UNDERGRADUATE LAW JOURNAL

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Spring 2021

Tenth Anniversary Special Edition

UNDERGRADUATE LAW JOURNAL
OF
FLORIDA ATLANTIC UNIVERSITY

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Spring 2021 | Edition X
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Faculty

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LETTER FROM THE EDITOR-IN-CHIEF

Dear Reader,

As this unique academic year comes to a close, the Editor-in-Chief is proud to present the Spring 2021 edition of the *Undergraduate Law Journal of Florida Atlantic University*. Despite the fully virtual learning environment and the challenges that were brought about by the worldwide COVID-19 Pandemic, this year's edition contains some of our most interesting and creative submissions to date.

This year's Tenth Anniversary Special Edition celebrates the *Journal*'s first publication and establishment a decade ago in 2011. Since being originally founded in the College of Business at Florida Atlantic University, the *Undergraduate Law Journal of FAU* continues to expand and flourish across the collegiate environment.

This Special Edition marks a new period of development for the *Undergraduate Law Journal of FAU*. The ever-growing interest and awareness for legal writing has contributed to our continually increasing membership, especially as we see the emerging number of contributing authors to the *Journal*, empowering our mission of enriching the academic life of students.

Without your readership and support, alongside the work of our incredible officers, faculty, and editorial staff, this journal would not exist. I hope you enjoy reading our Spring 2021 edition, and we look forward to your continued readership of the *Undergraduate Law Journal of Florida Atlantic University*.

Sincerely,

Sayd Hussain
Editor-in-Chief
Undergraduate Law Journal
Florida Atlantic University

LETTER FROM THE MANAGING EDITOR

Dear Reader,

On behalf of the officers, faculty, and editorial staff, the Managing Editor is proud to present the Spring 2021 edition of the *Undergraduate Law Journal of Florida Atlantic University*. Charged with directly managing the *Journal*'s operations, I must attribute this year's renewed success to the leadership's tremendous tenacity and resiliency in the face of the COVID-19 pandemic.

This year, numerous strategic efforts were spearheaded in expansion, design, and functional efficiency. Due to these collaborative endeavors, this Tenth Anniversary Special Edition is the largest edition ever published and utilizes our new modern format, showcasing the *Undergraduate Law Journal of FAU*'s innovative contemporary design. Fundamentally embedded in our decade of growth, and achievements, the *Journal*'s renewed identity reinforces this new period of accomplishment and advancement.

As Florida Atlantic University's premier publication of legal scholarship, this year's edition boasts wide-ranging legal topics and pertinent student research articles currently circulating in the undergraduate community.

With your readership and support, we will continue to promote legal academia and cultivate legal debate and discourse among students and scholars for years to come. I hope you enjoy reading our Spring 2021 edition, and we look forward to your continued support of the *Undergraduate Law Journal of Florida Atlantic University*.

Sincerely,

Kevin Lopez Pelaez
Managing Editor
Undergraduate Law Journal
Florida Atlantic University

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RICO: THE ANTI-MAFIA LAW

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Abstract

After years of sending mob leaders to jail for reasons that may not have been the ones authorities wanted to charge them with, in 1970, the Racketeer Influenced and Corrupt Organizations Act was implemented on a federal level. The RICO law was designed to go after mob bosses that were not able to be charged with murder or as intellectual authors of a murder because they were not the ones executing the plan. This law also allowed prosecutors to go after mobsters for crimes such as drug trafficking, extortion, labor racketeering, and other crimes that would usually be under the control of the mafia. In this article, the RICO law will be analyzed. This article will determine whether the RICO law has been a success and if it has fulfilled its purpose after its implementation.

After years of sending mob leaders to jail for reasons that may not have been the ones authorities wanted to charge them with, in 1970, the *Racketeer Influenced and Corrupt Organizations Act* was implemented on a federal level.[1] The RICO law was designed to go after mob bosses that were not able to be charged with murder or as intellectual authors of a murder because they were not the ones executing the plan. This law also allowed prosecutors to go after mobsters for crimes such as drug trafficking, extortion, labor racketeering, and other crimes that would usually be under the control of the mafia. In this article, the RICO law will be analyzed in order to determine whether the RICO law has been a success and whether or not it has fulfilled its purpose after its implementation.

Organized crime has been a problem in the United States for more than a century. If we trace back in history, gangs seemed to gain power in the late 1890s and early 1900s on the East Coast and the Midwest. Most of these gangs started in Europe. Many of them were Irish, Russian, Dutch, and most famously, Italian. The most powerful of these mobs were the Italians. Many Italian immigrants were from Calabria, Naples, and Sicily. When they established themselves in the United States they began as local gangs that committed extortions, robberies and ran illicit businesses such as gambling and prostitution. These mobs actually became very rich during the 1920s Prohibition Era, when they saw an opportunity to get into the liquor trade which allowed them to create profit like never before. [2]

One of the problems that occurred was that gangs, especially the Italians in New York, were always engaged in an internal war over turf control. The biggest war was the Castellammare War between Salvatore Maranzano and

[1] William R. Geary, *The Creation of Rico*, Kluwer Academic Publishers, 2000, 329-367.
[2] *Origins of the Mafia*, History, May 28, 2019, https://www.history.com/topics/crime/origins-of-the-mafia, (last visited March 31, 2021.)

Joe Masseria.[3] This war ended with a bloody battle where both Maranzano and Masseria were killed. At the end of this battle, a man by the name of Charles "Lucky" Luciano established a commission, which meant there were going to be five families controlling New York City instead of a boss of bosses.[4] Luciano, who was mentored for years by the famous gangster/gambler Arnold Rothstein, who fixed the 1919 World Series, learned that the mafia needed to move from being street gangs to business enterprises if they wanted to be legitimate and unnoticeable in front of authorities' eyes. [5] The previous examples during the Castellammare War and Al Capone's flashy way of handling things put organized crime in the spotlight and made them easy targets for the police to chase.[6]

With the new family systems made by Lucky Luciano, one of the families would control a territory or one of the boroughs in New York City. These family administrations would be organized using the concept of a ranking authority.[7] In order to be part of the family, you needed to be a Made Man and swear allegiance to the Omerta code which meant that they were part of La Cosa Nostra and would never give up any other family member or give information of this secret organization.[8]

[3] David Critchley *Buster, Maranzano and the Castellammare War 1930-1931*, U.S. Department of Justice https://www.ojp.gov/ncjrs/virtual-library/abstracts/buster-maranzano-and-castellammare-war-1930-1931, (last visited March 31, 2021.)
[4] *How is a Mafia Family Structured*, National Crime Syndicate, https://www.nationalcrimesyndicate.com/mafia-family-structured/, (last visited March 31, 2021.)
[5] Daniel A. *Nathan Arnold Rothstein rigged the 1919 World Series. Or did he?*, Legal Affairs, https://www.legalaffairs.org/issues/March-April-2004/review_nathan_marapr04.msp, (last visited April 5, 2021.)
[6] The Mob Museum, Lucky Luciano, https://themobmuseum.org/notable_names/lucky-luciano/, (last visited April 5, 2021.)
[7] Id.
[8] Adriana Nicole Cerami, *The Mafia's system of silence in communication, film and literature: perversions of society and transgressions of omertà*, https://cdr.lib.unc.edu/concern/dissertations/kd17ct10k, (last visited April 5, 2021.)

The National Crime Syndicate website described the structure in this way:

> - The family would be organized as follows; on top would be the Crime Boss/Don, the Boss would have a counselor or advisor called the Consigliere. Under the Boss would be the Underboss and below the Underboss would be the Caporegimes. The lowest rank of Made men mobsters would be the soldiers. Families would also have associates but they were not part of the family, they just worked for them. With this system, it would be difficult to trace the family and it would make it even harder for the Don, who was the boss, to be charged with anything because they were not the one committing the crime directly.[9]

With the prohibition era over in the mid-1930s, the mafia moved into another business that would be the pillar of their future wealth post-prohibition, and this would be the heroin trade. The heroine trade would be established between La Cosa Nostra in the United States and European mobs such as the Sicilian Mafia and the Corsicans in France. With negotiations between Lucky Luciano and Joseph Bonanno and the Europeans, they would receive heroin into New York City through the port in Marseille, France[10]. The heroine would be imported from Turkey and the Sicilians and Corsicans would then send it overseas. This would be known as the French Connection. La Cosa Nostra would become very rich with this network and had a lot of influence in local politics and over law enforcement.[11] Yet with high crimes such as drug trafficking and murders, mob leaders were not able to be prosecuted.

[9] *How is a Mafia Family Structured*, National Crime Syndicate, https://www.nationalcrimesyndicate.com/mafia-family-structured/, (last visited March 31, 2021.)

[10] Intelligence Authorization Act For Fiscal Year 1999, *A Tangled Web: A History of CIA Complicity in Drug International Traffickinghttps://fas.org/irp/congress/1998_cr/980507-l.htm*, (last visited April 5, 2021.)

[11] James O. Finckenauer, *La Cosa Nostra In The United States*, https://www.ojp.gov/pdffiles1/nij/218555.pdf, (last visited April 5, 2021.)

Mobsters like Al Capone and Lucky Luciano, the two most powerful mobsters went to jail, Capone for tax evasion and Luciano for Prostitution.[12] Other mobsters were able to get away with many other crimes and didn't even spend time in prison. The war against the mob was being lost, drugs were flooding the streets of the United States and many murders were left unsolved because the people that ordered the murders were not the ones being sent to jail.

In the 1960s, the five families of New York, the Bonnano, Colombo, Gambino, Genovese, and Lucchese were gaining power over unions, construction projects, legal gambling and were infiltrating the legitimate business world. Attorney General Robert F. Kennedy made it a priority to go after the mob.[13] He went after union leaders involved with the mafia-like Jimmy Hoffa and opened cases against many mobsters. This was when the first mobster, Joe Valachi from the Genovese family opened the can of worms that revealed the secret of the underworld mob.[14] He exposed whose murders were committed, who gave the orders to commit the murders, and who was authorized to commit the murders.

The continuing drug consumption in the United States forced politicians and law enforcement to work together to bring down the mafia. President Nixon, in the beginning of his presidency in the late 1960s, declared war against drugs and with the help of Congress designed the law that would bring mob leaders to court. In 1970, President Nixon signed the Racketeer Influenced and Corrupt Organizations Act into law. [15]

[12] William Donati, *Lucky Luciano: The Rise and Fall of a Mob Boss* , McFarland & Company, Inc. Publishers, 2010, (last visited March 31, 2021.)
[13] William R. Geary, *The Creation of Rico* (Kluwer Academic Publishers, 2000), 329-367, date, https://link.springer.com/article/10.1023/A:1008359922135, (last visited April 5, 2021.)
[14] Id.
[15] Andrew Glass, *President Richard Nixon signs anti-mob bill, Oct. 15, 1970*, Oct. 15, 2009, Politico, https://www.politico.com/story/2009/10/president-richard-nixon-signs-anti-mob-bill-oct-15-1970-028286, (last visited March 31, 2021.)

The difference between the RICO law and other laws that convicted mob leaders in the past was that a RICO law could send a mobster to jail for life. Mobsters like Luciano and Al Capone were only in jail for a couple of years and then they were released. After the RICO law was implemented, the crime bosses faced prison time for life. The first major test this law faced was the Mafia Commission Trial in 1985.[16] Almost 11 crime figures faced trial under the RICO law.[17] The prosecution was led by Rudy Giuliani. Some major crime figures convicted were men such as Carmine Persico, leader of the Colombo family.[18] Persico participated in many murders within the Colombo family but he was convicted for loan-sharking, extortion, many murders, and even a plot to kill law enforcement agents and prosecutor Giuliani. He was sentenced to life in prison for his actions. In that same Mafia Commission Trial, Anthony Salerno, boss of the Genovese family was convicted. Tony Salerno was known as the richest mobster during his era. Salerno had an extensive life in the mafia, tracing back to the era of Vito Genovese in the 1960s. The other two mob leaders from the Lucchese family and Bonnano Family were also convicted with racketeering charges, these were Anthony Corallo and Philip Rustelli were also sentenced to life in prison. The leader of the Gambino crime family, Paul Castellano was also going to be indicted but was killed by John Gotti before going to trial.

