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16th Edition

Thanks to:

POLITICAL SCIENCE
STUDENT ASSOCIATION

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Mitchell Bosley

Mitchell is in his third year of his undergraduate degree at UBC, majoring in political science and minoring in history. He is interested in security studies and political theory and their placement within a historical context. After graduating, Mitchell hopes to pursue master's degree in political science.

Katie Bowers

Katie is her last year at UBC completing an honours political science degree and is looking forward to completing her thesis on health care policy in developing countries. Her interests are public policy, international development, and human rights. She plans to pursue a master's degree in public policy after her undergraduate. Outside of academics, Katie is always looking for an exciting new place to travel.

Marnai Cimolai

Marnai is a fourth year undergraduate student of Canadian studies and political science. She is interested in the normative foundations of public law and issues concerning discretion and accountability, as well as democratic theory, legal pluralism, and learning about First Nations legal traditions. Previously she worked on the Canadian Studies Undergraduate Journal, and this is her first experience on the Editorial board of JPS.

Sarah King

Sarah's primary academic interest is contemporary political theory's relationship to social justice, particularly in Indigenous, Queer and feminist activisms. She is currently exploring these intersections as a third-year undergraduate student in the First Nations Studies and Political Science departments at UBC. Following graduation, Sarah expects to pursue either legal or archival studies.

Stefan Kostic

Stefan is a fourth year student in the Political Science Program, and he is interested in exploring the effects of water scarcity in South-East Asia. He is also generally interested in democratic theory, political economy of the developing world, and the effects of the 2008 financial crisis. After graduating he hopes to complete his J.D. or will continue his studies in Political Science.

Johann Lingohr

Johann is in his final year studying philosophy and political science. His current interests include non-institutionalized forms of representation, comparative democratization, and political economy. After graduation he plans to pursue graduate school in Political Science and eventually a J.D.

Jennifer Lo

Jennifer is a fourth year student in the Honours Political Science with International Relations Program. She has interests spanning across comparative politics, international political economy, and security studies. After graduating, Jennifer plans on pursuing further education in law studies.

Alex Mierke-Zatwarnicki

Alex Mierke-Zatwarnicki is a third-year Honours student in the Political Science program. Her primary interests in the discipline are framing theory, political socialization, and Canadian public policy. Alex's paper, 'Slaying the Hydra', was featured in this year's edition of the journal. After graduating, Alex intends to pursue graduate studies in Political Science.

Mohamed Said

Mohamed is a fourth year honours political science student and he is generally interested in international relations and comparative politics with a specific focus on security studies. He is specifically interested in how diasporas and refugees contribute to political life in their countries of origin. After graduation, Mo intends to travel widely, learn more languages, and pursue a career as a foreign correspondent.

César Augusto Sánchez

César is a third year student in the Political Science Program. Originally from Mexico City, he is interested in Latin American government and politics. Among other interests, he is fascinated by the study of society in the region and how it relates to the public sphere. After graduating, he plans to go back to Mexico to begin a career in public policy or governance.

Designers

Sarah Wilson

Sarah is a fourth year Communication Design student at Emily Carr University of Art and Design. She is currently the Editor in Chief and Art Director of Emily Carr's Student publication, *The WOO*. After graduating in the Spring Sarah is attending the MFA Design program at The School of Visual Arts NYC.

Brittany Cheyne

Brittany is a fourth year Communication Design student studying at Emily Carr University of Art and Design. She also has her diploma in Fine Arts from Grant MacEwan University.

Foreword

I am delighted to introduce the sixteenth issue of the UBC undergraduate Journal of Political Studies. The journal is a major accomplishment by any standard. Annually, political science undergraduate students solicit papers, assess them through peer review and select several outstanding contributions for publication. It is a major undertaking that yields impressive results.

The 2014 roster of essays is impressive. Papers examine BC politics, Canadian Aboriginal governance, and Quebec public policy. The Department's strength in international relations is reflected in papers on Swiss banking policy and analysis of the war in Afghanistan. An article assesses Vienna in the context of the internationalization of cities. Equally, the Department's capacity in political theory is manifest in several articles. Many essays are not easily compartmentalized. They creatively embrace important perspectives from different fields.

Such a major publication requires the support, active contribution and work of many people. First, many students submitted excellent papers. Broad participation is essential to the journal's well being. Second, eleven faculty members assessed papers—many others contributed advice and support. Gerald Baier was the faculty advisor and his contributions are hereby acknowledged. Finally, Julie Jenkins, editor-in-chief, and her editorial team made the journal happen. Their hard work has resulted in an excellent journal of which the Department and its students are proud.

Please enjoy and learn from the 2014 issue of the UBC Journal of Political Studies. You will be impressed by its quality and by the range of essays and viewpoints represented.

Best wishes,

Allan Tupper
Professor and Head, UBC Department of Political Science

Editor's Introduction

Dear Reader,

It is a great joy to introduce the 16th annual edition of UBC's Journal of Political Studies (JPS). Each year, the JPS receives submissions from UBC's top political science undergraduates. This year was no exception. After an intensive selection and editing process, we are proud to present nine of the most sophisticated and insightful papers written by political science students at UBC this year.

The students featured in this year's journal address pressing political questions with originality, nuance, and finesse. Emily Allan captures the complexities of diversity and identity in multinational societies, while Dominic Lai addresses the limitations of constitutional solutions. Veronica Reiss identifies opportunities for emerging urban actors in international politics, while Lina Zdruli reminds us of the potential costs for state sovereignty. Domestically, Noah Mayland McKimm reveals emerging models for citizens to challenge provincial policy, while Alex Mierke-Zatwarnicki shows how effective policy can influence the lives of citizens. Eric Coates, Ahmad Sohail Ludin, and Julia Schuurman each interrogate and expand upon existing political theories to shed light on contemporary issues as diverse as revolution, the War on Terror, and environmental exploitation.

The journal is always a labour of love. To our talented team of editors and designers: thank you for your dedication, enthusiasm, and many late nights. Your efforts are reflected on these pages. I must also express my sincere gratitude to Gabby Korcheva for her sound judgment, eye for detail, and inspiring publication vision. I couldn't have asked for a better partner with whom to lead the journal this year. Thanks also to the faculty members who read and provided comments on shortlisted papers, and particularly Dr. Gerald Baier for his leadership as faculty advisor. Your assistance maintaining the quality and academic integrity of the journal is vital and greatly appreciated. Finally, to the Department of Political Science and the Political Science Student Association (PSSA), thank you for your generous financial support of undergraduate research and publishing at UBC.

Congratulations to all published! This edition is yours.

Sincerely,

Julie Jenkins, Editor-in-Chief
2014 Journal of Political Studies

Publications Director's Introduction

Dear reader,

This year marks a turning point in the Journal of Political Studies' publishing strategy. It's the first time this journal has created dedicated roles for design and publication. Most significantly, the JPS took on a Publications Director to manage style and design with a mandate to create an updated look and feel.

Some marked differences to this year's journal include its smaller format as well as updated logos and designs. We could not have achieved this without the creative input and work of Sarah Wilson and Brittany Cheyne from Emily Carr University. It has been a true pleasure working with these two talented artists who have contributed countless hours and numerous insights into our journal re-design this year.

While our publications and design strategy has been a learning process, this year's work will lay the foundation for innovation to future journal editions. None of this could have been possible without the imagination and hard work from the Editor-in-Chief, Julie Jenkins, who had a new vision for this journal and then made it happen.

Finally, I offer my thanks to my colleagues on the editorial board, with whom I had the great pleasure to work, collaborate, and laugh these past few months. It's been an exciting year for the Journal of Political Studies and I am happy to share with you our hard-earned results.

Sincerely,

Gabby Korcheva, Publications Director
2014 Journal of Political Studies

Minority Identities In a Minority Nation: A Critical Analysis of Quebec's Interculturalism Policy

Emily Allan

Born and raised on Bowen Island, BC, Emily is a fourth-year student graduating this spring with a double major in political science and cultural anthropology. Emily's greatest academic interests centre around the sociocultural impacts and political implications of aid and development work, which were deepened when she spent some time studying in Tanzania last year. Her plan is to pursue a master's degree and future career in international development and social justice.

This article examines Quebec's distinctive interculturalism policy, which aims to foster Quebecois unity while maintaining cultural pluralism. Due to Quebec's position as a minority nation with a threatened national identity in Canada, the policy goal of unity often trumps diversity in praxis, maintaining precedence for the Francophone Quebecois majority and a situation for minorities that contradicts what interculturalism purports to foster. This case offers insight into the complexities that can arise in the gap between theory and reality when identity policies map onto certain cultural landscapes.

Since late 2013, debates over Quebec's proposed Charter of Values and its promotion of state secularism have brought Quebecois identity politics to the forefront in Canada. While academic discussions have often focused on the theoretical merit of Quebec's unique "interculturalism" policy, this article examines to what extent these merits translate into policy reality. The disconnect between interculturalism in theory and practice must be understood in the context of the long-standing and complex power relationship between Canada's hegemonic English majority and Francophone Quebecois minority. While minority nationhood does not promote restrictive immigration and diversity policies per se, in Quebec the two are integrally related. On the one hand, by demanding that immigrants conform to certain values and linguistic unity, interculturalism policy seeks to strengthen Quebec's position in the Canadian federation. On the other, it opposes total cultural assimilation of new immigrants in Quebec,

The disconnect between interculturalism in theory and practice must be understood in the context of the long-standing and complex power relationship between Canada's hegemonic English majority and Francophone Quebecois minority.

and advocates respect for cultural pluralism. I argue that due to Quebec's position as a threatened minority nation, the goal of unity tends to undermine the goal of diversity when interculturalism translates from policy ideal to reality.

For this reason, interculturalism policy has the potential to descend towards the assimilationist policies it purports to reject. If Quebec wishes to provide a society that respects diversity, it must account for this context and foster more anti-discrimination efforts and responsibility among the majority population.

The Emergence of Interculturalism

Quebec's interculturalism policies arose in an attempt to accommodate the province's specific needs as a minority nation in Canada. The development of provincial immigration and diversity policies aimed to differentiate Quebec from Canada, establishing it as a distinct host society nation for immigrants and a legitimate international actor. These goals were part of Quebec's ongoing efforts to protect its national identity, which has long faced the threat of assimilation into dominant English Canada. Quebecois identity underwent a pivotal shift during the Quiet Revolution of the 1960s. While identity historically fell along ethno-religious lines, emphasizing the French Catholic versus English Protestant divide, a more secular and civic identity emerged at this time. During this period, attitudes shifted from viewing immigration and minorities as an identity threat to an economic and demographic opportunity. As Quebec's leaders turned their efforts to nation building, Quebecers saw the value that immigration—specifically Francophone—could contribute. Concurrently, the province was facing a significant decline in birthrate, and worries about allophones (those whose first language is neither French nor English) gravitating linguistically towards English were prevalent. Thus, after the Quiet Revolution, the provincial government began to gain control over immigration, separating it from the federal framework and developing policies that would support a distinct Quebec nation. Starting in the 1970s, Quebec established offices in cities that were seen as ideal sources of immigration—specifically in countries with French-speaking populations like France, Morocco, Lebanon, and Algeria. In 1991, under the Canada-Quebec Accord, the province gained the right to select its immigrants independently from the federal immigration process. As a result, French language ability became a strong advantage in the immigration points system, and remains so today. Provincial control of immigration further resulted in the shift to French from English as the first official language learned by the majority of allophone immigrants. This linguistic boost aids Quebec's nation-building project by fostering French unity and protecting against Anglicization. Quebec thus became a society aimed at welcoming French-speaking immigrants who could contribute to a unified Quebec nation.

Quebec's development of interculturalism policy was also motivated by a concern that federal multiculturalism policy, developed shortly before, would reduce Quebec to one amongst many 'cultural minorities' in Canada. Multiculturalism, it is feared, ignores a crucial distinction: while immigrant groups and other minorities typically seek inclusion in the state, minority nations like Quebec seek to remain autonomous from it. Canada's multiculturalism policy has therefore been criticized for its failure to differentiate between minority immigrant cultures and minority nations, specifically Quebec and Canada's First Nations. Robert Bourassa, the premier of Quebec when multiculturalism was introduced in the early 1970s, expressed this concern in a letter to then-prime minister Pierre E. Trudeau. The letter argued that multiculturalism policy violated the established equality between the founding nations recognized at confederation. Critics have therefore viewed Canadian multiculturalism policy

as an attempt to assimilate national minorities under a banner of diversity; Quebec developed interculturalism in part to resist this assimilation risk.

There is still no single government document outlining Quebec's entire interculturalism policy. Official discourse is instead based on the ideals expressed in three provincial policies: La Charte des droits et libertés de la personne du Quebec (The Quebec Charter of Human Rights and Freedoms) of 1975, Autant de façons d'être Québécois (Many Ways to be a Quebecer) of 1984, and Au Quebec pour bâtir ensemble-Énoncé de politique en matière d'immigration et d'intégration (Building an All-Policy Statement on Immigration and Integration in Quebec) of 1990. According to Raffaele Iacovino and Charles-Antoine Sevigny, these policies contain four central goals. First, to ensure the preservation, integration, and development of diverse cultural communities, and to familiarize Francophone Quebecers with minority participation in society. Second, to distinguish interculturalism from the Canadian multiculturalism policy and establish Quebec as a host society. Third, to designate French as the language of public life and democratic participation, emphasizing

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openness to pluralistic contributions "within limits of respect for fundamental democratic values." And fourth, to stress formal equality over cultural difference and thereby combat discrimination. Together, these policies define Quebec citizenship by outlining various integration strategies that were formalized in the early 1990s and linked to national identity goals for a unified Quebec.

While not an official government policy, the 2008 Consultation Commission on Accommodation Practices Related to Cultural Difference is considered "the most comprehensive account of Quebec interculturalism to date." This document is otherwise known as the Bouchard-Taylor Commission, which was prompted by the Reasonable Accommodation debate that is discussed later in this article. The report presented interculturalism's first official, concise definition: "Interculturalism seeks to reconcile ethno-cultural diversity with the continuity of the French-speaking core and the preservation of the social link. It thus affords security to Quebecers of French-Canadian origin and to ethnocultural minorities and protects the rights of all in keeping with the liberal tradition."

As this definition implies, Quebec is careful to distinguish interculturalism from assimilationist policies. Conceptually, interculturalism does not map onto a Jacobean universalist policy framework, which does not protect individual rights to culture and promotes assimilation rather than integration. In the Jacobean framework, "the integrative function of citizenship requires that cultural differences be treated with 'benign neglect,' in order to forge a shared civic identity, regardless of collective, or group-based, identity differences." The American 'melting pot' is an example of this model, as are systems used in France and various other European countries. In contrast, interculturalism conceptually recognizes the need to account for the hierarchical nature of the majority over minorities, and attempts to strike a balance between the empowerment of diverse group identities and the need for unified, common dialogue in society. Quebec's

rejection of an assimilationist framework comes not only from a moralistic or normative viewpoint, but from recognition of the various benefits of maintaining diversity in a society, economic and otherwise.

Lost in Translation: From Policy Ideal to Policy Outcomes

In practice, however, interculturalism deviates significantly from the ideal policy framework its founders envisioned. This is due largely to the tension between its conflicting goals of bolstering Quebecois identity in Canada while respecting internal pluralism. As I will now demonstrate, the former goal tends to undermine the latter in the minority nation context. Language is at the heart of this phenomenon, as Francophone Quebecers face a linguistic 'triple threat': not only is there an Anglophone majority in Canada, but also a dominance of English throughout North America and as the language of globalization worldwide. Additionally, many immigrants to Canada, including to Quebec, desire to learn or improve their English. In response, Quebec has developed policy to counter the hegemonic threat of English and encourage an explicitly Francophone Quebecois civic identity. In 1974, the Official Language Act made French the Province's sole official language. Three years later, the Charter of the French Language made it every person's right to be communicated with in French. Together, these laws aimed to entrench the French language as "the normal and everyday language of work, instruction, communication, commerce and business" in Quebec. Of course, they apply equally to Francophone, Anglophone, and allophone Quebecers.

Language concerns are strongly linked to ideas about democratic Quebec citizenship, as laid out in interculturalism policy. Tied in with the nation-building project, citizenship is largely based around participation in a linguistically unified Quebec. In its asserted role as a culturally distinct host nation, Quebec requires civic participation through a 'moral contract' between the state and its citizens. This contract requires that linguistic minorities obtain enough French language proficiency to contribute to public life in accordance with Quebecois values. Whereas the federal multiculturalism policy limits participatory responsibility to the civic sphere through democratic involvement, Quebec expands this responsibility beyond just the civic into all aspects of the 'public sphere.' Minority integration thereby rests on a notion of reciprocity between citizen and host society in nearly all social realms. The 'moral contract' is based upon the agreement that, "established 'modes of being' in economic, political, and socio-cultural realms are to be respected as markers of identification and citizenship status, with the institutions of democratic participation acting as a point of convergence for groups of specific collective identities, in order that all may share equally in democratic life." Interculturalism therefore places the onus on linguistic minorities to learn French in order to participate not just civically, but in all of society, through a unified language that ensures Quebec's cultural protection.

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While critics argue that Quebec's language policies conflict with liberal individual democratic rights, defenders emphasize the link between linguistic proficiency and civic and democratic participation. Regardless, it must be acknowledged that minority languages, and by extension minority-

language speakers, face some exclusion from public life through these language requirements. Of course, the extent of exclusion hinges upon the definition of 'public.' Quebec's language policies consider public spaces those "not relegated solely to the activities of the state, but [that] encompass 'the public space of social interaction' as well." Because 'public' space encompasses all of public social life, it can conceivably include the street, schools and universities, playgrounds, parks, places of worship, businesses, and other interactive spaces outside the home. This leaves rather few social spaces for languages other than French to be communally nurtured.

Interestingly, Quebec has a long history of fighting for French language protection under the premise that language is inherently linked to culture. Indeed, the interconnectivity between language and culture is widely recognized within the fields of social science, particularly in linguistic anthropology. Of course, this connection does not apply exclusively to the French language in Canada, but to all linguistic minority communities within Quebec. As Alain Gagnon and Raffaele Iacovino argue, the imposition of French does not necessarily mean the total abandonment of other languages, or the complete loss of one's culture. However, given Quebec's focus on the threat posed by English to French language and Quebecois culture, it is incongruous for Quebec to require its own linguistic minorities take up French in all social spaces, and maintain that this does not threaten the retention of minority cultural identities in similar ways. Certainly, the historical contexts differ. Nevertheless, it is ironic that Quebec ignores how its own French language policies threaten the cultural identities of immigrants and minorities within the province.

While Quebec tries to fortify its national identity without assimilating minorities, interculturalism in practice prioritizes the dominant culture, resulting in a hierarchical arrangement with the potential for abuse of power.

As Charles Taylor warns, integration based on linguistic incorporation can easily slide "in practice towards imposing assimilation as a condition of integration; that is, towards insisting that they [immigrants and minorities] become like us [Francophone Quebecers] before they can function beside us to shape our future." While Quebec tries to fortify its national identity without assimilating minorities, interculturalism in practice prioritizes the dominant culture, resulting in a hierarchical arrangement with the potential for abuse of power. Moreover, while Quebec's language policies may discriminate against linguistic minorities, an even more troubling issue develops outside the official discourse. Ethnic and religious minorities more broadly have continued to face prejudice since interculturalism's implementation, despite the fact that, due to Quebec's immigration strategy, many are French speakers. This contradicts the linguistic justification for Quebec's feelings of threatened identity. A conflation thus occurs when interculturalism is misused, often to falsely justify feelings of identity threat that can lead to discrimination. For example, in 1995, then-premier and leader of the Parti Quebecois, Jacques Parizeau, blamed the 'ethnic' vote for the secession referendum defeat. While likely somewhat accurate, Parizeau's comments raised tensions and subjected minorities to further discrimination and scapegoating.

More recently, discriminatory attitudes were revealed during the Reasonable Accommodation crisis of the mid-2000s, during which many

Francophone Quebecers claimed that minority accommodation had gone too far. The crisis was triggered by a series of incidents, one being the courts granting a Sikh boy permission to wear his kirpan (ceremonial dagger) at school. Though the accommodations in question were actually reached with little animosity between the parties involved, the media's reporting of the events suggested otherwise and drew in the wider public. The debates, though largely fuelled by sensationalized media coverage, exposed the survival of xenophobic attitudes within the French-Canadian Quebecois population despite the official dialogue. The crisis therefore "revealed that inclusive, egalitarian discourse does not seem to have entirely penetrated the fabric of Quebec society." The Bouchard-Taylor Commission, established as a response to the crisis by then-premier Jean Charest, was also criticized for being too accommodating to cultural minorities. Gérard Bouchard, co-author of the Commission, argued that interculturalism "could exacerbate rather than smooth over us/them divisions because it allows space for the dominating trends of majority groups,

> *Though Quebec's interculturalism is based on a framework of a linguistic threat to cultural identity, in popular discourse and even proposed legislation this is easily conflated with religious or other forms of difference.*

the results of which are visible throughout the history of the West and other continents (xenophobia, exclusion, discrimination, etc.)." Following Bouchard, several others have expressed concern about the survival of racist sentiments in Quebec.

Most recently, ethnic tensions have re-emerged in the debates over the Quebec Charter of Values, announced by the Parti Quebecois in May 2013 and officially proposed in September of that year under the new name, the Charter Affirming the Values of State Secularism and Religious Neutrality and of Equality between Women and Men, and Providing a Framework for Accommodation Requests. In the name of unity and secularism, the charter would make religious neutrality a legal obligation for public servants and ban the display of any religious symbols or dress. As its title suggests, the charter officially aims to promote a safe and fair public environment of gender equality and state neutrality. However, the Charter's authors do not consider how universalist policies can indirectly discriminate against minorities. Here, again, is a gap between interculturalism's inclusive policy ideals and exclusive policy outcomes. In the charter case, affected groups include those whose religious practice entails conspicuous forms of dress, such as Muslim women and Orthodox Jews. Consequently, the charter has elicited opposition from religious groups and their allies. More broadly, it has fuelled debate in Quebec and wider Canadian society about the accommodation of religious practices, mirroring the Reasonable Accommodation crisis of the previous decade. Similar parallels exist with the 2011 international debates following France's ban on wearing niqābs, burqas, and other religious clothing in public. Again, questions of discrimination and racism are at the forefront of these debates. Though Quebec's interculturalism is based on a framework of a linguistic threat to cultural identity, in popular discourse and even proposed legislation this is easily conflated with religious or other forms of difference.

