

the social contract

/THĒ/ /'sōSHəl/ /'kän trackt/

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

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Cover Designer

Gregory Rogers

Layout Designer

Daniel Gilbert

Contact Information

The Social Contract, Western University's Undergraduate Political Science Journal
Western University
1151 Richmond Street
London, Ontario, Canada, N6A 2K7A
E-mail: socialcontractuwo@gmail.com
Web: http://politicalscience.uwo.ca/undergraduate/social_contract.html

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Letter from Professor Abelson

To the Editorial team of The Social Contract,

On behalf of the Department of Political Science, I wanted to congratulate both the editorial team of The Social Contract, as well as the contributors, who are responsible for bringing this impressive volume to fruition. For a department, there is nothing more rewarding than to see our students succeed, and you have once again made our department proud. In this and previous issues, you have demonstrated what can be achieved when your goal is to publish the very best undergraduate papers in the various sub-fields of our proud and distinguished discipline.

In the pages that follow, you will have an opportunity to read several fascinating articles that address many of the issues leaders around the globe continue to struggle with, including: cybersecurity, food insecurity, voting trends, and restructuring the machinery of government. The breadth of research contained in these articles is surpassed only by the quality of the writing. I have no doubt you will learn much from the insights that have been provided.

Please accept our congratulations for this wonderful accomplishment. We wish you great success with this publication, and look forward to watching The Social Contract continue to play a vital role in harnessing the intellectual and creative forces of our undergraduate students.

Best wishes,

Donald Abelson

Professor and Chair

Letter from Managing Editors

This year we were very happy to oversee the revitalization of *The Social Contract* in its eleventh year of publication. *The Social Contract* celebrates the diversity of the thought in the undergraduate Political Science Program at Western University, and it provides a platform for students to showcase their academic achievements.

Editing for the *Social Contract* was a great pleasure this year. The publication received over 80 essays, each exhibiting a unique perspective of political philosophy. Our thanks, first and foremost, must go to the professors and administration who helped facilitate our work. Most notably: Joanna Quinn, Nigmendra Narain, and Laurie Lefebvre. But, of course, our success is very much due to the reliable editors who stayed committed to resuscitating *The Social Contract*. Our Editorial Board included Laura Asta, Tully Cogswell, Zoe Leung, and Jonathon Pritchard. Without their hard work and insight, it is likely our project would have failed at its beginning.

One of our chief goals was to ensure that the *Social Contract* endures as a staple of the political science department at Western University. Therefore, we are happy to announce that Tully Cogswell will be assuming the role as Managing Editor for the 2017 issue. Given his tireless dedication this year, we are certain he will do an excellent job.

We would also like to thank all of those who submitted their essays this year. The quality of papers were generally outstanding, and so, if you were not selected this year, we implore you to resubmit for future publications.

To the reader, we hope that the essays we have selected will be engaging. Some of the topics are provocative; others simply controversial. We chose the papers that tackled tough issues, and therefore, whether they are in any event not sagacious, they are in all events not elusive. At the least, the purpose of the *Social Contract* is fulfilled if it inspires readers to strive for academic excellence and pursue research they otherwise would have neglected.

Cheers,
Managing Editors,
Michael Filice
Jesse Hammond
Hunter Norwick

International Relations

Papers by: Piotr Dobrzynski
Samantha Condie
Talitha Cherer

Chinese Cybersecurity and Espionage: Effects on Sino-American Relations

By: Piotr Dobrzynski

In remarks at George Washington University in anticipation of Chinese President Xi Jinping's visit to the U.S., national security advisor Susan Rice released a statement regarding China's industrial and defense espionage programs operating against the United States. "This isn't a mild irritation, it's an economic and national security concern to the United States. It puts enormous strain on our bilateral relationship, and it is a critical factor in determining the future trajectory of U.S. – China ties."¹ These remarks are telling in several aspects. Firstly, it suggests U.S. policymakers place a high priority on the damage caused by espionage as opposed to other aspects of the Sino-American bilateral relationship. Secondly, Rice's statement indicates that the U.S. is willing to allow the Sino-American relationship to falter in order to pressure Chinese officials to curtail the theft of trade and defence secrets. But to what extent can Rice's speech translate into tangible foreign policy decisions regarding cybersecurity and the Peoples' Republic of China? This research intends to analyze the effects of Chinese cyber-attacks and cyber-espionage on Sino-American relations. It will trace the development of Chinese-American relations regarding espionage and trade secrets to determine whether U.S. policymakers are willing to allow the vital bilateral relationship to encounter a confrontation in order to defend their information and defense interests, or whether the U.S. views espionage as

¹ United States, Office of the Press Secretary, *National Security Advisor Susan E. Rice's As Prepared Remarks on the U.S.-China Relationship at George Washington University* (Washington, DC: 2015)
<https://www.whitehouse.gov/the-press-office/2015/09/21/national-security-advisor-susan-e-rices-prepared-remarks-us-china>

the expected cost of amicable relations with China. In addition, it will explore whether China utilizes cyber-espionage as a calculated risk wherein the benefits of technological advancements are weighed against the political ramifications that accompany such activity, in the sense that Chinese policymakers limit the scope of espionage activity so as to avoid deteriorating Sino-American relations to a point wherein it would detract from other forms of bilateral and multilateral interactions the two states engage in.

This research found that although it is difficult to determine the effect of individual cyberespionage incidents on the Sino-American relationship due to a large variety of factors at play and cases often remaining unreported or classified, at this point in time U.S. bilateral and multilateral action regarding cyber espionage in the fields of private information theft and government information theft does not fall in line with the strong worded rhetoric the White House maintains. While warning of serious damage to a Sino-American relationship, U.S. policymakers have seldom strayed into territory which may damage the nation's other bilateral engagements, with the goal of curtailing the theft of information through cyberspace. Simultaneously this essay will display that Chinese policymakers enjoy extremely beneficial economic advances through espionage, while not significantly deteriorating the tangible aspects of their relationship with the United States.

Tracing back diplomatic relations revolving around the relatively new phenomenon of cyber-espionage and cyber-security requires a foundation to be establishment in the form of defining the various forms of espionage that regularly occur between the United States and China. The Obama administration deliberately differentiates between the use of espionage to gain economic advantages, and the use of cyberespionage to achieve political goals. As a result, U.S. policy on the two differs greatly. Regarding government level information gathering, the

Obama administration deliberately avoids any dialogues and agreements that may restrain the wide array of U.S. information gathering operations that were largely unveiled by the Snowden documents. This sentiment is also echoed by Chinese decision makers. As opposed to this, U.S. leaders place significant emphasis on reducing the intellectual property theft aimed towards U.S. based companies with the goal of gaining an economic advantage.² U.S. attempts to curtail such issues run into several roadblocks with distinguishing which cyberattacks are state sponsored and which are the actions of private individuals displaying Chinese IP addresses. Not all espionage is limited to the external breach of company security systems either. A significant amount of cases detail the theft of U.S. company trade secrets by employees, who intend to use stolen information in exchange for positions in Chinese companies or academia.

Detailing cases of Chinese cyberespionage in the United States is hampered by the issue of providing evidence. While U.S. rhetoric regarding the cybersecurity has been highly publicised, the nature and core mechanics of these incidents are largely information considered classified by the U.S. government. Furthermore, private organizations display reluctance to report security breaches within their systems.³ There are several reasons behind this, mainly because Silicon Valley companies seek to present an image of security and privacy to consumers and market investors. Pursuing security breaches publically only serves to draw attention to them in the first place. In other situations, entities negatively affected by the theft of trade secrets often only become aware of the crime several years after it has occurred, when previously unique products encounter stiff and suspiciously similar competition on the market, or when a security

² Adam Segal, "The Code Not Taken: China, the United States, and the Future of Cyber Espionage," *Bulletin of the Atomic Scientists* 69, no. 5 (2013): 42.

³ William Hannas, James Mulvenon, and Anna Puglisi, *Chinese Industrial Espionage: Technology Acquisition and Military Modernization*. (New York: Routledge, 2013.) 216.

review of the firm is undertaken. Furthermore, companies fear the consequences of public accusation levied against other corporations, which includes potentially alienating business partners in the global market.⁴ Nevertheless the U.S. government and various third party cybersecurity firms and analysis centers have provided sufficient evidence that cyber-espionage is a significant force on U.S. economics. In addition, it has been established that the majority of cyber-theft emanates from the Peoples' Republic of China.⁵

The case of Edward Snowden, former National Security Agency contractor and whistleblower on the United States' global information gathering programs, is key in understanding recent U.S. policy approaches to China. Days before a highly anticipated summit between Barack Obama and Xi Jinping, where cybersecurity was anticipated to be high on both nations' agendas,⁶ Snowden escaped the United States carrying thousands of documents establishing the existence of networks devoted to gathering the private information and communications of U.S. and foreign citizens, as well as that of significant international actors. It was revealed that surveillance programs not only had access to the identities of each communicator, but could also access the content and details of the communications without a court order. In addition, detailed were processes through which U.S. government agencies could demand telecommunication companies to hand over private information and circumnavigate encryptions. Such infringe-

⁴United States, Office of the National Counter-intelligence Executive, *Foreign Spies Stealing US Economic Secrets in Cyberspace: Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011* (Washington: DC: Office of the National Counter-intelligence Executive, 2011)
http://www.ncsc.gov/publications/reports/fecie_all/Foreign_Economic_Collection_2011.pdf

⁵Peter Mattis, "A Professional Assessment of Chinese Espionage," *Routledge Asian Security Studies* 28, no(2013), 398.

⁶Kenneth G. Libberthal, *U.S.-China Relations: The Obama-Xi California Summit*, June 3, 2013.
<http://www.brookings.edu/blogs/up-front/posts/2013/06/03-us-china-relations-obama-xi-california-summit-libberthal>

ments were not limited to U.S. territory, but also violated the privacy and sovereignty of the citizens of other states. This was most notable in Germany, where it was determined that the U.S. had gained access to Chancellor Merkel's records, sparking outrage amongst German activists and media. Legal experts of both international and cyber law also questioned the legality of such processes, citing rights to privacy and abuses of power among such agencies.

Significantly for the development of Sino-American relations, the revelations also abolished American moral authority regarding cyber-security. Talks between Obama and Jinping in 2013, overshadowed by the NSA revelations, still managed to reach an agreement on the environment through agreeing to work with other countries to reduce greenhouse gas emissions through hydrofluorocarbons, a significant emissions contributor commonly used in air conditioners. Further consensus was reached on the issue of nuclear proliferation, with emphasis on North Korea. Both leaders agreed to cooperate in encouraging regional talks with the goal of curbing the North Korean nuclear missile program, releasing statements acknowledging the gravity of the situation. However there was a notable lack of any progress made regarding U.S.-Chinese cybersecurity, as Jinping deflected and denied accusations of state-enabled cyber theft, whereas Obama lacked the authority at the time to pursue the matter more aggressively. This came despite attempts by U.S. delegates to divide the issues and draw distinction between the two previously discussed categories of espionage in the economic and governmental spheres, the latter of which neither state expresses interest in restraining. In summarizing the conferences accomplishments, delegates conceded that the only progress made regarding cybersecurity had been to impress the gravity of the issue on Chinese policymakers, as stated by Tom Donilon, National Security Advisor to President Obama at the time.⁷

⁷ Dan Roberts, "US-China Summit Ends with Accord on all but Cyber-espionage." *The Guardian*, June 11, 2013.

It was not until September of 2015 that Obama and Jinping were successfully able to visit the topic again. Over this timespan it became increasingly apparent that the 2013 talks had not had any tangible effect on the frequency and severity of Chinese cyberattacks. Meeting at the White House, Obama reportedly took a more aggressive stance regarding cybersecurity, threatening to pursue individuals responsible and to impose sanctions if necessary. Based on the language used by the two leaders, an agreement on principle was established. In a press conference, Obama described the agreement as a “common understanding” that state-sponsored intellectual theft would not be tolerated.⁸ At no point was there any talk of a potential binding bilateral agreement between the two states. Three weeks later, CrowdStrike, a U.S. firm dedicated to providing cybersecurity for companies, released a report detailing that cyber-attacks on U.S. targets had been maintained despite the appearance of progress at the Obama-Xi Jinping summit.⁹

Despite Chinese President Xi Jinping’s response to Rice’s allegations which denied the existence of state sponsored espionage and condemned the theft of trade secrets, the nation’s history has a prominent theme of relying on the import of technology. Before the Sino-Soviet split during the Cold War, China’s first Five-year Plan had a large reliance on Soviet intellectual aid, especially in the field of nuclear weapons. Following stagnation during the Cultural Revolution, China resumed sending students abroad to study technologies and hard sciences while investing in science and technology infrastructure on the home front. This is culminated in the *Medium and Long Term Plan for Science and Technology Development, 2006-2020*, which re-

⁸ Julie Davis and David Sanger, “Obama and Xi Jinping of China Agree to Steps on Cybertheft,” New York Times, Sept. 25, 2015.

⁹ Dmitri Alperovitch, The Latest on Chinese-affiliated Intrusions into Commercial Companies, Oct. 19, 2015. <http://www.crowdstrike.com/blog/the-latest-on-chinese-affiliated-intrusions-into-commercial-companies/>

mained largely reliant on foreign collaboration in order to spur progress in technological fields.¹⁰

Regarding motivation around cyber espionage, economic gains are not the only factor on the minds of Chinese officials. Chinese military doctrine also suggests that China views its potential for cybersecurity breaches as a deterrent in any future conflict, with emphasis on the South China Sea and Taiwan. Not only are cyberattacks conducted with this in mind, but some reports suggest that they are deliberately made to be “noisy” to ensure their presence is noted by U.S. policymakers. This strategy involves breaches both into technological and critical infrastructure centers, displaying potential to do significant damage should a conflict erupt. As Chinese analysts believe the U.S. is far more reliant on banking and communications infrastructure than China, Chinese analysts view cyberwarfare as a deterrent that massively reduces that likelihood of U.S. involvement in a conflict.¹¹

U.S. responses to cyber espionage and their effect on Sino-American relations can be divided into two categories: Cases in which the attack takes place on American soil and within the established jurisdiction of the U.S. legal system, and those in which information is stolen from beyond U.S. geographical borders. In the former of these categories, the United States are highly effective in protecting company assets and penalizing perpetrators, while in the latter they run into significant difficulty.

¹⁰ Hannas, *Chinese Industrial Espionage*, 8.

¹¹ Segal, “The Code Not Taken,”

¹² Mary Ellen Stanley, “From China with Love: Espionage in the Age of Foreign Investment.” *Brooklyn Journal of International Law* 45, no. 3 (2015), 1045-1046.

Instances of industrial espionage are documented by the Committee on Foreign Investment in the United States, henceforth referred to as "CFIUS". In the 2009-2013 period, CFIUS registered 480 notices regarding suspicious economic activity, culminating in 193 investigations. The reports were spread across various fields of the U.S. economy. In 2013, 36% of reports were in manufacturing fields, with financial institutions, information and services at 33%. The remaining CFIUS reports were divided between mining, utilities, and construction at 21% while wholesale, retail, and transportation accounted for 10%.

Within the U.S. the theft of industry secrets outside of the cyber realm generally takes place in two forms: Chinese government owned or connected entities doing business within the U.S., or instances where a U.S. business is purchased by a foreign entity.¹³ Most significant of these investigations was the case of Ralls Corporation in 2013, a U.S. registered corporation owned by Chinese executives. The U.S. Navy noted concern regarding the company's wind farms being in close proximity to a restricted airspace and bombing zone. After CFIUS investigation, President Obama mandated that Ralls divest all property interests in the project and barred the company from the project site.¹⁴ Despite an ensuing court battle with the corporation, the Obama administration's response was a clear statement of intent regarding the United States' stance on the protection of government secrets, especially in cases where a branch of the U.S. forces requests intervention.

In 2008-2009 a chemist and technical director working for Valspar Corporation, an international paint and coating manufacturer based in Minneapolis, downloaded hundreds of paint formulas using access to the company's internal servers. David Yen Lee had intended to use the

¹³ Stanley, "From China with Love," 1036-37.

¹⁴ *Ibid.*, p. 1047.

information to obtain a position at a Shanghai based painting company, with whom he had been negotiating employment from September 2009 until February 2010. He was arrested in March of 2010 and convicted on a count of theft of trade secrets, being sentenced to 15 months in prison and ordered to pay over \$30,000 in restitution to cover the cost of Valspar's internal investigation. Significantly, the Federal Bureau of Investigation noted that there was no evidence of Lee successfully disclosing the information.^{15 16}

Chinese collaborators also appear to reap the benefits of cooperating in illicit action with Chinese academia. In October of 2009 Meng Hong, a researcher for DuPont, was arrested and charged with theft of trade secrets. It was revealed that he had downloaded information containing significant research on organic light-emitting diodes and had intended to transfer the data to Peking University, where he had accepted a faculty position. In this case, Hong was successful in transferring several chemical compounds that DuPont had not made public to a colleague at Northwestern University. He had intended to receive funding from the Chinese government to manufacture OLED's utilising the stolen data. Similarly, Hong was sentenced to 14 months in prison for the theft of trade secrets.^{17 18}

¹⁵ Hannas, Chinese Industrial Espionage, 231.

¹⁶ United States, Federal Bureau of Investigation, Chicago Division, Former Paint Manufacturing Chemist Sentenced to 15 Months in Prison for Stealing Trade Secrets Valued up to \$20 Million, (Chicago, IL: Federal Bureau of Investigation, 2010) <https://www.fbi.gov/chicago/press-releases/2010/cg120810-1.htm>

¹⁷ Hannas, Chinese Industrial Espionage, 233.

¹⁸ United States, Federal Bureau of Investigation, Baltimore Division, Former DuPont Chemist Sentenced to 14 Months in Prison for Stealing DuPont Trade Secrets, (Baltimore, MD: Federal Bureau of Investigation, 2009), <https://www.fbi.gov/baltimore/press-releases/2010/ba102110a.htm>.

In a case where the limitations of U.S. anti-espionage ability are demonstrated clearly, Xiangdong Yu, former engineer at Ford Motor Company, was sentenced to five years and 10 months in prison after successfully stealing thousands of specialized and highly classified designs from the company. Xiangdong Yu arrived in China with the designs, estimated to have been worth millions, and began working for a Beijing based automotive company in 2008. He was only successfully apprehended after returning to Chicago in 2009, where he was served with an arrest warrant and eventually agreed to a plea bargain.^{19 20}

Cases of insider espionage are in contrast to external cyber-threats the U.S. faces, in requiring different action in the form of diplomatic and international pressure to resolve. In regards to cyber-espionage emanating from the Chinese mainland, an increasingly varied number of factors come into play. Firstly, actions in the field cyberespionage are not isolated, but have an effect on the whole of China's bilateral relationship with the United States. Most significant of these factors is China's historical trend to respond both aggressively and highly negatively to sanctions which impede the state's economic progression.²¹ As it is well established that the acquisition of technology such as software source codes can cut development times by months or years, an aggressively negative Chinese response to sanctions is highly likely. Such a response is certain to damage the current status quo of Sino-American affairs, and this is taken into account by U.S. policy makers when determining responses to the theft of trade secrets. As a result, the United States attempt to strike a balance between protecting trade secrets and main-

¹⁹ Hannas, *Chinese Industrial Espionage*, 232.

²⁰ United States, Federal Bureau of Investigation, Chicago Division, *Chinese National Sentenced for Stealing Ford Trade Secrets*, (Chicago, IL: Federal Bureau of Investigation, 2011), <https://www.fbi.gov/detroit/press-releases/2011/de041211.htm>.

²¹ Robert Sutter, *Chinese Foreign Relations: Power and Policy since the Cold War* (Plymouth: Rowman & Littlefield Publishers Incorporated, 2012), 137.

taining the Sino-American relationship, which slows progress on any cybersecurity negotiation despite ongoing security breaches. Furthermore, many states in the international sphere do not entirely distinguish between economic espionage and governmental espionage as U.S. policymakers do, and believe that the United States are practicing hypocrisy to some degree in their condemnation of Chinese actions in cyberspace.

These attempts to balance various aspects of bilateral relations, partially a result of the “Gulliver” strategies practiced by both states, manifest themselves in several high profile cases. From June to December of 2009 a series of concentrated cyber-attacks were launched against Google's Chinese branch and dozens of other American owned technological companies. The attacks prompted Google to release a statement claiming that although it appeared the primary targets of the cyberattacks were the Gmail accounts and finances of Chinese human rights activists, over twenty other major companies in varying fields had also experienced security breaches originating from the same source, spanning the internet, finance, technology, media, and chemical sectors.²² This included the theft of source codes, which allowed software development to proceed at a much faster rate. In this instance, U.S. response to the breach of intellectual property and privacy rights was negligible, with Secretary of State Clinton merely publically urging China to investigate Google's allegations.²³ Following release of diplomatic cables obtained by the Wikileaks organisation in December of 2010, documents suggested that the Chinese Politburo was guilty of recruiting agents responsible for the attacks. The documents detailed a series of ongoing attacks on Western governments and businesses since 2002. Not only

²² Google. A New Approach to China. January 12, 2010.

²³ Chris Buckley and Paul Eckert, Media in China Dismiss U.S. Internet Push, Reuters, January 22, 2010.

did the diplomatic cable reveal Chinese government involvement, it also alleged that U.S. leaders had been informed of this by a Chinese contact at the American embassy in Beijing.²⁴ This accusation was further confirmed later on by the security firm Verisign iDefense.²⁵ The lack of significant response from a state known for practicing policies of protectionism can be seen as perplexing, and is strongly indicative of an early American approach to intellectual property rights violations that is demonstrably far too soft to protect digital property rights.

A 2010 report from Mandiant, a U.S. cybersecurity company, detailed the theft of information from Fortune 500 companies during the process of negotiating the acquisition of a Chinese firm. Not only was it common for U.S. companies to lose sensitive data on a weekly basis, Mandiant also displayed that the data stolen would have significantly aided the Chinese firm in a stronger negotiation and pricing position. On a larger scale, an Office of National Counterintelligence Executive (ONCIX) conference comprised of the representatives of various private sector resulted in mass reports of repeated information theft. The theft included client lists, merger and acquisition data, company information on pricing, and financial data, with a far high rate being observed when doing business with China. ONCIX noted that even attributing responsibility for perpetrators was a difficult task, considering the generally slow rate corporate response to cybersecurity breaches.²⁶

²⁴ Andrew Lehren and Scott Shane, Leaked Cables Offer Raw Look at U.S. Diplomacy. *The New York Times*, November 28, 2010.

²⁵ United States. Office of the National Counter-intelligence Executive, *Foreign Spies Stealing US Economic Secrets*.

²⁶ *Ibid.*,

In May of 2014, the U.S. Department of Justice in a landmark movement indicted five Chinese military hackers for breaking through security measures of several U.S. companies in the fields of nuclear power, metal, and solar products from 2006 until 2014. The five were charged on 31 counts of conspiring to commit computer fraud and abuse, accessing protected computer systems for commercial and private financial gain, transmitting a program with the intent to cause damage to protected computers, identity theft, economic espionage, and trade secret theft. It was alleged that the officers had breached the systems with the intention of providing an economic advantage to competitors in China, including several state-owned enterprises.²⁷ Chinese officials denied the accusations. The move was largely a symbolic one given the fact that all five of the accused reside in China, beyond the reach of the U.S. Justice Department, and reflected the general limit of U.S. retribution in the realm of cyberspace.

In terms of future Chinese-American relations, both states have presented optimistic views of cooperation and goodwill in the fight to maintain intellectual property rights. Despite an apparent lack of progress in the months following the September 2015 talks, internal change under the Chinese regime can often be a slow process. In addition, Chinese authorities may appear to have greater ability than they wish to admit to limit the level of security breaches and technological transfers if it benefits the Communist Party's agenda, indicated by a notable reduction of cyber-attacks in the lead-up to Chinese-American discussions, negotiations, and summits,²⁸ presumably to weaken any criticisms and grievances the U.S. may wish to bring to the table.

²⁷ Hannas, *Chinese Industrial Espionage*, 235.

²⁸ Misha Glenny, "Are China and the US Ready for a Truce on Cyber-espionage?" *The Guardian*, Sept. 23, 2015.

In summary, U.S approaches and effectiveness in combatting cases of cyber espionage differ greatly relative to the form of espionage being practiced. The U.S. executive branch as demonstrated acts rapidly and effectively in responding to threats of espionage on home soil, especially when the threat pertains to a branch of the U.S. military. Similarly, the U.S. judicial system is adequate in bringing home territory spies and trade secret leakers to justice, often before the leak takes place. Significant difficulties only arise for the U.S. when information theft takes place outside of its borders. In situations where diplomatic pressure is required to be applied, U.S. decision-makers tend not to present a strong enough reaction to infractions. Such action sends a mixed message to Chinese officials, who hear rhetorical threats of sanctions and of a damaged relationship, while simultaneously seldom experiencing any tangible consequences regarding the theft of trade secrets. In turn, Chinese government strategists weigh the large economic benefits of technology transfer against relatively feeble diplomatic consequences, leading to only one possible outcome in the current state of international affairs.

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Voluntary Human Shields: The Next Generation Defense System

By: Samantha Condie

“By immunizing the military objective against attack as a matter of law, in many cases shields more effectively ... than traditional defenses such as anti-aircraft artillery.”¹

Michael Schmitt

During the First Gulf War in the 1990s, Saddam Hussein was televised greeting local Iraqi citizens and civilians from Western countries whom he would later threaten to use as human shields. Eight hundred of his “special guests” were coerced to stand in small groups at various strategic locations that would likely be subject to military attack such as ammunition factories, dams, and oil refineries.² In contrast, a decade later in January 2003, over 100 civilians from 32 different countries offered to serve as human shields by traveling to Iraq and placing themselves at strategic locations. Prior to their departure they even notified the British and American government of their intentions to deter these allied assaults. International Humanitarian Law (IHL) explicitly bans the use and targeting of unwilling human shields, however it is silent in the case of Voluntary Human Shields (VHS).

This raises the question: if civilians are voluntarily placing themselves in conflict to defend a target do they become a legitimate military objective? The protections afforded to an individual during war are based on their legal status (whether they combatants or civilians). Specifically, International Law clearly states that the only legal military targets are combatants or civilians who *directly participate* in hostilities. The status of whether or not VHS constitutes

¹Shannon Bosch, “Voluntary Human Shields: Status-less in the Crosshairs?” *Comparative and International Law Journal of Southern Africa*, Vol. 40, No. 322 (2007), p.341.

² Paolo Fusco, *Legal Status of Human Shields*, Centro Studi per la Pace (2003), p.6. http://files.studiperlapace.it/spp_zfiles/docs/20050125105209.pdf and Matthew V. Ezzo, and Amos N. Guiora, “A critical Decision Point on the Battlefield-Friend, Foe, or Innocent Bystander” in *Security: A Multidisciplinary Normative Approach*. Ed. Cecilia Bailliet (Martinus: Nijhoff Publishers, 2009), p.13.

direct participation has been so divisive among scholars that numerous conferences have been held by the International Committee of Red Cross (ICRC) to attempt to define it. However the final report published in 2008 reflects its failure to come to a consensus.³ This paper argues that while VHS retain civilian status they forfeit their protection by directly participating in hostilities, which violates their obligation, the intention of the Geneva Convention and the spirit of IHL.

In part I, this essay will explore the definition and emergence of VHS in history. Part II will argue that VHS involvement in war constitutes *direct* participation thus according to the Geneva Convention they retain civilian status but lose immunity from attack. Part III will reason that the Geneva Convention never intended to protect those who compromised its goal of reducing conflict, like VHS. Finally, part IV will argue that this treatment of VHS is the most aligned with the original intentions in which laws of war were created, to balance military necessity and humanitarian concern. This paper does not explore whether VHS can be considered combatants, as this has been examined at depth elsewhere. It has concluded that legally they can only be considered civilians as they fail to fit the criteria of combatants since they are not organized or wear identifying uniforms.⁴

I. Emergence of Involuntary Human Shields

Involuntary Human Shields are not an innovative idea; they have been used since the American Civil War.⁵ A widely accepted definition of Human Shields is provided by the ICRC as “an intentional co-location of military objectives and civilian or persons *hors de combat* with the specific intent of trying to prevent the targeting of military objectives.”⁶ The IHL is clear, human shields are prohibited as stated in the *Hague Regulation* of 1868, *Geneva Convention III* and *IV*, *Additional Protocol I of Geneva Convention*, customary law and the *Rome Statute of ICC*.⁷ Nevertheless it is frequently breached as it has been used a tactic of warfare in the Korean

³The Geneva Convention was first brought forth by the ICRC so it is therefore understandable their role in clarifying it. Cornell University Law School, **Geneva Conventions**, Legal Information Institute <https://www.law.cornell.edu/wex/geneva_conventions>

⁴Bosch, p.340.

⁵Fusco, p.4.

