the social contract

/T͟Hē/ /'sōSHəl/ /'kän trackt/

noun. **1:** *An agreement among the members of an organized society*

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Letter from the Editor

I am very excited to present the thirteenth volume of *The Social Contract*. This journal would not have been possible without the amazing work done by the senior and junior editors. I would like to thank them for their patience, dedication, and flexibility. Revitalizing *The Social Contract* during this past year posed its challenges, but the senior and junior editors did not let this impact the quality of the journal. I would also like to thank all of the professors that gave advice and advertised the journal. I would specifically like to thank Professor Morrison and Professor Narain for their guidance. In addition, I would like to thank the former editors who helped guide myself, and the rest of the team, through this process. Finally, I would like to thank everyone who submitted an essay. Sharing your work to an editorial board takes bravery, and without all of the amazing essays that were submitted, the journal would never have come to fruition.

I was first introduced to *The Social Contract* while discussing possible academic events/projects with Professor Morrison. After looking at the previous volumes and meeting with the former editors, I knew that this journal was an important project to pursue. Following consultations with the President of the Western Political Science Association, Aidan Link, and the other executives, the editorial team was formed. To ensure academic integrity, the application process was thorough, and the selection process was anonymous. The editorial team received over 75 essays covering a large range of topics. This year the journal has the following topics: American Politics, Canadian Politics, Comparative Politics, Identity, International Relations, Media, Political Theory, and Urban and Local Governance. Overall, the large range of essays presented in this journal reflects how interdisciplinary the study of political science truly is.

All in all, I hope that after reading *The Social Contract*, readers will understand that this is not just a journal. *The Social Contract* is a reflection of the current range of topics within political science. *The Social Contract* is a platform to recognize the hard work of Western students. *The Social Contract* brings students together to work towards a common goal. But most importantly, *The Social Contract* has the ability to create a legacy. Past, present, and future students will be united by their shared appreciation of *The Social Contract* as an integral part of the academic experience of Western political science students. This past year it has been up to the current editorial team to revitalize that legacy. I hope that future students will carry on the torch to ensure that projects like *The Social Contract* continue.

It was an honour to work on this journal, and I would again like to thank everyone who made this possible.

Best,

Amanda Mae Gutzke
Editor-in-Chief

Letter from the Undergraduate Chair

I am truly impressed that, in this extraordinarily challenging year, a group of enterprising Political Science students somehow found the time and the motivation to breathe new life into *The Social Contract*, a highly valued departmental institution. Once the idea had taken shape, an editorial team was remarkably quickly assembled, and requests for student submissions eagerly taken up. In short order, the 2020-21 edition was well on its way.

But bringing a high-quality student-run journal to completion requires months of dedicated effort. The editors are called upon to read and evaluate submitted papers, identify the best amongst them, and then help the chosen authors refine them with the aid of well-targeted and constructive criticism. Student contributors are required to bravely subject their best work to scrutiny and, if successful, to absorb and repeatedly respond to close and keen-eyed feedback from the editors. Over the course of multiple drafts, both contributors and editors acquire a much better understanding of what it takes to produce a genuinely finished product.

These applied efforts are undoubtedly worthwhile. They can yield precisely the kind of sharp and revealing collection of essays, focused on centrally important classic as well as contemporary issues, that you see in the pages to follow. No less significantly, a journal of this kind makes a very public commitment to careful and accurate research, tight and coherent reasoning, and openness to debate, and does so at a time when these principles require reinforcement.

On behalf of the department, I heartily congratulate the editors and contributors associated with this year's edition of *The Social Contract*!

Bruce Morrison
Undergraduate Program Chair,
Western University Department of Political Science

Letter from the Founder

In early 2021, I was pleased to learn from Professor Nigmendra Narain that *The Social Contract*, which had been on a hiatus, was being revived by a group of committed and hard-working political science students at Western University. Current Editor-in-Chief Amanda Gutzke asked that I provide some insights into the origins and goals of *The Social Contract*.

During my first two years of my undergraduate studies at Western University, I sought to better understand what professors and teaching assistants considered the hallmarks of a well-written research paper. The advice that I was given time and again was to read a variety of articles in scholarly journals – however, I found that it was rare for papers written by undergraduate students to be published, with most published articles being written by graduate/doctoral candidates or professors.

In the fall semester of 2005, I returned to Western's campus and discussed with faculty my idea of starting an undergraduate political science journal. The journal would be student run and create a forum for students to exchange ideas. By publishing undergraduate papers, the journal would help undergraduate students better understand what the benchmarks are for a well-written research paper. The journal was intended to also be inclusive and any student could volunteer and participate, regardless of year and skillset.

Teamwork is a crucial ingredient for any successful organization. The original editorial board in 2005-2006 consisted of approximately 40 student volunteers, organized into six editing sections (Canadian Politics, American Politics, International Relations, Political Theory, Business and Government and Selected Topics). In the first year, we received 56 submissions and published 14 articles.

After more than 15 years since founding *The Social Contract*, I am happy to witness that the journal and its vision continue by fostering a forum for ideas, standards for excellence, collaboration and teamwork. I hope that this journal continues to be a success at Western for many years to come. Thank you to everyone that has supported and contributed to the journal since 2005.

Cheers,

D.J. Lynde, B.A. (Hons.), 2007
The Social Contract, Founder and Former Editor-in-Chief, 2005-2006

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The National Basketball Association: The Need for Regulation in an Era of Neoliberalism

Written By: Yashraj Chavda

Introduction:

The rise of neoliberalism and the lack of government regulation of the National Basketball Association (NBA) has fuelled anti-competitive and monopolistic behaviour. For the purposes of this essay, neoliberalism refers to the shift in control from the state to private markets. While government deregulation and privatization are often implemented in the promotion of free-market competition, the same does not apply to major professional sports industries such as the NBA. This is because competing leagues often merge and eliminate competition for viewership, stadium rights and sponsorship affiliations. This is evident through the NBA and ABA merger of 1976, where the four ABA teams were consolidated into the NBA and the remaining two dismantled.[1] Additionally, the lack of government regulation on the NBA's monopoly has allowed it to obtain funding from entities with foreign affiliations and support. For example, prior to Daryl Morey's tweets and the NBA's China problem- the NBA earned approximately $500 million annually from Chinese corporate investments and deals.[2] While such investments are widely accepted in a competitive free-market system, the NBA's monopoly over North American basketball has made the league prone to financial uncertainty and organizational instability. The receipt of such funding also has negative externalities for the United States' economy as there are risks of league-associated uncertainty and instability spilling over into the economy in the event of a league-wide crisis or a sudden rift from international sponsors. Additionally, the NBA's unregulated international expansion poses political risks for the USA, indicating the need for state-led regulation of the league.

This essay argues that the rise of neoliberal policies and lack of state-led market regulation has fuelled a limitation of free speech and the impairment of ethical behaviour within the NBA. The first section of this essay discusses and analyzes the NBA's unchecked monopoly and the effects on freedom of speech through its interactions with other states such as China and Turkey. This essay then examines how neoliberal policies and lack of government intervention impair the NBA's conduct of ethical businesses through its support of the National Collegiate Athletic Association's (NCAA) exploitative policies, its hypocritical approach for financial gain, and its restrictions on league expansion. Finally, this essay concludes by presenting possible state-led solutions to these issues.

Limitation of Free Speech:

The NBA's unchecked monopoly over American professional basketball has fuelled a limitation of free speech among its team rosters and management. Historically, the NBA has allowed team rosters and management to take part in activism in support of contemporary political issues. For example, when Eric Garner's life was taken unjustly by the New York Police Department, Lebron James, Kobe Bryant, the Los Angeles Lakers, and many others associated with the NBA wore "I Can't Breathe" shirts to warm-ups and used their social platforms to stand up against such violence.[3] However, when Houston Rockets GM Daryl Morey posted a tweet that said, "Fight for freedom, stand for Hong Kong", the NBA's official statement lacked clarity and decisiveness on whether the league wanted to protect its freedom of speech or apologize in efforts to win back Chinese business.[4] The NBA's official statement reads:

"We recognize that the views expressed by Houston Rockets General Manager Daryl Morey have offended so many of our friends and fans in China, which is regrettable. While Daryl has made it clear that his tweet does not represent the Rockets or the NBA, the values of the league support individuals' educating themselves and sharing their views on matters important to them. We have great respect for the history and culture of China and hope that sports and the NBA can be used as a unifying force to bridge cultural divides and bring people together."[5]

While the NBA strongly advocates for the expression of free speech, its fear of the Chinese Communist Party (CCP) caused Commissioner Adam Silver to distance the NBA from Morey's 'personal' tweets. Here, the NBA seemingly attempts to protect the 'individual' right to free speech, while also conceding with regret and support to the PRC. By calling Morey's tweet 'regrettable', the NBA reinforces the league's prioritization of investor relationships over the freedoms of its teams and management. While such an equivocal approach may be required due to the league's significant loss in funding, this issue raises concerns over whether the NBA should predominantly rely on international or state-controlled funding, and to what extent this reliance politicizes the league and impedes its members' right to free speech.

Moreover, relationships between businesses and the PRC's authoritarian government are extremely delicate. The CCP holds a tight grip over its internal politics and reinforces this control through threats towards foreign businesses and states for non-compliance.[6] The PRC does not emphasize the value in freedom of speech like western neoliberal states, and as such, it is able to punish non-compliant businesses with restrictive policies and withdrawal of funding.[7] Due to this, the CCP is able to mobilize its private firms to rally against any opposition. Unlike the western neoliberal order, the PRC does not view the state and the market as two distinct institutions.[8] Rather, the CCP has historically used its executive power and

influence to control its markets.[9] Thus, while the NBA has faced significant levels of criticism over their initial response, it is arguably the state's responsibility to stand up against other state-level powers. In international situations, the NBA is responsible for protecting its financial and organizational interests. The NBA exercises limited control over the decisions made by Chinese corporations, which indicates that state-led regulations would help create a preventative framework to limit the NBA's vulnerability and harsh effects from such an issue.

Another example of the NBA's prioritization of its financial interests over democratic values is through its lack of public support for Enes Kanter, a Boston Celtics player who is wanted in Turkey for speaking against the anti-democratic regime under Erdogan. After Kanter publicly criticized the Turkish regime, the Turkish government revoked Kanter's passport, jailed his father, and issued an international warrant for Kanter's arrest.[10] While the NBA silently supported Kanter in his travels to exhibition games and other league-related travel, they made no efforts to publicly express concern or initiate talks with Turkey.[11] This demonstrates how once again, the NBA prioritizes its relationships and financial interests over league values. If the NBA is unwilling to step in on such issues and concretely express its support for the freedom of speech, individual teams will become suppressed through fear. This directly allows investors and states to politicize the league and its franchises and influence them to act in ways that further their political interests. Due to the NBA's lack of public support on such issues, the state needs to step in and place regulatory measures to ensure the league is protecting the rights and freedoms of its workers. Additionally, the state needs to lay out guidelines for the reception of league funding and disassociate any influences that other foreign states and investments may have on league operations. This is important as the NBA lacks domestic competition, and state-led regulation would allow for more stable relationships between the NBA and politically linked investments.

The neoliberal idea of privatization aims to combat the anti-competitiveness and lack of efficiency in public sectors[12] and the impact of neoliberalism varies based on the state's ability to attract foreign investment.[13] As the USA is able to attract significant levels of foreign investment, it becomes prone to the risk of foreign entities holding political influence within the state. The NBA's reception of foreign investment is a necessary by-product of neoliberalism; however, its monopoly poses a vulnerability not only to the organization but also to the USA. This is because the NBA's monopoly and widespread influence make it a huge target for states to push political agendas. Whether that is through their investments or their interactions with franchises and players, the NBA's size and influence allow such actions to directly impact the USA and foreign state's diplomatic relationships with the USA. Additionally, due to the rise of the internet and globalization, the NBAs value chain has rapidly expanded to international markets, thus creating greater opportunities

for states to use the NBA to push their political agenda. Accordingly, there should be state-led efforts not only to regulate and create preventative policies but also to investigate the impacts of foreign investment on the NBA's operations.

Impairment of Business Ethics:

The rise of neoliberal policies in the west has impaired the NBA's conduct of ethical business practices. These consist of player exploitation, hypocrisy in operations and league-wide prioritization of financial interests. In theory, the NBA is regulated by federal antitrust laws, however, in practice, these laws have failed to effectively regulate monopolistic and anti-competitive behaviour within the league.[14] This is because courts have historically failed to fulfil their duty to uphold their responsibilities as 'antitrust authorities'.[15] This failure to hold professional sporting leagues to federal antitrust standards has resulted in the impairment of the NBA's ethical business practices.

First, the NBA directly supports the systemic exploitation of professional basketball players through its use of the National Collegiate Athletic Association (NCAA) to annually draft players into the league. The NCAA exploits its athletes by not paying them their fair share of revenues for provided labour. For instance, in 2019, the NCAA, its broadcasting companies, and respective schools earned close to a billion dollars in revenues- none of which were directly distributed to players.[16] Historically, states have refused to intervene and have shut down lawsuits against the NCAA on their violations of federal antitrust laws.[17] This can also be interpreted as a civil rights issue as the athletes are primarily African American, while most of those who share the highest portion of the NCAA's revenues are white.[18] The NCAA argues against its exploitation claims through the concept of 'amateurism' where it emphasizes that college athletes are students first, and their involvement in basketball is secondary.[19] However, in 2019, Judge Claudia Wilken ruled that the NCAA violated federal antitrust laws. Judge Wilken discredited the NCAA's 'amateurism' argument through her statement

"the rules that permit, limit or forbid student-athlete compensation and benefits do not follow any coherent definition of amateurism".[20]

This ruling is significant as it allows colleges to compensate players for education expenses and achievements, however, it falls short of defeating the NCAAs exploitation as it still firmly holds the player salary caps for how much colleges are allowed to directly pay its players. These salary caps disproportionately distribute fewer funds to athletes while sharing significant levels of profits among executives.[21]

This shows how the increase in privatization of professional basketball through the rise of neoliberal policies has also allowed the NCAA to monopolize. This further permitted the league to participate in exploitative policies that proportionally limit funding received by college athletes. This signals a need for representative states to

intervene and push legislation that not only removes salary caps and proportionally pays its athletes, but also allows college athletes to approach businesses for endorsements and sponsorships for additional compensation. A state-led approach is necessary to meet the goals set out by federal antitrust laws to restrict monopoly powers.

Secondly, the NBA avoids culpability by separating itself from its franchises when combatting issues regarding free speech. This is seen in the NBA's response to the PRC, where the league made clear efforts to convince China that it functions independently from its franchises. However, when it comes to investment activity and the negotiation of broadcasting rights, the NBA hypocritically presents itself as a unified entity for greater negotiating power.[22] The United States' Congress is partially responsible for such an approach as it granted professional sports leagues the right to collectively negotiate broadcasting and television agreements.[23] This decision effectively eliminated healthy competition that occurred between franchises for streaming and broadcasting rights. While such an increase in negotiating power and increase in funds also allows the NBA to increase salary caps for its players, it also further reinforces the NBA's monopoly. So, without state-led regulations in place, there would be no way to know how efficiently the NBA is using public funds and to what proportion these funds are used to benefit players, workers of the league and the public interest.

When it comes to the reception of government subsidies and tax breaks, the NBA returns to an individualized approach. This approach allows the individual franchises to convince state lawmakers of their need for state funding to help construct stadiums. Through the individual approach, franchises can convince state governments of the local benefits of the creation of stadiums, such as increases in employment and consumer spending.[24] Due to this, taxpayers end up paying an average of $260 million per professional sports stadium, and with little government regulation and intervention, it becomes extremely difficult to enforce effective use of state funds for such projects.[25] Moreover, a study from the University of Maryland shows that the overall impact of stadiums tends to be negative.[26] It highlights that the construction of stadiums, especially those from state funds fail to deliver initially proposed economic benefits to states and their local communities. Additionally, stadium constructions tend to "negatively affect income, wage and salary disbursements, and wages per job".[27] Federal and state-level governments need to do a better job at regulating the NBA to ensure that the league is working towards the interests of the public. Increased state regulation will effectively allow the state to ensure that the subsidies provided are being used more effectively and have greater control over the NBA's ethical conduct of business.[28] Overall, a lack of state authority over the NBA has allowed it to utilize its unchecked monopolistic powers to switch between individual and unified approaches to avoid culpability and pursue financial gain.

Third, federal antitrust laws have failed to prevent the NBA from exploiting its monopoly through its restrictive approach for the creation of new teams. By restricting the total number of franchises, the league can create an "artificial shortage" of teams, through which it can collect more money and allow for substantial appreciation of existing franchises.[29] In contrast, restricting expansion would allow the league to reduce the dilution of talent and keep its fans interested in the sport.[30] Moreover, a lower number of teams allows each team to play more games, and thus, play more times against 'traditional rivals' and keep fans engaged.[31] Despite these reasons, it can be argued that the NBA and its franchises construct such barriers of entry for their own financial gain. Even if an increase of teams would increase league-wide revenues, if each individual franchise expects their share of funds will decline as a result, they have an incentive vote against any expansion proposals. The existence of such a franchise shortage hurts consumers as it creates inefficiencies within the league for the franchises' self-interest.

The lack of state regulation on professional sports leagues such as the NBA is counterproductive to neoliberal goals. This is because, like other professional sports leagues, the NBA was able to monopolize quickly. The NBA–contrary to most privatized industries and like publicly owned industries–lacks competitiveness and efficiency. The lack of competition among leagues or league franchises limits options for athletes and workers. Due to this, the NBA sees little incentive to improve efficiency such as league expansion or improve work conditions such as providing greater support for athletes' rights and freedoms. The NBA requires new incentives to pressure it into further aligning with the public interests. Comparable to private industries, the existence of competition encourages organizations to spend additional resources to better understand the needs of their clients and target audience. However, history has shown that competitive leagues are not able to co-exist. Due to this, if the government wishes to see the NBA conduct its business operations in a more efficient and ethical way, it must either create incentives or enforce regulations on the league- both of which require government intervention.

Recommendations:

Throughout history, federal and state governments have toyed with the idea of a state-led regulatory agency to monitor sports organizations. In 1972, there was a debate in Congress for the creation of a Federal Sports Commission, however, this idea was not acted upon and eventually disappeared from policy debates.[32] During this time, the NBA also did not have an extensive international presence which may have contributed to the proposal's failure. As the NBA is growing rapidly, and increasing its reliance on international markets, this becomes a relatively significant and contemporary issue.

The federal government needs to create a specialized agency, such as the proposed Federal Sports Commission, to address the

NBA's growing international influence and its anti-competitive practices. Regarding the NBA's international influence, this agency would monitor the receipt of foreign investments and funding and analyze the geopolitical risks of such funding to the USA. Through this, the agency can make recommendations to the NBA to mitigate vulnerabilities and geopolitical risks. This agency can also regulate its anti-competitive behaviours through the NBA's participation in its **(1)** exploitative policies, **(2)** negotiations for streaming and broadcasting deals and **(3)** restrictive expansion policies. Such an agency would be able to conduct frequent and periodic reviews to identify parts in the NBA's operations that do not represent the public interest. These reviews would also allow the government to see if the NBA is providing a sufficient supply of franchises to meet national demands and check the NBA's monopoly to prevent it from misusing its powers for financial gain.

Conclusion:

Due to the NBA's rapid international growth, this essay argued that there is a growing need for government regulation to reduce the NBA's limitation of free speech, systemic exploitation of players, and the impairment of ethical behaviour within the NBA. Additionally, government intervention would mitigate the influence foreign entities have on the American political system. While the western neoliberal approach allows for capitalism and competition to flourish, it is evident that market forces in the professional sports industry do not allow such competition and league expansion to occur naturally. The creation of a specialized regulatory agency would allow the NBA to work towards the general public interest. It would be able to provide an external body to evaluate the NBA and ensure it is supplying the demands set out by the public, such as the need for more franchises or compensation for college basketball players.

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Indigenous Led Opposition to Pipeline Infrastructure

Written By: Jade Clark

Introduction:

In contemporary Canada, the construction of pipelines has become a highly politicized debate, in part due to organized Indigenous resistance. Pipeline infrastructure is a crucial element of the Canadian Government and energy industry's multi-billion dollar agenda to transport oil and gas from the tar sands and fracking fields of Alberta and North Eastern British Columbia to West coast ports where it can be exported internationally.[1] Indigenous resurgence in population, culture and political importance has resulted in growing levels of activism.[2] With the constitutional protection of treaty rights under the *Canadian Charter of Rights and Freedoms* and the support of United Nations in the *United Nations Declaration on the Human Rights of Indigenous Peoples,*[3] many Indigenous Peoples have mobilized to defend their traditional, unceded and treaty-guaranteed territories along pipeline construction routes.[4] This movement can be seen through legislative and legal actions, and more radically through protest and controversial blockades in the streets.[5]

Parallels can be drawn between pipeline construction through Indigenous lands and colonial Canada.[6] The expropriation of Indigenous lands is necessary because pipelines are the key to a prosperous energy empire which serves to benefit settler Canada.[7] However, unlike during colonial times, Indigenous rights are protected under the Canadian Constitution and this empowers Indigenous activists to resist the interests of settler Canada. Often forming alliances with environmentalist groups, support for Indigenous territorial rights has spread across the nation.[8] Indigenous activism is gaining momentum and will continue to influence the political climate around the hydrocarbon economy. Settler Canada must recognize that failing to recognize Indigenous territorial rights and moving forward with natural resource projects will be met with continued opposition.[9] This paper begins by identifying the issue of pipeline construction on Indigenous territory and uses a social movement theory to analyze the emergence of Indigenous activism. It provides a background on the process of colonizing Canada and how colonial forces continue to impact the use of Indigenous territories, and then suggests decolonizing the decision-making process on hydrocarbon projects and the implementation of the *United Nations Declaration on the Human Rights of Indigenous Peoples*.[10]

Analytical Framework:

Indigenous led opposition to the construction of pipelines has grown into a widespread social movement. A social movement is purposeful actions made by a group in order to make meaningful changes to the values and institutions of a society.[11]

Indigenous Peoples' challenges to pipeline construction questions absolute state sovereignty over natural resources.[12] The movement acts on multiple fronts, in the courts and radically in the streets with blockades.[13] In October 2014, the British Columbia government approved the Coastal GasLink pipeline, which runs through Witsuwit'en territory that was never surrendered to the Crown through treaties.[14] In protest, the Unist'ot'en camp constructed a blockade in 2015 to prevent TransCanada employees from entering the territory.[15] Using the *United Nations Declaration on the Human Rights of Indigenous Peoples*,

the camp asserted their right to "free, prior, and informed consent" on the use of unceded territory.[16]

Social movements require several factors to emerge and have success. Resource Mobilization Theory suggests in order for a social movement to emerge, shared and continuous grievances must be inflicted on a vulnerable population.[17] The availability of new resources to a vulnerable population such as money, allies and expertise will aid in the emergence of a social movement.[18] According to Patrick C. Canning in *I Could Turn You to Stone: Indigenous Blockades in an Age of Climate Change*,

"Disadvantages have been stacked on the Indigenous Peoples of the Americas and the world in the form of colonialism. Key parts of that colonialism extend to the present day as government failures to deal with land issues and treaties, to honour treaties, and to resolve disputes over resources."[19]

Examining Indigenous activism through Resource Mobilization Theory considers both the grievances experienced by Indigenous Peoples since colonization and the newly available resources such as alliances with environmentalist groups and external validation from the United Nations as factors that have resulted in the emergence of the social movement against pipeline construction.[20] This theory and Indigenous activism extends past the issue of pipelines and can be applied to the Oka Crisis in 1990 when blockades were constructed in response to an attempt by a municipal government to bulldoze a sacred Indigenous burial ground to create a golf course and the Idle No More movement in 2012 and 2013 when mass blockades attempted to stop legislation reducing environmental protection.[21]

This theoretical approach considers both the history of mistreatment of Indigenous Peoples by settler Canada and the modern forces such as powerful alliances which drive the ability of Indigenous Peoples to resist oil and gas pipelines. Indigenous activism and pipeline challenges cannot be understood completely without the knowledge of Canada's oppressive and colonial past and the modern day political climate that is influenced by citizen activism which has allowed the social movement to spread across the country. One cannot be independent of the other, the history and the present day influence the outcomes of the resistance to the use of unceded Indigenous territory. The Canadian government's exclusion of Indigenous Peoples when considering hydrocarbon projects and

moving forward with pipeline construction despite constitutional protection of treaty rights, such as the government approved use of Witsuwit'en territory, is a reminder of ongoing colonialism in Canada.[22]

Analyzing the Causes:

The key to understanding the Indigenous resistance to pipeline construction dates back to the colonial period. Stefan Kipfer describes the colonization of Canada in *Pushing the Limits of Urban Research: Urbanization, Pipelines and Counter-Colonial Politics* as,

"it propelled and was organized by the genocidal apartheid system that helped build the Canadian nation-state-in-formation: a network of reserves, pass controls and racist legal classification."[23]

The *Indian Act* of 1876 codified these practices,[24] and forced Indigenous Peoples onto marginalized lands with extreme environments, leaving the best land for settler Canada.[25] The colonial attitude of invasion and conquest of Indigenous lands as a necessary consequence for the success of settler Canada is being reproduced with the expansion of natural resource projects on Indigenous territory.[26] Continuing to ignore Indigenous treaty rights protected in the Constitution to achieve economic development is a colonial practice by the Canadian government. Anne Spice says in *Fighting Invasive Infrastructures* that,

the characterization of oil and gas pipelines as 'critical infrastructures' constitutes a form of settler colonial invasion, and … Indigenous resistance to oil and gas infrastructures, through suspension, disruption, and blockades, protect our relations against the violence of settler colonial invasion.[27]

Arguments in support of pipeline infrastructure highlight the risks of transporting oil by rail, including contamination to the environment and death.[28] The solution is the construction of pipelines on unceded Indigenous territory to protect the safety of settler Canadians,[29] ignoring the impacts of pipeline leaks on Indigenous Peoples.[30] Pipeline leaks can contaminate drinking water and harm ecosystems by killing habitat and aquatic life which many Indigenous Peoples rely on.[31] Pipeline leaks on Indigenous territory further undermine constitutional protected rights by interfering the right to hunt and fish.[32]

The nature of the blockade in an attempt to challenge construction is symbolic as it creates a physical barrier between Indigenous territorial sovereignty and the invasion of settler Canada.[33] The use of the blockades is desperate and those who construct them put their personal safety at risk with no guarantee of success.[34] During the Oka Crisis at the blockades, an Indigenous girl was stabbed by a Canadian soldier using the bayonet on their rifle,[35] a reminder of the risks of violent retaliation when colonized groups attempt to resist the actions of the state. Despite the personal risks, Indigenous blockades continue to be constructed and are effective at drawing the attention of the media which further spreads the message of their campaign.[36] Media coverage on blockades often facilitates the

creation of alliances between Indigenous Peoples, environmentalist groups who are concerned with the hydrocarbon impact on climate change, and other citizens who sympathize with the continuous injustices Indigenous Peoples face.[37] When examining Indigenous resistance to pipeline construction using Resource Mobilization Theory, Indigenous and environmentalist alliances have strengthened the social movement.

Recently in February 2020, the Witsuwit'en blockade against the construction of the Coastal GasLink pipeline in Northern British Columbia sparked Indigenous solidarity protests and mass blockades across Canada, disrupting CN Rail and Via Rail service.[38] A political nightmare for Ottawa, Indigenous activism aligned with environmental groups and citizens has impacted the natural resource development and the economy.[39] The ongoing colonialist practices of the Canadian government, historically through colonization and conquest and today by ignoring treaty protected rights to proceed with natural resource extraction projects, combined with new powerful alliances and support across Canada has resulted in a widespread social movement. This aligns with the theoretical approach of Resource Mobilization Theory where the colonialist practices of the Canadian government has allowed Indigenous activists to establish and use alliances in their resistance against pipeline construction.