Granted, the Quebec Ministry of Cultural Communities and Immigration has funded programs for minority cultural communities and associations since the late 1980s. However, Quebec's promotion of linguistic conformity and (by extension) cultural unity overshadow its efforts to protect minority identities.

In theory, interculturalism provides a compelling model for diversity while protecting Quebec's own vital language and culture. However, in practice it can be misinterpreted to justify discrimination not only against linguistic minorities, but others as well, thereby undermining the pluralism it aims to foster. Quebec's cultural anxieties are, of course, historically justified. Quebec has struggled for recognition and cultural protection for more than 200 years, first against assimilationist policies imposed by the British colonial authorities, and then against unfavourable demographic shifts and a position of minority nationhood. Naturally, these national memories haunt the present generation. However, the resulting anxieties must be adequately accounted for in policy formation in order to prevent discrimination.

Where to Go From Here

Interculturalism has been largely unsuccessful not due to misguided ideals, but because of the policy constraints presented by Quebec's simultaneous nationalist goals. Quebec's leadership must recognize that its interculturalism policies rest inextricably upon this context, and cannot be created independently from it. As a result, interculturalism's goal of maintaining a distinct Quebecois nationality in Canada often undermines its other goal of protecting cultural diversity within the province. Perhaps it is fair for Quebec to expect a collaborative contribution from all of its citizens, even if this puts a certain onus on non-Francophone minorities. However, interculturalism must also account for the identity threat that can come with this language imposition, as well as the potential for discrimination against minorities when the majority culture takes precedence. For interculturalism to flourish, Quebec must actively resist the tendency to perpetuate a cultural power hierarchy rather than a truly democratic and equally integrative framework. As a minority nation, Quebec has endured the threat of assimilation into the rest of Canada for hundreds of years. It has also witnessed the potential for misunderstanding and discrimination firsthand. For these reasons, Quebec should extend empathy to minority groups trying to maintain their identities within its borders. In order to hold up its end of the

For interculturalism to flourish, Quebec must actively resist the tendency to perpetuate a cultural power hierarchy rather than a truly democratic and equally integrative framework.

'moral contract,' Quebec must create more robust protective measures within its interculturalism framework. Anti-discrimination initiatives and spaces for fostering minority identities must be focused on in balance with Quebecois identity. Not only do immigrants and minorities have a responsibility to integrate; Quebec society has a responsibility not to foster discriminatory ideologies in order for interculturalism to truly provide the social environment of pluralism to which it aims.

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Multiple Views and Realities of Social Revolutions: An Argument for the Accumulation of Knowledge Through an Intersubjective Understanding of Social Revolution

Erik Christopher Coates

Erik Christopher Coates is a third year student at UBC majoring in Honours Political Science with International Relations and minoring in French. His mother is Brazilian and his father is Canadian, and he has grown up in between these two countries. He is planning on continuing his studies, most likely in the areas of political theory and international relations.

Social revolutions have been the subject of varying theoretical interpretations. This article connects the assumptions behind structuralist, culturalist, and rationalist paradigms with their interpretations of revolutionary events. I argue that each theory of social revolution creates new revolutions that fit its subjective expectations. Social revolutions scholarship must therefore be placed an intersubjective dialogue, not a competition for explanatory supremacy. Doing so will allow for the production of new knowledge in the study of social revolutions.

Social revolutions have been subject to varying interpretations. This article focuses on the structuralist, ideational/culturalist,[1] and rationalist paradigms. These paradigms are often considered competitive, and are posed in opposition to one another. Furthermore, each paradigm claims to have an objective definition of social revolution, which upholds this assumption of incommensurability. Through their different lenses, each theory has been assumed to discuss the same social revolutions. I will, propose that each approach does not in fact discuss the same revolution, but instead creates a new and different one through its assumptions and accounts of the revolution's causes, outcomes, and intentions. Therefore, although a structuralist account of a given revolution may be based on the same "events" as a rationalist account, each theory creates a distinct revolution grounded in the actual events that took place on the ground. This proposition begs the following question: If each theory creates multiple revolutions from the original case, does this mean that the different approaches are incommensurable?

Although the revolutions conceived by each approach are distinct, they are not mutually exclusive. The accumulation of knowledge can and should be furthered through a dialogue between the varying understandings of social revolutions inherent to each of the multiple revolutions. In this article, I argue the structuralist, culturalist, and rationalist approaches together create multiple revolutions that should be placed into an intersubjective dialogue so as to further the study of social revolution. Then, I review the central arguments

of each scholar and address the difficulty of defining social revolutions. Next, I propose a different way of understanding social revolutions that shows how these varying paradigms can work together to strengthen the study of revolution. Finally, I will discuss the notion of multiple revolutions and its implication for the accumulation of knowledge in the study of social revolution.

Theda Skocpol's Structuralism

Theda Skocpol's *States and Social Revolutions: A Comparative Analysis of France, Russia and China (1979)* is a cornerstone of the social revolutions literature and a prominent example of the structuralist theoretical approach. In her comparison of the successful French, Russian, and Chinese social revolutions, Skocpol argues that fundamental social structures, such as class and state, and relations between them, are the central forces that promote and propel revolutions. Skocpol discusses three different sets of structural relations: between classes, classes and states, and the "world-historical context," or relations between states and states in international relations.[2] In this model, revolutions are likely to occur in states with "modernizing agrarian bureaucracies." In other words, the country has to be in the process of modernization, with a primarily agrarian economy and a landed elite capable of posing constraints on the absolute power of the king. Such conditions weaken the state and are favourable to peasant insurrection. Modernizing states are in a paradoxical state of governance, as existing domestic bureaucracies often oppose state efforts to modernize. Thus, there is an impasse on a governmental level in the proto-revolutionary state. When this impasse is coupled with agrarian class struggle (which foments peasant insurrection) and external pressures, such as war in the Russian case, the state is in a prime position for social revolution. However, the revolution will only occur when the state is weak. Thus, state weakness is the most important factor in pushing a state into social revolution. Even if all other characteristics are present, strong states will not succumb to social revolution.

Unlike Marxism and other theories of linear development, such as Modernization theory, Skocpol's structuralist framework lacks teleological pretext. Skocpol argues, ". . . to suppose that the Revolution could have proceeded, let alone broken out, in a France somehow suddenly and miraculously ripped out of the context of the European states system in which it had always been embedded [is absurd]."[3] Thus, it is neither destiny nor innate propulsion of History that causes revolution. Rather, it is contextual and historically arbitrary structural relations. Skocpol further challenges Lenin's contribution to Marxist theory by proclaiming that the power of actors—particularly a vanguard party—is very small in the grand scheme of social revolutions. Directly addressing the notion of a vanguard party she states, "political leaderships involved in revolutions must be regarded as actors struggling to assert and make good their claims to state sovereignty."[4]

Katerina Clark's Culturalist Approach

In contrast, Katerina Clark in *Petersburg: Crucible of Cultural Revolution* posits an "ecological" theory of social revolution focused on the role of dynamic shifts of culture and ideas in society. This approach sees culture and ideology in a constant state of transformation: existing ideologies and myths influence the creation of new ones, which then impact the re-conceptualization of the

old ideologies and myths. Clark develops this argument through an analysis of cultural shifts in the aftermath of the Russian revolution in the 1920s. Clark's argument builds upon what William H. Sewell Jr. has called, "the autonomous power of ideology in the revolutionary process." [5] Sewell argues that the addition of ideology to the multiple causation of revolution fundamentally changes the process of revolution.[6] This means that ideology is not only another structure to be included in a framework of multiple causation, but rather that it is the key causal element behind social revolution. However, Clark differs from Sewell by focusing solely on culture as the key engine of social revolution. The key distinction between the two comes from Clark's focus on culture—understood as the customs, language, myths, art and social institutions of a particular state. Thus, her emphasis differs from Sewell's, which is based on ideology understood as the (political and socio-economic) ideas and ideals of a person, a people and a state.

Like Skocpol, Clark downplays the role of human agency in the development of revolutionary culture and focuses on culture itself as expressed through the various members of the revolutionary intellectual class. Clark argues that, ". . . cultural revolution can only occur within a given ecosystem."[7] Therefore, Clark "rejects the notion that Soviet culture was formed in the 1920s and 1930s as the Party advanced, Bronze Horseman-like, upon an unsuspecting intelligentsia, imposing upon it an abomination of culture called socialist realism; there was no absolute agency in the evolution of Soviet culture."[8] Instead of absolute agency there were a variety of actors in the revolutionary ecosystem being inspired and affected by the culture of the revolution and at the same time inspiring and affecting the same cultural revolution. This dynamic interplay of influence and ideas underscores what is meant by Clark's model of the "ecological" nature of revolution.

Finally, it is pertinent to briefly note that Clark's ecological model, as an example of the ideational/culturalist approach, also depends on the structures stressed by Skocpol. Generally, ideational/culturalist theorists emphasize ideology (or culture in Clark's case) as the primary driving structural force in creating and continuing social revolution. Therefore, structuralism goes through a mutation in ideational/culturalist theory whereby it emphasizes the "psychological" factors of social revolution like ideology and culture as the primary engines of social revolution.

Ronald Wintrobe's Rational Choice Theory

Ronald Wintrobe takes a very different approach. Unlike both Skocpol and Clark, Wintrobe does not focus on structures but on rational actors. His 2006 book *Rational Extremism: The Political Economy of Radicalism* attempts to explain why rational individuals choose to participate in extreme politics like revolution and suicide bombings.[9] Rational theorists focus on utilitarian forms of cost-benefit analysis to explain human action, and measure it through the collection and analysis of data and the creation of scientific equations to explain human agency. Wintrobe develops mathematical formulae to explain how rational individuals would act in different dictatorships (tinpot, tyrants, totalitarians and timocrat dictatorships) and when they are likely to revolt. However, his strongest contribution to the social revolution literature—and rationalist theory in particular—is his embrace of "the individual as a *social* being, that is, in his relationship to other individuals or groups of which he may be a member."[10] Thus, he starts with the assumption that people are selfish social beings. This allows him to tackle the free-rider problem endemic to rational choice scholars,

Thus, he starts with the assumption that people are selfish social beings. This allows him to tackle the free-rider problem endemic to rational choice scholars, by framing the solution as one of three dynamic collective processes. These three processes are, "the *assurance* that people have about the willingness of others to engage in such actions . . . the protestors' *success* in achieving governmental concessions . . . one factor that is often linked to successful revolution is a 'critical' or 'triggering' event that . . . galvanizes large segments of the population."[11]

Wintrobe places a much greater emphasis on agency than either Clark or Skocpol. As a rationalist scholar this is no surprise, because that school of thought assumes a predominance of agency over structure in regard to causation. However, Wintrobe's argument moves away from the strict individualism of rational choice theory by adding a collectivist element to the individual. Thus, it is the agency of Wintrobe's selfish social being that causes revolution.

Defining Definitions

Before presenting my definition of social revolutions, we must first review what has been proposed by the structuralist, culturalist, and rationalist theorists discussed above. Definitions are inherently embedded in and constrained by their authors' theoretical orientations. Therefore, we need to reframe definitions not as objective and absolute descriptions; but as subjectively produced and constituted by the author's particular position in relation to the topic being studied. This section will therefore review the definitions of social revolution given by Skocpol, Clark, and Wintrobe, and their respective origins in the structuralist, culturalist, and rationalist paradigms.

Skocpol gives a well-known and widely accepted definition of social revolutions as "rapid, basic transformations of a society's state and class structures; and they are accompanied and in part carried through by class based revolts from below."[12] Despite its influential place in the literature, Skocpol's definition does not provide a neutral account of social revolutions. Rather, it is heavily embedded in Skocpol's structuralist understanding of social change. One can see this by analyzing the quote that follows her definition in *States and Social Revolutions*. There Skocpol writes, "Social revolutions are set apart from other sorts of conflicts and transformative processes above all by the combination of two coincidences: the coincidence of societal structural change with class upheaval; and the coincidence of political with social transformation."[13] Important here, is the emphasis of "societal structural change." Skocpol further emphasizes structure as being opposed to agency by drafting class as an active social structure and associating it to another structure: politics. Furthermore, Skocpol's definition is only applicable to a very small number of successful social revolutions that fit her scope of modernizing agrarian bureaucracies: the French Revolution 1787 onward, Russian Revolution of 1917, and China from 1911 to 1960. If Skocpol's theory were meant to apply more broadly, her definition would necessarily change, and more cases would fit within her framework. Like any other, Skocpol's definition is born out of her subjective structuralist paradigm, hence the difficulty using any definition as an objective measure.

Clark's culturalist theoretical framework similarly limits her definition of social revolutions. While Skocpol defines social revolutions per se, Clark analyzes the cultural structures through which they occur. "Any revolution," Clark argues, "occurs within a particular cultural ecosystem that delimits possible change.

Ideological formations in the system act as constraints on any extrahistorical agendas the revolution's agents might have."[14] Clark's focus is therefore not on the necessary conditions for social revolution, but instead how the revolution proceeds after its initial events and rupture with previous forms of government and social organization (for example, her focus is on Russia in the 1920s, not Russia in and around 1917). Furthermore, when understood as a pervasive, naturally occurring structure, culture—and by extension ideology—can limit agency. If one considers that Clark is taking a culturalist position, one notices that her ecological culture framework is very much attuned to that school of thought.

Wintrobe defines revolution broadly as a change in political power. By this definition, a coup d'état, a social revolution, and political revolution are all considered revolutions. However, Wintrobe's definition is not nearly as broad as it seems once the circumstances necessary for revolution are considered: "the weakness of the state and the leadership to take action against it tend to make individual participation in revolutionary activity rational, as these are the basic conditions for a bandwagon effect to take place."[15] Thus, Wintrobe's broader understanding of revolutionary conditions hinges on his rationalist, utilitarian analysis, emphasizing the capacity of human actors to assert their agency. Were it not for Wintrobe's rational choice paradigm, these conditions may look very different.

Now that the three definitions have been show to be conditional to each author's subjective position and interpretation of what is necessary for social revolutions to occur, it is essential to understand how this re-conception of definition benefits the study of revolution. Each definition not only frames revolution through the lens of its author, but it also shows the vast differences between revolutions. The limitation of Skocpol's definition to a handful of cases does not mean that all revolutions must occur according to the set of requirements she puts forward. Rather, her definition is limited to certain cases of social revolutions. Similarly, this is the case in Clark and Wintrobe's understanding of how revolutions occur. Their definitions are not only dependent on their paradigmatic commitments, but also on the subjective nature of each revolutionary case. Skocpol notes that, "[each] such revolution, furthermore, has occurred in a particular way in a unique set of social-structural and international circumstances."[16] Therefore, the difficulty defining social revolutions does not come from limitations in the capacity for definition, but from the inherently different nature of each revolution. The notion of an all-encompassing definition for how revolutions have occurred, do occur, and must occur is an illusion, which forces all revolutions to the confines of a subjective theory posed as an objective truth. This is not only an illusion, but also a danger: when the particular is declared to be universal it is ultimately exclusionary.

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The chief problem with the standard conceptualization of social revolutions is that it poses the subjective as the objective. However, if instead we take the subjective as merely that we are no longer bound to a myopic understanding of the objective. In short, when each definition is considered subjective, revolutions can be viewed from a variety of angles. What was formerly the entire meaning of revolution becomes a tool for studying revolution.

Answering the Big Questions

By reframing our understanding of definitions we are able to format the varying positions of the authors in the structure of a conversation, instead of a delirious monologue. When the varying definitions are placed in conversation with each other, the incoherence of assuming that each definition is all-encompassing is revealed. If each argument is assumed to have exclusive denotational power over the event being discussed, then the event itself must be coded as multiple things (a social revolution, a political revolution, modernization, and so on) at the same time. This means that the event loses a conception that is agreed upon. Rather, each definition claims its own conception of the original event as objective. Thus, the possibility for discussion is limited by the facts of that event, which all assume to be the same. However, the revolution is simultaneously being written and interpreted through different codes. A conversation is made possible when we code each author's argument in reference to a different revolution and/or revolutionary process. This would make each definition symptomatic of a different revolution based upon a general notion of the original revolutionary event. Through this lens, the similarities and differences between the authors are tangential, because each author is discussing an altogether different concept. This does not mean that the similarities and differences are insignificant, but rather that they should not be compared in a competitive manner. No theoretical framework should be considered superior to the other, because the authors are discussing different concepts altogether.

If we view the different understandings of revolution as complimentary with a common end goal of understanding social revolutions we can truly achieve growth in the accumulation of knowledge. For example, Wintrobe emphasizes collective rationality, or the concept of rational individuals working together as a rational collective. Collective rationality provides an explanation for Clark's question of why intellectuals who were originally against the Bolsheviks eventually joined them. Those intellectuals worked as collectively rational individuals under the constraints of ideology and a strong state to create the Soviet culture that was essentially different from that which the Stalinist regime directly intended.

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Moreover, the culturalist paradigm, when taken as a response or amendment to traditional structuralism, further demonstrates my argument. The accumulation of knowledge was furthered by the creation of a completely new theory that views the same events as its predecessor in a different light, thus creating new events. Therefore, as the study of social revolutions progresses, with new ideas creating different ways of understanding the same events, life is breathed into the potential corpses of overanalyzed historical revolutions. This potential gives scholars new tools to study additional cases, past, present, and future.

Theda Skocpol's *States and Social Revolutions* remains a canonical text of social revolutions. However, when viewed in light of my argument about "new revolutions," her oft-cited definition is incomplete. It is missing a specific

account of how ideas and culture influence and delimit social revolutions, which Clark provides us. It is also missing an account of human agency, and how individual actions and interests fuel revolutionary activity, which Wintrobe provides. Therefore, a more complete understanding of social revolutions is provided neither by Skocpol nor any of the other scholars, but by all three scholars taken together. By taking Skocpol's basic framework, building on Clark's detailed work about the role and course of culture and ideology, and adding Wintrobe's notion of the self-interested social individual and collective rationality, we arrive at a much more well-rounded understanding of revolutions. Importantly, this conception is not complete. We can expect further evolution with the addition of new social revolution theory in the future.

Conclusion

By reviewing Theda Skocpol's *States and Social Revolutions: A Comparative Analysis of France, Russia and China*, Katerina Clark's *Petersburg: Crucible of Cultural Revolution*, and Ronald Wintrobe's *Rational Extremism: The Political Economy of Radicalism*, I have discerned certain key assumptions, premises, and methodologies of structuralist, culturalist, and rationalist theories. These assumptions are present in each theorist's definition of social revolution. Therefore, their definitions—and any definition for that matter—are not objective observational accounts of social revolution, but objects of the authors' theoretical subjectivities. Through this process, each theory creates a new revolution out of the same original event. In other words, each theory subjectively produces a new revolution, which is a spectre of the "true" events. This analysis by no means suggests that the events of a revolution in question did not occur. Rather, our historical analysis of these events is always subjective and, for this reason, it is pertinent to embrace the diverse historicities to create a more nuanced understanding of social revolution as a concept. Additionally, the creation of multiple revolutions allows for exchange between the understanding of each revolution and an increase in the accumulation of knowledge through this interchange. Therefore, a rationalist social revolution proposes a different revolution than a Structuralist interpretation, but through a dialogue between these separate studies of revolution a more rounded understanding of social revolution can be achieved.

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1   I will use the term Culturalist from now on, because it better explains the approach taken by Katerina Clark in "Petersburg, Crucible of Cultural Revolution."
2   Sewell, "Ideologies and Social Revolutions," 57.
3   Skocpol, *States and Social Revolutions,* 165.
4   Ibid., 164.
5   Sewell, "Ideologies and Social Revolutions," 58.
6   Ibid.
7   Clark, *Petersburg,* 11.
8   Ibid.
9   The focus of this paper is not on diverse forms of radicalism, but on social revolution. Therefore, I will address Wintrobe's work on revolutions in particular.
10   Wintrobe, *Rational Extremism,* 162.
11   Ibid., 165.
12   Skocpol, *States and Social Revolutions,* 165.
13   Ibid., 4.
14   Clark, *Petersburg*, ix.
15   Wintrobe, *Rational Extremism*, 189.
16   Skocpol, *States and Social Revolutions*, 33.

The BC Anti-HST Movement: A Precedent for Empowered Populism

Noah Mayland McKimm

Noah Mayland McKimm is a fourth-year philosophy student from Victoria, BC. Noah's primary academic interests include questions of morality, meta-ethics, political strategy, and public policy. After finishing his undergraduate degree, Noah plans on pursuing further education in both law and business.

Why was the 2009-10 citizen's initiative against British Columbia's (BC) Harmonized Sales Tax (HST) successful? For citizens to force a province-wide initiative vote through BC's Recall and Initiative Act, several legislative barriers must be overcome. The anti-HST movement's success can be attributed to three factors: bipartisan populist opposition; efficient online administration and communications; and political necessity. Because none of these factors are particular to the HST, I argue the anti-HST movement's success sets a precedent for public opposition to provincial policy in the future.

In 1996, British Columbia (BC) passed an act allowing its citizens to propose legislation or remove its politicians from office. It would have been hard, however, to feel empowered by the passing of the *Recall and Initiative Act*. With its high thresholds, numerous possible pitfalls, and a provision granting the legislature veto power, the act appeared to be more a symbol of the government's respect for its citizens' preferences than a means for citizens to act. However, just over a decade later, the *Recall and Initiative Act* was the mechanism by which a disparate group, headed by a discredited former premier, ended the political career and repealed the controversial Harmonized Sales Tax (HST) of the sitting premier. BC's HST combined provincial and federal sales taxes into a single value-added tax in order to lower administration costs and increase efficiency. The success of the anti-HST movement warrants a careful analysis of the barriers the movement faced, how they were overcome, and the extent to which it sets a precedent that will constrain future governments' policy capacities. I argue that the anti-HST movement's ability to overcome obstacles to initiative success in BC depended on the nature of the HST, the nature of the BC electorate, and the technological and structural changes that occurred after the *Recall and Initiative Act* was passed. Because these factors are generally independent from the specifics

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of the anti-HST movement, its success is repeatable. As I will show, the anti-HST movement set a powerful precedent for potential challenges of future BC policies.