⁶**Rule 97 Human Shields**, International Committee of the Red Cross (ICRC), par. 9, <https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule97>

⁷Rewi Lyall, “Voluntary Human Shields, Direct participation in Hostilities and the International Humanitarian Law Obligations of States” **Melbourne Journal of International Law**, Vol. 9, No. 2 (May 2008), pp.314-315 .

conflict, the Vietnam war, Beirut in 1980, Somali in 1990, the Gulf Wars and numerous other conflicts.⁸ By disregarding the IHL, weaker parties gain a huge asymmetrical advantage, as this violation does not release the stronger party of its commitment.⁹ Weaker parties are unable to challenge stronger nations on the ground of military due to an imbalance of technology and capital.¹⁰ Additionally, since law acts as a conservative force, nations that are satisfied with the status quo are more likely to abide by the rules.¹¹ Combined, weaker nations are tempted to use methods, which are considered “unorthodox, indirect, surprising, or even ‘unthinkable’.”¹² Ironically, the same laws intended to reduce civilian exposure to wars are being used as a weapon to perpetuate them.

The recent emergence of VHS is a direct result of the changing battlefield and legal classification. The evolution in the environment of war from trench warfare in World War I to urban warfare in World War II, led to greater civilian exposure and fatalities.¹³ This prompted the creation of the *Geneva Convention* in 1949 to regulate the conduct of warfare (Jus in Bello) and outline the rights of combatants and civilians. It explicitly prohibits the use of human shields twice. First in Section IV Article 28 it states “[t]he presence of a protected person may not be used to render certain points or areas immune from military objective.”¹⁴ Second, in the same section, Article 34 states “[t]he taking of hostages is prohibited.”¹⁵

Further, in 1977 the Geneva Convention was expanded upon with the *Additional Protocol I (AP I)*, to include changes in warfare since the Second World War.¹⁶ This Protocol explicitly listed obligations of every stakeholder to minimize hostilities.¹⁷ In addition to cementing

⁸Lyll, p.314-315.

⁹*Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977*, International Committee of the Red Cross (ICRC), p.265.<<https://www.icrc.org/applic/ihl/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>>.

¹⁰Emily Camins, “The past as prologue: the development of the ‘direct participation’ exception to civilian immunity” *International Review of the Red Cross*, Vol. 90, No.872 (December 2008) p. 879.

¹¹Ezzo and Guiora, p.25.

¹²Ezzo and Guiora, p.21.

¹³*Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, International Committee of the Red Cross (ICRC), 12 August 1949, 75 UNTS 287, <<https://www.icrc.org/applic/ihl/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>>.

¹⁴*Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, par.28.

¹⁵*Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, par.34 .

the defenders obligation to not use Human Shields (Art 51.7), the attacker was banned from targeting civilians (Art 51.4).¹⁸ This responsibility to abide by the principle of distinction was reiterated in Article 48.16 “at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”¹⁹ The prohibition on indiscriminate attacks also includes those that would violate the principle of proportionality. The viability of military objectives are governed by a proportionality analysis, which determines if the number of civilian casualties are excessive in relation to the military advantage expected to be gained from the target.²⁰ Civilians are obligated to refrain from directly participating in conflict in order to maintain their protected status (Art 51.7). Consequently according to IHL, violation of this obligation does not change civilian’s legal status but the protections afforded to them. This leads to the present debate over whether VHS actions constitute direct participation. After years of conferences and expert panels, the ICRC’s recommendation has only been able to agree on a broad definition of “[t]he notion of direct participation in hostilities refers to specific acts carried out by individuals as part of the conduct of hostilities between parties to an armed conflict.”²¹ It tried to be more specific by including a three prong criteria to direct actions, but scholars have disagreed on its application to VHS.

¹⁶It is important to note that some war fighting nations have not signed the *Additional Protocol I* like the United states, France and Israel. However, they do recognize some components to be customary law. For instance, in 1987 the US state department did admit that it regards certain components of the Additional Protocol as customary international law, such Article 51 and 52. Daniel P. Schoenekase, “Targeting Decisions Regarding Human Shields” *Military Review*, Vol. 84, No. 5 (Sept/Oct 2004), p.29.

¹⁷Ezzo and Guiora, p.26.

¹⁸*Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, p. 265. <<https://www.icrc.org/applic/ihl/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>>.

¹⁹Indiscriminate attacks are defined as “those which are not directed at a specific military objective” *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, p. 265. <<https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=5E5142B6BA102B45C12563CD00434741>>

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of

²⁰*International Armed Conflicts (Protocol I)*, 8 June 1977, p. 265. <<https://www.icrc.org/applic/ihl/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>>.

²¹Nils Melzer, “Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law” *International Review of the Red Cross*, Vol. 90, No. 872 (December 2008) p.1013.

II. VHS: Direct, Indirect or Active?

Through direct participation in hostilities, VHS break their obligation and are no longer protected under the *Geneva Conventions*. This condition is read in Article 51.7 “civilians shall enjoy the protection afforded by this section, unless and for such time as they take a *direct part in hostilities*.”²² When civilians take action by mobilizing themselves in front of a military objective they enhance its survivability by skewing the proportionality analysis. In other words, increasing civilian presence can render the losses too great and effectively undermine the attackers ability to neutralize the target. Michael Schmitt, a well regarded International Law scholar, compares their effectiveness in war to that of an anti-missile shield.²³ Acting as “de facto defense system” they support defender’s interests by enhancing the survivability of a strategic location while frustrating the attackers effectiveness.²⁴ Consequently, the defenders ability to launch hostile acts is prolonged. Further, while the term hostilities may seem to suggest the exclusion of passive actions, the *Commentary* clarifies that it includes situations in which the act is committed without arms. Thus, similar to its definition of attack, hostile acts can be offensive or defensive in nature.²⁵ The ICRC Commentary reaffirms this stance that “situations in which [civilians] undertake hostiles acts without using a weapon” is still considered direct participation actionable to void their protection.²⁶ In addition, classifying VHS as civilians without protection is the stance that many war-waging nations have taken, such as the United States.²⁷ The High Court of Justice of Israel adopted the same position in their recent ruling on Targeted Killings. Penned by the President Barak, the judgment states in regards to VHS “if they do so of their own free will, out of support for the terrorist organization, they should be seen as persons taking direct part in hostilities.”²⁸

²²*Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977*, p. 265. <<https://www.icrc.org/applic/ihl/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>>.

²³*Professor Michael Schmitt*, University of Exeter, <<http://socialsciences.exeter.ac.uk/law/staff/mschmitt/>>

²⁴Ezzo and Guiora, p.10.

²⁵*Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977*, p. 264. <<https://www.icrc.org/applic/ihl/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>>

²⁶*Commentary Article 51: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977*, International Committee of the Red Cross (ICRC), <<https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=5E5142B6BA102B45C12563CD00434741>>

In contrast, critics such as legal advisor to ICRC Stephanie Bouchie de Belle refute that VHS do not meet the threshold of direct participation and therefore retain civilian protected status.²⁹ She argued that this is illustrated by the same *Commentary* in its definition of hostile participation as “acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces.”³⁰ Thus the passive stance in which VHS act is not comparable to directly threatening enemy forces; the VHS individual does not possess the capacity to harm enemy force nor are they physically impeding enemy access to the target by acting as a human blockade. In other words, a legal obstacle that confines military strategy cannot be considered a material threat.³¹ Others argue that even if it could be construed that the assets they shield would eventually be directed at the opposition, this would still only constitute an *indirect* offense. Dr. Hans- Peter Gasset, former legal advisor of ICRC and present editor in chief of ICRC revue, takes this stance that the actor must “present an immediate threat to the [adverse] party.”³² It has also gained support among organization such as Human Rights Watch, which argues that all human shields, voluntary or involuntary, indirectly participate. Like munitions workers in a factory, VHS support the war effort but their actions do not threaten directly the opposing forces.³³ There is some basis for this interpretation as the *Commentary* also clarifies that while the war effort involves all citizens to varying degrees, only those who contribute directly are committing hostile acts.³⁴

²⁷“the Pentagon has made it clear that it would treat voluntary human shields differently from hostages forced to stay at military targets. [...] they could be legitimate combatant targets, he adds.” Mark Thompson, “*Opening with a Bang. Time Magazine*,” (March 17 2003), par. 3, <<http://content.time.com/time/subscriber/article/0,33009,1004405-4,00.html>>

²⁸Stéphanie Bouchie de Belle, “Chained to Cannons or Wearing Targets on Their T-Shirts: Human Shields in International Humanitarian Law” *International Review of the Red Cross*, Vol. 90, No. 872, (December 2008), p.894.

²⁹Josiane Haas, “Voluntary Human Shields: status and Protection under International Humanitarian Law” in *International Humanitarian Law and the 21st Century’s Conflicts*, Ed. Roberta Arnold and Pierre-Antoine Hildbrand (Lausanne: Editions linteruniversitaire suisses, 2005), p.203.

³⁰Indiscriminate attacks are defined as “those which are not directed at a specific military objective” *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, p. 265. <<https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=5E5142B6BA102B45C12563CD00434741>>

³¹Bouchie de Belle, p.896.

³²Bosch, p.340.

³³Bosch, p.330.

³⁴*Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, p. 265. <<https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=5E5142B6BA102B45C12563CD00434741>>

However, the critics' interpretation of *direct* is too literal and narrows the threshold of violations further than the clause intended. This was the position taken by Dr. Nils Melzner, the legal advisor at the ICRC. He authored the "Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law" that was the product of the expert conferences held over the years and was adopted in 2009 by the ICRC assembly. It points out that in the Conventions the term *direct* is used synonymously with *active*. First, the debated Article 51.7 of the AP I is derived from the *Geneva Conventions IV* Article 3 which defines civilians as "persons taking no *active* part in the hostilities."³⁵ Also, the French version of the convention used the same term for both words, "*Participant Direct*."³⁶ Further, the International Criminal Tribunal for Rwanda (ICTR) affirmed the synonymous meaning of active participation and direct in their rulings.³⁷ Thus, the term *direct* must carry the same meaning in terms of scope and weight of involvement as the term *active*. As such Article 51.7 can be equally understood as any individual taking active part in hostilities. The most compelling evidence is that in the initial negotiations of the Article, an alternate draft was proposed that would guarantee civilian protection "except *when they commit hostile act* or take direct part in military operations."³⁸ It was rejected as unnecessary as the drafters believed that the additional wording was already implied.³⁹ Hence, reading Article 51.7 with the intended threshold of participation clarifies that VHS does constitute a violation of civilian obligation.

Accordingly, the legal scholar Richard Parrish provides a compelling case that VHS participation is more akin to a civilian systems contractor rather than an ammunition factory worker. Civilian system contractors are not officially part of armed forces yet are still legitimate targets. By ensuring the systems and artillery of war, such as anti missile defense systems, are functioning effectively they are considered active participants. Similarly, VHS ensure the effective operations of military assets by sheltering them against elements that would interfere, much like a soldier's role. In contrast, factory workers are considered non-participants because they

³⁵*Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, p.169.

³⁶Melzer, p.1015.

³⁷Camins, p.43.

³⁸Camins, p.877,

³⁹Camins, p.878.

⁴⁰Richard Parrish, *The International Legal Status of Voluntary Human Shields* Paper Presented at the Annual meeting of the International Studies Association, Montreal (17 March 2004), p.10. <http://www.allacademic.com/meta/p74057_index.html>.

only create the tools that soldiers use to defend but do not operate them.⁴⁰ Thus there is a distinction between offensive/defensive combat and military activities linked to combat.⁴¹ The ICRC supports this definition as “acts aimed at protecting personnel, infrastructure or material, where that behavior constitute a direct and immediate military threat to the adversary, constitute a direct participation in hostilities.”⁴² In summary, regardless of whether the VHS participation is indirect, their acts meet the threshold of active participation which is a breach of the condition of immunity and are therefore not afforded the civilian immunity.

III: Intention of Geneva Convention

Secondly, providing protection to civilians who participate in war, such as VHS, would contradict the purpose of the *Geneva Convention* to reduce hostilities of war. Intention is a legitimate source to interpret the application of treaties where terms, like *Direct Participation*, have not been defined. This is supported by the *Vienna Convention on The Law of Treaties* which says “A treaty shall be interpreted in good faith in accordance with ordinary meaning to be given to the terms in the context and in light of object and purpose.”⁴³ The intention of the *Geneva Convention* was to lessen the exposure of civilians to war by codifying laws of warfare against arbitrary action. This included banning human shields in Article 28 as “the use of protected person to immunize military objectives.” This prohibition became more explicit in AP I Article 51.7 “the presence or movement of the civilian population shall not be used to render certain points or areas immune from military operations.”⁴⁴ While the *Geneva Convention* applies to states comportment in war, it is significant that it banned not only use of human shields but more widely the prohibition of using protected status as a defense mechanism. Thus granting protection to VHS violates the conventions intentions of not allowing a stakeholder to gain lawful advantage in putting civilians in increased danger by using legal protections as a tool of warfare.

⁴¹Lyall, p.43.

⁴²Bosch, pp.340-341.

⁴³United Nations, *Vienna Convention on the Law of treaties*, 23 may 1969, p. 340, <<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>>.

⁴⁴*Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, p.179.

⁴⁵Michael N. Schmitt, “Human Shields in International Humanitarian Law” *Colombia Journal of Transnational Law*, Vol. 38, No.292 (2008), p.320.

Dissimilarly, opponents like Jean-Francois Queguiner, a Legal advisor of the ICRC, would refute that the intention of banning human shields does not extend to VHS. First, while there are numerous references to human shields, there is no explicit prohibition voluntarily acting as one.⁴⁶ All the conventions refer to Involuntary Human Shields such as those who complied under duress (hostages) or those who were unaware of their effects (proximity shields). Even the ICRC commentary mentions that it is unlikely that the Articles concerning prohibition on human shields were intended to cover voluntary cases. While AP I intentionally used the term “movement” to include civilians who voluntarily mobilize, it does not mean that they were referring to civilians intentionally acting as shields. It was referring to cases where the population was unaware of the cover they were providing for the assets.⁴⁷

This perspective is also affirmed by how human shields have been codified in the Rome Statute (2002) of the International Criminal Court (ICC).⁴⁸ VHS do not qualify as a war crime because they fail to meet all the criteria. More precisely, the first element is that “[t]he perpetrator moved or otherwise took advantage of the location of one or more civilians or other person protected under the International Law of armed conflict.”⁴⁹ Bouchie de Belle argues that this clarifies the true intention of shield laws as not to prohibit act of imposing a legal barrier, but the taking advantage of another civilians to shield. Thus, since VHS act without endangering others, they are not violating the intentions of shield laws and therefore are protected by the convention.

Nevertheless, proponents would refute that there is equally no evidence proving this interpretation of shield laws, which suggests that VHS were deliberately excluded from the Articles in the *Geneva Convention* or ICC. In fact since VHS are civilians, the only Article that is relevant to their conduct is Article 51, which outlines the provision of non engagement in hostilities in return for protection. Thus, the absence of a explicit ban on VHS does not deprive the

⁴⁶Schmitt, “Human Shields in,” p.360.

⁴⁷Jean-François Queguiner, “Precautions Under the Law Governing the Conduct of Hostilities” *International Review of the Red Cross*, Vol. 88, No. 864 (December 2006), p.816 .

⁴⁸Bouchie de Belle, p.898.

⁴⁹UN General Assembly, *Rome Statute of the International Criminal Court*, 17 July 1998, p. 16. <http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf>.

convention of its intention of banning the use of laws as tools of war, since it can be implicitly upheld by understanding that a civilian using their protected shield as a weapon is a breach of their civilian obligation. Further, while not an ICC war crime, these civilians are still being held accountable. The lack of immunity enables them to not only become legal targets of war, but also eligible to be persecuted in domestic court for participation in war without authorization.⁵⁰

Additionally, the critics' logic is flawed as examination of the drafters conception of *civilians* prove that the *Geneva Convention* never intended for civilian immunity to cover those who actively involved themselves in the war. Parrish comments that although civilians are not explicitly defined in the *Geneva Conventions*, they have been described by their lack of contribution to the war.⁵¹ This is implied when describing those eligible for the general protections as “persons taking no active part in the hostilities.”⁵² Further, the term civilian is negatively described as those who do not fit into the other “categories of person referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of” Protocol I.⁵³ In other words, a civilian is not a member of armed forces nor are they a member of a *levee en masse* (organized civilians taking arms).⁵⁴ Civilians were supposed to be given protected status because they were not viewed as engaged in the war, but rather as “war victims.”⁵⁵ Historically civilian protection was only accorded on the condition of harmlessness. The idea emerged at the same time as the Westphalia state in the 17th century. Grotius believed that fighting a “just war” required restraint of military action against innocent civilians. In his book, he states “By the law of war armed men and those who offer resistance are killed... [I]t is right that in war those who have taken up arms should pay the penalty, but that the guiltless should not be injured.”⁵⁶ Further, in the 18th century Rousseau introduced the concept of combatants and non-combatants by describing wars as conflicts between states, not involving the entire civilian population. Thus ci-

⁵⁰Camins, p. 894.

⁵¹Parrish, p.7.

⁵²***Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)***,par.1.

⁵³Parrish, p.7.

⁵⁴Parrish, p.7.

⁵⁵***Final record of the Diplomatic Conference convened by the Swiss federal council for the establishment of international conventions for the protection of war victims***, Final record of the Diplomatic Conference of Geneva of 1949, 1977, p.4, <http://www.loc.gov/rr/frd/Military_Law/pdf/Dipl-Conf-1949-Final_Vol-1.pdf>.

⁵⁶Camins, p. 857.

vilians were only involved accidentally and as non-combatants should not be targeted.⁵⁷ The common theme uniting these two contemporaries to IHL, is that civilian immunity is predicated on their lack of influence on the war. Thus, while no law bans VHS, it can be concluded that individuals who use legal status for military gain do not fit the definition of civilians as harmless and therefore immunity was not intended to protect them.

IV: The delicate balance underpinning International Humanitarian Law

Thirdly, allowing VHS to maintain civilian protection would undermine the foundation of International Humanitarian Law (ie., the balance of humanitarian concern and military necessity). An early IHL document, the St-Petersburg Declaration of 1868, summarizes this balance as “the technical limits at which the necessities of war ought to yield to the requirement of humanity.”⁵⁸ Therefore, civilian protection was never intended to be unlimited. At times it was expected to cede, such as Article 51 in United Nations Charter, which reads, “nothing in the present charter shall impair the inherent right of individual or collective self defense.”⁵⁹ This gives states the right to weaken enemy forces by attacking military objectives, including those who actively engage in war in defensive or attacking capacities like VHS. The balance is supposed to reflect “just war” theory by establishing conduct of warfare (*Jus in Bello*) that limits the civilian exposure but still allows for military action that is working towards peace. Schmitt argues that this second part has been overlooked in recent years as IHL is continuously legislating and interpreting in favor of humanitarian concerns. For instance the conditionality of civilians status was deemphasized in the title of the third *Geneva Convention*. Initially it was referred to as “The condition and protections of the civilian persons” while the final version read “Protection of civilian persons in war.”⁶⁰ As a delegate mentioned, this is misleading as only one part of the entire document refers to the protection of civilians as a whole, while the rest of the covers the civilians who met their obligation. Additionally the scope of protection was sup-

⁵⁷Camins, p.858.

⁵⁸Bosch, p.853-854.

⁵⁹Douglas H Fischer, “Human Shields, Homicides, and House Fires: How a Domestic Law Analogy Can Guide International Law Regarding Human Shield Tactics in Armed Conflict” *American University Law Review*, Vol. 57, No. 2, (2007), p.481-482.

⁶⁰**Commentary Title of Convention: Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)**, International Committee of the Red Cross (ICRC), 12 August 1949, 75 UNTS 287, <<https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=C632DADCEAC6A479C12563CD0042A04A>>.

posed to cover against only arbitrary aggressor action, not against all dangers of war. This gap in the intention and today's interpretation proves just how far the convention has tilted.⁶¹ This misguided interpretation has materialized into legislation amendments that further cement civilian advantage such as in *Additional Protocol I to the Convention*. For instance, the suspension of protected status is only temporary “for such time as they take direct part in hostilities.”⁶² Thus, they regain immunity, and no longer be a legitimate target, as soon as they cease participation. In contrast, combatants who may participate in war at the same level are always legitimate targets regardless of whether they are on duty or not. Similarly, only civilian participation that meets a certain threshold is considered threatening, this excludes some activities civilians partake in that aid the war effort.⁶³ Schmitt has argued that interpreting the law to allow for VHS to have protection would continue this growing imbalance, which undermines the purpose of the law.⁶⁴ Just theory is suppose to protect civilian but not significantly damper the forces ability to effectively engage. Allowing protection to VHS has unequal consequences on the parties of war; granting an unfair advantage to the defense.

Conversely, opponents argue that VHS with protection is not a shift towards humanity but a reflection of balancing the higher risk in modern warfare. As stated in the Nuremberg trials, military necessity is subject to the laws of war.⁶⁵ The legal basis for restraint of attacker is based on the *Hague Regulation of 1907*, which clearly states “the right of the belligerent to adopt means of injuring enemy is not unlimited.”⁶⁶ Further, Bouchie de Belle argues that their claim of imbalance is overstated as the presence of civilians does not render it absolute immunity. The military objective does not adopt civilian status, their presence just factors into the proportionality analysis. Thus, proportionality embodies the balance by permitting the target if the threat is larger than civilian casualties.⁶⁷ Further, she argues that this two tier system of human shields would be abused by aggressors because they would be tempted to classify innocent by-

⁶¹*Commentary Title of Convention: Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, par.

⁶²William J. Fenrick, “The Targeted Killings Judgment and the Scope of Direct Participation in Hostilities” *Journal of International Criminal Justice*, Vol. 5, No.2 (2007), p. 337.

⁶³Camins, p.870.

⁶⁴Michael N. Schmitt, *Essays on Law and War at the Fault Lines*, The Hague, Netherlands: T.M.C. Asser Press, 2012, p.515.

⁶⁵Camins, p.859.

⁶⁶Ezzo and Guiora, p.5.

standers as VHS in order to distort a favorable proportionality rate. The laws of distinction would also be compromised as the classifications of civilians become at the mercy of subjective criteria such as willingness to participate. Critics argue that voluntariness cannot be accurately measured from a commanders perspective, at least to the extent that is required to relinquish protected status. After all, how can they be certain that the civilian is acting voluntarily and not out of duress or even unawareness?⁶⁸ The laws are clear, in times of uncertainty a person is assumed protected civilian “until such time as their status is determined by a competent tribunal.”⁶⁹ While willingness may be a reasonable factor in court where applied rationality yields a fair verdict, it can hardly be discerned on a battlefield. Critics would also point that humanizing of IHL is a reflection of IHL adapting to the riskier environment civilians are exposed to in modern day conflict. This is reflected in the increase rate of civilian casualties in war. Their deaths accounted for 15% in WWI, 65% in WWII while in modern conflict the number is estimated 84%.⁷⁰ Therefore, the intention of IHL has never been to fully immunize the civilians, but to balance their level of protection with the increased military threat.

Despite the fact that military innovations have created more deadly arms, opponents have ignored civilians increased capacity to harm their adversaries.⁷¹ Schmitt points out that modern armies have become vulnerable to their dependence on technology to store and transmit military intelligence and automate sophisticated equipment. The skills needed to hack military systems are not reserved to soldiers; indeed any civilian can learn the trade and become a threatening force.⁷² In contrasts, the innovations in technology have enabled attackers to be more accurate, limiting its effect on civilians. Using the percentage of civilians that account for casualties is deceiving statistic because the total numbers of causalities have decreased and suggest war is becoming less deadly. For instance, in WWII (1939) 45,000,000 civilian killed, while Vietnam (1955) amounts to 587,000 and Iraq (2003) 165,000.⁷³ Additionally, most civil-

⁶⁸Bouchie de Belle, p.903.

⁶⁹Bosch, p.323.

⁷⁰Fischer, p. 484.

⁷¹Camins, p.880.

⁷²Schmitt, Michael N, “War, Technology, and International Humanitarian Law,” *Program on Humanitarian Policy and Conflict Research Harvard University*, No. 4. (Summer 2005), pp. 2-6.

ian casualties are repercussions of perfidious actions not following the IHL, not due to lack of attacker restraint.⁷⁴ Thus more protective laws would be ineffective in addressing civilian casualties caused by those who ignore it.

Further, humanizing IHL has put civilians safety in greater jeopardy by creating an incentive to disobey laws, which threatens the credibility of IHL. Allowing VHS to retain civilian status has resulted in contradicting consequences. An individual willing to risk their lives defending military objectives become more effective as an unarmed civilians shield than a soldier. In military parlance this has been referred to as “counter targeting.”⁷⁵ States such as Iran have recognized this grey area in International Law and have exploited it as an asymmetrical advantage. In 2006 it had “suggested” that athletes and other civilians should travel to the nuclear reaction in Isfahan to form a shield against attacks.⁷⁶ This form of lawfare allows humanitarian concerns to be employed in military necessity, defying the intentions of the convention.⁷⁷ This threatens not only the safety of civilians and longevity of the war, but the legitimacy is undermined when it is seen favoring one party. As Colonel Hays Parks stated “any law of war that offers the potential for a military advantage for the defender over the attacker, or vice-versa, is doomed to failure.”⁷⁸ Likewise, Schmitt argues that its relevance is dependent on its ability to address emerging developments in war while retaining consistency with purpose and values.⁷⁹ By interpreting VHS as unprotected civilian, it sustains (not violates) principle of distinction. As discussed, the contemporaries’ envisioned distinction to divide protections based on those who are harmless and those who are threatening, like VHS.⁸⁰ Additionally, while technically they can become a legitimate military objectives, this is highly unlikely given the “economy of force” principle which directs forces to act efficiently by focusing on only the most valued tar-

⁷³WWII : **By the Numbers: World Wide Deaths**, The National WWII Museum, par. 2, <<http://www.nationalww2museum.org/learn/education/for-students/ww2-history/ww2-by-the-numbers/world-wide-deaths.html?referrer=https://www.google.ca/>>Iraq: **Iraqi Civilians**, Watson Institute for International and Public Affairs: Cost of War, Par. 2, <<http://watson.brown.edu/costsofwar/costs/human/civilians/iraqi>> Vietnam: Hirschman, Charles, Samuel Preston and Vu Manh Loi. “Vietnamese casualties During the American War: A New Estimate.” **Population and Development Review**, Vol. 21. No. 2 (December 1995), p.783.

⁷⁴Fischer, p. 485.

⁷⁵Schmitt, “Human Shields in,” p.293.

⁷⁶Lyall, p.315.

⁷⁷Schmitt, “Human Shields in,” p. 301.

which traditional military strategies are forgone for instead using the law as an instrument of war to achieve the same objectives Schmitt, “Human Shields in,” p.298.

gets. Thus while the military asset they are defending may be of worth, the VHS themselves will never be directly targeted because they aren't as valuable.⁸¹ Relatedly, VHS intentions can be deduced based on the asset they are protecting (military in nature) and by their unwillingness to relocate when advised. Evidently, civilians will only be classified as VHS when there is sufficient evidence. Moreover, even though the questionable legal barrier would be lifted, the moral and media forces will still restrict the attacks. Historically, media focuses on scrutinizing attacker obligation to restraint rather than the defender's equal obligation to clear civilians from danger.⁸² As Schmitt noted, the "CNN effect" can be counterproductive to the efforts of war. Not only will the attacker be subject to negative public opinion, but the defender can manipulate the situation by using the attack to claim moral superiority, play victim and consequently garner international and domestic support in the war.

Conclusion

Voluntary Human Shields forfeit protection by using their civilian immunity as a shield for military objectives, which violates their obligation, the intention of the Geneva Convention and the foundation of International Humanitarian Law. First, regardless of whether their involvement is indirect or direct, it meets the threshold of active participation thus breaches the condition of their protection to not participate in hostilities. Second, while no explicit law bans voluntarily participating in war as a shield, civilian immunity was not intended to protect those who sought to increase involvement in war. Lastly, the shift in balance towards humanitarian concern does not increase civilian protections, but places them in greater jeopardy by undermining the intention and credibility of humanitarian law. While the ambiguity of the International Law leaves room for different interpretations, the legal status of VHS needs to be determined on the intentions of IHL. As a Judge once said about treaties they "should be construed

⁷⁸Amnon Rubinstein and Yaniv Roznai, "Human Shields in Modern Armed Conflicts: the Need for a Proportionate Proportionality" *Stanford Law & Policy Review*, Vol. 22, No. 1 (2011), p.108.

⁷⁹Fischer, p. 512.

⁸⁰Ezzo and Guiora, p. 2.

⁸¹Fischer, p. 326.

⁸²Fischer, pp.488-489.