The best example of the success of a RICO case can be with the famous crime boss, John Gotti of the Gambino Family. John Gotti, a celebrity among the mob because of his controversial way of doing things in the mob and because of some very important murders, was one of the Mob leaders affected by the RICO law. Gotti started in the Gambino Family when Carlo Gambino was the

[16] John M. Doyle, *Defendants Convicted On All Charges in Mafia 'Commission' Trial*, Nov. 19, 1986, AP News, https://apnews.com/article/299a3b9b2fb1ec096bc6368194444b89, (last visited March 31, 2021.)
[17] Id.
[18] US Court of Appeals for the Second Circuit - 832 F.2d 705 (2d Cir. 1987), https://law.justia.com/cases/federal/appellate-courts/F2/832/705/284457/, (last visited April 5, 2021.)

Don in the early 1970s. Within the family, Gotti had a lot of enemies, one of them was Paul Castellano, who became the boss after Carlo Gambino passed away. John Gotti dealt with drugs, which went against the orders of Castellano. This led to a division among the Gambino Family. This feud ended with John Gotti killing Castellano and becoming the new Don of the family. In 1992, John Gotti was charged under the RICO law for many murders when his underboss Salvatore Gravano confessed and gave evidence that Gotti ordered many murders.[19]. Along with Gotti, his consigliere Frank Locascio was sentenced to life in prison.

Conclusion

In conclusion, if anything can be said about the RICO law, it is that it is efficient and it sends mobsters to jail and the sentence these mobsters receive is fair. The original gangsters like Lucky Luciano, Joseph Bonanno, and Joe Colombo did not get the sentence they deserved and some didn't even step foot in prison. After the RICO law was implemented, the five family bosses were convicted and were sentenced to life in prison. The RICO law fulfilled its purpose because it found a way to convict mobsters. Back in time, mobsters got away with murder and with drug trafficking. Most were convicted for not paying taxes, because it was the only thing that courts could convict them of. After the passage of RICO, mobsters actually went to jail for murder and trafficking-related crimes which is what law enforcement needs in order to keep fighting organized crime.

The system created by Lucky Luciano, which allowed the mafia to have multiple families instead of one big crew, made it difficult for law enforcement to get to them. The hierarchical structure within the family made it impossible to reach the person on top which is the Don, because in many occasions the people in the bottom, which are the soldiers who did the dirty

[19] Jason Sabot, *Expert Testimony on Organized Crime Under the Federal Rules of Evidence* (Hosftra Law Review) 1-53. https://heinonline.org/HOL/LandingPage?handle=hein.journals/hoflr22&div=12&id=&page=, (last visited March 31, 2021.)

work, didn't even meet the mob boss because of the many layers in between them. On top of this, the people in the bottom, either soldiers or caporegimes, had their own businesses going on and didn't necessarily have direct involvement with the mobsters on top, they only paid their fee to have the protection and blessing from the godfather.

The creation of RICO, broke that barrier that law enforcement had. Congress identified the exact problem because through RICO, a prosecutor can accuse a mobster of two acts of racketeering and this would be enough to send them to jail for a while. The prosecutor would have to prove of course that this mobster has any type of involvement with such criminal structure they are accused of leading. But the framework created, facilitated everything for the U.S. Attorney's office because it gave them options on how to approach the case and indict these mobsters. Before RICO, they didn't have such framework to prove that a Don ordered a murder, smuggled drugs, or controlled gambling, in fact, there was no way of even proving there was such criminal structure or enterprise. It was hard to blame the person on top of something done by someone at the bottom. The implementation of RICO gave prosecutors the tools necessary to make a case that years before was impossible to prove because such structure was not even recognized. There was no such thing as mafia because the law didn't have the legal framework to detect such association. This is what made the mob successful, the organization they had. They had a hierarchy, measured operations, influence, and above everything, loyalty among their members. This secret society they formed made it impossible for law enforcement to detect participation of all involved.

REGULATING THE HIGH SEAS: INTERNATIONAL MARITIME PIRACY LAW

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Abstract

For many, laws and regulations are inescapable with their apparent global reach, whereby, governments across the world establish laws and regulations governing their respective countries and states. With such an extensive reach, the common person may never raise the question of what rules and regulations they must follow. However, with over 60% of the world's oceans being considered international waterways, the question of law and order on the high seas is a pertinent one. This article narrows the scope of international maritime law to that of piracy, exposing the reader to insight into international maritime piracy law, its application, and framework, as well as its shortcomings and faults. The successful application of international maritime piracy law is dependent on demand from the international community, as such, this article hopes to provide the reader with an increased sense of awareness and an introductory basis on international maritime piracy and security.

Introduction

Codified laws and statutes are an essential component of a well-structured society. For many, laws and regulations are inescapable with their apparent global reach, whereby, governments across the world establish laws and regulations governing their respective countries and states. With such an extensive reach, the common person may never raise the question of what

rules and regulations they must follow. However, the world is much more than a collection of different nations with approximately 71% of the planet being water-covered and the Earth's oceans comprising 96.5% of these water-covered areas.[1] The overwhelming majority of the world's waterways are considered international waters, creating a unique and complex legal situation. However, the waterways are a vital component to the subsistence of humans since more than 90% of the world's trade is transported by the sea.[2]

The issue of maintaining trade lanes and international waterways as open and regulated has consistently been challenged over time, facing a wide array of legal discrepancies, loopholes, and questions. International waters pose the unique challenge of having to collaborate across borders to maintain "law and order" on the high seas.[3] Examples of the dramatic need for law and order may be found in the story of Edward "Blackbeard" Teach, commandeering ships and at one point having control of over 300 pirates[4] in the 18th century, to more modern times such as in 2009 with the hijacking of the shipping vessel Maersk Alabama,[5] when both the vessel and the crew were held hostage. The need for a proper legal system and the compilation of international maritime law has been clearly demonstrated to be essential.

A robust system of collaboration and regulatory agreements among multiple countries have come about. But due to the international, broad, and ever-changing nature of the situation, oftentimes, legal recourse,

[1] *How Much Water is There on Earth?*, USGS.gov (2021), https://www.usgs.gov/special-topic/water-science-school/science/how-much-water-there-earth?qt-science_center_objects=0#qt-science_center_objects (last visited Jan 30, 2021).
[2] *OECD Ocean*, Oecd.org (2021), https://www.oecd.org/ocean/topics/ocean-shipping/#:~:text=The%20main%20transport%20mode%20for,transport%20arteries%20for%20global%20trade. (last visited Jan 30, 2021).
[3] "high seas" refers to any non-territorial waters, i.e., international waterways.
[4] *Blackbeard's Story and Facts, Queen Anne's Revenge Project*, Qaronline.org (2021), https://www.qaronline.org/history/blackbeard (last visited Jan 30, 2021).
[5] *Maersk Alabama hijacking | Summary, Rescue, Movie, & Facts*, Encyclopedia Britannica (2021), https://www.britannica.com/event/Maersk-Alabama-hijacking (last visited Jan 30, 2021).

detention/correction, and regulatory agreements are unable to be carried out and many suspects and instances of crimes that occur out in international waters will never stand before a court. With a continuous increase in demand for products and materials, maritime trade and transport will continue to be an essential component of life. As such, "freedom of the seas"[6] must be maintained and international maritime law must be ensured to protect free trade and travel across the world.

Primary Analysis of Maritime Piracy Law

Piracy is generally defined as "an act of robbery on the high seas,"[7] with the earliest evidence of piracy found in correspondence dating to the 14th century BCE in the Mediterranean Sea[8]. Essentially, for as long as there have been ships, there has been piracy. However, due to the inconsistencies of enforcement, legal action, and discrepancies in codified regulations, problems continue to exist. The origin of international maritime piracy law is vague but is more clearly recorded in the 19th and 20th centuries. The recorded history of modern maritime piracy laws emerges with the United Nations Convention on the Law of the Sea (UNCLOS) taking place between 1973 and 1982[9] and served as a foundational benchmark for international maritime piracy law. Article 87 of UNCLOS elaborates on the concept of defining and maintaining freedom of the high seas, stating, "The high seas are open to all states, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law," and that all states are entitled to "freedom of navigation" (ability to

[6] *Freedom of the seas*, International Law, Encyclopedia Britannica (2021), https://www.britannica.com/topic/freedom-of-the-seas (last visited Jan 30, 2021).
[7] *Definition of PIRACY*, Merriam-webster.com (2021), https://www.merriam-webster.com/dictionary/piracy (last visited Jan 30, 2021).
[8] Joshua Mark, Pirates in the Ancient Mediterranean Ancient History Encyclopedia (2021), https://www.ancient.eu/Piracy/ (last visited Jan 30, 2021).
[9] *Oceans and the Law of the Sea*, UN.org (2021), https://www.un.org/en/sections/issues-depth/oceans-and-law-sea/index.html (last visited Jan 30, 2021).

freely navigate in the high seas).[10] The United Nations Convention on the Law of the Sea recognized how piracy may inhibit states from freely navigating and can act as a deterrent to essential maritime transport & trade, thus including Articles 101 through 108 specifically pertaining to piracy.[11]

Within Article 101, UNCLOS provides the United Nations' (UN) legal framework for the repression of piracy as "any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or private aircraft, and directed: on the high seas, against another ship or aircraft; against a ship, aircraft, persons or property in place outside the jurisdiction of any state; any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship".[12,13]

The United States takes a similar approach in statutes relating to piracy via the 1994 U.S. Code Title 18, section 2280, Violence Against Maritime Navigation, (18 U.S.C. § 2280) providing a comparable, yet more specific definition as to the essential factors of a pirate as, "A person who unlawfully and intentionally, seizes or exercises control over a ship by force or threat thereof or any form of intimidation; performs an act of violence against a person onboard a ship if that act is likely to endanger the safe navigation of that ship; places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such act is likely to endanger the safe navigation of a ship". Further, the Act includes the act of

[10] *United Nations, United Nations Convention on the Law of the Sea* (2008), https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf
[11] Ibid.
[12] Ibid.
[13] *Legal Framework for the Repression of Piracy Under UNCLOS*, UN.org (2021), https://www.un.org/depts/los/piracy/piracy_legal_framework.htm (last visited Jan 30, 2021).

injuring, killing, attempting, or conspiring to commit the aforementioned in the definition of offenses for piracy.[14]

However, due to the broad nature of piracy, the high seas could be subject to a wide array of maritime law exploitation, finding numerous loopholes and technical legality of otherwise illegal circumstances. The United States of America in collaboration with its allies,[15] the UN, and the North Atlantic Treaty Organization (NATO) was able to utilize UNCLOS to better ensure mariners the freedom to fairly navigate the seas. The known "golden age" for piracy occurred between 1650 and 1720,[16] with UNCLOS and nations' maritime regulations thereafter serving as a sufficient force for insurance to mariners from its inception. However, international maritime law soon faced a new array of challenges as modern piracy evolved.