Structural Obstacles to Initiative Success

The HST was introduced in the summer of 2009 by the centre-right BC Liberal government just a few months after being re-elected over the centre-left BC New Democratic Party.[1] During the election campaign, Gordon Campbell, leader of the BC Liberals, was asked about the possibility of introducing a harmonized tax scheme. He asserted that no such scheme would be introduced.[2] As an incentive to harmonize the sales taxes, the federal government offered a $1.6 billion cash payment to the provincial government shortly after the election. There is some disagreement over whether or not the BC Liberals knew in advance of the election that this offer would be tendered. It is clear, however, that the HST received little public debate before its introduction, and a large number of BC citizens felt the premier had misrepresented his policy intentions to the electorate during the campaign. In opposition, Bill Vander Zalm, a former Social Credit premier, teamed up with various opponents of the new tax scheme including the BC New Democrats and various disparate libertarian anti-tax movements. Together, they formed the anti-HST movement by submitting a piece of draft legislation to repeal the HST via the *Recall and Initiative Act*.[3]

The *Recall and Initiative Act* was created in 1996 in response to a successful 1995 government referendum. The draft legislation included several obstacles to success that suggest it was crafted to only minimally satisfy the referendum obligation. For example, a successful petition must acquire valid signatures from 10 percent of registered voters in every electoral district within 90 days.[4] Then, if successful, the petition's draft legislation must then be approved by over 50 percent of all registered voters and 50 percent of registered voters in two-thirds of provincial electoral districts.[5] If, for example, an initiative vote had the same voter turnout as the 2009 provincial election—fifty-five percent[6]—ninety-one percent of voters would have to vote in favour for the initiative to succeed.[7] For an initiative petition to have a chance of success, its proponent of must be able to rapidly construct an infrastructure of canvassers and sponsors throughout the province and garner a majority in the formal vote.

Proponents and volunteers for initiatives are also subject to time-consuming bureaucratic exercises under the act. Individuals, not groups, may put forward initiative proposals to Elections BC.[8] If the Chief Electoral Officer approves the proposal, only the individual is considered the official proponent. Anyone who then wishes to canvass for an initiative petition must be a registered voter and apply to Elections BC.[9] Reviewing canvasser applications is time consuming and generally cuts into the first few days allotted for gathering petition signatures. Once registered, a canvasser must use the official Elections BC petition sheets or exact replicas (excluding faxes),[10] and Elections BC will only provide the proponent one sheet for each electoral district. This administrative inefficiency reduces the actual time available for canvassers to collect signatures.

Strict financing rules constitute a third significant obstacle to initiative success. The proponent can expense only $0.25 per registered vote on the petition, and only $1.52 per registered voter on advocating for their position during the period leading up to the vote. Overspending results in the disqualification of the initiative.[11]

Even if a campaign overcomes these obstacles, the *Recall and Initiative Act* only requires that legislatures be presented with the initiative's draft legislation, "with no guarantee of passage."[12] If this does not act as a direct obstacle to the success of an initiative campaign, it may at least undermine supporters' feelings of empowerment, and act as a disincentive to launching an initiative petition.

Three Conditions for Successful Citizens Initiatives

The anti-HST campaign was able to overcome these obstacles for three reasons: bipartisan populist opposition, the campaign's successful use of online tools and social media to expedite volunteer and canvasser coordination, and the confluence of political necessity and opportunism that allowed the vote to take place under the *Referendum Act* instead of the *Recall and Initiative Act*.

Bipartisan Populist Opposition

The HST was the target of bipartisan public opposition. Social democrats accused it of being regressive for shifting tax incidence onto "domestic consumers"[13] and making consumers pay taxes previously paid by producers.[14] At the same time, supporters of laissez-faire politics and economics critiqued it for raising the provincial sales tax revenue by about ten percent and taxing onto previously exempt items.[15] The anti-HST movement therefore appealed to both sides of the political spectrum, but for different reasons. In fact, lower average income level was more closely correlated with an electoral district's opposition to the HST than the party affiliation of the district's legislative representative.[16]

Political Scientist Mark Crawford argues that the results of the HST initiative show a resurgence of class-based voting, which is significant given the general movement away from class-based political affiliation today (which is correlated with the lower union affiliation and shrinking electoral power of the "resource hinterland" seen today).[17] Crawford's class analysis aligns with Reg Whittaker's argument that opposition to the HST was more about distrust of both business and government elites than actual distaste for the policy.[18] These elites provided convincing evidence, in the form of a government-sponsored independent study, that the HST net offset was not regressive.[19] Yet, a former premier from the populist conservative Social Credit Party was able to use "no-holds-barred"[20] language to rally class-based support for the anti-HST movement.

Understanding the anti-HST movement as based on populist fear and distrust of elites, rather than objective judgements about the substantive facts of the policy, helps explain why opposition to the HST dropped significantly with the resignation of premier Gordon Campbell.[21] The punishment of a prominent elite for his actions satisfied some, though not all, of the populist outrage. It also explains why various attempts to make the tax more palatable, such as Premier Clark's promise to lower the provincial cut of the HST to five percent[22] and studies indicating the HST was not regressive[23] could not in mollify the opposition. The anti-HST movement was less driven by facts than by the perception that "'they' [the elites] have turned against 'us'."[24]

Internet Activism

The second reason for the anti-HST movement's success was its possession of a tool that did not yet exist when the *Recall and Initiative Act* was passed in 1996: the Internet. The Internet empowered the anti-HST movement in two distinct ways.

First, the anti-HST movement successfully exploited the new social zones created by the Internet in order to promote "swing uniformity"[25] in the HST debate. That is, the movement used the Internet to leverage the capacity for one person's changed opinion to change another. Social media allowed anyone to become a vocal opponent of the HST simply by clicking a few buttons and sharing a news article. This significantly lowered the bar to become a promoter in the *The Recall and Initiative Act* (that is, to solicit others for signatures or votes).[26] Online support increased the number of identifiable individuals affiliated with the anti-HST movement in a manner inconceivable for traditional media. However, mass online support generated coverage by traditional media.[27] Media attention in turn increased anti-HST support online, creating a positive feedback loop. In contrast with the elite organizational control of the HST supporters, the anti-HST movement's online presence had grassroots appeal and encouraged individual participation. BC citizens received anti-HST information primarily through individual citizens on social media,[28] while pro-HST information was distributed through elite controlled groups, like the Smart Tax Alliance.[29] Given the movement's populist base, it is unsurprising that the information sourced from individuals was considered more trustworthy than counterviews disseminated by a group representing affluent corporate interests.

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The second way in which the Internet benefitted the anti-HST movement was through its expedition of bureaucratic and organizational processes. In the past, one petition sheet per riding would be sent to the proponent, who was then required to then mail to each electoral district for photocopying. During the anti-HST campaign Elections BC emailed PDF versions of these petition sheets,[30] allowing sheets to be forwarded instantaneously to their districts for unlimited printing. The previously time-consuming process of canvasser registration was also reduced to less than two days.[31] Identification cards were sent via email to the proponent, who could then email the card to the canvasser for printing.[32] This more efficient bureaucratic process allowed the anti-HST movement to register about 50 percent more canvassers than any other previous initiative petition.[33] Said canvassers were able to begin collecting signatures within days of deciding to volunteer. Social media were used to coordinate and announce central signature-gathering locations that could then be shared by supporters.[34] This was likely one of the key reasons the anti-HST movement gathered enough signatures in areas like Metro Vancouver, particularly since the legislation does not allow canvassers to gather signatures in apartments or strata communities.[35]

Referendum Act

Arguably the most important success factor for the anti-HST movement was the Province's decision to consider the initiative a binding referendum under the *Referendum Act*. After the unexpected success of the initiative petition, the provincial government faced a political dilemma. They could follow the *Recall and Initiative Act* and hold the anti-HST movement to an exceptionally high voting and turnout bar, or they could initiate a binding referendum under the *Referendum Act*. The *Recall and Initiative Act* would hold the anti-HST movement

to an unlikely turnout standard while retaining the legislature's ability to vote on the initiative. However, there were potential costs to this path. According to Doug McArthur, defeating the initiative in parliament would have amounted to "political suicide" for the sitting government.[36] Moreover, the BC Liberal Party was elected in 2009 with roughly twenty-five percent of the registered vote[37] – half of the percentage required to back a citizen's initiative.[38]

Maintaining legitimacy was critical if the government wished to prevent electoral defeat in 2013, or even the proposed "total recall" of the governing caucus.[39] Allowing the electorate to voice its displeasure in a binding, government-sanctioned referendum was determined to be the safest political option. Moreover, by switching to the *Referendum Act,* the government freed affluent HST supporters of the strict spending limits imposed upon opponents (as well as proponents) under the *Recall and Initiative Act*.[40] The opportunity for pro-HST financial support combined with the political dangers of a vote under the *Recall and Initiative Act*, ultimately influenced the government's decision to run the initiative vote under the *Referendum Act.* The *Referendum Act* requires a simple majority of all votes cast, regardless of turnout. In other words, the anti-HST movement was successful because the government allowed it to be.

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The Anti-HST Movement as a Precedent for Empowered Populism

Looking at the above reasons for the success of the anti-HST movement, it is surprising how few are related to the structure or merit of the tax itself. The movement's populist appeal emerged in response to the HST's bipartisan unpopularity and grassroots online support. These variables are potentially available to any movement, meaning the political calculus that took place after the success of the petition holds for all successful initiative petitions. Thus, it appears that any issue with broad political support could succeed in a similar fashion. We must analyze carefully whether, or to what extent, the success of the anti-HST movement serves as a precedent for future initiatives.

It makes sense to begin with a comparison of why initiatives have been entrenched elsewhere. In the United States, citizen-driven initiatives are a central feature (some say pitfall) of state governance. In his study of initiative prevalence in the United States, Robert McGrath identifies two commonly attributed motivations for initiative use: a perception that "legislatures are ineffective,"[41] or a perceived need for a Band-Aid solution for "failing representative institutions."[42] The ineffective legislature explanation argues that in instances where a legislature is so ideologically polarized that it ceases to be an effective governing body, citizens take up the responsibility of implementing laws that "have to be made"[43] through initiatives. Meanwhile, the unrepresentative legislature explanation argues that initiatives occur in response to a general perception that legislators have "eschew[ed] the interests of their constituents"[44] because of "a lack of competition" for their legislative post. In other words, the unrepresentative legislature explanation argues that initiatives are likely to occur and are more common when accountability mechanisms fail to perform their function. McGrath compares the prevalence of ballot initiatives and uncontested elections in areas where an ideological divergence between the government and voters has

been observed.[45] He finds that the accountability explanation is better supported by observable evidence than the lack of competition.[46]

McGrath's thesis that initiatives occur in response to representational failure is reflected in the anti-HST initiative in BC. Irrespective of one's opinion about citizen initiatives, public perception that the premier may have hidden the HST to prevent it from becoming a voting issue in 2009 helps explain the vociferous nature of the opposition.[47] The emergence and popularity of the anti-HST movement can be understood as a response to this widespread political mistrust.

The success of the anti-HST movement depended in large measure upon different forms of dislike: dislike for the policy, dislike for the premier's actions, and dislike for the business elites who were the most vocal supporters and obvious benefactors of the HST. However, disaffection empowers populism. When discussing positive action, individuals who share a common dislike often have radically different positive interests.[48] The radically divergent interests of members of populist movements make them unlikely to create new policies. Their commonalities are limited to feelings of disaffection. In BC, the high margin of support required for a success means successful initiatives will necessarily be populist. In this way, initiatives are more likely to rebuke government policy than to propose it. With McGrath's argument about misrepresentation, the precedential nature of the anti-HST initiative becomes clear. Because its conditions are replicable, the anti-HST movement's success introduces a new restriction on government power. Policies not perceived by the voters as sufficiently beneficial may be subject to recall initiatives.

> *The success of the anti-HST movement depended in large measure upon different forms of dislike: dislike for the policy, dislike for the premier's actions, and dislike for the business elites who were the most vocal supporters and obvious benefactors of the HST.*

While the concept of a newfound policy restriction is generally accepted, the breadth of policies and actions affected is a subject of some debate. Richards is critical of initiatives for their capacity to prevent governments from enacting taxation policy necessary to sustain social services in the long term. He predicts BC will adopt the "dire status of California," where "subsequent referendums…have cumulatively stymied the ability…to finance core services".[49] I contend that Richards overstates his conclusion principally. BC's initiative regulations bear little resemblance to California in terms of population quotas necessary for a success. Richards' comments respond to McArthur, whose arguments are equally overstated in the opposite direction. For McArthur, the HST forced "legitimate, intelligent, and much needed debate"[50] that culminated in the public realization that the HST was not in the interests of the middle class. While both Richards and McArthur offer insightful analyses of the HST, their polarized valuations of initiatives are not sufficiently nuanced.

A more convincing critical analysis comes instead from Tom Syer, who argues that the HST debate showed a significant willingness of a majority of the electorate to change their minds in response to new information. Polling data shows that, between the summers of 2010 and 2011, nearly twenty-five percent of voters had changed their views about the HST.[51] When compared with the subsequent referendum results,[52] this shift in public opinion appears

significant. It may therefore be premature to suggest, as Richards does, that future provincial governments will be unable to implement policies immediately distasteful to the electorate. Syer points out that the government's principal mistakes in the introduction of the HST were two-fold. First, it failed to engage the public in the introduction of a new tax policy using any non-initiative methods.[53] Secondly, the government failed to sufficiently advocate against the position of the initiative early in the petition process.[54] If governments heed these lessons, it is reasonable to expect the electorate will be swayed by government's position in future initiatives. As Syer's analysis shows, we should not be overly pessimistic about the willingness of the electorate to accept reasonable solutions for taxation in the long term.

Until we know more about British Columbians' appetite for restriction, governments can remain optimistic about persuading citizens to accept policy trade-offs and feel free to advocate the policies believed to best serve the province.

In 1996, barriers to the success of an initiative through the *Recall and Initiative Act* must have seemed insurmountable. Yet, for better or for worse, the anti-HST movement proved it could be done. I have argued that the anti-HST initiative was successful for three reasons: populist support, online coordination, and ruling party political interests. Admittedly, the confluence of these variables is rare. I admit that their coalescence will always be limited to the sphere of policy restriction, not policy creation. Whether this new restriction on government will be vast or narrow is an open question. Until we know more about British Columbians' appetite for restriction, governments can remain optimistic about persuading citizens to accept policy trade-offs and feel free to advocate the policies believed to best serve the province.

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1   Richards, "Tax Policy by Referendum," 80.
2   McArthur, "The British Columbia HST Debacle," 30.
3   Whittaker, "The Audacity of Nope," 14.
4   Elections BC, *Guide to the Initiative Process*, 8-9.
5   Ibid., 14.
6   Elections BC, *General Election Statistics in Comparison.*
7   Even if an initiative vote received something like the more robust 2001 voter turnout of 70.95 percent (Elections BC, *General Election Statistics in Comparison)*, 70.47 percent of those who voted would need to vote in favour of the initiative for it to pass.
8   Elections BC, *Guide to the Initiative Process,* 7.
9   Ibid., 10.

10   Ibid., 8-9.

11   Ibid., 26.

12   Ibid., 6.

13   Richards, "Tax policy by Referendum," 84.

14   Ibid., 85

15   Ibid., 83

16   Crawford, "Pluralism, Institutionalism, and the Theories of BC Politics," 6.

17   Crawford, "Pluralism, Institutionalism, and the Theories of BC Politics," 6.

18   Whittaker, "The Audacity of Nope," 15.

19   Richards, "Tax policy by Referendum," 83-84.

20   Crawford, "Pluralism, Institutionalism, and the Theories of BC Politics," 9.

21   Richards, "Tax policy by Referendum," 83.

22   Ibid., 84s.

23   Ibid., 83.

24   Whittaker, "The Audacity of Nope," 15.

25   Ibid., 11.

26   Sevenhuysen, "Learning Experience for B.C.'s Democracy," 67.

27   Ibid., 72-73.

28   Ibid., 66.

29   Richards, "Tax Policy by Referendum", 81.

30   Elections BC, "Report of the Chief Electoral Officer on the Initiative Position," 3.

31   Ibid., 6.

32   Ibid., 3.

33   Ibid., 6.

34   Sevenhuysen, "Learning Experience for B.C.'s Democracy," 63.

35   Elections BC, "Guide to the Initiative Process," 12.

36   McArthur, "British Columbia HST Debacle," 30.

37   Elections BC, "General Election Statistics in Comparison, and 2009 Statement of Votes," 11.

38   Ibid., 30.

39   Whittaker, "The Audacity of Nope," 14.

40   McArthur, "The British Columbia HST Debacle," 30.

41   McGrath, "Electoral Competition," 615.

42   Ibid., 630.

43   McGrath, "Electoral Competition," 615.

44   Ibid., 616.

45   Ibid., 621.

46   Ibid., 627.

47   As an example: McArthur, who believes that initiatives should become more prevalent, takes "the
        government's incredible bungling" ("British Columbia HST Debacle", 32) to be a core reason for the
        power of the Anti-HST movement, while Richards, who believes the success of the anti-HST
        movement to be "a lurch toward the 'worst form of government'" ("Tax Policy by Referendum", 86),
        also perceives Campbell's mismanagement of introducing the HST to be "a fatal mistake" for the policy.

48   Whittaker, "The Audacity of Nope," 15.

49   Richards, "Tax policy by Referendum," 86.

50   McArthur, "British Columbia HST Debacle," 32.

51   Richards, "Tax Policy by Referendum," 84.

52   Syer, "Learning Experience for BC's Democracy," 116.

53   Ibid., 115.

54   Ibid., 115-116.

Slaying the Hydra: The Impact of the Mahatma Gandhi National Rural Employment Guarantee Act on Insurgency in Tripura

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Tripura, a small state in Northeast India, has been plagued by insurgency for decades. Time and time again, military counter-insurgency efforts have only proved a temporary solution to the violent unrest of local tribal groups. However, a comparison of two periods, 1999-2003 and 2008-2013, demonstrates that violence has now rapidly declined in the region. While a revitalized police strategy was key to initial conflict reduction, this article argues that the subsequent implementation of the Mahatma Ghandi National Rural Employment Guarantee Act (MGNREGA) has been an important factor preventing the re-mergence of conflict in the long term.

Tripura, a small hilly state in India's insurgency-ridden Northeast, was once referred to as "the Northeast's nightmare."[1] Today, however a, the South Asia Terrorism Portal (SATP) touts Tripura as "a model of the most extraordinary success."[2] Comparing the period of 1999-2003 to that of 2008-2013, it is evident that the danger posed by insurgents has declined drastically in the region (SATP). While strategic police and military efforts may have been key in the initial reduction of conflict, one of the most important factors that has helped sustain peace in Tripura has been the successful implementation of the *Mahatma Gandhi National Rural Employment Guarantee Act* (MGNREGA*)*. The MGNREGA is a job creation scheme that guarantees rural inhabitants one hundred days of work per year, primarily on infrastructure projects. This policy change has had major effects on political efficacy in the region and the opportunity cost of insurgency participation. As well, the implementation of the scheme has resulted in improved infrastructure and economic development, which has struck at the root of the problem itself: economic backwardness[3] and feelings of marginalization. Thus, while a revised counter-insurgency strategy set the initial stage for peace, the implementation of the MGNREGA has been a crucial factor in preventing the re-emergence of conflict in the long term.

A History of Conflict

As many scholars have noted, the central cause of the initial outbreak of insurgency in Tripura was land alienation amongst the state's indigenous tribes-people.[4] For many years, the tribes lived in harmony with Bengali settlers of the region.[5] However, this changed drastically after the partition led to an unprecedented influx of Bengali migrants to Tripura.[6] Tripura's indigenous population, which had long been a majority of between 50-60 percent, was reduced to a minority of twenty-nine percent over the course of 30 years.[7] These socio-demographic shifts led to feelings of marginalization, which were amplified by a series of government programs that both redistributed tribal lands to Bengali settlers and seized tribal lands for infrastructure projects on a large scale.[8] The feelings of discontent and marginalization of Tripura's tribespeople manifested as a fierce wave of insurgent violence that plagued the region for many years.

Indeed, the specific period of 1999-2003 is one of particular salience as it "marked intense tribal militancy" on the part of both major insurgent groups in the region.[9] As Subir Bhaumik writes, "the cadres attacked security patrols and Bengali settlements at will. Violence, intimidation and mass abductions had become the order of the day."[10] During this period, academics N. C. Asthana and Anjali Nirmal described the outlook of the Tripura situation as "a quite grim security scenario."[11] According to the SATP, there were 1599 insurgency-related killings over the course of the period.[12] Of those incidents, 1221 were civilian deaths.[13] These numbers provide a stark contrast to the data from more recent years. Although census data reveals that the population in Tripura's rural areas has not changed significantly between 2001 and 2011,[14] the amount of violence has decreased remarkably. In the period from 2008-2013, the number of insurgency related killings was reduced to a total of forty-five, of which the vast majority took place in 2008; the total number of insurgency-related civilian deaths in this time span was sixteen.[15]

One of the major causes of the decline in insurgent violence was a revitalized counter-insurgency strategy by police chief Ghanashyam Murari Srivastava.[16] However, renewed counter-insurgency efforts on behalf of the police and state security forces seem unlikely to be the only reason that the insurgency has stayed quiet. In the past, seemingly successful efforts to quell conflict ultimately proved temporary because they did not strike the root causes of the discontent.[17] As Ajay Darshan Behera wrote, "without addressing the development needs of people… there cannot be a proper response to violence and the security of the people cannot be ensured."[18] This has been true in Tripura's history; akin to the Lernaean Hydra, a mythical beast that would grow several heads back whenever an opponent cut off one, the insurgency would consistently grow back in new forms and factions.[19]

Indeed, in the lead-up to the February 2013 Tripura elections there was widespread concern that, despite the exemplary counter-insurgency efforts, violent activity would re-emerge.[20] This concern appears to echo the many thinkers who do not view police efforts as enough to truly eradicate the insurgency alone.