Proposing Solutions:

Given the causes of Indigenous activism and the strength of the movement to disrupt not only natural resource extraction projects, but the flow of the entire Canadian economy using mass blockades, the Canadian government must recognize that continuing to fail to uphold treaty protected rights will result in escalating conflict. Canning says,

"The indigenous resurgence is arguably one of the two biggest phenomena currently shaping our future of generations to come. The other is climate change."[40]

The pressure on Ottawa is mounting to find solutions to the conflicting interests of settler Canada and Indigenous Peoples and their allies.

The government has attempted to divert attention away from Indigenous land claims, focusing on facilitating the revival of culture and stories.[41] However, approvals of hydrocarbon projects which impact Indigenous territorial sovereignty has not gone unnoticed. According to Canning,

Settler Canada has a duty to raise alarm: If we continue to treat Indigenous Peoples as we have – leaving them ignored; sidelined; bought off; belittled; not at the table; consulted, but ultimately with projects going ahead regardless of their views – we may well be 'turned to stone.'[42]

Being "turned to stone" is a metaphor for the impact of mass Indigenous blockades on the Canadian economy.[43]

One suggestion would be to decolonize the decision-making process regarding hydrocarbon projects and the collaboration of Indigenous knowledge and Western

scientists to come to an agreement on the viability of these projects.[44] Consultation from Indigenous communities and harm assessments of pipelines from Western scientists has the potential to deescalate tensions between Indigenous Peoples and the Canadian energy industry.[45] A second and more extensive suggestion is for the Canadian government to implement the provisions of the *United Nations Declaration on the Human Rights of Indigenous Peoples*.[46] Article 28 states:

Indigenous Peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.[47]

Implementing the requirement of "free, prior and informed consent",[48] will give Indigenous Peoples the agency to make decisions regarding the use of their territories.[49] Indigenous Peoples have internal divisions regarding viability of hydrocarbon projects and the freedom to fully control projects on their territories will allow those divisions to be debated. This is also a necessary step to ending oppressive, colonial style relationships between the Canadian government and Indigenous Peoples.

Resource Mobilization Theory suggests that shared and enduring grievances are required for a social movement to emerge.[50] Ending paternalistic and colonial treatment of Indigenous Peoples by the Canadian government and adhering to the *United Nations Declaration on the Human Rights of Indigenous Peoples* can work towards eliminating many of the grievances experienced by Indigenous Peoples.

Conclusion:

Ultimately, Indigenous activism to resist the construction of pipelines is a powerful social movement in Canada. According to Resource Mobilization Theory, this movement has emerged due to the frustrations about enduring colonial forces inflicted on Indigenous Peoples and the resources available such as citizen and environmentalist group alliances. Approval of pipeline routes that lie along unceded Indigenous territories without the consent of Indigenous Peoples can be seen as a modern day form of settler Canada invasion.[51] Blockades are often used to protest the construction of pipelines, while risky and uncertain, they effectively spread the message of the social movement through the media, inspire support for solidarity protests and have the ability to impact the Canadian economy.[52] Potential solutions are to decolonize government decisions on oil and gas projects, the collaboration between Indigenous Peoples and Western scientists, and the implementation of the *United Nations Declaration on the Human Rights of Indigenous Peoples*.[53]

This research paper has analyzed the issue of natural resource projects being constructed on Indigenous treaty protected territory without consent and its powerful nationwide

resistance, while highlighting the enduring oppressive Indigenous colonial experience. I encourage policymakers and other interested actors to seek to make meaningful actions to deconstruct the paternalistic and colonial style treatment of Indigenous Peoples and to uphold their rights entrenched in the Canadian Constitution.

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A Mouse Between Two Elephants: How Canada's Economic Dependence on the United States Reduces its Policy Autonomy Toward China

Written By: Jiya Hai

Introduction:

Pierre Trudeau famously compared the Canada–United States (US) relationship to that between a mouse and an elephant, with the US "dominat[ing] its immediate surroundings" and Canada vulnerable to every movement of its large neighbour.[1] [2] Fifty years later, two former Canadian ambassadors to China compared Canada's position in growing US–China economic conflicts to being caught between "two elephants."[3] [4] Assimilating China into the great power system is the pre-eminent focus of the first half of the twenty-first century, and the external threat of a rising China is perhaps the most important issue in modern Canada–US relations.[5] This paper examines Canadian and American policies toward China, particularly the extent of Canada's policy autonomy from the US given the former's economic dependence on the latter. An analysis of policy autonomy and the use of political economic, post–9/11 security, and legal analytical frameworks reveal that Canada's economic dependence on the US deprives it of policy autonomy when contending with China, and that Canada and the US are converging in this policy domain. These ideas are exemplified by developments in three key areas: the case surrounding Huawei executive Meng Wanzhou, Canadian and American policies toward Huawei's equipment, and the China-relevant implications of the US–Mexico–Canada Agreement (USMCA).

The literature on Canada–US relations since 9/11 often considers the implications of heightened US security concerns for Canada's economic well-being within a broader discussion of Canada's autonomy.[6] [7] [8] [9] [10] [11] [12] [13] [14] [15] [16] During Donald Trump's presidency, Canada–US literature increasingly discussed Canada's role in US–China conflicts.[17] [18] [19] [20] [21] [22] [23] [24] [25] [26] [27] [28] [29] In the contexts of Canada's dependence on the US and of American concerns regarding China's rise, it will be increasingly important to understand the extent to which Canada's China policy is tethered to America's. This paper adds to the aforementioned bodies of literature by examining recent and ongoing developments in Canadian and American policies toward China to reveal trends that will drive Canada–US relations for decades.

Meng Wanzhou:

Ongoing developments in Huawei executive Meng Wanzhou's arrest and potential extradition constitute a salient example of how Canada lacks policy autonomy from the US as well as the two countries' convergence on China. First, it is necessary to understand the relative inefficacy of applying a legal analytical framework to this

case given the greater importance of political economic factors. The peculiarities of Meng's case should be examined in the larger context of the US–China rivalry. It is also evident that Meng's case further constrains Canada's ability to pursue independent policies which might otherwise diversify trade away from the US.

In Meng's case, a legal approach that emphasizes Canadian judicial independence and the rule of law is less relevant than a political economic approach, which highlights American politicization of Meng's case and Canada's dependence on the US. In December 2018, Canadian police arrested Meng after a New York court issued an arrest warrant for covering up attempts by Huawei-linked companies to sell equipment to Iran, thereby violating American sanctions.[30] A legal analysis of Meng's potential extradition has merit when considering statements that Canada is simply complying with the terms of its extradition treaty with the US and upholding the rule of law as it pertains to fraud.[31] However, circumstances strongly suggest that the US politicized Meng's case as a result of its rivalry with China. Fundamentally, the key struggle of Canadian autonomy is the tension between independent policy and the extent to which Canada is beholden to its powerful neighbour due to political economic factors.[32] In Meng's case, the key interest of said neighbour is to mitigate the economic threats posed by a rising China by containing Huawei, the telecommunications giant leading American companies in the 5G technology race.[33] Notably, lawyers including John Bellinger, a former legal adviser and senior associate counsel to the George W. Bush White House, and Eric Lewis, a U.S. lawyer specializing in international fraud and corruption cases, said there was a lack of precedent for the Us to prosecute individuals for criminal charges related to American sanctions in Iran.[34 35] They gave examples wherein corporations were fined instead.[36] Accusations grew that the US was undermining Canada's judicial proceedings and using Meng as a "bargaining chip" in the Sino–American trade dispute when it was revealed that Trump had commented on the possibility of intervening in the case if it would serve American national security or facilitate a US–China trade deal.[37 38 39] Such a statement reinforces the perception of Meng's case as a politicized component of evolving US–China competition. One perspective is that Trump's idiosyncrasies do not necessarily reflect broader American intentions, but a different Republican or Democratic administration would likely also take part in what is essentially an inevitable clash between the US and China which will extend beyond Trump's presidency.[40 41 42 43] From this perspective, Canada's legal actions in Meng's case, while legitimate, effectively serve American political economic interests.

Meng's case also reinforces the notion of Canada's lack of policy autonomy from and convergence with the US insofar as it is an ongoing barrier to further free trade agreement talks between Canada and China.[44 45 46] Previously, the growth of China's economy and the size of its market strongly incentivized Canada to pursue

closer relations while avoiding the effects of China's competition with the US.[47] [48] However, this approach is no longer feasible. In the US–China conflict, economics is the "primary nexus" where the two great powers' interests meet.[49]

Trade, in turn, is the "common ground" upon which the powers are re-establishing their relationship.[50]

As the US confronts China, Canada loses its autonomy to pursue free trade with China. Although Canada's policy-makers may prefer to reduce the country's heavy economic dependence on the US, the reality is that Canada is compelled to align its economic policy with that of the US in order to maintain relations with its most significant trading partner and strategic ally.[51]

Huawei Technologies:

Canada's non-integration of Huawei's equipment in its 5G networks also results from its political economic dependence on the US and subsequent need to accommodate American security concerns. Although Canada was historically more open to Chinese technology firms, US pressures on Canada to ban Huawei essentially succeeded. Interrelated factors concerning American securitization of economic competition with China and Canada's political economic dependence on the US erode Canada's policy autonomy. These dynamics are particularly clear when applying a post-9/11 security framework to Canadian and American policies toward Huawei.

Canada's non-integration of Huawei's equipment is driven by its economic dependence on the US. Years before Trump was elected, the US used the issue of national security to politicize Chinese technology.[52] Since 2008, Huawei has been barred from acquisitions and contracts as well as labelled a national security threat due to economic espionage and ties to the Chinese government.[53] [54] In contrast, Canadian policy was characterized by greater willingness to work with Chinese information and communication technology firms, reflecting some autonomy from the US despite Canada's involvement in North American security arrangements.[55] Nevertheless, with Trump's presidency came an ideology of "Trumpism" underpinned by a preoccupation with China.[56] Furthermore, there is bipartisan sentiment in the US that Canada's integration of Huawei's equipment in its 5G networks would threaten American security.[57] Although Canada is the only member of the Five Eyes intelligence alliance that has yet to bar or restrict the use of Huawei's equipment in its 5G networks, it delayed the decision long enough to force telecommunications companies to exclude Huawei.[58] [59] Despite statements that Canada would make the decision in its national interest and not be "bullied" into banning Huawei's equipment, Canada's policy in this issue area could not diverge from that of the US.[60] Sustained challenges to this relationship would disproportionately harm Canada given its asymmetrical trade dependence on the US.[61] [62]

Canada's policy autonomy is weakened by US–China tensions and the American "with-us-or-against-us attitude," because

Canada's "obvious preeminent interest is to maintain effective relations with its closest ally and largest trading partner."[63] [64]

The securitization of economic relations, which refers to economic challenges that assume a national security identity, underpins the belief that Chinese economic practices pose a security threat to the US and explains why American elites equate an increase in China's economic competitiveness with a decrease in American national security.[65] [66] The 2017 US National Security Strategy defined China as a revisionist power with global military and economic ambitions; such ideas were reinforced by the National Defense Strategy issued by the US Department of Defense in 2018, which highlighted "long-term strategic competition" with China as the "central challenge to U.S. prosperity and security."[67] [68] Concerns over strategic competition as exemplified by the 5G technology race thereby explain American efforts to target Huawei.[69] In the context of Canada–US relations, American pressures on Canada's China policy over the question of Huawei is an expression of American concerns over global technological dominance.[70] [71] [72] [73]

A post–9/11 security framework including political economic factors helps to explain policy convergence between Canada and the US on the non-integration of Huawei equipment. 9/11 and the ensuing War on Terror "intensif[ied] the unipolar power structure" in Canada–US relations, ultimately reducing Canada's policy autonomy by prioritizing US–dependent economic interests in its foreign policy.[74] Canada cooperated with the US on border control issues post–9/11 in a tacit bargain: the US indicated that security issues trumped trade, and Canada signaled that it would also prioritize security to the extent that access to American markets would be protected.[75] [76] [77] America's post–9/11 security concerns thus cemented the Canadian staples state's trade with the US as a policy priority for Canadian leaders.[78] Similarly, Canada is strongly incentivized to align its security policy with that of the US against Huawei. This is because Canada's exports are still dependent on access to American markets, and this dependence consequently dominates Canada's policy priorities.[79] By prioritizing China in its security agenda and effectively barring Huawei from its 5G networks, Canadian policy converges with American policy, and the trend of Canada's diminishing policy autonomy since 9/11 continues.[80]

USMCA:

The content and successful negotiation of the USMCA reinforce the idea that Canada lacks policy autonomy from and is converging with the US in contending with China. Importantly, Canada cooperated in re-negotiating the North American Free Trade Agreement (NAFTA) due to its dependence on trade with the US. Although legally insignificant, USMCA Article 32.10 reinforces Canada's policy convergence with the US and the growing extent to which it lacks trade policy autonomy. Agreeing to Article 32.10 can also be interpreted as a

part of Canada's strategy to avoid unwanted help from the US.

First, it is necessary to contextualize Canada's lack of policy autonomy in regards to the USMCA using a political economic lens. Nationally, it is evident that Canada's trade policy imperatives, specifically in relation to strengthening bilateral economic relations and ensuring access to American markets, are central to its foreign policy priorities.[81] In truth, the alternative of not reaching a deal over the USMCA was not a viable option for Canada.[82] [83] The blunt reality of Canada's economic relationship with the US is shaped by continued dependence on staples trade.[84] A well-known Canadian contribution to political economy, the staples approach fundamentally assumes that staple exports constitute the leading sector of an economy.[85] The combined pressures of the staples approach to Canada's economy and the argument that Canada lacks a back-up plan which would pivot its trade away from the US constituted its need to maintain economic relations with the US and renegotiate NAFTA.[86] [87] In the negotiating process, Canada's capacity to exercise policy autonomy was constrained by its status as a small, open economy dependent on the US.[88]

As opposed to the relatively weaker efficacy of a legal lens, a political economic analysis reveals Canada's decreasing policy autonomy from and increasing convergence with the US in the context of China-relevant USMCA provisions. Article 32.10 in particular exemplifies the American with-us-or-against-us approach to bilateral relations and American pressures on Canada's China policy. This is because it seems to give the US veto power over Canada should it pursue a comprehensive free trade agreement with a "non-market economy," which is widely agreed to be a direct reference to China.[89] [90] [91] Internationally, the US frames tensions with China as North America versus China.[92] A counterargument to the idea that Article 32.10 erodes Canada's policy autonomy might point out that the US already had the legal ability to withdraw from the agreement for any reason.[93] [94] However, Article 32.10's material legal consequences are less important than its symbolic effects. By agreeing to the clause, Canada implicitly agreed to side with the US in its larger trade dispute with China and signalled support for a North American front in the strategic rivalry.[95] Canada's lack of policy autonomy on this issue is again explained by its dependence on American markets. In essence, the decision to agree to the clause and the USMCA overall was "not so much made as accepted as a matter of political and economic necessity."[96]

Defense against help, which was initially conceptualized as a strategy for mid- or small-sized states to maintain sufficient levels of defense, can also be applied to the outcome of the USMCA and Canada's convergence with the US on the issue of China. Canada's overall security strategy is to maintain a minimum level of defense that may not be in the country's direct strategic interests but is sufficient "to avoid

'unwanted help' from the U.S."[97] Canada's implicit agreement to align its trade policies with American objectives of countering China through the USMCA can be interpreted as a decision to signal a level of cooperation the US would find acceptable. This would subsequently help reduce the risks of unilateral American action that could harm Canada's economic well-being. Canada's bid to avoid unwanted help from the US through Article 32.10 is reinforced by Canada's historic free trade agenda. Both the Stephen Harper and early Justin Trudeau governments sought to promote trade diversification, but practical uptake by Canadian businesses was minimal.[98] [99] [100] The preferential trade conditions in the USMCA's predecessor, NAFTA, created opportunity costs for businesses seeking to expand into China.[101] Canadian leaders expressed ambitions for trade diversification, specifically by pivoting to China, but these proved far easier to state than to achieve.[102] Like the Liberals before them, the Harper government prioritized keeping the Canada–US border open for trade, with Harper admitting that

even the "best-case scenario of diversification" would not displace the US as Canada's most important trading partner.[103]

Essentially, despite clear potential for economic growth in trading with China, Canada was and continues to be unable to exercise policy autonomy in pursuing such growth due to its trade relationship with the US.[104] In a time marked by heightened tensions over China, Canada will continue to focus on strengthening Canadian–American economic relations while carefully avoiding what the US might consider threatening alternative relationships. This converging policy trajectory is expected to persist beyond Trump's presidency and Trudeau's prime ministry, probably due to the twofold pressures of bipartisan consensus on the long-term strategic threat posed by China in the US and Canada's continued economic dependence on its southern neighbour.[105]

Conclusion:

Examining the political economic and security factors driving Huawei executive Meng Wanzhou's case, Canadian and American policies toward Huawei, and USMCA Article 32.10 reveals that Canada lacks policy autonomy from the US when contending with China and is converging with the US in this domain. The US politicized Meng's case as a part of the larger US–China economic conflict, and Canada's political economic dependence on the US rather than legal factors compels it to comply with American prosecutorial motives. Similarly, American efforts to block Huawei Technologies in Canada stem from the former's strategic competition with China in technological innovation. Canada's informal yet effective non-integration of Huawei's equipment is a part of its tacit bargain with the US after 9/11 to cooperate on matters of security in order to protect bilateral trade. Finally, while largely insignificant in a legal sense, USMCA Article 32.10 highlights Canada's prioritization of trade relations with the US and subsequent incapacity to pursue independent trade policy. While political parties and leaders in both countries will

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The Impact of Federalism and Historical Institutionalism on Evangelical Anti-Abortion Mobilization in the United States and Canada

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Introduction:

Over the past few decades, the United States and Canada have both experienced the polarizing effect of abortion debates in numerous policy spheres. This paper will investigate how different sociopolitical terrains in the United States and Canada influenced the extent to which evangelicals in both respective countries could influence anti-abortion policy developments. This paper will begin by demonstrating that the development of evangelical anti-abortion groups can be attributed to federalism. Specifically, federalism has facilitated an informal, unorganized network of Christians in Canada, ultimately impeding their ability to impact public policy. Conversely, federalism in the United States facilitated an organized, cooperative group of Christians that were able to present a unified opposition to abortion in public policy debates. Also, historical institutionalism can be used to explain the limited influence that Canadian evangelicals had on anti-abortion policy debates in the legislature. This paper will conversely demonstrate that the American polity structure provided an opportunity for the evangelical movement in the United States to help push anti-abortion policy developments in Congress and the Senate.

Analytical Framework:

Historical institutionalism is the main analytical framework that will be used to explain the diverging developments in the evangelical anti-abortion movement in the United States and Canada. Historical institutionalism, as an approach to analyzing social change, recognizes the roles that institutions play in structuring political outcomes.[1] [2] David Meyer and Susan Staggenborg define a political opportunity structure as the static, institutional variables that limit a movement's development, tactics and impact.[3] William Gamson and David Meyer also posit that the political opportunity structure can consist of elements that activists can attempt to alter, such as public policy, elite alignment and political discourse.[4] It follows that certain special interests and social movements can easily permeate certain political environments while others are constrained. Certain social movements may also be constrained by institutions in the pursuit of favourable policy outcomes. In this paper, the political institutionalist context has been crucial in the organization and development of moral traditionalist movements and their influence on public policy.[5]

This paper will also use the analytical framework of federalism. Both the United

States and Canada have federal systems that divide power between federal and local governments. However, Canada's federal system is decentralized, adversarial and involves strengthened provinces in relation to the federal government.[6] Debates on federalism in Canada involve language, region and managing difference.[7] Discourses on federalism in the United States involve the concepts of shared power, limited government and checks and balances.[8] Federalism ultimately has implications on the development of national unity narratives, exceptionalism and conflicting regional interests, all of which will be relevant in assessing the impact of federal systems on the development of evangelical anti-abortion movements in two different federal states.

Historical Context of Abortion Policy Developments:

Abortion was regulated by state laws in the United States in the nineteenth century, prohibiting it unless the life of the mother was threatened.[9] Before the 1960s, abortion in America was rarely discussed and considered taboo.[10] Starting in the 1960s, a series of discourses emerged that emphasized a woman's choice to limit childbearing due to her own deliberate free will.[11] This rapid shift in the policy agenda led to a large judicial and legislative attack on existing abortion laws, culminating in the *Roe. v. Wade* decision in 1973.[12] *Roe. v. Wade* granted women the right to an abortion in the first six months of pregnancy but did not establish guaranteed access to abortion in America.[13] The legalization of abortion was constructed as a "right founded in privacy" and abortion services are consequently offered through a woman's private insurance company.[14] Despite these developments, 61 anti-abortion laws were enacted in state legislatures across the country in the first eight months of 2011.[15]

In Canada, all abortion was prohibited until 1969. In 1969, the Criminal Code was amended to permit abortion as long as a committee of three doctors deemed the pregnancy threatening to the life or health of the mother.[16] The pro-abortion movement in Canada in the 1960s and 1970s emphasized women's choice.[17] In *R. v. Morgentaler* [1988], the Supreme Court deemed the abortion prohibitions in the 1969 law to be contrary to the section 7 guarantee of "life, liberty and security of the person" under the *Charter of Rights and Freedoms*.[18] Like the United States, *Morgentaler* did not guarantee access to abortion in Canada. Provincial Medicare covers the cost of most in-province abortions in hospitals, with notable discrepancies in access to hospitals willing to perform the procedure in Nova Scotia and New Brunswick.[19] Since the *Morgentaler* decision, 43 private member bills were introduced in the House of Commons with anti-abortion implications and none of them passed.[20]

Historical Context of Evangelism:

In both the United States and Canada, evangelicals have similar animosities against abortion and both groups constitute a significant portion of their respective countries' anti-abortion movements. Scholars have noted that evangelical protestants in the United States and Canada

have similar views regarding abortion.[21] [22] Similarly, public opinion scholars have found that evangelical protestants in the United States and Canada are more likely to be opposed to abortion.[23] [24] [25] In the United States, evangelical protestants motivated the formation of the Moral Majority in the 1970s, a prominent political organization with strong ties to the Republican Party and the Christian right. The Christian right has also united fundamentalists and Catholics by acting as a coalition representing religious anti-abortion views.[26] The Christian Voice, the Religious Roundtable and the Christian Coalition are more examples of interest groups that emerged in the 1970s and 1980s in the United States.[27] In Canada, some examples of evangelical activist groups that have taken strong anti-abortion stances include the Evangelical Fellowship of Canada (EFC), Citizens for Public Justice and the Centre for the Renew.[28] Clearly, the evangelical anti-abortion movement has had strong ties with morally conservative ideological organizations in both countries and hold similar opinions regarding abortion.

Despite these similarities, the difference in scale and influence of these respective movements is significant. The United States overwhelmingly consists of self-identified Christians, with no state in the US consisting of less than 30 percent of self-identified Christians.[29] Additionally, 25 percent of the population is evangelical Protestant or Catholic.[30] David Rayside and Clyde Wilcox similarly conclude that there is an "unusually strong religious faith in the United States" and emphasize the strength of evangelical Protestantism.[31] Further, the population of evangelicals in the United States is more than double that in Canada.[32] As a result, a higher percentage of groups represent conservative moral positions in policy debates in the United States.[33] To contrast, there is an overall lack of evangelical subculture in Canada and Canadians are more likely to emphasize economic problems rather than moral problems when discussing politics.[34] This paper will now turn to a discussion that will provide an explanation as to why the influence of these movements differed drastically between the two countries, regardless of any differences in scale and size.

The Impact of Federalism:

Thus far, this paper has established that Canadian and American evangelicals are similar in their opposition to abortion. This paper will now discuss the relevance of federalism in explaining the difference in the prominence and influence of the evangelical anti-abortion movement in America and Canada. Federalism can be used to explain why evangelicals in the United States were able to mobilize into various anti-abortion organizations and interest groups. These differences ultimately influenced how evangelists were able to influence anti-abortion policies within their respective countries' socio-political frameworks.

To begin, a lack of emphasis on national unity and exceptionalism within the fragmented Canadian federal system had implications on how evangelicals were able to mobilize against abortion. Canadian

evangelism was founded on anti-Calvinism and did not consider their nation to be a chosen people.[35] Also, Evangelist Protestants had to co-exist with a larger Catholic minority in Canada.[36] John Stackhouse posits that evangelicalism operated on the margins of larger Canadian culture, operating as the "outsider" and attracting individuals who saw themselves at the margins of society.[37] Thus, evangelicals felt alienated and did not engage with questions involving social policy.[38] Also, evangelical movements were largely separated from each other, sharing similar beliefs but "isolated by geography and distinctive convictions".[39] Canadian Christians that were isolated by strong ethnic, regional and denominational identities did not share all the evangelical movements' concerns.[40] Thus, evangelicals did not constitute a coherent, national religious movement due to the absence of leaders, schools and mass media that could draw them together into a full-fledged religious movement.[41] In the absence of these institutions, the evangelical movement was separated by Canada's vast geography, by the influence of regionally dominant institutions and leaders, and by different dispositions towards common evangelical concerns into subgroups.[42] The Canadian evangelical landscape can be defined as an "informal network of Christians united in their central concerns but pursuing them with only limited cooperation".[43] Therefore, regional concerns and Quebec Catholicism had a substantial impact on evangelicals' ability to cooperate with each other and with other religions.

Federalism was a significant constraint on the organization and cooperation of anti-abortion evangelical groups in Canada. Canadian evangelicalism became significantly more "accommodationist and open-minded" than the "hard-edged and fundamentalist" evangelicalism of the United States.[44] Hoover et al. similarly conclude that Canadian evangelicals are less likely to be found in fundamentalist environments and the national cultural milieu is much more hostile to right-wing politics.[45] In Canada, the Campaign Life Coalition's opposition to abortion consisted of an "uneasy alliance" between evangelicals and Roman Catholics.[46] Canadian evangelical organizations that were opposed to abortion, such as REAL Women, Renaissance Canada and Choose Life Canada, were similarly unable to build larger organizational bases or political alliances.[47] The founder of Renaissance Canada, Ken Campbell, primarily operated outside the political system by relying on abortion clinic protests.[48] Therefore, Canadian evangelicals were unable to develop the political organization of the American Christian right in the 1980's and 1990's.[49]

Eighteenth-century American evangelicals were shaped by the covenantal, Calvinist theology of Puritan Settlers.[50] Evangelicals adopted the Calvinist assumption that "America was a promised land and Americans God's chosen people".[51] Further, Catholic resistance to this vision was limited due to the overwhelming numerical majority of protestants.[52] In modern America, evangelicals can easily tap into a civil

religious culture that combines a sense of national destiny and character.[53] Notions of American exceptionalism, destiny and uniqueness and the interaction with Christianity provided the cultural environment for evangelical mobilization.[54] This unified national myth does not exist in Canada, preventing evangelicalism from mobilizing.[55] Thus, the Canadian evangelical population is less susceptible to political mobilization than the American evangelical population.[56] This emphasis on national unity that is evident in American federalism facilitated the mobilization of evangelical anti-abortion groups. In the height of anti-abortion activism in the United States in the 1980s, evangelical Jerry Falwell emphasized the need to cooperate with different theologies in order to

"fight the spiritual war where Satan is active – the political arena".[57]

Indeed, Falwell's political action group, Moral Majority, was predicated on the unified cooperation and political alliances with non-fundamentalists to promote "pro-life, pro-family, pro-moral, and pro-America" values.[58]

The Impact of Historical Institutionalism:

Upon analyzing the impact of federalism on the diverging development of evangelical anti-abortion movements in Canada and the United States, this paper will now analyze the impact of historical institutionalism in constricting or facilitating anti-abortion policy developments by evangelicals in these respective countries. It will be argued that the political opportunity structure constrained the influence that Canadian evangelicals had on anti-abortion policy developments. Conversely, the American polity structure provided an opportunity for the evangelical movement in the United States to help push anti-abortion policy developments in the American Congress and Senate.