International Maritime Piracy Law in an Evolving World

With the rise of the 19th, 20th, and 21st centuries, piracy took a drastic turn as the world was introduced to global terrorism, hijackings, and attacks. With differentiating definitions for piracy and how it has evolved, a new need for legal counsel, protection, and enforcement of international maritime law is needed. Traditionally, crimes (including piracy) in international waterways would be prosecuted by the country of origin[17] or by the country in which the

[14] *18 U.S. Code § 2280 - Violence Against Maritime Navigation*, LII / Legal Information Institute of Cornell Law School (2021), https://www.law.cornell.edu/uscode/text/18/2280 (last visited Jan 30, 2021).
[15] *United States Counter Piracy and Maritime Security Action* PLAN, Homeland Security Digital Library at the Naval Postgraduate School, (2014).
[16] *The Golden Age of Piracy*, Royal Museums Greenwich (2021), https://www.rmg.co.uk/discover/explore/golden-age-piracy (last visited Jan 30, 2021).
[17] *Are There Laws on the High Seas?* Encyclopedia Britannica (2021), https://www.britannica.com/story/are-there-laws-on-the-high-seas (last visited Feb 6, 2021).

ship was registered.[18] Nevertheless, due to the changing nature of how acts of piracy are conducted, pirates have exploited the loopholes and technicalities of maritime law, endangering mariners, and maritime trade alike.

Through these loopholes, the United States of America has relied on a minute number of pertinent legal cases including but not limited to *United States v. Holmes* (18 U.S. 412)[19] and *United States v. Palmer* (16 U.S. 610),[20] where discrepancies in jurisdiction and the U.S.' ability to prosecute were addressed, all in an attempt to set a precedent in maritime law enforcement. Despite this, there was no clear set precedent in maritime law specifically concerning piracy and thus, pirates continue to utilize loopholes and technicalities for their gain.

A prime example of the exploitation of international maritime law occurs off the coast of Somalia in the Gulf of Aden.[21] The Gulf of Aden is an extension of the Indian ocean and is centered between the countries of Somalia and Yemen,[22] and is a major shipping lane, seeing over 20,000 ships sail through the Gulf of Aden per year, according to the U.S. Department of Transportation testifying before the Senate Armed Forces Committee.[23] Because of the socioeconomic and governmental instability of the neighboring countries,

[18] *670. Maritime Jurisdiction*, Justice.gov (2021), https://www.justice.gov/archives/jm/criminal-resource-manual-670-maritime-jurisdiction (last visited Feb 6, 2021).
[19] *United States v. Holmes*, 18 U.S. 412 (1820), Justia Law (2021), https://supreme.justia.com/cases/federal/us/18/412/ (last visited Jan 30, 2021).
[20] *United States v. Palmer*, 16 U.S. 610 (1818), Justia Law (2021), https://supreme.justia.com/cases/federal/us/16/610/ (last visited Jan 30, 2021).
[21] *Somalia - the World Factbook*, CIA.gov (2021), https://www.cia.gov/the-world-factbook/countries/somalia/ (last visited Feb 6, 2021).
[22] *Gulf of Aden | gulf, Arabian Sea*, Encyclopedia Britannica (2021), https://www.britannica.com/place/Gulf-of-Aden (last visited Jan 30, 2021).
[23] *The Ongoing Piracy Problem in the Waters off of Somalia*, U.S. Department of Transportation (2021), https://www.transportation.gov/testimony/ongoing-piracy-problem-waters-somalia (last visited Jan 30, 2021).

many Somali nationals see maritime piracy as a source of income.[24] Due to such socioeconomic devastation in Somalia, the Somali government is largely unable to prosecute piracy cases, thus enabling the pirates to take full advantage of this maritime law weak spot. Seeing this major flaw in maritime regulations, the United Nations introduced the principle of "Universal Jurisdiction", which essentially enables all countries to prosecute piracy under UNCLOS.[25]

The UN Universal Jurisdiction principle, however, remains under constant scrutiny as many countries choose not to prosecute and/or are unwilling to prosecute. And because there is no clear codified definition of the Universal Jurisdiction principle, UN delegates remain under constant pressure concerning these issues.

There are numerous press headlines regarding these issues, "Universal Jurisdiction Principle Must Be Defined to Avoid Abuse, Endangerment of International Law, Sixth Committee Hears as Debate Begins",[26] "Without Clear Definition, Universal Jurisdiction Principle Risks Misuse, Abuse, Sixth Committee Speakers Warn",[27] and as recently as 2019, an article headline read

[24] *Transnational Organized Crime Threat Assessment*, Unodc.org (2010), https://www.unodc.org/documents/data-and-analysis/tocta/9.Maritime_piracy.pdf (last visited Feb 6, 2021).
[25] *Legal Framework for the Repression of Piracy Under UNCLOS*, Un.org (2021), https://www.un.org/depts/los/piracy/piracy_legal_framework.htm (last visited Feb 6, 2021).
[26] *Universal Jurisdiction Principle Must Be Defined to Avoid Abuse, Endangerment of International Law, Sixth Committee Hears as Debate Begins | Meetings Coverage and Press Releases*, Un.org (2021), https://www.un.org/press/en/2014/gal3481.doc.htm (last visited Jan 30, 2021).
[27] *Without Clear Definition, Universal Jurisdiction Principle Risks Misuse, Abuse, Sixth Committee Speakers Warn, Meetings Coverage and Press Releases*, Un.org (2021), https://www.un.org/press/en/2018/gal3571.doc.htm (last visited Jan 30, 2021).

"Delegates Remain Divided on Best Forum to Discuss Universal Jurisdiction, as Sixth Committee Continues Debate on Principle".[28]

This lack of legal prosecution only further places military and naval efforts in the Gulf of Aden under constant constraint with what oftentimes may appear as a "detain and release"[29] system when intercepting piracy. Nevertheless, a constant military presence, acting as a deterrent has had an effect on the decline of piracy in the Gulf of Aden. Without an overwhelming mounting pressure in the international community and a lack of collaboration, a naval military presence continues to decrease in the region. Unfortunately, regardless of the international community's actions to try to enforce "Universal Jurisdiction", maritime piracy laws continue to exist with ineffective regulations and enforcement. An additional burden that is faced is the problem of countries that are unwilling to prosecute and utilize their own court system for enforcing international maritime piracy laws. Without a strong demand for action from the international community, efforts to correct current codified maritime regulations remain stagnant. With maritime piracy continuing to evolve and expand, new piracy cases are increasing in the Singapore Strait,[30] demonstrating both a clear expansion in piracy operations, as well as an everchanging piracy style which is evolving to more complex and "difficult to catch" acts, which only further complicates international maritime law and its associated legal/court systems.

[28] *Delegates Remain Divided on Best Forum to Discuss Universal Jurisdiction, as Sixth Committee Continues Debate on Principle, Meetings Coverage and Press* Releases, Un.org (2021), https://www.un.org/press/en/2019/gal3599.doc.htm (last visited Jan 30, 2021).

[29] "detain and release" refers to holding/detaining prisoners and not holding them for prosecution, but rather returning/releasing the prisoner shortly after the encounter.

[30] Roslan Khasawneh & Aradhana Aravindan, *Piracy spike in Singapore Strait prompts calls for tighter security U.S.* (2021), https://www.reuters.com/article/us-singapore-piracy/piracy-spike-in-singapore-strait-prompts-calls-for-tighter-security-idUSKBN1ZE0Y7 (last visited Jan 30, 2021).

Conclusion

Inevitably, maintaining a robust and complex legal system that protects the high seas is accompanied by a high demand for consistent collaboration and constant refinement of codified regulations and agreements. It is clearly necessary to find a way to maintain "law and order" on the high seas, especially in reference to how regulations need to be consistent and evenly applied and that there must be thorough processes in place to enforce the law.

Although a considerable undertaking, the United States and the international community have prevailed in similar situations. Most notably, worldwide efforts demanded a clear and stringent set of regulations and enforcement policies for intellectual property (IP). IP refers to "creations of the mind such as inventions; literary and artistic works; designs; and symbols, names and imaged used in commerce".[31] With mounting demand from the global community, sound international agreements, law, and organizations, such as the World Intellectual Property Organization (WIPO) of the UN[32] were founded[33] – demonstrating that it is possible to construct legal systems that not only have a strong regulatory framework but are also equally applicable abroad.[34] Through constant international demand, refinement, and collaboration, IP law remains an emerging area that is consistently enforced, a parallel not found with maritime piracy.

[31] *What is Intellectual Property (IP)?*, Wipo.int (2021), https://www.wipo.int/about-ip/en/ (last visited Feb 11, 2021).
[32] *Inside WIPO*, Wipo.int (2021), https://www.wipo.int/about-wipo/en/ (last visited Feb 11, 2021).
[33] *Summary of the Convention Establishing the World Intellectual Property* Organization (WIPO Convention) (1967), Wipo.int (2021), https://www.wipo.int/treaties/en/convention/summary_wipo_convention.html#:~:text=WIPO%20is%20an%20intergovernmental%20organization,United%20Nations%20system%20of%20organizations.&text=The%20two%20bureaus%20were%20united,virtue%20of%20the%20WIPO%20Convention. (last visited Feb 11, 2021).
[34] *Berne Convention for the Protection of Literary and Artistic Works*, Wipo.int (2021), https://www.wipo.int/treaties/en/ip/berne/ (last visited Feb 11, 2021).

As long as debate and discrepancies continue to be negotiated under UNCLOS and the United States Code, piracy will continue to be unchecked. In the status quo, an essential and fundamental component of a structurally sound maritime piracy law framework necessitates the premise of international collaboration and cooperation.

With rising governmental tensions throughout regions of major maritime lanes and an expanding system of complex piracy networks, the United Nations, NATO, and numerous other international organizations, in addition to the efforts of the international community at-large, will be forced to continue to play a vital role in the further development of international maritime piracy law; especially in providing specific details as to the prosecution and repression framework – with the ultimate expectation of establishing a set and explicit structure to successfully control, mitigate, and enforce maritime piracy law. Albeit, without strong international maritime agreements, regulations, collaboration, and an overall unified legal system for the prosecution and deterrence of piracy, the high seas will continue to bear witness to the dangers of maritime piracy and the shortcomings of a proper legal system regulating the high seas.

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A HISTORICAL AND POLITICAL LOOK INTO THE WAR ON DRUGS WITHIN THE UNITED STATES LEGAL SYSTEM

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Abstract

Illegal drug use and drug addiction has been a complex issue in the United States for centuries. Over the course of time, the United States has used different approaches to tackle the problem of drug use and abuse within its communities. Beginning in the 1800's, drug usage appears to lead to devastating consequences within society, forcing the legal system to create legislation preventing the use and solicitation of such addictive drugs. In recent decades though, state law has strayed from a strict and punishing position on drugs to one that allows for the medicinal and recreational use, or decriminalization of drugs. The war on drugs is at a crucial point in time that is changing the country's legal system and communities, and the new stance on drug policy may consequently lead the nation into a deeper hole within the war on drugs.

A complex debate for decades within American law and society has been that of illegal drug use and drug addiction. The war on drugs in the United States began in the 1970s when the U.S. government created an initiative to stop the illegal use, distribution, and trade of drugs.[1] Since the initiative began though, state law has continued to break from this prior belief of criminalizing the use and distribution of drugs through the enactment of new legislation that allows for the medicinal or recreational use of certain Schedule I and Schedule II drugs. In 2020, a radical new measure was passed by the state of Oregon that allows for the decriminalization of a majority of dangerous narcotics, opioids, and psychedelics, which directly conflicts with the objectives set forth within the War on Drugs initiative.[2]

Patterns present within history in regard to drug usage, treatment mechanisms, and legal consequences in the United States help to determine the best course of action to take when forming an ethical and effective drug policy within the U.S. while using political research helps to describe the current criminal justice system and the laws and social movements that have formed it. By using the two together, effective solutions and strategies for overcoming these problems at the individual and government level can be formed to prevent usage and addiction.