Socio-demographic shifts led to feelings of marginalization, which were amplified by a series of government programs that both redistributed tribal lands to Bengali settlers and seized tribal lands for infrastructure projects on a large scale.

Furthermore, Tripura politicians in past years have been accused of playing off insurgent sentiments or orchestrating riots to gain electoral advantages.[21] In 2003, "the February elections had been preceded by a number of incidents of violence, allegedly intended to coerce voters to support the INPT and its electoral ally, the Congress."[22] Surprisingly, the 2013 elections were "by and large peaceful."[23] As many doubted that the efforts of the police and security force would be enough to maintain this harmony, it seems evident that there must have been another causal factor

Hypothetical Solutions: A New Economic Strategy

A possible answer to the puzzling endurance of stability could be a shift in economic policy between the two periods. As Sreeradha Datta once noted, "economic causes emerge as a common theme in all the analyses of various problems in India's Northeast."[24] If a series of economic policies were successfully implemented in a contentious area, they could theoretically stabilize relations to the point that former triggering events, such as elections, would remain free of violence and the insurgency would not grow back in new factions. By setting a region on the path to development, an improved economic policy could diffuse tensions in the area – effectively disarming the Hydra, the general discontent and civil unrest, as opposed to aimlessly chopping off one of the heads (only to have several new ones reappear). Indeed, in 2003, Tripura's Chief Minister Manik Sarakar relayed to a reporter his feelings that "the insurgency problem in [Tripura] cannot be viewed or dealt with in isolation … economic backwardness, especially among the tribals, in the entire Northeast is one of the main causes."[25]

In the past, seemingly successful efforts to quell conflict ultimately proved temporary because they did not strike the root causes of the discontent.

One particular type of policy that could quell discontent effectively in a case such as this could be the successful implementation of job creation schemes, specifically ones targeted at the groups most likely to participate in violent conflict. First, job creation schemes could increase feelings of political efficacy among people in the area, therefore decreasing the likelihood of individuals to seek political change through militant means. Second, the improved employment opportunities that such programs would provide could increase the opportunity cost faced by potential participants in violent events. Finally, the resulting improvements in the local infrastructure and progress of development could reduce the overall civil unrest.

Implementing the MGNREGA

In the case of Tripura, the successful implementation of job creation schemes was a significant shift in policy that differentiates the violent 1999-2003 period from the peaceful 2008-2013 period. Beginning in 2006, the government of Tripura began to implement the Mutahama Ghandi National Rural Employment Guarantee Act (MGNREGA),[26] which "seeks to enhance the livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work."[27] For several consecutive years, Tripura has gained publicity as the state most successful at implementing the program.[28] Although the initial reduction

in violence may be attributed to the aggressive counter-insurgency strategies undertaken by police and security forces in the region, the militant approach is not a complete solution to an insurgency problem as it does not quell the underlying motivations of the insurgents. As stated earlier, in Tripura these motivations have been fierce feelings of marginalization due to both demographic changes and insensitive government actions. The unemployment of

After a few years of successful implementation the voter turnout rate for the February 2013 Legislative Assembly elections in Tripura was recorded at 93 percent: the highest turnout rate in India's history.

younger segments of the population has fueled political unrest in the entire Northeast region.[29] Datta has argued that "in the absence of industries and business opportunities, employment prospects for the youths are dim. The resultant discontent and frustration is exploited by militants to swell their ranks."[30] Whereas previous political efforts to solve Tripura's insurgency had seen the conflict emerge in new forms, the successful establishment of rural employment schemes in the period from 2008-2013 has led to a peace that seems likely to persist.

An Increase in Political Efficacy

One of the most important changes since the implementation of the MGNREGA has been an increased sense of political efficacy among Tripura's citizens. The increase in Tripura's voter turnout rates between the two periods suggests that residents of the state now put more faith in the democratic process as opposed to the insurgent methods of past years. The voter turnout rate for the 2003 Tripura Legislative Assembly elections was 78.7 percent.[31] After the MGNREGA was passed in 2005 and implemented preliminarily in Tripura in 2006, the voter turnout rate jumped to 91.3 percent in 2008.[32] This upward trend in turnout has continued, and after a few years of successful implementation the voter turnout rate for the February 2013 Legislative Assembly elections in Tripura was recorded at 93 percent: the highest turnout rate in India's history.[33] News reports coming from the region act as further proof that people are increasingly satisfied with the government. Whereas feelings of marginalization were pivotal in the outbreaks of insurgency in 1999-2003 and earlier,[34] an increasingly positive outlook on policy is visible in the popular media over the period of 2008-2013.[35]

From as early as 2008, many villagers were described as happy with the economic progress that MGNREGA had triggered. One participant in the program summarized the dramatic shift by saying:

> Earlier most of us were farmers while others use to collect firewood and bamboos from the forest. We would sell them in town. But the income was not adequate to maintain our families properly. Now due to MGNREGA, there is work round the year. We are happy because along with work lots of developmental activities are going on in our villages.[36]

In the same article, the head of that village echoed these sentiments. Similarly, a beneficiary of the program was quoted in 2012 as saying, "We have benefited from the MGNREGA as with [*sic*] extra income we are able to send our children to

schools. This has really helped us."[37] Indeed, as aforementioned, happiness about the MGNREGA is consistent in a survey of many articles from the 2008-2013 period.[38] Increased political efficacy in the state and satisfaction with government policy is likely to deter residents from seeking extra-democratic means to air their grievances in the future.

Increased Opportunity Cost

Furthermore, not only have there been changes in political efficacy but the implementation of the MGNREGA has also increased the opportunity cost faced by potential participants in insurgent activity by creating both job opportunities and an overall more favorable climate for employment. In the 1999-2003 period before the scheme was implemented, Datta suggested, "Insurgency [had] become, in many ways, the only sustainable, expanding industry in the whole of the Northeast."[39] Joining insurgency efforts was the sole lucrative opportunity in a desperate time. However, with effective job creation schemes in place, this is no longer the case for many rural citizens. With employment opportunities available through the MGNREGA, today's potential insurgents are faced with a career decision that offers fewer rewards and more significant risks than it may have in the 1999-2003 timespan. As Bikons Debbarama, a member of the Kok Borok tribe, said in 2013, "All I care about is an opportunity to work. The tribal leaders make tall claims but have not done anything for us."[40] By joining insurgent efforts, the indigenous people of Tripura may jeopardize their wages and potential future employment opportunities.

> *As Bikons Debbarama, a member of the Kok Borok tribe, said in 2013, "All I care about is an opportunity to work. The tribal leaders make tall claims but have not done anything for us."*

In addition, the improved economic conditions and infrastructure that the MGNREGA has produced have aided the success of other government economic schemes, such as the rubber initiatives. As one insurgent-turned-rubber-worker declared, "If every government helps terrorists in this way, few will pick up the gun… After all, it is only us poor who because of hunger and penury are easy targets for recruitment. You can brainwash easily a man with no food on his table."[41] By providing employment opportunities directly, as well as setting favorable economic conditions for other employment schemes, the implementation of the MGNREGA in Tripura has greatly increased the opportunity cost of insurgency, therefore decreasing the likelihood that citizens will resort to it in the future.

Infrastructure Improvements

Lastly, as touched on above, the implementation of the MGNREGA has led to significant improvements in Tripura's infrastructure. In the violent period of 1999-2003, investment in infrastructure in the Northeast had been minimal, and as Datta argued, "the backwardness of the region and insurgency are interlinked, the lack of economic development has fostered discontent and violence, and this in turn has impeded development."[42] In villages of the region, such as Jirania, "development works had come to a standstill" due to the conflict.[43] In this sense, the lack of development and the insurgency formed a self-perpetuating cycle in Tripura.

Since the implementation of the MGNREGA, however, the infrastructure situation in many of Tripura's rural villages is gradually becoming less dire. In Rajghat, for example, villagers are working to build roads under the MGNREGA.[44] The results of similar projects in Pitra, another rural village, have meant that there are better commuter links within the region, improving the opportunities for transportation of products and people, further setting the villages on the path to development.[45] And just as low development levels and insurgency once created a self-perpetuating system, the implementation of MGNREGA has created a system where peace and development reinforce each other. By addressing the need for infrastructure, the scheme has struck at the very roots of Tripura's insurgency problem – economic backwardness and the feelings of marginalization that poor infrastructure had exacerbated for many years. Instead of slicing off the Hydra's endless supply of new heads, the government of Tripura has at last taken a page from Hercules' book and rendered them permanently immobile.

A Lasting Peace

In the words of Bhaumik, "Many rebel groups have come and gone in Tripura – the Sengkrak, the TNV, the ATTF, and the NLFT may all fade into the pages of history but that does not mean that tribal insurgency will not return to the hills of Tripura. A strategy to assuage the community's sense of marginalization is necessary if Tripura is to achieve durable peace."[46] Upon analysis of two key temporal windows, the violent 1999-2003 period and the peaceful 2008-2013 period, it becomes clear that through the successful implementation of the MGNREGA, this strategy has come to fruition at last. Although the initial decrease in violence may be attributed to a revised militant counterinsurgency strategy, the successful implementation of the MGNREGA in the ensuing years has been crucial to sustaining peace in Tripura. The MGNREGA has improved political efficacy, increased the opportunity cost for insurgent behavior, and reduced the severity of economic backwardness and civil unrest in the region. Altogether, the scheme has created conditions conducive to a lasting peace.

Overall, the MGNREGA has been an exemplary policy in Tripura because it has directly benefitted the Indigenous people who were once at high risk for insurgent recruitment. As long as the governing bodies of Tripura successfully implement the MGNREGA or other development-minded job creation schemes, the state's peace is likely to hold firm and new factions of the insurgency will be unlikely to resurface. This research has serious implications for future counter-insurgency efforts. It confirms the suspicions of many researchers that insurgency cannot be defeated by military means alone. Striking at the roots of the conflict is a necessary step, and economic policies, specifically job creation policies aimed at high-risk populations, can provide an ideal medium for addressing feelings of marginalization and frustration over economic backwardness—slaying the Hydra at last.

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1   Verghese, *India's Northeast Resurgent*, 166.
2   SATP, "Tripura Assessment – Year 2013." The SATP is an online database for up-to-date terrorist activity in South Asia. It is run by the Institute for Conflict Management, an NGO headed by K. P. S. Gill. Gill was central to the police counterterrorism efforts in Punjab in the 1980s and 1990s.
3   The phrase "economic backwardness" appears frequently in literature on the region.
4   Bhaumik, "Just Development," 295. He writes, "Almost all writers on Tripura insurgency have identified land alienation amongst the tribespeople as the major cause that has fuelled the violent insurgency that has eaten into the vitals of the once vibrant state." Also see:

Asthana and Nirmal, *Terrorism*, 135; Behera, *Violence*, 68; Bhuamik, "Taming the Twipra Tempest," 95-9; and Datta, *Northeast Complexities*, 44.

5   Bhuamik, "Just Development," 294.
6   Bhuamik, "Just Development," 295.
7   Ibid., and Behera, Violence, 131-2.
8   Bhuamik, "Just Development," 295-8.
9   Bhuamik, "Taming the Twipra Tempest," 109.
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Constitutionally Protected (Maybe): Canadian Aboriginal Governance and Powers, Section 35, and the Nisga'a Final Agreement

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In 2000, the Nisga'a Final Agreement became the first modern self-government agreement between the Canadian state and an Indigenous nation in British Columbia. While the treaty set precedent for future self-government agreements, the location and definition of Aboriginal governance in Canada and its constitution still remains complicated. Although powers exercised by Aboriginal governments are revocable by the state, the power of and right to self-government resides outside of the heads of power that can be exercised by Canada. For this reason, Canadian Indigenous governance resides simultaneously within and exterior to Canadian sovereignty.

Legal relations between Indigenous peoples in Canada and the Crown are framed by the most complex agreements in the Canadian federation. Currently, an Aboriginal government requires delegated powers from both federal and provincial Crowns to enact legislation within its community. An additional complicating factor in this relationship is the constitutional protection for treaties and land claims under the Constitution Act, 1982 (CA1982) Section 35; treaty relations are protected by, but not included in, the Canadian Constitution. Aboriginal governments formed as a result of treaties therefore derive their powers from other orders of government. However, the irrevocability of treaties, except through unanimous agreement by all three orders of government, does not preclude the Canadian or provincial governments from unilaterally withdrawing powers from Aboriginal governments. Powers are delegated within the scope of the constitution, meaning that irreversible delegations of power would be in contravention of the division of powers set out in the Constitution Act, 1867 (CA1867) sections 91 and 92.

The Nisga'a Final Agreement (NFA) was enacted in 2000 between the governments of Canada, British Columbia (BC), and the Nisga'a Nation. The agreement granted lands, funds, and certain fishing and water rights. It also granted the Nisga'a Nation government delegated powers from Canada and BC, with paramountcy in certain areas. However, the agreement was challenged by

lawsuits, which were resolved recently in a 2011 BC Supreme Court ruling only resolved when the BC Supreme Court ruled in 2011 that found that the Crown could not irrevocably delegate powers granted under CA1867 sections 91 and 92. Under common law, the agreement serves as precedent for future court rulings and as a template for future models for Aboriginal self-governance.

While an Aboriginal government's powers emanate from the Crown and can be withdrawn unilaterally, the Aboriginal right to self-government is protected by CA1982 Section 35 and cannot be extinguished. Prior to CA1982, the state had the power to extinguish Aboriginal rights and title at its discretion. It also had the power to create an Aboriginal government, though the courts have since held that this particular head of power lay outside of the division of powers envisioned in CA1867. Aboriginal government can therefore be understood as an order of constitutionally protected government that can simultaneously reside within and outside of the Canadian state, a fact that is not reflected in most discussions about Aboriginal governance. Though delegated powers belong to the Crown in its own right, the power to create an Aboriginal government remains external to the state. While Aboriginal governments exercise delegated legislative powers subject to unilateral withdrawal from the state, they derive legitimacy from outside the bounds of the state.

This article engages a specialized language that differentiates the terms Indigenous, Aboriginal, and Indian. 'Indigenous' refers to peoples with a historical link to the inhabitants of a territory prior to settler colonial contact.[1] 'Aboriginal' is the legal term used by the Canadian state to refer to First Nation, Inuit, Métis and non-status Indian populations.[2] While 'Aboriginal' is often used in Canada interchangeably with 'Indigenous,' its continued use implies that the state still defines Indigenous populations, perpetuating a colonial relationship. 'Indian' is used by the Canadian state to refer to individuals registered as 'Indian' under the Indian Act. In this article, 'Indigenous' will be used instead of 'Aboriginal' and 'Indian' unless specifically required.

Indigenous peoples claim sovereignty, distinct rights, and privileges on the basis of indigeneity, which emphasizes a connection to the pre-colonial inhabitants of a given territory and their political and cultural traditions which requires a historical or genealogical link to the pre-colonial inhabitants of a given territory. Included under claims of indigeneity is the right to self-governance without state interference in certain areas, such as the right to determine membership in communities or areas of cultural concern.

Is Section 35 Actually Relevant?

Section 35 of CA1982 specifically addresses the protection of Aboriginal rights, but does not define these rights. Indigenous groups in Canada generally claim both Aboriginal rights and Aboriginal title to a given territory. While Aboriginal rights include carrying out culturally significant practices or ways of life, as well as the right to self-governance, title refers to rights to the occupation and communal ownership of the land. Only in 1999 did Canada recognize and affirm Aboriginal title as part of Aboriginal rights, although previous court cases stemming as far back as 1888 had recognized Aboriginal title as part of Aboriginal rights.

Section 35 came to being relatively recently, as part of CA1982. It decrees:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed [...]

(3) For greater certainty, in subsection (1) *'treaty rights'* includes rights that now exist by way of land claims agreements or may be so acquired" [emphasis added].

The court in R v. Sparrow found that §35(1)'s recognition and affirmation protected, but did not entrench Aboriginal rights. This distinction was accepted in *Sga'nism Sim'augit v. Canada*, where the court held "treaty rights, just like Aboriginal rights, although recognized and affirmed and accordingly protected by Section 35 are not absolute," allowing infringement upon treaty rights if justifiable and in accordance with the *Sparrow* test.

The Sparrow test holds that infringement of Aboriginal rights must meet the following criteria: infringement must be reasonable, not impose due hardship, not deny holders their "preferred means of exercising that right," have valid legislative objectives, uphold the Crown's honour, and be clearly justifiable. Treaties create an impression that they are permanent resolutions through language such as "full and final settlement" in the NFA. However, Sparrow, *Sga'nism Sim'augit,* and Mitchell v. MNR's "sovereign incompatibility" suggest that such treaties are permanent only insofar as the Crown has no compelling reason to act contrary to treaty terms.

However, the same test that highlights Section 35's weaknesses also highlights its strengths. The Sparrow test allows infringement on Aboriginal rights, but also sets high standards and the burden of proof on the government seeking to infringe upon Aboriginal rights. Mark Stevenson notes various courts have deemed consultation with Indigenous communities necessary, even when an Aboriginal right has not been proved in court. He specifically references Haida Nation v. BC, where economic interests were held insufficient to override Aboriginal rights under the Sparrow test. Because most government action has an economic objective, the court suggested it would reject most proposed rights infringements.

Stevenson agrees with the courts in *Delgamuukw, Sparrow, Mitchell and Guerin v. The Queen* that Canada has a fiduciary duty towards Indigenous peoples within the state's borders as a result of the relationship between the Crown and Indigenous peoples under the Indian Act. This requires the Crown to negotiate in good faith with Indigenous communities. Both the Sparrow test and the principle of fiduciary duty are linked to Section 35, as Sparrow referenced the fiduciary duty to be a principle the state must consider, while drawing on Section 35 to create a meaningful test with weight in jurisprudence. The Crown's fiduciary duty to Indigenous communities prevents governments from spuriously infringing Aboriginal rights, as infringement must pass the Sparrow test. In this way, Aboriginal government powers were protected, but not entrenched through Section 35. These principles became formalized and acted upon through the NFA in 1999, which was the first major treaty signed between the Crown and an Indigenous community since the enactment of CA1982.

The Nisga'a Final Agreement

The NFA accurately describes the agreement as "not alter[ing] the Constitution of Canada, including...the distribution of powers between Canada and [BC...and] sections 25 and 35 of the *Constitution Act, 1982*." It further stipulates that provincial and Canadian law applies to the Nisga'a except "in the event of an inconsistency or conflict between this Agreement and the provisions of any federal or provincial law, [where] this Agreement will prevail to the extent of the inconsistency or conflict," appearing to place the Agreement in a position superior to other statutes. It also ensures judicial paramountcy, stipulating that "if a superior court...or the Supreme Court of Canada finally determines any provision of this Agreement to be invalid or unenforceable...the provision will be severable from this Agreement to the extent of the invalidity or unenforceability, and the remainder of this Agreement will be construed...to give effect to the intent of the Parties," and allows cases to be sent to the BC Supreme Court. These clauses integrate the Nisga'a into the Canadian state by creating a hierarchy of governing institutions. Canada is given a role within Nisga'a affairs with the agreement of Nisga'a leaders and representatives.

Those challenging the NFA's constitutionality argued in *Sga'nism Sim'augit* that it changed the federal compact struck at confederation in contravention of *CA1982* Section 52(1). This assumed that the NFA irrevocably delegated governmental powers based on the NFA's "final and binding" language, and the signatories' agreements to not challenge the NFA. While this argument appears logical given the explicit outlining of Nisga'a paramountcy in jurisdictions listed in the NFA, it ignores the basis of how the powers were granted, and that *CA1982* Section 35 protects treaties but does not constitutionalize them. As described above, the NFA declared that the agreement did not change the constitution, meaning the NFA is an agreement with constitutional protections and statutes giving the agreement legal effect subject to the constitution.

While the NFA gave the Nisga'a paramountcy in some areas, the agreement was enacted through Canadian legislative statutes. It can therefore be seen as an intergovernmental accord with little recourse to bind signatories, despite the added stipulation of constitutional protection. In Sga'nism Sim'augit, the court held that the NFA did not permanently delegate powers, but rather prohibited their withdrawal unless an application to infringe on treaty rights met the criteria of the Sparrow test, or was found unconstitutional. Therefore the NFA was not unconstitutional, as methods to withdraw powers existed. Powers held by the Nisga'a government are thus at the pleasure of the Crowns; however, the Crown must prove that any infringement of an Aboriginal right or treaty meets the standards of the Sparrow test. Delegation of power to the Nisga'a government could only be constitutional if the division of powers in CA*1867* remained intact.

Division of Power

In *Campbell et al v. BC (AG)/Canada (AG) & Nisga'a Nation et al* the court interpreted the division of powers set out in CA1867 sections 91 and 92 to include only those powers held by the colonies prior to confederation. In an ironic turn of events, the court determined that colonies only held those powers that existed at Confederation, in the same way that Aboriginal rights were crystallized at the enactment of CA*1982*. The court held that "anything outside of the powers enjoyed by the colonies was not encompassed by CA*1867* sections 91 and 92 and

remained outside of the power of Parliament and the legislative assemblies just as it had been beyond the powers of the colonies."

The Crown could not legally extinguish other powers exercised but not held by the colonies at the time of Confederation, as such powers were not envisioned to be part of the division of powers in CA*1867*. Furthermore, powers outside the division of powers must have been claimed by external actors at Confederation to distinguish powers outside the state and residual powers held by the federal government. The court in *Campbell* found that Aboriginal right to self-governance predated European arrival in Canada, and continued unextinguished throughout Canadian history. This judgement, which cited and applied the principle from Ontario (*AG*) v. Canada (*AG*) that the powers of state only encompassed the heads of power exercised at the time of CA*1867*, means that neither federal nor provincial governments can legislate the existence of Aboriginal governance, as it lies outside of the heads of power listed in CA*1867*. Because external sovereigns exercised the right to self-governance, this power could not be part of CA*1867*. While Aboriginal government derives powers from the Canadian state, its right to exist resides outside of the Constitution. Canada cannot legislate on the existence of such structures, but can control the powers delegated to and exercised by Aboriginal government, subject to the protections of CA*1982*.