To begin, a permeable political and legal system in the United States allowed evangelical anti-abortion groups to influence significant policy decisions regarding abortion. The United States political environment was designed to fragment political authority and impede radical change.[59] Consequently, party leaders do not have as much control over their parties' policy agenda, creating a permeable political system.[60] Thus, there are more opportunities for continuous political intervention by social movements and specific interests.[61] This has direct implications for the political involvement of evangelical anti-abortion movements in the United States. Small blocs of evangelicals have been able to garner a substantial degree of control at the local level due to federal and diffuse government structures.[62] For example, evangelical religious groups have been successful at weakening *Roe. v. Wade* by invoking challenges in state and federal legislatures.[63]

Due to a permeable political system, evangelicals were also able to align themselves with government authorities in the Republican party and subsequently influence anti-abortion policy debates. The reinforcement of anti-abortion views within

the policy sphere of American government has been facilitated by evangelical protestants' involvement in the Republican Party in the United States.[64] [65] [66] The Christian right constitute a core Republican constituency at the state and federal levels, "as activists campaigning for candidates and pressuring officials, as delegates to local and national Republican conventions, as party officials and as both elected and appointed officeholders".[67] The Christian right has effectively used the issue of abortion to move conservative white evangelicals into the Republican party and the issue of abortion is also used to mobilize Christian right activists.[68] Also, due to a weak party system, the Christian Coalition has been a significant bloc within the Republican party at local and national levels.[69] Evangelical alignment with the Republican Party ultimately resulted in a strong sense of moral traditionalism and anti-abortion policy views that have become hallmarks of the Republican party.[70]

Also, the Christian rights' agenda was overtly endorsed by the Reagan administration.[71] The Name of God was invoked several times in the 1984 State of the Union Address, in addition to a detailed outline of plans for an anti-abortion amendment.[72] President Reagan consistently spoke at National Right to Life conventions, spoke at March for Life rallies and prepared a eulogy for the burial of aborted fetuses in 1985.[73] Similarly, George Bush consistently mentioned the "sanctity of life" and the "lives of unborn children" in the 1988 presidential campaigns.[74] As the Republican Party became increasingly evangelical and adopted anti-abortion stances during the Reagan and Bush administrations, pro-abortion activists had little chance of influencing government agencies staffed by Republican appointees.[75]

The religious anti-abortion movement has directly influenced policy developments in the United States.[76] As demonstrated, evangelicals had a drastic role in aligning themselves with evangelical political leaders and encouraging evangelism within the Republican party. Due to the amount of evangelical Representatives and Senators, anti-abortion policies were adopted. John Camobreco and Michelle Barnello found that evangelical protestants had an influence on state policies on abortion, either directly or indirectly by shifting mass abortion attitudes. They posit that the overwhelming amount of self-identified Christian lawmakers predetermines anti-abortion interest group influence.[77] Since Evangelicals have influenced the issue-positions of Republican law-makers, evangelicals have directly influenced the voting patterns of Republicans in Congress. Greg Adams analyzed the voting patterns of Democrats and Republicans in Congress between 1973 and 1994.[78] The percentage of pro-choice abortion votes among Republicans in the House of Representatives increased from 5 percent in 1973 to 23 percent in 1976 before becoming stable at 20 percent from 1977 to 1994.[79] After 1978, Republicans drastically decreased their percentage of pro-choice votes in the Senate.[80]

In the United States, party politics can be characterized using Layman and Carsey's theory of conflict extension. This theory posits that conflicts within political parties increase when a new issue cleavage is introduced.[81] As a result, the dominant parties in a political system become more polarized as they adapt their position on the new issue to conform to the rest of the party's agenda.[82] This theory of conflict extension explains why the Republican party was so easily able to adopt the issue stances of anti-abortion religious groups. Also, whether or not American political parties adopt this model of issue adoption and conflict extension depends largely on the opinions of interest group allies.[83] Thus, the substantial evangelical support base of the Republican party created the appropriate conditions for the party to increasingly adopt an anti-abortion stance. As it will be demonstrated, the theory of conflict extension could not exist in Canada's centrist, conflict-averse political system.

As a significant deviation from the American political system, the Canadian political party system significantly deters the endorsement of special interests in Parliament. The Canadian political system concentrates policy making power in the prime minister and provincial premiers.[84] Canadian political parties are subjected to party dominance within Parliament, with politicians unable to advance free-votes and a lack of support for "back-bench rebellions".[85] Further, political executives often relegate socially divisive issues to the jurisdiction of the courts.[86] Thus, social movements and special interests seldom have the opportunity to influence the policy agenda of the party in power.[87] For example, evangelical MP's in Brian Mulroney's caucus were back-benchers and did not have significant policy influence.[88] Thus, national presence of evangelical protestants in the federal political system was modest in the mid-1980s, while the trend substantially differed in the United States.[89] Further, a drastic political party realignment in Canada in the 2000s, that emphasized a party driven by office-seekers rather than "believers," provided the impetus for many moral traditionalists to exit the Conservative party in discontent.[90] Thus, religious conservatives in Canada did not have the same incentives to continuously mobilize as they did in the United States, where special interests could thrive in a legislative environment characterized by a broadly defined policy agenda.[91]

Further, Canada's electoral system necessitates that major parties adhere to centrist positions on many social issues, at the risk of alienating core supporters in this "2 and ½ party" system.[92] For example, the evangelical leader of the Reform Party, Preston Manning, avoided overt references to his beliefs.[93] Also, the Canadian Conservative party has disciplined local candidates to avoid discussing morally conservative issues because these issues were electorally dangerous.[94] Further, the political risks resulting from the association of the Conservative party with the religious right often does not outweigh the gains, due to the small and fragmented nature of the religious right in Canada.[95] Likewise, the views of moral traditionalists in the

Canadian Conservative party are downplayed in the party's platform and its policy making in government.[96] Harper's morally conservative positions were separated from his party's policy agenda.[97] Thus, evangelicals have not been aligned to any political party in Canada to the same extent as evangelicals have been aligned to the Republican party in the United States.[98] Evangelical groups in Canada had a dramatic lack of influence on law-makers.

Staggenborg and Meyer posit that when countermovement actions "clash with elite interests, elite support will be withdrawn and countermovement activity will decline".[99] Religious leaders in Canada expressed their opposition to abortion without investing significant resources into political mobilization.[100] Thus, Canadian anti-abortion activists have turned to non-legislative means of implementing change in contemporary Canadian society due to limited opportunities to effectively permeate the political system.[101]

Conclusion:

This paper has demonstrated that the development of evangelical anti-abortion groups in the US and Canada can be attributed to federalism. This paper also demonstrated the effect of historical institutionalism on constraining or enhancing the influence that evangelicals had on anti-abortion developments in the US and Canada. There is seldom a policy issue in North America that has been scrutinized like abortion. It is crucial to continue to inquire into international differences in abortion policies and discourses.

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Canada and the United States: A Divergence in Attitudes Towards Defence and NATO

Written By: Bita Pejam

Introduction:

Strong domestic and global security and defence are at the forefront of a nation's interests and have become a heated topic of contention among countries following the Cold War era and post-9/11. Currently, the United States of America allocates $686 billion of its budget towards military and defence, equating to 3.4 percent of their national GDP.[1] In contrast, Canada spends much less where military and defence is concerned– approximately $22 billion, accounting for 1.3 percent of GDP.[2] However, the country maintains a strong global presence in various defence initiatives to promote peace and stability. These opposing approaches towards defence spending are at the forefront of a heated debate around whether military expenditure is the only means by which a nation can both maintain and enhance security. The very fact that Canada and the United States share a military alliance, along with countless European allies, in the North Atlantic Treaty Organization (NATO) suggests that the two nations possess similar security goals and motives.[3] The debate, therefore, lies in which method is best when it comes to achieving these goals, and this argument has exhibited a strong divergence in attitudes and values between Canada and the United States. Whereas the United States believes in increased military intervention and expenditure, relying ultimately on hard power to obtain maximum security, Canada takes a soft power approach towards this phenomenon. Canada and the United States are diverging in their attitudes towards military and defence approaches, particularly where their contributions to NATO are concerned. The Trump Administration has criticized Trudeau's government for free-riding and failing to sufficiently contribute financially towards NATO, questioning their commitment to the military alliance. This has caused tension within Canada- U.S. relations, ultimately showcasing that these neighboring countries are perhaps more distinct in identity than they appear. While both hard power and soft power frameworks provide different approaches to a similar goal, it is important to note that both methods are effective in their own regards when it comes to the prosperity of global security efforts.

This paper will use a comparative approach to analyze the diverging American and Canadian attitudes and approaches towards military defence spending, with a focus on each country's contribution towards NATO. To effectively analyze the divergence in attitudes, this paper will first identify two concepts explored throughout this analysis: soft power and hard power. A thorough analysis and evaluation of the current state of affairs and diverging attitudes between the two nations will then be evaluated. Once an examination of the two sides has been

completed, potential future implications will be considered. Lastly, a summary will be provided.

Research Significance:

It is critical to understand the significance of conducting such a comparative analysis, as appealing to the interests of all members of the alliance, and actively contributing to the treaty, is at the forefront of ensuring international security against threats. Therefore, it is imperative to examine the current ongoing debate on contribution, to account for the future advancement and prosperity of foreign relations between these nations and towards the alliance.

Key Terms:

To compare the two nations and their distinct approaches accurately, two key terms must first be defined: soft power and hard power. For the context of this paper, the term soft power is defined as a method by which desirable outcomes are achieved through persuasion rather than coercion.[4] Soft power imposes influence and presence through diplomacy, culture, values, foreign policies, and active participation.[5] This method can be identified and associated with Canada, as the nation interacts and contributes through soft power strategies with other nations and within alliances such as NATO. Secondly, the term hard power will refer to the use of coercion and monetary payment to obtain desirable outcomes. Hard power strategies focus on the use of military intervention, coercive diplomacy, and economic means to gain influence.[6] States that are far more politically and institutionally powerful, such as the United States, can more commonly be found to display hard power tactics in international relations, as they often possess the resources to do so.

Nature of Divergence: Foundational Attitudes and Differences in Military and Defence Contributions:

Variance in attitudes when it comes to foreign and defence policy decision-making can be attributed to national interests and deep-rooted culture and values.[7] The United States and Canada take diverse approaches to military and defence initiatives, and how these decisions play out on an international scale highlights the increasing divergence between the two nations. Where the United States believes that a reliance on financial support and military intervention is the most suitable method for advancing this portfolio, Canada takes a much more passive and participatory approach to domestic and international security. While the United States allocates a significant amount of their funding towards their defence budget, it's important to note that their relative size economically and militarily is much greater than Canada. This can make the playing field a bit unequal when analyzing their approaches to defence and security. A better analysis of their diverging attitudes and values can be drawn from their involvement and contributions towards NATO. NATO, created in 1949, operates as an intergovernmental alliance between the United States, Canada, and several western

European nations to ensure collective security against the threat of the Soviet Union.[8] As both nations are among the alliance's founding members, they support the goal of the treaty to safeguard the allies' freedom and security by political and military means. NATO promotes democratic values and encourages consultation and cooperation on defence and security-related issues. The organization also strives to peacefully resolve disputes that arise. If diplomatic efforts fail, it utilizes military power to undertake crisis-management efforts, overseen by Article 5, stating that

"an attack against one, is an attack against all."[9]

These are values that both Canada and the U.S. support. However, how these security efforts are carried out is at the core of their divergence. A longstanding goal of the treaty is that all members are obligated to allocate at least two percent of their national GDP towards defence.[10] As of 2020, approximately 70 percent of total spending on defence by the alliance's member governments is accounted for by the United States.[11] The United States takes a hard power approach to security and defence, believing that the most effective and sufficient method of contribution is through economic means and military intervention.

The Trump Administration recently accused all but four NATO members of not meeting the required defence spending target of two percent of GDP, specifically singling out Canada for not honouring their commitment to the alliance.[12] Further, President Trump has referred to the entire alliance as "obsolete", stating that the alliance has not effectively been fighting terrorism and that more concrete and interventionist methods should be implemented.[13] Trump has exhibited U.S. attitudes and values when it comes to issues of military defence and security on the international stage, as he's showcased a tendency to focus exclusively on defence dollars and the number of operating military bases. This focus indicates that the U.S. values these two methods of contribution as the most effective ways to enhance security efforts. While the U.S. firmly stands by their hard power ideals, they make this known to other parties by publicly shaming fellow NATO members who are not meeting their minimum commitment targets. Despite their close relations with Canada, the U.S. makes no hesitation to criticize Canadian defence spending levels, going as far as labelling Canada as a "free-rider". At the NATO headquarters in 2017, Trump singled out the many nations who were not doing enough to combat terrorism and who failed to financially contribute their fair share to the alliance.[14] The point of divergence can be identified in Canada's response to these claims.

Where Washington's criticism states that the success of the alliance requires further monetary and military attention, opposing soft power values highlight a different approach to this issue. The Canadian government has argued, in response to the United States, that greater financial contributions do not necessarily produce greater military outcomes or security.[15] Despite being an easy U.S. target for criticism, Canada firmly holds that soft

power values are a sufficient and sustainable form of contributing to military and defence alliances. Ottawa's response to the free-rider claims promotes the nation's stance and attitude on military and security efforts. The Canadian government relies on active participation as a way of measuring its commitment towards the alliance, which in its sense, is a valid measure of commitment. Contemporary theoretical discussions on hard versus soft power conclude that member states can vary in terms of their contributions and that hard power is not necessarily the most effective.[16] Therefore, Canadian efforts should not be overlooked. The point of divergence in values can be exemplified by Canada's methods of participating within the alliance throughout the years, despite not allocating two percent of their overall GDP towards defence. Former Canadian Ambassador to NATO, David Wright, stated that

"interests can be pursued in ways that reflect a country's values,"

highlighting that Canadian foreign policy interests are projected through Canadian values.[17] The Canadian government measures their commitment to NATO through actively contributing to every operation since the founding of the alliance. Canada exhibits their soft power values through the various operations and initiatives the nation is currently leading through NATO. Current ongoing participation includes leading a battle group in Latvia, providing air policing over Romania, leading a NATO training mission in Iraq, and building a new fleet of Canadian warships, to name a few.[18] It is evident, therefore, that despite agreeing on the fundamental goal of NATO – to increase global security against threats – the point of divergence between Canada and the United States can be identified in their distinct approaches to maximizing security and defence. Where the United States relies on hard power in the form of funding and military intervention, Canada takes a soft power approach by relying on participation, diplomacy, and more qualitative efforts.

Impact of Divergence on Canada-U.S. Relations and NATO:

The divergence in attitudes and values when it relates to domestic and international security could be a cause for concern when discussing Canada-U.S. relations, but perhaps not so much where NATO is concerned. While NATO stands by their goal of having all member states contribute two percent of their annual GDP towards defence measures, the foundation of the alliance does not rest upon this monetary contribution. Rather, the founding and basis of NATO was established upon many other values and goals. Hard power contributions benefit the treaty in obvious aspects, but soft power contributions still hold their significance and benefits when it comes to the success of NATO, as outlined in the treaty's Article Two. This section of the alliance outlines NATO's non-military interests, focusing primarily on the enhancement of democracy, liberty, and the rule of law – all of which are distinct soft power values. Article 2 states,

"The member states will contribute toward the further development of peaceful

international relations by strengthening their free institutions, by bringing about a better understanding of the principles upon which these institutions are founded, and by promoting conditions of stability and well-being".[19]

This section highlights that even soft power values are of strong importance to NATO and that mere military and economic contributions are not all that is promoted and needed. While this section of the treaty is often referred to as the "Canadian Article", it demonstrates that NATO does not solely rely on military intervention and monetary contribution. The alliance accepts various forms of contribution to be critical for its success in global security, cooperation, and collective defence.[20] Further, the divergence in attitudes towards the United States and Canada does not explicitly impact NATO negatively, as both hard and soft power efforts presented by both nations are valuable towards the prosperity of the alliance. NATO has historically focused on providing collective defence and security in a post-Cold War era, and the means by which this is accomplished should not be prohibited to one form of aid.

The divergence between Canada and the United States can, however, be a cause for concern when it comes to the bilateral security relationship between the two nations. The Trump Administration's criticism of how Canada is not pulling their weight where defence is concerned has produced heated tension between the leaders of the two countries. President Trump's assertion of U.S. interests and values during his time in office has elevated the differences between Canada and the U.S. as he pushes for more hard power initiatives. Trump's view of America's role within the global order has had notable effects on how both nations showcase their identities and interests, and how they ultimately have interacted with one another during his tenure.[21] After being publicly criticized for not living up to their obligations towards NATO, the Trudeau government announced that they intend to increase their defence budget by 1.46 percent by the year 2024.[22] This decision may have been reached as a consequence of being pressured by their neighbours down south; however, it further calls into question whether this is sufficient to mitigate the opposing views between the two countries. It is noteworthy to mention that where these diverging interests can be viewed as non-damaging is if the two countries are able to compromise and adopt the others' values to a certain extent. According to Hataley and Leuprecht,

"collaboration is possible by a set of common interests, institutions, identity and ideas."[23]

While the two leaders have diverging ideas and interests when it comes to military spending and the appropriate approach to exercise, Canada and the U.S. have a longstanding positive relationship in various other aspects. This showcases that the two nations have a valuable relationship and that diverging security interests may not be too damaging to the overall relationship, so long as the two sides are each willing to compromise to a certain extent.

A Discussion of Future Implications:

How these evaluations will play out in the future is subject to further research and analysis—however, it is worthwhile to predict the role of soft power and hard power in future disputes and resolutions between Canada and the U.S. As previously stated, both nations should aim to compromise for the sake of the longevity of their relationship, certain trends will persist, and each nation should work within its capabilities. Despite soft power being a beneficial method of contribution towards NATO and in approaching security measures in general, hard power metrics remain and will continue to be a requirement for future years.[24] It is likely that the United States will continue to act upon hard power, as their military and economic capabilities provide them greater influence and dominance within the treaty and within a global context. The two percent GDP requirement is also still a threshold that member states are required to meet. Therefore, hard power will continue to exist as a means of achieving such goals. Given that Canada does not have the military or economic capabilities to hold such influence, the country should aim to rely on a combination of hard and soft power to achieve maximum influence and contribution.[25] Maintaining their involvement within the alliance by actively participating in their global initiatives and promoting their values is a form of contribution that should not be overlooked.

As Trump's time as president of the United States comes to an end, scholars must continue to examine the relationship between Canada and the United States under Joe Biden's leadership, to analyze whether diverging attitudes and tensions on security-related issues persist between the two countries. The new administration will allow for a potential new approach to these issues, enabling further research to be done.

Conclusion:

Security and defence are at the forefront of all nations' political agendas, whether domestically or globally. Canada and the United States have long held opposing views on security and defence and which approach is best when tackling such issues. The divergence in attitudes towards the utilization of hard power versus soft power has been expanded through the two countries' involvement within NATO and has caused tension within Canada-U.S. relations. While the United States takes a hard power approach to security and defence by relying on military intervention and economic contribution, Canada prefers a soft power approach, focusing on participation, leading global initiatives and promoting peace and stability. While this divergence has yet to establish hard consequences for NATO, it has certainly caused disagreements between the two nations and their leaders. The two nations should aim to compromise on their views and approaches to salvage their long-standing relationship and rely on a mixed approach when dealing with future security and defence issues.

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Gatekeeping the "Gamer" Identity: Vicarious Consumption and the Exclusion of Women from American Video Game Subcultures

Written By: Kaitlyn Adam

Introduction:

In 2013, independent game developer Zoe Quinn released *Depression Quest,* an interactive story video game about a young adult's struggle with depression.[1] Its simplistic gameplay, slow pace, and artistic design placed *Depression Quest* starkly outside of mainstream gaming. Though it was well-liked by critics, some gamers took offense to Quinn's attempt to label *Depression Quest* as a "video game" despite its low dexterity requirement and lack of strategy. In August, when the American gaming community was still buzzing about her disregard for the so-called "rules" of game production, Quinn's ex-boyfriend penned a series of disturbing blog posts alleging that she cheated on him with multiple men in the games industry to advance her career.[2] One of these alleged men was a writer for the prominent video game journalism website, *Kotaku*, who supposedly gave *Depression Quest* a positive review in exchange for sexual favours.[3] Tens of thousands of outraged gamers took to social media to voice their concerns about ethical breaches in games journalism and the unfair advantages received by women in game production.[4] Though Quinn denied the allegations, she was attacked by anonymous hackers who posted her personal information, spread her nude photographs, and bombarded her with death and rape threats.[5]

This controversy was the beginning of a years-long Internet culture war known as Gamergate. On one side were independent video game creators and feminist critics like Anita Sarkeesian, who advocated for greater inclusion of women in video game production and in-game narratives.[6] On the other side were "gamergaters": a mix of trolls, misogynists, and traditionalists who saw female gamers and game developers as encroaching upon their rightful territory.[7] Though they framed the movement as an apolitical consumer revolt aimed at maintaining the integrity of the games industry, Gamergate was "a swelling of vicious right-wing sentiment."[8] Attacks on Quinn sparked violence against other female video game producers and players who threatened the traditionally male-dominated gaming subculture.[9] Mobs of anonymous gamers flooded women like Sarkeesian and game developer Brianna Wu with actionable threats, forcing them to flee their homes.[10] Meanwhile, many female gamers faced debilitating verbal abuse in video game voice chat lobbies,[11] leading them to hide their voices and use gender-neutral screen names to avoid harassment from other players.[12]

The numerous incidents of abuse against women during the Gamergate controversy demonstrate the history of rampant anti-feminism in American video game subcultures.[13] Though the number of female game players and producers has grown substantially since 2014, the anti-feminist sensibilities of mainstream gaming culture still serve to constrain women's participation in video game consumption and production.[14] Many women gamers continue to face online harassment (e.g. in games via voice chat, on social media platforms such as Twitch and Twitter, etc.)[15] and women are still vastly underrepresented in video game production, accounting for a mere 4-6.9% of the total American game industry workforce.[16] Game producers remain overwhelmingly white, heterosexual, middle-class, technologically competent men, thus the discursively imagined ideal video game player tends to fit this same description.[17] As a result, women video game consumers are often met with discomfort or even rage by adamant gamers who see gaming as an exclusively male activity. Much of this discomfort, I believe, can be traced to historical conceptions of acceptable forms of consumption for women, which strongly persist in contemporary gaming subcultures today.

In this essay, I will explore gendered ideologies of consumption in the context of the American video game industry and gaming subcultures. Using the Gamergate controversy as a key contemporary example, I will trace the historical exclusion of women from certain indulgent consumer practices (e.g. gaming, smoking, drinking, etc.) with particular emphasis on the woman's role of "vicarious consumer," which was first observed by sociologist Thorstein Veblen in the late nineteenth century. The vicarious consumer – who labours to elevate and maintain the social status of the household – was, for example, not permitted to consume intoxicating substances like narcotics.[18] Such fantastic indulgences were reserved for her master (i.e. husband), a patriarchal tradition that continues to influence dominant ideologies of consumption in gaming communities today. The consumption of video games by women – a similarly stimulating and addictive commodity– is often met with hostility from male players who see women as threatening their identity and affinity spaces. This "gamer identity" has been curated through the consumption of gaming technology and the role-play of masculine video game characters which, through the medium's offer of immersion, is particularly influential in forming offline identities. By reference to the exclusion of women from "addictive" and indulgent commodities, the history of femininity and domesticity in the West, and the unique immersion and identity construction associated with video game consumption, I will demonstrate that gendered ideologies of consumption are strongly represented in contemporary gaming subcultures.

"Vicarious Consumer:"

Rather than distinguishing between video game consumption (i.e. play) and production (i.e. design), gender scholars like Alison Harvey and Stephanie Fisher have tended to group these categories together in reference

to the "gaming community" as a whole.[19] By dually considering consumption and production rather than separating them into two separate analytical spheres, existing feminist literature about the American games industry is consistent with David Graeber's recommendations for studying consumption.[20] For Graeber, the ideology of consumption leads to all human processes being categorized as either "production" or "consumption," failing to capture nuance and obscuring the reality that social life is "mainly about the mutual creation of human beings."[21] In recognition of this, I too will bring together concepts of consumption and production in order to account for nonalienated forms of labour – including so-called "passion projects," like *Depression Quest* – and the construction of human subjectivities in the context of women in gaming. After all, the exclusion of women from gaming transcends the conceptual barriers of consumption and production, applying to both female gamers and game designers. Nevertheless, given the scope of this essay, I will focus on attempts to gatekeep women from video game consumption on the basis that female players threaten the mainstream, masculine "gamer" identity. This defensive consumer behaviour reflects historical patterns of exclusion of women from certain indulgent consumer practices dating back to the nineteenth century with the woman's role as "vicarious consumer."

Vicarious consumption was first observed by Thorstein Veblen in his 1899 book, *The Theory of the Leisure Class*. Veblen's analysis demonstrated a shift in social priorities in the West post-industrial revolution in which the consumption of goods for the display of status, rather than survival, became a key element of social life. Though once the practice of the upper-class, "conspicuous consumption" – the purchase of expensive items to display wealth rather than to serve the needs of the consumer – transcended class boundaries as working-class families aspired to rise up the class spectrum, mimicking elites with the purchase of luxury goods.[22] The consumption of excellent goods was evidence of wealth and status, and failure to consume in due quality and quantity signified social inferiority.[23] Thus, despite their lack of wealth, the lower classes laboured to ensure the outward appearance of conspicuous consumption, even by means of sacrificing the commodities necessary to their comfort and survival.[24] In the late nineteenth century, lower middle-class men displayed no outward conspicuous consumption due to lack of resources, yet the traditional gendered role of servitude was maintained by their wives, who engaged in vicarious consumption to uphold the good name of the household.[25] Women undertook a range of domestic duties to meet the demands of reputability, including the presentation of a reputable household and the consumption of clothing, food, furniture, and dwelling.[26] Meanwhile, male labour was directed towards producing adequate resources (i.e. through waged work) to enable the degree of conspicuous consumption demanded of the time.[27] The wife was the ceremonial consumer of the goods that her husband produced, but remained an "unfree servant," forbidden

from occupying herself with anything that was gainful or indulgent.[28] From archaic times through the nineteenth century, she was not permitted to consume intoxicating substances like alcohol or narcotics.[29]

The quasi-peaceable stage of industry – the pre-industrialism era characterized by slavery and servile classes – established a longstanding tradition in which comforts and luxuries were reserved for the upper-class.[30] Consumption of goods in high quantity and quality was evidence of "mastery," and was thus unavailable to women, who were still considered property of their husbands under Western patriarchal traditions.[31] Thus, any consumption by women could only take place on the basis of sufferance or in service to their masters (e.g. dress and household paraphernalia for social status). The exclusion of women from indulgent consumer practices is perhaps best exemplified by the "ceremonial differentiation of the dietary" in which certain intoxicating substances were unavailable to women, minors, and other so-called "inferiors."[32] Women practiced an enforced abstention from smoking, narcotics, and alcohol due to dominant perceptions of femininity and domesticity; the selfish consumption of such substances was defiant of women's identity as subservient to men.[33]

Video Games as a Self-Indulgence:

Just as the consumption of intoxicating substances was taboo for American women in the nineteenth century, women's consumption of video games is often renounced by male gamers today, likely due to these same patriarchal perceptions of femininity, domesticity, and subservience. Video games, like drugs or alcohol, are a stimulating and addictive commodity whose function is entirely self-serving. Rather than serving a specific use value for sustenance or the maintenance of social status, video games offer fantastical experiences of self-indulgence, satisfying the selfish impulse for the predictable release of dopamine via in-game achievements.