⁸³Schmitt, "Human Shields in," p.301.

not as theorems of Euclid, but with some imagination of the purpose which lies behind them.”⁸³ IHL was never intended to inspire activist to travel to war zones such as Iraq in order to create a legal and moral barrier against attackers missions for peace. It was intended to ensure that civilians are not used as pawns of war, to ensure that the conflict remains between states. The only way to ensure the survival of any code of war protecting civilians is to ensure that its integrity is not undermined.

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Food Insecurity: The Threat of Hunger

By: Talitha Cherer

The world will face the challenge of feeding over 9 billion people by 2050¹ so it is imperative that the global community cooperates to develop timely solutions. We must focus today to develop a sustainable global food system, one that not only provides adequate food, but also encourages healthy communities and economies that will sustain the planet.² Food security is not a single issue, but rather a broad, interconnected concept with far-reaching effects that demands holistic approaches and effective solutions.

This essay begins with some definitions of the food security problem. The nature of the problem is discussed and experts' opinions are provided. Next, the essay outlines the various causes of food security including population growth, food production limitations, water scarcity, rising energy prices, global dietary changes, and climate change. Next, the essay analyzes the possible consequences of food insecurity. It is predicted that the consequences of food security will be far reaching and ultimately result in political instability and civil unrest. As more of the global population is pushed into hunger, we need to explore different policy options and consider recommendations that could alleviate this global security threat.

Food Insecurity: A definition of the problem

The Food and Agriculture Organization (FAO) defines food security as “a situation that exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.”³ This definition led to the identification of four dimensions of food security: food availability, food access, food utilization, and food stability.⁴ Here, the broad nature of the food

security problem is revealed. The first element of the food security problem is the sheer number of people it affects. The Committee on World Food Security reported that 842 million people—or around one in eight people in the world—were estimated to be suffering from chronic hunger between 2011-2013.⁵ Although the international community has made efforts to address this problem, the reality remains: millions of people continue to suffer and it may only get worse. Based on projections made at the FAO Rome Summit on World Food Security in June 2008,⁶ the international community has come to the general consensus that food production must increase between 70-100% by 2050⁷ in order to feed the estimated future global population of 9 billion. Exponential population growth will result in increased demand on limited resources. This leads to the second element of the food security problem— its relationship to a large number of outside factors, such as the aforementioned limited resources. To create any solution to food insecurity, a multitude of variables must be taken into account. Food insecurity is not attributable to a sole cause, but rather to an entire network of causes. This web of variables makes it difficult to identify the problem and to devise solutions. Finally, a third issue is that food insecurity is largely a developing world issue and is predicted to disproportionately affect these countries in the future.

Probable Causes of Food Insecurity

Food insecurity cannot be attributed to a single cause. Instead, it stems from a multitude of causes, including, but not limited to population growth, food production limitations, water scarcity, energy prices, global dietary changes, and climate change. This section will provide an analysis of the probable causes, both current and near future, of food insecurity.

One driver of food insecurity is population growth. Today, the world population stands around 7.3 billion⁸ and may only be expected to increase as modern medicine and living stand-

ards improve. While the growth rate has declined, the absolute annual increments continue to be large⁹ and population projections reveal that this trend is likely to continue. The United Nations Population Fund (UNFPA) publishes population projections every two years that compare low, medium, and high population growth scenarios. In the most recent of these projections, it is predicted that in the medium scenario, the world population will increase to almost 10 billion by mid-century.¹⁰ Whether projected population pressures may be met and sustained is largely dependent on the demographic region. Countries with certain characteristics such as heavy economic dependence on their own agriculture for income, employment, food supplies, or agricultural resources that are limited in quantity and/or quality (e.g. predominantly semi-arid, with little irrigation potential), are particularly vulnerable to population growth.¹¹ These characteristics are found in developing countries such as Uganda or Yemen where food insecurity is already high and national population growth is predicted to grow much faster than the rest of the world. For example, Uganda's population growth is expected to grow from 30 million in 2006 to 91 million in 2050.¹² Overall, the world as a whole may experience difficulty adapting to meet the demands of the growing global population, but countries that are already food insecure and also predicted to experience extremely high population growth rates, face a much larger challenge. The World Food Security reported that 842 million people—or around one in eight people in the world—were estimated to be suffering from chronic hunger between 2011-2013.¹³ As the world population continues to grow, the number of those suffering from chronic hunger will surely grow in parallel. It is unlikely that countries that are doubly disadvantaged by experiencing both high food insecurity and high population growth, such as many sub-Saharan African countries, will be able to withstand these pressures without substantial international assistance. Beyond the difficulty countries will experience in their efforts to meet growing domestic

demands, population growth will also increase food insecurity by further taxing earth's finite resources. The negative environmental costs of agricultural production will grow as higher levels of food are produced. Overall, population growth is a cause of food insecurity as it challenges nations, particularly in already food insecure regions, to adapt to higher population pressures and as it further taxes earth's resources in response to growing agricultural production demands. The latter must be recognized as not only a consequence of population growth, but also a separate driver of food insecurity.

Food production must increase demonstrably by mid century, creating another driver of food insecurity. The international community has come to the general consensus that food production must increase between 70-100% by 2050¹⁴ in order to feed the estimated future global population of 9 billion. Earth's resources are not unlimited and food insecurity will certainly rise as these resources continue to be over exploited by the agricultural sector. Upon analysis of agriculture's current impact on earth's resources, it is clear that increased food production will undoubtedly have far-reaching effects. Negative externalities of food production include the following: the release of greenhouse gases; environmental pollution due to nutrient run-off; water shortages due to over-extraction; soil degradation and the loss of biodiversity through land conversion or inappropriate management; and ecosystem disruption due to the intensive harvesting of fish and other aquatic foods.¹⁵ These externalities have huge costs that cannot be overlooked. It has been suggested that "land based degradation may cost the global economy as much as US\$66 billion per annum from losses in net primary production."¹⁶ Declining yields and productivity loss will only be further exasperated as predicted levels of climate change, water scarcity, pest invasion, and land degradation come into effect. In fact, it is predicted that up to 25% of world food production may be lost during the 21st century due to these reasons.¹⁷

Analysis of food production reveals that major changes in food production must be made in an effort to curb further exploitation of earth's resources. These resources have often been treated as though unlimited, but it is clear that food security will never be attained if we do not develop mechanisms that allow for effective and sustainable food production in the future.

Related to food production, a third driver of food insecurity exists—water scarcity. In fact, the United Nations has stated that “It is water scarcity, not a lack of arable land, that will be a major constraint to increased food production over the next few decades.”¹⁸ Agriculture is largely dependent on water, accounting for 70% of freshwater withdrawals globally.¹⁹ However, current crop water usage rates are unsustainable, resulting in a push of global water usage beyond the estimated safe operating boundary for the planet.²⁰ Consider that about 450 million people in 29 countries face severe water shortages and about 20% more water than is now available will be needed to feed the additional three billion people by 2025.²¹ Irrigation is a specific aspect of water usage that must be addressed as it contributes to 42% of global crop production²² but is the first sector to come under pressure as water scarcity increases.²³ While increasing irrigation is a widely cited food production solution, countries do not necessarily have the water available for such projects.²⁴ In fact, numerous countries have crossed the threshold of impending water scarcity by using more than 20% of their renewable resources for irrigation.²⁵ It should also be noted that irrigation is especially tenuous in regions that currently experience renewable water resource scarcity such as Near East/North Africa and Northern China.²⁶ These regions already experience food insecurity; therefore, it may be reasonably assumed that as water scarcity effects become more pronounced, they will suffer disproportionately. Agriculture is already viewed as one of the main factors behind the global scarcity of freshwater²⁷; thus, as food production increases to meet rising population demands, it is expected that this resource

will become increasingly valuable and adversely impact food security. Water scarcity has significant consequences, such as increased competition for water between sectors, resulting in the transfer of water out of agriculture and, therefore, less water for food; increased inequity between the developed and developing world due to water access inequalities; decline in global per capita food production; and tension over the use and control of water.²⁸ Each of these consequences either directly or indirectly adversely impacts food security.

In an era of expensive energy, it has become clear that energy prices are strongly correlated with food security. This factor is connected to food production in numerous ways, including transportation from farm to store, machine operation, fossil fuel use in fertilizers, and more. As a result of the consistent rise of energy prices in recent years, higher farming costs have become the norm as the price of fuel and fertilizers steepens²⁹ and the inadvertent dependency of our global food system of today upon fossil fuels, specifically oil and natural gas, has been revealed.³⁰ Rising energy costs directly translate into higher machinery, transportation, and fertilizer costs. In response, the cost of food for consumers rises as well. Not only do high-energy prices raise food prices, it also has been noted that they result in the expansion of the biofuel market.³¹ A marked shift away from food production is clear as crops such as sugar cane, maize, and palm oil are increasingly used for biofuel production³² rather than food. This phenomenon is tied to rising oil prices, which has been made clear by the “ratchet effect”, or the enhanced coupling of food and oil prices that arise as farmers switch to biofuel production in response.³³ Biofuel production creates higher food security risks as it creates competition for cropland. As the global population grows, cropland becomes more valuable and powerful interests will begin to compete for this limited cropland for biofuel production purposes, adversely affecting food supply availability. As cropland becomes a commodity for both a food and ener-

gy production, it is predicted that “powerful emerging economies [will] scramble to take control of land in some of the poorest countries in pursuit of their own food and energy security.”³⁴ The ensuing power struggle may result in violence and unrest, further enhancing food insecurity in already poor countries.

A fifth driver of food insecurity is the evolution of dietary habits in the developing world as a result of globalization. As developing countries aim to replicate Western protein-based diets, the “livestock revolution”³⁵ appears to be gaining traction. Widespread income growth throughout the developing world has led to a parallel increase in per capita consumption levels of animal products. Consider that caloric intake per capita rose by 60% on average between 1960 and 2006, while the share of animal products in total food consumption grew from 7% to 16%.³⁶ For example, it is estimated that China’s animal product consumption has quadrupled since the 1960s, now resting at 20% of local diets.³⁷ This standardization of tastes and the spread of Western lifestyles, results in a globalized dietary pattern that has adverse consequences on public health, food security, and climate change.³⁸ Livestock production is especially detrimental to the environment as it is a direct cause of climate change, responsible for approximately 18% of greenhouse gas emissions.³⁹ Livestock production generates 65% of anthropogenic nitrous oxide, 35% of methane, and 9% of global carbon dioxide.⁴⁰ The challenge to meet the necessary levels of food production to alleviate global food insecurity is immense, but to add to the problem a shift to Western diet standardization makes food production completely unsustainable. The basic understanding that more people could be supported from the same amount of land if they were vegetarians must be taken into consideration as well. The conversion efficiency of plant into animal matter is ~ 10%,⁴¹ highlighting that using more croplands for livestock feed production is impractical in the face of increased demands for food produc-

tion overall. As it stands, the costs of the changing dietary practices around the world are unsustainable and will certainly lead to increased food insecurity.

A sixth driver of food insecurity, climate change, is arguably the most important driver, as it exists in a negative cyclical relationship with the majority of the food insecurity drivers. Climate change simultaneously acts as both a cause and consequence of food production. The International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) outlined five major agricultural causes of climate change in their Synthesis Report. First, land conversion and plowing releases large amounts of stored carbon from vegetation and soils.⁴² Second, deforestation results in the release of carbon through the decomposition of aboveground biomass and peat fires and decay of drained peat soils.⁴³ Deforestation also results in a reduction trees available to reduce carbon emissions through the natural carbon dioxide absorption processes. Third, fossil fuels used to power farm machinery, irrigation pumps, fertilizer production etc., lead to carbon dioxide and particulate matter emissions.⁴⁴ Fourth, nitrous oxide is emitted as a consequence of nitrogen fertilizer application, manure application, and the decomposition of agricultural wastes.⁴⁵ Finally, methane is released through livestock digestive processes and rice production. It is clear that climate change is, in part, a direct consequence of agricultural production.⁴⁶ As climate change becomes a more pressing issue on the global agenda, it has been established that food security will be severely impacted by this threat. A few of the negative impacts of climate change include warmer temperature, changes to rainfall patterns and increased frequency and severity of extreme weather events.⁴⁷ These affects will, according to the IPCC's Fifth Assessment Report, potentially impact all aspects of food security, including food access, utilization, and price stability.⁴⁸ Across research, it is also consistently found that the negative effects of climate change will exacerbate food insecurity in are-

as that already struggle with the burden of hunger and undernourishment. The effects will be unfairly distributed, mainly affecting sub-Saharan Africa and parts of South Asia as widespread droughts and floods create more frequent fluctuations in food production in these semi-arid and sub-humid areas.⁴⁹ Changes in global and regional weather conditions, mainly increases in frequency and severity of extreme weather events, are also expected to result in greater fluctuations in crop yields and local food supplies as well as higher risks of landslides and erosion damage that ultimately affect the stability of food supplies.⁵⁰ The changing climatic conditions are also expected to result in ill-health effects among populations that will result in a substantial decline in labor productivity, increase in poverty, decreased ability of individuals to use food effectively as conditions for food safety' and changing disease pressures are some of the issues.⁵¹ The various impacts of climate change on food security are well established in the international community. It is also recognized that climate change impacts on food security will be worse in countries already suffering high levels of hunger. Areas currently plagued by chronic hunger and undernourishment are expected to become increasingly food insecure, as they are not only the most directly impacted, but also the most vulnerable to the effects of climate change.

Possible Consequences of Food Insecurity

Upon analysis of these six major causes of food insecurity, it is clear that prospects for ameliorating this problem are bleak. Each variable results in negative consequences that are only predicted to worsen over time. Notably, these variables often overlap as well as each factor further exacerbates another. Population growth will result in increased stress on earth's resources and further tax weak infrastructures in already food-insecure states. Food production limitations will result in decreased food access as production fails to meet increased population

demands. Increased food production levels will also result in further land degradation and greenhouse gas emissions. Dietary changes, as a result of income growth in the developing world, are similarly expected to lead to additional environmental degradation and propel climate change effects. Energy and water scarcity are expected to act as restraints on food production, raising the costs of food and other staple commodities. Finally, climate change will adversely impact all aspects of food production leading to decreased crop yields, increased water scarcity, widespread health issues, increased natural disaster occurrence, and more. The consequences of current food production are potentially large and will ultimately result in increased food insecurity rates around the world, particularly in sub-Saharan Africa and Asia.

The exact outcomes of the predicted alarming rates of food insecurity are unknown. However, it is reasonable to suggest that these outcomes will include political instability, such as food riots and resource conflict, large-scale migration movements, and mass famine and disease. The “food crisis” of 2007-2008 provides useful insight into the possible outcomes of increased food insecurity. As food prices peaked during this time period, an unprecedented number of protests and “food riots” erupted in response to civil unrest as larger portions of the Global South population⁵² were forced into poverty. A food riot is defined as “civil unrest in response to the unavailability of basic staple foods following an increase in food prices that led to violence and casualties, as reported by the international media.”⁵³ Throughout 25 countries in Africa, Asia, the Middle East, the Americas, and the Caribbean, demonstrations, marches, and rallies occurred in direct response to food insecurity.⁵⁴ An Al Jazeera article at the time reported that “thousands of people have resorted to violence due to shortages of basic food commodities and rising food prices.”⁵⁵ These global disturbances will likely increase in direct correlation with growing food insecurity. Governments that cannot control such civil unrest may face polit-

ical instability or even regime overthrow. Existing evidence of such predictions is limited; however, when focusing on the *causes* of food insecurity, evidence does exist. For example, the IPCC Government report claims that “Climate change can indirectly increase risks of violent conflicts in the form of civil war and inter-group violence by amplifying well-documented drivers of these conflicts such as poverty and economic shocks.”⁵⁶ As mentioned previously, food insecurity is indirectly related to climate change; therefore, this statement is applicable not only to climate change, but to food insecurity as well. It has also been theorized that climate change, and therefore food insecurity, may also be linked to terrorism. Renowned scientist, Bill Nye, recently claimed in an interview that water shortage in Syria was indirectly linked with terrorism. Nye claims that as small and medium farmers are increasingly displaced from their land due to water shortages, the disaffected youth are moving to the urban centers. This burgeoning population group is increasingly dissatisfied as they struggle to find work or basic opportunity for advancement in society and are, therefore, more easily engaged and recruited by terrorist organizations.⁵⁷ These indirect links to food insecurity cannot be denied. Political instability, terrorism, and conflict are likely outcomes in the coming era of increased food insecurity.

The IPCC also notably claims that “Climate change over the 21st century is projected to increase displacement of people.”⁵⁸ The UNCHR, the UN reported that as food security becomes a more challenging issue, people will have to try to adapt to this situation, but for many this will result in moving elsewhere for survival.⁵⁹ This migration may “spark conflict with other communities, as an increasing number of people compete for a decreasing amount of resources.”⁶⁰ The recent refugee crisis of Syria is a testament to the adverse impact of refugees and displacement. In the case of food insecurity, it is a reasonable prediction that millions of Africans will be forced to migrate in search of hunger alleviation in the face of climate change.

The influx of these displaced persons, often referred to as “climate refugees”, will result in extreme infrastructure stressors as states attempt to adapt to refugees within their borders.

Food insecurity will also have adverse effects on global health. It is predicted that, in the face of climate change, “infectious and vector-borne animal diseases will continue to become increasingly frequent worldwide.”⁶¹ A major concern is that “the changing climatic conditions can initiate a vicious cycle where infectious disease causes or compounds hunger, which, in turn, makes the affected populations more susceptible to infectious disease.”⁶² Also, pest or insect movement as changing climates allow for these disease-carrying vessels to survive in new regions, results in the spread of diseases or illness to populations that have not adopted resistant immunities. The ensuing health costs of such health issues will be unbearable in the poorer regions of the world. Much of the developing world has only basic healthcare infrastructure that would not be able to withstand a food insecurity crisis.

Policy Options & Recommendations

The possible consequences of increased future food insecurity are detrimental to global stability. While food insecurity cannot be completely eliminated, policy options exist that will alleviate some of the burden. The major policy recommendations suggested here include waste reduction, further trade liberalization, and increased technological innovation funding. These recommendations are encompassed within a broader understanding of the necessity of a “twin track approach”, requiring specific and urgent attention to both short- and longer-term interventions to address food insecurity and malnutrition.⁶³ These tracks must be undertaken simultaneously and immediately so as to ensure effective results.

Waste reduction is a key policy recommendation in the effort to alleviate food insecurity impacts. Current food wastage is roughly 30 to 40% in both the developed and developing worlds.⁶⁴ However, *how* food is wasted differs between the worlds. In developing countries, more than 40% of food is lost during post-harvest or during processing while in developed countries, more than 40% of food may be wasted at the retail and consumer level.⁶⁵ These levels of waste are unsustainable. In an era of increased food insecurity, waste reduction policies will expand food availability for millions if utilized properly. It is recommended here that investment and research in storage and transportation technologies be encouraged in developing countries. The usefulness of such recommendation is highlighted in the case of India where it is estimated that 35 to 40% of fresh produce is lost because neither wholesale nor retail outlets have cold storage.⁶⁶ As for the developed world, it is clear that incentives to avoid waste would be particularly useful. In the U.S. alone, 30% of all food, worth over \$48 billion, is thrown away annually.⁶⁷ These levels of waste are unacceptable and must be curbed through public awareness programs and through the reprimand of such practices. It has been suggested that the customary cosmetic standards of food today and the commercial pressures, such as “supersizing”, lead to developed world wastefulness.⁶⁸ Public awareness campaigns denouncing such waste and informing consumers of the impracticality of the rejection of edible food on the basis of cosmetics may generate social movements or change in food norms. Focusing on the supply side, it is also recommended here that reprimand for excessive waste by agri-businesses, food retailers, restaurants, and more be applied. Such reprimand may include a “food tax” similar to a carbon tax, where waste beyond a maximum standard is fined. Programs to salvage wasted food are also recommended. Recent French legislation banning supermarkets from throwing away or destroying unsold food, exemplifies such a policy. Supermarkets throughout France

must now donate the food to charities or for animal feed.⁶⁹ Waste reduction, especially in the developed world, will require a concerted effort to design creative and effective solutions that incorporate innovative technology advancement, government initiatives, and a shift in public awareness of the issue.

Increased trade liberalization is a second major policy recommendation. Trade openness is argued to benefit all four dimensions of food security. By raising incomes and contributing to faster economic growth, trade liberalization supports increased food access.⁷⁰ Simultaneously, food availability increases as well as trade enables products to flow from surplus to deficit areas.⁷¹ In addition, improvement of food utilization is attained as national diets are increasingly diversified.⁷² Finally, food stability is established as open markets generally improve the stability of access due to the pooling of production risks across individual markets.⁷³ Although trade liberalization is beneficial in many ways, it is not without costs. To minimize loss, it is key that policymakers design policies that take the losing interests into consideration and mitigate said losses.⁷⁴ These mitigation strategies include social protection and the provision of risk management tools.⁷⁵ These considerations must be taken into account when designing new trade policies, as well as in the reform of current trade policies. Possible trade policy reforms include flexibility and differentiation in trade policy frameworks such as preferential market access for poorer developing countries.⁷⁶ Overall, trade policy should aim to create a fairer global trading system, acting as a tool to facilitate food security.

Another commonly proposed solution to food insecurity is increased funding for technological innovation. A key tenet of this policy recommendation is sustainable intensification or the “production of more food from the same area of land while reducing the environmental impacts.”⁷⁷ Policy recommendations in line with sustainable intensification include increased tech-

nology research and development, as “new technologies can extend the production function or carrying capacity beyond its current biophysical limits.”⁷⁸ Examples include the improvement of crops through genetic modification or the development of more efficient irrigation systems. The benefits to be received from investment in agricultural research are made clear by one study that estimated an average internal rate of return of 43% in 700 Research and Development projects evaluated in developing countries.⁷⁹ A second element of the increased funding for technological innovation recommendation is the modernization of developing world farming systems. Steps must be taken to remove the technical and economic constraints that prevent food producers from increasing productivity⁸⁰ in already food insecure regions. Policies that facilitate increased farming efficiency as well as crop improvement and protection, and agricultural engineering and mechanization⁸¹ in these countries are to be encouraged. Advancement of technology across the food system is necessary to meet global food output goals of the future.

Beyond the aforementioned policy recommendations, there exist many other useful recommendations. Detailed analysis of such policy recommendations is beyond the scope of this paper; however, it is beneficial to include a brief note of these additional options. Additional recommendations include increased foreign aid or developed-to-developing country agricultural assistance; the development of water and energy conservation strategies and technologies; increased support of farmers, especially small farmers, to develop and protect agricultural production in food insecure regions; efforts to reverse the change in dietary trends towards high levels of meat consumption; and a global focus on the reduction of greenhouse gas emissions overall. Despite competing policy recommendations, it should be remembered that the underlying consensus remains that food security is a vital future challenge that must be dealt with immediately and with unprecedented global cooperation. It is imperative the international community devel-

op these policy options in tandem so as to create both short term and long term solutions to food insecurity in an effective fashion. All such policy options and recommendations outlined here would have widespread benefits. Food security can no longer be so rudimentarily defined as an issue of food production limitations—rather it is a problem that is far-reaching in its causes and consequences, and therefore, its solutions must be equally extensive.

¹“World Population Trends,” last modified October 6, 2015, <http://www.unfpa.org/world-population-trends>.

²Isobel Tomlinson, “Doubling food production to feed the 9 billion: A critical perspective on a key discourse of food security in the UK,” *Journal of Rural Studies* 29 (2013): 87, accessed December 7, 2015, doi:10.1016/j.jrurstud.2011.09.001.

³“The State of Food Insecurity in the World 2015,” Food and Agriculture Organization of the United Nations, accessed December 7, 2015, <http://www.fao.org/hunger/glossary/en/>.

⁴Tim Wheeler and Joachim von Braun, “Climate Change Impacts on Global Food Security,” *Science* 2 (2013): 509, accessed December 7, 2015, doi: 10.1126/science.1239402.

⁵“Global Strategic Framework for Food Security & Nutrition (GSF): Third Version 2014,” Committee on World Food Security, accessed December 7, 2015, <http://www.fao.org/3/a-av031e.pdf>.

⁶Damian Maye and Kirwan, James, “Food Security: A fractured consensus,” *Journal of Rural Studies* 29 (2013): 1, accessed December 7, 2015, doi: 10.1016/j.jrurstud.2012.12.001.

⁷Tomlinson, “Doubling food production,” 81.

⁸“World Population Trends.”

⁹Nikos Alexandratos and Jelle Bruinsma, “World agriculture towards 2030/2050: the 2012 revision,” *FAO ESA Working Paper* No. 12-03 (2012): 29, accessed December 7, 2015, <http://large.stanford.edu/courses/2014/ph240/yuan2/docs/ap106e.pdf>.

¹⁰“World Population Trends.”

¹¹Alexandratos and Bruinsma, “World agriculture towards 2030/2050,” 31.

¹²Ibid.

¹³“GSF: Third Version 2014.”

¹⁴H. Charles J. Godfray et al., “Food Security: the Challenge of feeding 9 billion people,” *Science* 327 (2010): 813, accessed December 7, 2015, doi:10.1126/science.1185383.

¹⁵Ibid, 814.

¹⁶Colin J. Chartres and Andrew Noble, “Sustainable intensification: overcoming land and water constraints on food production,” *Food Security* 7 (2015): 237, accessed December 7, 2015, <http://link.springer.com.proxy1.lib.uwo.ca/article/10.1007%2Fs12571-015-0425-1>.

¹⁷Fiona C. McKenzie and John Williams, “Sustainable food production: constraints, challenges, and choices by 2050,” *Food Security* 7 (2015): 223, accessed December 7, 2015, <http://link.springer.com.proxy1.lib.uwo.ca/article/10.1007%2Fs12571-015-0441-1>.

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- ²¹Hanjra and Qureshi, "Global water crisis," 366.
- ²²Hertel, "The challenges of sustainably feeding," 188.
- ²³Hanjra and Qureshi, "Global water crisis," 366.
- ²⁴Chartres and Noble, "Sustainable intensification," 238.
- ²⁵Alexandratos and Bruinsma, "World agriculture towards 2030/2050," 13.
- ²⁶Ibid, 12.
- ²⁷Ibid, 116.
- ²⁸Hanjra and Qureshi, "Global water crisis," 367.
- ²⁹Ibid, 368.
- ³⁰Colin Sage, "The interconnected challenges for food security from a food regimes perspective: Energy, climate and malconsumption," *Journal of Rural Studies* 29 (2013): 74, accessed December 7, 2-15, doi:10.1016/j.jrurstud.2012.02.005.
- ³¹Hanjra and Qureshi, "Global water crisis," 368.
- ³²Sage, "The interconnected challenges," 75.
- ³³Grafton, Williams, and Jiang, "Food and water gaps," 212.
- ³⁴Sage, "The interconnected challenges," 75.
- ³⁵Brian Machovina, Kenneth J. Feeley, and William J. Ripple, "Biodiversity conservation: The key is reducing meat consumption," *Science of the Total Environment* 536 (2015): 420, accessed December 7, 2015 doi:10.1016/j.scitotenv.2015.07.022.
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- ³⁷Machovina, Feeley, and Ripple, "Biodiversity conservation," 421.
- ³⁸Brunelle, Dumas, and Souty, "The Impact of Globalization," 42.
- ³⁹Machovina, Feeley, and Ripple, "Biodiversity conservation," 424.
- ⁴⁰"The role of livestock in climate change," Food and Agriculture Organization of the United Nations, accessed December 7, 2015, <http://www.fao.org/agriculture/lead/themes0/climate/en/>.
- ⁴¹Godfray et al., "Food Security," 816.
- ⁴²Beverly D. McIntyre et al., trans. *IAASTD Agriculture at a Crossroads: A Synthesis of the Global and Sub-Global IAASTD Reports*, (Washington, D.C.: The Island Press, 2009), 46.
- ⁴³McIntyre et al, *Agriculture at a Crossroads*, 46.
- ⁴⁴Ibid.
- ⁴⁵Ibid.
- ⁴⁶Ibid.
- ⁴⁷Wheeler and von Braun, "Climate Change Impacts," 509.
- ⁴⁸McKenzie and Williams, "Sustainable food production," 228.

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- ⁶¹McIntyre et al, *Agriculture at a Crossroads*, 49.
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- ⁶⁵McKenzie and Williams, “Sustainable food production,” 225.
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- ⁷¹Brooks and Matthews, “Trade Dimensions,” 39.
- ⁷²Ibid.
- ⁷³Ibid.
- ⁷⁴Ibid, 40.
- ⁷⁵Ibid.
- ⁷⁶McIntyre et al, *Agriculture at a Crossroads*, 65.
- ⁷⁷Godfray et al., “Food Security,” 813.
- ⁷⁸Hanjra and Qureshi, “Global water crisis,” 374.