The history of drug policy in the United States took many turns during the 19th and 20th centuries. The 1800s saw many narcotics being legally and encouragingly used as medication for simple aches and illnesses including toothaches and common colds. These drugs consisted of morphine, cocaine, laudanum, opium, and heroin, and were given to both children and adults for treatment. Addiction rates consequently and rapidly skyrocketed during this period, as these drugs, which would later be known as Schedule I and II drugs,

[1] *Comprehensive Drug Abuse Prevention and Control Act of 1970*, FindLaw, https://www.findlaw.com/criminal/criminal-charges/comprehensive-drug-abuse-prevention-and-control-act-of-1970.html, (last visited March 27, 2021.)
[2] Lauren Johnson, *Oregon's law decriminalizing small amounts of heroin and other street drugs officially goes into effect*, CNN, Feb. 1, 2021, https://www.cnn.com/2021/02/01/us/oregon-decriminalize-drugs-is-law-trnd/index.html, (last visited March 27, 2021.)

are defined by the DEA to have a high potential for abuse, and are capable of creating both severe psychological and physical dependence.[3] Between 1863 and 1867, 236 infants younger than 1 year of age were reported to have died from narcotics, and an epidemic of addiction and overdose arose throughout the adult population, leading to a change in the nation's view of narcotics.[4]

In 1906, Congress passed the Food and Drug Act.[5] For the first time, medications, and foods to be sold were required to meet a standard for purity and strength, and ingredients were also required to be listed. The 1914 Harrison Act[6] required anyone selling opiates or cocaine to register with the federal government, and in 1924, heroin became entirely illegal for the first time after the passage of the Heroin Act.[7] The Narcotic Control Act of 1956[8] and the Controlled Substances Act of 1970[9] both have also contributed to the criminalization of Schedule I controlled substances. In June of 1971, President Richard Nixon officially declared a "war on drugs". The leader identified drug abuse as "public enemy No. 1", as marijuana, LSD, cocaine, and mushrooms

[3] *Drug Scheduling*, DEA.gov (2021), https://www.dea.gov/drug-scheduling (last visited Mar 15, 2021).
[4] *A Brief History of the Drug War*, drugpolicy.org, https://www.drugabuse.gov/publications/principles-drug- addiction-treatment-research-based-guide-third-edition/frequently-asked-questions/how-do-we-get-more-substance-abusing-people-treatment, [last visited 15 March 2021].
[5] *1906 Food and Drugs Act and Its Enforcement*, U.S. Food & Drug Administration, https://www.fda.gov/about-fda/changes-science-law-and-regulatory-authorities/part-i-1906-food-and-drugs-act-and-its-enforcement, (last visited March 27, 2021.)
[6] *The Harrison Narcotics Act*, Virginia Law Review, Vol. 6, No. 7, 1920, pp. 534-540, JSTOR, https://www.jstor.org/stable/1063174?seq=1#metadata_info_tab_contents, (last visited March 27, 2021.)
[7] *Laws*, The National Alliance of Advocates for Buprenorphine Treatment, https://www.naabt.org/laws.cfm, (last visited March 27, 2021.)
[8] *Title I – Amendments to the 1954 Code, The Narcotic Drugs Import and Export Act, Etc.*, Public Law 728 – July 18, 1956, https://www.govinfo.gov/content/pkg/STATUTE-70/pdf/STATUTE-70-Pg567.pdf, (last visited March 27, 2021.)
[9] *The Controlled Substances Act*, U.S. Drug Enforcement Administration, https://www.dea.gov/controlled-substances-act, (last visited March 27, 2021.)

had recently become part of popular culture during the 1960s, spreading a negative view of drugs to many Americans.[10] By 1973, the Drug Enforcement Administration (DEA) was created, along with longer jail and prison sentences and higher fines for drug use. In 1982, First Lady Nancy Reagan continued the trend of opposing drugs by beginning the "Just Say No" initiative, which was also further campaigned by celebrities and other influential people.[11]

The statistical data on drug use and addiction makes the current political agenda in relation to drug policy in the United States shocking. Today, many Americans still use illegal drugs and seek recovery services. The CDC's research shows that in 2017, 11.2% of Americans aged 12 and up had used illegal drugs. In 2011, 21.6 million people aged 12 or older needed treatment for illicit drug or alcohol use problems.[12] In recent decades though, many states have undergone a contrasting agenda that works towards the decriminalization, legalization, and medicinal use of Schedule I controlled substances. In 1996, California became the first state to legalize the use of marijuana for medicinal treatment for illnesses including anxiety, depression, IBS, epilepsy, multiple sclerosis, and cancer, among others.[13] Those suffering from such illnesses and diseases were able to use the drug as treatment through physician supervision, and many saw adequate treatment results. In 2012, Colorado and Washington became the first states to legalize the recreational use of marijuana and began to regulate the production,

[10] *Timeline: America's War on Drugs*, NPR.org. 2007, https://www.npr.org/templates/story/story.php?storyId=9252490, [last visited 15 March 2021].
[11] *Just Say No*, History, Updated 2018, https://www.history.com/topics/1980s/just-say-no, (last visited March 27, 2021.)
[12] *How do we get more substance-abusing people into treatment?* National Institute on Drug Abuse, https://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/frequently-asked-questions/how-do-we-get-more-substance-abusing-people-treatment, (last visited 15 March 2021].
[13] Scott Imler, *Marijuana in California: a history*, Los Angeles Times, March 6, 2009, https://www.latimes.com/health/la-oew-gutwillig-imler6-2009mar06-story.html, (last visited March 27, 2021.)

distribution, and sale of the drug.[14] Today, 15 states, along with the District of Columbia, have legalized the recreational use of marijuana. Though marijuana is not as dangerous or deadly as other Schedule I controlled substances, it does result in side effects of lack of coordination, reduced reaction time, memory loss, anxiety, and may also result in addictive behavior.

A drastic step in reforming the U.S. criminal justice system regarding drug use came in November of 2020, with the passing of Measure 110 in Oregon. This initiative decriminalizes "smaller" amounts of Schedule I controlled substances including heroin, cocaine, methamphetamine, MDMA/ecstasy, LSD, psilocybin, methadone, and oxycodone. These "smaller" amounts include less than 2 grams of cocaine and methamphetamine, and less than 40 pills or user units of LSD, methadone, and oxycodone. These drugs can have dangerous consequences related to use, including overdose, uncontrollable addiction, molecular changes in the brain, anxiety, depression, violent behavior, paranoia, and death.[15] Under Measure 110, possession of such drugs turned from a Class A misdemeanor, which may result in a 1-year jail sentence or a $6000 fine, to a Class E violation. Class E violations result in fines of $100 or a voluntary health assessment to avoid paying the penalty, meaning no arrestment or jail time. Proponents believe that Measure 110 could reduce jail convictions by as many as 3,076 people annually, could save the state nearly $132 million in taxes per year, and alleviate overpopulation in county and state facilities.[16] The initiative was also expected to prevent recovering drug users from being stigmatized by employers, leaders, and landlords, by keeping a clear record with no felony or criminal convictions.[17]

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[14] *Marijuana Legalization in Washington State: One-Year Status Report*, Drug Policy Alliance, 2015, https://drugpolicy.org/press-release/2015/07/marijuana-legalization-washington- state-one-year-status-report, [last visited 15 March 2021].
[15] *What are the long-term effects of methamphetamine misuse?* National Institute on Drug Abuse, https://www.drugabuse.gov/publications/research-reports/methamphetamine/what-are-long-term-effects-methamphetamine-misuse, (last visited March 15, 2021.)
[16] *Explaining Measure 110: Drug Decriminalization*, The Advocate Online, 2020, https://www.advocate-online.net/measure-110/, (last visited March15, 2021.)
[17] Id.

The Vote Yes on 110 organization states that "people will no longer be arrested and put in jail simply for possession of small amounts of drugs. Instead, they will be connected to the right treatment or recovery services, including housing assistance, to help them get their lives back on track."[18] The first statement shows that the intent of Measure 110 is to change the way the criminal justice system convicts drug users and addicts. There is a sentencing problem present within the U.S. criminal justice system when it comes to drug addiction. It is not beneficial for neither the user nor the country for there not to be a system of authority able to enforce sobriety of such drugs or provide the adequate treatment that is needed for people dependent or mentally imprisoned by the controlled substances. Many users benefit and need court-mandated drug treatment and rehabilitation services as the typical drug addict typically sees no issue in their behavior, believes taking the drug is the right or most appealing choice at the moment, is knowingly allowing the drug to destroy their life, is undergoing withdrawal symptoms, is facing issues such as poverty, depression, homelessness, etc., or is overpowered by the desire of feeling high and the drug's addictive qualities. This results in a vast majority of drug users who choose to not seek treatment, leave treatment, and/or relapse. Government intervention in crises such as these, with enforcement of treatment and group services, can do more for an individual than allowing the behavior to persist. Rehab treatment under Measure 110 is left as a choice to the individual who is truly no longer in control of proper decision making, or is left for the family to act, which may be mentally tough, costly, cause division within the family, or be overall ineffective.

The enactment of Measure 110 and any future similar laws has the potential to mislead the coming younger generations and allow current users to not fear any consequence of taking or continuing to take such drugs. The high-school or college student in Oregon exposed to drugs for the first time will no longer look at these drugs as a potential life sentence, whether it be in prison or a crippling state of addiction, it is now just a civil penalty. The user will no longer be stopped. Many addicts give up or lose their family, jobs, and homes

[18] Ben Botkin, *Petition Seeks Treatment – Not Jail – For Drug Possession*, The Lund Report, March 27, 2020, https://www.thelundreport.org/content/petition-seeks-treatment-not-jail-drug-possession, (last visited March 27, 2021.)

due to lack of control and an altered state of mind- a $100 fine will be no source of motivation to quit. Decriminalizing these drugs prevents a person struggling with this disease without any official support and places the responsibility of dealing with the issue solely in their own hands. And in some cases, that means those who are corrupted by a mind-altering drug that forces users into a repeated cycle of want and withdrawal are left to their own devices. Measure 110 allows drug users to keep their "small" possessions of drugs, keep using, and keep living a dangerous lifestyle for both themselves and society.

Measure 110 tells the citizens of Oregon that having thirty-nine pills of oxycodone is okay as long as you pay a fine. Lying is easy. The drug user can tell a cop who found their "small" stash that it is just for themselves, then go ahead and sell or distribute thirty-eight of the pills they have on hand. Measure 110 includes many beneficial provisions that provide prison reform in the area of drug use, including calling on the Oregon Health Authority to establish or expand addiction recovery centers and support funding for health assessments, addiction treatment, and harm reduction, but this can all be done without decriminalizing the drugs.[19]

The measure reallocates cannabis tax dollars to such services, but cannabis has been legalized in the state for 6 years.[20] This too could have been done without decriminalizing drug possession. The reallocation of money for these services is also being taken from education systems, the institutions that are capable of teaching the youth the consequential effects of drug usage.[21] What will work for the war on drugs is changing the structure of sentencing for drug addicts while keeping the drugs a criminal offense to prevent future use. It is at the individual level where positive change happens. If a judge can have compassion for the addict in front of them and notice that what they need is a stay in a treatment center rather than a prison cell, the addict will be

[19] *Explaining Measure 110: Drug Decriminalization,* The Advocate Online, 2020, https://www.advocate-online.net/measure-110/, (last visited March 15, 2021.)
[20] Id.
[21] Dirk VanderHart, *Gov. Kate Brown wants to delay voter-approved addiction treatment funding,* OPB, 2020, (last visited March 29, 2021).

surrounded by the influence they need. Drug treatment can be established within the court system, but decriminalizing drug possession, which ultimately allows drug use, does not allow for a source of authority to make these decisions.