> *While the NFA gave the Nisga'a paramountcy in some areas, the agreement was enacted through Canadian legislative statutes. It can therefore be seen as an intergovernmental accord with little recourse to bind signatories, despite the added stipulation of constitutional protection.*

Aboriginal Self-government

Through Sparrow, Campbell, *Sga'nism Sim'augit*, and the deadlocked appellate judges in Calder v. BC (*AG*), the courts have established that Aboriginal rights and title existed unextinguished by the assertion of Crown sovereignty because a "clear and plain" intention of doing so was never established. Thus, Aboriginal rights in the Constitution originate in "traditional ownership and laws that predated the beginning of settlement in our territories by Europeans." While government prior to CA1982 had the ability to define law and legislate out of existence Aboriginal rights to self-governance by excluding it from Canadian law, it can no longer do so due to Section 35. Until CA*1982*, the courts recognized Canada's legal right to extinguish Indigenous rights outside the division of powers set out in *CA1867*, regardless of constitutionality. The courts ceased to recognize the Canada's extinguishment of rights after *CA1982* due to the protections afforded by Section 35.

The right to Aboriginal self-governance exists outside the constitution, but is part of the body of law that governs the state. The Canadian state, despite its sovereignty, has continued to recognize Aboriginal governments that resides outside of Canadian sovereignty, thus granting them legitimacy within the Canadian constitutional order. Continued negotiations with Indigenous peoples after the enactment of *CA1867* also confer recognition of Aboriginal right and title, creating a situation where "aboriginal rights formed part of the unwritten principles underlying our constitution" in the same manner as the principle of

parliamentary supremacy. In this case, parliaments are limited to governance within *CA1867*'s division of power, meaning that government must abide by the principles of Aboriginal rights unless otherwise consented to by Indigenous communities.

When applying *CA1982* Section 35 to this court-defined notion of Aboriginal self-governance, it strongly suggests the following: that the state today does not have the requisite legislative competency to amend or extinguish Aboriginal rights to self-governance, and that even with the appropriate legislative competency, it would be barred by Section 35, the *Sparrow* test, and the Crown's fiduciary duty. The NFA highlights the existence of a constitutionally protected Aboriginal right to self-government inextinguishable by other orders of government - a right that resides outside of Canadian sovereignty. Because the colonial powers did not include powers of Aboriginal governance and Aboriginal governments did not have their claims to self-governance extinguished by any other means, such powers are not included in the constitutional division of powers and residual powers.

> *The right to Aboriginal self-governance exists outside the constitution, but is part of the body of law that governs the state. The Canadian state, despite its sovereignty, has continued to recognize Aboriginal governments that resides outside of Canadian sovereignty, thus granting them legitimacy within the Canadian constitutional order.* [28]

The power of Aboriginal governance was recognized as separate from the Crown's powers, and stems from a previous enjoyment and use of the land prior to assertion of Crown sovereignty. Due to this inability to extinguish rights residing outside of the power of the Crown, Aboriginal governments cannot be fully recognized as an order of government within the Canadian state, even though the Crown delegates powers to it.

What Comes Next?

While the NFA provided an Aboriginal government with constitutionally protected legislative powers, such powers remain at the pleasure of the Crown. The argument that powers can be withdrawn from Aboriginal governments has been upheld in courts, proving that while Section 35 protections are substantial, delegated powers must be revocable by the delegating government to be constitutional. If Aboriginal government is to be recognized as a sovereign order of government within the state, there are two ways to secure constitutionally defined sovereign power. The first is to deal exclusively in areas outside the powers held by colonies at confederation nor otherwise extinguished, but held exclusively and unquestionably in Indigenous communities. The second is to seek a constitutional amendment irrevocably granting power to an Aboriginal government. However, neither option is likely to manifest due to political and legal complexity. The first option requires courts to determine whether or not a certain legislative head of power was envisioned as part of the constitutional compact. The second option creates a government with substantive powers, but due to the nature of Canadian politics is unlikely to achieve the necessary political approval from federal and provincial governments.

Additionally, amending the constitution could open the door to other Indigenous communities to claim rights to the same powers. While this would lead to a substantial check on governmental powers, it would likely also meet resistance, as creation of a third order of government would require Indigenous peoples to implicitly recognize the sovereignty of the Crown. Ironically, Indigenous sovereignty would seemingly be extinguished in order to re-establish Indigenous sovereignty, though now under the Canadian state. However, Indigenous sovereignty would still exist until the divisions of power were adjusted to explicitly include the head of power over Indigenous governance.

Aboriginal government in Canada is uniquely situated as a result: it is theoretically sovereign in/from Canada due to its existence before colonial contact; however, it holds no powers in its own right, and owes the powers it temporarily holds to the constitution outside of which it partially resides.

Regardless of the types of power granted to the Nisga'a government by the NFA, its font of legitimacy remains at least partially outside of the constitution. Aboriginal government in Canada is uniquely situated as a result: it is theoretically sovereign in/from Canada due to its existence before colonial contact; however, it holds no powers in its own right, and owes the powers it temporarily holds to the constitution outside of which it partially resides. Aboriginal government is both inside and outside Canada's constitutional order. Indigenous governance is inextricably linked to the state, and as argued in *R v. Furtney*, necessarily subordinated in terms of power.

With these simultaneously conflicting and complementary points in mind, a clear distinction cannot be drawn as to whether Aboriginal governments can form a sovereign order of government in the same manner as the provincial or federal governments. The source of legitimacy for Aboriginal government and *CA1982* Section 35 protections for Aboriginal rights places Aboriginal government outside the bounds of the constitution, while constitutionally protecting and recognizing the same governments and simultaneously denying Aboriginal government powers in its own right. Aboriginal government in Canada cannot be extinguished by the state because of Section 35 and external legitimacy, but can be subject to withdrawal of powers granted by treaty as a result of the principles of federalism upon which the Canadian state is based. The Indigenous right to self-governance can not be truly extinguished if the Canadian state could never exercise that right in the first place under the current division of powers. Therefore, recognition of Aboriginal governments as an order of government within the constitution of Canada cannot be recognized under the current restrictions on the state.

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22   Ibid., at para 68.
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25   Manuel, "Aboriginal Rights on the Ground," 388.
26   This argument requires that the reader accept the following: that despite Canada lacking the right to legislate the existence of Aboriginal self-government, doing so prior to CA1982 would have still led to the extinguishment of the right to self-gov ernment. Therefore, §35 would not (in that case) apply to Aboriginal self-government, as a "clear and plain" intent to extinguish that particular right had existed.
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28   Ibid., at paras 69-70. "In short, long before the 1982 enactment of §35, aboriginal rights formed part of the unwritten principles underlying our constitution."
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The Ethics of Aggression: An Ethical Analysis of the Just Cause Proviso and the 2001 Invasion of Afghanistan

Ahmad Sohail Ludin

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Nearly all just war theorists in the post 9/11 literature have defended the 2001 U.S. invasion of Afghanistan as an ethically justified use of violence. This article challenges this orthodox view with a critical analysis of the preponderant formulations of the foremost tenet of jus ad bellum: just cause. In response to the theoretical inadequacies of these formulations—that is, their failure to distinguish between aggressing parties and mere accomplices to aggression—I develop a novel formulation of the just cause proviso, predicated on the presence of what I term as "manifest aggression." Through this lens, I show that the 2001 invasion of Afghanistan was, in actuality, an ethically indefensible military venture.

"Great infamy redounds to those, who by anticipation perpetrate the criminal act, which they fear."[1] - Livy, as cited by Hugo Grotius

Just war theory is appealing insofar as it provides a principled theoretical framework for determining when violence is justified. Conventionally, just war theory contains several formal criteria, bifurcated into two groups: those that establish the right to go to war *(jus ad bellum)*, and those that regulate conduct within war *(jus in bello)*. This paper assesses the ethical merit of the 2001 invasion of Afghanistan through the lens of just cause, or jus ad bellum. I argue there must be a stipulated rubric to determine whether the use of violent force is justified in an international conflict. Without universal criteria, any state or political organization can aggress another so long as some minimally justificatory agenda is feigned. Indeed, the majority of just war theorists justified the American invasion of Afghanistan. However, as this article shows, existing theoretical justifications are weak. If the literature remains unchallenged it risks reifying problematic ethical evaluations. I begin with a review of the ethical dimensions of current formulations of just cause. Then, I demonstrate the deficiencies of those existing formulations. Finally, I propose a novel formulation of the just cause tenet that is predicated on the presence of what I term "manifest aggression." Without this proviso, just war theory will continue to operate on a problematic ethical foundation that only perpetuates the unjust wars it exists to identify and condemn.

Background

On October 7, 2001, the United States (US) launched "Operation Enduring Freedom" in Afghanistan. The objectives of the invasion were ostensibly clear: to bring al-Qaeda to justice for the crimes it perpetrated on September 11, 2001, and to eliminate all terrorist threats burgeoning in the region. Prior to the invasion, the US asserted five specific demands of the Taliban: (1) the surrender of Osama bin Laden and his chief lieutenants for extradition; (2) the divulgement of all information possessed by the Taliban regarding al-Qaeda and its operations; (3) the termination of all terrorist training camps and the concession of US access to said terrorist training camps for examination; (4) the freeing of all captive foreigners; and (5) Taliban compliance with all UN Security Council resolutions.[2] The Taliban's refusal to surrender Bin Laden and other high-profile al-Qaeda members and guerrilla militants, following the US's rejection of Taliban negotiation attempts, constituted the moral corpus for the US's decision to invade Afghanistan. Moreover, it was used to help justify the US strategy to target and depose the Taliban regime for harbouring al-Qaeda in its counterterror war.

The US decision to invade Afghanistan was initially a moral one. Then-Secretary of Defence Donald Rumsfeld argued that the Taliban and al-Qaeda had merged into one indistinguishable and felonious adversary. According to Rumsfeld, by sheltering the terrorists, "the Taliban [had] become terrorists" themselves.[3] This looming terrorist threat seemingly invited an aggressive response. According to Neta C. Crawford, Rumsfeld's assertion "invites moral assessment" of the US invasion of Afghanistan, regardless of the strategic necessity in its counterterror war.[4] This position is espoused by a majority of just war theorists within the post-invasion literature. To determine whether the US invasion of Afghanistan was ethical, one must first assay whether a just cause was, in fact, present.

Just cause constitutes the first requirement of *jus ad bellum*, or, the right to resort to war, within just war doctrine. According to Brian Orend, the presence of a just cause is a prerequisite for any state launching a war. Orend identifies four axial categories of just cause within the just war tradition: "self-defence by a state from external attack; the protection of innocents within [that state's] borders; punishment for wrongdoing; and, in general, vindication for any violation of the two core state rights: political sovereignty and territorial integrity."[5] If the requirements of just cause are not met prior to the commencement of war, then the subsequent requirements of jus ad bellum (save the principle of proper authority), would accordingly be left unsatisfied. As such, the enterprise of war in *toto* would be deemed theoretically unethical.

Aggression, defined as the violent or armed infringement of a state or non-state actor on the political sovereignty or territorial integrity of another state, serves as the fundamental determinant of just cause. Since a just cause is typically assumed when a state defends itself against aggression, the US was unequivocally justified in attacking al-Qaeda. However, it is not clear that the US was justified in attacking the Taliban. This question of aggression serves as the locus of obfuscation within the larger debate at hand; that is, determining the ethical validity of the invasion of Afghanistan.

Existing orthodox formulations of aggression – and by extension just cause – are theoretically scant and thereby inadequate. They fail to account for the specificity of certain contexts, such as those involving violence beyond conventional interstate conflict. Moreover, their deontological and

intransigent nature enables the implication of accomplices to non-state actors who have aggressed against victim states. Such formulations of just cause provide victim states with an unduly "moral" license to attack accomplice states, regardless of whether they have committed substantial aggression. For this reason, a reconfiguration of just cause is necessary. Just cause must restrict state defence to target the aggressors at hand, not any affiliated parties.

I posit a novel conceptualization of just cause that is predicated on the differentiation between two conceptions of aggression: manifest (considerable) aggression, and limited (minimal) aggression. By requiring the presence of manifest aggression for just cause to be present, this new proviso effectively increases the threshold for just cause to be met. In

Existing orthodox formulations of aggression – and by extension just cause – are theoretically scant and thereby inadequate.

effect, this proviso reduces the chances of wars being undertaken, excluding instances where war is of substantial necessity, such as emergency cases where diplomatic options have been exhausted. Secondly, I argue that the Taliban should not have qualified as aggressors for harbouring al-Qaeda within their borders ipso facto. I thereby reject the claim that a sufficient (independent) just cause was present.[6] Lastly, I argue that the US's lack of a comprehensively "just" just cause formulation, which allowed for a "carefully defined and controlled military apparatus" whose professional and technical prerogative was to go to war,[7] allowed for the avertable and unjust sacrificing of considerable numbers of non-combatant Afghan civilians[8] as collateral damage in the US war on terror. Ultimately, I parse the ethical dimensions of the formulation of just cause and identify the effects of these ethical injustices. Hence, it is my contention that the 2001 invasion of Afghanistan was ethically indefensible and fails to fulfil the just cause requirement of *jus ad bellum*.

Formulating Aggression: Contemporary Just Cause Orthodoxies

Orthodox formulations of just cause in the contemporary literature are predicated on the ideas of Michael Walzer. *In Just and Unjust Wars* (1977), Walzer develops the aggressor/defender paradigm,[9] which argues that all offensive wars (defined as wars for any purpose other than defence) are in *all* instances wrong.[10] Aggression is iniquitous, not only because it interrupts the peace of communities, but because it deprives community members of the "condition of liberty and security that can only exist in the absence of aggression itself."[11] Aggression is an undifferentiated criminal act on the part of states, because it "challenges the rights worth dying for," confronting men and women with the choice of "your rights or (some of) your lives," and thereby stripping those individuals of their rights to self-determination.[12] Aggression may allow for two kinds of violent response: "a war of self-defence by the victim and a war of law enforcement by the victim and any other member of international society."[13] This formulation of just cause is deontological, for the value of human life is considered a higher-order good than anything else relative to it. In this framework, war becomes "permissible only to confront a 'real and certain' danger," such as protecting an innocent life.[14]

A proponent of the 2001 military invasion of Afghanistan, Brian Orend posits a formulation of just cause in *The Morality of War*. He refers to his formula

as the "Core Principle on Aggression" (CPA), and suggests that, if met, the CPA allows a minimally just state[15] to attack the aggressor in self-defence of its rights.[16] Much like the concept of social contract, minimally just states refrain from attacking one other, and in doing so, protect their own rights to not be victimised by said aggression. By this logic, any state that commits aggression forfeits its right not to be attacked.[17] The following is Orend's formulation of just cause (CPA):

> The commission of aggression against any aggressor A, against any Victim V, entitles V—and/or any third party vindicator T, acting on behalf of V—to employ all necessary means to stop A, including lethal force, provided that such means do not themselves violate human rights.[18]

This formulation of just cause is deontological, for the value of human life is considered a higher-order good than anything else relative to it.

Orend's formulation of just cause is exiguous in three integral ways. First, it maintains a conventional Walzerian conception of aggression, or what Orend refers to as the "violent violation of state rights."[19] Second, it does not explicitly define what constitutes aggression. It provides neither scale nor benchmark for when aggression should be considered seriously by a victim state, and thus, the operative definition of aggression remains conceptually amorphous and over-inclusive. For example, if actor A infringed on the territorial sovereignty of actor V by annexing one acre of V's land, would V be justified to respond militarily? And if so, to what degree? Suppose V is a non-state actor, and A a global hegemon. Ought an asymmetric war be fought to vindicate a minor theft?[20] I concede that any benchmark for validating the criteria for just cause for war would necessarily be arbitrary. However, considerations of proportionality should be made prior to any evaluation of just cause. Orend's CPA, by its very rhetoric, favours capitulation as the fundamental alternative to war.[21]

Necessary Conditions for Pre-emptive War

Pre-emptive wars, such as the US war on terror, focus on destabilising and defeating a known enemy, in this case, al Qaeda (and the Taliban). Traditional just war theorist Hugo Grotius was one of the first thinkers to suggest that a state that possesses the foreknowledge of a conspiracy or a planned attack against them, does not possess the right of preventative self-defence until the attack becomes otherwise inevitable.[22] Walzer requires the aggressor to possess a "manifest intent to injure, a degree of active preparation that makes that intent a positive danger, and a general situation in which waiting, or doing anything other than fighting greatly magnifies that risk."[23] The question at hand becomes, "At what stage does a state acquire the right to take military action to defend itself?"[24] Grotius's position is problematic in its insistence that pre-emptive war is always unjust. Against this view, scenarios exist where pre-emption is necessary and justified. In part due to the new threats of global terrorism, international standards are changing. Perceptions of terrorism have likened pre-emption to self-defence in the eyes of states. In response to the ubiquitous threat of terrorism in today's international arena, Alex J. Bellamy provides a reinterpretation of "imminence." Bellamy replaces temporal imminence with a new conceptualization of terrorist threat, wherein a terrorist threat is only present "when a group expresses a clear intention to use

terrorism and begins acquiring the means to do so" via mobilisation tactics.[25]

Proponents of pre-emptive war, such as Thomas Aquinas, argue that "those who are to be warred upon should deserve to be warred upon because of some fault."[26] Jeff McMahon amends this assertion, suggesting that the aggressor is the agent that is liable to be attacked. Those liable to attack are not required to act in a way that grants the attacker an explicit justification. Rather, the liable agent is one that "would not be wronged by being attacked, given certain conditions, though perhaps only in a particular way or by a particular agent."[27] Such pre-emptive arguments could be used to justify the US attack of the Taliban. While the Taliban did not attack the US directly, they made themselves liable to aggression by harbouring al-Qaeda. Proponents of pre-emptive war equate a mere threat to wrong with a wrong that has already been actualised. Such a threat allows the "threatened" to hold the "perpetrators liable to military attack as a means of preventing the threatened wrong."[28] In this sense, an overwhelming majority of just war theorists view any party that poses a threat as being "non-innocent."[29] However, there is a clear dilemma at hand here. The existence of threat in and of itself cannot and ought not be able to form the basis of the liability to attack. If this were the case, then any individuals or states that engage in justified self-defence would become liable to pre-emptive counterattack, even by those who originally wronged them.

Redefining Aggression: Limited vs. Manifest Archetypes

Upon consideration of the inadequacies of current just cause formulations, a more comprehensive and nuanced definition for aggression is necessary. I will now bisect the concept of aggression, and, in doing so, contrast its varying models. We must determine what the act of aggression, at its very basis, entails.

The current model of aggression seems to disregard the relevance of intention.

Any systematic analysis of aggression must de-compound the concept into its constitutive elements. My manifest model of aggression relies on a set of supplemental criterion,[30] to be added to the central criterion of the infringement of territorial integrity and political sovereignty of a state. These criterion must be satisfied for any genuine aggression to exist on the part of aggressor A, against Victim state V. Then, and only then, would V be justified in engaging in military action against A in self-defence. I hold that, for a state or non-state actor to commit the crime of aggression, the alleged aggressor must knowingly commit the act of aggression, or, in the case of a third-party accomplice, there must exist foreknowledge of any plans of aggression against the victim state prior to the aggression transpiring. Any knowledge of aggression attained ex post the actual act of aggression cannot reasonably be used as sufficient evidence to incriminate the accomplice. Only agents that have directly and materially bolstered the enterprise of aggression can be reasonably held responsible for the repercussions engendered by said aggression. If it is "the single act of aggression that makes the aggressor liable and gives the defender a right of self-defence,"[31] then the tangible act of aggression itself must hold substantial moral weight. The current model of aggression seems to disregard the relevance of intention. Therefore, the intentions of the accomplice must be acutely dissected, and it intuitively

seems that any just punishment for noncompliance or abetting an aggressor must be proportionate to the accomplice's overall contribution to the act of aggression.

Manifest aggression is characterised by intent to aggress against a state. Commonly, terrorist acts of aggression, such as the September 11th attacks, are propelled by ideological or political intentions. Manifest aggression requires the aggressor to be uncooperative, showing no desire to ameliorate the act of aggression or to absolve themselves of charges of aggression. Any attempts undertaken by an alleged accomplice party to negotiate in order to absolve themselves from charges of aggression that they did not conspicuously commit, must be genuinely taken into consideration, and factored in to the overall punishment that will be inflicted upon the accomplice party. A limited model of aggression is one in which all of these criterion are essentially left unsatisfied. This conceptualization of principled aggression is more restrictive in permitting states to engage militarily in defensive wars. It effectively differentiates between a genuine aggressor, who commits manifest aggression, and an accomplice, who commits limited aggression. In doing so, it still permits victim states to engage in defensive wars contra genuine aggressors, in the name of their rights.

Applying Abstractions on the Ground: Aggression and the Case of the Taliban

It is almost unanimously agreed that the Taliban committed a considerable act of aggression against the US following the events of September 11, 2001. The argument, on behalf of the US and the coalition of the willing, ran as follows: because the Taliban regime knowingly provided al-Qaeda with "material support," such constituted aggression. (Or, as in the case of Orend's just cause formulation, such material support allowed for the application of the Core Principle of Aggression.)[32] This aggression, in effect, permitted the US to invade Afghanistan, in order to punish the Taliban and prevent further aggressive Taliban activity.[33] Orend once again presents his argument in a succinct and formulaic manner:

> "War is justified not only against the non-state threat but the state sponsor as well. Aggression is, in this regard, a symmetrical relation: if Q commits aggression against R, and Q had substantial support from P in doing so, then P also aggressed against R."[34]

Mark Vorobej questions Orend's specific formulation of just cause and the international community's equating of al-Qaeda and the Taliban. In an attempt to answer Orend's questions, I will apply the framework of manifest aggression developed in the previous section to determine whether the Taliban's failure to provide Osama bin Laden and his chief lieutenants to the US constituted adequate just cause for the US to retaliate with war.