⁷⁹John Beddington, "Food Security: Contributions from Science to a New and Greener Revolution," *Philosophical Transactions: Biological Sciences* 365 (2010): 65, accessed December 7, 2015, doi: 10.1098/rstb.2009.0201.

⁸⁰Godfray et al., "Food Security," 815.

⁸¹Beddington, "Food Security," 66-68.

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Comparative Politics

Papers by: Jonathan Goldberg
Meghan Wolfenden

Compulsory Voting Vs. Voluntary Voting: Which Produces a Better Democracy?

By: Jonathan Goldberg

Currently, over half the world's population reside in liberal democracies, giving citizens the opportunity to take part in free elections to determine who should govern.¹ However, even though the majority of people have the ability to exercise their franchise, many choose not to do so. In the United States, one of the world's largest democracies, nearly half the population chooses not to take part in Presidential elections, with voter turnout hovering around 50%.² The U.S. is hardly the only democratic country to have this problem, and as a result, a growing number of states have begun instituting compulsory voting (CV), where citizens are legally obligated to cast a ballot in every election. Australia, which introduced the law in 1924, is one of the 25 countries who have or are considering the introduction of CV.

Voting in elections is a cornerstone of democracy, as it allows citizens to participate in deciding who will govern them. And yet, many of the advanced democracies that operate under a voluntary voting system are suffering from a participation crisis, with persistently low election turnout, and participation trends that are moving downward.³ This threatens the very legitimacy of a government, rooted as it is in fact that the people elected them. By contrast, countries using a CV system guarantee high voter turnouts, thus solidifying the government's democratic legitimacy. Compulsory voting succeeds in enhancing the quality of democracy by increasing political participation, strengthening the legitimacy of governments, and creating true political

¹Bart, Engelen. "Why Compulsory Voting can Enhance Democracy." *Acta Politica* 42, (2007): 23-39.

²Lisa, Hill. "Low Voter Turnout in The United States: Is Compulsory Voting a Viable Solution?" *Journal of Theoretical Politics* 18, no. 2 (2006): 207-232

³Ibid, 208.

equality. Australia's experience with CV, in contrast with the American voting model supports this thesis.

The right to vote involves a duty to exercise it. Legal compulsion ensures this duty is fulfilled and that citizens uphold their civic duty. It is a widely held belief that citizenship is based upon a set of reciprocal rights and responsibilities — this includes the right to vote.⁴ Introducing compulsory voting making voting analogous to other civic duties⁵ such as paying taxes or jury duty.⁶ Furthermore, by compelling citizens to vote, participation in elections becomes entrenched in society, and over time transforms voting into a social norm.

In Australia, where CV was established almost a century ago, voting is considered part of the country's, "social ethos."⁷ Similar to other social norms, when it is violated it will elicit social condemnation equivalent to littering or smoking cigarettes in public.⁸ This further reinforces participation in elections and helps solidify voting as part of a nation's political culture. As citizens, we have an obligation to follow and uphold our civic duties. By making voting mandatory, governments can ensure these responsibilities are met, and help foster the idea that voting is a social convention.

Implementing compulsory voting is the most cost-effective solution to the growing problem of low voter turnout. Since direct democracies (A democracy where all citizens actively participate in crafting legislation) are virtually impossible to facilitate in modern societies, states have resorted to the representative model of democracy. However, when only half the

⁴Andrew, Heywood. *Politics*. Toronto: Palgrave Macmillan, 2013, p.204.

⁵A civic duty is a legal obligation the citizen has to the state, such as paying taxes.

⁶Mackerras, M. and McAllister, I. "Compulsory Voting, Party Stability, and Electoral Advantage in Australia." *Electoral Studies* 18, (1999): 217–233.

⁷Sean, Matsler. "Compulsory Voting in America." *Southern California Law Review* 76, (2002): 953-978.

⁸Ibid, 995.

population participates in an election, it becomes difficult to defend the claim that our democracy is truly representative. As one Pro-CV British MP remarked, “Democracy is too important to leave to the minority.”⁹ By implementing mandatory voting, nations can guarantee the majority will is accurately reflected by their elected representatives. Individuals risked their lives so others would be able to have a say in the structure and function of their government. In other words, the franchise has been fought for, and therefore should be used. CV ensures citizens exercise their right to vote, combatting the problem of low voting turnouts.

Opponents of CV argue that low turnout in elections is not a bad thing, and instead is indicative of general satisfaction with the current government and political system. This belief is supported by American political scientist Russell Hardin, who argues low turnout in the United States, “is evidence that the government has not engendered grievous distrust and opposition.”¹⁰ W.H. Morris Jones goes as far to describe political apathy as a political virtue that is a valuable counter-force to those who believe liberal democracy is in real danger.¹¹ These views are underscored by a libertarian ideology that firmly believes a government should not compel its citizens to do something they do not freely want to do.¹² Libertarians believe CV infringes on the individual freedom of citizens, arguing that the right to vote includes the right not to vote.¹³

However, it can be argued that compelling individuals to vote does not violate any freedoms because all citizens retain the right to abstain. The secret ballot guarantees citizens the

⁹Sean, Matsler. “Compulsory Voting in America.” *Southern California Law Review* 76, (2002): 953-978.

¹⁰Lisa, Hill. “Low Voter Turnout in The United States: Is Compulsory Voting a Viable Solution?” *Journal of Theoretical Politics* 18, no. 2 (2006): 207-232

¹¹Ibid, 208.

¹²Bart, Engelen. “Why Compulsory Voting can Enhance Democracy.” *Acta Politica* 42, (2007): 23-39.

¹³Ibid, 29.

option to leave a ballot blank, allowing them to remain conscientious objectors.¹⁴ In addition, relative to other civic duties such as jury duty, or military conscription, voting is a relatively light burden. In Australia, Don Aitkin notes that, “voting is in no sense seen as an imposition on the electorate.” In fact, the majority of the public is supportive of the policy.¹⁵ Moreover, as Australian political scientist Lisa Hill points out, abstention in voluntary systems, “is at best ambiguous.”¹⁶ Casting a protest vote in a compulsory system — by spoiling a ballot or leaving it blank — is far easier to interpret and analyze than not casting a vote at all under a voluntary regime. Ultimately, by retaining the option to leave the ballot blank, governments are able to enjoy the benefits of CV, without infringing on the constitutional liberties of its citizens.

Another criticism of CV claims that widespread voter turnout trivializes politics, and only serves to increase the number of protest votes. According to this theory, the individuals being compelled to participate in elections are generally un-interested in political life and as a result are unlikely to make an informed vote.¹⁷ Therefore, a compulsory system will only serve to increase the number of protest votes and create “donkey-voting,” where obliged citizens simply vote at random. Opponents cite the slippery-slope argument, noting that engaging the entire electorate will diminish the quality of debate, leading to an era of populism.¹⁸

However, under current voluntary systems, politicians devote immense amounts of time, resources, and money towards convincing people to vote for them, overlooking critical political concerns. Increasingly campaigns have become focused around sound-bites and theatrics as op-

¹⁴Lisa, Hill. “Low Voter Turnout in The United States: Is Compulsory Voting a Viable Solution?” *Journal of Theoretical Politics* 18, no. 2 (2006): 207-232

¹⁵Ibid, 213.

¹⁶Lisa, Hill. “Low Voter Turnout in The United States: Is Compulsory Voting a Viable Solution?” *Journal of Theoretical Politics* 18, no. 2 (2006): 207-232

¹⁷Bart, Engelen. “Why Compulsory Voting can Enhance Democracy.” *Acta Politica* 42, (2007): 32.

¹⁸Bart, Engelen. “Why Compulsory Voting can Enhance Democracy.” *Acta Politica* 42, (2007): 23-39.

¹⁹Ibid, 33.

posed to rational argumentation.¹⁹ Introducing CV takes out the need for politicians to convince people to vote, allowing them more time to focus on discussing their platforms. Furthermore, it motivates politicians to make the system voter friendly, and encourages incumbent governments to protect everybody's interests.²⁰

One advantage to compelling all members of the electorate to vote, is that the government can unquestionably claim to be popularly elected, solidifying their democratic legitimacy. In contrast, under a voluntary system, a government's legitimacy is subject to question. For instance, Congressional Republicans often questioned President Bill Clinton's mandate because he received only 43% of the votes cast in the 1992 election.²¹ Participation in elections is often viewed as a, "sensitive barometer," that gauges, "the health of democratic institutions."²² In other words, higher participation in elections translates to higher government legitimacy. Ultimately, a government elected under a compulsory system would more accurately reflect the will of the electorate, amplifying their legitimacy.

A critical ramification of a government's heightened legitimacy may be a greater degree of political equality and the potential elimination of class bias in elections. By mandating citizens' vote in elections, all groups in society vote and therefore, it can be argued that it is in the political interest of a government to consider the needs of all groups. By contrast, under most voluntary systems, there is a strong correlation between socioeconomic status (SES) and voter

²⁰Ibid, 32.

²¹Hill, Lisa. "Low Voter Turnout in The United States: Is Compulsory Voting a Viable Solution?" *Journal of Theoretical Politics* 18, no. 2 (2006): 207-232

²²Mackerras, M. and McAllister, I. "Compulsory Voting, Party Stability, and Electoral Advantage in Australia." *Electoral Studies* 18, (1999): 217-233.

²³Hill, Lisa. "Low Voter Turnout in The United States: Is Compulsory Voting a Viable Solution?" *Journal of Theoretical Politics* 18, no. 2 (2006): 207-232

²⁴Ibid, 213.

turnout in elections.²³ Typically, white, educated, and older populations comprise the majority of votes cast in a given election.²⁴ The custom of voting is far less established among the poorer, younger, and less educated members of society. This means that the elected government largely reflects the preferences of wealthy and educated citizens, while marginalizing those of the poor. This inequality has a profound effect on the actions of a government. Political scientist Arend Lijphart argues that unequal turnout makes it easier for representatives, “to reduce government aid to the poor than to cut entitlement programs that chiefly benefit the middle class.”²⁵ Thus, disparities in voter turnout enable governments to overlook concerns of certain groups in society, primarily the poor. Furthermore, the low turnout in most democracies undermines the principle of, “one vote, one value,” and the promise of unchallenged universal suffrage to all citizens.²⁶ In the United States, the SES gap is the worst of any established democracy, with non-participation in elections disproportionately impacting the poor.²⁷ Genuine political equality requires not only that all can vote, but that all do vote.²⁸ Compulsory voting ensures that this happens. By compelling citizens to vote, governments are forced to take into account the differing interests of the electorate when crafting public policy.

In 1924, Australia introduced CV, stating, “It shall be the duty of every elector to vote at each election.”²⁹ Compulsory enrolment, which mandated all citizens register to vote, was introduced in 1911, opening the door to CV, which was argued to be, “a natural corollary,” of compulsory enrolment.³⁰ The program’s success was immediate, with voter turnout consistently

²⁵Ibid, 214.

²⁶Ibid, 210.

^{27, 28}Ibid, 208.

^{29, 30}Heywood, Andrew. *Politics*. Toronto: Palgrave Macmillan, 2013.

³¹Evans, Tim. “Compulsory Voting in Australia.” *Australian Electoral Commission*. 2006, 1-12.

³²Ibid, 2.

³³Ibid, 3.

resting between 94-96% in every nationwide election. Even more, the policy was met with enthusiasm from the public, with support for the initiative peaking at 76% in 1969.³¹

According to Louis Hartz, the reasoning for CVs success lies in Australia's distinct utilitarian political culture.³² Hartz argues that the development of colonial societies was determined by the dominant values from their host country at the time of their separation.³³ Australia's independence from Britain in the 19th century coincided with the rise of Jeremy Bentham's utilitarian ideas.³⁴ Over time, utilitarianism has become entrenched in Australian political culture, impacting the activity of their government. CV represented a pragmatic and sensible solution to what was becoming a growing societal problem. Overall, Australia is a quintessential example of the success CV can have on the political atmosphere of a country.

In contrast, when the United States split from Britain in the 18th century, the dominant values of the time were individualism and the ideas from the age of enlightenment, namely those of John Locke.³⁵ In its first century, voter turnout in US elections was fairly high, with percentage levels reaching 80% in the 1840 election.³⁶ However, over the past few decades, America has suffered from electoral lethargy, encountering a gradual erosion of voter turnout levels. The year 2000 marked the third consecutive Presidential election where the executive branch was elected with a mandate of less than 25% of the eligible voter population.³⁷ That being said, the establishment of American democracy was underscored by the ideas of freedom and individualism. These libertarian values are widely held across America, which is why there

³⁴Ibid, 231.

³⁵Mackerras, M. and McAllister, I. "Compulsory Voting, Party Stability, and Electoral Advantage in Australia." *Electoral Studies* 18, (1999): 217-233.

³⁶Lyn, Ragsdale. "Vital Statistics on the Presidency." (Washington, D.C.: Congressional Quarterly Press, 1998), 132-38.

³⁷Sean, Matsler. "Compulsory Voting in America." *Southern California Law Review* 76, (2002): 953-978.

³⁸Hill, Lisa. "Low Voter Turnout in The United States: Is Compulsory Voting a Viable Solution?" *Journal of Theoretical Politics* 18, no. 2 (2006): 207-232

is such vehement opposition to CV. Richard Hasen notes that even if CV was proven to be an effective way to increase turnout, "it is unlikely to occur because of a widely held libertarian belief against government interference in the decision to vote."³⁸ This is an example of American willingness to sacrifice fundamental pillars of democracy in exchange for individual freedom. If they want to ensure that their democracy remains strong over time, it would be prudent to seriously consider compulsory voting as a solution to lower turnout levels. But in order for this to happen, Americans would have to consider the collective good as more important than their individual rights.

In conclusion, compulsory voting succeeds in enhancing the quality of democracy. CV strengthens the legitimacy of governments, enables greater political equality, and is the most practical solution to solving the issue of low voter turnout. Critics of the policy argue that it infringes on citizens individual liberties and erodes the quality of democratic debate. However, by providing a, "none of the above," section on a ballot, governments are able to guarantee that citizen's individual freedoms are maintained. Furthermore, instead of diminishing the quality of democracy, CV enhances it, by forcing politicians to engage in meaningful discussions over issues that impact the entirety of the electorate. On balance, democracy is defined as rule by the many. Compulsory voting ensures this mandate is upheld and that every elected government accurately reflects the will of all voters.

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Ethiopia: The State of Economic Boom and Political Bust

By: Meghan Wolfenden

When one considers the political and economic climate of a country, it is not always easy to pin point what exactly caused a country to either excel into a developed nation, or fall into dilapidation. However, within Africa, it is relatively easy to trace the cause of a country's disintegration and/or corruption back to colonialism, exploitation and, ultimately, desertion. Colonialism heavily impacted nearly every country within the African continent. However, not all countries within African were colonized and can blame their former conqueror for their state of disrepair. Ethiopia is, and has always been, an autonomous state, having never been subjugated. Although there was a brief chapter from 1935-1941 where Italy attempted to gain control¹, Ethiopia has maintained sovereignty since its origination, which some predict is as early as 8th century BC.² In accordance with Ethiopia's significant past, the country has an interesting present and future.

Ethiopia is a compelling country due to the fact that it is going through a period of substantial economic growth, while its people are suffering in great extent as their civic and human rights are stripped away from them. Ethiopia is the home to an illiberal democracy. The regime in place within Ethiopia can be described as an autocratic fictitious democracy, subjecting its citizens to political repression and violence. In order to bring validation to this claim, through the course of this paper, I will give a brief overview of Ethiopian life, explore Ethiopia's past

¹BBC. *Ethiopia country profile - overview*. 2015. <http://www.bbc.com/news/world-africa-13349398> (accessed 07 10, 2015).

²Wayman, Erin. *The Top Ten Human Evolution Discoveries from Ethiopia*. 10 10, 2012. <http://www.smithsonianmag.com/science-nature/the-top-ten-human-evolution-discoveries-from-ethiopia-67871931/?no-ist> (accessed 07 10, 2015).

and present political environment, discuss the country's economic conditions, and describe the political violence occurring between the government and the Ethiopian people. Firstly, a broad synopsis of the social, political and economic conditions must be given in order to establish a comprehensive understanding of Ethiopia.

Located in the Horn of Africa, Ethiopia is home to roughly 90 million people, with nearly 660,000 refugees.³ Religion within Ethiopia is commonly practiced among nearly all of its population.⁴ The Ethiopian Orthodox Church remains the most popular religious institution, one-third of the population are of the Muslim faith.⁵ Economically, Ethiopia is excelling. The country has an increasing GDP, which in 2014 was \$1455USD per capita, considering purchase price parity (all monetary values will be given in USD from this point onward).⁶ Additionally, the International Monetary Fund (IMF) expects Ethiopia to have continued economic growth.⁷ Despite the promising economic future, the country is ranked 173 out of 187 on the Human Development Index (HDI).⁸ This is due, in part, to the reoccurring droughts and famines Ethiopia is prone to, as well as a deficient provision of education and health care.⁹ Although Ethiopia has yet to meet world standards for health and development, the country has made ties to global governmental organization in order to improve. Ethiopia is a member of the African Union, United Nations, the International Monetary Fund, the World Bank Group and an observer of the World Trade Organization.¹⁰ These relationships are all mostly recently founded, as Ethiopia

³The UN Refugee Agency. *2015 UNHCR country operations profile - Ethiopia*. 2015. (accessed 07 10, 2015).

⁴Smith, Lahra. *Political Violence and Democratic Uncertainty in Ethiopia*. Special Report, United States Institute of Peace, Washington: United States Institute of Peace, 2007.

⁵(The UN Refugee Agency 2015)

⁶*Ethiopia*. 07 13, 2015. <http://www.worldbank.org/en/country/ethiopia> (accessed 07 10, 2015).

⁷IMF. *IMF Staff Completes 2015 Article IV Mission to Ethiopia*. 06 19, 2015. <http://www.imf.org/external/np/sec/pr/2015/pr15286.htm> (accessed 07 10, 2015).

⁸United Nations Development Programme. *Human Development Index and its components*. 2014. <http://hdr.undp.org/en/content/table-1-human-development-index-and-its-components> (accessed 07 10, 2015).

⁹(United Nations Development Programme 2014)

¹⁰(BBC 2015)

only started to increase its global connections after the implementation of their newest political system.

Political institutions within the state have greatly evolved, especially within the last century. From 1930 to 1974, Emperor Haile Salassie ruled Ethiopia in a monarchical system.¹¹ After a revolution in 1974, a Marxist government, known as the Derg regime, came into power until it was overthrown in 1991.¹² During that year, a federal democratic republic was developed within Ethiopia, consisting of a prime minister, a president and two chambers of parliament.¹³ When this new governmental institution was inaugurated, so too was Meles Zenawi as President, until he later became Prime Minister in 1995.¹⁴ Prime Minister Zenawi was a member of The Ethiopian People's Revolutionary Democratic Front (EPRDF) political party.¹⁵ A constitution was written and established in 1994, delineating all governmental principles and procedures, creating precedents that were advantageous for the EPRDF regime.¹⁶ Prime Minister Zenawi was broadly disapproved upon by the public and by the international community, but was able to stay in power until his death in 2012.¹⁷ Another member of EPRDF, Hailemariam Desalegn, became Prime Minister and still holds power today.¹⁸ Regardless of his designation, Prime Minister Desalegn has struggled to maintain power and legitimacy within Ethiopia, resulting in turbulent political conditions.

Although Ethiopia denotes itself as a democracy, when assessing the country's political conditions it is difficult to be convinced. During the most recent election in May of this year,

¹¹(Smith 2007)

¹²(BBC 2015)

¹³*Ethiopian Parliament*. <http://www.ethiobar.net> (accessed 07 10, 2015).

¹⁴(Ethiopian Parliament)

¹⁵(BBC 2015)

¹⁶"Ethiopian Constitution." *University of Pennsylvania - African Studies Center*. 1994.

http://www.africa.upenn.edu/Hornet/Ethiopian_Constitution.html (accessed 07 10, 2015).

¹⁷(BBC 2015)

¹⁸(Ethiopian Parliament)

only 21 of the 1,987 seats in the regional parliament were not won by EPRDF.¹⁹ The federal parliament was also won by EPRDF in landslide, winning all 546 seats.²⁰ Reception of these results has been skeptical. Taye Negussie, professor of sociology at Addis Ababa University, remarked that the multiparty system within Ethiopia has reached its demise.²¹ Although there are numerous political parties within Ethiopia, the groups had difficulty receiving votes. The EPRDF government has been accused of using illiberal practices in order to ensure victory.²² Despite the Ethiopian Constitution, freedom of speech is not without charge. The EPRDF government has created “anti-terrorism” laws to mute supporters of oppositional political parties.²³ The EU has stated that, due to the current political regime in place, Ethiopia has yet to fully develop a democratic system.²⁴

At its foundation, a democracy involves features such as representation and the right to organize political parties, a capacity of parliaments, the right of opposition, as well as incorporation and the right to vote.²⁵ However, the EPRDF regime has limited the democratic rights within the country to such a point that an illiberal democracy has been produced. While elections are held, the government threatens citizens with violence, economic repression and imprisonment so that they do not vote against the existing regime. Rural communities are thoroughly regulated by the EPRDF regime to prevent militia groups from forming.²⁶ Larger cities, such as Addis Abba and Dire Dawa, are regulated as well, but are not as thoroughly controlled.

¹⁹France-Presse, Agence. *Ethiopia's ruling party wins by landslide in general election*. 06 22, 2015. <http://www.theguardian.com/world/2015/jun/22/ethiopias-ruling-party-win-clean-sweep-general-election> (accessed 07 10, 2015).

²⁰(France-Presse 2015)

²¹(France-Presse 2015)

²²(France-Presse 2015)

²³(France-Presse 2015)

²⁴(BBC 2015)

²⁵Scorgie-Porter, Lindsay. *Comparative Politics*. POLISCI 2245E, Summer 2015.

²⁶(Smith 2007)

Protests and rallies still occur, expressing the peoples' discontent with the current oppressive government.²⁷ However, the consequences for speaking out against the EPRDF causes fear in the majority of people, creating an autocratic environment. EPRDF has taken away basic human rights, such as freedom of speech and the right to vote according to one's own preferences, in order to stay in power. The regime has restrained the public to such an extent that the democratic system put in place cannot function as a true democracy, and thus an authoritarian regime has materialized. Despite the social and political repression EPRDF seeks to implement, they have not inhibited the countries economic advancement.

Within the last decade, Ethiopia has seen steady economic growth, increasing its GDP by 10.9 per cent.²⁸ The agricultural industry accounts for 75 per cent of Ethiopia's economy²⁹, however, the country is experiencing development in two new sectors: manufacturing and resource extraction.³⁰ The World Bank Group (WBG) is offering technical assistance to Ethiopia to aid their development of mineral extraction, which takes place largely in the rural regions of the country.³¹ Ethiopia has also experienced staggering amounts of foreign direct investment (FDI) to develop the country's manufacturing industry. The China Development Bank Cooperation has promised \$5 billion to Africa.³² Although the specific amount allotted for Ethiopia has not been disclosed, the country has seen investments of half a billion dollars in the last year.³³

²⁷(Smith 2007)

²⁸*Ethiopia*. 07 13, 2015. <http://www.worldbank.org/en/country/ethiopia> (accessed 07 10, 2015).

²⁹(*Ethiopia*. The World Bank 2015)

³⁰The World Bank. *Can Ethiopia's Resource Wealth Contribute to its Growth and Transformation?* 01 26, 2015. <http://www.worldbank.org/en/news/feature/2015/01/26/ethiopia-extractives-mining-strategic-assessment-mineral-sector> (accessed 07 11, 2015).

³¹(*Resource Wealth*. The World Bank 2015)

³²Fikade, Birhanu. *China pledges more funding to Ethiopia*. 07 04, 2015. <http://www.thereporterethiopia.com/index.php/news-headlines/item/3709-china-pledges-more-funding-to-ethiopia> (accessed 07 11, 2015).

³³(Fikade 2015)

Despite the funds received from Chinese investors, the EPRDF regime has made foreign investment a complicated process. Lars Christian Moller, an economist for WBG said “Although great progress has been achieved, the country must make changes to its burdensome tax, trade, and financing rules and improve basic services such as electricity to support local business and attract new investment.”³⁴ As stated by Moller, basic necessities such as electricity are not dependable within Ethiopia, especially in districts containing small businesses.³⁵ As well, due to regulations put in place by the EPRDF government, competition with businesses affiliated with EPRDF are not tolerated and are subjected to unfair directives.³⁶ Due to both these factors, small businesses have a tough time expanding, while large companies reap the benefits of minimal regulation. Regardless of the regime’s attempts to discourage FDI, Ethiopia is on a path of economic development.

Through regulations put in place by EPRDF, the government has tried to implement an import substitution regime by creating legal barriers to curb foreign investment. Despite their efforts, an export-oriented industrialization has occurred within Ethiopia. Mercantilistic business sectors have emerged, however they are suffering from heavy regulation and competition limitations. The illiberal democracy in place within Ethiopia hurts small businesses and grass roots development. Be that as it may, investment into developing the mineral extraction industry and the manufacturing industry will continue to grow the Ethiopian economy. The EPRDF

³²Fikade, Birhanu. *China pledges more funding to Ethiopia*. 07 04, 2015.
<http://www.thereporterethiopia.com/index.php/news-headlines/item/3709-china-pledges-more-funding-to-ethiopia> (accessed 07 11, 2015).

³³(Fikade 2015)

³⁴*Ethiopia Economic Update: A Flourishing Manufacturing Industry Will Help More Ethiopians*. 07 2015.
<http://www.worldbank.org/en/country/ethiopia/publication/fourth-ethiopia-economic-update-overcoming-contraints-manufacturing-sector> (accessed 07 11, 2015).

³⁵(Smith 2007)

³⁶Lefort, René. *Ethiopia after its electoral drama: econod renewal'imminent?* 07 07, 2015.
<https://www.opendemocracy.net/rené-lefort/ethiopia-after-its-electoral-drama-second-“renewal”-imminent> (accessed 07 10, 2015).

regime may be forced to alter its trade barriers to ensure that the economy is able to continue on its path of success. If the government continues to unfairly regulate the economic system, preventing the projected growth, civil unrest can be expected to erupt.

Within Ethiopia there has been a series of ever-present issues causing incessant political violence. From the political system transitions, the autocratic ‘democratic’ regime, the oppression of social, political and economic life, the clashing religious ideologies and the tenuous relationships with bordering countries, Ethiopians have a great deal of difficult and complex situations to endure.³⁷ Although there was an attempt to shift from communism to democracy, the transition has not been smooth, peaceful nor entirely successful.

Regional government has become extremely repressive, while Ethiopians living in major cities have participated in rallies and protests against the hostile EPRDF leadership and regime.³⁸ As mentioned previously, although a multiparty system is set in place by the constitution, one does not exist. Communities with ethnic associations, such as the Oromo and Somali, have little to no representation, especially since the last election.³⁹ These communities are mistreated by the government through the use of violence and are not provided human rights.⁴⁰ Groups, such as the Oromo and Somali ethnic communities, protest the EPRDF regime, but are seen as anti-government and are subjected to brutality and imprisonment.⁴¹ Although the constitution outlines freedom of expression, there is intolerance for any act that demonstrates a general displeasure for the government in place.⁴²

³⁷(Smith 2007)

³⁸(Smith 2007)

³⁹(Smith 2007)

⁴⁰(Smith 2007)

⁴¹(Lefort 2015)

⁴²(Lefort 2015)

Besides political repression, religious groups are also subjected to political violence. Muslims make up one third of the population within Ethiopia, yet they are treated similarly to those who oppose the EPRDF government.⁴³ Since the downfall of the Derg regime, acceptance of Islamic ideologies has increased, and Muslims are less repressed now than any other time in Ethiopia's history.⁴⁴ However, as expressed previously, despite the improvement, some areas are not amicable to Muslims. Human rights are often not afforded to these people and they are frequently subjected to violence from the state.⁴⁵

The state has also taken issues with neighbouring countries, such as Somalia and Eritrea. Eritrea was formerly a part of Ethiopia until its finalized succession in 1993, however Ethiopia's relationship with the country has never been fully resolved.⁴⁶ War between the two countries broke out between 1998-2000, which weakened both political systems.⁴⁷ Violence between Ethiopia and Eritrea still takes place today, mostly between Eritrea and the EPRDF regime. Eritrea also provides material and funding to anti-Ethiopia militant Islamic groups within Somalia.⁴⁸ Ethiopia has continuously offered military support to help Somalia in their fight against Islamic statism.⁴⁹ Ethiopia has tried to assist Somalia but has been driven out several times by Al-Shabaab.⁵⁰ Many Somali refugees have found a home in Ethiopia, but, as previously mentioned, are mistreated by the state.⁵¹

⁴³(Smith 2007)

⁴⁴(Lefort 2015)

⁴⁵(Smith 2007)

⁴⁶(BBC 2015)

⁴⁷(BBC 2015)

⁴⁸(Smith 2007)

⁴⁹(BBC 2015)

⁵⁰(BBC 2015)

⁵¹Bariagaber, Assefaw. " Political Violence and the Uprooted in the Horn of Africa: A Study of Refugee Flows from Ethiopia." *Journal of Black Studies* (Sage Publications, Inc.) 28, no. 1 (09 1997): 26-42.