Looking at the legalization and decriminalization of Schedule I controlled substances through a political and historical viewpoint proves that the consequences of such actions will move the United States into a deeper hole within the war on drugs. The purpose of government is to protect people from conflicts and to provide law and order. The war on drugs has been a longstanding conflict in the United States that continues to affect families, the healthcare and criminal justice system, the youth, and the future of this country and the people within it. The use of substances including heroin, cocaine, oxycodone, and methamphetamine, among others, leads to abuse, dependency, and the risk of declining mental and physical health among individuals, while in society, leads to homelessness, loss within the workforce, increased deaths, and the increased necessity for healthcare services including overdose treatment and rehabilitation facilities.

The first and most effective step in preventing drug use and abuse is to get the individual to say no the first time they encounter these drugs. Pursuing the end-all for drug use is not done by legalizing and decriminalizing it. It is by focusing on the prevention of use, solicitation, abuse, and dependency on drugs, and certainly not by letting addiction and the use of such drugs slide due to monetary or time-consuming reasons. Court-mandated rehabilitation, prohibition, community groups, and volunteer services are proven effective measures that help those struggling with addiction. Drug use is a crime against society and the individual. The federal government has the rightful power to treat it as such to protect the citizen, the community, and the future generations who depend on virtuous teaching.

THE GOVERNMENT'S ROLE IN PROTECTING CITIZENS FROM PSYCHOLOGICAL HARM

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Abstract

Capitalism in the United States has created economic obsession regarding the profit of businesses. Industries will go to great lengths to ensure that they receive a sizable profit. These industries use the insecurities of society to plant instability within customers to best promote their products and increase sales. However, the government is responsible for protecting citizens from harm, which includes the psychological harm caused by industries. Not only are customers psychologically harmed as a byproduct of capitalism, but employees are also psychologically harmed through this process. The prevalence of workplace stress and mental illness is only increasing in the United States. Seeing that it is a responsibility of the government, they need to construct regulations that manage how industries treat their customers and employees. To restore the damage that these corporations have caused, it would be in the best interest of the government to incorporate proper mental health resources within the industrial environment.

Introduction

Private enterprise in the United States has created a fixation on the economy concerning the benefit of organizations. These enterprises utilize the frailties of society for the betterment of their own business, without concern about how this affects society. The government is answerable for protecting citizens from

harm, which includes the mental anguish brought about by enterprises. Customers are not exclusively mentally harmed because of private enterprise, as employees are likewise psychologically harmed. The pervasiveness of the work environment into every area of our lives causes stress. The government needs to hold these industries and corporations accountable, as they must regulate the power and influence that businesses hold in society.

The Responsibilities of the United States Government

One of the earliest, yet most fundamental, foundations of government is to protect and guard its citizens against harm.[1] When a region becomes defined as an independent territory, those within the state borders become supervised and regulated by a government. Instability and vulnerability befall a society "without a government to provide the safety of law and order, protecting citizens from each other and foreign foes."[2] It is the government's responsibility to "protect citizens from violence and the worst vicissitudes of life."[3] Citizenship entails "the duty of the Government to protect; and of the subject to obey."[4]

As it is the duty and responsibility of the government to guard its citizens against any form of harm that comes forth, and it is important to understand the parameters of harm. Harm, as defined by the Oxford English Dictionary, is "physical injury, especially that which is deliberately inflicted."[5] The

[1] Anne-Marie Slaughter, *3 responsibilities every government has towards its citizens*, World Economic Forum, 2017, https://www.weforum.org/agenda/2017/02/government-responsibility-to-citizens-anne-marie-slaughter/, (last visited April 7, 2021.)
[2] Id.
[3] Id.
[4] Steven Heyman, *The First Duty of Government: Protection, Liberty, and the Fourteenth Amendment, pp.* 546-554, Duke Law Journal, 1991, https://scholarship.law.duke.edu/dlj/vol41/iss3/2/, (last visited April 7, 2021.)
[5] *Definition of HARM*, Oxford Dictionary, https://www.lexico.com/definition/harm, (last visited April 7, 2021.)

definition of harm is specifically classified as the purposeful imposition of physical injury. However, that is not the only form of harm that exists. Harm can present itself in the following categories: financial, physical, psychological, sexual, and neglect.[6] Although harm takes many forms, psychological harm has become incredibly prevalent today, causing mental and emotional distress to a significant number of citizens. Psychological harm can be defined as "hurtful words used to frighten, threaten, humiliate or control another person, or make individuals feel isolated."[7] The capitalistic society of the United States has turned humans into numbers and a dollar sign, causing industries to abuse employees and customers in order to make a profit. "As the welfare state has evolved, its critics have come to see [the government] more as a protector from the harsh results of capitalism, or perhaps as a means of protecting the wealthy from the political rage of the dispossessed."[8] As it is the government's responsibility to protect citizens, this includes protecting citizens from psychological harm.

Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 provides conditions in which employers are forbidden to discriminate against employers. Section 703 of Title VII, states that "it shall be an unlawful employment practice for an employer to discriminate against any individual because of such individual's race, color, religion, sex, or national origin."[9] In addition to the many provisions set out by the United States government, there are labor laws in place for different workplace conditions regarding lawful and unlawful employer behavior. These labor laws along with Title VII, prohibit

[6] *What is harm*?, Act Against Harm, Safer Scotland Scottish Government, http://www.actagainstharm.org/what-is harm, (last visited April 7, 2021.)
[7] Id.
[8] Id.
[9] *Title VII of the Civil Rights Act of 1964*, U.S. Equal Employment Opportunity Commission, EEOC.gov, https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964, (last visited April 7, 2021.)

discrimination, as well as abuse and harassment due to an individual's background.

Although the government has these regulations in place, the issue here is that these regulations do not include harm derived from abuse and harassment from a psychological viewpoint. Physical maltreatment is not the only maltreatment that exists. The prevalence of psychological abuse of employees is far too high in industries.[10] Not only are employees psychologically harmed, but customers are too. These laws and acts are focused on how employers should treat employees, but not on how industries should treat customers. Along with guidelines regarding employer behavior, the government needs to also create guidelines that industries are required to follow regarding the creation of products and contracts that instigate psychological distress among customers.

The Truth About Industries

The culture of capitalism feeds off society's self-doubts. Industries turn these widespread insecurities into products that are marketed as solutions and profit from those sales. For example, "the $382 billion global "beauty" industry has effectively targeted every aspect of appearance, ranging between hair-care, hair removal, makeup, plastic surgery, skin-care, diet plans, and perfumes."[11] The beauty industry allures women, especially teenagers and young adults, by "[building] as much on promises for attractive as on fears of ugliness, products targeting the superficial guarantee not only better looks but happiness too."[12]

[10] Zubair Akram, Yan Li, and Umair Akram, *When Employees are Emotionally exhausted Due to Abusive supervision*, A Conservation of Resources Perspective, International Journal of Environmental Research and Public Health, Sept. 8, 2019, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6765885/, (last visited April 7, 2021.)
[11] Hanna Khalil, *Profit, Self-Worth, and the Ugly Side of the Beauty Industry,* Washington University Political Review, 2018, https://www.wupr.org/2018/03/03/profit-self-worth-and-the-ugly-side-of-the-beauty-industry/, (last visited April 7, 2021.)
[12] Id.

Studies have revealed that 53 percent of female teenagers in the United States are dissatisfied with their physical appearance.[13] "These low feelings of self-worth…are a direct result of the constant, targeted messaging surrounding appearance, beauty, and perfection."[14] The beauty industry takes advantage of insecurities by placing ideations of a negative self-image into the minds of women customers through their advertising. This way, the industry can assure their customers that happiness and perfection are guaranteed when using these products. The trick of false satisfaction is a ploy to increase sales and maximize profits. Unfortunately, the beauty industry is not the only industry profiting from society's vulnerabilities. It is not uncommon for industries to have hidden agendas behind their sales pitches of their products, which is to economically benefit the company at the expense of a vulnerable society.

While customers are inherently targeted by industries for financial gain, employees of these industries are psychologically harmed behind closed doors. "Psychologically traumatic workplace events (known as critical incidents) occur within various work environments, with workgroups in certain industries vulnerable to multiple incidents."[15] Employees have great levels of stress due to their jobs. Stress, defined as "the adverse reaction people have to excessive pressures or other types of demands placed upon them," not only comes from being overworked resulting in mental and physical exhaustion, but also comes from the mistreatment and devaluation of employees.[16] The negative psychological impact of work-related stress can present itself in numerous ways, "such as anxiety and depression, loss of concentration and poor decision making."[17] Not only that, but the

[13] Id.
[14] Id.
[15] G.S. DeFraia, *Psychological Trauma in the Workplace: Variation of Incident Severity among Industry Settings and between Recurring vs Isolated Incidents*, The International Journal of Occupational and Environmental Medicine 155-168, 2015, https://pubmed.ncbi.nlm.nih.gov/26174992/, (last visited April 7, 2021.)
[16] T Rajgopal, *Mental well-being at the workplace*, 14 Indian Journal of Occupational and Environmental Medicine 63, 2010, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3062016/, (last visited April 7, 2021.)
[17] Id.

psychological harm from work-related stress has been reported to cause adverse effects on employees' physical health as well. "Work-related stress could also manifest as heart disease, back pain, headaches, gastrointestinal disturbances or various minor illnesses."[18] Customers and employees alike are being exploited by industries for their benefit, and it is time that they are held accountable for their unlawful actions.

Is the Government Fulfilling its Responsibilities?

The pursuit of happiness, a right guaranteed to citizens and mentioned in the United States Declaration of Independence, is the ability for an individual under the law to achieve a life of contentment, full of happiness, provided no other citizen is harmed in the process.[19] The rights of citizens will always be limited in the case that another individual's rights are infringed upon or their safety is compromised. However, in today's world, the right to the pursuit of happiness has not been upheld. It is instead as if citizens must fight to survive, instead of being able to live as if it is their given right. The widespread growth of mental illnesses in the United States is alarming. "Even before COVID-19, the prevalence of mental illness among adults was increasing. In 2017-2018, 19% of adults experienced a mental illness, an increase of 1.5 million people over last year's dataset."[20] Individuals not only suffer from psychological pain but have also lost their motivation to pursue happiness. "Suicidal ideation among adults is increasing. The percentage of adults in the U.S. who are experiencing serious thoughts of suicide increased 0.15% from 2016-2017 to 2017-2018 – an additional 460,000 people from last year's dataset."[21]

[18] Id.
[19] *Declaration of Independence: A Transcription*, National Archives, 2021, https://www.archives.gov/founding-docs/declaration-transcript, (last visited Mar 25, 2021.)
[20] *The State of Mental Health in America*, Mental Health America, 2021, https://www.mhanational.org/issues/state-mental-health-america, (last visited April 7, 2021.)
[21] Id.

The prevalence of mental illness calls for better access to mental health resources. Those who are uninsured have no access to these resources, which indicates that they have no means of rehabilitation. However, whether insured or uninsured, citizens' needs for treatment are not being met. The government has a responsibility to protect citizens from psychological harm, which they are currently not fulfilling. The right to the pursuit of happiness is an entitlement that hundreds of thousands to millions of citizens are not even able to attain.