First we must consider the extent to which the Taliban had foreknowledge of al-Qaeda's plans to violently attack the US on September 11, 2001. Bin Laden initially denied any involvement in the attacks before he finally claimed responsibility in October of 2004.[35] To what extent did the Taliban directly or materially support al-Qaeda in its attack on US soil? That is, did any members of the Taliban, or any of its closely linked tribal associates

(such as the Haqqani network), fund, train, or partake in the events of 9/11 in any way? Overwhelming evidence would suggest that they did not. Of the 19 recruited "muscle" hijackers, 15 of which were Saudi citizens, none were Afghan.[36] Additionally, as an ethno-political movement, the Taliban promulgate a specific political vision, characterized by the institutionalization of a specific type of radical "deobandi" Islam that is heavily intertwined with Pashtun tribal customs. Due to the disparate political ends that the Taliban and al-Qaeda endeavour to actualize, it would be an onerous task to be able to exhibit that any of the "muscle" used in the operations of 9/11 included Taliban tribesmen.

Due to the lack of strong evidence exhibiting the Taliban's direct involvement in the September 11 attacks, it would be utterly false to accuse the Taliban of violating the US's rights of territorial integrity and political sovereignty, or, doing so to the same extent or in an identical manner as al-Qaeda.[37] Mark Vorobej asks whether any of the alleged material support provided by the Taliban could be linked directly to the specific attacks that occurred on 9/11.[38] This begs the question: is it not equally likely that such attacks on the part of al-Qaeda could occur without Taliban support?[39] In terms of intent, is it relevant that there is evidence that the de facto Taliban leader, Mullah Mohammad Omar, opposed any al-Qaeda operations directly against the US in 2001, on ideological and strategic grounds.[40] Such evidence effectively absolves the Taliban of any direct intent to harm the US, prior to the invasion.

Additionally, on several occasions, the Taliban appealed to negotiate with the US regarding Bin Laden's surrender. Mullah Omar called for hard evidence from the US indicating Bin Laden's involvement in the events of 9/11. If provided, he would relinquish Bin Laden to a neutral third-party Muslim state, where he would be tried in an Islamic Court.[41] This offer was to no avail. On October 2, 2001, then-US president George W. Bush replied stating, "there is no timetable for the Taliban, just like there are no negotiations."[42] Omar's suggestion that the Organization of the Islamic Conference, comprised of fifty Muslim countries, should be consulted by the US was also rejected.[43] On October 7, 2001, the US launched an intensive air campaign against the Taliban, dropping over 3,000 bombs and cruise missiles on the cities of Kabul, Kandahar, and Jalalabad. It is estimated that hundreds of civilians died in the month of October alone.[44] In November 2001, the Taliban again offered to extradite Bin Laden, this time to Pakistan, on two terms. First, that the US cease the aerial bombardment, and second, that the evidence which they had been seeking in regards to Bin Laden's incrimination was provided. The US chose not to oblige, and reacted militarily. Arguably, the Taliban's requisition for evidence was justified in that it was "in accord with normal requests for extradition" and that "the US would itself insist on evidence before handing someone within its borders over to another nation wishing to put him on trial for a capital offense."[45]

Vorobej's philosophical analysis of the aggressor-accomplice relation includes several observations. He notes, in response to Orend, that in aiding and abetting the non-state actor al-Qaeda, the Taliban did not commit any violence against the US. Thus, aggression, the violent violation of (state) rights, was not evident, and thereby, the Taliban (who committed a crime in not surrendering Bin Laden), could not be considered as literal aggressors of the US, much like how "not every accessory to murder is also a murderer."[46] Thus, "a morally appropriate response to an act of aggression ought to take into account the specific nature

of that aggression."[47] Due to the ambiguity surrounding the Taliban's culpability of aggression, an argument for just cause holds more weight than arguments for pre-emptive attack. It is in response to this argument that I turn to next.

The US Counterterror War and the Invasion of Afghanistan: A Necessary Evil?

There are just war theorists, such as McMahon, that suggest that the proviso of just cause is not a single, unitary goal, but rather, can coexist with auxiliary just causes.[48] McMahon notes that when the aims of the just cause(s) have been acheived, the continuation of a war lacks justification and thereby becomes impermissible.[49] However, McMahon does not only apply the principle of just cause to the initial resort to war. In fact, he goes further, suggesting it is possible for a war to commence without a just cause, but to acquire one during its course. In such cases, one singular war ceases to be unjust and becomes just, and is therefore justified in its continuation.[50] It is my contention that McMahon's proposal is not a just cause for going to war, but rather, a cause for staying in war. If an original cause of a war is unjust, but the war is militarily pursued. No conditional just causes—for example, the intent of toppling an oppressive regime like the Taliban – can ameliorate the destruction that has subsequently transpired. A war that has been undertaken without a just cause is a war to which the principle of proportionality cannot justifiably be applied. Thus, civilians will die without just cause. This, I hold, is precisely what occured with the 2001 invasion of Afghanistan. The harbouring of al-Qaeda was framed by the US to constitute aggression, and thereby provided them with an independent (sufficient) just reason to invade.[51]

> *Due to the ambiguity surrounding the Taliban's culpability of aggression, an argument for just cause holds more weight than arguments for pre-emptive attack.*

The ethical dilemma here is convincingly articulated by just war theorist Neta Crawford, who asks: "if self-defence is legitimate, and so is preemption in cases of supreme emergency, how much self defence is necessary to justify preemption?"[52] Refraining from invading Afghanistan, a country characterized by US President Barack Obama as "the epicentre of violent extremism,"[53] would have profoundly restrictive effects on the efficiency of the US counterterror war. Alternative methods to a military invasion could have been pursued. For example, Crawford proposes a counterrterrorism policy that does not favour war as a tool in the fight against terrorism. [54] Unfortunately, this strategic policy is beyond the scope of this paper.

The just cause principle within just war doctrine relies on a deontological precept grounded in the Kantian notion of the categorical imperative, in which individuals must never be used as a mere means to achieving others' ends.[55] The rationale for pre-emptive war in response to aggression or the threat of aggression widens the justifiable scope for a pragmatic state to sacrifice innocent civilians abroad for a purportedly "just" cause, when in fact the goal is to secure goods such as self-defence, protection of sovereignty, and security. This denigrates human life as a higher-order good—a good that any would-be belligerent in a quest to determine just cause must factor in seriously. A question remains: how is it ethically justifiable to pre-emptively attack a perceived state sponsor to aggression like the Taliban, which has no precedent

of attacking the victim state? Would this not be akin to imprisoning a "suspected criminal" before he has committed a crime or been given due process?

The deontological nature of just cause makes it susceptible to exploitation. For this reason, just cause is contingent upon its delineated conditions. If formulated appropriately, the requirement for just cause may effectively restrict the grounds a state has for legitimately waging war. In its current formulation, however, it may essentially allow a victim state to falsely justify an aggressive war in the name of defence. In doing so, it fails to encourage that state to seek alternative, less lethal methods of conflict resolution. A guise of justice becomes a necessary pretext, and the ability to ostensibly justify waging war precludes substantive debates concerning the veracity or justifiability of the proposed just causes for doing so. War must necessarily pass ethical criterion to be justified. If not, the institution of war may essentially parallel state murder, and a justification for such intuitively appears to be absurd. Deficient formulations of just cause are susceptible to exploitation by states with security doctrines that seek dominance and exalt pre-emption. These faulty just cause formulations perpetuate the atrocity that just war doctrine developed to avert: the resort to war.

Conclusion

The US has attempted to justify its invasion of Afghanistan, and specifically, its attacks on the Taliban, by "framing its counterterrorism effort in just war terms by making a positive legal and moral assertion of self-defence... [and] in arguing that terrorism is a different type of war, the administration consistently defined pre-emption as self-defence."[56] As it stands, just war theory, which serves as a normative framework for debate regarding the right causes and conduct of war, places the onus of proof on the victim state that wishes to wage war.[57] The US, in pointing to their *prima facie* right of justified self-defence against the perpetrators of 9/11, al-Qaeda, extended this right of self-defence to apply also to the Taliban. The US did so out of what they believed was necessity, appealing to St. Augustine's argument that war is a necessary evil to prevent the occurance of even greater evils.[58] I have argued for a new proviso of manifest aggression to be present for just cause to be actualized. I have also argued that the US has committed a logical and ethical fallacy in its indiscrimination of the Taliban from al-Qaeda. The theoretical principle of just cause must become more stringent and restrictive in allowing for war, and viewed as such by the international community.[59] Thus, the deontological precept of just cause, the foremost principle of *jus ad bellum,* must adopt a more restrictive disposition in order to metastasize between just and unjust wars of self-defence and preemption. One must ask themself, at what point does the victim, in vindicating its own rights, trangress to become the aggressor? The cause for war, though imperative in circumstances of utter necessity, was not evident in the US invasion of Afghanistan. As such, I argue that the invasion was ethically untenable. War is not an accoutrement of progress. It is seldom a praiseworthy pursuit. "War is hell."[60]

> *War is not an accoutrement of progress. It is seldom a praiseworthy pursuit.*
> *"War is hell."* [60]

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1   Hugo and Campbell, On the Law of War and Peace, 65.
2   Kean and Hamilton, Commission Report.
3   Singer, The President of Good and Evil, 17.
4   Crawford "Just War Theory and the U.S. Counterterror War."
5   Orend, "Kant's Just War Theory." Political sovereignty is to be defined as "the state having the exclusive right to have control over an area, to operate the government, enact laws, and regulate activities and commerce." Territorial integrity is to be defined as "the principle under international law that nation-states should not attempt to promote secessionist movements or to promote border changes in other nation-states. Conversely, it states that imposition by force of a border change is an act of aggression." See <http://princeton edu/~achaney/tmv/wiki100kdocs/Territorial_integrity.html>.
     It must be noted that just cause is often understood as being the preeminent principle of jus ad bellum. This is, perhaps, not only due to the order of just cause within the structural arrangement of jus ad bellum, (it is, as mentioned, the initial requirement that must antecedently subsist, preceding the ensuing principles of right intention, last resort, and (macro)-proportionality) which must additionally be met, but also due to the intermeshed nature of the principles of jus ad bellum. For example, because just cause establishes the ends for which a state may justifiably engage in war, it would be impossible to ascertain whether a state undertakes war with the proper intentions, if the goods which it envisions it will gain via the mean of war are not defined (i.e. a just cause(s) is not identified). Similarly, it would likely be sufficiently difficult to determine if the generated aggregate good of a war outweighs the aggregate evil, if the good(s) for which that war was initially undertaken was not elucidated ex ante.
     Furthermore, I hold that just cause is the preeminent principle of jus ad bellum, in addition to the reasons presented, because, the "moral requirement of just cause sets it apart from all forms of realpolitik." Henrick Syse, et al., Ethics, Nationalism, and Just War: Medieval and Contemporary Perspectives (Washington D.C.: The Catholic University of America Press, 2007), 90.
     Just war doctrine that has traditionally endeavoured to moderate the diametric extremes of pacifism and political realism, (or, in a medieval context, the crusades). On the spectrum of pacifism to political realism, just war doctrine, which posits a set of military ethics that limit, but which do not prohibit, necessary or unavoidable wars, attempts to reconcile the deontological negation of war in all cases, with the thesis of political realism, in which notions of morality and ethics do not apply to the realm of international politics, thus, holding war to serve as the apparatus of the state in its endeavours to protect its self interests.
     Both jus ad bellum and jus in bello contain a principle of proportionality; the former,

referred to as macro-proportionality, focuses on the proportionality of the violence used in war relative to the overall attack suffered (often determined by a quasi-utilitarian calculation or method of cost-benefit analysis), whereas micro-proportionality applies the same principle to instances within war. These goods would be the general aims that would have to be just, for they would comprise just cause.

6   McMahon, "Just Cause for War"; Hurka, "Proportionality in the Morality of War." I borrow Jeff McMahon's terms of independent and conditional just causes. For McMahon, independent just causes can justify war or the resort to war their own, whereas conditional just causes can only contribute to the justification for war, but only when "triggered or activated by the presence of an independent just cause" (14). Commonly cited conditional just causes for the war in Afghanistan included the oppression of women, human rights violations, as well as religious persecutions at the hands of the Taliban regime.

7   Foucault, Ethics Subjectivity and Truth, 60.

8   O'Rourke. "Just War and the Case in Afghanistan." It is estimated that there had been 31,000 Afghan civilian deaths as of 2010 in Afghanistan due to Operation Enduring Freedom, as quoted by O'Rourke.

9   Hudson, Justice, Intervention, and Force, 8.

10   Ibid.

11   Ibid.

12   Ibid. Here, Walzer is applying the domestic analogy, in that he treats state self-defence as being directly analogous to an individual's rights to defend themselves. (Hutchings, Global Ethics, chapter 6).

13   Walzer, Just and Unjust Wars, 62.

14   Hutchings, Global Ethics, 144.

15   Vorobej, "Just War Theory and the Invasion of Afghanistan." For Orend, a 'minimally just state' is one that "makes every reasonable effort to satisfy the human rights of [its] own citizens" and also "avoid[s] violating the rights of other countries" (Orend, Morality of War, 36, as quoted by Vorobej, "Just War Theory," 30).

16   Ibid, 29.

17   Ibid, 30.

18   Orend, The Morality of War, 37. Orend adds that the variables A,V, and T may be substituted by the names of state actors. Where "A" is understood to represent the non state actor, al Qaeda, "V" the United States, and "T" the United Kingdom.

19   Vorobej, " Just War Theory and the Invasion of Afghanistan."

20   It is relevant to note that Orend does suggest that the "necessary means" undertaken to cease A's aggression must be in line with the other principles of just war, (both just ad bellum and jus in bello).

21   As such, alternative methods of conflict resolution, such as diplomacy, are denigrated.

22   Hudson, Justice, Intervention, and Force, 23.

23   Ibid, 9.

24   Hutchings, Global Ethics, 153.

25   Ibid.

26   McMahon, "Just Cause for War."

27   Ibid.

28   Ibid., 8.

29   Ibid., 9.

30   Such criterion render manifest aggression synonymous with a quintessential aggressor defender paradigm (Walzerian model), or Orendian model, for the concept of manifest aggression can encapsulate both the contemporary models of just war and preemptive war.

31   McMahon, "Just Cause for War."

32   Orend, The Morality of War, 71-4.

33   Vorobej, "Just War Theory and the Invasion of Afghanistan."

34   Orend, The Morality of War, 73-4. Where Q, R, and P are understood to represent al-Qaeda, the United States, and the Taliban, respectively.

35   BBC, "BBC-History- The US Refuses to Negotiate With the Taliban."

36   Kean and Hamilton, "Commission Report."

37   Vorobej, " Just War Theory and the Invasion of Afghanistan."

38   Ibid.

39   Ibid.

40   Kean and Hamilton, "Commission Report," 268-9. The report, by the National Commission
        On Terrorist Attack's Upon the United States (an independent and bipartisan commission
        mandated by congressional legislation and signed off on by George W. Bush), claims that
        Mullah Omar preferred, for ideological reasons, that al-Qaeda "attack the Jews" rather than
        the United States, and that al-Qaeda provide the Taliban with strategic military support
        for its offensive against the Northern Alliance. Vorobej notes that the Taliban and al-Qaeda
        "have serious cultural, political and ideological differences." (Vorobej, " Just War Theory
        and the Invasion of Afghanistan," 69.)

41   Singer, President of Good and Evil, 151. Singer writes that this proposal was later
        abrogated, so that the court had at least one Muslim judge.

42   BBC, "BBC-History- The US Refuses to Negotiate With the Taliban."

43   Singer, President of Good and Evil, 151.

44   Ibid.

45   Ibid.

46   Vorobej, "Just War Theory and the Invasion of Afghanistan," 46.

47   Ibid, 48.

48   Ibid, 2.

49   Ibid.

50   Ibid.

51   Singer, President of Good and Evil, 152. The conditional just causes of waging the war
        in Afghanistan include the rebuilding of the nation's infrastructure, as well as the
        counterterror war. Due to the strategic difficulty of capturing and punishing an "elusive
        target" such as al-Qaeda, the Bush War Cabinet decided to shift their focus on the Taliban
        government, who served as substantial targets. Fueled by the Bush Administration's desire
        to achieve its approximation of justice, and to do so expediently, ousting the Taliban
        regime became the assumed goal of the U.S. military operation.

52   Crawford "Just War Theory," 15. Crawford's central concern in relation to pre-emption
        is later articulated in the same paper, in which she asserts that "Once one defines terrorism
        and counterterrorism as war, self-defence and war expand—spatially, temporally, and
        conceptually—to near infinity" (16).

53   O'Rourke, "Just War."

54   Crawford, "Just War Theory." Crawford posits a counterterror policy that emphasizes three
        central elements: "protection against terrorist assault frustration and disruption of terrorist
        activities, and prevention by long-term diminution of the attractiveness [of terrorism] as an
        option."

55   Alexander and Moore, "Deontological Ethics."

56   Such instances were evident by Bush's speech at West Point, as well as the US's most recent
        National Security Survey at the time in 2002.

57   Crawford "Just War Theory," 12.

58   Ibid.

59   Orend, The Morality of War, 196. Orend notes that the majority of just war theorists and
        twenty-eight other countries agreed with American that it was just to respond with force
        when the Taliban refused to hand over al-Qaida suspects in November of 2001.

60   Walzer, Just and Unjust Wars, 22.

Vienna and the New Internationalization of Cities

Veronica Reiss

Veronica is in her fourth year at UBC pursuing a major in Political Science and a minor in International Relations. Her academic interests include environmental policy, urban planning, and the changing role of cities in the 21st century, in particular on an international level. In the coming years Veronica hopes to pursue studies in Urban Planning and Public Policy.

As competition for resources and skilled workers increases, global cities must make themselves attractive to both investors and immigrants. Using Vienna as a case study, this article explores how cities, independent of national structures, can engage international actors to promote themselves and lobby their interests abroad. Vienna's maintenance of representative offices in various countries around the world is an example of successful international engagement by a city government, and represents a potential policy model that other governments could follow. Vienna's experience also suggests cities could become significant actors on the international stage in the future.

The world has undergone a rapid and profound demographic shift within the last two centuries. The world's population has exploded from 1 billion people in 1803 to over 7 billion people today. This growth in population has coincided with the rapid urbanization of the world's population. While an estimated five percent of the world's population resided in cities in 1800, more than half the world's population lives in urban areas today. This shift to an urbanized population, coupled with developments in technology, focuses new attention on the cities of the world. As populations swell in urban centres and in some cases eclipse populations of entire countries, municipal and senior governments are faced with complex challenges. The imperative to attract economic interests, foreign investment, and human capital has never been higher. These factors form the foundation of a city's growth and survival; however, economic interests should be balanced against the objectives of providing a quality and affordable standard of living for inhabitants and potential immigrants to a city, as well as ensuring sustainable growth that allows for the prosperity of future generations. Cities are now acting as individual entities in an attempt to distinguish and promote themselves on the international stage. It is within this global context of competition and specialization that we turn our attention towards Vienna.

Vienna stands alone among the cities of the world in many respects. Renowned for its quality of living, innovative urban planning, sustainable environmental practices, and cultural draws, year after year it ranks among the most livable cities in the world. As a world-renowned centre for international relations, Vienna plays host to numerous high profile international organizations, including the UN, OPEC, OSCE, and countless NGOs. Vienna has become the number-one

destination in the world for conferences and congresses and positioned itself as the gateway city to Eastern Europe and the former Soviet Bloc. This high level of internationalism is no coincidence. The city has invested countless resources to attain the global position it enjoys and it continues to do so with this strategy in mind. This article examines the ways in which Vienna has harnessed its advantages and translated them into an effective international engagement strategy in order to spur economic growth and maintain the high standard of living it provides its citizens. This article will examine the historical and institutional factors that enable Vienna to exercise a high degree of independence within the Austrian Federation and pursue its own foreign policy. These factors shape Vienna's international promotion policies and the structures of its foreign office. The article concludes with the outcomes of this international promotion strategy and highlights Vienna's unique ability to compete internationally.

Background

As the capital of the former Austro-Hungarian Empire, Vienna has a long history as a nexus of international relations. However, it was not until the second half of the 20th century that Vienna characterized itself in earnest with a strong international dimension. Austria's declaration of permanent neutrality after regaining independence in 1955, combined with its central location in Europe, positioned it to become a host city of non-aligned international relations. In 1957, at the invitation of the Austrian Government, the International Atomic Energy Agency (IAEA) established its headquarters in Vienna. This spearheaded the migration of international organizations into the city. In 1972, the City of Vienna, in partnership with the national government of Austria, began construction on a complex to house the United Nations and other international organizations. The resulting Vienna International City (VIC) has become a major part of Vienna's identity as a seat of international diplomacy. With the completion of the VIC project in 1979, the UN set up a permanent headquarters in Vienna. Countless IOs and NGOs followed this lead. The Organization of Petroleum Exporting Countries (OPEC), the Organization for Security and Cooperation in Europe (OSCE), and the International Institute for Applied Systems Analysis (IIASA) are all housed in Vienna. This international presence has given Vienna a reputation as a leading city of diplomacy.

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While its history and geography have undoubtedly been an advantage to the city, a number of institutional factors and government decisions also bolstered Vienna's ability to distinguish itself internationally. The most significant of these is Vienna's status within the Austrian Federation as both a municipality and a state. This rare institutional design dates back to the inter-war period with the passage of the 1921 Separation Act, which designated Vienna as one of Austria's nine Bundesländer, or states. Over time, the municipal and state governments began to fuse powers, until eventually the city and state governments became one and the same. Today there is only one government for all of Vienna, both city and state. This government has more power than other municipal governments in Austria, for example the power to raise its own tax revenue. This status

has allowed Vienna more autonomy in local municipal decisions. The city uses this autonomy to implement innovative urban policies within the city, including high quality social housing and an extensive public transportation network, allowing it to achieve its status as one of the most livable cities in the world. This autonomy has also equipped the city with the resources it needs to aggressively promote itself on the international stage.

The Viennese government uses this relatively unique structure to its advantage by placing international promotion and business connections high on its list of policy priorities. The city publishes an annual report on its international initiatives and in 2006 published a 10-year policy plan paper that outlines the city's strategies for international growth over the decade. Vienna also invests resources in a strategy of international city branding and "storytelling" in order to further capitalize on its rich cultural and historical assets.