The emerging consensus among researchers and health professionals is that video games can be extremely addictive, especially for young adults with poor impulse control.[34] Video game addiction is the result of hyperarousal, which is triggered by the release of dopamine when a player experiences in-game achievements and rewards.[35] The predictable release of dopamine is the same process that triggers addiction to substances like narcotics, creating a dependence over time.[36] As noted by Veblen, the symptoms of an expensive vice – like drug addiction – were conventionally accepted as marks of superior status in the nineteenth century.[37] Today, symptoms of video game addiction – including a preoccupation with video games, gaming withdrawals, and the loss of interests in previously enjoyed activities[38] – are regarded by the American gaming community as symbols of dedication and superiority. In a community defined by competition (i.e. perpetual one-upmanship and the comparison of in-game metrics), continuous attention is required to maintain one's social riding.[39] Moreover, with near constant game updates and new releases,

membership in the American gaming subculture is wholly dependent on one's ability to buy and use the most recent software and hardware. Acceptance into the social group requires excess wealth and leisure time, a benefit largely exclusive to those in dominant social classes (especially straight white upper-class men who have, for all of modern history, enjoyed more wealth and leisure time than other social groups in the West). Thus, not only are women excluded on the basis of identity, but also on the basis of access to material resources that make video game consumption possible.

Ideologies of Consumption:

History scholar Mary Louise Roberts expanded on Veblen's observations of gendered servitude by examining ideologies of consumption from the eighteenth century to today. American consumer culture, she claims, is founded in part on the naturalized link between femininity and the consumption of luxury goods, which has long contributed to the exclusion of women from politics and their containment in the household.[40] For Roberts, Veblen's notion of vicarious consumption raises important questions about why the consumption of luxury goods is often gendered female in the cultural imaginary.[41] If women were barred from the consumption of self-serving goods, then why are dominant perceptions of luxury associated with women in American consumer culture? To address this question, Roberts examined how woman-as-consumer became central to the narratives of family and domesticity in the West, beginning in France after the French Revolution.[42] Despite their long history of vicarious consumption and servitude, contemporaries spread the myth of women's limitless desire to consume for their own benefit. The selfish attraction to luxury goods was seen as an inevitable part of their psychology; as the weaker sex, they were naturally vulnerable to the mystical allure of commodities.[43] These myths were partially the result of anxieties surrounding women's growing social and political power, which threatened existing social and moral order.[44] Women's desire to participate in political life was channeled into "acceptable" forms of social participation like shopping for the home and occasionally for innocent feminine luxuries (e.g. makeup, clothes, beauty products), which came to represent the ideals of femininity and domesticity.[45] Still, much of the consumption deemed acceptable for women served to elevate their husbands' social status by presenting a polished, reputable physical appearance (i.e. conspicuous consumption). This shift in the perception of women's consumption mirrors the transformation noted by Graeber around the industrial revolution in which women went from being seen as morally inferior to symbols of virtue and purity.[46] The workplace and the household became separate spheres with the introduction of wage labour, and consumption began to be defined as a feminine business.

Roberts's discussion of the types of consumption deemed acceptable for women throughout history are directly traceable to the exclusion of women from gaming today. As a highly personal and political medium divorced from practical use in ordinary domestic life, video games are wholly

outside of the realm of femininity and domesticity, which have historically defined acceptable forms of consumption for women. Video games are a highly immersive, personal, and political medium, acting as the ultimate indulgence of fantasy and escapism from domestic life.

Video Games Provide a Sense of Agency:

Video games are paradigmatic of interactive media; they are distinguished from traditional media like television and film by their feedback channels which, in the process of consumption, allow users to actively participate in the production of a seemingly unique media experience.[47] Through the process of play, the consumer's choices appear to shape the trajectory of the game's narrative, allowing players to feel a sense of self-efficacy and control over their experience.[48] The feeling of interacting meaningfully with a piece of media makes video games distinctly pleasurable by providing a sense of agency in an ever more fluid, uncertain life world.[49] Through the act of play, users are free to experiment and construct social identities in both real and imaginary worlds.[50] A video game is thus an experimental realm outside of the "ordinary" in which a player's actions have no material consequences on the outside world, yet they have absolute influence on the game's internal events.[51] This interactivity and reciprocity make the experience of video game consumption unique to traditional media such as television and film, where the viewer is mostly passive.[52] Thus, the exclusion of women from video games – with their unique offer of self-gratification and control – reflect gendered ideologies of consumption by positioning women as passive beings of whom active pleasure and self-serving leisure is not accepted.

In addition, by allowing consumers to act as influential beings in a virtual environment, video games are crucial to the construction of online and offline identities.[53] Success in video games (e.g. in-game achievements) can increase confidence, belongingness, and foster feelings of self-determination and control, which can transfer to offline life.[54] Role-playing, like assuming the role of a soldier in *Call of Duty*, also plays a large part in shaping real-world identities by prioritizing masculine traits like violence, power, and assertiveness. Even with the substantial rise in female gamers since the end of Gamergate, representation of women in video games (i.e. as well-developed, non-sexualized playable characters) has been minimal.[55] For example, only 5% of video games showcased at E3 – a massive trade event for the games industry – featured female protagonists in 2019.[56] By contrast, 22% of games featured male protagonists, while 65% offered multiple character options.[57] Though the freedom to choose the gender of one's character has its benefits, it is fundamentally different from being required to take on the role and experiences of a character of the opposite gender. A male gamer who is more comfortable with experiences that center men will simply play as a man in games that offer the choice, never branching out to experiment with feminine subjectivities.[58] As a result of the continuous role-playing of hypermasculine

characters in violent scenarios, masculinist values have become foundational to the American gamer subculture, which influences their willingness to accept women into the gaming community.

Conclusion:

Recall Graeber's suggestion that human processes (i.e. consumption and production) should be regarded as primarily "about the mutual creation of human beings."[59] From this perspective, the consumption and production of video games is mainly about the creation of masculine subjectivities and social groups that exclude women. The male-dominated American gaming subculture – characterized in part by anti-feminism, technological competence, and white heterosexuality – is created by limited representations of women in game production (i.e. the games industry) and gameplay (i.e. the experience of consumption), as well as patriarchal perceptions about acceptable forms of consumption for women dating back to the nineteenth century. Thus, as exemplified by Gamergate, the exclusion of women from self-serving consumer practices, dominant perceptions of femininity and domesticity, and the unique interactivity of video game consumption, patriarchal traditions continue to influence mainstream gamer culture. Despite the immense progress towards gender equality since the dawn of industrial capitalism, gendered ideologies of consumption continue to constrain women's participation in video game consumption and production.

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Drivers of Sex Trafficking: The Interconnection of Poverty, Gender Inequality, and Corruption with Sex Trafficking in India

Written By: Sonia Narang

Introduction:

This paper focuses on the human rights violations of sex trafficking, and the causes of its high prevalence in India. In particular, how does the prevalence of corruption, poverty, and gender inequality contribute to high rates of sex trafficking in India? From my research, I have concluded that the causes of sex trafficking in India result from intertwined social and economic drivers, including corruption, poverty, and gender inequality; it cannot solely be attributed to the character of sex traffickers. This is a critical topic as it affects people worldwide, and while it is difficult to track the exact numbers, sex trafficking rates are increasing globally.[1]

Sex trafficking is a form of human trafficking where people, generally women, and young girls, are traded for sexual slavery or exploitation.[2] This violates Article 4 of the Universal Declaration of Human Rights, which states that

"no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."[3]

Sex trafficking may be considered a modern-day form of slavery, forcing individuals to perform sex work, causing it to be a significant issue, especially in India, where it is highly prevalent. Due to the widespread social norms of corruption, poverty, and gender inequality in India, sex trafficking is a crucial issue to discuss. I would like to propose that these are the three main areas where conditions need to be improved to combat high sex trafficking rates. To establish the relationship between poverty, gender inequality, and sex trafficking, I will explore issues regarding parents selling their daughters of lesser value than their sons to sex traffickers to pay off debts or earn money for other purposes. Additionally, corruption coupled with an insufficient salary of a police officer would increase their incentive to accept bribes and turn a blind eye to sex trafficking victims.

The Role of the Police:

Firstly, a significant issue involved in the difficulty of the prosecution of sex traffickers is not the ability of the traffickers to cover their tracks; the police play a vital role in protecting sex traffickers from punishment. The police are closely involved in assisting with the protection of sex traffickers by "registering" newly trafficked victims.[4] During this process, brothel owners notify the police of the new victims and bribe the police between $166 and $833 in exchange for their silence. Furthermore, when minors are involved, the police arrest the minor for one day before "attesting to her adult status" in court to protect the brothel owners from future charges of prostitution of minors. This service would

be an additional expense to the brothel owners of about $14 to $33. Additionally, this creates a problem of the government being unable to accurately identify the sex trafficking rates to understand its severity to effectively combat the issue.

To prevent this from continuing, one would expect police officers to no longer need to accept bribes if their salaries were increased. In Ghana, officials doubled the salary of police officers to track if the amount of highway bribes decreased; however, while the number of bribes decreased slightly, the value of the bribes overall increased by 25-28 percent, and the police officers increased their time and efforts spent on collecting bribes by 19 percent.[5] This suggests an underlying social cause of corruption that is unrelated to obtaining funds for survival needs. Once corruption becomes normalized in a society, people continue to accept bribes as they are now considered a part of their salary, regardless of one's income. Instilling the concepts of morals and values at a young age is essential to prevent the continuous cycle of corruption. Especially with a significant issue such as sex trafficking, future generations should feel morally obligated to report traffickers rather than be lured into becoming an accomplice through economic incentives.

The Impact of Poverty:

Poverty is a contributing factor to both an increase in the number of sex traffickers and to a high number of young girls being lured into trafficking through economic incentives. In India, approximately 55 percent of victims were lured with promises of economic opportunities, and this number is 65 percent for victims with no formal education.[6] Due to this, Dalits, the members of the lowest caste at the bottom of the social hierarchy, are the most vulnerable social group to trafficking attempts.[7] There is a strong positive correlation between education and economic wealth, leading one to believe that an increase in education levels can help reduce sex trafficking. In 2016, the state of Jharkhand had the second-highest number of human trafficking cases in India.[8] Additionally, in 2011, they had a female literacy rate of approximately 55 percent.[9] Meanwhile, the overall female literacy rate in India is 65 percent.[10] These statistics suggest that when females are foregoing formal education, they have limited job opportunities and would easily fall for promises of economic opportunities; an objective outsider with greater analytical reasoning and less vulnerability may be more skeptical of these unrealistic offers often coming from strangers.

Moreover, poverty can lead people to find being a sex trafficker as an appealing career path, as it promises great economic returns. Girls can be recruited from villages in Nepal and sold in brothels in India for about $500 to $1333; this is greater than the yearly per-capita income in Nepal, which is approximately $490.[11] Poverty in countries surrounding India can also amplify the number of sex trafficking victims and traffickers in India. These victims are generally transported to major cities in India, where the demand for sex tourism or other purposes of sexual exploitation is higher.[12] Additionally, in larger cities, the traffickers

can make a higher income by easily recruiting a larger number of girls through economic incentives and selling them at a high volume in cities with high demand and prices where customers are affluent.[13] This is especially appealing for uneducated males who are not qualified for many jobs that would offer them equivalent salaries. In 2011, the estimated annual profit from sex slavery was $38.3 billion, amounting to $28,357 per slave.[14]

At a domestic level, violence against women stems from societal expectations of men. Men are expected to be domineering and powerful, and if a woman threatens his position, he will resort to violence to force the woman into submissiveness. Due to this, women of higher status who share positions of power with men, are less likely to have sexual violence inflicted upon them.[15] Moreover, when men cannot attain the societal expectation of manhood due to external factors such as poverty, they inflict violence upon women to assert their power and dominance through unhealthy means.[16]

"Patriarchal Households:"

In 2014, 70 percent of trafficked individuals were adult women or girls.[17] This can partially be attributed to the fact that having a daughter is considered to be a liability in many developing countries with "patriarchal households."[18] This is due to the many financial burdens they pose, including a dowry at marriage and other material gifts presented to the marital family on special occasions. If given the opportunity to sell their daughter into prostitution or have her married to a family that does not demand any money, her family will take advantage of the opportunity, predisposing the daughter to trafficking.[19] This preference for boys is a contributing factor to girls' lower education rates.[20] Girls are raised to do household work that does not require formal education, decreasing their economic opportunities. Additionally, many fetuses are aborted solely because they are female; this increases the disparity between the number of males and females.[21] As a result of this disparity, there is an insufficient number of women to satisfy men's sexual urges, increasing the demand for trafficked women. Furthermore, the sex trafficking industry is purely demand-driven. Approximately 34.9 percent of brothel owners reported that their clients, privileged males, demand girls that are virgins or look young. If a large number of clients are demanding virgins, brothel owners are required to regularly buy more newly trafficked girls, increasing the number of girls in the trafficking circulation.

Conclusion:

I believe that my research's main objective to determine the drivers of sex trafficking in India has been achieved. Through the research I have obtained, one can conclude that corruption, poverty, and gender inequality contribute to high rates of sex trafficking in India. Moreover, this research contributes to the ongoing discussion about sex trafficking as it is evident that the causes of trafficking cannot be solely attributed to the character of traffickers. The social norms of accepting bribes, selling daughters, and struggles associated with extreme poverty

are all contributing factors. It is important to recognize the flaws in the structure of society in India, with impoverished women at the bottom of the social hierarchy, to reduce the rates of sex trafficking.

Sex trafficking is a significant issue violating the Universal Declaration of Human Rights. Trading and selling people for sex slavery and holding them captive against their will directly goes against Article 4, which states that "no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."[22] Additionally, researchers and policymakers must differentiate between sex workers and sex trafficking victims. Sex workers advocate for the right to work without criminal punishment by separating themselves from trafficking victims.[23] These ideas add value to feminism around the world by determining the policies that need to be put in place to protect women and allow for their advancement in society. It is also important to note the social structures and cultural norms, such as dowry payments and the caste system, that place women further down the social hierarchy. Once women and men are seen as equals with the same education and workforce participation rates, corruption is strongly prohibited, and poverty is decreased, sex trafficking rates in India will decrease dramatically.

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Iran and International Politics Since 1945: A Long-Lasting Struggle

Written By: Mia Gasko

Introduction:

In the twentieth century, Iran has been engaged in an extended struggle with members of the international community. Since 1945, Iran's relations with dominant nations have grown apart due to the problematic history that it has had with the West in relation to hostilities, domestic issues, and its nuclear problems. The United States (U.S.) has faced challenges of coping amid Iran through confrontation, containment, and engagement. Notably, the birth of Iran's nuclear program in the 1950s allowed for international engagement amongst Iran and the U.S., the International Atomic Energy Agency (IAEA), Western European states, Russia, and China until the 90s when Iran turned to the black market. The assassination of Iranian scientists, Iran's white lies and President Donald Trump's action taken on the Joint Comprehensive Plan of Action (JCPOA) have created apprehension regarding the future of international relations. Though troubled, Iran's history is rich in detail and highly applicable to situations in the twenty-first century. Iran's history will address its past issues with various nations, the importance of its nuclear program and factors that affect international relations.

The Sun Rises in the Middle East and Sets in the West:

In the second half of the twentieth century, Iran's relations with the U.S. grew tense due to conflicts that stemmed from hostilities and political objectives. In 1950, a new Prime Minister named Muhammed Mossadegh was welcomed into Iran. Mossadegh nationalized the British owned Anglo-Iranian Oil Company in 1951, and only two years later, his government was overthrown in a military coup orchestrated by the United States and the United Kingdom.[1] The coup was a crucial turning point in Iran's relations with the West and it remains a barrier in cooperation with the West today. As a result of the coup, Muhammad Reza Pahlavi, also known as the Shah, came into power with the hope that he would be able to prevent the spread of Soviet influence in the Middle East.[2] Aiming to reform a country that was in desperate need of economic and social change, and with plans to Westernize Iran, the Shah successfully led the White Revolution of 1963.[3] The Shah led Iran towards a more diplomatic and collective space on the world stage, as in 1968 Iran signed on to the Nuclear Non-Proliferation Treaty, alongside the U.S., the United Kingdom (UK), the Soviet Union and fifty-nine other countries.[4] The Shah's rule did not last as long as he had hoped it would, ending when Ayatollah Ruhollah Khomeini—an Islamic clergyman of Iran—voiced opposition to the Shah's pro-Western policies and set off the 1979 Revolution that ended the Shah's rule.[5] After the protest of his rule by the Iranian people, the Shah's rule ended on January 16, 1979. Two weeks later, Ayatollah Khomeini,

Iran's first supreme leader of a newly declared theocratic republic, the Islamic Republic, was welcomed in Tehran.[6] Civil unrest erupted due to opposition of the Shah in 1979, marking the beginning of the Iranian Revolution.7 Demanding the Shah's extradition, Islamic revolutionaries—mainly made up of students—took 52 American diplomats hostage at the U.S. Embassy in Tehran for 444 days on November 4, 1979 until January 20, 1981.[8] The event shocked Americans, who saw it as a violation of their freedom, and created a fundamental impact over the diplomatic relations between the two countries.[9] In 1980, the U.S. cut all diplomatic ties with Iran and launched Operation Eagle Claw, an initiative taken by the U.S. military in hopes of rescuing the hostages.[10] The operation was unsuccessful, so instead U.S. President Jimmy Carter and other Western heads of state imposed an embargo on exports to Iran and froze Iranian assets in U.S. banks until the hostages were released. This occurred on the day of President Ronald Regan's inauguration.[11] In July 1980, the Shah died of cancer, only months away from an Iran-Iraq war that would become a brutal and devastating eight-year-long bloodshed.[12] In September of 1980, Iraqi forces invaded Iran as Iraq's president, Saddam Hussein, viewed Iran's new post-revolution government as a threat.[13] Many criticize the U.S.'s role in the Middle East during the war, particularly their decision to side with the aggressor and share intelligence and funds with Iraq. Moreover, in 1983, the U.S. placed blame on Iran as they viewed Hezbollah as responsible for a suicide bombing on the US embassy situated in Beirut, Lebanon.[14] The Iran-Contra Affair of 1985 was a secret deal that was made between Iran and the U.S. that consisted of the unlawful selling of weapons to Iran in exchange for the release of all U.S. hostages that were held in Lebanon by an Iranian-backed group named Hezbollah.[15] Although Iran was perceived as a state that had to be approached with caution, the U.S. committed an unforgivable mistake jeopardizing its relations with Iran. In July of 1988, a U.S. warship that was in charge of taking surveillance of the Persian Gulf shot down an Iranian passenger plane and killed 290 individuals, claiming that they had mistaken the plane for a F-14 fighter jet.[16] Alongside grief for its people, the Iranian response showcased the hostilities that it held towards the U.S., as they did not believe that the attack was an accident, stating that they would "avenge the blood of our martyrs."[17] After the war ended in July of 1988 with the signing of a United Nations (UN) agreement, the UK suspended all relations with Iran in February of 1989 after Ayatollah Khomeini called for the death of a British author, Salman Rushdie, over his book which the Iranian regime regarded as blasphemous.[18] Concerns over the U.S. were delayed after Ayatollah Khomeini died in 1989, but quickly rose to the spotlight yet again when the U.S. imposed sanctions that banned trade with Iran in 1995 in response to connections between Iran's nuclear program development and Hezbollah.[19]

Every Day is a New Clear Day in Iran:

After 1957, Iran was in the hot seat in the international community as the U.S., the

International IAEA, Western European states, Russia, and China were highly engaged and concerned with its nuclear program. Inspired by U.S. President Dwight D. Eisenhower's idea of peaceful uses of atomic energy in his Atoms for Peace speech in 1953, 1957 marked the beginning of Iran's nuclear energy program.[20] The core of Iran's nuclear program became known as the nuclear fuel cycle which was "based on the enrichment of natural uranium [...] suitable for reactor fuel [...] [to] be used to further enrich uranium to a concentration suitable for a nuclear weapon."[21] Further provisions include goals of

"indigenously [acquiring] all of the necessary elements of the fuel cycle" and "to make available the option of quickly producing nuclear weapons."[22]

After signing a civilian nuclear cooperation agreement, Iran's nuclear program became heavily endorsed by the U.S. as they were close allies until the 1979 U.S. embassy incident in Tehran when they lost all relations with the West.[23] In 1967, the Tehran Nuclear Research Center (TNRC), was created and the U.S. supplied the TNRC with a five-megawatt nuclear research reactor.[24] U.S. support in Iran's nuclear program marked a major step in the relations between the two nations. As Iran felt supported by the U.S. and wanted to increase cooperation with the ally, they signed the Nuclear Non-Proliferation Treaty along with other great nations such as the UK, the U.S. and the Soviet Union in 1968 and ratified it in 1970.[25] As Iran's nuclear program was growing with success, they signed a Safeguards Agreement with the IAEA in 1974, granting the IAEA transparency to their nuclear program through inspection, verification and surveillance.[26] Iran grew ambitious, and in the same year it established the Atomic Energy Organization of Iran (AEOI), and was

"charged with fulfilling the ambitious goal of producing 23,000 megawatt electricals by 1995"

through the implementation of a full nuclear cycle and an ability to enrich uranium.[27] In the same year, Iran gave the European nuclear company Eurodif a $1 billion loan in exchange for 10% of the supply of the manufacturer's fuel production.[28] A year later, they developed close relations with France through the implementation of a company named *Société franco-iranienne pour l'enrichissement de l'uranium par diffusion gazeuse,* also known as Sofidif.[29] In 1976, they engaged in contact with Germany as they signed a contract with Kraftwerk Union to create two 1,300 megawatt electrical light water reactors at Bushehr, a city in Iran, and contracted with Framatome at Darkhovin to create two 900-megawatt electrical light water reactors.[30] Additionally, in that same year, Iran signed letters of intent with suppliers from Germany, the U.S. and France for the creation of eighteen reactors.[31] Iran's nuclear program was on the rise as they were developing connections with other powerful nations. However, it took a turning point in 1977 when the U.S. President Jimmy Carter's Administration elected to withhold their civilian nuclear assistance in Iran's nuclear program.[32] Although no

evidence of a nuclear weapons program in Iran was present, the Carter Administration became concerned with the nuclear program as information about

Iranian scientists secretly [conducting] experiments related to the nuclear cycle"

was revealed.[33] After the 1979 Revolution, Iran lost its top nuclear engineers due to the skepticism that Ayatollah Khomeini held towards the nuclear program and international nuclear cooperation with Iran was discontinued.[34] Nuclear suppliers became unwilling to trade with the new regime in Iran, the U.S. cut off the supply of fuel for the TNRC, French Eurodif stopped supplying enriched uranium to Iran, and the program was left without financial support, assistance and capability.[35] Despite the issues that arose, Iran's program remained viable with French assistance due to the ability of completing laboratory-scale uranium conversion and fuel fabrication at the Esfahan Nuclear Technology Center, also known as the ENTEC.[36] Since their international suppliers had lost interest in dealing with Iran, their nuclear program fell into a problematic position as they turned to the black market in 1987.[37] Iran began purchasing "designs and components for uranium enrichment" from the Abdul Qadeer Khan network, which was a group that illegally proliferated nuclear weapons technology in several countries.[38] Iran claimed that they turned to the black market because they had no other choice after they were "rebuffed by legitimate nuclear suppliers" and wanted to initiate fuel-cycle research at the TNRC.[39] The A.Q. Khan assistance was crucial in the survival of Iran's nuclear program as it provided Iran with technical advice and

"served as the basis of Iran's eventual ability to produce highly enriched uranium (HEU) that could fuel a weapon."[40]

In 1992, Iran advanced its uranium enrichment efforts through the pursuit of foreign nuclear technology suppliers.[41] Iran had a major development in its program when a Russian firm, *Zarubezhatomenergostroi*, signed a contract with the AEOI and provided $1 billion for the construction of a 900-megawatt electrical light water reactor.[42] The U.S. quickly became concerned about the secret 1992 agreement as Russia agreed to aid Iran by providing them "with more sensitive nuclear technologies such as plutonium reprocessing and uranium enrichment facilities." Therefore, they "began a diplomatic initiative to put pressure on potential suppliers."[43] In the early 1990s, China also became a major supplier for Iran's program by signing a contract with Iran in aid of the construction of a 300-megawatt light water reactor "and a large research reactor capable of producing plutonium for a nuclear weapon."[44] China provided Iran with research reactors, laser enrichment equipment as well as fluorides and oxides, however they quickly severed their nuclear involvement with Iran due to US pressures.[45] The U.S. "opposed Iran's possession of [the fuel cycle]" and they made it a priority to deny Iran this capability by keeping other nations out of Iran's nuclear program.[46] During the 1990s, Japan, a nuclear threshold state, became a large trading partner of Iran and assisted Iran

economically, pushing them to make more money to pay off their debts.[47] However, due to the U.S. anti-Iran non-proliferation policy, trade restrictions were applied on any nuclear-related commerce between the two nations, hence Iran was limited in terms of resources yet again.[48] By the end of the twentieth century, Iran "achieved the ability to enrich uranium to 1% U-235 using a small centrifuge cascade at the Kalaye Electric Company's facilities outside of Tehran."[49] However, it lost the momentum that it needed to thrive as a notable program on the world stage. If Iran had not turned to black markets, they may have gained legitimate contracts with powerful nations and aid in the projection of their overall political and economic power. Moreover, the U.S. anti-Iran proliferation policy managed to repel cooperation between Iran and other nations as they viewed the program as problematic. Nonetheless, international responses to managing the program became butchered as ties were cut due to the skeptical nature that was rooted in the project after the A.Q. Khan network got involved.

The Remnants of Discourse:

The single aspect that remains with reference to Iran in international politics is related to the question of understanding the reason as to why everything is happening. However, through the application of Iran's stance on the world stage throughout history, it may be simpler to comprehend than one may perceive. In the past, Iran and the U.S. have played a constant game of back-and-forth, resulting in tensions that continue to surface in the twenty-first century. Nations like Israel, which have close associations with the U.S., have hatched secret plans to stop the country's development of nuclear weapons. Iran accused Israel and the U.S. of the assassination of an Iranian nuclear scientist, which occurred on January 11, 2010, in Tehran.[50] Two men attached a magnetic bomb to a car that nuclear scientist Mostafa Ahmadi Roshan was in and the car exploded, killing Roshan as well as his driver.[51] Roshan became the fourth nuclear scientist to be assassinated since 2008, and it is perceived that since the Iranian regime was not transparent with its nuclear intentions, nations responded by killing Iranian nuclear scientists.[52] Not only did this incident kill extremely qualified individuals, but it also gave the notice that working for Iran's nuclear program is dangerous.[53] In addition, it made it known that despite the benefits that the career gives, it is not worth the risk to work for the program if that means that one day the individual may lose their life. Although it is completely unacceptable to assassinate Iranian nuclear scientists, it is no surprise that these attacks may have something to do with the U.S. and its ally, Israel, as their attitudes towards Iran have recently been destabilizing. Due to its problematic history, baggage continues to be dragged across international politics, potentially triggering conflict and completely jeopardizing worldwide security. Targeting Iranian nuclear scientists may satisfy Israel and the U.S. by allowing them to believe that they are preventing the development of Iran's nuclear program. However, it has and will continue to bring a painful effect on the Iranian people, instilling anti-U.S. and anti-Israeli sentiment

into their thinking and potentially igniting an unneeded conflict. Moreover, the JCPOA between Iran and the P5+1, consisting of Russia, China, France, the UK, and the US, that is meant to "obstruct Iran's potential pathways to nuclear-weapons development," has been completely butchered by the U.S.[54] Trump called it "the worst deal ever" and on May 8, 2018, he announced that he was withdrawing from the deal.[55] The move that Trump pursued has not only made the U.S. look completely unstable as

"State Department officials had no good answers about the purpose of reimposing sanctions on Iran,"

but has also shaken up the ideas of legitimacy in international relations.[56] Notably, Iran is known to deny any involvement with nuclear weapons, however, the IAEA report of 2015 has proven that they are highly involved in the program.[57] It has been reported that Iran has "violated its commitments under the [...] Non-Proliferation Treaty" and has "failed to report various nuclear activities."[58] Trump withdrawing from the deal and Iran violating the IAEA rules has left international actors with nothing but the questioning of legitimacy and trust. Since 1979, Iran has been a source of Western apprehension, and with the moves that the U.S. continues to pull and Iran's white lies, it will further continue to feed into the apprehension between the two nations.[59] Both nations have made controversial moves, and something as central as international law has now become of question. As a result of past conflict, various nations have begun turning towards notions of peacekeeping, avoiding conflict and diplomacy rather than conflict. European nations of the P5+1 criticize Trump's decision of leaving the JCPOA, as when agreements are signed, they should be kept. Besides Trump's recklessness in relation to the JCPOA, all nations have agreed to stay in the JCPOA, adhering to the initial provisions of "positively [...] [contributing] to regional and international peace."[60] Ultimately, some countries may go to very far lengths to prevent Iran's nuclear development, and although it is intolerable, it is nothing strange to the international community. While various European nations have agreed upon staying in the JCPOA and vouching for diplomacy amongst all nations, Trump has done the opposite by completely butchering and eliminating the ideas of negotiation with extremely politically and militarily powerful nations.