Legislative and Judicial Action

A great deal of improvement needs to take place for society to be in a state of recuperation. The government must hold industries and corporations accountable for using the insecurities of society to gain a profit. The vulnerability of citizens should never have been used as a selling point, and it is time that the government speaks out on this issue as it is a breach of the responsibilities of the government. Secondly, the government needs to establish psychological harm as unlawful and amend the specifications of the current labor laws and civil rights acts that are already in place. To ensure that these regulations are being followed properly, it is imperative for the government to closely supervise and manage the actions of industries.

To diminish the effects of psychological harm, the government needs to provide better access to mental health resources for citizens. This will not only repair the current damage but will also decrease the prevalence of mental illness. According to the Centers for Disease Control and Prevention, "workplace health promotion programs have proven to be successful, especially when they combine mental and physical health interventions."[22] The Centers for Disease Control and Prevention also provides recommendations regarding mental health-related issues that can act as a solution for federal and state governments to take:

[22] *Mental Health in the Workplace*, Centers for Disease Control and Prevention, 2019, https://www.cdc.gov/workplacehealthpromotion/tools-resources/workplace-health/mental-health/index.html, (last visited April 7, 2021.)

- Federal and state governments can:[23]
    - Provide tool kits and materials for organizations and employers delivering mental health and stress management education.
    - Provide courses, guidance, and decision-making tools to help people manage their mental health and well-being.
    - Collect data on workers' well-being and conduct prevention and biomedical research to guide ongoing public health innovations.
    - Promote strategies designed to reach people in underserved communities, such as the use of community health workers to help patients access mental health and substance abuse prevention services from local community groups (for example, churches and community centers).

Conclusion

One of the most fundamental responsibilities of the United States government is to protect citizens from harm. And psychological harm has become increasingly apparent within our current culture. The insecurities of citizens are exploited by industries for financial benefits. This exploitation violates many of the government's guidelines regarding the treatment of others and may be considered unlawful conduct. However, customers of these industries are not the only ones being exploited. The employees of these industries are being overworked and abused, causing them great stress and psychological harm. The time and exertion spent working requires employees to expend a considerable amount of an individual's life, time, and effort. The industry's blatant disregard of employee needs including their self-respect, severely influences and contributes to a negative sense of self. Due to these issues, new improvements need to be made to better protect citizens from psychological

[23] Id.

harm. The government must establish psychological harm as unlawful and amend laws to include this distinction. The government needs to tightly regulate industries to ensure that citizens are protected from psychological harm. Lastly, better access to mental health resources is necessary for citizens who have been psychologically traumatized. These modifications will establish the protection of citizens from psychological harm and allow for the betterment of society.

IS THE PRISON COMPLEX A REVISION OF SLAVERY?

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Abstract

Many think of slavery as the brutal practice of forcing someone to work hard without paying them a fair wage, sometimes without paying them at all. Britannica defines slavery in this manner: Slavery may be defined as a condition in which one human being was owned by another, and it was considered by law as property, or chattel, and was deprived of most of the rights ordinarily held by free persons. This definition has been used to describe today's prison system. Others point to the Thirteenth Amendment of the U.S. Constitution as justification for the current practice of requiring prisoners to work for pennies a day. The current prison system has been constructed as a mirror image of slavery because of their use of unfair wages, the willingness to capitalize on the plight and reality of being incarcerated, and the excessive sentencing that has become a part of our judicial criminal justice system.

Many think of slavery as the brutal practice of forcing someone to work hard without paying them a fair wage, sometimes without paying them at all. Britannica defines slavery in this manner: Slavery may be defined as a condition in which one human being was owned by another, and it was considered by law as property, or chattel, and was deprived of most of the rights ordinarily held by free persons.[1] This definition has been used to describe today's prison system. Others point to the Thirteenth Amendment of the U.S. Constitution[2] as justification for the current practice of requiring prisoners to work for pennies a day. The 13th Amendment says:

- Sections 1 & 2. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have power to enforce this article by appropriate legislation.[3]

The current prison system has been constructed as a mirror image of slavery because of their use of unfair wages, the willingness to capitalize on the plight and reality of being incarcerated, and the excessive sentencing that has become a part of our judicial criminal justice system.

Unfair wages are an understatement of what these prisoners are being paid. There is nothing proportional about the wages that are paid to the prisoners and the profit made from their labor. According to the Federal Bureau of Prisons, "Institution work assignments include employment in areas like food service or the warehouse, or work as an inmate orderly, plumber, painter, or groundskeeper. Inmates earn 12¢ to 40¢ per hour for these work

[1] Richard Hellie, *Slavery, Definition, History, & Facts*, Britannica, https://www.britannica.com/topic/slavery-sociology, (last visited April 2, 2021.)
[2] *Thirteenth Amendment of the U.S. Constitution – Slavery and Involuntary Servitude, Sections 1 & 2*, Justia, https://law.justia.com/constitution/us/amendment-13/, (last visited April 2, 2021.)
[3] Id.

assignments."[4] These inmates are being paid the equivalent of loose change hourly. It is a harsh realization that our criminal justice system would condone the extreme unfairness of these wages and the personal exploitation of these incarcerated people. The prison labor industry is worth billions of dollars.[5] The prison labor industry is dependent upon the contributions of inmates who are barely compensated at all, much less fairly.

In the case of *Ragnar E. Danneskjold v. State of New York Department of Correctional Services*,[6] prison inmates sued the Department of Correctional Services under the Fair Labor Standards Act for minimum wage.[7] 'The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than $7.25 per hour effective July 24, 2009. Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.'[8] In the Danneskjold case, the prison inmates decided to sue for unpaid wages because of all the tutoring they did to help teach other inmates. They were participating as tutors for the Consortium of the Niagara Frontier which offers inmates at the Attica Correctional Facility and opportunity to earn college degrees.[9] The judge however, ruled in favor of the prison due to

[4] *Work Programs*, Federal Bureau of Prisons, https://www.bop.gov/inmates/custody_and_care/work_programs.jsp, (last visited April 2, 2021.)
[5] *Profitting off of Prison Labor,* Business Review Berkeley, July 6, 2020, https://businessreview.berkeley.edu/profiting-off-of-prison-labor/, (last visited April 2, 2021.)
[6] *Danneskjold v. Hausrath*, 82 *F.3d 37 (2nd Cir. 1996)*, https://case-law.vlex.com/vid/82-f-3d-37-594954102, (last visited April 1, 2021.)
[7] Id.
[8] *Wages and the Fair Labor Standards Act*, U.S. Department of Labor, https://www.dol.gov/agencies/whd/flsa, (last visited April 2, 2021.)
[9] *Danneskjold* supra.

prison labor not being protected under the Fair Labor Standards Act (FSLA).[10] This verdict completely disregarded the purpose behind the FLSA which was to stabilize the post-depression economy and protect the workers in the labor force using the minimum wage to create a minimum standard of living to protect the health and well-being of employees.[11] The FLSA offers protection for both part-time and fulltime workers in the private sector, local, state, and federal governments. Prison labor would fall under these categories. The court case however, focused on the phrase included in the Thirteenth Amendment, "Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted* shall exist within the United States, or any place subject to their jurisdiction." And in focusing on this phrase, the court accepted the premise that its allowable to create involuntary servitude systems where criminal convictions are present.[12] It may be that the addition of that phrase needs to be removed from the Thirteenth Amendment. Prison inmates are people, they may be stripped of certain entitlements/freedoms, yet they should not be completely diminished to little to no pay for work that helps keeps the economy thriving.

Private prisons are capitalizing off these inmates. CoreCivic and the GEO Group, which make up half of the market share of prison made $3.5 billion in 2015.[13] Because this prison labor system has become so enriching for these large corporations, the concept of 'lockup quotas" was also adopted by the parties in order to negotiate their contracts with federal and state authorities.[14]

[10] Will Kenton, *What Is the Fair Labor Standards Act?*, 2021, Investopedia, https://www.investopedia.com/terms/f/fair-labor-standards-act-flsa.asp, (last visited April 2, 2021.)
[11] *Minimum Wage*, Legal Information Institute, https://www.law.cornell.edu/wex/minimum_wage, (last visited April 2, 2021.)
[12] *Wages and the Fair Labor Standards Act*, U.S. Department of Labor, https://www.dol.gov/agencies/whd/flsa, (last visited April 2, 2021.)
[13] *Profitting off of Prison Labor,* Business Review Berkeley, July 6, 2020, https://businessreview.berkeley.edu/profiting-off-of-prison-labor/, (last visited April 2, 2021.)
[14] Id.

Prisons were established to rehabilitate those unable to abide by societal laws and regulations. Instead, inmates are being sold by the government to house and work in private prisons where conditions are less than favorable. Private prisons are essentially exploiting the government in order for them to be able to use these prisoners while also forcing labor from the inmates, and its labor that leaves the inmate severely underpaid and overworked. Corporate Accountability lab states, "Private prisons hold valuable government contracts featuring minimum bed guarantees and a fixed price per-prisoner provision, [along with] private companies that stock overpriced commissaries and provide telephone services, and private companies using prison labor in their supply chains."[15] These contracts are problematic for our justice system. If the government is under contract to keep a minimum number of inmates in a private prison, is that an incentive for them to increase the length of the sentences imposed?

Conclusion

Excessive sentencing contributes to the enslavement of prisoners by extending the amount of time the prisoner stays in the prison environment. According to the Federal Bureau of Prisons, there are 21,562 prisoners who are sentenced to 20 years or more in prison.[16] According to the Sentencing Project, at the federal level, the prison population expanded from 20,000 in 1980 to 189,000 by 2016. Research suggests that the combined effect of the surge in drug prosecutions and the expansion of mandatory minimum sentences was a key

[15] Investopedia. 2021. *The Business Model of Private Prisons*. [online] Available at: <https://www.investopedia.com/articles/investing/062215/business-model-private-prisons.asp> [Accessed 1 April 2021].
[16] *BOP Statistics: Sentences Imposed*, Bop.gov, 2021, https://www.bop.gov/about/statistics/statistics_inmate_sentences.jsp, (last visited April 2, 2021.)

factor in the increase.[17] These sentences ensure payment for private prisons and companies who depend on the prison labor. Is it possible that the need to establish quotas or to meet certain productivity goals by these private prisons becomes a factor in the sentencing?

The prison complex is more than a reversion to slavery, it is making the concept of slavery acceptable to the everyday citizen. Using inmates to acquire needed labor is a way to divert and tone down the harsh reality of exploiting people in order to benefit corporations. Immediate changes should be made starting with the miniscule wages inmates are forced to receive for their required work, then removing the government's ability to negotiate contracts with these private corporations to use and exploit prison labor for their own profit, as well as using the concept of guaranteeing a minimum number of prisoners in any given prison at a certain time in order to ensure the corporation has sufficient labor for their projects. And finally, we need a Constitutional Amendment to the Thirteenth Amendment removing the phrase that disallows protection for convicted prisoners.

[17] Marc Mauer, *Long Term Sentences: Time to Reconsider the Scale of Punishment*, The Sentencing Project, Nov. 5, 2018, https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/, (last visited April 2, 2021.)

FILLING IN THE GAPS OF INTERNATIONAL CYBERSECURITY IN THE UNITED STATES

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Abstract

With the widespread use of technology, a new host of threats appear that affect the American government, businesses, and civilians. This is why Cybersecurity is a global emergency that involves not only the United States, but all countries, and which makes it necessary for the gaps within international cybersecurity to be filled. Cyber security crosses all geographic boundaries and must be addressed wholistically in order to be effective. Current regulations within cyberspace are not adequate and in order to protect each state from cyber threats, it is imperative for the states to create a collaborative solution to the issues within the current cyberspace in order to maintain peace.