One of the most interesting features of Vienna's unique political structure is a government department dedicated solely to its international affairs. This department is called the International Strategy and Coordination Office and is comparable to other national departments of foreign affairs. Part of the mandate of this department is the maintenance of a network of liaison offices abroad. Officially called Vienna Representative Offices (VROs), these offices are strategically located in countries around the world. According to the City of Vienna, they "lobby for the interests of the City of Vienna in the host countries and cities." These offices often work in tandem with other Viennese and Austrian organizations abroad, such as the Vienna Business Agency and the Austrian National Tourist Office, to achieve policy goals. While the VROs are not legally diplomatic offices, they serve as quasi-embassies through which Vienna can promote itself independent of federal control and interests.

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The locations of these offices abroad indicate Vienna's international strategy. The offices are concentrated in perceived growth regions that are central to Vienna's international goals. These target markets are primarily in areas where Vienna has already been heavily involved or is looking to expand its presence such as, Central, Eastern, and Southeastern Europe, the European Union, and East Asia.

Central, Eastern, and Southeastern Europe

The greatest presence and concentration of VROs can be found in Central, Eastern, and Southeastern Europe. This region has been a focus of Viennese investment and expansion for over a decade. The emphasis on this region can be seen in the wider context of Vienna's (and to some extent Austria's) drive to take advantage of the end of communism in Eastern Europe and the newly opened and capitalized economies. It also relates to Vienna's historical ties to the region as the old capital of the Austro-Hungarian Empire.

After the fall of the Iron Curtain, Vienna, previously on the periphery of Western

Europe, found itself located precisely in the middle of a newly open Europe. As Andrea Kampschulte explains:

> In 1989, Vienna no longer found itself on the outskirts of West Europe but once again at the heart of Central Europe. The door was opened for the re-establishment of economic ties with its eastern hinterland. However, Vienna remains at the interface of East and West, a boundary now marked less by differing political ideologies than by serious economic disparity.

With its geographical proximity and historical ties to the countries and cities of Central and Eastern Europe (via the former Austro-Hungarian Empire), early 1990s Vienna was in a strong position to expand into the newly opened markets of the former Soviet Bloc and capitalize on this economic disparity.

In 1996 VROs were set up in Belgrade, Bratislava, Budapest, Bucharest, Krakow, Ljubljana, Prague, Sarajevo and Zagreb; all cities that had at one time or another been within the Austro-Hungarian Empire. Offices were also set up in Sofia and Moscow, both cities with historically strong ties to the Empire. The early establishment of these offices gave Vienna something of a first-mover advantage in breaking into the new markets. Compress Verlagsgesellschaft G.m.b.H. & Co. KG, the company responsible for running the Eastern European VROs, notes that the establishment of these offices meant that Vienna "assumed a leading role in establishing special contacts with neighbouring countries in central, south, and east Europe, long before the 2004 EU enlargement, and acquired considerable advantages for all those involved."

Vienna's cultivation of close ties with Bratislava has also resulted in the creation of CENTROPE, a regional cooperation initiative to pair the "Twin Cities" of Vienna and Bratislava and to promote the area around these two cities (including parts of Austria, Czech Republic, Hungary, and Slovakia) as an attractive place to invest, visit, and live.

The establishment of these offices signaled Vienna's commitment to investing in and strengthening its ties with its Eastern European neighbours. The project to establish these offices was a large undertaking by the city. Instead of directly overseeing the offices in Eastern Europe, the city hired a private PR firm, Compress Verlagsgesellschaft G.m.b.H. & Co. KG, to manage them. They undertake various promotional and networking tasks on behalf of the City of Vienna through these offices including organizing official meetings, conferences, and cultural events. They release promotional publications and publish a weekly online magazine which promotes Vienna and highlights its partnership and presence in these Eastern European cities.

Vienna Representative Offices (VROs) are integral to building new alliances and supporting Viennese business interests in the area. Vienna and Bratislava in particular, have begun to foster a very close relationship since the fall of the Iron Curtain. From 2003-2010, four out of the top ten largest companies in terms of job creation in Bratislava were Austrian. Vienna's cultivation of close ties with Bratislava has also resulted in the creation of CENTROPE, a regional cooperation initiative to pair the "Twin Cities" of Vienna and Bratislava and to promote the area around these two cities (including parts of Austria, Czech Republic, Hunga-

ry, and Slovakia) as an attractive place to invest, visit, and live. This central European region (comprising some eight million people) represents a new political and economic strategy whereby cities and towns in a geographic area identify themselves as one entity – in this case the CENTROPE region – and pool their resources in order to gain more clout and promote themselves more effectively on the global stage. This is a marked shift from trans-national cooperation, as individual cities gain access to engaging in foreign affairs. As one of the main focal points and the largest city within CENTROPE, Vienna is able to strengthen its international recognition and promote itself.

The European Union

As a member of the EU, Austria's most important trading partners are the other EU nations. The EU is also highly important for Vienna's international promotion strategy. The 27 EU member countries account for 72 percent of Austria's trade and 90 percent of its foreign direct investments. These close economic and political ties with EU structures have led to the establishment of a Vienna Representative Office in Brussels, the capital of the European Union. The office serves as Vienna's direct line of communication to the EU. Known as the Vienna House, the office was opened in 1996, one year after Austria joined the European Union. The office lobbies and promotes Viennese interests independent of Austrian national interests. By situating an office in the capital of the European Union and maintaining a direct line of contact, Vienna is better able to promote itself and attract investment throughout the region. The Vienna Representative Office in Brussels shares its space with the Vienna Business Agency, an important body akin to a chamber of commerce. The Agency works to promote Vienna's image as a business-friendly city. The Vienna House also plays host to various cultural and academic events that highlight Vienna and it is thus able to promote contrasting interests in one place. The VRO in Brussels also allows Vienna to maintain its contact with various organizations and EU bodies it is party to, such as EUROCITIES, the Committee of the Regions and the Conference of European Regions with Legislative Powers. One interesting dimension of this VRO is how it positions itself as interlocutor between the EU and the Central and Eastern European countries. In keeping with Vienna's focus on positioning itself as the gateway

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Asia

VROs also exist in Tokyo and Hong Kong to promote Vienna in the ever-important Asian markets. The Tokyo office focuses on promoting Viennese interests solely in Japan and is housed with the Austrian National Tourist Office, whereas the office in Hong Kong acts as Vienna's portal to the rest of Asia. Vienna focuses much of its attention in Asia on China, and in particular, the metropolises

of Shanghai, Beijing, and Hong Kong. Vienna also maintains its contacts with India through its Hong Kong office. While Sino-Austrian business relations are not insignificant, (there are over 300 Austrian companies involved in business in China and over 70 base production facilities there) their trade relationship has not realized its full potential. China accounts for only 0.6 percent of Austria's foreign direct investments. Tourism from China is also important to Vienna and is on the rise. Over one hundred thousand tourists from China visited Vienna in 2012, a twenty-seven percent increase from 2011 figures and a forty-seven percent increase from 2010 figures. This potential for growth in Austrian-Chinese relations, and the high likelihood of future growth, makes the liaison office in Hong Kong very important for Vienna's foreign promotion and its access to the Chinese market.

Conclusions

Vienna has undoubtedly benefited from its geographical location and imperial history; however, the city government has in no way been complacent. It has aggressively promoted itself and actively taken steps to position itself as a globally competitive and attractive city. Vienna has harnessed its advantages and magnified its strengths. As a state within the Austrian Federation, Vienna has the special ability to promote itself through a foreign service. The establishment of Vienna Representative Offices (VROs) is a unique and innovative policy which gives Vienna an advantage over other global cities. It is also in line with Vienna's overall image as a city of diplomacy and international relations.

Vienna's foreign policy focus has been largely on the east. With the fall of the Iron Curtain, Vienna used its geographical proximity and historically close relationship with its Eastern European neighbours to re-establish long-standing political and economic ties. The cultivation of these relationships resulted in a strong economic and social presence of Austrian companies in the east. Vienna maintains a VRO in Brussels, as a direct link to the European Union, its member states, and its affiliated bodies. Finally, Vienna established offices in the Far East to take advantage of the opportunities presented by the growing Asian markets, especially China. These global representative offices provide Vienna with a direct line of communication to other global cities and regions. In this way, Vienna has been able to create a strong international network that allows it to distinguish and promote itself around the world. As cities become ever more important entities on the international stage, and as competition to attract workers, tourists, businesses, and investors becomes more fierce, cities will continue to find innovative ways to emphasize their advantages and promote themselves internationally, in some cases by following Vienna's lead and establishing international

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Closer to Nature: Collapsing the distance between the natural and political

Julia Schuurman

Julia Schuurman is a graduating political science student whose interests include critical theory, postmodernism, and gender theory. Following graduation Julia will be studying philosophy and literature at free lectures and reading groups before an eventual return to academia.

This paper seeks to present and problematize the construction of the political as necessarily distant from nature. Though complicated by contemporary biopolitics, this has been an ongoing production of Western politics since antiquity. Embodying an ethic of intimacy in human/non-human & human/environmental relations helps to collapse this distance. I would like to acknowledge and express gratitude to the hən'q'əmin'əm' speaking Musqueam people for allowing me to produce this scholarship on their unceded ancestral territory and the Oglala Lakota whose place-based practice I have grounded my ethic in.

In his lectures entitled *Society Must Be Defended*, Foucault describes a "biological-type caesura" that functions to grant the state legitimacy to exercise biopower over a fragmented society. Through its division of society into the ideal citizen and the diseased, the state becomes sanctioned to take on a purifying project to cure and cleanse the individual citizen through disciplinary and regulatory acts. Agamben describes this division as the "production of a biopolitical body" that has emerged as a central project of power since the emergence of the sovereign state.[1] In this article I argue that this production of a biopolitical body requires a symmetrical production of an external natural environment. Acting as a nostalgic oikos (home), nature serves as signifier to the biopolitical nation-building and purifying projects of the state, while simultaneously being excluded from the role of the political actor, lacking a disciplinable body. This process constitutes an externalization of "nature" and establishes a false dichotomy between the socio-political (culture) and the environmental (nature)—a dichotomy supported by discourse that constructs a mythological understanding of the "natural environment." This philosophical and physical distance between political citizen and oikos must be deconstructed such that we can understand our own experiences as always natural; part of nature. Reorienting political discourse in this way would address the paradox that emerges when humanity posits itself as separate from and masters of nature. The

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reality of our situation is that we are natural beings whose existence is necessarily tied to the environment within which we are situated. Embodying a political ethic of intimacy, as Haraway and LaDuke suggest, would successfully collapse the artificially constructed distance between human and the environment without calling for the outright dissolution of differentiating categories of being.

Liberal political discourse in the Lockean tradition has historically aligned certain discussions and actors to either the realm of the public or the private. Locke initially established the dominion of private property and possession to the citizen; to the state he relegated the protection of this right, and the defense of the state in foreign relations.[2] The theoretical exclusion of individual land use from the public sphere in turn ensures its exclusion from the rightful scope of political discussion. For example, in liberal democracies, the public sphere has been constructed as the forum of political participation occupied by those who are allowed to have a political voice. This distinction between public and private spheres has been criticized by social justice movements and political theorists seeking to draw attention to the power associated with various socio-economic demographics: specifically, the privileging of those identities located within the public sphere, and their supremacy over those identities delegated to the private.[3] In the early democratic era of limited political enfranchisement, this division was made more explicitly. Per Locke, men located themselves within in the political public sphere through tacit consent; "women, children, servants and slaves," could be found within the private (domestic) sphere.[4] Today this distinction is more implicit. Through Agamben and Foucault we can identify the role of political discourse in producing an overly "political" (the old public) and the hidden "political" (the old private). Despite this evolution, both implicit and explicit distinctions between public and private necessarily fracture issues relating to humans and non-humans, humans and the environment. For instance, the decision to adopt a plant-based diet is located within the private sphere and as such the political implications of these decisions are marginalized in political conversations surrounding the production, distribution and consumption of food.

As Agamben argues in *Homo Sacer,* the differentiation between public and private is imperfect. Private modalities are included only as signifiers to the political order, still ultimately outside of its scope. We can see an example of this in Canada's nationalist imagery. While the stylized maple leaf found on the flag does not signify any actual maple species found in Canada, it is symbolically associated with the syrup-producing sugar maples, a species that is under threat both from climate change and an invasive beetle species. Neither the federal government nor the Province of Ontario has addressed this discrepancy.[5] Agamben describes ancient Grecian morphological distinctions of life: the zoe, "the simple fact of living common to all living beings," and the bios, "the form or way of living proper to an individual or group."[6] Locating zoe in the oikos (home) and bios in the polis,[7] this distinction is the basis of conceptually distinct but inextricably linked private and public spheres. The bios is constructed as the rightful and traditional location of politics, the public sphere, and in Athens is restricted to landowning males and limited in similar arbitrary ways throughout history. Yet, while zoe is distinct from bios and explicitly remains outside the scope of politics, it still remains politicized, included in politics through its exclusion.[8] Agamben is more specifically speaking about the reality of the human's "bare life":[9] eating, breathing, and living as such, while questions

regarding the 'best' or 'right' way of doing these are relegated to the private sphere.

The emergence of biopolitics would appear to reconcile this initial division. Agamben takes up Foucault's concept of the biopolitical, where he locates "the entry of the zoe into the sphere of the polis: the politicization of bare life as such."[10] In *Society Must Be Defended,* Foucault tells us that prior to this new form of power acting upon "biological processes,"[11] politics could be described as the domain of individuals: power was located in the hands of individuals, and enacted upon individuals through disciplinary acts, the "right to take life or let live."[12] This introduced the problem of the wild, natural population—a population needing to be brought under the scope of power through regulatory and normalizing institutions.[13] This power was disproportionately enacted upon various populations and, through its productive effect, simultaneously worked to produce these populations. There were then "two series: the body-organism-discipline-institutions series, and the population-biological processes-regulatory mechanisms-State."[14]

In *Homo Sacer* Agamben seeks to "complete" Foucault's thesis:[15] though Agamben is largely in agreement with Foucault, he claims that Foucault does not identify the decisive fact of modern politics: that "the realm of bare life … and the political realm … enter into a zone of irreducible indistinction."[16] In this sense Agamben treats Foucault's account of the biopolitical as disingenuous: where Foucault identifies two distinct but closely related series, Agamben focuses on their convergence. The fracture between zoe and bios, oikos and polis is not healed but instead obscured, producing a new paradox.

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The state relies on old motifs: "modern democracy presents itself from the beginning as a vindication and liberation of zoe."[17] Yet, this vindication and liberation is rendered impossible when it is acknowledged that the state is founded on "blood and death."[18] Agamben tells us that zoe has always been included in politics as its "precious centre."[19] However, by conceptualizing "the beautiful day" of bare life as a political signifier (a site where biopolitics can return us to—vindication and liberation), zoe emerges as a production of politics itself, and thus is ultimately revealed to be not zoe but more bios.

Sanbonmatsu reaffirms the paradox proposed by Agamben: as a species, humans have historically distinguished themselves from the simple living of the natural environment of zoe through the political organization of the bios. This differentiation is ultimately incomplete, and remains a point of insecurity for man-as-species. As a result, a relationship of total domination over zoe has emerged to actualize a final division from nature. Recalling Foucault, this relationship of domination constitutes a biological-type caesura that informs the hierarchical power relations in which man-as-species and all other species are embroiled, simultaneously producing man as both separate from and privileged above all other living beings. Though "man is fundamentally an animal, [he has] developed the peculiar idea that he was not an animal; he was a 'man' […] In distancing ourselves from the animal other, we end up disavowing our own humanity (itself, after all, a form of animality)."[20] When the human is defined as evolved from and opposite to the animal, humans are forced to defend this distinction through violent

disassociation and domination of the animal. Sanbonmatsu states that this leads to the production of a "machine civilization based in death-fetishism,"[21] whereby humanity comes to define and glorify itself through the systematized slaughter of the animal other.

The problem of death-fetishism mirrors the ultimate paradox that Agamben seeks to address in *Homo Sacer*: how can a state promise Aristotle's "beautiful day" of life when citizenship is predicated upon blood and death?[22] The issue of death is not simply its presence: of course death must be present in any system that administers life. According to Donna Haraway, "it is not killing that get us into exterminism, but making beings killable."[23] For Sanbonmatsu, the "making killable" of the animal is not something that can be counterbalanced except by the subjectification of the animal, something that requires the recognition of a shared affinity between the human and nonhuman consciousness. This problem need not be restricted to the realm of animal liberation: we can observe the same logic of differentiation through domination in the construction of the bios and zoe at the root of our system of political organization. Haraway's distinction between killing and making killable indicates that it is not simply the differentiation that is so problematic, but the artificial distance constructed around this difference.

Man as political species emerges diametrically opposed to but elevated above those biological organisms without personhood (biological objects). The biological object marks the other side of Foucault's biological-type caesura: we can locate this in various spatial and temporal movements as "the other." Commonly, these movements' treat of the subjugated other as closer to nature than the dominant subject. The Woman as other: "[she] appears to us as *flesh* … woman is akin to *nature*, she embodies it: animal."[24] The colonized as other: "he is reduced to the state of an animal. And consequently, when the colonist speaks of the colonized he uses zoological terms," and more specifically, Black as other: "his intellectual and social inaptitude and his almost animal impulsivity."[25] The Oriental as other: with "animal appetite," his form "is often a combination of extreme animality, even of grotesque nastiness."[26] The animal as other: "negation of the animal other is … the phenomenological ground upon which the figure of the human being continues to stand."[27] This is not to suggest that these oppressions are reducible to one another, but rather to note that the political discourses used in their justification relies on the same motifs.

> *Locating the other along a spectrum, with "nature" at one end and the political subject at the other, is a project that seeks to carve out bios from zoe. This construction necessarily distances the "political" from "nature."*

Locating the other along a spectrum, with "nature" at one end and the political subject at the other, is a project that seeks to carve out bios from zoe. This construction necessarily distances the "political" from "nature." This distance is often explicitly referenced in western classical political philosophy, perhaps best exemplified in the work of social contract theorists who mark the establishment of government, of political institution, as the shifting point away from the state of nature towards society.[28] However, these "natural" and "political" orders do not exist prior to the location of species—human or

otherwise—within them. The biopolitical production of "man-as-species" is also the site within which the pole of nature is produced, "at once excluding bare life from and capturing it within the political order, the state of exception actually constituted, in its very separateness, the hidden foundation on which the entire political system rested."[29] The issue surrounding this comes more clearly into focus when considering Agamben: how can a genocidal state that is predicated on death exist in modern democracies, characterized by the supposed inclusion of bare life? Agamben's "state of exception" is meant to directly address this question. In order to include life as the basis for the exclusive citizenship that constitutes the modern state (that is, to mobilize life as the condition for politics), some lives must be excluded. In this way bios and zoe have become mutually constitutive: bios conditioned by zoe; zoe conditioned by bios.

Thus, nature cannot be said to truly exist prior to the production of the biopolitical body. The "natural environment" is produced through the political "man-as-species," diametrically opposed to the political but also its initial site of emergence: the oikos that houses the political actor. While the natural environment lacks a "docile body" to be produced through discipline, it exists as an ecosystem that can be evaluated as healthy or unhealthy, sustainable or unsustainable, balanced or imbalanced, productive or unproductive, and thus is susceptible to the regulatory mechanisms of the biopolitical. While the natural environment resists an a priori characterization as an actor with a specific and communicable will, its inclusion in biopolitics can be referenced and conceptualized as a part of a healthy state. The natural environment is frequently referenced within nation-building projects of the state: in national anthems; as borders that need protecting; as economic resource. This promotes an implicit characterization of the natural environment as mythological – a site upon which numerous symbolic referents are attached simultaneously. This mythological stature can be seen in our treatment of environmental disturbance. Earthquakes, hurricanes and other "natural" disasters are understood as punishment. Combating their effects (flooding, fire, etc.) is seen as evidence of the rightful domain of man-as-species over the natural environment, which masks humanity's instrumental role in intensifying or sometimes even causing "natural" disasters, as in extreme weather patterns caused by global warming.

The natural environment is frequently referenced within nation-building projects of the state: in national anthems; as borders that need protecting; as economic resource. This promotes an implicit characterization of the natural environment as mythological – a site upon which numerous symbolic referents are attached simultaneously.

When symbolic meaning is ascribed to natural phenomena, the natural environment becomes personified as a mythological figure, possessing the ability to intentionally consider and respond to human activity. This process constructs man-as-species and the natural environment as necessarily separate, and in turn reifies the psychological distance between the two. This project has successfully framed environmental discourse within the language characteristic of dominant socio-political institutions. We can observe this at work during the bureaucratized

process of indigenous land claims in Canada, in which First Nations are expected to prove land management and occupation since time immemorial through the existence of historical institutions. The developing concept of "natural capital" exemplifies this also, wherein ecosystems are evaluated according to western capitalist economic standards. Or consider the political debates surrounding environmental wellbeing, which advocates for bringing the environmental interests into the liberal democratic fold (so to speak) through representation in the public forum by way of human stewards.[30] This ethic of stewardship reifies psychological distance by reinscribing a vertical hierarchy between the human steward and natural ward.