Conclusion:

It is evident that Iran's history led it to have a long-lasting struggle on the world stage. Since 1945, its relations with the West have been problematic due to hostilities, difficulty in domestic relations and its nuclear problems. It is extremely important to understand the relations that Iran has had with the West since 1945 because they have been extremely influential in politics and decision making in the current era. It is challenging to see and understand a complete world history without Iran and its rich past with the involvement of many prominent nations. Despite the challenge of applying Iran's history to present-day international relations, it is also crucial that politicians and the ones in power step aside for a moment and think twice about their

decisions. It is vital to understand that lives take priority over power, money, and conflict. Though it may seem simple, it lacks clarity for some leaders that hold power over a nation's action or inaction. Iran's nuclear program has created an enduring process of engagement between many nations across the world, however it has also created conflict and endorsed illegal suppliers due to the program it has created. Hence, it is important to see the two sides of each situation. Moreover, Iran's past has followed it into the present day, and tensions between Iran and the West are still on the rise. Iran's program has caused nations to kill Iranian scientists, however what is frightening is that many can do more than just killing intelligent individuals. Perhaps the U.S. feels threatened by Iran's nuclear capability as they slowly lose their hegemonic seat on the world stage. Nonetheless, the security of international politics will depend heavily on Iran's and the West's actions, as will the lives of individuals in both countries and the prospect of the past repeating itself.

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The Legal and Ethical Implications of U.S. Drone Strikes in Pakistan

Written By: Pauliina Anttila

Introduction:

Since 2004, the United States has increased the frequency of drone strikes against Pakistan's federally administered tribal areas to kill alleged terrorists.[1] The US has increasingly utilized the form of targeted drone strikes known as "signature strikes" that target men "believed to be militants associated with terrorist groups, but whose identities aren't always known."[2] In this paper, the use of targeted drone strikes by the United States against suspected terrorists in Pakistan will be analyzed in the context of the just war doctrine to determine if drone strikes in Pakistan constitute a violation of international humanitarian law. The right to resort to drones is governed by *jus ad bellum* and the examination of how and under what circumstances drones are being used is an issue of *jus in bello.* I will argue that the United States has no legal right under international humanitarian law or international customary law to resort to the use of force under self-defence. According to *jus ad bellum*, I will also demonstrate that drone strikes in Pakistan are neither a necessary nor proportional response. Additionally, I will argue that US drone strikes in Pakistan do not conform to the *jus in bello* principles of distinction and proportionality. A high civilian death rate, psychological traumas and the possible exacerbation of local radicalization do not suggest that the civilian costs associated with drone strikes are proportional to the military objective of the United States. This paper will conclude by examining how traditional conceptions of warfare that are implicit within international humanitarian law may be incongruent with the tactics of modern warfare. Thus, I will conclude by arguing that the nature of modern warfare necessitates a re-examination of the usefulness of the just war doctrine and how states can easily circumvent it by referring to the changing nature of warfare to justify their actions.

Drone Warfare in the United States:

The United States has frequently relied upon the use of Unmanned Aerial Vehicles (UAVs) or "drones" to remotely target and kill enemy combatants in armed conflicts.[3] By utilizing drone strikes, the US military is able to avoid the challenges, controversies and safety concerns that accompany using traditional forces.[4] [5] The US military can also reach more remote territory and targets, with UAV operators located in mobile command centers near the battlefield or in command centers in the United States.[6] [7] The use of drones by the United States military has increased significantly after 2001, with the overall use of armed drones by the US growing by 1200 percent between 2005 and 2013.8 The role of drones has also shifted

from reconnaissance to aggression.[9] Across its theatres of armed conflict, the United States has used drones to support combat and counterterrorism efforts.[10] Historically, the laws governing armed conflict were reassessed when the landscape of warfare changed with the introduction of new military technology.[11] Thus, the legality and morality of using drones in non-traditional conflicts have been continuously challenged by scholars.

Self-Defence:

The right to resort to drone warfare is governed by *jus ad bellum*. I will begin by arguing that the United States has no legal right under international humanitarian law and international customary law to resort to the use of force under self-defence because Pakistan has not engaged in an armed attack on the United States.

The UN Charter makes an exception on the prohibition of the use of force by guaranteeing States

"the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations".[12]

Self-defense under Article 51 refers to the right of the victim state to use "significant offensive military force on the territory of a state legally responsible for the attack."[13] As determined in *The Oil Platforms (Iran v. U.S.),* states also have an inherent right to self-defense under customary international law.[14] States that are victims of an armed attack "may respond with force that is proportional to the armed attack and necessary to respond to it."[15] In *Nicaragua v. United States*, it was determined that a state's right to use self-defensive force under the UN Charter could not be triggered by mere sporadic incidents but rather by "grave forms of the use of force."[16] Further, the concept of unit self- defence exists under customary international law but its parameters cannot exceed those found within the *Caroline* principles.[17] Thus, immediacy or imminence is required to use force in self-defence according to customary international law.[18] A state can act in self-defence when the "danger posed to a state is instant, overwhelming, leaving no choice of means, and no moment for deliberation."[19]

The scope and magnitude of terrorist attacks are unlikely to sufficiently endanger the victim state to an extent that would trigger a state's right to self-defence.[20] [21] [22] [23] Orr argues that al-Qaeda's campaign against the US does not trigger the right of self-defensive force because al-Qaeda has not launched a full-scale military offensive.[24] Rather, Al-Qaeda is a network of loosely organized and operationally independent entities.[25] Thus, acts of violence carried out in the name of al-Qaeda cannot be attributed to the work of a single, centralized and hierarchical organization.[26] Further, the Taliban are guilty of terrorism against both Afghan civilians and against Pakistan, making it difficult to argue that the Afghan Taliban are engaged in terrorism against the United States.[27] Likewise, O'Connell posits that an armed response to a terrorist attack will seldom meet the requirements for the lawful exercise of self-defence.[28] O'Connell further argues that if the US is already in a

worldwide armed conflict with terrorists, the need to invoke self-defence for each additional attack should not be necessary.[29]

Further, the right to pre-emptive self-defence does not exist under the UN Charter since lawful self-defence requires the existence of an armed attack.[30] [31] [32] An "attack" under the Charter is defined as an actual move forward rather than a mere threat of action.[33] [34] Shah contends that US drone attacks "carried out in Pakistan against al-Qaeda members and Pakistani Taliban, and militia leadership as pre-emptive self-defence against terrorism rest on a justification unrecognized in international law."[35] However, if these drone attacks are acts of reprisal then they are *unlawful* under international law.[36] As determined in the Advisory Opinion on Nuclear Weapons by the I.C.J.,

"armed reprisals in times of peace are considered to be unlawful".[37]

Terrorist attacks do not result in an on-going wrong such as the occupation of territory. Terrorist attacks are brief, and force may not be used long after the terrorist attack as it "loses it defensive character and becomes unlawful reprisal."[38] Thus, claiming that the United States is acting in self-defence is inaccurate because "in the case of pre-emptive attacks no armed attack has been committed, and with regard to reprisals armed attacks have already ended."[39]

Then, since the state of Pakistan is not responsible for an armed attack on the United States, the US has no right to resort to military force under the law of self-defence. Terrorist attacks are sporadic and rarely the responsibility of the state where the perpetrators are located.[40] By failing to establish "effective control" over the perpetrators, the state of Pakistan cannot be considered a sponsor for al-Qaeda or Afghani Taliban operations.[41] The provision of weapons, logistics and a safe haven by the state of Pakistan is not the requisite assistance required to qualify terrorist attacks as an "armed attack."[42] Thus, drone attacks violate the sovereignty of Pakistan rather than constituting a lawful act of self-defence.

Nonetheless, in *Oil Platforms (Iran v. U.S.),* it was determined that "the mining of a single military vessel might be sufficient to bring into play the inherent right of self-defence."[43] This suggests that individual acts of violence could constitute an armed attack. According to this more recent view, a single armed attack by a non-state actor could trigger a state's right to self- defence.[44] The attacks on 9/11 might provide a sufficient basis for the US to engage in self-defence against those responsible for the attacks.[45] However, self-defence would only warrant measures proportional to the armed attack and necessary to respond to it.[46] Subsequently, it will be argued that US drone strikes in Pakistan are neither a proportional nor a necessary response.

Proportionality and Necessity under *Jus ad Bellum*:

Under *Jus ad Bellum,* states must prove that the use of force is necessary to achieve a defensive purpose and will not result in a

disproportionate loss of life and destruction compared to the value of the objective.[47] Additionally, "the requirement of necessity addresses whether there are adequate non-forceful options to deter or defeat the attack."[48] I will now argue that drone strikes in Pakistan are neither a necessary nor proportional response to isolated terrorist incidents.

If a sovereign nation is unable or unwilling to take action against a non-state actor in its territory, international law does not prohibit the use of deadly force against the non-state actor.[49] Therefore, drones *may* be used in the context of a global battlefield. Drones may be used anywhere in the world against terrorism suspects related to the attacks of 9/11 as long as the country where such suspects are located is "unwilling or unable to effectively take action against such suspects."[50] [51] However, Pakistan has not requested US assistance in the form of drone strikes nor consented to them.[52] In 2009, Taliban militants attacked the city of Buner in Pakistan and Pakistan's armed forces began engaging with these militant groups.[53] Pakistani forces had a right to respond with military force as this clearly indicated a conflict escalation.[54] [55] Despite the fact that Pakistan did not request US assistance,

"many U.S. attacks have been in areas where the Pakistani government had been attempting through a variety of methods to prevent an armed conflict."[56]

Even if the United States had express consent from Pakistan to conduct drone strikes, it would be counterproductive to the military objective of preventing terrorist attacks on the United States.

Further, US drone strikes in Pakistan are not proportional to the military objective and may even exacerbate the threat of terrorism against the United States. United States drone attacks in Pakistan "aim at militants who attack U.S. troops in Afghanistan or join with al-Qaeda to plot future 9/11-type attacks in the U.S.."[57] Instead of mitigating the threat of terrorism, drone strikes may have exacerbated it. David Kilcullen does not believe that the drone attacks served their purpose, claiming that

drone strikes "are deeply aggravating to the population… and leads to spikes of extremism."[58]

Militant groups in Northern Waziristan, Pakistan pursued retaliatory attacks against local civilians they suspected of being U.S. informants.[59] Drone strikes in the tribal regions of Pakistan have also resulted in a radicalization of the local population against the United States.[60] [61] Also, drone attacks may be re-invigorating hatred of the West in Pakistan, with the rapid ascent of al-Qaeda in the Arabian Peninsula as an example.[62] In Pakistan, drone attacks killed many senior commanders but "the Taliban were able to garner recruits in [the strikes'] aftermath by exaggerating the number of civilian casualties."[63] Further, two-thirds of those polled in Pakistan's tribal areas said that suicide attacks against US military targets were justified.[64] As Kilcullen explains,

"every one of these dead non-combatants represents… a new desire for revenge, and more recruits for a militant movement."[65]

Drones are also depicted as one of the most significant sources of strain in US-Pakistan relations, suggesting that the implications of conducting drone strikes in Pakistan have long-term effects on security relations, in addition to an exacerbated risk of terrorism.[66]

Nonetheless, many scholars purport that assessing the lawfulness of drone strikes through *jus ad bellum* is difficult because the CIA operates the drone program in Pakistan in secrecy.[67] [68] [69] Sometimes, targeted killings may be a necessary and proportionate response. However, it is difficult to conclude with certainty whether the entire drone program is legal or illegal.[70] [71] More data is needed to determine the immanency of the threat and whether other means of stopping the targets were available.[72]

A Conflict between Unlawful Combatants:

If the United States is engaged in an armed conflict and the laws of war apply, then lawful combatants can legally be targeted. Under the Geneva Conventions, lawful combatants are considered members of a state's armed forces or militia that "report to a responsible chain of command, distinguish themselves by wearing distinctive signs or uniforms, carry arms openly, or conduct their actions in compliance with the laws and customs of war."[73] I will now consider the military and organizational operations of terrorist groups in Pakistan and United States drone operators to argue that neither should be considered lawful combatants.

In order to become a combatant, an individual must become a member of the "armed forces of a Party to a conflict where those armed forces comply with the rules of international law applicable in armed conflict."[74] Since al-Qaeda does not enforce this compliance by deliberately targeting civilians, they cannot claim combatant status for their members.[75] Further, CIA drone operatives in the United States are not considered lawful combatants because they are not members of the US armed forces.[76] [77] They do not have the right to use force during an armed conflict and are not trained in the targeting principles of distinction, necessity, proportionality, and humanity.[78]

Modern-day wars are fought by armies and militias that do not resemble traditional soldiers and may appear civilian, suggesting that a looser interpretation of the Geneva Conventions may support the characterization of al-Qaeda members as lawful combatants.[79] However, a strict interpretation would suggest that

"members of al-Qaeda, the Taliban and their associates do not meet the requirements of lawful combatancy, and therefore are unlawful combatants or unprotected civilians."[80] [81]

Civilians can only be targeted if they participate directly in hostilities and "members of an armed group remain direct participants in the hostilities for the entire duration of their membership in the given

armed group, because of their constant combat function."[82] One must prove that al-Qaeda members are directly engaging in hostilities in order for them to be lawfully targeted, which may be difficult considering the sporadic nature of terrorist attacks.

Jus in Bello:

To continue, US drone strikes in Pakistan do not conform to the *jus in bello* principles of distinction and proportionality due to the inability to differentiate between civilians and combatants through drone technology and the increasing civilian death rate. A high civilian death rate, potential psychological traumas and instances of local radicalization all suggest that the civilian costs associated with drone strikes are not proportional to the military objective of the United States.

Article 51 of the Geneva Conventions prohibits "attack[s] which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."[83] Also, civilians cannot be targets of military operations and Article 51 considers any attacks that cannot distinguish between a civilian non-combatant and a combatant to be illegal.[84] This correlates with Article 52, which states that

armed attacks in wartime must be "limited strictly to military objectives" and offers a "definite military advantage."[85]

The principle of proportionality necessitates "taking into account factors such as the military importance or exigency of the target."[86] The achievement of a military goal is considered in relation to the effects of an attack on civilian objects and civilians. Reckless attacks may knowingly take civilian lives in "excess of what is necessary for accomplishing the military objective."[87] [88]

United States drone operators are unable to adequately distinguish between civilians and combatants, resulting in a disproportionate civilian casualty rate compared to the casualty rate of militant leaders. A study conducted by Bergen and Tiedemann demonstrates that the 114 reported drone strikes conducted in northwest Pakistan between 2004 and 2010 have killed between 830 and 1210 individuals, of whom 550 to 850 were "militants."[89] Other studies have also found that approximately one-third of drone fatalities are civilians.[90] [91] Other studies indicate a civilian death rate of approximately 10 percent.[92] In Pakistan in 2009, approximately 10 militant leaders were killed by drone strikes, in addition to hundreds of lower-level militants and civilians.[93] According to statistics compiled by the Pakistani authorities, more than 700 civilians were killed in drone strikes in 2009.[94] In Pakistan between 2006 and 2009, approximately 20 suspected militant leaders were reportedly killed during strikes that also killed approximately 750 to 1000 civilians.[95] From 2004 to 2009, some estimate that only 6 out of 24 high-profile terrorists targeted by drones were killed, compared with 874 Pakistani civilians (hundreds of whom were children).[96] O'Connell claims that for every one

suspected combatant, 50 Pakistani civilians are killed.[97] Likewise, Keene argues that attempts to kill 41 men resulted in the deaths of about 1,147 people.[98]

Mayer claims that the first two CIA airstrikes of the Obama Administration killed 20 people, four of whom were likely affiliated with al-Qaeda.[99] In a second strike, the wrong house was targeted,

"hitting the residence of a pro-government tribal leader… in South Waziristan. The blast killed the tribal leader's entire family, including three children, one of them five years old."[100]

In August of 2009, a CIA-operated drone strike killed Taliban leader Baitullah Mehsud while he was receiving an intravenous transfusion and unintentionally killed twelve others in the process, including his uncle and wife.[101] Selectively targeting individuals with drones was not possible in the conditions of the Pakistan border region.[102]

The civilian segment of the population also suffers psychological costs associated with a consistent fear of surveillance, injury or death.[103] In North Waziristan, children have stopped going to school, too injured or traumatized by overhead drones.[104] One humanitarian worker in Pakistan describes drone-created terror as a "continuous tension, a feeling of continuous uneasiness… you wake up with a start to every noise."[105] Further, citizens subjected to drone strikes are left "impoverished, anguished and infuriated."[106]

The inability to distinguish between civilians and combatants is the result of terrorists being embedded in broader communities populated by innocent civilians.[107] In the context of terrorism, combatants are rarely distinguishable from civilian populations.[108] [109] [110] [111] Intended targets of drone strikes in Pakistan are in civilian settings, in "villages, in homes, in vehicles… "[112] [113] Also, civilian casualties may be explained by unreliable intelligence gathering and the fact that militants often take refuge among civilians.[114] Access to reliable on-the-ground information in Pakistan was limited, with one media report explaining that "looking through the Predator's camera is somewhat like looking through a soda straw… You might be able to tell a Saudi headdress from an Afghan one… but it'd be pretty hard to do.[115] Operators merely rely on pre-identified behaviours that suggest they are associated with the Taliban or al-Qaeda.[116] Also, suspected militant leaders wear civilian clothes and drones cannot determine with certainty that a suspect being targeted is not a civilian.[117] It is unknown whether the U.S. takes any precautions to avoid the incidental loss of civilian life when carrying out drone strikes.[118] Since the civilian casualty rate is relatively high compared to the casualty rate of terrorist militants, drone strikes violate both the distinction and proportionality requirements of the *jus in bello* doctrine.

Drones: An Ethical Precedent?

Due to the intense scholarly focus on the legality of drone strikes under international humanitarian law, it is necessary to question the applicability of the just war doctrine in

analyzing the legality of modern conflicts. Drone warfare demonstrates the shifting ethical dimensions of modern warfare. In addition to their illegality under the just war doctrine, I will now argue that US drone strikes in Pakistan are also not ethically permissible due to the asymmetric and unequal nature of the drone program. I will also argue that the nature of modern warfare necessitates a re-examination of the usefulness of the just war doctrine, since states can easily circumvent it by referring to the changing nature of warfare to justify their actions.

To begin, boundaries between war and peace in modern warfare are indistinguishable. Hardt and Negri emphasize the lack of distinction between war and peace in modern conflicts and argue that a "state of constant war" exists.[119] The boundaries between peace and war are blurred because states are no longer the primary actors in conflicts. The classical theory of warfare defines war as symmetrical and clearly differentiates between war and peace.[120] [121] In contrast, modern warfare is defined by the asymmetry of actors and involves the circumvention of international laws to instigate normalized, perpetual war.[122] [123] Asymmetric warfare can be defined as "conflicts between nations or groups that have disparate military capabilities and strategies." If modern warfare is increasingly diffused and asymmetrical, blurring the distinction between combatants and non-combatants, it is difficult to imagine any modern conflicts conforming to the just war doctrine.

Furthermore, warfare is dehumanized due to the vast geographical distance between drone operators in the United States and the battlefields of Pakistan. Many scholars have compared modern warfare to a video game, since lethal weapons can be launched through the click of a button.[124] [125] Singer contends that "as wars become safer and easier, as soldiers are removed from the horrors of war and see the enemy not as humans but as blips on a screen, there is a very real danger of losing the deterrent that such horrors provide."[126] Individuals may overcome the resistance to kill by maintaining a physical and emotional distance from the victim.[127] Likewise, drone operators do not put their own lives on the line, invoking debates about military honour that has traditionally purported a "reciprocity of risk that gave war… its moral force."[128] Butler similarly contends that when human lives do not initially qualify as lives "then these lives are never lived nor lost in the full sense… the frames through which we apprehend or, indeed, fail to apprehend the lives of others as lost or injured (lose-able or injurable) are politically saturated.[129] They are themselves operations of power."[130] Thus, war becomes "easy" and "dehumanized."[131] [132] [133]

Moreover, drone warfare is a non-ethical form of warfare due to the psychological implications on its victims. Modern warfare is not characterized as a duel between relative equals. Drone warfare perpetuates a predatory relationship; modern warfare becomes a manhunt and creates a relationship between the "hunter" and the "hunted."[134] Chamayou states that the

experience of "hunting" perpetuates "radical anxiety" and a constant sense of "foreboding danger."[135] The psychological and physical consequences endured by victims of drone attacks have been discussed at length throughout this paper. In respect to Pakistan, Kilcullen and Exum have stated that for a frightened population, violent extremists "seem less ominous than a faceless enemy that wages war from afar and often kills more civilians than militants."[136] Keene contends that communities living under the constant watch of surveillance drones have "no one to recognize, apologize for, or explain their sorrow; there is no one to hold accountable for their fear."[137]

Winter provides a useful analysis that might explain how the United States is able to continue with its drone program despite its potential illegality. Winter contends that fighting against "asymmetric enemies" such as terrorists provides a useful idiom for states to expand the scope of their response.[138] Specifically, it allows states to "selectively rationalize brutal tactics against non-state actors… and to defend operations that cause high degrees of collateral damage."[139] The asymmetrical enemy is "wrapped in civilian dress" and constantly "transforms."[140] Thus, the claim to asymmetry provides a "political shield" against the legal responsibilities of states under international law.[141] By blurring the distinction between combatants and civilians, states are able to present themselves as vulnerable to strategic arrangements that they cannot realistically win and frame themselves as victims.[142] [143] The only thing the victim can do when confronting an asymmetrical enemy is to utilize excessive power until the enemy is eliminated; there is no ability to reason with the asymmetrical enemy. The enemy has been constructed abstractly, encouraging the conception of all of humanity as united against terrorism. Any state conduct can be legitimated for this "just" cause. Thus, the United States is able to ethically justify drone warfare, utilizing drone strikes against the abstract enemy despite the potential illegality of doing so under international humanitarian law. A critical re-examination of the doctrine governing the legality of drone strikes is necessary in order to prevent the circumvention of international humanitarian law.

Conclusion:

This paper has determined that US drone strikes in Pakistan violate the major tenants of both *jus ad bellum* and *jus in bello*, rendering them illegal. This paper has also considered drone strikes in the context of modern warfare, arguing that the just war doctrine may be inaccurate to measure the legality of modern conflicts. It was also determined that US drone strikes in Pakistan are not ethically permissible due to the asymmetric and unequal nature of drone strikes. Despite the legality of modern conflicts becoming increasingly blurred, it is crucial to continue to inquire into the legitimacy of the military tactics used by the United States.

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Why the Truth Fails: A Comparative Approach to Ethiopia's Abandoned Truth Commission

Written By: Charlotte Rolfe

Introduction:

This paper discusses the truth commission, a transitional justice mechanism used all over the world in post-conflict societies to heal the population and stimulate social trust among victims of war crimes. Sierra Leone and Ethiopia are two post-conflict African states that both attempted to garner success from truth commissions as a part of the transitional justice process, but only Sierra Leone was a success. The cloudiness surrounding why Ethiopia's commission failed is concerning, and there should be clarity as to why the effort in Ethiopia was abandoned even with the support of truth commissions and transitional justice from the African Union and United Nations. During my time in Ethiopia, I was able to research possible reasons based on secondary and primary sources as to what the reasoning behind abruptly stopping the truth commission in Ethiopia was. Although there may be a multitude of factors that played into the halting of the truth commission in Ethiopia, the primary reason can be credited to the fact that the people of Ethiopia did not want to grant amnesty to perpetrators, and therefore rejected the truth commission as any sort of mechanism for healing. The new government of Ethiopia that came to power after the civil conflict had garnered widespread support for the freedom of oppression faced by the Ethiopian people. The process of justice was determined by a population that felt it was their right to serve justice as they saw fit; retributively, through a judicial trial, rather than restoratively, through a truth commission.

The Puzzle:

"The truth will set you free" is a biblical statement often quoted for its accuracy.[1] In post-conflict societies, this statement can be very accurately ascribed, as the process of telling one's truth can have lasting positive effects on society. Truth commissions are a transitional justice tool used to share the truth of what happened during a conflict, shifting the post-war burden from the individual victim onto the community. Transitional justice values have been officially recognized by academics, policy makers, and the African Union as an integral tool to mend the damage done in the aftermath of a conflict. It has been applied and considered to be successful in cases such as in South Africa, Sierra Leone, and Uganda in some respects.[2] However, the application of transitional justice mechanisms in other African countries such as Ethiopia was largely seen as failures. This essay focuses on the two contrasting case studies of Sierra Leone, seen as a positive example case for truth commissions and other transitional justice mechanisms, and Ethiopia, which achieved very little.

In this paper, the question that I answered is given that both countries are post-conflict African states with governments that had similar goals, why did the truth commission in Sierra Leone work out so well, but failed in Ethiopia?