Political violence occurs for a number of reasons, such as converging cultural, religious, and political institutions, authoritarian regimes, ineffectiveness of the state, fiscal weakness, and poor social well-being.⁵² All of these issues are occurring within Ethiopia, making political violence an epidemic. A revolution has yet to take place within the country, but terrorism is occurring in a widespread manor. It is arguable that terrorism is used by the EPRDF regime to stay in power. Terrorism has been defined as the use of violence in order to achieve political aims⁵³, which is precisely what the EPRDF regime is doing within Ethiopia. The Ethiopian government has implemented regulations that are unfavourable to the majority of its citizens and promised violence, imprisonment, and economic peril to those who oppose the regime. Because of this political institution, a democracy does not exist within Ethiopia.

Despite the country's constitution and label as a democratic government, the EPRDF regime has an authoritarian hold over Ethiopia, dictating the citizens' social, political and economic abilities. Through FDI, Ethiopia has been able to grow economically, and will continue to do so for the foreseeable future. The current government institution has limited grass roots business development, and has tried to suppress any economic development beyond its own control. The government's continued repression of economic, social and political development has resulted in rallies, and protests. The EPRDF regime has turned to the use of violence to control the population. However, this violence, as well as its conflicts with surrounding nations, effectively negates the countries ability to function as a representative government. Until the current regime is either reconstructed or overthrown, Ethiopia will not see a peaceful democracy.

⁵²(Scorgie-Porter 2015)

⁵³(Scorgie-Porter 2015)

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Political Theory

Papers by: Amanda DeYoung

The Critique of Political Perception in Machiavelli's *The Prince* and his Influence on Modern Day Politics

By: Amanda DeYoung

Throughout history it has become apparent that in order for a ruler to maintain political power and be free from all threats of dissolution, they must be perceived as favorable towards the masses. Political theorist Niccolò Machiavelli was the first to acknowledge this correlation creating the concept of 'virtù'. In his most famous work *The Prince*, 'virtù'— a concept encompassing all traits that are necessary for the maintenance of the state,¹ is theorized as the only action keeping a ruler away from achieving memorable greatness and long-lasting fame. However, in order to obtain 'virtù', Machiavelli believed that in addition to having the drive and talent to lead a nation, one must be respected by the masses, whether that be in the form of admiration, or the form of fear.² A firm believer that an individual in power was no different than the greedy, self-interested individuals who make up the state, Machiavelli was a realist who supported realpolitik as he believed that morality held no place in the function of the state. As a consequence, Machiavelli therefore argues that perception from masses is key to maintaining political power. This is demonstrated through Machiavelli's work *The Prince* as he paints a picture of how a ruler can maintain dominance and power over his people. Through acts of brutality, injustice, and manipulation towards the masses, Machiavelli argues the importance behind political perception and how ultimately, it can strengthen or destroy an individual's political power over the state. Thus, in this essay I will outline Machiavelli's views on perception being

¹Paul A. Rahe, *Machiavelli's Liberal Republican Legacy* (New York: Cambridge University Press, 2006), xii.

²Niccolò Machiavelli, "The Prince," In *Political Philosophy*, edited by Steven M. Cahn, 284.

everything in politics. Then, I will argue how this bold approach plays a role in today's society through modern politics.

To begin, Machiavelli's *The Prince* discusses the operation behind power in politics—the extents one goes to in order to achieve it, and the limits they will continuously go over in order to maintain it. However, unlike any theorist of or before his time, Machiavelli does not over-estimate the conception of human nature. Instead, he illustrates a lower conception of human nature³ with the aim to see individuals in a more truthful light,⁴ focusing on the bad and reality of what 'is', rather than focusing on the good and arguing what 'should' be.⁵ Thus, as Machiavelli chooses to disregard religion and morality in his work *The Prince*,⁶ he tries to unveil the natural acts and thoughts of the individual. Through this analysis, acknowledging the power of the masses, he argues the necessity in a leader consistently working to maintain his popularity in society. In addition, equally important, Machiavelli argues that it is crucial for a prince to be willing to utilize acts of brutality and violence if he wishes to maintain political power and domination over the state. However, as he is able to acknowledge that these measures do not go hand in hand, it is evident that the masses will likely be intolerant to a leader who bestows acts of cruelty and injustice simply as a means to support his self-interests. Thus, Machiavelli introduces the relevance of perception in politics.

First off, as Machiavelli is quick to acknowledge the flaws and self-interest in all individuals, he argues that 'great men' are quick to bestow cruelty and acts of injustice on individuals in the aim to gain or preserve power. To illustrate, Machiavelli states: "if the necessity aris-

³Smith, Steven B. Introduction to *The Prince*, ed. Steven M. Cahn (New York: Oxford University Press, 2005), 268.

⁴Smith, Steven B. Introduction to *The Prince*, ed. Steven M. Cahn (New York: Oxford University Press, 2005), 268.

⁵Smith, Steven B. Introduction to *The Prince*, ed. Steven M. Cahn (New York: Oxford University Press, 2005), 269.

⁶Smith, Steven B. Introduction to *The Prince*, ed. Steven M. Cahn (New York: Oxford University Press, 2005), 268.

es, [they] know how to follow evil”⁷ and are able to “manipulate the minds of men by shrewdness.”⁸ This idea is reinforced throughout *The Prince* as Machiavelli draws a fine line between how a prince must act as well as how he must be seen to the public. While a prince must appear to be: “all mercy, all faithfulness, all integrity, all kindness, [and] all religion”⁹ in reality, his power depends on none of these characteristics as Machiavelli argues that these acts of goodness to have the potential to destroy a leader. This can be illustrated through Machiavelli’s critique of mercy. While he states that a leader must appear to be ‘all merciful’ to his subjects, he believes that if one were to actually bestow generosity on the state they would pay significantly through state corruption and disorder as those who are granted mercy will take advantage of it.¹⁰ In addition, Machiavelli explains that in a situation where an individual threatens a ruler’s leadership, a prince should not be merciful, but instead, unforgiving through the act of controlled violence as he argues that the means of harming one individual would justify the ends of ensuring no threat to a ruler’s political power. However, if a prince is really willing to go through with this, acknowledging the power of the masses, Machiavelli places an importance on making sure a leader can develop “proper justification and manifest cause”¹¹ for his act of injustice, as if otherwise, this could lead to the suspicion of a prince’s true intentions. Thus, through Machiavelli’s outline on how one must appear versus how they must act in order to maintain power—justifying vile acts such as controlled violence, it is evident that Machiavelli believes that political growth and achievement is a result of a ruler using force and manipulation. Therefore, he firmly believes political perception to be the foundation of stable political and long-lasting fame.

⁷Niccolò Machiavelli, “The Prince,” In *Political Philosophy*, edited by Steven M. Cahn, 286

⁸Niccolò Machiavelli, “The Prince,” In *Political Philosophy*, edited by Steven M. Cahn, 286

⁹Niccolò Machiavelli, “The Prince,” In *Political Philosophy*, edited by Steven M. Cahn, 286

¹⁰Niccolò Machiavelli, “The Prince,” In *Political Philosophy*, edited by Steven M. Cahn, 284

¹¹Niccolò Machiavelli, “The Prince,” In *Political Philosophy*, edited by Steven M. Cahn, 285

However, while Machiavelli holds the platform of political perception to be the key to maintaining political power as he supported acts of injustice, violence and evidently, manipulation and deceit—he argues that this can not successfully be achieved relying only on the acts and abilities of man. Thus, Machiavelli calls upon the nature of the beast. Influenced by Ancient Rome and the ancient writers who claimed that the most powerful princes such as Achilles, were those raised by Chiron the Centaur, half-man, half-beast¹², he argues: “there are two means of fighting: one according to the laws, the other with force; the first way is proper to man, the second to beasts, but because the first, in many cases is not sufficient, it becomes necessary to have to recourse to the second.”¹³ Thus, it is evident that this further supports Machiavelli’s claim for the necessity of injustice and brutality playing a role in politics, as he later takes into account that the characteristics of both man and beast must be coupled together in order for a prince to have the ‘enduring strength’ needed to maintain his power. However, on an additional level, through the analysis on why it is crucial that the prince must emulate the characteristics of both the man as well as the beast, it becomes evident that this is simply done to paint a picture further illustrating the importance of political perception, as the beast is able to symbolize cruelty while the man encompasses all skills needed in order for him to successfully manipulate the masses—getting away with his wrongdoings and maintaining good perception among the population. Thus, through an analysis of Machiavelli’s work *The Prince*; it is evident that he holds the position that political perception is everything in politics, as he does not have enough faith in humanity to support the idea of a leader obtaining greatness and long-lasting fame simply through the support of the common good. Therefore, as a ruler must resort to other

¹²Peter S. Donaldson, *Machiavelli and the Mystery of the State* (New York: Cambridge University Press, 1988), vii.

¹³Niccolò Machiavelli, “The Prince,” In *Political Philosophy*, edited by Steven M. Cahn, 286

means in order to maintain political power and stability within the state, political perception is everything in politics.

On another note, in terms of modern politics, many political theorists have acknowledged Machiavelli's views on politics and vision of the governing state to be the foundation of modern political thought, significantly shaping the western world into how it functions today. Argued to have influenced the secular reformation of politics, constitutional law, and colonization, through an analysis of Machiavelli's work it will become apparent how he has tremendously influenced modern day politics.

As a man living in a time with recurring violence as old political order in 16th century Europe was collapsing, Machiavellian experts such as Lawrence Burd argue that the intelligence and modernity within his work has most definitely 'shaped' the conditions of 'national life'¹⁴ as Machiavelli's goal was to "interpret the logical meaning of events to forecast the inevitable issue and to elicit the rules which, destined hence forth to dominate political action."¹⁵ On the contrary, theorists of 16th-18th century Europe such as Leo Strauss, argue against this as they believe Machiavelli to be the 'teacher of evil'¹⁶ reducing his modern ideas such as the secularization of politics to be nothing but satanic.¹⁷ However, with the comparison of Machiavelli's ideas and modern governments of today, it becomes apparent that these 'evil teachings' such as the secularization of politics are considered to be nothing but societal norms in the western

¹⁴Kashi P. Misra, "Machiavelli," *The Indian Journal of Political Science* 13, no. ¾ (1952): 20, accessed July 1, 2015, <http://www.jstor.org/stable/42743396>

¹⁵Kashi P. Misra, "Machiavelli," *The Indian Journal of Political Science* 13, no. ¾ (1952): 20, accessed July 1, 2015, <http://www.jstor.org/stable/42743396>

¹⁶Dragica Vujadinovic, "Machiavelli's Republican Political Theory," *Philosophy and Social Criticism* 40, no. 1 (2014) : 44, Accessed July 1, 2015. DOI: 10.1177/0191453713513786 psc.sagepub.com

¹⁷Dragica Vujadinovic, "Machiavelli's Republican Political Theory," *Philosophy and Social Criticism* 40, no. 1 (2014) : 44, Accessed July 1, 2015. DOI: 10.1177/0191453713513786 psc.sagepub.com

world. To explicate, being the first European to disregard Christianity since the pagan days of Ancient Rome,¹⁸ originality in his work becomes clear as he was the first to clearly introduce the concepts of realism and realpolitik to society as he rationalized: “[every] man who wants to act virtuously in every way necessarily comes to grief among those who are not virtuous.”¹⁹ Thus, he argues that if a prince wants to hold on to his power he must learn the ways of amorality, making use of this according to need.²⁰ Furthermore, while he made sure not to deny the presence of God in *The Prince*, he did argue that Christianity and morality should not have a role while pursuing power in politics. Therefore, as he argued God and morality to be left out of the political realm, something that was unheard of during 16th century Europe as the Pope still had tremendous power in politics, he became labeled as a ‘an enemy of humanity.’²¹ In addition, with Christianity and the Pope therefore playing a crucial role in the framework of society at the time, it was believed that the devils hands themselves, wrote *The Prince*.²² However, on the contrary, as in the western world of today, modern governments are amoral²³ and symmetrical to Machiavelli in the sense that they do not deny yet, fail to recognize the divine in their rulings, Machiavelli’s presence in modern politics is conspicuous.

On another note, political theorist Angelo M. Codevilla, agrees that *The Prince* is modern in the sense that Machiavelli illustrates an organized government with sovereign amorality, arguing that the ‘greatness’ and relevance of Machiavelli’s work in modern day is a result of it being written on several different levels.²⁴ For instance, while on the first and most obvious lev-

¹⁸Robert Black, *Machiavelli*, (New York: Routledge, 2013), xxi.

¹⁹Niccolò Machiavelli, “The Prince,” In *Political Philosophy*, edited by Steven M. Cahn, 283

²⁰Niccolò Machiavelli, “The Prince,” In *Political Philosophy*, edited by Steven M. Cahn, 283

²¹Dragica Vujadinovic, “Machiavelli’s Republican Political Theory,” *Philosophy and Social Criticism* 40, no. 1 (2014) : 44, Accessed July 1, 2015. DOI: 10.1177/0191453713513786 psc.sagepub.com

²²Dragica Vujadinovic, “Machiavelli’s Republican Political Theory,” *Philosophy and Social Criticism* 40, no. 1 (2014) : 44, Accessed July 1, 2015. DOI: 10.1177/0191453713513786 psc.sagepub.com

²³Niccolò Machiavelli, *The Prince*, ed. Angelo Codevilla (New York: Yale University Press, 1997), vii

²⁴Niccolò Machiavelli, *The Prince*, ed. Angelo Codevilla (New York: Yale University Press, 1997), vii

el, Codevilla acknowledges a relationship between Machiavelli's support for realpolitik and the secularized government of today, he also acknowledges how Machiavelli was able to teach an art of government people could emulate regardless of what region and time period they were from as he abandons all cultural identities such and religion from his form of government.²⁵ This ultimately being what has "freed us from the myth that government is about the pursuit of goodness."²⁶ Additionally, as *The Prince* was the first publication to explicitly critique the individual as Machiavelli magnified humans in a harsher light recognizing their faults such as self-interest and greed, it is evident that *The Prince* enlightened individuals of their ability to fulfill their self-interests through limiting the power of government.²⁷

In addition, political expert Graham Maddox touches on this as he addresses the doctrine of original sin in *The Prince* claiming that as Machiavelli thought negatively towards the concept of human nature, he therefore scared individuals to question the sovereign's political elites. Furthermore, as he acknowledges how Machiavelli touched upon religious texts and doctrines such as original sin to support the "secularization of all religious matters that impinge on the state,"²⁸ he attempts to illustrate a correlation between the influence of Machiavelli's work and the secular reformation of politics. Doing so, he argues that Machiavelli's approach to 'bypass Christianity' and deconstruct the churches political authority, has greatly influenced the formation of modern constitutionalism as well as an individuals right to fundamental rights and liberties.²⁹ This is evident as he argues that *The Prince* is what influenced individuals to insist

²⁵Niccolò Machiavelli, *The Prince*, ed. Angelo Codevilla (New York: Yale University Press, 1997), vii

²⁶Niccolò Machiavelli, *The Prince*, ed. Angelo Codevilla (New York: Yale University Press, 1997), vii

²⁷Niccolò Machiavelli, *The Prince*, ed. Angelo Codevilla (New York: Yale University Press, 1997), vii

²⁸Graham Maddox, "The Secular Reformation and the Influence of Machiavelli," *The Journal Of Religion* 82, no. 4 (2002): 540, accessed June 25, 2015, <http://www.jstor.org/stable/1206519>

²⁹Graham Maddox, "The Secular Reformation and the Influence of Machiavelli," *The Journal Of Religion* 82, no. 4 (2002): 539, accessed June 25, 2015, <http://www.jstor.org/stable/1206519>

that the state create a constitution”³⁰—an inflexible documentation outlining fundamental freedoms and rights which cannot be neglected under the leadership of the state, as *The Prince* unveiled the reality of politics and human nature as he argues men to be: “ungrateful, fickle, pretenders and dissemblers, evaders of danger, eager for gain.”³¹ Furthermore, as Angelo recognizes that Machiavelli suggested that individuals obtain their own self-interests through limiting the power of government, ensuring that a ruler is unable to infringe and impede on an individual’s fundamental rights and freedoms, Maddox on the other hand, illustrates that Machiavelli’s insight on the world of politics is what scared individuals into going forth with the creation of the unchangeable, written constitution. Thus, as this relates to our governments of modern day, it is evident that Machiavelli influence is apparent in modern day politics.

On another note, political theorists such as Christian Gauss, an introductory writer for an edition of *The Prince* is able to recognize modernity in Machiavelli’s work as he argues Machiavelli’s support towards colonization and nationalistic endeavors. To illustrate, *The Prince*, dedicated to Lorenzo de’ Medici as a solution in order to solve the political instability in Italy, was written in search of a political leader that would unite Italy and “free [them] from the barbarians.”³² This is evident as Machiavelli quotes Italian scholar Francesco Petrarch’s poem *Italia Mia*, a work that vouched for the unification of Italy as it illustrated the brutality of civil war and how it was tearing apart the nation.³³

³⁰Graham Maddox, “The Secular Reformation and the Influence of Machiavelli,” *The Journal Of Religion* 82, no. 4 (2002): 542, accessed June 25, 2015, <http://www.jstor.org/stable/1206519>

³¹Niccolò Machiavelli, “The Prince,” In *Political Philosophy*, edited by Steven M. Cahn, (chapter 17)

³²Dragica Vujadinovic, “Machiavelli’s Republican Political Theory,” *Philosophy and Social Criticism* 40, no. 1 (2014) : 45, Accessed July 1, 2015. DOI: 10.1177/0191453713513786 psc.sagepub.com

³³Mikael Hörnqvist, *Machiavelli and the Empire* (New York: Cambridge University Press, 2004), 257.

*“Virtue will take up arms against fury,
and make the battle short,
because the ancient valor in Italian hearts
is not yet dead”³⁴ The Prince 26*

Taking place during the 1350s, *Italia Mia* illustrates Italy during a time where civil war took place between all five states. Through his work, Francesco Petrarch addresses his political appeals to foreign rulers to enlighten others that the unification of Italy is necessary.³⁵ *The Prince* by Machiavelli is similar in this sense, as it was influenced by Italy’s “arrested political development” during 16th century Europe, a time where consequently, fighting again took place amongst the five territories Italy was comprised of.³⁶ However, as Machiavelli blamed this to be the absence of not having a strong leader to bring order to the nation, *The Prince* formulated a plan on how to solve this by listing off the secrets to gaining political domination over the masses—a trick that could be used on not only one territory but instead, all the states the nation was comprised of. In addition, as he supports the presence of a militia, advising princes to use the Roman republic as their model in regard to foreign and domestic politics,³⁷ it is evident that Machiavelli’s main goal revolves around “[maintaining] the salvation of the fatherland.”³⁸ Thus, as one can argue that Machiavelli made sure that the survival and maintenance of the state was his first priority, it is evident that he supported nationalism as well as colonization as promoted the unification of Italy. Furthermore, as countries such as Italy now in modern day

³⁵Sabrina Stoppa, “Italia Mia.” *The Romance Quarterly* 53, no. 3 (2015) : 195, accessed July 6, 2015, <http://www.tandfonline.com/doi/abs/10.3200/RQTR.54.3.195-218#preview>

³⁶Kashi P. Misra, “Machiavelli,” *The Indian Journal of Political Science* 13, no. ¾ (1952): 19, accessed July 1, 2015, <http://www.jstor.org/stable/42743396>

³⁷Leo Strauss, *Thoughts on Machiavelli* (Chicago: University of Chicago Press, 1958), 16.

³⁸Leo Strauss, *Thoughts on Machiavelli* (Chicago: University of Chicago Press, 1958), 10.

have become unified, it is evident that Machiavelli's work has influenced individuals of the state to see survival and peace of a nation in terms of uniting as a whole.

In conclusion, through the analysis of Machiavelli's work *The Prince*, it becomes apparent that perception is everything in politics as Machiavelli believes the only way a leader is able to maintain political power and long-lasting fame over the state is through acts of brutality, covered up and justified to the public through acts of manipulation and deceit. In addition, as *The Prince* was considered to be the first work to illustrate individuals with a lower conception of human nature, as Machiavelli explicit states that the Divine and morality held no place in politics, suggested through the malicious character of the prince that a large government and the formation of constitutional rights may be necessary in order to avoid raising suspicion of a political leader, and supported all the unification of states in order to promote long-lasting peace, it is evident how Machiavelli's *The Prince* has influenced modern day politics.

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Canadian Politics

Papers by: Cameron Torrens
Elizabeth McCallion

Abolishing Section 33 of the Canadian Charter of Rights and Freedoms:

The argument for why the notwithstanding clause is no longer necessary

By: Cameron Torrens

After the introduction of the *Charter of Rights and Freedoms* in 1982, questions began to formulate over how section 33 of the Charter of Rights and Freedoms (CORAF) would be interpreted by the judiciary.¹ Since then, there have been debates over why this amendment was included in the CORAF. Scholars, such as Janet Hiebert and John Whyte, believe it is necessary to abolish section 33 of the CORAF, as Canada's path towards judicial supremacy was clearly the main goal of the *Charter*. Other scholars, such as Peter Russell and Lorraine Weinrib, believe that maintaining section 33 within the CORAF allows for parliamentary sovereignty to be sustained. A final scholar, Jamie Cameron, is used to develop both sides of the debate and strengthen the claim that abolishing section 33 of CORAF is in the best interest of Canadians. I will argue that although in principle, section 33 has significant merit and causality, in reality it now serves as an obstacle for Canada to achieve full judicial supremacy.

This paper will be organized as follows. First it will clarify section 33 and the clauses associated with it. Second, it will outline the arguments for and against abolishing section 33 of the Canadian Charter of Rights and Freedoms by referring to many academic scholars. Next, it will analyze the strengths and weaknesses of both sides of the debate. Finally, the paper will solidify the case for the abolition by acknowledging the inevitable shift towards judicial supremacy within Canada.

¹Lorraine Weinrib, "Learning to Live with the Override," *McGill Law Journal* 35, no.3 (May 1990): 543.

Section 33 of the CORAF is as follows: “Parliament or a legislature of a province may expressly declare an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision including in section 2 or section 7-15 of this Charter.”² Additionally, a declaration can be in effect for five years and can be continually re-enacted.³ Since its inclusion into the CORAF in 1982 and its usage thereafter, many scholars have deemed section 33 as extremely controversial. This has fuelled a debate between maintaining or abolishing section 33 within the CORAF.

The first author in favour of abolishing section 33 of the CORAF is John Whyte. In his article, “On Not Standing for Notwithstanding”, Whyte believes that abolishing section 33 should occur, which would allow the judiciary to be relied on as the sole vindicator of Charter values.⁴ Whyte’s arguments stem from the idea that section 33 should not be debated using constitutional theory claims. Constitutional theory neglects to address the social ramifications of the legislature exercising its override on entrenched Charter rights. Instead, Whyte uses a three-pronged methodology of legalism, democracy, and federalism to outline how section 33 should be debated.⁵ First, Canada derives part of its legitimacy from legal adjudication. The decisions rendered from the judiciary ensure that the state is not overreaching its realm of power.⁶ Second, the democratic principles that are portrayed in the *Charter* provide a powerful pedigree for judicial control over political decisions.⁷ This ties in with Whyte’s third methodology of federalism because Canada’s foundation as a federal state allows the judiciary to represent the mi-

²*Canadian Charter of Rights and Freedoms*, s 33, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, c 11.

³*Ibid.*

⁴John Whyte, “On Not Standing for Notwithstanding,” *Alberta Law Review* 28, no. 2 (1989-1990): 349.

⁵Whyte, “On Not Standing for Notwithstanding,” 349-350.

⁶*Ibid.*, 350.

⁷*Ibid.*, 351.

norities over the majority's will.⁸ The decisions of the Supreme Court have never correlated with severe public unrest and frustration and has done an adequate job in strengthening the rights of all citizens, not just minorities.⁹ This methodology proves that Canada shifts moves towards an ideology of constitutionalism rather than parliamentary sovereignty as a direct result of the introduction of the *Charter*. The fact that section 33 is rarely called upon has thus marginalized the minorities within Canada more so than the judiciary. Therefore the legislature cannot portray itself by representing the values of the minorities as the judiciary has overtaken that responsibility.¹⁰

The second author in favour of abolishing section 33 of the CORAF is Janet Hiebert. In her article, "New Constitutional Ideas: Can New Parliamentary Models Resist Judicial Dominance When Interpreting Rights?" Hiebert advocates that a shift from parliamentary sovereignty to judicial supremacy occurred when the Canadian Bill of Rights became entrenched into the CORAF.¹¹ By entrenching the Bill of Rights into CORAF, the federal government was able to listen to the judicial power concerns of the provinces as well as establish legislation that authorized judicial oversight.¹² It is evident that within the language of the *Charter* the goal was to displace the principle of parliamentary sovereignty in favour of a federal state that could better represent the country as a whole.¹³ A key concern with parliamentary sovereignty is that the socio-economic levels of the Members of Parliament do not accurately represent the majority of Canadian citizens. The shift away from parliamentary sovereignty symbolizes a new connection

⁸Ibid, 352.

⁹Ibid, 352-353.

¹⁰Ibid, 354.

¹¹Janet Hiebert, "New Constitutional Ideas: Can New Parliamentary Models Resist Judicial Dominance When Interpreting Rights?" *Texas Law Review* 82 (2004): 1965.

¹²Hiebert, "New Constitutional Ideas," 1968.

¹³Ibid, 1976.

with American constitutionalism.¹⁴ Other parliamentary democracies, such as the United Kingdom and Australia, neglected to entrench the bill of rights into their respective constitutions. Judicial review therefore does not play as much as an influential role in those countries. Because of this key distinction, Canada has vindicated the judiciary as having the only valid role in solving conflicts between legislation and individuals.¹⁵

The first author in favour of maintaining section 33 of the CORAF is Peter Russell. In his article, “Standing Up for Notwithstanding”, Russell refutes the claims made by John Whyte towards section 33 of the CORAF and his failure to define Canada as a liberal democracy rather than a constitutional democracy.¹⁶ Russell states that democratic governments should not be founded on constitutionalist grounds as it advocates the majority’s will. Instead, Canadian citizens carry equal responsibility for determining what is right for the political community.¹⁷ Allowing the judiciary to become the only valid role in solving conflicts poses two concerns. First, judges are not infallible.¹⁸ If all citizens carry responsibility to determine what is right for the political community, there should be a process that allows for decisions to be debated and possibly rejected. Russell believes that this process is present in section 33 of the CORAF.¹⁹ This provides a sense of checks and balances between the legislature and the judiciary that ensures that the will of majority does not always prevail. The other concern is the generic language of the charter leaves a lot up to the interpretation of the judges. One example he looks at is that section 1 of the CORAF outlines that no rights are absolute, which begs the question of how one defines absolute.²⁰ Due to these two major concerns that gives the ability of the judici-

¹⁴Ibid, 1983.

¹⁵Ibid, 1985.

¹⁶Peter Russell, “Standing Up for Notwithstanding,” *Alberta Law Review* 29 (1991): 295.

¹⁷Russell, “Standing Up for Notwithstanding,” 295.

¹⁸Ibid, 295-296.

¹⁹Ibid, 296-297.

²⁰Ibid, 296-298.

ary to severely shape interpretations of the *Charter*, Russell concludes that section 33 should not be abolished from the CORAF as it acts as a sufficient buffer to full judicial supremacy.

The second author in favour of maintaining section 33 of the CORAF is Lorraine Weinrib. In her article, “Learning to Live With The Override”, Weinrib argues that a constant dialogue between the legislature and the judiciary regarding section 1 and section 33 is necessary within the Canadian government to prevent a weakening of the judicial commitment to rights protection.²¹ Weinrib postulates that the design of the Charter was not to give legislative powers to the courts or combine the constitutionalization of rights. Furthermore, she questions the belief that parliamentary sovereignty has not shifted outside the Canadian mindset.²² Simply put, the *Charter* maintains many characteristics of parliamentary sovereignty and grants the judiciary the power to actively debate political interests with the legislature. Weinrib does acknowledge that there are constitutionalist elements within the *Charter* that pushes the advancement of judicial oversight and review. However, to combat the increased power of the judiciary that is non-elected and non-representative, section 33 is established to maintain democratic legitimacy.²³ Disagreeing with Whyte and Hiebert, Weinrib believes that section 33 is where the exercise of majoritarian powers should occur rather than the placing majoritarian powers in the hands of the judiciary.²⁴ A hybrid of institutional foundation is created because of the dialogue between section 1 and section 33. As a result, section 33 gains paramount importance for representing the rights of the majority.