Introduction

Now, more than ever, technology is one of the most common means of communication between people. With billions of people using technology, it allows hackers to have multiple opportunities to facilitate cyberattacks. The use of technology and the internet are widespread throughout the world. This year, the number of devices connected to the internet is expected to reach over

46 billion.[1] Individuals use technology for various reasons, such as to work or to communicate with others. Technology and the internet have allowed people to complete tasks quickly and efficiently, making the lives of many easier. Due to the widespread use of technology, a new host of threats appear, however. Therefore, cybersecurity is important. Cybersecurity is the art of protecting networks, devices, and data from unauthorized access or criminal use.[2] Cybersecurity ensures that the confidential information of individuals, businesses, the government, and other entities is protected. The United States has made efforts to make sure that the people are protected. The most prominent Cybersecurity regulations in the United States are the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act, and the Homeland Security Act.[3] HIPPA ensures that the medical and health confidential information of a patient is protected.[4] The Gramm Leach Bliley Act requires financial institutions to be transparent about their information-sharing practices to their customers and to safeguard sensitive data.[5] The Homeland Security Act established the Department of Homeland Security after 9/11 and was created in the hope of preventing another terrorist

[1] *Internet of Things' Connected Devices to Triple by 2021, Reaching Over 46 Billion Units, Compare* the Cloud, 2021, https://www.comparethecloud.net/news/internet-of-things-connected-devices-to-triple-by-2021-reaching-over-46-billion-units/, (last visited March 15, 2021.)

[2]. *What is Cybersecurity, CISA*., 2021, https://us-cert.cisa.gov/ncas/tips/ST04-001, (last visited March 14, 2021.)

[3] Agarwal, H., *A Glance at The United States Cyber Security Laws*, 2018, https://www.appknox.com/blog/united-states-cyber-security-laws, (last visited March 15, 2021.)

[4] *Health Insurance Portability and Accountability Act of 1996 (HIPAA*), Centers for Disease Control and Prevention, https://www.cdc.gov/phlp/publications/topic/hipaa.html, (last visited March 27, 2021.)

[5] *Gramm Leach Bliley Act*, Federal Trade Commission, https://www.ftc.gov/tips-advice/business-center/privacy-and-security/gramm-leach-bliley-act, (last visited March 28, 2021.)

attack.[6] In 2018, the Cybersecurity and Infrastructure Security Agency was created to defend the nation against cyber-attacks.[7] While the United States has a good foundation within its borders, the issues within international cybersecurity need to be addressed. While the United States can regulate cybersecurity within the country, regulating it collaboratively with other countries has been challenging due to different viewpoints. The states also have different interpretations of various legal questions that arise. Each country has different cyber capabilities and viewpoints which makes it difficult for everyone to come to an agreement.

International Humanitarian Law

The United Nations established a group called the Open-Ended Working Group (OEWG) at the end of 2018 that discusses developments in Information Communications Technology (ICT).[8] In 2019, state representatives met to discuss different issues that would be addressed in later meetings. During this meeting, the applicability of International Humanitarian Law (IHL), a gap within cybersecurity, was discussed. International Humanitarian Law is defined as "a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict."[9] International Humanitarian Law protects innocent civilians whenever a war occurs. With the spread of technology, however, a new type of war has emerged - cyberwar. Cyberwar is "war conducted in and from computers and the networks connecting them, waged by states or their

[6] *The Homeland Security Act of 2002*, Homeland Security, https://www.dhs.gov/homeland-security-act-2002, ((last visited March 28, 2021.)
[7] *Cybersecurity and Infrastructure Security Agency*, CISA, https://www.cisa.gov/, (last visited March 28, 2021.)
[8]. *Open-ended Working Group on ICT*. Reachingcriticalwill.org. 2021, https://www.reachingcriticalwill.org/disarmament-fora/ict/oewg, (last visited March 28, 2021.)
[9] *What is International Humanitarian Law?*, Icrc.org. 2021, https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf, (last visited March 28, 2021.)

proxies against other states."[10] With cyber wars becoming a new threat, the states must identify how IHL can address some of its issues.

Cyberwar is unique from a typical war since it can occur anywhere in the world and can even be difficult to trace. Due to this, it is imperative to establish how IHL looks at cyberwars. IHL identifies cyberwars as an armed attack because they can lead to physical damage, injury, or death.[11] They can also damage important infrastructures, such as hospitals and nuclear plants. An example where International Humanitarian Law would apply would be if a hospital's computer systems were hacked and a patient who was seeking treatment died because they were unable to receive treatment due to a loss of information.

International Humanitarian Law focuses on protecting civilian objects like infrastructure, but a gap appears when we begin to discuss whether the personal information of civilians is protected under International Humanitarian Law. There appears to be some agreement among the members' that an attack is when a cyber operation intends to inflict physical harm or damage. The problem is that not all cyber-attacks will physically harm civilians. If the personal data of a civilian is compromised, it can severely impact their lives. Civilian data includes confidential information, such as tax records, medical data, social security information, and more. The states should consider filling this gap by looking at personal data as a civilian object to further protect civilians under International Humanitarian Law.[12]

[10] *Cyberwar*, Encyclopedia Britannica 2021, https://www.britannica.com/topic/cyberwar, (last visited March 28, 2021.)
[11] Laurent Gisel and Tilman Rodenhauser, *Cyber Operations and International Humanitarian Law: Five Key Points*, Nov. 2019, Humanitarian Law and Policy, https://blogs.icrc.org/law-and-policy/2019/11/28/cyber-operations-ihl-five-key-points/, (last visited March 28, 2021.)
[12] Id.

Attribution

Public attribution plays an influential role in international cyberspace. Attribution is "the allocation of a cyber-attack to a certain attacker or group of attackers."[13] Public Attribution is beneficial to victim states because it can be a useful mechanism for deterring cyber-attacks. When an attack occurs, investigators are called in to collect evidence to determine who is behind the attack. Investigators look at the technical forensics first to figure out who was behind the attack. They look at things such as the software and coding language used to help them get a better idea of the nature of the attack. The investigators can also identify the strategy that the attacker used, which can allow them to determine what their motive was.[14]

A notable example would be the 2014 indictment of Chinese military hackers. The hackers hacked into the computers of individuals who were indifferent to United States industries, such as the nuclear and solar industry. They stole the information they received through hacking for their own economic advantage. On the day of the indictment, FBI director James B. Comey claimed that "for too long, the Chinese government has blatantly sought to use cyber espionage to obtain economic advantage for its state-owned industries."[15] This hacking allowed investigators to identify the strategy that the Chinese were using to gain unauthorized access to their information.[16] The benefit of this is that investigators can help prevent and even predict future attacks because they are privy to the strategies that the Chinese hackers used. By placing the blame on those Chinese military officials, it helped them deter the officials from hacking

[13] Professor K. Saalbach, *Attribution of Cyber Attacks*, Universitat Osnabruk, Feb. 2017, https://repositorium.ub.uni-osnabrueck.de/bitstream/urn:nbn:de:gbv:700-2017022015577/2/Attribution_of_Cyber_Attacks_Saalbach.pdf, (last visited March 28, 2021.)
[14] Id.
[15] *U.S. Charges Five Chinese Military Hackers for Cyber Espionage Against U.S. Corporations and a Labor Organization for Commercial Advantage*, Justice.gov, 2021, https://www.justice.gov/opa/pr/us-charges-five-chinese-military-hackers-cyber-espionage-against-us-corporations-and-labor, (last visited March 28, 2021.)
[16] Id.

them for economic advantage.

Despite the benefits of attribution, there are some holes present in this method for deterring cyberattacks. It can be difficult for investigators to analyze both the strategic and technical aspects of an attack. If an attack is overly complicated, then it becomes more difficult for investigators to determine who is behind it. Experienced hackers also know how to conceal their identity, making the job of investigators more intricate. The United States has made investments in attribution technology a priority. However, not every state has that capability.[17]

Incorrectly attributing a state for a cyber-attack can have an impactful consequence within international cyberspace. It can lead to hostility between the victim state and the attacking state. Incorrectly attributing a state creates an unnecessary mark on the reputation of the blamed state in cyberspace as well. Currently, there is not an international law that governs placing the blame on other countries for participating in malicious cyber activities. The states have been discussing what norms should be established and their applicability. During the Open-Ended Working Group (OEWG) meeting in 2019, attribution was discussed, but the countries had differing viewpoints.

For instance, China was concerned that public attribution would lead to "great economic instability" while the United States believed that it would not invite conflict and would instead remind states to comply with the ethical norms. [18]A solution to this gap would be the creation of an international law that requires the victim state to provide evidence to prove that the state they are attributing the illegal action to was indeed behind the attack. The states would have to come together and decide what the evidence threshold would need to be. This

[17] *Final Report*, National Security Commission on Artificial Intelligence, 2021, https://www.nscai.gov/wp-content/upl. ads/2021/03/Full-Report-Digital-1.pdf, (last visited March 28, 2021.)
[18] Achten, N., *New U.N. Debate on Cybersecurity in the Context of International Security*. 2021, Lawfare. https://www.lawfareblog.com/new-un-debate-cybersecurity-context-international-security, (last visited March 28, 2021.)

way, the hostility between the victim state and attacking state will be mitigated because there is an established norm that allows the victim state to publicly come forward with the claims backed by evidence.

Prosecution in the International Cyberspace

Another gap within international cybersecurity is the issue of how to prosecute individuals who are behind attacks. There is no established international law regarding how states should prosecute individuals which makes the process challenging to navigate. A solution would be to apply the protective principle of jurisdiction to international cyberspace. The protective principle states that a country has the "jurisdiction to prescribe a rule of law attaching legal consequences to conduct outside its territory that threatens its security as a state or the operation of its governmental functions, provided the conduct is generally recognized as a crime under the law of states that have reasonably developed legal systems."[19]

Cyber threats can impact the security of a country tremendously because attackers can hack into government systems and steal classified information which would be detrimental to the country and its civilians. By applying a legal framework, it would allow states to circumvent prosecution arguments and would allow states to effectively prosecute attackers. States who are prone to cyberattacks due to having limited cybersecurity measures would benefit from this because they would be able to punish attackers. This principle may also aid in the reduction of cyber-attacks. When holes are present within the legal framework, it makes it easy for hackers to carry out their plans. If hackers know that they will be prosecuted if they attack a state, they will be

[19] *United States v. Zehe*, 601 F. Supp. 196 (D. Mass. 1985*)*, Justia Law. 2021, https://law.justia.com/cases/federal/district-courts/FSupp/601/196/1734505/,(last visited March 28, 2021.)

less likely to go through with an attack.

Conclusion

Technology will continue to spread in the future and the states must work to keep up with the changes in cyberspace. There will always be a need to modify the regulations within international cyberspace for the states to maintain cybersecurity. While the proposed solutions provide a way to fill the current gaps within international cybersecurity, it is important for discussions surrounding international cybersecurity to continue. This is a challenging, yet critical, aspect of international law that impacts the states profusely. State cooperation and collaboration are imperative to maintain international cybersecurity and protect the states against cybercrimes. Through collaboration, the states will have the ability to establish effective laws and prevent future cyberattacks.

COMBINING SOCIAL & LEGAL CONSTRUCTS: CONSTITUTIONAL REFORMATIONS FOR THE FUTURE

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Abstract

This article attempts to identify foundational constructs that may give clues for motives supporting our doctrines and the selection of procedures in American democratic protocols. Constitutional insights and formative ideology lend readers, thinkers and legal scholars, tools for guiding political reconstruction of principles that may guide our rule of law choices. Time and events may alter the original intent of the framers of our Constitution and the structure of our Republic. Areas of law that may have been affected include environmental policy, international law, healthcare, corporate governance, and the separation of powers principle. Issues requiring analysis within the historical context include age discrimination, the supremacy clause, the U.S. response to the global healthcare crisis, the parameters of executive power, and the boundaries for regulating economic policy. Should there be federal standards related to local management for emergency situations? Should there be established core competencies in governance and policies related to community planning and rezoning. Should we reconsider the use of the Electoral College? What about the voting systems currently regulated locally? Other threats that have emerged include issues related to a planetary crisis, authoritarianism regimes, hate group political activism and socialist ideology.