Effectiveness of Truth Commissions:

Truth commissions are transitional justice mechanisms used all over the world in post-conflict societies to heal the population and stimulate social trust among victims of war crimes. They differ on a case-by-case basis, but certain aspects remain constant. Professor Joanna Quinn describes truth commissions as focusing on past events and previous conflicts and are concerned with the widespread human rights violations over a set period and place.[3] These mandates are clearly defined and are temporary. Most truth commissions have quasi-judicial powers that can sometimes compel people to testify.[4] All these aspects of truth commissions are necessary to have a successful truth commission, but they are not inherently sufficient to have a successful truth commission.[5] They are run by the state itself or the international community, especially in post-conflict cases where the national government is too fragile or depleted of its resources. In instances where the state has the capacity to operate a truth commission, this advantageous and localized opportunity can be taken advantage of by the state to retake control of the post-war society. The state can then help the victims of war crimes heal through community support and understanding.[6]

Based on my findings, transitional justice literature tends to speak highly of truth commissions when done correctly, as the benefits of a truth commission include its broad focus on patterns of crimes committed by one group against another, or to the greater community.[7] Rather than the responsibility of healing from crimes against human rights alone, truth commissions help to transfer the responsibility from the individual to the community. In a truth commission setting, those that have committed crimes may be punished for their crimes, but it still allows them to tell their side of the story; everyone involved in war is treated as a victim of war, and truth commissions allow victims and perpetrators alike to hold onto their dignity despite the crimes that they have done or have been done to them. Victims can speak their truth freely without fear of judgement, as once a report is published, truth commission testimonies become public knowledge, and that sense of responsibility is shared.[8]

Background:

After the 11-year-long civil conflict between the Revolutionary United Front (RUF) and the official governing body known as the All-People's Congress (APC) in Sierra Leone, widely known for the gross human rights and humanitarian law violations, which began due to corruption, bad governance, and a lack of care for the population by the government.[9] The result of this conflict was a complete governmental takeover, and after incessant fighting, the international community stepped in through the creation of the UN Mission in Sierra Leone. This mission ensured a ceasefire to

attain peace, and it was under these circumstances that the National Truth and Reconciliation Commission was pursued by the new regime with the requested assistance of the international community.[10] Transitional justice and truth commission literature suggest that Sierra Leone is considered one of the most effective and successful truth efforts.[11]

The Ethiopian civil war was triggered by a coup, resulting in the overturning of the previous oppressive regime known as the Derg led by President Mengistu Haile Mariam.[12] The rebel group that organized the coup, known as the Tigray People's Liberation Front (hereon TPLF), merged with smaller rebelling groups such as the Amhara Democratic Party (ADP), the Oromo Democratic Party (ODP) and the Southern Ethiopian People's Democratic Movement (SEPDM).[13] A new government coalition was formed known as the Ethiopian People's Revolutionary Democratic Front (hereon EPRDF) and mass lustration occurred to cleanse the government of corrupt individuals tied to the previous regime.[14] The new president and regime appeared to be one of great hope, as they made claims of helping the people to heal from the wounds of war through a truth commission and retributive justice. Despite these ambitious claims, the Ethiopian truth commission was never completed but instead was essentially abandoned.[15]

Qualitative Research and Potential Hypotheses:

The Ethiopian case helps contribute to our understanding of truth commissions and their effectiveness as it shows that there is a missing piece to this puzzle. The ambitions of the government of Sierra Leone and the government of Ethiopia were the same, and both attempted to use truth commissions, but only the truth commission in Sierra Leone is considered a success, while its Ethiopian counterpart was abandoned and considered a failure.

It should be noted that my research method of choice is the method of difference. This method compares two cases in which the outcomes are different, but the cases are very similar except for one variable that results in the difference in outcomes and allows for effective hypothesis building and testing.[16] Truth commissions have one general mandate: to establish a common truth for the public in order to promote the acceptance of events and to establish a sense of closure in the healing process.[17] In addition to utilizing the method of difference, I used a comparative political research method, the Most Different Systems Design (hereon MDSD), created by Professors Henry Teune and Adam Przeworski. It is the most applicable system of comparative research in the case of the truth commissions of Sierra Leone and Ethiopia because it emphasizes the systemic differences between the two cases.[18] The MDSD method allows for the differences in culture, religion, language, and other variables to be disregarded if needed, so that my research can focus on differences in the outcomes of the two truth commissions.[19] The strength in this approach allows for the extraction of common details between the two cases to provide explanations in my research. The differences are not ignored,

but I do not view them as challenges to comparing the two countries. The very principles and grassroot foundations of a truth commission, as previously mentioned, change very little on a case-to-case basis, as the mandates for truth commissions generally revolve around the discovery of common truths.

It became clear in my research that the implementation of certain transitional justice mechanisms such as truth commissions must be appropriately timed in order for them to achieve their specified mandate. It is imperative the implementation is not too early, nor too late; if the corrupt officials of the previous regime are not completely removed from influence and power, it can spread back into the new regime. The entirety of it must be removed, or the problem will continue to exist. This can sometimes go unnoticed, as the ambitious goals of a new government can put hope in the minds of a population that perhaps has not yet fully recovered from a conflict that happened years ago, so when a massive transitional justice effort like a truth commission is determined a failure without a conclusive reason as to why it was abandoned, it gives rise to the suspicion that something went awry, especially after a process of 'mass lustration' within the governmental body.

This was something I considered when I concluded that the first possibility that I considered for what could have gone wrong with the truth commission in Ethiopia was that those working on the commission were pressured to stop all work. If that was the case, political pressure would be the culprit, which is common in transitioning societies, according to Professor Quinn.[20] The second was that the lack of or little support provided to those genuinely seeking a regime change by international actors caused the regime change to fall into the wrong hands during a time of instability, which can also occur during times of transition.[21] Sierra Leone had enough monetary aid and expertise provided to them by international actors, so this could have been the main contributor to the success of their truth commission and governmental transition.[22] The final possibility I investigated was the ethnic divide and its effect on power politics. The regime that emerged after the conflict in Sierra Leone was made up of the dominant ethnic group in the region, the Amharic people, allowing for popular consent and approval among a majority of the country. However, the new regime in Ethiopia was mostly made up of Tigrayans, a much smaller group considered to be a minority.[23] I saw the possibility that the larger ethnic groups felt unpresented and did not consent to the leadership being made up of mostly a minority group. Not only could popular consent have been an issue with the Ethiopian regime change, but the Derg regime that the commission was created to bring justice to was made up of the dominant ethnic group, making sabotage the final possibility that I considered while accumulating more information for my research.[24]

Research Obstacles:

In my findings I came across several obstacles that seemed less than fruitful, but eventually showed me the answer to my

puzzling question. When speaking with officials from the African Union, I was unable to get any concrete evidence to support any of my claims. The AU relationship with the government of Ethiopia could be negatively affected if information that was not meant to get out was released to the public through my writing, so the answers to my questions were vague and very diplomatic. When in Axum, a more rural city in northern Ethiopia, I was able to ask members of the local population about whether they are aware of the truth and reconciliation commission that occurred after the civil war, and if so, what they think happened to it with the help of a translator. I was unable to get an answer from the three farmers I was able to interview, as when I told the translator my question, he informed me that he could not ask such a question because these men participated in the Derg regime's brutalities when they were younger.

Finally, whilst visiting the Institute for Peace and Security Studies (hereon IPSS) in Addis Ababa, I was able to speak with the APN award-winning scholar, Dr. Fana Gebresenbet, who has worked at the IPSS for 8 years. Upon asking why he thought no elaborate peace processes have been implemented, he stated that although an opportunity for the truth to be presented by survivors of the Derg's crimes would have been a useful addition to the post-conflict stage, the main goal of the new regime had been to remove the Derg regime, and this was a success. They felt no need for any additional justice processes, especially when the courts had made all the decisions that they felt needed to be made. In addition, the new regime had not been aided by any international actors, and therefore the new regime felt that a foreign justice invention would not work in Ethiopia. He suggested that they felt that just because such an initiative invented in a Western country would work in some other country, it did not mean it would necessarily work in Ethiopia.

He followed up these statements by noting that it was possible that the EPRDF had a lot to hide despite their glorified appearance to the population, as being a rebel fighting group can be "tricky". The TPLF and EPRDF found it difficult to cooperate fully for some time, and this could easily have allowed for the Derg to win the war. Even today, researchers regularly ask the Ethiopian government for access to their archives from this time period, however, any access to the files from 1974-1991 is always denied; there is still a large portion of missing information from the time of the war, so it is difficult to make definite statements in answer to my questions.

Concluding Findings:

Despite the array of possible factors, but based on all research previously discussed, my research shows that the abandonment of the truth commission was mainly due to the fact that the people of Ethiopia did not want to grant amnesty to perpetrators, and therefore rejected the truth commission as any sort of mechanism for healing. The perpetrators were eventually put through a retributive justice process and were charged for their crimes, leaving no room for transitional justice in a state that wanted to

take ownership of its history. Even those that would have benefited from a method of justice that promotes healing of all members of the community affected by the terror of the Derg regime could not possibly complain about the methods of the EPRDF. I was unable to understand the extent of the support for the EPRDF, formerly the TPLF, by the people of Ethiopia until I was able to see the Ethiopian Red Terror Martyr Museum and talk to the man giving us the tour on his stance. He refused to recognize the truth commission that was tried in Ethiopia, because in his view, the TPLF had succeeded in its mission of ending an era of extreme violence through a trial of retributive justice, and thus it is celebrated and never challenged. The TPLF may not have been an excellent government by modern standards, but because of what it represents, it is far better than what the Ethiopian people had. The man at the museum had lost people during the Derg regime, as he talked to me about losing his friends and

their mothers being unable to cry over their lost sons, as the action of crying over a lost loved one was akin to providing support for the enemy.

Those that experienced the red terror period see challenging the EPRDF, the government that saved them from these horrors, to be immoral and completely against their interest.

Conclusion:

There is a clear split between those that participated in the Derg regime and those that felt the effects of it; now, they are a much older generation. Despite this, it became very clear to me after speaking to Dr. Fana Gebresenbet, as well as the man working at the Ethiopian Red Terror Museum who witnessed the Derg regime firsthand, that Ethiopians have great support for the EPRDF. Clear political support for the EPRDF by armed young people on the street, proudly flying the country's new flag, showed me that although this generation did not live through the Red Terror, the history of that era remains unforgotten among people of all ages. Although the truth commission may have been considered a failure and was never able to complete its mission, what the people of Ethiopia felt needed to be done was completed, and those that committed acts of terror against their population were prosecuted in a way that felt right to the new government and the people that lived through it. The truth commission in Sierra Leone was a success because of international guidance and a genuine desire for restorative justice, whereas in Ethiopia, the explanatory variable behind the difference in outcomes was that the justice served required a culprit for the crimes committed and the atrocities the people endured, and the transition of power between an oppressive regime and a freed people allowed them to shape the justice period into whatever way they saw fit.

Notes

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Pulling the Curtain on the Private Security Industry: The Legality of Corporate Security Companies and State Responsibility

Written By: Mathew Seeburger

Introduction:

The debate surrounding the use of private military or security companies (PMSCs) has emerged as a controversial topic amidst policymakers, corporate stakeholders and academics. There are conflicting views over the legality of PMSCs operating in foreign security operations due to issues of legitimacy, regulation, and responsibility. This was evidenced when American PMSC Blackwater was criticized for massacring Iraqi civilians in 2007. This essay is broken down into four sections, the first of which provides a brief background on Blackwater and its contract with the United States (US), as well as the 2007 Nisour Square shootings. The second section discusses Blackwater's arguments regarding its exemption from international law and immunity to US jurisdiction. Section three examines the counterarguments which attest that Blackwater violated international humanitarian law (IHL), requiring the US to extend its jurisdiction and lay criminal charges. Section four includes a final evaluation of arguments and a conclusion. Ultimately, this essay finds that the US was correct in taking legal action to charge Blackwater for its crimes in the Nisour Square massacre of 2007. This is determined by analyzing relevant legal mechanisms pertaining to the use of force, the privilege of immunity, and expanding state jurisdiction.

Background on Blackwater:

Firstly, Blackwater and other PMSCs are important to the study of international law. Mercenary groups are not new to international law; they are limited liability corporations (LLCs) and operate ambiguously worldwide with seemingly little regulation. The company was founded in 1997 and had been contracted by the US to provide security, peacekeeping, and capacity-building services around the world. In doing so, it has influenced the private security industry by redefining the role of the civilian contractor, and how states oversee PMSCs. Blackwater has been most active in Afghanistan and Iraq between 2003 and 2007. In Iraq, Blackwater's services extended beyond private security as contractors set up "bases, supplied logistics and maintained medical support, […] ready to enter the fray in service of humanitarian goals."[1] In doing so, they were to "perform in a safe, proper and workmanlike manner, following the generally accepted current good practices of the security industry [and] adhere to rules of engagement."[2] However, there were concerns over Blackwater's legal status as an LLC operating internationally, transparency, and inappropriate uses of force. These issues would come to the forefront of the international community on September 16th, 2007 when Blackwater's security team, codenamed "Raven 23", shot

and killed Iraqi civilians in Nisour Square, Baghdad. Following an inquiry from the Federal Bureau of Investigation (FBI), it was revealed that Raven 23 had "injured or killed at least 31 Iraqi civilians" while protecting a diplomatic convoy.[3] Blackwater responded with gross lethal force to a perceived threat directed at the convoy. Consequently, Blackwater was criticized for its inappropriate violence and accused of violating its rules of engagement and IHL.

Blackwater's Arguments for Exemption from International Law:

However, the grounds on which Blackwater claims its innocence must be identified. The company argues that it was granted immunity, acted in self-defense, and operated outside the jurisdiction of the US. The first international legal mechanism that defends Blackwater is the 2004 Coalition Provisional Authority (CPA). The CPA was the transitional government of Iraq which enacted orders and regulations relating to the country's administration. To help protect the development of democratic processes following the CPA, immunity from local laws was granted to foreign PMSCs operating in Iraq.[4] CPA Order 17 provided immunity to all US Armed Forces, stating that "their personnel, property, funds, assets, and all international consultants shall be immune from Iraqi legal processes."[5] Although Blackwater was not a part of the US Armed Forces, it operated on a military contract with the Forces. In this capacity, Blackwater argued that its use of lethal force, and possession of weapons and small arms was necessary to fulfill its contract with the US Armed Forces. In this capacity, Blackwater was granted immunity to criminal prosecution for its actions of lethal force and weapon possession in Iraq. Also, CPA Order 3 prohibits "possession of heavy weapons, and possession of small arms except at home or in a place of work [except] for Coalition personnel and Iraqi police and soldiers."[6] When under contract with the US Department of State (DOS), Blackwater personnel were authorized to carry these prohibited weapons to provide security services. However, the US Department of Justice (DOJ) charged the members of Raven 23 separately for committing a crime with a deadly assault weapon. In defence, Blackwater argued that

"they were required to carry the very weapons they have now been sentenced to thirty years of imprisonment for using."[7]

Given that the CPA granted immunity in Iraq, and authorized Blackwater staff to carry weapons, no evidence proves Raven 23 culpable of "discharging their weapons in a warzone."[8] The second ground of international law supporting the defence of Blackwater is that neither the 1899 Hague Declaration Concerning Expanding Bullets, nor the Rome Statute explicitly banned the weapon and ammunition types that were used during the Nisour Square shooting. Raven 23 used armor-piercing/limited penetration (APLP) rounds used at the Nisour Square shooting. Both of these bodies of law prohibit the use of "bullets which expand or flatten easily in the human body."[9] Yet, the APLP rounds that were fired by Raven 23 at Nisour Square do not

meet the requirements to be of a prohibited ammunition type.
Thus, Blackwater demanded that the separate assault-weapon charges, which carried a mandatory thirty-year minimum sentence, be dropped.[10] They argued that "the type of weapon [or ammunition] used should not be more determinative of their punishments."[11] Blackwater maintains that their staff was exempt from certain restrictions regarding prohibited weapon and ammunition types as per the orders provided by the CPA.

The third international legal mechanism by which Blackwater may argue its defence is via the Rome Statute concerning grounds for excluding criminal responsibility. Article 31(c) states that a person may not be criminally responsible if at the time of the conduct they acted "reasonably to defend [themselves] or another person [...] against the imminent and unlawful use of force in a manner proportionate to the degree of danger."[12] Raven 23 contends that they were protecting US DOS officials when their convoy was threatened by a car bomber and came under fire from Iraqi insurgents. Four Blackwater security contractors retaliated with machine-gun fire, and grenade launchers.[13] These weapons were permissible given that Blackwater was following its directive under CPA Order 3, and neither the Hague declaration nor the Rome Statute banned APLP ammunition rounds. Following the FBI investigation, Iraqi witnesses did confirm that

"a white Kia drove toward their convoy and refused to stop, [suggesting a threat] like a car bomb."[14]

In trial, Raven 23 described how they brandished their weapons and made shout-outs to tell the driver of the vehicle to stop but to no avail. Given the circumstances and believing that the vehicle was carrying a bomb, Blackwater commits that contractors on Raven 23 responded proportionately to the security threat posed. Moreover, Article 31(d) states that grounds for excluding criminal responsibility may arise when the conduct was "caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person."[15] Ultimately, Blackwater maintains that its contractors were trained to use force only when necessary. The security threat facing Raven 23 justified defending the convoy in the middle of "a war zone and a city that was one of the world's most dangerous places."[16]

The final ground on which Blackwater argues its defence is that the US lacked jurisdiction when enacting the 2000 Military Extraterritorial Jurisdiction Act (MEJA). When the DOJ expanded its jurisdiction to lay charges, they did so according to the 2000 Military Extraterritorial Jurisdiction Act. However, this act only applies to individuals "working in support of the Department of Defense (DOD)."[17] Blackwater's contract to support the DOD needs to be better assessed to determine the culpability for its civilian private security contractors. The DOJ may have misinterpreted MEJA if it is understood that Raven 23 was civilian contractors operating internationally and in connection to the DOD. Section 3251(a)(1) of MEJA is clear

in stating that "civilian crimes committed while employed by [...] the Armed Forces (part of DOD) outside the US, fall within MEJA's purview."[18] In the case, *United States of America v. Slatten,* Judge Royce Lamberth decreed that "the government must prove beyond a reasonable doubt that [Blackwater] was employed by the Armed Forces outside the United States."[19] Moreover, in his testimony under cross-examination, Deputy Secretary of the DOD Gordon England said that Blackwater was "supporting the DOS, [and] was not supporting our mission."[20] Hence, Raven 23 were contracted by the DOS and did not further any DOD objective in Iraq, therefore falling outside the jurisdiction of the US under MEJA.

Blackwater Violated International Humanitarian Law:

Nonetheless, substantial counter-arguments can be made that support the charges laid against Blackwater, thus having the US fulfill its legal obligation to cooperate with bodies of international law. The first major mechanism of international law supporting the US, in this case, is granted by the Rome Statute and the 1949 Geneva Convention (III) for inappropriate uses of force. Article 7(1)(a) of the Rome Statute defines a crime against humanity to include murder when "committed as part of a widespread attack directed against any civilian population, with knowledge of the attack," and 2(a) defines an attack as "a course of conduct involving multiple commission of acts […] against any civilian population."[21] [22] This is applicable because Iraqi's witnessed the *widespread and "indiscriminate shooting from the convoy [as] victims were hit as they sought cover or tried to escape."*[23]

Also, this constitutes a grave breach of IHL due to the massacre, causing extensive harm to both Iraqis and society as a whole.[24] Moreover, Article 8(2)(a) includes, in its definition of war crimes, "willful killing, causing great suffering or serious injury and killing or wounding a person, having laid down his arms or having no means of defence."[25] The shootings are correctly defined as war crimes because it was reported by Matt Apuzzo that civilians were shot while lying on the ground and defenseless.[26] Lastly, Article 3 of the Geneva Convention (III) ensures that both non-government and government forces are bound to apply minimum provisions towards the treatment of civilians. Article 3(1) states that

"persons taking no active part in the hostilities […] shall in all circumstances be treated humanely without adverse distinction founded on race, color, or religion."[27]

On September 16th, 2007, no minimum provisions were provided to the residents of Baghdad. Instead, Blackwater blatantly disregarded its rules of engagement and failed to protect against harming Iraqi civilians.

The second means by which the US can charge Blackwater for violating IHL is by revoking its immunity and applying criminal charges subject to the Rome Statute. Most importantly, Article 27(2) declares that

"immunities or special procedural rules which may attach to […] a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person."[28] A similar argument is found in the case *Prefecture of Voitia v. Federal Republic of Germany.* In its judgement, the Supreme Court of Greece revoked the immunity it had granted to German forces when they killed 200 civilians in the Greek village of Distomo. The Supreme Court argued that such atrocities "violate *jus cognes* norms […] and that Germany had impliedly waived its immunity."[29] Applying this rationale, it would follow that any immunity extended to Blackwater would be revoked in a similar manner.

Also, Article 31(c) states that "the fact that the person was involved in a defensive operation […] shall not in itself constitute a ground for excluding criminal responsibility."[30] This pertains to Blackwater claiming its actions were in self-defense and a response to a severe and imminent security threat. While evidence may suggest that their convoy was at risk, the fact that Raven 23 maintained a defensive posture does not provide immunity under international law and exclude them from duties owed to article 7 and 8 of the Rome Statute. Similarly, Article 31(d) states that an exclusion or immunity from criminal responsibility may only be "provided [when] the person does not intend to cause greater harm than the one sought to be avoided."[31] After interpreting this article, it may be seen that the principle of proportionality was not adhered to. Raven 23 responded with unrelenting force for some distance along the entire length of the square.[32] Also, the perceived insurgents were proven to be civilians as they put up their hands in defence and called for Iraqi police to arrive and stop the attack. Witnesses saw

"two nearby police officers' approach, [...] waving their hands to indicate that the shooting should stop."[33]

Most indicative of the disregard for proportionality is the number of casualties. After the massacre, the Blackwater convoy left the square with no casualties to their group, leaving behind a horde of dead bodies and injured civilians.

Thirdly, the US was authorized according to the 1899 Hague Declaration Concerning the Laws and Customs of War on Land, the Rome Statute, and the 1949 Geneva Conventions to expand its jurisdiction to include crimes committed by US PMSCs in Iraq. The preamble of the Rome statute reaffirms its member states' commitment to extend their territorial jurisdiction at the time so that the " most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level."[34] This justification is also found in the case of *Al-Skeini v. Secretary of State for Defense*, whereby in 2003 members of the United Kingdom (UK) Armed Forces killed six civilians in Iraq.[35] It was found that the Human Rights Act of 1988 was "applicable to acts of a UK public authority performed outside its territory [and or] where the deceased were linked to the UK when they

were killed."[36] Similarly, the US can extend its extraterritorial jurisdiction in response to the international crimes committed by American PMSCs.

To this point, the US laid charges against Blackwater under MEJA. Section 3261(a) states that "persons employed by or accompanying the Armed Forces (part of DOD) engaging in conduct outside the United States that would constitute an offense punishable by imprisonment."[37] Section 3267(a) further defines employment to include "a civilian employee of the DOD or a DOD contractor."[38] While Blackwater's defence successfully achieved an appeal, the US Court of Appeals disagreed with the interpretation of MEJA. In the appeal case, Circuit Judge John Rogers acknowledged the issue of interpretation arising from "precise limits which [the] federal statute had defined."[39] To exclude non-DOD contractors from MEJA would be a "dangerous loophole in our criminal law that would have allowed civilian contractors who do the crime to escape doing the time."[40] The court determined that the charges under MEJA applied because Blackwater was indirectly supporting the DOD by "providing diplomatic security for the DOS [...] to concentrate exclusively on the DOD's rebuilding mission."[41] Considering Gordon England's testimony, his statement and "contrary evidence is not enough to overcome this [interpretation]."[42]

Moreover, the US can reference the 1899 Hague Declaration Concerning the Laws and Customs of War on Land. Article 23(e) prohibits "weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering."[43] As such, APLP ammunition might be seen as violating this condition. While Blackwater is correct in saying that PMSCs are not a branch of the US government and have a certain degree of leniency, contractors are still required to respect international laws that the US has ratified. Thus, Blackwater is not immune to "international norms pertinent to small arms, light weapons and the ammunition they choose."[44] Article 23(e) provides a broad and generic overview of the prohibited types of ammunition. As such, the US was correct in laying a separate charge because any projectile must be viewed as a violation of international law when causing superfluous injury or unnecessary suffering.

Finally, Article 146 of the Geneva Convention (IV) reinforces member states' universal jurisdiction (UJ) and "obligation to search for persons alleged to have committed […] grave breaches, and shall bring such persons, regardless of their nationality, before its own courts."[45] Also, the International Law Commission of the UN General Assembly (ILC) advocates for its use. Specifically, the ILC advises that the UJ principle be increasingly invoked by states to "fight against impunity for heinous international crimes. These include war crimes, crimes against humanity, and genocide, which are among the most serious crimes of concern."[46] Ultimately, the UJ principle is important because it accounts for any legal vacuum or gap in jurisdiction between states. If the US was unsuccessful in amending MEJA to apply to non-DOD contractors, failed to revoke immunity, or had other issues occur, it could have relied

on these aforementioned legal mechanisms and sources of international law authorizing its UJ to try all criminals for "grave breaches of international law."[47]

Conclusion:

This case highlights the intersection of domestic and international law, state and civilian actors, and the vague nature of PMSCs whereby they operate across different government jurisdictions. While Blackwater and its defendants insist their persecution is unlawful, international law offers legal recourse to ensure that their crimes do not go unpunished. In consideration of relevant international law and several legal cases regarding the use of force, extraterritorial and universal jurisdiction, and immunity, these bodies have successfully proved that the US had legal authority for prosecuting Blackwater for the 2007 Nisour Square massacre. While PMSCs operate in the grey area of international law, they do not have immunity. Any privilege that extends to individuals charged with a crime must be revoked as per Article 27(2) of the Rome Statute. This was demonstrated by the judgement of the Supreme Court of Greece in the case of Prefecture *of Voitia v. Federal Republic of Germany*. The Rome Statute and Geneva Conventions require that the US extend its jurisdiction and use its national courts to prosecute civilians charged with a crime in foreign territories. In this case, violating articles 7 and 8 for crimes against humanity and war crimes. A similar rationale was also analyzed in *Al-Skeini v. Secretary of State for Defence.* The massacre also resulted in a separate charge for using prohibited weapon systems. In response, the US extended its jurisdiction according to MEJA. This allowed the US to revoke CPA privileges and charge Blackwater for crimes in Iraq. Consequently, Blackwater did not act within a jurisdictional gap and was successfully prosecuted. The benefit of international law is that criminals can be held responsible for their actions. Moreover, if a state fails to act, the case can be referred to the ICC. Ultimately, Blackwater's employment in Iraq and involvement in the Nisour Square massacre has become a watershed moment in the history of foreign policy, one requiring further investigation and dialogue to determine the legality and accountability of PMSCs operating elsewhere. With the rise in numbers and continued reliance on PMSCs, international law must clarify its position and response while reminding states of their obligations towards improving oversight, control, and accountability of the private security industry.

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Want to go to Blockbuster? The CRTC is Faced with an Opportunity to Change its Regulations to Better Adapt to an Era of Dominant Foreign Streaming Services

Written By: Noah Vanderhoeven

Introduction:

One of the casualties from the development of streaming services, such as Netflix and Amazon Prime Video, was the video store. A prominent way of accessing entertainment was effectively replaced by a new piece of software that allowed for greater individual choice and consumption. That freedom has been enthusiastically embraced by consumers, but in Canada that choice often manifests itself in American or international services, coming at the expense of Canadian media companies and Canadian content. Thus, Canadian content could be the next casualty of streaming services. However, the Canadian Radio and Telecommunications Commission (CRTC) can still step up in defense of Canadian content, which is a part of its mandate. Thus far the CRTC has been ineffective at keeping its current mandate in an era of digitally networked global media technologies, namely streaming services. However, the CRTC can work through new regulations to help ensure Canadian content is produced, distributed, and found by Canadian consumers on products that benefit Canadians. To establish what these new strategies could be, we will begin with a review of the CRTC's mandate, the government's goals for the work of the CRTC, and what Canadian content is. After this framework is established, we will move onto how the CRTC can act within this current framework, alter it, or expand it to fulfill its mandate in relation to managing streaming services. This will include policy tools such as deregulating all streaming services in Canada, enforcing sales taxes on all streaming services operating in Canada, directing some of this new tax revenue to the Canadian Media Fund to ensure the production of Canadian content, incentivizing the creation and carrying of Canadian content by clearly defining it, and subsidizing companies procuring Canadian sites and workers in exchange for carrying Canadian content on their streaming services. Before we delve into these new tools, we will first examine the current mandate of the CRTC which impacts what tools we can envision in the later stages of the paper.

The CRTC's Mandate:

The CRTC was formed by the Federal government in 1968 as an arms-length tribunal tasked with regulating the radio and telecommunications systems. Through its enforcement of the *Broadcasting Act* and the developments of *The Green Paper,* the CRTC became heavily involved in regulating media broadcasting in Canada beyond radio and telecommunications.[1] In this role it has become one of the central

gatekeepers of broadcasted media content in Canada. The CRTC aims to ensure that Canadian content is created, distributed, and found by Canadian consumers and to ensure that Canadian consumers receive quality media content at reasonable prices.[2] The CRTC works to fulfil its mandate through its control of broadcasting licenses, the enforcement of broadcasting policies such as Canadian content quotas, the development of new regulations or policies through public consultation, and hearings.[3] [4] These avenues used to allow the CRTC to regulate broadcasters to ensure they met the goals of the CRTC's mandate. However, new media such as foreign streaming services have been able to avoid the CRTC's current regulations and set out themselves what kind of prices, services, and content Canadians receive. Even though the CRTC's protectionist mandate and outdated regulatory tools are not suitable for ensuring that new forms of media work for the interests of Canadians, the CRTC is entrusted with valuable goals by the government that make re-imagining their regulatory framework much more valuable than their dissolution.