²¹Weinrib, “Learning to Live with the Override,” 542.

²²Ibid, 557, 568.

²³Ibid, 564.

²⁴Ibid, 570.

To summarize, Whyte and Hiebert state that abolishing section 33 does not heavily impact the balance of power within Canada. Canada is already moving towards judicial supremacy and constitutionalism due to the ideological undertones of the language of the Charter and judges will actively consider and represent the rights of the majority. On the other hand, Russell and Weinrib want to keep section 33 in the CORAF, as it will heavily impact the balance of power within Canada. Too much power and influence is put into hands of unelected, unrepresentative, infallible judges. Although the Charter gives significant powers towards the judiciary, the legislature is there to prevent parliamentary sovereignty from fading. Now, I will assess the arguments put forth by the authors and use Jamie Cameron's article, "The Charter's Legislative Override: Feat or Figment of the Constitutional Imagination?" to help guide both sides of the debate.

Whyte and Hiebert fail to address two major concerns in their analysis of section 33. The first concern is based on the lack of emphasis on the role that legislative activism has to counteract judicial activism.²⁵ Although Whyte and Hiebert are correct in asserting that the *Charter* contains many constitutionalist principles, it puts a lot of power in an undemocratic institution. The appointment of Supreme Court justices by the Prime Minister is one example where the justices represent the values of the governing party and it is hard to prove that the justices will rule solely on legal merit.²⁶ Democratic principles re-emerge once legislatures are able to interact with the judiciary and prevent the courts from weakening rights issues. The other concern is the idea that Quebec could separate from Canada.²⁷ This is not because Quebec disagrees with the rights and freedoms outlined in the Charter. On the contrary, many of the en-

²⁵Jamie Cameron, "The Charter's Legislative Override: Feat or Figment of the Constitutional Imagination?" *Supreme Court Law Review*, 2d ser., (2004): 139.

²⁶Russell, "Standing Up for Notwithstanding," 295.

²⁷*Ibid*, 301.

actments of section 33 come from Quebec in order to sustain cultural security that defines the province and how Quebec is continually underrepresented and marginalized from the rest of Canada.²⁸ Although it could be said that section 33 merely plays a psychological role on government institutions because it is rarely enacted anymore, judges and legislators must constantly be aware of the potential for provinces to enact section 33 and the ramifications if that were to happen.²⁹

Russell and Weinrib also fail to account for two problems that arise from keeping section 33 in the *Charter*. The first problem refers to the legislature's ability to preemptively attach section 33 to bills that are drafted.³⁰ When section 33 is enacted preemptively, the dialogue between the judiciary and the legislature becomes silent. This is inconsistent with Russell and Weinrib's argument that the override clause is derived from the legitimacy of values. In reality, preemptive override is not subject to any democratic scrutiny.³¹ Although there are cases where section 33 is used in response to a claim made by a court, the preemptive use of the override severely tarnishes the courts' ability to consistently interpret section 33 correctly.³² The other problem is directed more at Weinrib's main assumption that two supremacies can function effectively at the same time. In reality, as pointed out by Cameron, the legislature cannot prevail in a contest against the judiciary because of the *Charter*. There are no meaningful boundaries to the rights protected by the override and constitutional entitlements have a greater claim to legitimacy than legislation enacted by section 33.³³ As a result, section 33 can be seen as an illegit-

²⁸Ibid, 301.

²⁹Whyte, "On Not Standing for Notwithstanding," 356.

³⁰Cameron, "The Charter's Legislative Override," 151.

³¹Ibid, 159.

³²Ibid, 151.

³³Ibid, 152.

imate response to the disagreement of judicial review.³⁴ In essence, section 33 has become increasingly problematic because of the Charter's focus on judicial oversight.

Both sides of the debate do carry flaws yet they both recognize the idea of potential benefits from reforming section 33. Consistency of judicial rulings regarding section 33 has been brought up in multiple cases. However, it is easier for the judiciary to change the constitution than trying to amend it.³⁵ Due to the complex nature of the amending formulae, it would be difficult to justify change to section 33 two clear stigmas are attached to it. The first stigma revolves around the idea it is considered political suicide to submit a bill to Parliament contradicting the Bill of Rights.³⁶ The other stigma is that the legislature cannot prevail against the judiciary and reforming section 33 to permit it do so would contradict the principle of judicial review set out by the Charter.³⁷ Although reforming section 33 provides optimism to both sides of the debate, it would be difficult to accomplish.

Finally, this essay will now take the position that section 33 should be abolished and will respond to the criticisms that abolition faces. First, Canada has never had complete parliamentary sovereignty.³⁸ Canadian legislatures have been subject to judicial enforcement as a result of federalist principles that Canada adopts.³⁹ Therefore, it is not unreasonable to allow the judiciary to have power over the legislature. Over time, judicial supremacy should be able to flourish in the Canadian system. Secondly, section 33 has gained a bad reputation that is associated with political suicide. In reality, section 33 has become merely psychological phenome-

³⁴Ibid, 156.

³⁵Russell, "Standing Up for Notwithstanding," 298.

³⁶Hiebert, "New Constitutional Ideas," 1970.

³⁷Cameron, "The Charter's Legislative Override," 156.

³⁸Russell, "Standing Up for Notwithstanding," 294.

³⁹Ibid, 294-295.

⁴⁰Cameron, "The Charter's Legislative Override," 167.

non.⁴⁰ If section 33 was abolished, it would be illogical and irrational to assume that legislators and judges would still not consider the effects certain legislation would have on the potential infringement of rights. Lastly, the ability for legislators to attack an unelected, unrepresentative, and potentially undemocratic institution such as the judiciary by enacting a preemptive usage of section 33 is contradictory in itself. Preemptive usage of section 33 is able to shield itself from democratic scrutiny.⁴¹ Attacking a potentially undemocratic judiciary by using an undemocratic clause of section 33 begs the question of whether Canada is facing concerns about a democratic deficit. Abolishing section 33 would allow Canada to move fully towards judicial supremacy as intended but was halted due to the federal government's concession to the provinces during constitutional patriation.

There are some criticisms that arise from this particular view on the abolition of section 33. First, critics argue that judicial supremacy would further marginalize Canadians. Without section 33 protecting the rights of majority's will, judges embrace elitist views. It is hypocritical to call the judiciary elitist and claim that parliamentarians are not. Although this criticism carries merit, court partying has had a major impact and influence towards representing the rights of citizens.⁴² The aim is to use the legal system to enact changes that cannot get through the legislature. Minorities can turn to the courts because the institutions built by Canadian federalism benefit geographic areas rather than addressing social and regional issues.

Secondly, with judicial supremacy comes the argument that judges are not infallible. There have been many cases of inconsistency when interpreting section 33. However, Canadian federalism allows for judges to practice common law rather than civil law.⁴³ As a result, judges

⁴¹Ibid, 159.

⁴²Russell, "Standing Up for Notwithstanding," 302.

⁴³Whyte, "On Not Standing Up for Notwithstanding," 350.

will not be able to interpret every case correctly and that is just a by-product of the common law system. One could also make the case that common law is one of many fundamental characteristics that make Canada distinctly Canadian. Critics that claim that section 33 of CORAF is relevant due to its distinctly Canadian features are incorrect to do so. Rather, section 33 is merely a way of reversing judicial decisions. Countries that do not have a similar override clause have other means outlined in their specific constitutions that allows for interaction between the legislature and the judiciary.⁴⁴

Lastly, some critics could argue that political party ideologies from the appointment of justices will impact the legal decisions rendered. However, it seems unlikely that the decisions made by the courts will become radicalized. Since the Canadian Bill of rights is entrenched in the CORAF, it becomes hard to rule in favour of major changes without political upheaval and civil unrest.⁴⁵ No decisions rendered should nor would be able to drastically change the political landscape in Canada. Judges will still have to consider the ramifications of their decisions regardless to whether section 33 is abolished or not.

To summarize, I believe that section 33 of CORAF should be abolished to allow for Canada to strive towards judicial supremacy. Building on the arguments of Whyte and Hiebert along with the additional arguments made in the last section of the paper, it seems inevitable that Canada will shift towards judicial supremacy. As outlined by Cameron, Section 33 has become an illegitimate response to disagreements with judicial review due to the language of the Charter.⁴⁶ However, it would be naïve to think that the principles behind the override clause

⁴⁴Russell, "Standing Up for Notwithstanding," 298.

⁴⁵Weinrib, "Learning to Live with the Override," 1965.

⁴⁶Cameron, "The Charter's Legislative Override," 156.

would not continue to shape the minds of the courts once judicial supremacy occurs and section 33 is abolished.

This paper analyzed the relationship section 33 has on Canada's ability to move towards judicial supremacy. First, the paper provided a brief scope of section 33 within the CORAF. Next, it looked into the analysis of Whyte and Hiebert in regards to abolishing section 33 and it looked at arguments for maintaining section 33 within the CORAF through the analysis of Russell and Weinrib. Then, the paper assessed the strengths and weaknesses of each side of the debate by using Cameron's article as a mediator. Finally, it solidified the position that section 33 should be abolished as it stands in the way of judicial supremacy yet acknowledges the fact that section 33 will forever impact the decision making process of the legislature and judiciary. Since the introduction of the CORAF in 1982, Canada has begun a path that moves away from parliamentary sovereignty and towards a path of judicial supremacy. Section 33 has provided difficulties for Canada to incrementally adopt the philosophy of judicial supremacy. However, once section 33 is abolished, Canadians should fully embrace the philosophy that was a main intention of the *Charter*.

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David E. Smith's Proposal for Improvement of the Senate: A Re-evaluation in 2015

By: Elizabeth McCallion

The reform of the Senate has been a contested topic in Canada since shortly after its formation in 1867. David E. Smith's analysis of the Senate and proposals for its reform are considered some of the most important academic work on the institution. Smith's chapter "The Improvement of the Senate by Nonconstitutional Means," in Serge Joyal's 2003 book *Protecting Canadian Democracy: The Senate You Never Knew*, examines measures that the government can take to improve the Senate without opening the door to constitutional debate. Because of the delicate nature of Canadian federalism, there is a very real fear amongst Canadian politicians that another constitutional crisis could create deep divides within the country. Since the chapter was written, a few developments in Senate reform have occurred that specifically related to Smith's proposals. These include the attempt at Senate reform by Prime Minister Stephen Harper in 2012, the Supreme Court of Canada Reference re: Senate Reform, and the 2014 attempts by Liberal Party leader Justin Trudeau to create a non-partisan Senate. This essay considers some of Smith's suggestions, along with other literature on the subject, in conjunction with recent events to examine whether those proposals are still relevant today. It discusses, with the federal structure of Canada in mind, whether Senate reform through constitutional means should be discounted. An analysis of Smith's article in light of recent developments creates a more comprehensive view of Senate Reform in 2015.

While many of Smith's ideas bear significant merit, they have not yet come to fruition in Canadian politics. Some of his suggestions, however, have recently become the subject of debate. One reason that the Senate is not seen as a credible institution is that once Senators are appointed, they hold office until age 75. As Smith pointed out, this is to ensure that the Senate is filled with experienced members, and to create a sense of continuity and long-term perspective.¹ He argued that Senators should be appointed to non-renewable 12 year terms in office, since that is the approximate average term for a Canadian Senator.² Since Smith produced this idea, it has become popular among scholars. The Honourable Daniel Hays, a former Senator, proposed a maximum of 15 year terms for Senators (but stated that he preferred 12 year terms).³ Daniel Pellerin, a critic of Smith, argues for a 12 year term for Senators, with elections every 4 years to ensure continuous rotation of Senators.⁴ Finally, Brian Crowley suggests that Senators should sit for the life of two parliaments; this would not impose a specific time limit but would still constitute a set term.⁵ While it may be true that Senators have the opportunity to abuse their positions due to their certain tenures in office, it should be noted that imposing a fixed term creates the risk of losing the expertise of genuinely competent and valuable Senators with long-term experience.

The idea of a fixed term gained traction under the government of Stephen Harper. Historically, Western Canada has sought stronger representation in the Canadian parliament through the improvement of the Senate; this was particularly important for the Reform Party, in

¹David E. Smith, "The Improvement of the Senate by Nonconstitutional Means," in *Protecting Canadian Democracy: The Senate You Never Knew*, ed. Serge Joyal (Kingston: McGill-Queen's University Press, 2003), 259.

²Ibid.

³Hon. Daniel P. Hays, *A New Senate for Canada: A Two-Step Process for Moving Forward on Senate Reform*, (Calgary, AB: Canada West Foundation, 2008), 3.

⁴Daniel Pellerin, "Between Despair and Denial: What to do about the Canadian Senate," *Review of Constitutional Studies* 11, no. 1 (2006), 23.

⁵Brian Lee Crowley, *Beyond Scandal and Patronage: A Rationale and Strategy for Serious Senate Reform*, (Ottawa, ON: Macdonald-Laurier Institute, 2013), 18.

which Harper first gained political experience.⁶ In 2012, then-Prime Minister Harper introduced Bill C-7 to the House of Commons, which would limit Senators to nine year terms and invite provinces to hold elections to fill Senate seats.⁷ Though nine years is shorter than the term proposed by Smith, it is a comparable idea because it proposes fixed senatorial terms. The dissatisfaction of the provinces over Bill C-7 led the federal government to ask the Supreme Court of Canada (SCC) for a reference regarding Senate reform. A unanimous decision was released on April 25, 2014; it stated that the imposition of fixed senatorial terms would alter the fundamental nature of the Senate and would require a constitutional amendment using the constitution's general amending formula.⁸ The formula, known as the '7/50 Formula' by politicians and scholars, requires the consent of both houses of the federal parliament and the legislatures two-thirds of the provinces representing at least 50% of the population to pass a constitutional amendment. Smith terms the 7/50 formula "nearly unachievable," and the deadlock created by it is the reason that he explores nonconstitutional reforms.⁹ This SCC decision means that Smith's suggestion for 12 year fixed terms is now anachronistic. But this is not the only proposal that was affected by the SCC Reference re: Senate Reform.

An issue with the lack of Senate reform throughout Canadian history is that the qualifications to become a Senator are not difficult to achieve today, though in 1867 they would have demarcated the wise and experienced by requiring Senators to be at least 30 years of age and hold \$4000 worth of property.¹⁰ Now, they create the notion that anyone can become a Senator,

⁶Patrick Malcolmson and Richard Myers, *The Canadian Regime: An Introduction to Parliamentary Government in Canada*, (Toronto, ON: University of Toronto Press, 2012), 133.

⁷Paul Wells, "The Messy Details of Senate Reform," in *Maclean's Magazine*, August 16, 2013, <http://www.macleans.ca/news/canada/a-three-ring-circus/>

⁸Christopher Cornell, "Reference re Senate Reform and the Supreme Court of Canada's Clarification of the Constitutional Procedure for Reforming the Canadian Parliament's Upper House," *Law and Business Review of the Americas* 20, no. 3, (2014): 456-457.

⁹Smith, "The Improvement of the Senate," 231.

¹⁰Malcolmson and Myers, *The Canadian Regime*, 129.

and the prime minister can indeed choose anyone he wishes. Smith suggested that an updated set of guidelines for the qualifications of Senators should be developed and published.¹¹ This could be incredibly effective, as it might cement unofficial standards that the prime minister would have to uphold or risk falling in public favour. The SCC Reference re: Senate Reform can not only reinforce Smith's suggestion, but actually expand upon it. The court ruled that the Canadian parliament can unilaterally abolish the \$4000 property qualification, as this would not affect the fundamental nature or role of the Senate.¹² It is not unreasonable to extend from this that if qualifications can be abolished unilaterally, they can also be added unilaterally. So long as the qualifications added do not alter the fundamental nature or role of the Senate, it is unlikely that the federal government would face challenges from the provinces. Additionally, a Supreme Court reference confirming the legality of adding qualifications would eliminate the possibility of provincial challenges. The SCC Reference re: Senate Reform was a milestone in the debate about the Canadian Senate, and it has had implications in the analysis of Smith's chapter.

With regards to the composition of the Senate, there have been developments since Smith wrote "The Improvement of the Senate by Nonconstitutional Means." The method to select senators makes many Canadians uncomfortable, as the power rests in the hands of the prime minister to advise the governor general on whom to appoint. A Senate appointment is perceived by many as a way for a prime minister to reward an individual who has done favours for him or his party. To counter this perception, Smith proposed an "Appointments Vetting Commission" that would create a list of candidates from which the prime minister could

¹¹Smith, "The Improvement of the Senate," 260.

¹²Cornell, "Reference re Senate Reform," 458.

¹³Smith, "The Improvement of the Senate," 258.

choose, which would eventually lead to a new convention of the prime minister abiding by the recommendations of the commission.¹³ The Honourable Daniel Hays has also suggested an independent vetting committee modeled on the British House of Lords' appointments commission.¹⁴ This seems reasonable as it would cause a dispersal of the power over Senate appointments, which would increase the credibility of the Senate in the eyes of Canadians. The current prime minister of Canada, Justin Trudeau, championed a similar idea around the time of the SCC Reference, and again during the 2015 election.^{15,16} Trudeau has stated that he is not interested in opening the Constitution Act 1982 up to amendment, and would create a "new, non-partisan, merit-based, broad and diverse process to advise the Prime Minister on Senate appointments."¹⁷ However, according to Section 42 (I) (b) of the act, changes to the method of selecting Senators would require a constitutional amendment using the 7/50 formula.¹⁸ This brings up the issue of whether an appointments committee can be considered to change the method of selecting Senators. If it did, it would be unconstitutional. Legal experts have contended that if the decisions of the committee are merely advisory and not binding, then it can be considered legal.¹⁹ While an advisory appointments committee would certainly increase the credibility of the Senate, it leaves the possibility of the prime minister making biased appointments based on party allegiances. Smith's model would have to be combined with a non-partisan Senate in order for it to be most effective.

¹⁴Hays, *A New Senate for Canada*, 3.

¹⁵Cornell, "Reference re Senate Reform," 460.

¹⁶Liberal Party of Canada, *Real Change: A Fair and Open Government*, (Ottawa, ON: 2015) www.liberal.ca/files/2015/08/a-fair-and-open-government.pdf

¹⁷Ibid.

¹⁸Government of Canada, *Constitution Acts 1867-1982*, (Ottawa, ON: Justice Laws Website, 2015), <http://laws-lois.justice.gc.ca/eng/Const/page-16.html>

¹⁹Cornell, "Reference to Senate Reform," 460.

Missing from Smith's proposals is the suggestion of a non-partisan Senate. It is possible that to a Canadian politics scholar in 2003, the concept of a non-partisan Senate was unimaginable. The closest Smith came to such an idea was the suggestion of a 'crossbench.' Based on a similar concept in the British House of Lords, the crossbench would be an institutionalized group of independent senators who would not be subject to a party whip, which would thereby diminish the power of the executive in the Senate.²⁰ The concept of independent senators has recently become more popular, but has been expanded upon greatly. On January 29, 2014, after the Québec Court of Appeal rejected Bill C-7 but before the SCC Reference re: Senate Reform, Trudeau released all Liberal senators from his caucus and barred them from participating in Liberal Party fundraising or campaigning.²¹ He then campaigned on a plan to end the partisan nature of the Senate in the 2015 election.²² The purpose of these reforms would be to ensure that the Senate can truly function as a chamber of sober second thought, and senators can be free to vote with their consciences instead of succumbing to the party whip. Smith pointed out that the Senate is not as partisan as the House of Commons, but "it is still a parliamentary chamber whose operations are organized around the adversarial principle of government and opposition."²³ An objection to a non-partisan Senate might be that the Senate requires adversarial debate in order to function properly. However, a non-partisan Senate does not necessarily mean a lack of adversarial debate, as it is incredibly unlikely that a group of 105 people would agree unanimously. Some debate would always occur in the Senate because even if senators are not formally allied with a political party, they will hold differing political views. The argument can be made that allegiances will inevitably form in the Senate regardless of whether members

²⁰Smith, "The Improvement of the Senate," 262-263.

²¹Cornell, "Reference re Senate Reform," 459.

²²Liberal Party of Canada, Real Change.

²³Smith, "The Improvement of the Senate," 263.

belong to caucuses. However, the response to this is that since Senators will technically be free from a party whip, they would still be able to vote against their allies occasionally, and it would allow for shifting allegiances. Though Smith suggested a group of non-partisan senators, with the election of Prime Minister Trudeau it is looking increasingly likely that Canada could see a non-partisan Senate in the future. A non-partisan Senate would increase public confidence in the Senate while still allowing the institution to perform its functions within the political system.

While the Canadian Senate is quite obviously in need of reform, the trend towards non-constitutional reform may be a risky one. Nonconstitutional reform may very well be effective reforming the Senate, but caution should be taken when establishing conventions around the constitution. Political scientist Christopher Cornell sees the need for reform of the Senate but thinks that a comprehensive overhaul is unlikely; for now, Canadians will have to settle for small, nonconstitutional reforms.²⁴ Additionally, much of the criticism about Bill C-7 was that piecemeal reform might exacerbate the problems in the Senate.²⁵ However, Canadians need not resign themselves to merely tolerable Senate reform, when opening up the constitution might lead to a more comprehensive and effective political system. Pellerin argues that Canadians have been traumatized by the Meech Lake and Charlottetown Accords (and the late 20th century constitutional crisis in general).²⁶ The failure of constitutional negotiations in this period led to the common belief that the constitution is impenetrable. The marked regionalism in Canada can sometimes make it difficult for the provinces to collaborate on federal initiatives, and the most obvious example of this is the period of constitutional crisis. But it is important to recog-

²⁴Cornell, "Reference re Senate Reform," 461.

²⁵Malcolmson and Myers, *The Canadian Regime*, 133-134.

²⁶Pellerin, "Between Despair and Denial," 7.

nize that as time passes, circumstances change. While Québec's reluctance to compromise with other provinces during the late 20th century was seen as a major stumbling block for constitutional amendment, political analyst and journalist Chantal Hébert has noted that Québec currently has the most federalist government that it has had in decades.²⁷ While this point only considers one region of Canada, it makes the case that the continuous changeover of governments and of personnel creates new circumstances. To rule out constitutional amendment might not be in the best interests of the Canadian state.

The fear of constitutional amendment and the desire to work around the constitution has the potential to set a dangerous precedent. If too many constitutional conventions become ingrained in Canadian politics but operate outside the law, the written document might be rendered obsolete. While the trend today is to work outside the constitution to reform the Senate, it is difficult to predict to which areas of politics this may spread. It is hard to overstate the importance of a written constitution in a federal state such as Canada. The document guarantees rights to each level of government and is vital to the survival of the state. If politicians begin to operate too much in the realm of constitutional convention, it could lead to another constitutional overhaul, such as the one in 1982. Additionally, it is not unreasonable to say that the larger the amendment, the more fractured the state could become during negotiations. Though the 7/50 Formula unquestionably makes amendment more difficult, constitutional amendment should not be written off in the minds of Canadians, as this may lead to a cathartic round of constitutional amendments. An avoidance of constitutional amendment could become a threat to Canadian federalism if it leads to a defunct written constitution or another constitutional crisis.

²⁷Chantal Hébert, "Can Quebecers and the Rest of Canada Come Together on Senate Reform?" in *The Toronto Star*, June 15, 2015, <http://www.thestar.com/news/canada/2015/06/15/can-quebecers-and-the-rest-of-canada-come-together-on-senate-reform-hbert.html>

David E. Smith's proposals to reform the Senate by nonconstitutional means provide an interesting starting point for the study of Senate reform since his chapter was written. His proposal of 12 year terms can now be said to be unconstitutional, after the ruling of the Supreme Court of Canada on Harper's Senate Reform bill. The same ruling allowed parliament to abolish property qualifications for senators, leading to the possibility that a new set of guidelines, which was suggested by Smith, could actually be imposed by parliament unilaterally. Smith's proposition of an independent vetting commission for senators is now being pushed by Prime Minister Trudeau, and is said to be legal so long as the commission offers advice and not binding decisions. Smith discusses the idea of a crossbench, but not of a non-partisan Senate; Trudeau has expressed his interest in creating a non-partisan Senate and this essay has shown why it is a viable option. Though all of these methods are valid ways to reform the Senate, the fixation on operating outside the constitution and the fear of constitutional amendment could lead to the obsolescence of the written constitution, or to another constitutional crisis. The political climate in Canada has changed since the 1980s and 1990s; it is time for governments to consider opening constitutional negotiations on small amendments in order to avoid other unsavoury options.

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Local Government and Public Administration

Papers by: Russell Christmas
Sam Cohen
Alexis De Brouhoven

The Public Service Modernization Act: An Amendment to Canadian Bureaucratic Values

By: Russell Christmas

Introduction

The Public Service Modernization Act (PSMA) was codified into Canadian law in 2003 and was enacted in the two years that followed. Described by the Canadian government as “the single biggest change to public service human resources management in more than 35 years,” the PSMA has had significant impact on the hiring practices of Canadian ministries. Specifically, the concepts of merit, patronage, and employment equity have been constructed remarkably differently in Canadian ministries after the PSMA came into use. This essay will analyze these three concepts relative to Canada’s bureaucratic values and address the manner in which the PSMA has addressed and affected their relevancy to Canadian public administration. Firstly, the historical context of the PSMA will be analyzed to establish the significance of merit, patronage, and employment equity through Canadian history. Secondly, the PSMA will be analyzed through different theoretical frameworks to measure the degree to which the PSMA’s tenants fit within policy theories. Finally, this essay will critically analyze the manner in which the PSMA has been defined, formulated, implemented, and evaluated relevant to these three key concepts. Through the use of historical, theoretical and critical analysis, this essay will argue that the PSMA, while ensuring greater employment equity for Canadian pub-

lic servants and increasing government efficiency, has mitigated a new form of patronage appointments and reduced the number of bureaucratic appointments based on merit.

Historical Context of PSMA

To understand how the PSMA affected bureaucratic human relation practices in Canada, two main important historical lineages must be addressed. Firstly, the history of political and bureaucratic appointments in Canada must be understood to properly analyze how the PSMA has changed these arrangements in contemporary Canada. In an attempt to deliver this history in a clear and concise manner, this essay will split historical context into three segments; the beginnings of Canadian public services when Canada was still a new nation, the innovative and radical policy change regarding Canada's civil service during the post-war era, and the contemporary policies leading up to the PSMA will all be addressed.

As may be expected, the Canadian public service was a radically different organism during the beginning of Canada's nationhood. Before the principle of responsible government became the standard of Canadian democracy, there was no established civil service to speak of. Positions were granted based on the whims of the Crown or colonial officials, and public servants could hold their position for as long as the crowned deemed them fit for their position. The politics-administration dichotomy that Canada currently operates under did not come into existence until 1849, when the principle of responsible government began to change the Canadian political landscape. However, non-political government positions were still largely based on patronage and loyalty to the party in power (Dawson 18).

It was not until The Civil Service Act, 1882, that this system based on patronage to political authority received any challenge in the political realm. The Civil Service Act created an examination board, The Board of Civil Service Examiners, that assessed new candidates to the civil service to ensure they met minimum criteria for their position. However, the examinations did not fully test the worth of potential civil servants, and a system based on patronage continued almost entirely unabated (19). The first significant challenge to the patronage system did not come about until The Civil Service Amendment Act, 1908, instituted a Civil Service Commission that was stipulated to give appointments in the Canadian bureaucracy primarily on the basis of how potential candidates performed in a revamped, competitive examination system. When the Civil Service Commission was created, only departmental officials were required to be assessed by the examination system, and appointments outside of internal bureaucratic affairs continued to be given based on patronage (20). However, the Amendment still served as an enormous improvement over the previously unchallenged patronage system. Following the serious disruptions to government processes after the outbreak of World War I, the Civil Service Commission was able to gain control over the appointment of civil servants in the internal services of government. In spite of this, the power of political influence remained strong, and by 1919 dominant party actions had taken the jurisdiction of the Civil Service Commission away from a significant number of government bureaus (Roberts 5-6).

On the verge of the 1920s, the Canadian public service had largely returned to a system of appointments based on patronage. In the years between 1920 and 1944, many radical policy changes shifted the manner in which bureaucratic appointments were given, and a mer-

it system was established. Of these changes, none would have been possible had the Civil Service Act not depoliticized the public service and allowed the Canadian bureaucracy to be capable of self-direction (Juillet and Rasmussen 48-49). During this period to time, the Canadian Service Commission used its new powers to ensure that appointments were “based on fairness and equity in terms of access, that the public service was operationally efficient and that public servants were not subject to politicization in terms of appointment or influence” (50). In other words, the Canadian Service Commission worked diligently during the postwar period to establish a system based on equity and merit.