It is possible to deconstruct the psychological and physical distance between politics and nature while transcending the language of management by focusing on a relationship of proximity and reciprocity (as opposed to a relationship by proxy). Haraway proposes a system of "nonmimetic sharing" in her work on the morality and necessity of animal research in its present state. [31] She explicitly calls for the rejection of mythical ontologies in the laboratory setting. Though the scientist "may (or may not) have good reason to kill … [they] do not have the majesty of Reason and the solace of Sacrifice."[32] By explicitly rejecting both reason and the logic of sacrifice as justifications for the instrumental abuse and consequent suffering of animal test subjects, Haraway refrains from mapping an anthrocentric morality onto the instrumental use of animal by humans. She instead opts to locate animals alongside humans as fellow labourers, as "response-able" (responsible) beings who are similarly located in systems of inequitable labour and power relations.[33] Human and non-human animals alike are unfree, and this (un)freedom exists in degrees.[34] What is especially notable is that Haraway locates the site of possibility first in the proximity that exists between the scientist and the subject: though psychological distance persists in the language of anthrocentric rational and sacrificial moralities, this can be broken down through institutionalizing intimacy. Haraway's theoretical framework maps onto LaDuke's discussion of the Buffalo Nation in *All Our Relation*. Despite years of forced dislocation and management through ongoing colonial projects, a psychological intimacy between the Oglala Lakota and the Oglala buffalo herd has survived.[35] This intimacy is described as a collective psyche that includes both the Oglala Lakota and their spiritual elders, the wild buffalo.[36] As spiritual leader, the buffalo tops the political hierarchy within the herd and plays an important role in the design of prairie land.[37] Elsewhere, LaDuke quotes farmer Fred Dubray: "When we talk about restoring buffalo itself, we're not just talking about restoring animals to the land, we're talking about restoring social structure, culture, and even our political structure."[38] This intimacy is also located within the Buffalo Kill ceremony where "the individual offers prayers and talks to the spirit of the animal [after which] the buffalo will surrender itself,"[39] reminiscent of Haraway's nonmimetic sharing that rejects a logic of rationalism and sacrifice. Through direct action and civil disobedience, the Buffalo Nation are in the process of dissolving imperially produced distance between the Oglala Lakota and Oglala herd in

> *This ethic of stewardship reifies psychological distance by reinscribing a vertical hierarchy between the human steward and natural ward.*

order to match the psychological intimacy that informs their ontology. Haraway's nonmimetic sharing and the Oglala's Buffalo Nation represent two means by which the artificial distance between "bare life" and "good life" is to be collapsed.

The Western political tradition contains an ongoing project to carve out bios from zoe. Agamben locates this since Aristotle as "the fundamental categorical pair of Western politics […] bare life/political existence, zoe/bios, exclusion/inclusion."[40] The initial distinction of zoe and bios in part set the stage for the construction of an artificial pole that positions the natural realm as separate from politics. The Western tradition continues to uphold this separation. However, despite operating on this basic distinction between bare life and politics, the emergence of biopolitics has confused these supposedly

…as Western politics perpetuates psychological and physical dislocation from the natural environment, these distances are in fact reified, which can then be used to marginalize persons and discussions, towards projects of disenfranchisement, or the dominion of the state over land, or the instrumental utility of animals.

distinct orders such that life as such has come to be the absolute condition for politics. Thus it is only the appearance of distance that is absolutely necessary: "the bare life" remains minimally addressed within public political discourse, secondary to those areas that are rightfully political, despite acting as signifier (the abstracted "good life") to those projects. The logic of Western politics maintains this distinction. The "natural environment" has been externalized as a mythological construction that exists separate to the political realm, and thus secondary to those discussions that are neatly located within the realm of politics. But as Western politics perpetuates psychological and physical dislocation from the natural environment, these distances are in fact reified, which can then be used to marginalize persons and discussions, towards projects of disenfranchisement, or the dominion of the state over land, or the instrumental utility of animals.

By embodying an ethic of intimacy in the form of nonmimetic sharing, Haraway and LaDuke propose alternatives that challenges the dislocation of bios from zoe, polis from oikos, and public from private: the biological-type caesura that posits humans as necessarily distanced from so-called "natural" bodies. This is a politics of proximity rather than by proxy management. While this does not wholly collapse categories of human and non-human, human and environment—a move that may be desirable in the abstract but would require a full reorientation of Western ontologies—it provides a grounded methodology around which various social movements acting to collapse the artificial distance between nature and man-of-species could coalesce. Rather than casting aside Aristotelian understandings of humans as political animals, this does away with a great chain of political beings that locates humans at a distant apex.

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1   Agamben, *Homo Sacer,* 6.
2   Locke, *Second Treatise*, 8.
3   See, for example, Pateman, Carole, *The Sexual Contract*, Cambridge: Polity, 1988.
4   Locke, *Second Treatise*, 46.
5   Canadian Press, "Ontario Could Lose its Maple Trees, Watchdog Warns," *Canadian Broadcasting Corporation, January 10, 2012,* http://www.cbc.ca/news/canada/ottawa/ontario-could-lose-its-maple-trees-watchdog-warns-1.1148162.
6   Agamben, *Homo Sacer,* 1.
7   Ibid., 2.
8   Ibid., 7.
9   Ibid., 4.
10   Ibid.
11   Foucault, "17 March 1976," 250.
12   Ibid., 241.
13   Ibid., 247.
14   Ibid., 250.
15   Agamben, *Homo Sacer,* 7.
16   Ibid., 9.
17   Ibid.
18   Ibid., 11.
19   Ibid.

20   Sanbonmatsu, *Critical Theory*, 9-10.
21   Ibid.
22   Agamben, *Homo Sacer*, 11.
23   Haraway, *When Species Meet*, 80.
24   Beauvoir, *The Second Sex,* 262.
25   Ibid., 301.
26   Said, *Orientalism*, 164, 184.
27   Sanbonmatsu, Critical Theory, 8.
28   Locke, *Second Treatise*, 13.
29   Agamben, *Homo Sacer*, 9.
30   Stone, "Should the Trees Have Standing?"
31   Haraway, *When Species Meet*, 75.
32   Ibid., 76.
33   Ibid., 73, 77.
34   Ibid., 73.
35   LaDuke, *All Our Relations,* 139.
36   Ibid., 149.
37   Ibid., 159.
38   Ibid., 160.
39   Ibid., 147.
40   Agamben, *Homo Sacer*, 8.

The International Cooperation Dilemma: Incentives and Disincentives for the Continuation of Bank Secrecy in Switzerland

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Lina Zdruli is a fourth-year international relations major. She was born in Albania and grew up moving between the United States, Italy and Canada. Lina is particularly interested in ways countries can link resources and work on joint research projects and cultural cooperation. After graduation, she plans to pursue a Master of International Law and work in an international organization or European think tank.

Secrecy has long rendered Swiss banks competitive in the international financial sector. Over the past decade, Switzerland has loosened its banking laws in response to international pressures from European countries and the United States. This article argues that the loosening of Bank Secrecy laws in Switzerland is an indication of international law affecting national laws and interfering with legislative sovereignty. If continued, this process has the potential to reduce the economic advantage of Swiss Banks.

       Switzerland's domestic banking regulations are under increasing pressure from the United States and European countries. Foreign influences are not only modifying public (state) laws, but also private business and industry regulations. The impact of international pressure on state laws can create conflicts with national legislative sovereignty. Specifically, this conflict can negatively impact economic competitiveness. This article discusses how international and transnational laws are changing bank secrecy policy in Switzerland. It demonstrates how public law—which defines relations between states and individuals—is influencing private law, which regulates activities between individuals, such as contracts and company law. The implication for Switzerland is the progressive decline of state insularity from external influences. Bank secrecy is one of the primary factors driving foreign investments into Switzerland, but Swiss banks will have to block external pressures to remain competitive. As a result, we can expect to see the progressive decline of competitiveness of Swiss banks.

       This article analyzes contemporary Swiss banking regulations and the influence of converging foreign banking legislation on domestic state banking law. I begin by contrasting international and transnational banking law with Swiss regulations. Then, I review cases where foreign countries have attempted to use their domestic laws to influence Swiss banking secrecy laws and Swiss public and private law responses to these international pressures. Finally, I discuss the negative financial implications for Switzerland if it continues to succumb to international pressures and loosen its commitment to banking secrecy.

Bank Secrecy in Switzerland

Banking secrecy has the purpose of protecting clients from unauthorized third-party access to information. Since 1934, Swiss banks have been subject to bank-client confidentiality laws, codified under Article 47 of the Federal Act on Banks and Savings Banks. Article 47 stipulates that bank workers are legally punishable if they deliberately disclose information shared with them while working as a bank employee or member of an audit company. This privacy legislation stems from the Swiss Penal Code, which prohibits economic espionage and stipulates punishments for those who disclose business secrets. The Banking Commission of Switzerland can prevent a company from conducting business if they fail to protect client secrecy.

Article 47 was drafted in response to economic dynamics in early 20th-century Europe. During the late 19th and early 20th centuries, banking secrecy was exclusively under civil law jurisdiction and could only be pursued if a damaged party pressed charges. In 1934, the Swiss Parliament voted in favour of Article 47, making the breach of banking secrecy punishable under criminal law. This decision was driven by private regulatory pressure to respond to foreign public regulations. At the time, Switzerland was experiencing increased international bank investment from wealthy Europeans trying to avoid new taxes. Foreign bank clients were welcomed as an opportunity for economic development and Switzerland introduced secrecy laws for their protection. Secrecy laws gave Switzerland a comparative advantage over other European banks and enabled economic growth on par with larger industrial European nations. The development of Swiss bank secrecy policy reveals the increasingly blurred lines between private and public, domestic and international regulation. Swiss policymakers introduced Article 47 in response to pressure from private Swiss banks, which in turn were responding to the investment opportunity presented by the new taxation policies in surrounding European countries.

International Banking and Transnational Regulations

Today, Switzerland's domestic banking laws face increasing pressure from international and transnational legislation. While Swiss banking laws exist to protect the privacy of the individual, international and transnational regulations exist to protect and promote state and private business interests in an international system. Transnational laws differ from international laws in a few critical ways. As a form of supranational governance, transnational law does not require state interaction for its legal framework to function. Instead, transnational law emerges from private regulatory regimes, such as private international banking regulations, and operates in a manner that is "semi-autonomous" from state law. Its scope is generally less specific because it is based on informal devices such as customary norms. International law, on the other hand, considers states interacting agents that abide by laws within a pluralist legal framework. Justice is interpreted and enforced by domestic courts. In other words, the limits of private international law are defined by individual states. In contrast, transnational bank regulation reflects the relationship between publicly regulated private sector governance and market competition, state-market integration, and transnational firms.

The development of international and transnational law has limited the independence of domestic law and private regulation. In effect, the increasingly

unclear distinction between international law and national (state) law restricts national sovereignty. For example, while Switzerland has incentive to ignore international law to maintain its bank policy independence, it in turn must exclude itself from international agreements between private industries such as the banking sector. As I argue, the trade-offs between independence and cooperation are acute in an increasingly global economy.

Swiss Regulatory Independence

Switzerland has long avoided signing onto international banking regulations in order to protect its domestic interests in bank secrecy. Until the creation of the Basel Committee on Banking Supervision in 1974, there were no legally binding regulations for international banks, which are defined as banks that allow non-nationals to use their services. The committee was formed to encourage cooperation between governments and international banks. However, the Basel Committee's ongoing survival depends on the benefits of participation exceeding the costs.

For Switzerland, maintaining bank secrecy has often been more profitable than international cooperation. Its rare secrecy laws help Switzerland carve out a near monopoly for a specific and sizable offshore clientele. Political stability, currency stability, low taxation, a law-abiding reputation, and political neutrality all help attract foreign bank clients. For wealthy clients living in unstable countries, Swiss banks can shelter assets and investments at threatened by economic, political, and legal instability. Secrecy also makes Swiss banks attractive to clients whose could be retracted for political, religious or social persecution. Fear of losing this international market share, and the national revenue they provide, helps explain Switzerland's resistance to international agreements that would restrict its policy independence.

More recently, Switzerland has avoided signing onto international banking regulations to protect its domestic interests in bank secrecy. For example, it refused to accept the New Multilateral Convention on Tax Co-Operation drafted by the OECD in 2011 because it does not distinguish between tax evasion and tax fraud. In Switzerland, tax evasion is not punishable under the criminal code while tax fraud is; this bipolarity has created tension with countries such as the United States. To breach bank secrecy, a country must make a request to a Swiss judge and the process must go through a cantonal review, meaning that it must follow the specific regulations that vary across the twenty-six administrative divisions of the country. By implication the case is then considered to be a domestic procedure, and cannot be considered under international law. This procedure highlights the public domestic law aspect of international law, and the necessity of analysing legal pluralism and justice in private law. In the case of international law, justice is defined by the circumstance under which a case occurs and determined by foreign courts.

As I argue, the trade-offs between independence and cooperation are acute in an increasingly global economy.

International-Domestic Tensions

The Swiss government is under increasing pressure from the interna-

tional community to loosen their banking secrecy laws. This section analyses the use of criminal charges, tax fraud charges, humanitarian law, and inter-market trading as tools used by the international community to demand greater transparency from Swiss banks.

Pressures from the United States of America

The United States (US) has repeatedly managed to convince the Swiss government to loosen bank secrecy laws for tax fraud investigations. The US influences banking laws by showing the economic benefits of aligning Swiss banking laws with US government laws. For example, insider trading is a criminal offence in the US, while Switzerland does not consider the offence punishable under criminal law. Because actions must be illegal under Swiss law for bank secrecy to be breached, the US was unable to directly obtain banking information of the actors involved in insider trading in the US during the 1970s and 80s. In 1982, the US threatened to suspend Swiss securities within US markets so Switzerland adopted the MoU, a bilateral agreement in which members of the Swiss Banking Association agreed to override banking secrecy in cases of inquisition on insider trading in US markets. Switzerland complied.

The US was successful in two ways: It persuaded the Swiss government to breach its federal banking laws, and convinced private banks to loosen their policies

Generally, the US government appeals to international regulations when dealing with foreign businesses, but 2012 marked the first time the US Department of Justice (US DOJ) used domestic laws to indict a private firm abroad. Specifically, in February 2012, the US DOJ indicted the private Swiss bank Wegelin & Co. for conspiracy, tax fraud and aiding the perpetrators of tax fraud, and US nationals who held dual citizenship. The case is an example of legal plurality and how states use domestic law to interpret international events. The Wegelin & Co. case offers a precedent for the extension of national public legislation into foreign countries' private laws. The US DOJ in fact did not consider any of the domestic legislations in place when making the indictment against Wegelin & Co. While the case was unprecedented, it fits into the attempts withheld by the United States for Swiss banks from the 1970s to breach their banking secrecy policies to allow US federal investigation units to uncover domestic tax fraud and tax evasion. The US was successful in two ways: It persuaded the Swiss government to breach its federal banking laws, and convinced private banks to loosen their policies (categorized as inner-market private law). This success demonstrates how international pressure is changing the legal structure of Switzerland's banking regulations and undermining its legislative sovereignty.

Pressures under the Humanitarian Issues Pretext

Recent arguments for greater transparency in Swiss Banks have come from the perspective of international ethics. Swiss bank secrecy has been criticized for enabling offshore tax evasion and thereby reducing foreign governments' national tax revenues. According to Stephen B. Cohen, developing countries—which constitute an estimated twenty-five to thirty three percent of private foreign investments deposited in Swiss banks—lose tax revenue from $120 billion annually. Because Switzerland considers the disclosure of private wealth is considered a crime, its regulatory framework is safe for the

wealthiest citizens of developing nations to shelter their capital and avoid local taxation.

Cohen argues that this form of tax evasion, with investments flowing from Low Income Countries (LICs) to High Income Countries (HICs), is a moral and a legal issue. By depriving LICs from resources needed for nation building, offshoring wealth into secret and untaxed accounts raises questions of justice and human rights. Moreover, Swiss banking secrecy appears to conflict with Article 2 of the United Nations Covenant, which obliges member nations to realize human rights through the maximum application of its available resources. The UN Covenant prevails over both international and transnational law, making Swiss bank secrecy in conflict with already established transnational legislation. The question arises of how Swiss policy-makers can reconcile their supranational ethical obligations with their national interests.

> *While it used to fall under in private law regulated by non-governmental bodies, financial regulation is increasingly aligning with public law.*

Swiss Responses to International Pressures: Maintaining the Competitive Advantage

In response to international pressure, Switzerland has signed bank regulation treaties with the Commonwealth countries, the United States, and the Organization for Economic Co-operation and Development (OECD) countries. These treaties are significant harmonizing private laws amongst countries and forming international laws based on a pluralist perspective. The harmonization of norms between non-state policies, such as businesses, and state laws is influencing relationships among states and private enterprises. Domestic legislation tends to absorb international and transnational law, particularly when such treaties are established. Moreover, financial regulation is experiencing a "diffusion of power." While it used to fall under in private law regulated by non-governmental bodies, financial regulation is increasingly aligning with public law. Difficulties with legal regulation and coordination have been the driving factor for the shift from private to public law.

The case of Swiss Federal Banking laws offers an example of national law responding to international dynamics. As previously mentioned, banking secrecy was established in 1934 to protect the financial assets of politically persecuted persons, such as victims of the Nazi regime. Later on, from the 1970s, Swiss banks entered a series of international treaties to harmonize internal regulation with international demands monitor crimes such as tax evasion and money laundering. Specifically, the Federal Assembly of Switzerland enacted the Federal Act on International Mutual Assistance in Criminal Matters (IMAC) in 1983, after pressures from Commonwealth countries. The act allows other countries to request a breach of bank secrecy if they present substantial evidence of criminal activity conducted which is legally punishable.

Swiss bank dependency on international clients encourages banking regulations to respond to international norms, which are constantly changing and adapting to new economic and political conditions. Herein lies the policy dilemma: Swiss private law must maintain its secrecy mandate while adapting to increasingly globalized markets and government regulations. For example, five years after the Memorandum of Understanding (MoU) between the US and

Switzerland, Swiss banks agreed to lift secrecy in the case of insider trading in US securities markets and the Swiss Parliament made insider trading illegal. This case is the antithesis of legislative plurality, because multiple international norms influence national laws. In the process, international law converges with domestic law, rather than cooperating together. In contrast, the MoU example illustrates the theory of legislative replacement: one norm is removed in favour of another. The impetus for this shift came from United States pressure. One possible explanation why the Swiss Parliament voted in favour of making insider trading a criminal offense is to reduce transaction costs in determining which cases fit under this category and which do not. The adoption of banking policies and law following pressure from OECD countries, such as the United States in the cases mentioned, is becoming increasingly predominant.

The increasing domestic uptake of international treaties and legal norms affirms their very real foreign policy influence. Switzerland's decision to adopt OECD regulations is just one example. In an increasingly global world, reforms that reconcile domestic laws with foreign norms are also becoming more frequent. The adoption of transnational laws facilitates intrastate interaction and aligns states with other countries' modus operandi, especially to efficiently address urgent cases, such as criminal proceedings. For example, Switzerland joined the Basel Committee to collaborate with other countries on international banking supervision regulations while still maintaining its banking secrecy laws. More recently, Switzerland's banking policies have relaxed in response to European Union (EU) calls for their outright elimination. For nations with which Switzerland does not have treaties, the 1954 Hague Convention provides the mutual exchange of information on judicial and administrative cases. Together, these demonstrate that international pressures are changing the character of national banking laws in Switzerland.

Although Swiss private laws are subjected to international laws, the country continues to maintain some form of legislative sovereignty and protect its competitiveness in banking services.

Still, cooperation with international and transnational laws has depended on Switzerland's case-specific domestic economic advantage. When in place, multilateral and bilateral agreements guarantee efficient operations and lower transaction costs. International cooperation also allows for the mutual transmission of tax fraud information, without having to operate through diplomatic channels. However, even bilateral and multilateral partners are limited in the information they can demand from Swiss banks. They operate within a framework considered illegal in Switzerland, and requests to authorities are limited to information that will help the proceedings of the investigation in course. If the requested information is disclosed, countries are not allowed to use it in other spheres. In other words, information is only legally disclosed to the specific requested case, and cannot be shared with another state or used as evidence for other crimes. Switzerland also refuses to disclose information for criminal cases and cases where clients have violated the economic, monetary, or commercial policies of the requesting state. Thus, despite international pressure to eliminate its banking secrecy laws, Switzerland refuses to disclose clients in cases that would undermine its distinct market as a financial haven for specific clients. Although Swiss private laws are subjected to international laws, the country continues to maintain some form of legislative sovereignty and protect its competitiveness in banking services.

Conclusion

The influence of transnational and international law on Swiss private banking regulations demonstrates how, in an increasingly globalized world, private firms and states are subject to foreign states' demands. Assuming public and private international law are influenced by the public-private partnerships amongst states and non-state agents, the mechanism of public-private partnerships should be used as a tool for cooperation to benefit economic activities while limiting conflicts with national legislative sovereignty. In this article's case study, the shifts in Swiss banking secrecy laws reveal a need for international cooperation, especially public-private collaboration. This collaboration is crucial because Switzerland depends on international economic investments for its financial markets. Thus Switzerland faces a dilemma: it cannot alienate international actors, yet bank secrecy laws are a competitive advantage. Loosening bank secrecy laws undermines the legislation's core function to offer a secure depository for clients living in unstable countries and subject to political persecution.

Banking secrecy remains at the core of Swiss political economy, and accounts for eight to fourteen percent of private banks' market value. Article 47 reflects the protection of private institutions (banks) on behalf of federal government legislations. The case study of Swiss banking secrecy offers an example of the current tendencies to reduce the legislative disparities between countries in terms of economic relations. When these disparities are reduced, so also are economic transaction costs and delays, both important in the context of increasingly globalized economic relations. While the Basel Committee on Banking Supervision represents an attempt to unify private and public international law and establish a form of universal regulation, Switzerland has been reluctant to be legally bound by measures that undermine principle international economic advantage: banking secrecy.

The costs of maintaining secrecy have increased in proportion to pressures from the United States to bypass secrecy in order to convict US citizens of tax fraud and evasion. This helps explain Switzerland's adoption of bilateral and multilateral treaties. The tension between public and private law, and multiple systems of law adopted by different countries, shows the governance problem of international law. Likewise, the existence of private international law legitimizes the existence of legal pluralism. In order to hold on to its comparative advantage in the banking sector, Switzerland must resist subjecting its banking laws to foreign pressure. This article has explained the impact of international pressures on national Swiss public law, and the tensions between international law and national legislative sovereignty. Pressure from the United States and Europe has pushed Switzerland to change its federal banking laws – evidence of international and transnational laws influencing state law in Switzerland. In turn, the change of national law affects private law. These changes can negatively impact national economic activities. In the case of Switzerland, the loosening of Swiss banking laws reduces the economic advantage of Swiss banks, which rely eight to fourteen percent of their private banks market value on private banking. Further research can be conducted to examine strategies to reduce transaction costs by limiting disparity between international, transnational, and national laws while maintaining bank secrecy principles for Swiss banks.

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