The CRTC contributes to the government's goals for equality under Canadian federalism and strengthening the national identity of a multicultural country. The geographic realities of Canada make regulating broadcasting necessary because the profitability of various regions of Canada would not drive private interest in those areas without government intervention.[5] The CRTC works to ensure that media content is broadcasted across the country in a way that is accessible and affordable throughout Canada by ensuring that the proper hardware is build throughout the country to carry the forms of media Canadians want and need.[6] Thus, the CRTC plays a crucial role in upholding Canadian federalism's goal of providing similar resources and opportunities across the country. Furthermore, the CRTC is concerned with ensuring that Canadian content is created, distributed, and found. Canadian content is seen as a necessity because Canada has always dealt with issues surrounding a lack of a national identity due to its union of multiple nations at confederacy, with the French, English, and Indigenous, and its more recently established belief in the importance of multiculturalism.[7] By acting as a guardian of Canadian content the CRTC can ensure that Canadian stories are being told to prevent Canada's national identity from being completely overtaken by the pervasive American national identity that is present in the popular media many Canadians consume.[8] In the end, the importance of the CRTC's work for the public interest and national unity gives the CRTC the support of the government that ensures their existence and their strength when leveling and enforcing regulations, even though the government is always able to override their decisions.[9] However, given the importance of Canadian content to the CRTC and the federal government, it is interesting to consider what constitutes "Canadian content" when Canada struggles for a clear national identity under multiculturalism.

What is "Canadian Content"?:

The traditional conception of "Canadian content" was Eurocentric and focused on the

stories of white Canadians from the English and French founding nations. The label of Eurocentric applies to "Canadian content" based on its continued focus on the stories of white Canadians that ignore Indigenous stories that have developed concurrently over the history of Canada. There is also a hesitancy to move on from this concept in Canadian media and include stories told by a more diverse group of Canadian writers.[10] These writers' stories do not stop existing as Canadian stories just because they are a member of a certain culture or an indigenous nation, Canadian content should be inclusive of stories told by Canadians without privilege for white Canadian stories.[11] Furthermore, it is confounding that the media landscape in Canada has remained Eurocentric because as Canada has become more multicultural. the national identity currently pursued by the federal government of Canada lies in multiculturalism, which was the result of frustrations with the view that Canada was made up of only those two nations. The government's aim under multiculturalism is to support the cultures that were brought to Canada as it embraced a more diverse immigration strategy as an economic policy, as well as promoting cultural exchange and acceptance amongst cultures in Canada.[12] Therefore, the traditional concept of Canadian content is clearly outdated and also would not lead to any positive developments regarding the government's goal of fostering national unity in a presently multicultural country. In relation to the government's support for a multicultural national identity, they desire Canadian content that reinforces the multicultural ethos of Canada and focuses on stories about the many cultures that make up Canada and those that are often overlooked.[13] There is also an increasing consumer demand for content that depicts the acceptance of minority cultures and stories of the "outsider" that both connect with Canada's national identity based on it being a multicultural country that exists as an outsider in North America due to the dominance of the United States.[14] Thus, contemporary Canadian content could focus on telling the stories of the cultures that have been brought to Canada via immigration, the struggles and successes of those immigrant Canadians, the instances of cultural exchange across Canada, and the often-overlooked indigenous founding nation. Updating what constitutes the "Canadian content" that the CRTC requires broadcasters to carry is just one area that will be discussed later relating to how the CRTC can update its regulations to better deal with streaming services. These changes will be designed to ensure that Canadian content is being created, distributed, and found by Canadian consumers, while also being received on services that Canadians want and can afford.

Deregulating Media Companies:

One of the first changes that is usually recommended for the CRTC is to deregulate all media companies operating in Canada. Deregulating all media companies in Canada is deemed necessary because the CRTC has been unable to get its regulations to apply to foreign streaming services, most notably Netflix.[15] This reality makes Canada's media environment unequal. This is because its regulations are only being applied to

Canadian companies, who are in direct competition with the already stronger foreign streaming services whose products do not face tax and content regulations. By deregulating all media companies in Canada, the CRTC would be granting Canadian companies, and their streaming services, the same ability to freely develop their database of content, without needing to meet Canadian content quotas for example. Removing restrictions from Canadian companies would also allow greater free-market competition, which ensures that Canadians receive reasonably priced services through market forces in the highly competitive entertainment media industry. Furthermore, it could cause Canadian media companies to become more innovative with the content they provide consumers, leading to Canadians receiving better media products. Also, the path to being more competitive with services like Netflix would still involve producing forms of Canadian content, because Netflix largely neglects this area that many Canadians still demand.[16] Overall, if the CRTC deregulates all media companies in Canada there will likely be benefits for Canadian consumers as they could receive more innovative and better quality products from Canadian companies and if Canadian companies become more successful the market will become even more competitive and prices could drop even further for consumers. However, this only ensures one part of the CRTC's mandate is fulfilled, the part concerned with ensuring beneficial media products for Canadian consumers. That is why deregulating all media companies is only one part of the changes the CRTC could make to better deal with streaming services in an era of digitally networked global media technologies.

Sales Tax:

Another part of the new policy tools the CRTC could use is they could seek sales taxes from streaming services in Canada. Currently companies like Netflix escape sales and income taxes because they do not have any permanent establishments in Canada due to their products being housed remotely and sold digitally.[17] There have been recent developments in New Zealand, Australia, South Korea, Japan, South Africa and across the European Union to ensure sales and/or value added taxes are applied to products sold digitally and collected in the jurisdiction of the final consumer.[18] In order for sales taxes to be collected from foreign streaming services, the Canada Revenue Agency (CRA) would have to make changes to its rules to allow it to pursue taxes from companies that operate in Canada but do not have any permanent establishments there.[19] This would likely mean that the CRTC would have to recommend this change to the federal government and hope they can legislate these changes to the CRA's rules. If this were to occur it would further level the playing field for Canadian media companies by allowing them to offer similarly priced products to foreign streaming services who would now also have to incorporate sales taxes into their prices.[20] Therefore, the introduction of sales taxes to foreign streaming services would increase the competitiveness of Canadian media companies and allow them to offer better services to Canadian consumers as Canadian

companies could improve their products as they become more competitive with foreign streaming services. This would work towards the CRTC's mandate of ensuring beneficial services for Canadians on the whole, with better Canadian products offsetting price increases for Canadians buying foreign streaming services. The revenue that is generated from sales taxes applied to foreign streaming services could also be used to fulfill the second part of the CRTC's mandate, to ensure that Canadian content is being produced, distributed, and found by Canadians.

The money collected from sales taxes that are applied to foreign streaming services would represent a new revenue stream for the federal government. A portion of this new tax revenue could be given to the Canadian Media Fund (CMF). The CMF is a public-private partnership between the Department of Canadian Heritage and Canadian cable companies that is designed to modernize government investment into the creation of Canadian content in an era of greater consumer choice and new technologies.[21] An increase in the available funds for the CMF could help ensure the production of Canadian content that may not otherwise be financially viable in a changing media landscape.[22] Directing the new tax revenue in this way would also bridge another gap between Canadian media companies who, as originally predominantly cable broadcasters, contribute to the CMF already, and foreign streaming services who do not currently contribute. Given that there is no real avenue to enforce a donation to the CMF on foreign streaming companies, directing some of the new tax revenue that is collected from them could be the most realistic way to work towards more equal financial contributions to Canadian content. Overall, directing some of the new tax revenues from foreign streaming services to the CMF can better support the creation of Canadian content with fewer concerns over initial profitability as Canadian content finds its place in the evolving global media environment. However, the concerns over Canadian content creation are not solely about finances, companies also seem to have misperceptions about what kind of Canadian content they should create.

Clearly Defining "Canadian Content":

The CRTC could work to clearly define Canadian content to aid in the creation, distribution, and consumption of Canadian content. We have already established that both the government and Canadian consumers want Canadian content that represents stories of multiculturalism, overlooked cultures, and Canada's place as an "outsider" given the heavy influence of American culture.[23] The CRTC could continue to work on clearly defining what the current form of Canadian content that is demanded is and what is currently being overlooked. This process should continue using the structure of the CRTC's collaborative work with Canadian consumers through the *Let's Talk TV* consultations from 2013-2015.[24] One way the CRTC can use this market research to aid in the production and distribution of Canadian content is they can present their

findings to Canadian media companies and foreign streaming services to incentive them to create Canadian content that there is a clear demand for.[25] Furthermore, they can work with media organizations to rectify issues with entertainment media in Canada. They can do this by presenting these media organizations with the stories that are being overlooked or groups that are being misrepresented by media companies and their products, such as women and racial minority groups. If the companies do not address these issues, the CRTC could hold them to account with public hearings, with the federal government likely supporting their strong stance in defence of an accepting multicultural Canadian media environment. Finally, the process of public consultations to define what Canadian content is should be updated every few years by the CRTC to ensure that their definition remains relevant as the issues Canadians care about, the minority groups that are being overlooked, and the demographics of Canada more generally change over time. Overall, by showing what Canadian content is in demand through collaborative market research the CRTC can incentivize Canadian content creation and distribution on major platforms, making it easier for Canadians to find Canadian content. The CRTC can also work to ensure Canadian content is carried and found by Canadian consumers beyond just working on the specific stories that are being produced.

Distributing Content:

A final area that the CRTC could increase their interest in to ensure that Canadian content is not only being produced, but also carried by popular media platforms to be found by Canadians is procurement. Procurement relates to using Canadian sites for shooting media content and hiring Canadians to work on these sites. When media is produced in Canada it creates "gigs" for Canadian workers in the media industry such as camera and sound operators or make-up personnel. For example, Netflix used the financial district in Toronto to shoot their popular legal drama *Suits* and had Canadian workers on site in production roles.[26] There is also the ever-present process of negotiating distribution rights in Canada for the content on streaming services, which are negotiated with the film boards of Canada and the provinces/territories.[27] Within this framework the CRTC can work to ensure Canadian content is distributed and carried by the platforms Canadians use. They can do this by bargaining over wage subsidies for Canadian workers on Canadian sets in exchange for carrying Canadian content.[28] This is a more holistic way of fulfilling the purpose of the quotas the CRTC currently applies to Canadian media companies' channels, in that it exchanges reduced costs, that make Canadian sites and workers more attractive, for distributing and carrying Canadian content. In summary, the procurement of staff and sites for media projects in Canada can be used by the CRTC to set out subsidies that make shooting content in Canada more competitive with other locations in exchange for carrying Canadian content on their services, so Canadians can easily find Canadian content. The new or re-imagined tools that have been outlined for the CRTC here could work to

ensure that it meets its current mandate in a way that benefits Canadian consumers and producers, while also meeting the government's goals for the CRTC.

Conclusion:

As foreign streaming services have developed into the dominant entities in the media industry, the CRTC has found it difficult to fulfil their mandate. They were created by the federal government of Canada to protect Canadian content, our national identity, and Canadian consumers. This has manifested itself in the mandate of the CRTC to ensure that Canadian content is produced, distributed, and found by Canadian consumers through services that are affordable. In order to more effectively meet these goals, we recommended new tools for the CRTC, or adaptions to the ones they already have. They could start by deregulating all streaming services in Canada to allow Canadian streaming services to better compete with their strong American counterparts to bring Canadian consumers better quality and priced products. In addition to de-regulation, the CRTC could also lobby the Federal government to change the CRA's rules so they are able to apply sales taxes to foreign streaming services, which again works to even out the playing field for Canadian media companies who are already taxed and must price their products accordingly. Then the CRTC could direct some of this new foreign tax revenue to the Canadian Media Fund to aid in the production of Canadian content as Canadian media companies and creators adjust to the changing global media environment. The CRTC could also work to clearly define what Canadian content is in the modern multicultural Canada, with consumer collaboration to show companies what Canadian content is demanded and incentivize its creation and presence on the services Canadians' use. Finally, the CRTC could subsidize the Canadian media industry to make it more attractive for content producers in exchange for carrying Canadian content to on major services to ensure that Canadian content is able to be found by Canadian consumers on the services they use. These alterations to the CRTC's policy tools could allow them to effectively fulfil their mandate in the era of digitally networked global media technologies by better aligning streaming services to its mandate. Without changes to their tools and regulations, the CRTC may oversee the retraction of Canadian content in the era of Netflix, just as Netflix destroyed major movie rental stores like Blockbuster.

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Multiculturalism in a Secular Society

Written By: Jacob VanHelder

Introduction:

Secularism refers to the concept that the church and state ought to be separate entities. A secular state is one which restricts religion to the private sphere and refrains from imposing a specific concept of the good particularly on religious grounds.1 Both France and Canada are secular states who have a plurality of cultures that reside within them. However, when it comes to the integration of these minority cultural groups, Canada has made more progress in shaping itself to be a true multicultural society. Canadian multiculturalism has its roots in cultural and religious tensions within the nation. From this cultural and religious political history, Canada has developed a particular sense of what a secular nation should look like that differs from other countries who have not had to politically integrate distinct cultural groups. Canada adheres most closely to a negative sense of secularism which allows it to foster an egalitarian form of multiculturalism. I will suggest that the contrasting, positive form of secularism is unsuitable for egalitarian multiculturalism and that multiculturalism requires a pluralist understanding of secularism to be successful for integrating immigrant cultures on fair terms.

Positive vs Negative Secularism:

There are two established types of secularism, negative secularism and positive secularism.[2] Negative secularism is the idea that the state should refrain from endorsing any conception of the good or way of life over another allowing citizens to have the 'freedom from' an imposing establishment.[3] Negative secularism aims to keep a high level of structural separation where no institution embraces any one specific religion.[4] This sort of secularism tolerates religious voices in public discussion but limits them so that they do not silence or obscure other voices.[5] The important aspect of negative secularism is that it acknowledges that religious expression rests both with individuals and their community, and that

"religion ought not to be scorned as inherently dangerous."[6]

Thus, a negative secular state recognizes various religious communities and associations.[7] While acknowledging that religion plays a role in the public realm, negative secularists do not endorse any specific groups and thus maintain the distinction between state and religion and refrains from imposing a concept of the good.

Positive secularism contrasts with negative secularism in that positive secularism seeks to 'free' the individual from religious dogmas.[8] Positive secularism keeps a high level of structural separation as well as ideological separation. Ideological separation requires that the state aims to

remove all religious influences from the public sphere.[9] A positive secular state would not recognize religious communities and would limit religious expression to private life only. Positive secular state takes a more assertive approach which adheres to an idea that

"religious thinking and reasons have no place in the public and political sphere, the latter being the exclusive domain of reason and rationality."[10]

In this way a positive secular state maintains that non secular beliefs do not have a place in public discourse.

Impartiality and Neutrality:

Along with the form of secularism a state adopts, the secular policies it creates will be influenced by how the state applies its understanding impartiality and neutrality. No matter how a state approaches secularism it is commonly understood that it should have a robust idea of what equal treatment means. Equal treatment usually takes the form of being impartial or neutral to those affected. However, there are three different understandings of neutrality that will be discussed. One understanding such understanding is called 'formally neutral' which treats all interests or 'aims of purpose' on equal grounds thus creating a certain element of 'blindness' to religious interests.[11] Formal neutrality is the act of seeing all interests whether they be secular or religious to be of equal consideration. However, this type of impartiality seems to be open to criticisms that in effect formal neutrality can lead to the unequal treatment of groups. The relative blindness of this approach makes it ill equipped to see necessary distinction between groups that require extra considerations and can predominantly favor interests of the majority religious and cultural groups.

Another type of impartiality is referred to as the 'substantively neutral' approach. This approach constrains religion and religious expression as much as possible to the private sphere, and that the state should minimize its interferences with religion.[12] Substantive neutrality treats all religions and secular beliefs on the same level of respect and tries to act in a way that does not interfere with the natural evolution and change of these beliefs. This concept of impartiality allows for corrective exemptions to be made where the state imposes itself onto religious groups practices.[13] A substantive neutral doctrine concerns itself with the undue interference by the state onto any natural change in religion.[14] This approach takes a relatively 'hands off' approach where neutrality is understood to be the minimization of interference.

Third type of impartiality is called 'open neutrality'. This style of impartiality imitates a pluralist understanding of democratic organization where the state acts as a mediator between group interests.[15] It does not support any specific group but acknowledges their right to be in the public realm.[16] Open neutrality allows all worldviews to have equal access to the public forum.[17] This allows the state to acknowledge the political importance of all world views that individuals might have

while also not endorsing any particular view. Open neutrality rejects the notion that by restricting religion to the private sphere the state is then neutral.[18] Instead, open neutrality tries to remain neutral by facilitating the equal access public expression of worldviews in the public forum.

Defining Multiculturalism:

Given that there are multiple concepts of secularism and impartiality, it is important to form a definition of multiculturalism to better understand the incompatibility of positive secularism. When the term multiculturalism is used, it is referring to a society that hosts a plurality of politically relevant cultural groups.[19] However, this definition is insufficient because most early modern to present day nations are described by this definition. A case can be made that the Holy Roman Empire was a multicultural state as it encompassed many diverse European cultural and ethnic groups, but this is not what is referred to by modern multiculturalism. Even though there existed a plurality of cultures in the Holy Roman Empire it was dominated by a German monoculture that enforced its language and practices onto the minority cultures for political and economic control. This model does not fit into what we think of as a modern multicultural state. Even though there may exist many cultural communities within the state there is only one political monoculture that is enforced by the majority group. This would imply that Modern Multiculturalism also has a normative aspect attached to it. A multicultural state should have a role in recognizing the political interests of minority cultural groups and should work to facilitate a healthy relationship between cultural groups and the state itself. Taking a liberal egalitarian view of multiculturalism, immigrant integration is preferred to assimilation or 'melting pots' and that the state should support fairer terms of integration for minority cultural groups.[20]

It is important then to distinguish cultural groups from other types of social bonds. It is not necessarily true that an ethnic minority is a cultural group as they can be integrated into the culture of the majority. However, we do recognize certain ethnic minorities as cultural groups. Will Kymlicka's idea of culture identifies a cultural community as one that has a shared set of cultural values, memories, language and sometimes territory.[21] These shared aspects of the community are important as they form the identity of the cultural group and serve as a distinct type of social bond that goes beyond shared practices. Some cultural groups can be defined around their religion which incorporates their shared sense of memories, and values. We see this in the Jewish, Muslim and Sikh communities. All these communities are not ethnically determined but share a common religion which ties them together. It is unclear in some cases where the line between religion and culture is as in many cases they are densely interwoven together. While religion and culture are not identical there are many religions that manifest through cultural practices. So, it is possible to have religious cultural groups as opposed to just religious or just cultural groups.

Religious cultural groups are important to individuals for a variety of reasons. They are beneficial for promoting social bonds among individuals. They can also have a significant role in shaping an individual's identity. The cultural values, memories and language that an individual share with their community create a substantial part of their identity. When religion is interwoven with the fabric of the culture it greatly affects the beliefs, assumptions and behaviors of individuals in that community. These comprehensive doctrines are then a fundamental part of the individual which ties them to their larger community. It would seem reasonable to believe that individuals are free to make personal decisions in their lives and that their cultural involvement is reaching only as far as they allow it to reach. While this is ultimately true that an individual has the freedom to define their own involvement in society, in practicality, an individual is not always free to leave their cultural community in a meaningful way. Their ties might be so deep that that leaving the community would be akin to personal and social out-casting. When someone's community forms their identity, their identity is thus part of the community itself.

This then means that the distinction between practicing religion privately and expressing it publicly is arbitrary. It is through the culture with which our values and sensibilities arise and through these parts of our character we can judge what constitutes a good life. This is Kymlicka's resource-based theory for cultural justice which states that culture is the "precondition for autonomy."[22] If this is true, we can invoke an idea of "luck multiculturalism" implying that no individual chooses the culture they were born in and that there is no choice in what culture they are a part of.[23] It follows then, that the state should help integrate minority cultures into the public realm because culture is the avenue in which individuals practice their autonomy. This takes the view that culture and religion are then a primary good which the state has a responsibility to redistribute fairly.[24] Therefore, it is the multiculturalist states' responsibility to ensure that all individuals have fair access to the overall cultural goods that they need. These cultural goods can take the form of special schooling systems that reflect the values and interests of the culture it represents. Kymlicka's theory on poly ethnic rights states that because immigrants leave behind the good of their native culture they should be granted 'fairer terms of integration' into their new society by means of accommodation and exemptions.[25]

From this we can say that positive secularism is not conducive to a multicultural society. Delegating religion to be a private matter, delegitimizes the political relevance of these religious cultural groups. If it is not entirely practical for individuals to freely adopt new cultures and that their cultural and religious groups have the potential to be a limiting factor on their autonomy, the positive secular state then directly restricts the autonomy of minority cultural religious groups. The restriction of religious and cultural expression in the public realm acts as a de-facto restriction on the individual. The negative concept of secularism is better suited to handle cultural

integration challenges because of its ability to acknowledge religious groups in the public forum.

Multiculturalism in Canada:

To get a better sense of how negative secularism promotes multiculturalism we can look to The Canadian Multiculturalism Act of 1997. Its aims were generally as follows:

"...to facilitate the full and active participation of ethnic, racial, religious and cultural communities in Canada; [to] support collective community initiatives and responses to ethnic, racial, religious and cultural conflict; [to] improve the ability of public institutions to respond to ethnic, racial, religious and cultural diversity; [to] encourage and assist in the development of inclusive policies, programs and practices within federal departments ... ; and increase public awareness, understanding and dialogue with respect to multiculturalism, racism and cultural diversity in Canada."[26]

Canada is a very good example of a nation that practices negative secularism. Canada maintains a high level of structural separation from the church while embracing religion and culture into the public sphere. While it has institutions with a Protestant and Catholic bias there is positive action taking place for fairer integration of minority cultural and religious groups. Based on the tenets of its multiculturalism act the federal government promotes the integration of religious cultural communities into the public realm. Integration as understood by this act is not assimilation but the idea that an individual can keep their cultural identity while also being a part of the Canadian public and Canadian society. This tradition of integration is steeped in Canadian history where the turmoil for representation and group rights between the French English and Indigenous Canadians was gradually resolved. Quebec's right to practice religious freedom since 1774 is a testament to Canada's ability to refrain from imposing a strict conception of the good.

Secularism in France:

Conversely to the Canadian approach, is the French system. French multiculturalism is an example of how a positive secularism impedes the integration of immigrant minorities. Secularism is in fact a French invention.[27] Having its roots in the French Revolution, if pure secularism exists anywhere it exists in France. The French constitution states that

"France is an indivisible, secular, democratic and social Republic, guaranteeing that all citizens regardless of their origin, race or religion are treated as equals before the law and respecting all religious beliefs."[28]

The core principle of French secularism is that it restricts religion to the private sector. This allows for the prohibition of religious attire in the schooling system and in the public sphere.[29] France does not allow exemptions to this dress code.[30] French radio broadcasts are monitored and held to a standard of 'pluralism and objectivity in where they are to promote and protect French language and culture in public

broadcasting.[31] While associations of citizens are allowed and can be publicly funded, they must respect the principles of secularism and equality.[32] There exists in French laws a practice to protect a concept of the French citizen. This extends into their concept of unity which differs from Canada where French laws promote a monoculture that is indivisible. Canada's understanding of unity seems to come from a place of cooperation and compromise.

France then falls closer to our concept of a positive secular state. It practices a high level of both structural and ideological separation from religion. The French government is vested in maintaining the French culture and purity of the French language. In this way they uphold a concept of the good that endorses the French majority culture. They proclaim to allow for "enjoying freedom of conscience."[33] While this is true that they do not prohibit any religious beliefs, they actively encourage these beliefs to be a private endeavor, thus creating a positive secular culture in the public realm that inhibits the religious groups' political integration in French public life. The French system does not foster fair terms of integration. The French system forces members of religious and cultural groups to forgo the practices of their community in order to enter the public sphere thus not respecting claims to poly ethnic rights. This then leaves the public sphere to be dominated by the majority cultural group which cannot properly serve the political interests of non-majority groups. Further, the French restrictions on what is permissible in the public sphere enforce a public monoculture which is inherently not multicultural. So, having a high degree of ideological separation only works to truly benefit the majority culture that dominates the public realm.

Impartiality and Neutrality Revisited:

Thus, if negative secularism is the framework that is compatible with multiculturalism the question of impartiality is important to answer. Being a negatively secular state, in itself restricts, what practices of impartiality are acceptable. The Formally neutral practice of not acknowledging religious groups would defeat the point of negative secularism whose purpose is to acknowledge the existence and importance of religious groups in the state. Substantive neutrality allows for exemptions and equal respect among religions but the minimization of interactions between the state and religion is unrealistic in the circumstances of multicultural states. The substantive approach, while more compatible than the formally neutral approach, is still insufficient.

Open neutrality is compatible with multiculturalism. Open neutrality furthers the goals of negative secularism in that it allows for a diverse public culture to emerge. Acknowledgement and integration of religious groups into the public sphere are the aims of open neutrality. These features are conducive to fostering a healthy relationship between groups and with the state. However, the more committed to

pluralism a nation is the harder it is to justify laws that restrict religious cultural practices. While a multicultural nation would not want to pass laws that alienate cultural groups there are unavoidable conflicts between liberal values and illiberal communities. This is the advantage of the French system over the Canadian system. While the French system places many restrictions on the integration of minority religious cultural communities its rigidness allows for greater unitary decision making. The disadvantage of creating a too diverse public sphere is that claims to cultural rights become stronger which creates a challenge in withholding cultural exemptions from the law. While cultural and religious exemptions are not inherently unsound, problems arise when the rights of the individual and cultural rights conflict. Kymlicka's understanding of the justifications for minority claims makes a distinction that claims that endanger human rights should not be granted and cultural actions that do violate human rights should be stopped.[34]

Each approach is insufficient for different reasons. This is possibly because of the relative nature of multiculturalism. In giving full acknowledgment to the political importance of the cultural groups that live within the state, the state in turn loses its decisive power over which cultural practices are tolerable and which are not. The answer to this question is ultimately up to the state. While Kymlicka's theory on poly ethnic rights states that there should be fairer terms for integration for immigrant cultures into society, the practical application of this theory must contend with how a state views its relationship with religion.

Conclusion:

Overall, positive secularism is unsuitable for egalitarian multiculturalism as it retains a monoculture in the public realm and unduly restricts minority religious and cultural groups from easy integration. Canada's system of negative secularism allows for the maintenance of a structural separation while allowing for fairer terms of integration for minority immigrants into the Canadian public realm. While the French system of positive secularism maintains both high structural and ideological separation which impedes the integration process of immigrant minorities. Positive secularism's ability to recognize that religion cannot be just delegated to the private sphere and that doing so only benefits majority cultural groups, allows for fairer terms of integration and thus is suitable for an egalitarian conception of multiculturalism.

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Philosophies of Punishment: What Works?