The development of contemporary bureaucratic policy leading up to the PSMA constitutes the second historical lineage that this essay will address. These newer policies must be understood to evaluate the results of the PSMA’s stipulations. In Luc Juillet and Ken Rasmussen’s book, “Defending a Contested Ideal: Merit and the PSC of Canada, 1908-2008,” the scholars argue that the public service went through a dramatic series of reforms to its human resources management systems during the recent thirteen years that the Liberals held power in Parliament (184). Throughout the 1990s, the Public Service Commission approached delegation in a radically different manner; the Commission reduced its involvement in the delivery of services and focused more exclusively on oversight and accountability. The merit system that had guided the PSC’s approach to human resources management became more emphasized in the hiring practices of bureaucracy, and the Commission began to place great emphasis on the public service’s cohesion to the central guiding values to the Canadian bureaucracy (185).

The public service reforms kickstarted by the Chrétien government started in 1994 with the Program Review initiative. When the Progressive Conservative party left Parliament in 1993, they left the Liberals with an overgrown government budget in the midst of an economic downturn (185). Despite efforts from the Progressive Conservatives to cut back spending prior to the Liberals coming to power, Chrétien's government was required to continue with further reductions to government spending. Thus, these new reforms to the public service were created under the pretence that Canadian bureaucracy needed to be streamlined and reorganized. The Program Review initiative was primarily aimed at reducing the national deficit through the restructuring of government programs while supplying federal public service officials with the means necessarily to make public sector management more efficient (Paquet and Shepherd 39-40). Many critics have argued that the performance of the Program Review did not live up to its claims for reform. The initiative was capable of greatly reducing government spending throughout government ministries, with roughly twenty-nine billion dollars saved and forty-five thousand civil servant jobs removed from the Canadian public service (Phillips 15). However, it failed to effectively restructure the public service in a way that would solve the issues that led to excessive bureaucratic spending in the first place (Paquet and Shepherd 40). As with previous failed attempts to reform the public service, critics pointed to the fact that change had occurred in a top-down process, with the bureaucratic elite administering change without consulting public servants that worked within the Canadian ministries undergoing budget cuts. Due to the fact that the initiative failed to consult with middle-level managers who were potentially having their departments resources adversely

affected by budget cuts, there was a widespread rejection of the Program Review by lower-level public servants (51).

After the failure of the Program Review initiative to reform the public service, Canadian bureaucracy fell into a crisis. Public service morale had reached an unprecedented low due to a number of factors. The members of the public service were dissatisfied with years of constant criticism from the media and public, pay freezes, unrepresentative work demographics, and the continual loss of talent spurred from years of downsizing, budget cuts, and private sector recruitment. As a result of this “quiet crisis,” the clerk of the privy council launched the La Relève initiative to find solutions to the adversity faced by the Canadian bureaucratic system (Johnson and Molloy 203-205). La Relève identified the key challenges facing Canada’s public service, which its Task Force defined as the lack of demographic targeting, underrepresentation in the public service, and the lack of new recruitment. The success of La Relève can be attributed to its focus on consultation with public servants from all levels of management. This horizontal approach to public service consultation led to a boost in public service morale, and prepared the government with the knowledge necessary to create large-scale, successful reform (207-209). In 2001, the Liberal government promised to provide the public service with new reforms, and created the Task Force on Modernizing Human Resource Management to assess the bureaucratic reforms of other nations with Parliamentary governments to find the best solutions for the Canadian public service. The Task Force’s assessment of other nation’s policies resulted in the introduction of the Public Service Modernization Act in 2003.

The radical changes that came with the adoption of the Public Service Modernization Act greatly surpassed the scope of previous efforts for reform. While previous policies attempted to emphasize greater government accountability while ensuring that the public service's human resources management hired public servants based on merit, the PSMA was much more successful at achieving these goals. In an effort to increase efficiency and create greater employment equity in the public service, the PSMA's reforms modified the manner in which the bureaucracy defined the principle of merit and also explicitly defined merit-based appointments through statute law (Juillet and Rasmussen 184-185). This new definition changed the definition of merit to be more flexible, and applied two new concepts to the bureaucratic value. Firstly, the PSMA's definition of merit stated that it would no longer be necessary for managers to prove that their selected candidate was the highest qualified individual for the job, but only that they possessed the necessary qualification for the work. Secondly, managers would now be allowed to consider additional qualifications that, while not necessary for a candidate's job, could be deemed as an asset to their ministries (203). By allowing bureaucratic managers to make faster staffing decisions while also considering the importance of representation in the public service, this new definition of merit was meant to find a balance between public service efficiency and employment equity (218).

Theoretical Context of PSMA

The second section of this essay will outline the theories of individual scholars that can be applied to the PSMA act in addition to analyzing ideological theories relevant to the PSMA. This theoretical context will specifically review the backlash and controversy surrounding the principles core to the PSMA's legislature and use established theories to analyze

why this controversy has occurred. Firstly, this essay will review P.G. Nixon's bureaucratic innovation paradox theory and apply its premise to the PSMA. Afterward, this essay will analyze the ideological reasons for opposition for the PSMA. Both Nixon's bureaucratic innovation paradox theory and the ideological theories that stimulate Canada's political parties can be used to explain why there has been opposition to the PSMA's redefinition of the merit principle.

P.G. Nixon, a scholar of political science who specializes in public administration, has argued that the radical, seemingly positive changes that the Canadian civil service established during the post-war period are simply a result of government wanting to commit actions for symbolic reasons. Nixon's article, "Bureaucracy and Innovations," outlines what he describes as a paradox of public bureaucracy innovations (Nixon 280). According to Nixon, governments are likely to enact innovative bureaucratic policies when they want to perform actions for symbolic purposes and "do not know or care about what sort" (280). Nixon argues that innovative bureaucratic policies usually take the form of policies that give public servants a greater deal of autonomy in developing programs and mandates to fit local customs and circumstances. While Nixon contends that this type of policy is necessary to spur innovation in bureaucracy, it is also the undoing of such innovations. When government creates innovations in the public service, a larger amount of public resources needs to be allocated to enact these innovations, which has several effects in the political sphere. This reallocation of resources leads to greater public awareness of the policy area and increased competition among bureaucratic ministries. These effects translate into bureaucratic expansion to accommodate increased public and political interest, which leads to greater external review

of policy development and costs (296-298). This, according to Nixon, scales back innovation and stops its progress. Nixon ultimately argues that bureaucratic policy innovation is limited once the policy field becomes politicized and bureaucratic growth occurs.

Nixon's bureaucratic innovation paradox can be applied to the innovations brought to bureaucracy by the PSMA. The PSMA granted human resource departments greater autonomy in the hiring of public servants. It also shifted the public service's hiring practices to focus more on employment equity, increasing the representation of four designated groups in Canadian bureaucracy: visible minorities, first nations peoples, disabled individuals, and women. However, the innovation of this policy has been limited by the political controversy and bureaucratic spending surrounding it. Critics have argued that employment equity violates moral notions of fairness and equality (Juillet and Rasmussen 214). In a infamous example of employment equity in action, a woman named Sara Landriault was precluded from applying for an administrative assistant position at the federal ministry of Citizenship and Immigration due to the fact that she was not a racial minority. The Conservative party ratified around this controversial case, claiming that Canadians should not be barred from employment due to their race. Stockwell Day, then president of the Treasury Board of Canada, was pressured into ordering a review of the employment equity policy of Canadian human resource managers (Friesen). This case exemplifies Nixon's bureaucratic innovation paradox. While the PSMA's focus on employment equity allows for the greater representation of minority groups in government, its innovative principles have been undermined by its politicization and the costs it has brought to bureaucratic spending. While the PSMA symbolically establishes that the Canadian government is concerned with protecting minorities, it has been undermined by its own innovation,

and attempts to derail its regulations have come from pressure originating from influential actors in the political sphere.

It can also be argued the PSMA was bound to have its innovative, radical reforms set back by the frequent swaying of dominant political ideologies in Canadian Parliament. The PSMA is a policy with ideological roots in liberal thought. Once again, consider the PSMA's inclusion of employment equity as a central concept to public service human resources management. The PSMA required that the definition of the merit principle be reformed to include a protection for minority groups in Canada. Its reformation of the merit principle's definition in the public service aligns it with reform liberal values of self-actualization and equality of opportunity. In addition, the PSMA was formulated during a period of time in which the Liberals formed the government and enjoyed control over the creation of policies.

It is logical that when the Progressive Conservative government came back to power, they would be in opposition to the PSMA's leftist conceptions of morality. Looking to the example of Sara Landriault, the arguments put forward by Conservative party representatives regarding Landriault's situation are logical in this context. In opposition to the reform liberal conception of equality that entails the freedom of opportunity, the Conservatives subscribe to the neoliberal conception of equality that suggests that individuals in society should have freedom of right. It makes sense that the Conservatives would fight back against the PSMA's protection for minority groups on the grounds that they are ideologically opposed to the idea that any individual should be denied the right to a position that any Canadian citizen, regard-

less of social group, is capable of servicing. The Conservatives believe that promoting equality through concepts such as employment equity conflict with freedom rather than realize freedom, and are therefore fundamentally opposed to some of the PSMA's reforms. Both Nixon's bureaucratic innovation paradox and the ideological differences between Canada's leading political parties function to explain why there has been opposition to the PSMA redefining the merit principle that guides the public sector's human resources management.

Analysis of PSMA

Nixon's bureaucratic innovation paradox theory provides a powerful criticism for the PSMA, as it suggests that the PSMA has several key flaws. Firstly, there is reason to believe that, as Nixon's theory suggests, the PSMA's radical reforms to bureaucratic values are the result of government seeking to create a symbolic political gesture. The PSMA's reforms came at a time when the Canadian public service was in the midst of a crisis. While many politicians and academics viewed bureaucratic reform as necessary, the fact that the PSMA's stipulations define bureaucratic principles that had previously been conceptual suggests that the government wanted to preform a symbolic political gesture with the PSMA. Additionally, Nixon's bureaucratic innovation theory suggests that the PSMA's innovations will be scaled back once its policies becomes politicized and requires government spending. While Sara Landriault's story was one dramatic example of this phenomenon occurring, the Canadian Treasury Board's Review of the PSMA has evidence that suggests that the policy's reforms to the merit principle have made it controversial among public service officials (Treasury Board of Canada 3). Despite the Canadian Treasury Board finding that the PSMA "is adequate and provides an appropriate framework for people management in the federal service," the politi-

cal controversy and increased government spending surrounding the PSMA has limited the extend to which its innovations have been realized (2).

There is also criticism to be made regarding the PSMA's conception of employment equity. Consider the case of Sara Landriault once again. Women are considered a disadvantaged group in Canadian society, yet Landriault was barred from applying for a position with a government ministry due to her ethnic identity not being part a disadvantaged group. This is surprising considering that she was applying for a low-level administrative assistance job. Such a low-level position being filled by a racial minority should not count towards employment equity in the workplace to the same degree as middle and high-level positions, as low-level positions have very little influence on top-level decision making in the public service. As top-level decisions are the ones that affect minority groups in Canada the most, top-level public service positions should be increasingly appointed to members of disadvantaged minority groups to solve representational issues. Data shows that most higher level managers in the public service are members of privileged groups in society. In addition, disadvantaged minority groups are more dependent on government programs than Canadians that are economically and socially privileged (Paul 18-19). If human resources managers simply satisfy employment equity principles by appointing minorities to low-level positions while withholding higher-level positions for candidates that fit the previous definition of the merit principle, then the PSMA has failed in achieving greater representation in the Canadian public service. If this is true, than the redefinition of the merit principle to include the concept of employment equity was a ill- conceived measure. While it has provided greater representation in the public service, it has not solved the problem that greater representation is meant to solve in

the public service; the removal of barriers to employment for disadvantaged social groups and the consideration of disadvantaged perspectives in top-level decision making.

This proposed argument is not meant to suggest that employment equity is an unimportant principle for the public service human resources managers to adhere to. It is important for Canadian government to address inequalities and provide reasonable accommodations to remove barriers for disadvantaged groups. However, the way in which employment equity has been justified through a redefinition of the merit system is problematic. It has already been addressed in the argument above that employment equity may not be working to address the problems it was meant to solve. On top of this criticism, it is awkward to include appointments on the basis of employment equity in the same category as appointments based on merit. The new definition of the merit principle requires that race and gender be viewed as an asset on par with competence and talent. While data from the La Relève and the Task Force on Modernizing Human Resources Management indicated that it was necessary to create a balance between public service efficiency and employment equity, it does not seem logical to describe the PSMA's hiring system as one based on merit. The fact that this new definition of merit gives leeway to appointments based on patronage suggests that it should not be defined as a merit system of human resources management.

Conclusion

The Public Service Modernization Act is a piece of legislation that stipulates radical and seemingly positive reforms to the Canadian public service. However, as with many of the management reforms that came before it, it has created problems as well as solved them. The PSMA's acknowledgement of the importance of representation and employment equity

in Canadian bureaucracy is commendable. In addition, its efforts to increase managerial efficiency and autonomy has been mostly well-received. However, the PSMA's amendments to Canadian bureaucratic values have made it into a problematic policy. The flexibility given to the principle of merit in the PSMA's statutes have created leeway for public service appointments based on patronage. The PSMA has watered down the bureaucratic value of merit to boost efficiency and employment equity, and in turn has reduced the importance of merit-based appointments in the Canadian public service.

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Urban Governance Theory: A Framework for Comparing Redistributive Development Policy in New York and Tokyo City

By: Sam Cohen

The process of globalization has interconnected private and public actors from different nations in dynamic relationships where traditional forms of political structures are being challenged. Considering the degree to which cities such as New York and Tokyo exhibit centrality within international political and economic systems, the local space can be defined as a place institutionally affected by global forces. These global influences complicate local governance by providing both positive and negative attributes to cities, which interfere and restrict policies that are unable to remain effective under outside pressures. To compensate for externalities, urban governance theory offers a framework that rejects the negative pressures from the global environment while supporting policy objectives such as the effective delivery of redistributive and developmental services. Although New York and Tokyo embody local environments with similar international pressures, the outcomes of their redistributive and developmental policies vary with success. Considering the critical services these policies offer for the socio-economic status of a city, analysis of the causes resulting in different outcomes of these policies is essential. Using a comparative analysis method, this paper will evaluate whether an urban governance framework is capable of explaining these redistributive and developmental outcome differences within the urban political structures of New York and Tokyo City.

To provide a clear and objective analysis concerning these policy outcomes, this paper will be structured into four sections where both theoretical and practical comparisons will be discussed. The first section of this paper will explain the institutional embeddedness of New York and Tokyo City within the international politico-economic system and the reason this similar embeddedness makes the cities conducive for comparison. The second section will provide an overview of urban governance theory beginning with an outline explaining the key and relevant components of urban regime theory. This will follow with a comparison between the two theories to highlight the lacking aspects of urban regime theory that have been incorporated into urban governance theory. Proceeding this, the third section will describe how an urban governance framework adequately explains the local political structure in Tokyo City while failing to explain the political structure in New York. The section will also outline the importance of the different cultural pressures affecting the perception of government in both Japanese and American contexts and the relation this has to the applicability of urban governance and regime theory in each city.

Finally, transitioning from a theoretical to a practical approach, the fourth section will provide evidence proving the framework as outlined by urban governance theory does exist in Tokyo City and how its features directly contribute to the city's effective redistributive and developmental policies. Conversely, evidence will be provided regarding the inapplicability of the urban governance framework in New York City and the direct affect this has on the city's ineffective redistributive and developmental policies.

New York and Tokyo as Global Cities

Traditional political systems have been arranged with the perception that certain levels of government operate and are responsible for specific policy domains. National governments have historically represented their respective countries in the foreign environment while state and local governments operated strictly as domestic political actors. These levels of government and their corresponding political domains have become distorted with the increasing importance of the local space in the international environment. New York and Tokyo City are representative of the idea of a global city, where the local space is an actor in both domestic and international affairs. Both of these cities are centers of finance, trade and foreign investment, which make their local economies extremely susceptible and influential to international market trends.¹ These global cities connect their national economies to global markets, which result in these local spaces being reflective of primary nodes in the international economic system. As global cities are identified as major economic actors domestically and internationally, their political roles prove to be equally substantial as in the economic domain. These political roles are understood through the context of both New York and Tokyo being centers of diplomatic relations, intergovernmental organizations, non-governmental organizations and large domestic and international interest groups.²

The similar global pressures acting on both New York and Tokyo are considered to be constant variables when comparing any aspect of their internal features. Although each city's

¹Saskia Sassen. *The Global City: New York, London and Tokyo*. (New Jersey: Princeton University Press, 1991), 327-329.

²Savitch, H. V. and Paul Kantor. *Cities in the International Marketplace*. (New Jersey: Princeton University Press, 2002), 347, 349-350.

space faces different national, historical and geographical contexts, their institutional embeddedness within international political and economic systems suggests the external environment acts the same on both cities. This makes Tokyo and New York an ideal set of cities concerning the comparison of their internal political structures and their corresponding policies. Ensuring external forces are a constant variable for both cities is critical for the validity of the comparison. If a global city were to be compared to a medium sized city lacking structural connections to global political and economic systems, the internal variables would be disrupted with different effects. The result of this would be the inability to identify specific causes for differences in policy outcomes between the different cities, which eliminates the effectiveness of the comparison and its evaluation in relation to redistributive and developmental policy. In conclusion, the use of New York and Tokyo City allow for external economic and political forces to represent significant features in the comparison while also remaining a constant variable, parameters essential for an evaluation capable of reliable conclusions.

Comparing Urban Regime Theory and Urban Governance Theory

Urban regime theory was constructed in a context of the American industrial period where local environments were governed by traditional political economy strategies. This industrial economic period resulted in local relationships between public and private actors where interests were aligned for the purpose of governance and corporate success.³ This contrasts the environment from which urban governance theory developed, a context characterized by global political and economic forces acting in the local space.⁴ The change and variation in political

³Mickey Lauria. *Restructuring Urban Regime Theory: Regulating Urban Politics in a Global Economy*. (California: SAGE Publications Inc., 1997), 2-4.

⁴Jon Pierre, "Can Urban Regimes Travel in Time and Space? Urban Regime Theory, Urban Governance

and economic circumstances within the locality is the primary contributor to the differences between the urban governance model and the urban regime model of local governance.

Fundamental to urban regime theory is recognition of the incapacity for local government to sufficiently provide the services required by its citizenry. The urban regime model suggests that to compensate for these service insufficiencies, local government and business should develop an interdependent relationship where both public and private interests are supported.⁵ Regime theory argues that the legal and institutional controls local government maintains over land-use, taxation and infrastructure provide the ability to implement governing strategies supportive of corporate interests. Further to this, regime theory suggests that provided the local government is supportive of private interests, corporate actors will provide services offsetting insufficiencies in city public services, social welfare and infrastructural development programs.⁶ However, the urban regime model assumes that local institutions retain the capability of developing governing strategies suitable for attracting essential private interests and the ability for corporate actors to coordinate and compensate for insufficient city services. Both of these assumptions are challenged in the current context of local environments being embedded within international political and economic systems and are addressed in the central components of urban governance theory.

Previously identified as a basis for urban regime theory, urban governance theory extends the principle that local government is incapable of providing sufficient services to its citizenry. Further to this, urban governance theory also supports the notion that a central component of effective local governance draws upon relationships between local corporate and public

⁵Jon Pierre, "Can Urban Regimes Travel in Time and Space?" (2014): 871-872.

⁶Mickey Lauria. *Restructuring Urban Regime Theory*, 4.

⁷Jon Pierre, "Can Urban Regimes Travel in Time and Space?" (2014): 873.

actors.⁷ The urban governance model uses these features of urban regime theory as a foundation for a more inclusive model where the parameters of the local governing domain are reflective of the global circumstances currently facing cities.

The major component of the urban governance model is the intergovernmental support structure prioritized for management of the local environment. This structure emphasizes multi-level governance where national and state governments are critical agencies required for the successful delivery of sufficient services from local government to its citizenry.⁸ Further to this, urban governance theory explains that the inclusion of non-profit organizations and national and multinational corporate actors within the local government domain provides a model where previously unattainable resources at the local level can be acquired to assist in government services.⁹ The addition of national and state governments in an intergovernmental support system provides significant advantages concerning the management of global economic and political pressures acting on local environments. Considering the traditional role of the national government in the international political and economic domain, the urban governance model offers the local government vital support and expertise absent in urban regime theory. Consequently, since the urban governance model expands the parameters of the local domain, the ability to provide the effective provision of services while being subject to international political and economic forces increases. In conclusion, the inability for urban regime theory to compensate for external pressures affecting local governing dynamics challenges the applicability and effectiveness of the urban regime model of local governance in the current context of the local space.

⁸Jon Pierre, "Can Urban Regimes Travel in Time and Space?" (2014): 874-876.

⁹Ibid.,

Cultural Contexts and Theoretical Frameworks in New York and Tokyo City

As previously discussed, urban governance theory incorporates higher levels of public and private actors into the local governance structure primarily as a response to manage the increasing international political and economic pressures within the local domain. Fundamental to the urban governance model is an intergovernmental support system where local and state governments become subordinate in certain political arrangements and policy strategies. Considering this aspect of urban governance theory, the cultural acceptance of central authority in Japan as compared to the skeptical perception of federal authority in America provides an indication of the intergovernmental support structures existing in each city.¹⁰

The ability for an urban governance framework to analyze political structures in New York City is considerably limited as compared to its ability to explain the political structures governing Tokyo City. New York among the majority of American cities is characterized by the local governing arrangements as outlined by urban regime models of governance. In the United States the local government has limited institutional and policy relation with national levels of government, with the state government supporting municipalities regarding certain services and policies.¹¹ Considering that urban governance theory shares common core features with urban regime theory, it offers a partial ability to outline the major components of local governance in New York City. However, the disconnect between the national and local governments in addition to the partial role of the state government in local affairs demonstrates a lack of intergovernmental support for the city. Further to this, there are limited non-local private actors provid-

¹⁰Harvey Molotch and Serena Vicari, "Three Ways to Build: The Development Process in the United States, Japan and Italy," *Urban Affairs Quarterly* 24, no. 2 (1988): 192-193.

¹¹Apogee Research Inc, "The Federal Role in Funding State Infrastructure" (U.S. Army Corps of Engineers: Virginia, 1994), 1-3.

ing services independently or cooperatively within the city, placing the majority of the governance and service provision on local institutions and actors.¹² These circumstances describing the local political arrangements of New York are consistent with local structures defined within the urban regime framework, indicating that an urban governance framework is inappropriate for identifying the policies, strategies and services within New York City.

The local governing system of Tokyo City is reflective of an extensive intergovernmental support structure comprising national and prefectural levels of government.¹³ An urban regime model of local governance lacks the necessary principles to successfully explain this political relationship between local and higher levels of government due to its narrow focus on local private-public arrangements. Further to this, the significant presence of national and multinational corporations providing local services supplement the intergovernmental support provided for the local government.¹⁴ This multi-level governance approach to the local space inclusive to non-local private actors illustrates the political structures outlined by urban governance theory. Therefore, an urban governance framework is certainly capable of highlighting the political institutions and private-public arrangements comprising the governing structure of Tokyo City.

Theoretical Frameworks in Relation to Redistributive and Developmental Policy

To comprehend the implications regarding the applicability of an urban governance framework in Tokyo City and the inapplicability of the same framework in New York City, further analysis into the cities intergovernmental support structures is necessary. This additional

¹²Paul Kantor et al., *Struggling Giants: City-region governance in London, New York, Paris and Tokyo*. (Minneapolis: University of Minnesota Press, 2012), 128-130.

¹³Udai Bhan Singh. *Decentralized Democratic Governance in New Millennium: Local Government in USA, UK, France, Russia, Japan and India*. (New Delhi: Concept Publishing Company, 2009), 137-138.

¹⁴Satoru Ohsugi, "Local Government Planning in Japan," *Institute for Comparative Studies in Local Governance*, no. 15 (2010): 12, 19-20.

analysis will provide evidence connecting the applicability of an urban governance framework with the effectiveness of each city's redistributive and developmental policies.

The substantial intergovernmental support Tokyo receives is evident through the tax allocation system directed from national and prefectural governments to local governments. About 70 percent of total government tax revenues in Japan are focused towards local governments either directly through grants or indirectly through national government funded programs.¹⁵ Local allocation and transfer taxes, special grants, *The National Land Use Planning Act* and *The National Land Formation Planning Law* are all legislative features within the Japanese government that directly support local spaces.¹⁶

The American federal government contrasts Japan's intergovernmental support system by providing no financial benefits or strategic planning directly towards local institutions. The elimination of federal strategy and planning support for localities has been evident with the removal of the *Urban Development Action Program* and the *Community Development Grant Initiative*.¹⁷ Although local governments do receive federal financial assistance indirectly through state governments, the total revenue supporting local governments is less than 40 percent compared to the 70 percent in Japan.¹⁸ A slight increase in state aid has not compensated for this lack of federal funds largely due to the already insufficient local tax revenues serving as the primary source of local government budget in American cities.¹⁹ Evidence demonstrating the na-

¹⁵Tokyo Metropolitan Government, "Financial Structure of Local Governments in Japan," *About Our City*. November 27, 2015.

<http://www.metro.tokyo.jp/ENGLISH/ABOUT/FINANCIAL/financial01.htm>

¹⁶Satoru Ohsugi, "Local Government Planning in Japan," (2010): 3-5.

¹⁷Savitch, H. V. and Paul Kantor. *Cities in the International Marketplace*, 123-124.

¹⁸Roberton Williams, "What is the breakdown of revenues among federal, state and local governments?" *Tax Policy Center*. November 26, 2015. <http://www.taxpolicycenter.org/briefing-book/background/numbers/revenue-breakdown.cfm>.

¹⁹Apogee Research Inc, "The Federal Role in Funding State Infrastructure" (1994), 1-3.

tional policies providing strategic guidance and substantial financial assistance to local governments in Japan validate the applicability of an urban governance model in Tokyo City. In contrast, evidence has outlined the lack of federal strategic planning and financial assistance for local governments in America, which confirms the absence of a sufficient intergovernmental support system and the corresponding unsuitability to apply the urban governance framework in New York City.

To demonstrate the affects the applicability of an urban governance framework has on the outcome of developmental policy in Tokyo and New York City, analyzing the direct benefits of an intergovernmental support structure is necessary. As previously validated, the existence of multilevel governance strategies for local domains in Japan is clear. However, to illustrate how these strategies yield effective developmental policies an analysis of the public transit system in Tokyo City will be used in comparison to the public transit system of New York.

The role the national government undertakes in developmental policy in Japan is two fold as it provides resources and expertise unavailable at local levels while also providing a connection to private actors residing within national and international domains. Tokyo's public transit system is primarily comprised of an extensive railway system constructed and maintained by multinational and national corporate transit companies.²⁰ Using the powers granted by *The National Land Use Planning Act*, the national government decided to provide low interest-rate construction loans for private railway companies while also providing subsidies to other transit privatization projects.²¹ The ability to offer these attractive investment opportunities for

²⁰Hiroaki Suzuki et al., *Financing Transit-Oriented Development with Land Values* (Washington: International Bank for Reconstruction and Development, 2015), 103-105.

²¹Satoru Ohsugi, "Local Government Planning in Japan," (2010): 3-5.

the railway corporations is founded in national legislative authority, resources and connections non-existent at the local level. Ultimately, the trilateral coordination between national government, local government and corporate actors allowed for a strategy where railway lines would pass through key transportation hubs in addition to commercial areas controlled by the corporate actors, a feature incentivizing the private investment.²² The policy objective as outlined between these three actors consisted of the non-delayed movement of the railway lines in a non-crowded comfortable setting throughout all peak hours of commuter use.²³ The national government subsidies allocated to the corporate actors allowed for the corporations to invest previously unavailable funds into the reorganization and modernization of Tokyo's railway infrastructure. The additional corporate investment provided essential upgrades to the public transit system allowing for the effective implementation of policy and the completion of the governing objective.

The lack of intergovernmental support for New York City has a direct correlation to the ineffective public transit system currently in operation. The City's Metropolitan Transportation Authority (MTA) has acknowledged the need for the privatization of transit services to reduce stress on the overburdened agency.²⁴ The MTA identified the deteriorating infrastructure of subway lines and buses, excessive delays and the overcrowded facilities during peak hours as primary concerns. The principal issues encountered by the local government are the lack of planning strategies and approaches to the privatization process and the ability to attract non-local corporations capable of providing large-scale services unsuitable for local competitors.²⁵

²²Stephen Smith, "Why Tokyo's Privately Owned Rail Systems Work So Well". *The Atlantic City Lab*. November 28, 2015. <http://www.citylab.com/commute/2011/10/why-tokyos-privately-owned-rail-systems-work-so-well/389/>.

²³Ibid.,

²⁴Emanuel. S. Savas. "Privatization and Competition in New York City Transit," *National Center for Policy Analysis*, no. 774 (2012): 1-2.

²⁵Ibid.,

However, due to the lack of institutional connections between the local environment and private-public national actors compared to Tokyo City, New York has failed to establish the political arrangements required to receive the resources necessary for effective public transit policy.

Using the same comparison structure for the evaluation of developmental policy, the applicability of an urban governance framework will highlight the different outcomes of redistributive policy between New York and Tokyo City. To clearly identify the differences in redistributive services in New York and Tokyo, an emphasis will be placed on social welfare policy and the direct correlation the effective delivery of services has with intergovernmental support structures. The Japanese national and prefectural governments provide the majority of funds supporting social welfare programs throughout the country while the direct provision strategies are the responsibility of the local government.²⁶ The national government provides local allocation tax grants with legislative mandates directing funds towards social welfare services while also running welfare program subsidies.²⁷ The intergovernmental coordination allows for the financial resources of higher-level government to be appropriately delivered to local social welfare programs while the complexities and circumstances specific to Tokyo City are addressed through the local governments provision of the service. This approach to social welfare allows for the policy to complete its objective of providing sustained socio-economic and health support for individuals and families requiring public aid. Particularly, the local government maintaining complete control over the implementation and delivery of the services and programs indicate that the specific needs unique to Tokyo City are adequately addressed within budgetary assessments and overall strategies.

²⁶Shuzo Nishimura, "Social Security in Japan," *National Institute of Population and Social Security Research*, (2011): 34-36.

²⁷Masako Li, "Addressing the Problems in the Japanese Healthcare System," *The Tokyo Foundation*, (2009): 2.

Similar to the Japanese social welfare system, the *Social Security Act 1923* and the *Supplemental Welfare Income Program* designate American federal and state governments responsible for financing social welfare services throughout the country.²⁸ Although this resembles a key component of the intergovernmental support structure outlined in the urban governance framework, the American system lacks connection to local institutions and actors. The result is a social welfare strategy that resembles a template approach standardized across the country or large state areas, which ultimately neglects circumstances that demand different provision strategies in different local environments. New York State expenditures for welfare services are among the highest in the nation per individual compared to other state budgets while federal funds for New York State's welfare policies are also higher when compared to other States.²⁹ New York's local government has identified that welfare services are extremely expensive due to ineffective structural and managerial policies controlling the system, causing for slow implementation practices and inadequate planning which enhances issues for those requiring the services.³⁰ New York's local government suggests that this issue can be addressed with reforms to federal and state welfare policies that are more inclusive to local demands.³¹ Although an aspect of intergovernmental support exists, the disconnect between the local domain and higher levels of government prevent the welfare system from identifying the distinct requirements in New York necessary for the effective provision of welfare services.

²⁸John E. Hanson, "State-Federal Welfare Relationships," *The Social Welfare History Project*. November 30, 2015. <http://www.socialwelfarehistory.com/public-welfare/public-welfare-state-federal-welfare-relationships/>.

²⁹Wendell Cox, "Government Efficiency and the Case for Local Control," *Demographia Inc.*, (2008): 12-13, 21.

³⁰Emanuel. S. Savas. *Managing Welfare Reform in New York City* (Maryland: Rowmand and Littlefield Publishers Inc., 2005), 67-69.

³¹Wendell Cox, "Government Efficiency and the Case for Local Control," (2008): 12-13, 21.

Conclusion

When comparing the developmental policies between New York and Tokyo City, the underlying necessity for effective policy was proven to be the existence of an intergovernmental system of local governance capable of retaining national resources, expertise and private actors for the public transit system. The comparison between the redistributive policies of the two cities resulted in a comparable conclusion where intergovernmental support incorporating both national and local governments directed national resources and local expertise towards an effective social welfare policy. Recognizing an intergovernmental support structure as a primary component of the urban governance framework suggests that its ability to identify the successes and shortcomings of local governing arrangements reflects the capacity of the framework to provide the same function. Providing the framework maintains this function, the inapplicability of the urban governance framework in New York is consistent with the negative outcomes identified regarding developmental and redistributive policies in the city. Conversely, the applicability of the framework in Tokyo corresponds to effective local governing policies and successful developmental and redistributive services. In conclusion, an urban governance framework is capable of identifying the differences between the two cities intergovernmental support structures, allowing for an explanation of the different levels of effectiveness developmental and redistributive policy outcomes have in both cities.

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Capitalists and the State: Policies and Reforms Towards a Symbiotic Relationship Between the Capitalist Class and the Communist Party in China

By: Alexis De Brouhoven

On July 1, 2001, Jiang Zemin proposed that capitalists be allowed to join the Chinese Communist Party (CCP). This proposal was part of a policy called “The Three Represents” and focused on: Representing the requirements for developing China's productive forces, orient China's advanced culture, and the fundamental interests of the majority of the Chinese people.¹ To cope with China's economic growth, the technocratic Party resorted to the capitalist class to utilize its ability for job creation and economic growth. With their support, party officials became concerned with how to liberalize the economy without destabilizing the political system and how to balance the need to adapt with the need to uphold Party traditions.² This essay argues the CCP has established a symbiotic relationship with the capitalist class by loosening direct control over the economy to maintain political control. This paper also showcases one of the major grievances the private sector faced against state-owned enterprises (SOE) such as financial liquidity constrains and then discusses the reforms the CCP implemented to allow pri-

¹The Xinhua News Agency, “Jiang Zemin tongzhi zai quanguo dangxiao gongzuo huiyi shan de jianghua” (June 9, 2000), *People's Daily*, July 17, 2000.

²Bruce J. Dickson, *Red Capitalists in China: the party, private entrepreneurs, and prospects for political change* (Cambridge, UK: Cambridge University Press, 2003), 7.

vate firms to prosper. This essay is relevant because the emergence of the ‘Red Capitalists’ alongside with the private sector are agents of change that will determine China’s political future.

Jiang Zemin’s decision to collaborate with the capitalist class had a significant impact on the Chinese administration for two reasons: First, it implied the Party was determined to adjust itself to the changing political reality as the capitalists, the once repudiated class were now allowed to join the Party. The once then technocratic Party, committed to economic growth and efficiency, needed the Capitalists. This meant the Party was willing to shift its social bases and it did so despite concerns over the alleged diminished the revolutionary role of the workers and peasants. Finally, this decision shows the Party was developing a new way to rule the country. Theoretically the party is the only and absolute ruling force, but to govern successfully it has to stand above all social forces to coordinate them, and to represent conflicting interests. Hence this is why the CCP had to approach the Capitalists instead of constrain them.

The capitalists constitute one of the major social forces by contributing over 60 percent of gross domestic product (GDP) in 2013³ and are divided in two categories: The Red Capitalists and the Entrepreneurs. Entrepreneurs become capitalists once they accumulate significant amount of wealth and do not interact with the CCP. Red Capitalists, on the other hand, are co-opted capitalist who joined the CCP, sometimes belong to business associations and have an influential position in the private sector.⁴ These in particular emerged as the outcome of Deng Xiaoping’s statement that everyone should get rich. Moreover, the CCP actively encouraged its

³Yiyuan Ying, "Private Sector Contributes over 60% to GDP." *China Central Television*. February 6, 2013. Accessed October 24, 2015.

⁴Jie Chen and Bruce J. Dickson. *Allies of the State: China's Private Entrepreneurs and Democratic Change* (Cambridge, Mass.: Harvard University Press, 2010), 150.

members to go into business and strategically co-opted new members among successful capitalists.⁵

The term *xiahai*, which means diving into the ocean, was used to showcase the rush of Party officials towards the private sector to accumulate wealth. *Xiahai* entrepreneurs could also be Red Capitalists because of their former ties with the Party.⁶ If such ties are no longer maintained they are just *xiahai* entrepreneurs. Bruce Dickson noted there was a correlation between the growth in Red Capitalist and Party support in the mid 1990s.⁷ The CCP seized the opportunity and targeted managers in the largest firms to join the Party. It did so because they have the most employees and contribute the most towards the economy, providing tax revenues and helping the CCP to integrate the private sector. The CCP according to Dickson favored capitalist who had previous connections with the Party, e.g. former Party and government officials and SOE managers.⁸ The very nature of the Red Capitalists then is an outcome of the Party trying to achieve political stability. This is because the private sector merges with the Party in a web of interconnectedness and ensures that the party gains influence over the sector. Red Capitalists may attain economic and political benefits through the CCP while the CCP is able to reach the private sector internally. This equally benefits the Capitalists aspiring to government posts, for joining the CCP and official business associations becomes a primordial step. Therefore the Party devised the co-optation strategy not for the capitalists' representation but rather an indicator of selective inclusion to the Party to exercise power over the economy.

⁵Ibid., 153

⁶Bruce J. Dickson, *Red Capitalists in China*, 136

⁷Jie Chen and Bruce J. Dickson. *Allies of the State*, 150

⁹Ibid.,

The co-optation of new elites is a strategy of adaptation for Leninist parties and for organizations in general.⁹ Co-optation allows organizations to blend with their environment and be better informed of changes occurring within them. It allows organizations to add new skills and resources that may increase performance and chances for survival.¹⁰ However, this involves risks. Co-opted elites may not support or sympathize with the party. The very creation of autonomous sources of wealth such as the private sector weakens what Walder denominated the “institutional pillars” of a communist system.¹¹ As economic reforms create alternatives towards job selection and acquisition of wealth, the dependence of the state is reduced, and its power and ruling party (CCP) diminishes.¹² Aside the implicit risk and resistance shown by orthodox Party members, the CCP pursued a strategy of co-optation in order to facilitate its goal of economic modernization.¹³ In this scenario the risk is sustained by the irony that the Party once called the capitalists the class enemy and exploiters. However, the relationship between the capitalist and the Party is worth examining.

Capitalists’ support for the regime is influenced by the governments’ policy performance.¹⁴ This means a decline in regime performance corresponds to a fall in support for the regime. Therefore we note that the government gains support by promoting the growth of the capitalists’ interest. These include a broad range of policies such as: The control of inflation, the protection of the entrepreneurs’ legal rights and the resolution of social issues such as hous-

¹⁰Ibid.,

¹¹Andrew G. Walder, “The Decline of Communist Power: Elements of a Theory of Institutional Change,” *Theory and Society*, vol. 23, no. 2 (April 1994), pp. 297-323, and “The Quiet Revolution from Within: Economic Reform as a Source of Political Decline,” in Walder, ed., *The Waning of the Communist State: Economic Origins of Political Decline in China and Hungary* (Berkeley: University of California Press, 1995).

¹²Dickson, *Red Capitalists in China*, 92.

¹³Ibid.,

¹⁴Chen and Dickson, *Allies of the State*, 159.

ing conditions.¹⁵ Interestingly these goals do not necessarily coincide with the government's and sometimes they contradict each other. The classic example is the trade-off for greater economic growth at the cost of inflation. This shows although the Party has gained support from certain capitalists by integrating the Red Capitalist into the market, the Party must still reciprocate. In other words, Dickson summarized the result of this phenomena as: "... An increasingly integrated, mutually reinforcing, and symbiotic relationship that has allowed the capitalists to prosper and the CCP to remain in power."¹⁶

Albeit the interlinked connection between the private and public sector there are still grievances in the private sector regarding preferential treatments to SOEs and discrimination against the private industries. Private firms face accessibility issues to financial capital from China's largest banks. Before Deng Xiaoping's tour in 1992, small private enterprises had to either register as collective enterprises or become affiliated with SOE's to access cash; otherwise, financial capital was very constrained.¹⁷ This meant the private sector after Deng's tour in 1992 developed mostly around micro financing, partnerships such as limited liability companies (LLC) after the passing of the 1994 Company Law, and the majority through fake collectives to avoid discrimination.¹⁸ Zheng Yongnian showed in his works based on China's Administration and Management of Industry and Commerce that in 1998 the leading organizational forms of Private-Owned Enterprises in China were LLCs constituting 52 percent followed by Sole Proprietorship with 37 percent and Joint Ventures with 11 percent. This shows the majority of entrepreneurs did not want to run their businesses alone given the shortage of financial

¹⁵Ibid.,

¹⁶Ibid., 163

¹⁷Kellee S. Tsai, *Back-Alley Banking: Private Entrepreneurs in China* (Ithaca: Cornell University Press, 2002), 130.

¹⁸Zheng, Yongnian. "Technocratic Leadership, Private Entrepreneurship and Party Transformation in the Post-Deng Era." *China's Post-Jiang Leadership Problems and Perspectives*. (London: World Scientific, 2002.), 280.

liquidity to start a business. Zheng stated: “only limited loans for short-term working capital were given under strict conditions.”¹⁹ In addition he estimated private enterprises accounted for a meagre 2.3 percent of the total loans from state banks in 1994.²⁰ In 1997 in Shanghai, 53.33 percent of the total loans went to SOEs, 22.36 percent to collective enterprises, 6.75 percent to foreign-funded enterprises, and 0.15 percent to private enterprises.²¹ This shows the extent to which financial capital was constrained for the private sector and infers why the private sector had to excel in productivity.

The highest level of state ownership of banks in any major economy is found in China.²² As of 2015, the ‘Big Four’ banks spearhead the world’s largest bank ranks in terms of assets.²³ Respectively, they deal with the majority of financial intermediation and play a central role in the allocation of resources in the domestic realm. The Organization for Economic Co-operation and Development (OECD) demonstrated in a study from 2005 the CCP conducted major changes in the legal framework of State-Owned Commercial Banks (SOCB) to push such institutions towards more commercially oriented lending patterns; however, it did not suffice.²⁴ The OECD states such preference for SOEs persisted despite low levels of profitability and more rapid growth in other segments of the Chinese economy.²⁵ This pattern has been attributed to continued local government intervention in bank operations.²⁶ The Economist mentioned local governments have taken advantage over SOCBs branch offices as the major source of capital to

¹⁹Ibid.,

²⁰Fangming Zhu, Shurong Yao, Yi Zou, and Shifa Hu, *The Private Economy in China: Reality, Puzzle and Trend of the Change of the Private Economy* (Beijing: China City Press, 1998), 454.

²¹Diana Farrell, et al. *Putting China's Capital to Work: The Value of Financial System Reform* (McKinsey & Company, 2006), 35.

²²Relbanks. “Top Banks in the World.” Accessed October 23, 2015.

²³Organization for Economic Co-operation and Development. *OECD Economic Surveys: China* (Paris: OECD Publishing, 2005), 19 and 40. Accessed October 24, 2015.

²⁴Ibid.,

²⁵Kellie S. Tsai, *Back-Alley Banking*, 8.

fund investment projects and support local SOEs, which in return provided local employment and fiscal revenue.²⁷ According to the OECD, local staff in SOCBs are influenced by local government officials:

The chief executives of the head offices of the SOCBs are government appointed and the Party retains significant influence in their choice. Moreover, the traditionally close ties between government and bank officials at the local level have created a culture that has given local government officials substantial influence over bank lending decisions.²⁸

This section discusses the advantages SOEs have over the private sector in respect to financial liquidity and taxation because they are the catalysts for the emergence of businesses. SOEs have had 2 mayor benefits from state-owned banks over the private sector in this field: First, they have access to borrow funds at favorable interest rates.²⁹ The U.S.-China Economic and Security Review Commission stated the average monthly prime lending rates from December 2009 to December 2010 was 5.36 percent.³⁰ Sinopec's weighted average interest rate on short-term loans was 2.7 percent in 2010.³¹ On another occasion the Securities Exchange Commission (SEC) recorded China Telecom's short-term borrowing rates from SOCBs ranged from 3.5 percent to 5.8 percent, while the rate from its SOE parent was 3.9 percent.³² The implication is not only SOEs get preferential rates below market price from state-owned banks, but also lend money to themselves at very low rates. This means SOEs have the edge when dealing with debt relative to the private sector because they receive lower rates and have greater accessibility to loans than their counterpart.

²⁷"A Great Big Banking Gamble - China's Banking Industry." *The Economist*, October 29, 2005. Accessed October 25, 2015.

²⁸Organization for Economic Co-operation and Development. *OECD Economic Surveys: China*, 141.

²⁹Barry Naughton, *The Chinese Economy: Transitions and Growth*. (Cambridge, MA: MIT Press, 2006), 411.

³⁰U.S.-China Economic and Security Review Commission. *An Analysis of State-owned Enterprises and State Capitalism in China*. By Andrew Szamoss (Washington, D.C. October 26, 2011), 47. Accessed October 23, 2015.

³¹*Ibid.*,

³²*Ibid.*,

Finally, SOCBs have forgiven debt to SOEs unable to pay their loans.³³ This gives SOEs a significant advantage over the private sector since their interest payable accounts would not become a financial threat or they simply never pay back. However, it will be mentioned later on SOEs are not as productive as firms in the private sector since they do not have to compete nor adapt to harsh changing circumstances.

Performance is the key indicator showing why both Red and regular capitalists have gone into the private sector. The irony in the relationship between SOEs and private sector firms is that those in the private sector have been more productive than the state-owned and grew at a higher rate. The number of private enterprises from 1993 until 1999 increased by 6.2 times, the number of employees by 5.4 times, their assets by 15 times, and the output value by 18.2 times.³⁴ By 2005, private enterprises were more than twice as productive as wholly owned SOEs and their productivity increased with each form of ownership shifting away from direct state-ownership.³⁵ The study carried by McKinsey claimed:

Corporatized enterprises with majority state ownership are 46 percent more productive than wholly state-owned enterprises, corporatized enterprises with minority state ownership are 70 percent more productive, and collective enterprises are nearly as productive as private enterprises.³⁶

A similar study carried out by the OECD noted total factor productivity of privately-controlled enterprises is approximately twice that of SOEs.³⁷ Studies from different sources show how the private sector outperforms the state-owned and that is why the state has been

³³Ibid., 52.

³⁴Yongnian Zheng, *China's Post-Jiang Leadership Succession: Problems and Perspectives*, 271.

³⁵Diana, Farrell, et al. *Putting China's Capital to Work*, 61.

³⁶Ibid.,

³⁷Organization for Economic Co-operation and Development. *OECD Economic Surveys: China*, 86.

forced to react to the rise of the capitalists. The CCP can no longer be ambivalent as it did in the mid 1990s to an industry whose returns over assets to date are almost as three times as its own.³⁸ Hence the appearance of the Red Capitalist was the natural adaptation of the structure of the Party. Deng Xiaoping foresaw the need to co-opt with the capitalist to sustain economic growth in order to maintain political power while allowing the economy to be more market oriented but under the relative grasp of its party members.

Earlier in the essay it was stated the private sector contributed to 60 percent of China's GDP. This number is not accurate because some private firms have the influence of the CCP through their shares in the company as investors. This shows how the CCP has taken an active role in the private sector by investing in it, whether for board control or for investing instead of remaining ambivalent as it did in the early 1990s. Finally, the U.S.-China Economic and Security Review Commission estimated China's gross industrial output value by status of registration of companies in 2009 was: 41 percent for private enterprises, 31 percent for LLCs, 13 percent for share-holding corporations, and 11 percent SOEs.³⁹ This further shows why the CCP developed a symbiotic relationship with the private sector. As SOEs' performance declines, it is more lucrative to invest in firms with better yields than those operating sometimes at a loss. Private firms gained the support from the CCP and now prosper as they would have never imagined, but they struggled for survival in years prior to the reforms.

Prior to 1992, there were SOEs, collective enterprises, share cooperative enterprise, and joint enterprises. Privately-owned enterprises were a minority in this period due to the fear of

³⁸Nicholas R. Lardy, "Rise of the Private Sector." *Markets over Mao: The Rise of Private Business in China*. (Washington, DC: Peterson Institute for International Economics, 2014), 98.

³⁹U.S.-China Economic and Security Review Commission. *An Analysis of State-owned Enterprises and State Capitalism in China*, 13.

political persecution after the Tiananmen Square incident.⁴⁰ This changed in 1994 when the CCP approved the Company Law, which allowed the birth of the limited liability corporations (LLC).⁴¹ This policy was a key method for turning traditional SOEs into corporations. The law dictated high minimum capital requirements to prevent private firms from becoming companies enjoying limited liability. The minimum capital requirement for most production enterprises to register as LLCs was RMB 500,000 and at RMB 10,000,000 to register as a shareholding limited company.⁴² Surprisingly private firms adopted the same structures by short-term borrowing to meet the legal minimum capital requirement and repaying after registration. This change had a significant impact for entrepreneurs because now they could register as LLCs instead of holding their own name, which could become a target of the CCP's discrimination.

Taxation is another ground the CCP implemented reforms. The government has lately used tax policies to promote the growth of small and micro-enterprises, which are registered as private companies and individual businesses. In 2008 the government introduced a corporate income tax rate of 20 percent, a decrease from 25 percent.⁴³ Later in 2010 this was extended by introducing a lower rate of 10 percent for firms with annual taxable income of RMB 30,000 or less.⁴⁴ In 2014 this rate was applied to firms with income up to RMB 100,000.⁴⁵ Additionally, beginning in August 2013 small, microenterprises, and individual businesses with annual sales revenue below RMB 240,000 will be exempt from both value-added taxes and business taxes.⁴⁶

⁴⁰Yongnian Zheng, *China's Post-Jiang Leadership Succession: Problems and Perspectives*, 268.

⁴¹China. Promulgation Department. Standing Committee of the National People's Congress. *Company Law of the People's Republic of China*. (Beijing, December 29, 1993). Accessed October 25, 2015.

⁴²Nicholas R. Lardy, *Markets over Mao*, 90.

⁴³Nicholas R. Lardy, *Markets over Mao*, 93.

⁴⁴*Ibid.*,

⁴⁵*Ibid.*,

⁴⁶*Ibid.*,

Both banking and taxation policies show the CCP is further willing to promote growth in companies who once were burdened with taxes and encourage borrowing for private businesses. Although most of these are small businesses, it shows the Party is willing to have jobs created in the private sector instead of in SOEs. It proves how it is embracing free-market ideologies for it allows individuals pursue their own self-interest and fosters the conditions for their emergence. In 2012, 25 percent of the total loans were part of the private sector, showing how much SOCBs progressed from the early 0.15 percent.⁴⁷

The final section of this paper discusses the ideological and practical reasons why co-optation with the capitalists seems the rational decision. The party since the early reform period prior to the Tiananmen Incident believed private business could perform several functions the party and state could regulate ad hoc. It believed private businesses could absorb many of the unemployed, provide a new source of revenue through taxation, and through competition against SOEs, the latter would improve its efficiency and productivity.⁴⁸ The main worry for the Party during that time was the rising costs of living, which meant citizens could not afford to be unemployed, thus having the private sector absorb the unemployed became an optimal solution. It is important to mention there was no constitutional protection for the private economy until 1999, thus if the private sector became a threat to the Party it could easily be dealt with under legal grounds.⁴⁹

⁴⁷Richard Cooper, "China's Growing Private Sector." *Caixin online*, October 30, 2014, Opinion sec. Accessed October 24, 2015.

⁴⁸Richard Baum, *Reform and Reaction in Post-Mao China: The Road to Tiananmen*. (New York: Routledge, 1991), 88.

⁴⁹Yongnian Zheng, *China's Post-Jiang Leadership Succession: Problems and Perspectives*, 116.

With the rise of co-opted capitalists and *xiahai* entrepreneurs, Bruce Dickson conducted surveys of private business owners in the late 1990s and these suggest that rather than challenging the existing authoritarian party-state, Red Capitalists in prosperous areas generally seek closer connections with it.⁵⁰ Dickson estimated co-opted capitalists had a higher level of participation in village elections than did other entrepreneurs: 40.6 percent of co-opted capitalists had run for village chief or their village council, as opposed to 22.8 percent of *xiahai* entrepreneurs.⁵¹

This corroborates the party's strategy in co-opting the capitalists. The party wants to keep all political participation under its control, so if private entrepreneurs are running for local office, the CCP would prefer they be party members. Otherwise, having a large number of non-CCP Capitalist as village chief would present a political challenge. This means economic growth and market relaxation in a locality does not alone determine the political views and behavior of local capitalists as well as the socioeconomic division in the local community, and the degree of economic dependence of capitalists on representatives of the party-state. Wright shows where local authorities have been seen as facilitating the material gains of private entrepreneurs, businesspeople have been supportive of the political status quo. In contrast, when officials have been viewed as antagonistic or harmful to the interest of the capitalists, they have kept their distance from the regime and show less support for the existing political system.⁵²

Alpermann and Jiangsu Zhang in their respective case studies showed the CCP succeeded in politically integrating rural entrepreneurs where the local state had a more developmental and supportive attitude toward the private sector, but not where local states were ambivalent

⁵⁰Bruce J. Dickson, *Red Capitalists in China*, 123.

⁵¹*Ibid.*,

⁵²Teresa Wright, *Accepting Authoritarianism State-society Relations in China's Reform Era*. (Stanford, Calif.: Stanford University Press, 2010), 52.

and less supportive towards the private economy.⁵³ In areas where authorities have been seen as constricting the rise of capitalists, the latter have been more likely to hold negative views of the regime and have had a greater possibility to support change in the political status quo.⁵⁴ Zhang showed that in the Sunan region, local party-state representatives controlled the privatization of public enterprises, transferring all of them to the former managers of the firms at very low prices.⁵⁵ Thus Sunan's private entrepreneurs depended on the ruling regime for their material prosperity.⁵⁶ In other words, Sunan's capitalists have viewed the Party as an ally. In this way, Sunan's polarized socioeconomic structure and symbiotic relationship between the capitalists and the Party has given the former incentives to preserve the political power of the latter.⁵⁷

Curiously Zhang also documented a different situation in Wenzhou. The capitalists' wealth⁵⁸ had not depended on political connections and shows an equitable distribution of wealth. In Wenzhou, as economic reforms progressed, local officials took a relatively *laissez-faire* approach toward the development of private business. Thus, the private sector grew independent of the state. Wenzhou's economic development featured a relatively equalized class structure with a large number of rich individuals.⁵⁹ Further, most of Wenzhou's capitalists came from low-income families with limited education and insignificant political connections. Consequently, Zhang states, Wenzhou's entrepreneurs "have no reason to fear democracy. On the contrary, they have an interest in pushing for democratic change, from which they can benefit."⁶⁰ In fact, they established many "bottom-up, grassroots associations" that are "gradually

⁵³Ibid., 53.

⁵⁴Ibid.,

⁵⁵Ibid., 54.

⁵⁶Ibid.,

⁵⁷Ibid.,

⁵⁸Ibid.,

⁵⁹Ibid.,

⁶⁰Ibid.,

turning into interest and pressure groups, pushing for reform.”⁶¹ They also have become major candidates in village elections. However, both Alpermann and Zhang agree in their studies that the capitalists consider the wealthy are of higher political quality than the poor, so the former should have more influence in policymaking than the later.^{62,63}

Much of China today looks like Sunan’s symbiotic behavior between economic and political elites.⁶⁴ Interestingly, Wright suggests it is likely capitalists in the future will gravitate more towards a new variant of authoritarian rule instead of liberal democracy where both capitalists and state are intertwined.⁶⁵ Wright believes the capitalists would only endorse a transition towards liberal democracy at the national level only if they felt their wealth would be protected.⁶⁶ Adam Przeworski found “historically, in countries around the world, the well-to-do have been willing to accept uncertainty in political outcomes when they have felt assured their own wealth would remain shielded from the dictates of majority rule.”⁶⁷ Therefore if the case observed in Wenzhou of independent capitalists manages to become dominant, the capitalists are likely to support political change only if they do not perceive the transformation as a threat to their wealth.

It is evident the CCP and the capitalist class including both the Red and regular Capitalists have engaged in a symbiotic relationship in the last decade. Both financial capital and taxation policies introduced in the last 20 years have shown the state is willing to foster an environment where private enterprises, specially smaller ones, can prosper. Exercising indirect influ-

⁶¹Ibid.,

⁶²Bjorn Alpermann, ‘Wrapped Up in Cotton Wool’, 54.

⁶³Jianjun Zhang, “Marketization, Class Structure, and Democracy in China”, 440.

⁶⁴Jianjun Zhang, *Marketization and Democracy in China*. (New York: Routledge, 2008), 34.

⁶⁵Teresa Wright, *Accepting Authoritarianism State-society*, 56.

⁶⁶Ibid.,

⁶⁷Adam Przeworski, “Some Problems in the Study of the Transition to Democracy.” In *Transition from Authoritarian Rule: Comparative Perspectives*, edited by Guillermo O’Donnell, Philippe Schmitter, and Lawrence Whitehead, 47-63. (Baltimore: MD: John Hopkins Press, 1986).

ence over the market through the Red Capitalists ensure the Party they can progressively lean towards a free-market economic system while still retaining control and maintaining political legitimacy through economic growth. Finally, as the capitalists engage more in local politics, including non-Red Capitalist as seen in Wenzhou, it would be advantageous for the CCP to incorporate them to the Party. Not only they would acquire new powerful members and extend their influence but the capitalist would also exercise influence towards policies that could benefit themselves and as a result they would benefit China as a whole too.

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