Written By: Blair Tinkham

Introduction:

Common sense morality enables punishment for those who violate the law, though the appropriate method of punishment to apply has long been a topic of debate. Prison systems with a 'tough on crime' approach are used in countries such as the United States, though the reality is this method of punishment has been ineffective in reducing crime to foster a safer society.[1] Discontent with the inadequate prison system is not new, as Sanford Bates, the first director of the Federal Bureau of Prisons, asserted in 1932,

"[the prison system] does not reform the criminal. It fails to protect society. There is reason to believe that it contributes to the increase of crime by hardening the prisoner."[2]

The meagre attempts to protect society through the use of prisons have resulted in the adoption of various criminal punishment philosophies over time, most notably reform, retribution, deterrence, and incapacitation. I argue that as a result of its social and economic benefits to society and the criminal offender, reform is the most optimal philosophy of criminal punishment. Reform successfully reintegrates offenders into society and effectively reduces recidivism, thus fostering a lower crime and safer society. Reform as the goal of punishment also has significant economic benefits as it reduces a taxpayer's burden and sparks economic growth while simultaneously helping to build up an offender's sense of self-worth.

In the following essay, I first clarify and define relevant terms. Then, I explain the philosophy of reform as a method of criminal punishment and its ties to the principle of utilitarianism. Next, I present my arguments on the social benefits of reform as criminal punishment and outline how the method benefits both society and the offender. After, I present the economic benefits of reform, and how these benefits serve society and the offender. Finally, I discuss the flaws in the other methods of criminal punishment: retribution, deterrence, and incapacitation. Along with a brief description of the three philosophies, I emphasize their failure to produce the same quality of social and economic benefits as reform, thus exposing the characteristics deeming them inferior to reform.

The Reform Approach:

The purpose of reform is to rehabilitate an offender following a violation of the law, and for simplicity purposes, I will use the terms "reform" and "rehabilitation" interchangeably throughout my arguments. I will be using the term recidivism to express the rate of reconviction or repetition of criminal behaviour following the completion of an initial prison sentence or rehabilitative program. This is measured in a three-year

time period following the initial release of a prisoner or completion of a program.[3]

The philosophy of reform seeks to rehabilitate a criminal offender with appropriate treatments and activities to ultimately diminish their tendency to re-offend. Reform is most notably and successfully employed in Scandinavian countries with the attitude that

"rehabilitation can change a person and that being a criminal is not something that is permanent, but a learned trait that can be unlearned."[4]

Scandinavian criminologist Olof Kinberg believes that "criminal behavior [is] a symptom of mental illness unique to each individual which could be altered by a skilled psychiatrist," or through various rehabilitative programs.[5] Educational and vocational classes, substance abuse treatments, and non-custodial sentences are examples of reform programs that help with the process of rehabilitation and prepare offenders for societal reintegration. When implemented effectively, these programs "can ease prisoners' transitions to the free world," and thus contribute to a safer, lower-crime society.[6]

The philosophy of reform is a product of a consequentialist justification of punishment. Consequentialism is a moral theory coined by Elizabeth Anscombe holding that the overall goodness or badness of a particular action is determined by the outcome of the action, or the predicted outcome.[7] If the outcome of an action produces a benefit that outweighs any harm incurred, then the action is deemed to be good. Conversely, if the harm produced fails to exceed the good in the outcome of an action, then the action is considered to be bad. Bentham's utilitarianism is the example of consequentialism that will structure my arguments to prove reform is the ideal punishment philosophy. In its assessment of consequences, utilitarianism holds that an ideal and moral outcome would produce "the greatest amount of good for the greatest number," which I will argue the philosophy of reform does.[8] From a utilitarian perspective, punishment is evil but can be reasonably or morally pursued if the good that will be accomplished outweighs the intrinsic evil of the punishment.

Punishment "ought only to be admitted in as far as it promises to exclude some greater evil."[9]

The following arguments will show how the philosophy of reform successfully excludes any greater evil, and how the value gained from rehabilitating a prisoner outweighs the intrinsic evil associated with the punishment.

Through the result of social benefits that favour not only society but the offender as well, reform successfully achieves the most good for the most people. The effective use of time while an offender is in prison is what propels the success of reform. During a prison sentence, the time of an offender is efficiently used to develop their skills, prepare their connections to support networks in society, and boost their opportunities for finding employment upon the completion of their sentence. These

efforts ultimately ensure an offender's successful return to society. Education is a primary activity to rehabilitate and prepare for societal integration, and it has significant effects on an offender's life after prison. According to New York University psychiatry and adjunct law professor James Gilligan, "getting a college degree while in prison is the only program that has ever been shown to be 100 percent effective for years or decades at a time in preventing recidivism."[10] With an absence of education and other rehabilitative programs, and rather a 'tough on crime' approach, we see an "explosive growth in the prison population, while having at most a modest effect on crime rates."[11] To benefit both society and the offender, it is imperative to introduce rehabilitation programs and target psychological tendencies rather than punishing a criminal offender. Targeting the psychological tendencies and behaviour of an inmate is often thought of as the root of the issue on offenders, and is proven to be far more effective to reduce recidivism than physically or psychologically harming an offender. With rehabilitative programs, offenders are benefitting from good preparation for integrating into society, and society will benefit in the future with a crime reduction. The stability found through the goals and activities of a reform philosophy directly diminishes recidivism, thus accomplishing a primary objective of prisons and preventing any further evil from occurring.[12]

The value gained from rehabilitating a prisoner greatly outweighs the evil produced by reform programs. Rather than harsh punishment that would foster evil and harm, the only condition associated with rehabilitation is a temporary restriction in an offender's liberty, which would be restricted regardless of the chosen punishment philosophy. The prison conditions associated with a rehabilitative approach are also more humane. A reduced recidivism rate curtails the issue of prison overcrowding, which creates a safer environment for guards and the offenders themselves. Respecting an appropriate prison capacity enables criminals to learn the skills they need and access the necessary resources to prepare for successful reintegration into society. So, offenders benefit from a morally sound, humanizing, and safe atmosphere and a well-prepared transition into society after their sentence, and society gains a safer atmosphere with less crime. These benefits greatly outweigh the evil of liberty restrictions that inmates suffer from participation in the programs.

Along with social benefits for society and offenders, the philosophy of reform is economically advantageous. Preparing an offender for societal reintegration through education or job placement aid will not only enrich a prisoner with abilities to make them competitive in a job market and improve self-esteem, but it will deliver great economic benefits to society.[13] As established, rehabilitation effectively lowers recidivism, thus decreasing overall crime levels and benefitting society as a whole while also reducing the prison population. This reduction in the prison population benefits society by easing costs on taxpayers. The cost of imprisonment, while

factoring in the direct tax dollars spent on each inmate's care and the indirect, long-term costs such as healthcare, is "usually significantly higher than what is spent on a person sentenced to non-custodial sanctions."[14] An educational program employed in a San Francisco prison aimed at dangerous male inmates effectively slashed the rate of violence in the prison to zero and also reduced recidivism by 83 percent.[15] As a result of the lowered recidivism rate, taxpayers annual savings amounted to about $300,000 per inmate.[16] So, by participating in non-custodial sentences, or introducing rehabilitative programs like education, the public benefits from significant cost savings.

Offenders also benefit by finding a sense of self-worth in actively contributing to the workforce, and economic growth results as an effect of this participation. By improving a prisoner's mental health, and creating a pathway for their contribution to society, as well as a venue for income and a sense of community, rehabilitative programs including educational classes give offenders a heightened sense of self-worth. This sense of self-worth feeds toward the goals of prisons as it contributes to a lowered recidivism rate.[17] Educating prisoners and teaching skills to ensure they can secure a job after their sentence also leads to a higher level of employment, which bolsters consumer spending thus contributing to the health of businesses who rely on sales activity to remain in profitable operation. This economic activity results in prospering businesses and a well-operating economy.[18] As demonstrated, programs including education have a significantly beneficial effect on society by lowering taxes and boosting the economy, and it benefits offenders with a portfolio of new skills and resources, as well as a sense of worth and steady transition to society.

Rebuttal and Response to the Reform Approach:

A common criticism of rehabilitation through prison reform is that the system fails to make the offender suffer punitive consequences. The philosophy of retribution fits the wishes of punitive measures, as this method focuses on punishments for wrongdoings that are usually proportional to the harm of the offender's action. This proportional penalization, commonly known as the doctrine of lex talionis, or 'an-eye-for-an-eye,' benefits society by providing emotional satisfaction; however, this short-term satisfaction has historically shown no effect to lower recidivism, nor does it provide any economic benefits given that there is no education or vocational training for inmates or tax reductions.19 These punitive measures fail to meet the expectations of utilitarianism given that the evils resulting from harming the prisoner do not produce a greater good and fail to accomplish the goal of decreasing recidivism. Through rehabilitation, the prisoner still undergoes a loss of liberty which can be viewed as a form of 'paying' for their crime, while still making societal contributions and furthering the benefits of reform. R.A. Duff, a proponent of the retributive model, claims that

"the proper aim of a criminal conviction is to communicate and to justify the defendant

an appropriate judgement on his past conduct, and thus bring him to recognize and accept his duty to obey the law."[20]

While rehabilitation shares a similar goal, the philosophy of retribution is conducted in a less moral manner involving harm and suffering inflicted upon the offender and does not meet utilitarian standards. Rehabilitating a prisoner carries Duff's goal of communicating that the action was wrong, though rather than a retributive approach, this communication is done more effectively and humanely. Inflicting pain or punishment for revenge against an offender is only teaching offenders that violence is an appropriate measure for retaliation while having no long-term societal or economic benefit, thus proving retribution alone is an inappropriate punishment philosophy with minimal value.

Critics of the rehabilitation of prisoners may also argue that deterrence is a more effective philosophy because it aims to prevent crime in the first place. By appealing to a 'tough on crime' image and harsh punitive measures, supporters of the philosophy of deterrence believe taking pre-emptive measures to deter crime is most beneficial to society and offenders. While this would be an effective approach in theory, there is "little evidence to suggest that the threat of prison, or even the death penalty, deters would-be crime."[21] Deterrence fails to produce any results whereas rehabilitating prisoners has proven to emit positive social and economic results.

Keeping society safe is undoubtedly an important purpose of prisons, leading some to believe that the philosophy of incapacitation, or protection, is the appropriate criminal punishment. With the goal of keeping society safe from harm by isolating prisoners, incapacitation may effectively maintain a safe society for the duration of the offender's sentence, but there are no efforts taken to reduce recidivism. Incapacitation does not benefit the offender through educational or skill-building programs, nor does it help offenders secure employment after their sentence or stimulate economic growth. This method, unlike rehabilitation, does not emit long-term benefits nor does it produce good for the most people as it neglects to meet the needs of a prisoner.

Conclusion:

Reform is the most advantageous philosophy of criminal punishment, benefitting both society and the criminal offender. Socially, a rehabilitative approach lowers recidivism rates, subsequently creating a safer and lower crime society. Economically, rehabilitating an offender lowers society's taxes, and through making offender's competitive in the job market and building their sense of worth, rehabilitative measures spark economic growth. As a result of these benefits and subsequent outcomes, reform proves to be the most effective and utilitarian approach to criminal punishment.

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The Question of The Human: Political Rights

Written By: Sophie Holland

Introduction:

In this essay I will discuss the discursive formation of the human and how human rights are used as social and political factors to prescribe how the human must behave. I will discuss this through eight articles, four of which affirm human rights as political and four that provide proof as such. I affirm the statement: Is it the case that the very human beings who engage in discourse over how and what to know of their world(s), as well as the contexts in which they express their humanity, are themselves formed discursively and, thus, any rights and freedoms that they may claim as humans are always subject to social and political struggles? If we are to assume that human rights are more of a political and social actor of different worldly perspectives than the moral "truth" we all possess, it becomes evident that human rights are subject to both political and social struggles, framed by what the human should possess.

In "What is an anti-humanist human right?" Ben Golder discusses Foucault's anti-humanism, where he interprets Foucault's critical perspective of deconstructing human rights to recognize how we create them in knowing an unfinished humanity.[1] In this way, human rights are a formation of a power-knowledge relation,[2] "That is, humanity is not simply a 'knowable' but a 'governable reality for the modern period."[3] He demonstrates this using those considered outlaws, who earn 'humane' treatment in the criminal justice system, which is inherently inhumane.[4] This idea can be equated to the concept of internal morals, which contests that each human has the right to be treated fairly. However, within this conceptualization, there is the construction of the criminal versus the human. Foucault argues they might as well be called the monster,[5] as the concept of criminal is a construct of control, the good versus the bad, outlining the inability to perform as a human in society; this creates the political struggle, as many 'criminals' are people who are struggling financially or mentally and thus politically and socially. It can be seen with the concept of homosexuality in that questioning one's identity is not an act of sexuality or identity itself, but rather the relationship of difference to the human essence and constructed by a heteronormative ideal of the human.[6] Golder explains that

"Human rights are not simply read off the metaphysical face of humanity, but are particular historico-political emanations, the shifting expression of the needs and incidents of membership in particular political communities."[7]

Therefore, human rights cannot be a moral idea against suffering but rather a political one that deems what is just.[8]

‘Rights’ Drawn from Citizenship and Borders:

Golder’s point can be further analyzed in Moya Lloyd’s “(Women’s) human rights: paradoxes and possibilities,” where she points out that human rights for women are often called women’s human rights. She states that “the pairing of the particular (women) and the universal (human) – in fact highlights the contingency of the category of the human (the bearer of rights).”[9] She argues that, when we start with the human as the subject, there are problems in which humanness is often equated with colonial, masculinist, and imperialistic ideals.[10] Therefore, women’s rights are only of great importance for heterosexual and maternal women.[11] In this way, any understanding of knowing a right must be constructed out of how the human is defined, as they have long served the status of a man and their political advancements.[12] In accordance with the UN Declaration of Human Rights, she sees how clearly it defines the will of the man, as she notes these rules are only to be enacted by the state, which does not address where many women are most vulnerable: “…that human rights could be violated within the home by non-state actors and yet, for women, they regularly, and often violently, are.” Lara Montesinos Coleman’s “Struggles, over rights: humanism, ethical dispossession and resistance” provides examples of the limitations of human rights. As she points out, who is it that counts as human? Moreover, what is the proper place to exist as a human?[13] The fact of the matter seems to be that what is human is always enforced by the social and political landscape. She states, “Colonial violence, for example, was rationalised in part on the basis that colonised populations did not conform to the standards of natural law.”[14] She suggests that, to make sense of this, one might look at dispossession in the law.[15] For instance, in the Global North, there is the pressing issue of U.S. immigration laws; through ICE facilities, many people are essentially being locked in cages, pulled apart from their families and thus being treated inhumanely. This awful treatment puts to question the essence of an inherent truth of humanness in human rights. These people have been thrown in cages as outlaws or, what Foucault might suggest, as monsters. There is nothing inherently truthful about this situation, but that the ‘human rights’ of Americans do not serve the ‘outsiders.’ Therefore, these ‘rights’ turn into struggles that are socially and politically drawn by citizenship and borders.

The idea of borders can be further explored in Keiichi Omura’s “Quotidian politics through boundary translation matrix for world multiple in contemporary Inuit everyday life,” where she discusses the idea of topographical maps to Inuit hunters in Kugaaruk. He discusses how these maps often play an essential role in negotiations with the government in terms of land claims.[16] Of course, in their own perspective, the act of hunting is performed in their own traditions. Omura points out this difference within the same landscape to be a ‘boundary translational matrix.’[17] The concept of worlds allows for different perspectives within bodies of land. Subsequently, the assumptions in

Indigenous sovereignty are often defined in colonial terms. As one might examine, the creation of roads in Canada were often given settler names, carved into the stolen land of Indigenous peoples, which is now taken for granted by many Canadians. Omura captures the idea of what it means to be a human in Canada. This concept can be further explored in Birgitta Ferllo's "Towards a Discursive Analytics of Movement: On the Making and Unmaking of Movement as an Object of Knowledge." She argues that mobility should be seen as the central idea in sociology, as not everyone can have control over their movement. She questions our ideas of movement, as "if mobility is everything then it is nothing."[18] We might examine this topic with struggles of the refugee, as citizens often forget that people exist outside of their own landscape, their own country or state, which is built off of borders. Therefore, the human and their rights are a figment of different countries' political agenda.

The political agenda can be further explored in Adam Bledsoe and Willie Jamaal Wright's "The anti-Blackness of global capital," which examines globalized capitalism and anti-Blackness. They state, "Violent forms of domination accompany [and make possible] the reproduction of global capitalism."[19] Those who do not exhibit 'normalized' or threatened humanity under Western ideology are subject to violence, including "lesbian, gay, bisexual, transgender, and queer (LGBTQ) and gender nonconforming folk, but also Muslims, Latinx, and undocumented immigrants."[20] This domination can specifically be seen in black populations who are subject to urban renewal, gentrification and policing.[21] These mark "the treatment of Black lives as the embodied absence of value."[22] This mistreatment can be further observed with the Toronto government's response to the Black Lives Matter movement, where the solution was to increase the police budget instead of funding the communities, which seems odd as police brutality significantly impacts the black community.[23] It is as if the only thing that there is a right to is the governments to serve its own politics: the constructed humanness plays their game. For instance, with capitalism,

"Early capitalism flourished thanks to the relegation of enslaved Blacks to the ontological and legal condition of non-humans on the plantations, in the forests, and in the mines of the Americas, while slaveholders and early insurance companies made fortunes off their investments in the transatlantic slave trade."[24]

With the frequent policing of black communities, modern slavery has never ceased to exist, creating the violence of blackness in a time of 'human' rights.

These ideals can be expanded to that of nature in Heather Anne Swanson's "Landscapes, by comparison: Practices of enacting salmon in Hokkaido, Japan," where she discusses that landscapes themselves have non-human ecological connections integrated into human histories.[25] This is relevant because places do not just exist within themselves, but are created in the process of interests. For instance, Hokkaido's fisheries and the 'human-

nonhuman arrangements': Japanese officials colonized Indigenous lands for economic profit in areas such as fisheries, which have completely changed the island for salmon and their watershed ecologies.[26] Dams can divert water for irrigation and block salmon migration, agricultural runoff can pollute rivers, and logging-related erosion can cause rivers to fill with silt, smothering the fishes' eggs."[27] This is significant, she points out, as landscapes do not stop at borders. Instead, they are interconnected, which, like cultures, emerge out of encounters.[28] Subsequently, when beginning to characterize landscapes within borders or the ideals of others, one loses sight of how those ideas exist discursively, which problematizes the naturality of ecosystems. She states, "Japanese officials began to characterize Hokkaido as a frontier where they could test and refine the most cutting-edge Euro-American ideas of the times—including forms of scientific agriculture and modern natural resource management,"[29] which is all framed out of a quest for comparison as political and social actors. This idea can be further explored within José-Manuel Barrreto's "Decolonial Thinking and the Quest for Decolonising Human Rights," where he asks what it might mean to decolonize human rights. He thinks it is vital to consider and question the essence of the human and their created rights for what imperialists have discursively made to be human and non-human. For instance, he states,

"…decolonisation is about getting rid of the colonial features of human rights, or about putting into evidence their involvement in the task of boosting imperialism."[30]

In this way, one can look to the geo-politics of knowledge. He suggests it is essential to understand that many places have constructed their idea of human rights. Modernity serves the "conquest of America and colonial genocide,"[31] which has been made possible by its inherent violence towards many people and ways of living. In this way, human rights have been defined on those practices of violence and, to move forward with any concept of human rights, we must deconstruct the limitations of the discursive "Western" human and reclaim it with what makes sense to multiple people and their worlds.[32] If we do not deconstruct the ideas of Eurocentric humanness that have been around since the 16th century, it will be impossible to serve the "truth" of humanness and it will instead continue to serve the political agenda of the Global North.[33]

Conclusion:

In conclusion, if we are to consider the rights of those outside the Global North's standard humanness, often equated to a heteronormative white masculinist sphere, then humanness cannot be equated to people's truth but to those who hold the dominant discursive plane. In this way, human rights are more so rooted in the political and social actors that make imperialistic agendas possible. Subsequently, if the human is discursively constructed, the human is the driver of who can and who cannot participate in dominant societies. This idea can be seen through the above articles, which show multiple possibilities of existing and how human

rights outlaw them; therefore, rights must be defined as the struggles of what it means to exist outside of the traditional framework of the human.

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Urban Social Mix Policy in Paris, France

Written By: Jessica McDougall

The Foundation for Paris Diversity: Mission Statement

The Foundation for Paris Diversity is an advocacy group focused on updating current urban policy in Paris to include specific ethnic diversity action within social programming, specifically, public housing. The values of city renewal and city cohesion through recognition over redistribution practices are the basis for our vision. Colour-blindness is an evident quality in social mixing policy today, which reaffirms segregation and discrimination within low-income minority demographics living in subsidized housing. Our recommended course of action is for Paris Habitat, a state elected, and funded institution dedicated to public housing initiatives, to dedicate a place for minority membership from these areas on the elected representatives and/or subsidiary board with the cooperation of local NGO's. Ethnic diversity on Paris Habitats membership board in a coalition with local NGO's would allow these minority demographics the political opportunity and resources to be considered an equal voice in future Paris public housing initiatives.

Issue Identification: Redistribution Over Recognition

As a solution to the perceived poverty concentration in French neighbourhoods, social mixing has become a policy staple in urban renewal programs. Social mixing aims to prevent this concentration in public housing dense areas by redistributing subsidized housing into wealthy French neighbourhoods in the hopes of beneficial social integration and diversifying housing stock.[1] The qualifications of which residents are to be relocated are based on socio-economic and current residential addresses, which are characterized to represent a healthy, diverse population who would benefit from social mixing policy.[2] However, newer immigrants and non-French citizens make up most of this demographic and are subjected to reinforced segregation and marginalization due to this redistribution into mainly white, wealthy areas. In reference to Figure One, there is only one arrondissement, the 18th, out of the seven with a large percentage of social housing placed in an ethnically diverse and established area.[3] Since social mixing only focuses on socio-economic and locational qualities as diversity characterization, ethnicity is not addressed as a criterion. Therefore, cultural development and a lack of a full spectrum understanding of diversity leaves social mixing policies unsustainable.

Newly relocated residents find their new neighbourhoods not beneficial to their cultural and ethnic identities since they are a distinguishable minority with no obtainable ability to be fully integrated into the community.[4] Diversity is not considered a relevant category in urban policy

implementation for institutional actors, as diversity is perceived as operationally unsuitable for public action.[5] This assumption directly correlates to long-held French communal beliefs of a "universal citizen" where direct representation is seen to divide instead of uniting because ethnic identities can be misconstrued or misunderstood.[6] Ethnic criteria in target populations for urban policy implementation, for this reason, is illegal and highly disapproved.[7] However, we aim to advocate towards informal ethnic representation, where infringement on urban policy legal terms would not occur. Instead, this recognition would be valued as an advisory role, similar to the NGO placement in social programming and their capabilities to implement ethnically targeted initiatives where formal policy cannot.

Policy Analysis: Social Mix Policy Implementation and Examples

Social mix policy is not characterized by one single initiative; instead, there is a shift from soft to direct tactics between the 1980s to the 2000s. Focusing towards the later era as it is more recently enacted, the National Socialist government in 2000 implemented the Law on Solidarity and Urban Renewal, which saw social mixing become a legal requirement for large metropolitan areas in France.[8] This law saw a minimum proportion of social housing stock listed at 20% by 2020 and raised to 25% in 2014 for severe housing shortage areas, including Paris.[9] To achieve these rates, Paris, a densely populated city with low spatial capacity, aimed to implement more demolition and rebuilding policies that focused on the overall framework of social mixing. Under the Program Nationale de Renovation (2003), Paris created the local Borloo Act (2005) to allow the demolition and refurbishment of city-owned land and businesses to create new public housing in wealthy neighbourhoods.[10] Even though these acts were creating spatial diversity in housing stock, demolition was geared towards poverty-stricken immigrant areas in Paris, where relocation was forced upon the low-income residents to newer builds in wealthy areas.

Municipal initiatives do not direct all urban policy within France. Instead, all action is envisioned at the national level and implemented locally through cross-functional institutions such as City Paris and Paris Habitat.[11] This is a similar process with categorizing diversity, as the term is defined by national means and adopted by municipal actors. For instance, Paris habitat, which manages the largest sector of Parisian public housing with 124,000 units and 310,000 residents, is state supervised and runs on a socio-economic and spatial understanding of diversity.[12] The board of members and subsidiaries, which we wish to install a minority representation within, is broken down into thirds with municipal, independent, and elected actors.[13] Paris Habitat does not create policy; however, they create connections with NGO's to operate within Paris to supply operations where legal policy cannot. NGO's play a key role in social mixing policy within immigrant populations as they can fund social initiatives and act as a microlocal

actor that can recognize ethnic diversity informally.[14] Although NGOs vary in background, there are no legal limitations on operational definitions. They can adapt to the institutional demand at hand based on ethnic diversity, and have been embraced by the government when action can occur where the state cannot proceed without infringement.[15] However, this is not a widely recognized political opportunity avenue for low-income minorities, and as such, should be explored as an implementation for new action.

Recommendation: Diversity Recognition as Political Opportunity

The recommended policy implementation to shift social mixing policy to recognize diversity as ethnically contingent, is to allow low-income minorities representation within Paris Habitats' board with the cooperation of NGO social programming. This is because political opportunity is required to initiate community participation within a governing structure swayed to prefer institutional actors and cause asymmetric potential. Income and housing tenure are critical factors in determining political activism levels in a given neighbourhood.[16] The low-income minorities living in Parisian public housing do not fit these criteria. Partnerships with NGOs and Paris Habitat, for this reason, is essential. Local institutions are considered legitimate based on their representative capabilities to their neighbourhoods, and these demographics have to find avenues to be informally ethnically recognized in urban initiatives. A similar scenario can be exemplified in Minneapolis' urban renewal program, where district councils were not seen to represent respective areas' development needs. Therefore, political opportunity was given to the residents to frame their own urban improvement initiatives, creating community engagement and representation.[17] In Paris, residents could not initiate their own policy programs as urban renewal is a national directive, but the partnership element through specified recognition is a goal in this recommendation.

By creating an informal coalition between Paris Habitat and NGO's with the goal of ethnic representation in diversity criteria, immigrant minorities could potentially sway asymmetric potential in their favour. Stone, an urban governance theorist, evaluated the unequal distribution of power in local communities between individuals and groups. Stating, individuals and groups cannot overcome the less than equal distribution by sheer force of an interest group's preferences or the extent of its mobilization as institutional actors have systemic power.[18] This systemic power leads to potential influence in policy implementation; hence, this policy recommendation requires NGO participation and Paris Habitat. This institutional actor manages a large sector of Parisian public housing directly with state guidance and funding but can allow internal representation and advisory. This would create a coalition of power in the governance structure, where independent organizations would join forces to mutually represent ethnic diversity in an

informal implementation that would not infringe upon the legality of national social mix urban policy.

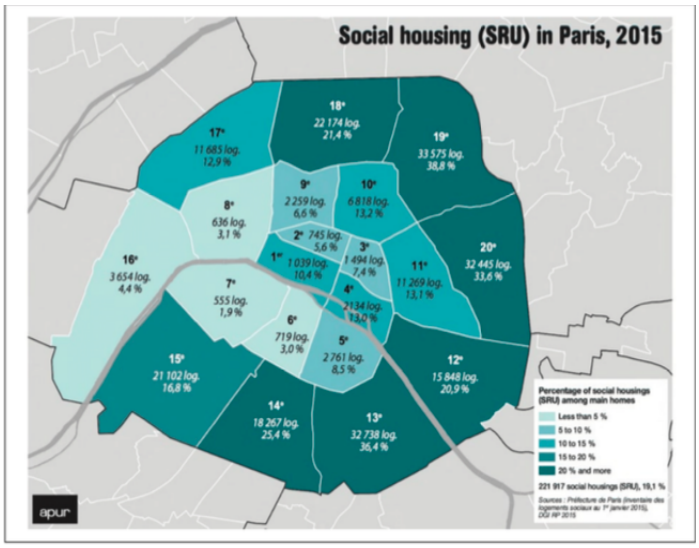

Figure 1: Escarfe-Dublet et al. 2019. "Governing Diveristy without naming it: An analysis of neighbourhood policies in Paris"

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