Introduction

Law has been the currency of rulers, judges, legislators, presidents, and kings throughout time, and has been the source of “Elite” efforts to harness authority and entitlements. Law has become a system of unlimited power and value to some yet act as punishment for others. Lessons of fear provoke obedience. But what if Law were used to guide and teach, to educate through the stages of life? This illustrates the unity of a larger social convention by introducing terms that many may embrace as "Freedom of Speech." Today, the corruption of power runs deep in "Man” within the realm of public service, and within governmental institutions and agencies, which has colluded with prejudice. Lobbyists, pundits, media channels, corporations, and their financial intermediaries, influence education systems. Whereby faith-based entities seem to be driven by agendas that capitalize standards of entitlement and provide justifications for preferences that interpret U.S. Constitutional Law. The American founders perhaps intended a different form of "checks and balances” to promote the improvement of democracy. Free speech now argues for information, to influence reasoned insight, and derive from media and our civil platforms. Currently, we hear the support of facts or truths to make quality decisions, purchases, and votes on the health of our systems related to social, economic, or political discourse, however, perhaps the underlining concern relates to our arguably innate discriminatory instincts? It would seem there is a new classroom forming in the minds of global citizens, focused on national interests and virtuous laws to elevate the importance of constitutional principles as the conduit to a higher plane of existence.

Abuse of Power

Abusers of power have existed in social structures for every generation. There are correlations between the emergence of a hierarchical social system class structure and the abuse of power problems. Lower Class structures also face the dilemma through the application of theories of domination. Controlling other humans with authority by possession, titles, or assets, remains a lawful reality in American culture. The American system has used investment

bankers, corporate owners, Real Estate Investment Trust (REIT) brokers, and developers to help set policies and influence laws. In 2021, economists and federal loyalists also share the stage of great power in capitalist cultures through the working-class, business-class, and professional classes of tradesmen, each with some power to rule by influencing the ruling class. Under our system, a Supreme Court rules, then states and Congress follow the interpretation of the Supreme Court by enacting laws that comply with the rule using due process. Situations where those who vote on restrictions of "Free Speech" by an electorate who is being lobbied for beneficial rights for the industry they represent is cause for concern. Conceptually, power exists as "property" or something to be owned in the minds of those who employ its function. And "material wealth" is positioned as the benefit rendered for certain classes. Thus, what does that indicate about the status of our country, a working-class body of heroes, or immigrant citizens employed for votes? America is the property of the people, but sovereign elites in supreme wealth communities have assumed its ownership.

Analyzing the Implications of *Marbury v. Madison*

In *Marbury v Madison*[1] concerning Constitutional Primacy, Chief Justice John Marshall heard arguments to define the "Supremacy Clause." Federal statutes and treaties were competing for control by enactment of rules and/or regulations when conflict arose between them over state interference of Federal Authority. This case establishes that the supreme law in America is the U.S. Federal Government, when conflicts of interest arise between the states and the federal government and the court relied upon the U.S. Constitution, Article VI Clause 2, as the authority.[2]

[1] *Marbury v, Madison*, 5 U.S. 137 (1803), Justia US Supreme Court, https://supreme.justia.com/cases/federal/us/5/137/, (last visited March 12, 2021.)

[2] U.S. Constitution, Article VI, Clause 2, Constitution Annotated, https://constitution.congress.gov/browse/article-6/clause-2/, (last visited March 13, 2021.)

Originalists might disagree. Despite this ruling, there are still disputes as to the appropriate interpretation and application of Constitutional theory. This system employed by judges in the various states allows them to follow guidelines to honor established precedents if conflicts occur between states. The Constitution is the binding theory of law in America. Amending its precedent in some cases may be interpreted as overreach, and in some cases may even be interpreted as an abuse of power and not a separation of power issue. In the Marbury case, Section 13 of the "Judiciary Act" of 1789 conflicted with Article III Section 2 of the U.S. Constitution whereby Justice Marshall explained that the court's jurisdiction does not extend beyond the boundary of the Constitution, but that the court can determine whether an act is unconstitutional.[3] The Court thereby established the power to declare any law unconstitutional under the principle of "Judicial Review." So, the Supreme Court, using its supreme power by interpreting the Supremacy Clause gave unfettered power to the Supreme Court to be the final arbiter of what is and is not constitutional. With the Judiciary Act of 1801 with then-President Adams and the U.S. Congress created more courts and added more judges by appointment and by the outgoing or sitting President of the United States.[4]

Understanding Sovereignty and other Components of Democracy

Early in American Society, the U.S. Congress grappled with the concept of power, who had it, and what did it look like. Equality and Freedom were also debated. Some embraced a philosophy where independence and natural rights were to be governed by a state solution? But if state governments failed to perform the duties of protecting the rights of their citizens through their abuse of power, what then? Thus, the concepts of separation of power emerged and became a central and controlling portion of the development of our

[3] *Marbury v, Madison*, 5 U.S. 137 (1803), Justia US Supreme Court, https://supreme.justia.com/cases/federal/us/5/137/, (last visited March 12, 2021.)
[4] Melvin Urofsky, *Judiciary Act of 1801*, Encyclopedia Britannica, https://www.britannica.com/topic/Judiciary-Act-of-1801, (last visited March 13, 2021.)

Constitutional government.[5] The philosopher John Locke who influenced the Revolution of 1688 and the Declaration of Independence, thought the pre-civic state should be about equality and freedom, rather than war. He also opined that individuals were endowed with certain natural rights, but that for the better preservation and enjoyment of these rights every individual entered a compact with the rest of the group by which he surrendered the exercise of a part of his natural rights for the protection and preservation of his remaining rights by a government to be instituted by the State. But, since the members of the group still retained many of their natural rights, neither the State nor the government instituted by it had unlimited power over them, and if a government transcended its authority, the people regained the whole of their natural liberty, a part of which they had surrendered conditionally, and they (instead of the State) could institute a new government.[6]

Another theory emerged concerning the rights of corporations and whether they could claim the protection of their rights by the constitution. And this concept was perpetuated in court decisions including a precedent established in an opinion by Justice John Marshall.[7] He took the position that a corporation had rights but no duties because it could not sin, and until corporations and states could sin, he refused to admit that they could be real persons. Willis also deals with the corporate issue as he develops the concept of sovereignty under the Constitution and quotes several cases which debated the appropriate status of the corporation. The American system has relied upon the concept of three branches of government with specified powers,

[5] Willis, Hugh Evander, "*The Doctrine of Sovereignty Under the United States Constitution*" (1929). 15 Virginia Law Review 437 (1929), Articles by Maurer Faculty. Paper 1256., http://www.repository.law.indiana.edu/facpub/1256 (last visited March 15, 2021).

[6] John Locke, *Two Treatises on Civil Government*, Encyclopedia Britannica, https://www.britannica.com/biography/John-Locke/Two-Treatises-of-Government, (last accessed on 3/6/2021).

[7] Willis, Hugh Evander, *The Doctrine of Sovereignty Under the United States Constitution*, 15 Virginia Law Review 437 (1929), pp 445-446, Articles by Maurer Faculty. Paper 1256., http://www.repository.law.indiana.edu/facpub/1256 (last visited March 15, 2021.)

some of which allow them to act as a check and balance on the other two. However, in matters of determining the constitutionality of citizen rights, it is the Supreme Court that is looked to as the final authority.[8]

Leadership is born in communities of faith and family. This is because we are social creatures and understand the sociological principles to reach deeper and build our context for the connection. However, humans continue to struggle with 'survival instincts" with which they must deal, and which may constitute the primary driving force for the decisions they make. In other words, "Darwinism" may not be entirely applicable to human evolution simply because we reasoned our poor choices. Much like rights and entitlements to power in America, our survivalist instincts may lead us to a belief that we have indefinite security but results in pretense and actual insecurity due to the risk of loss in perspectives. Here we can see the result of conflict within our nature. For example, we rely completely upon the concept that by separating powers among the three branches of government we have made our democracy safe where no one gets absolute power. Another example is the heavy reliance upon the concept of capitalism. Because we place such high regard on social status and wealth, we rationalize inequality as a devaluation of our own virtue. Who among us still believes that as free-speaking citizens, though we are separated in fear of viral contact, we have sufficient standing to denounce the suppression of liberty and unlawful government conduct, and further, that economic policies and manipulation of markets have a direct correlation with "Votes?" Americans today may not easily find the solutions that promote technologies and workforce systems that transfer power back into the people's market. Laws that limit or completely diminish the rights of the people, are passed one little step at a time so that we do not notice it is happening. Those who have chosen to use this subtle strategy for diminishing the rights of 'we the people' have chosen to hold power and seek to hold power in ways that are anathema to the American concept of democracy. And they are going unchecked, because the change is subtle, they have wealth and power, and that makes them allegedly entitled and fit to be followed and it further defines the American class system.

[8] Id.

Finding Values & Virtues to Aid in Reforming our Democracy

American democracy can be about the concept of building better class structures in a lawful world community. America must represent building "Values & Virtues" in every step we take. That focus on values and ethics solves war, and poverty, and may influence the formation of a global contract for international laws. The world is watching and waiting anxiously for signs of true leadership from America and its allies, each hoping for a living example of conviction in the very principles of ethics that people have sought through their struggles with injustice and a lack of fairness in the economic, political, and civic systems. Why must we struggle so hard to achieve fairness and justice? Perhaps because justice and fairness are not easy things to achieve unless we work together to achieve them? Let us ease burdens and join hands in friendship across the country and the world, in trade, in business, and in societal causes that help other countries participate in the process. Let us help people thrive and build systems based upon solid foundational doctrines that enable peace, hope and education, and enough wealth to live on in future societies. That represents what is truly great about America and what is worthy of sharing. This motive gives purpose to diplomatic capitalism and confirms how to build market economies, and global market economies. This should also contain the values and foundational doctrines of freedom and speech for everybody. It is the presence of these values in the human spirit that makes such a system possible. It is that spirit of demanding the best humans must give that has made America a global example of the best of governmental and economic systems. We are a "Hospitality Nation" and have outstanding "Guest Services." America is a destination port of call and embodies the spirit for innovation in policies for world peace and economic opportunity. This is a land of communities, a land of beauty and complexity, diverse applications, and diverse people, culturally enriched and poised for unity.

We have a saying in America, 'If you can play ball, you're on the team.' And for the U.S. Congress, that metaphor has many connotations, most importantly, it is the central idea that we create inspiration and once initiated, we can help others achieve their willingness and contributions to a shared vision of Democracy. We also have a hybrid system of social capitalism here

in America. We have liberals and conservatives and moderates who shape our understanding and perspectives of the rule of law. Contributions of reciprocal actions in markets with goods and services, lend us perceptions that we are building social relationships in domestic and global markets for business and law. And labeling and mislabeling the various theories may sometimes inform, but more often confuse the listener. Many today perceive a new world view of evolving values and understanding and these changes are influenced by entrepreneurship, philosophy, science, technology, and hospitality experiences. Though, whether our elites are experiencing the same enlightening moments of accepting all peoples equally and recognizing the potential each has for contributing to our evolving culture is doubtful. These romantic philosophies chime well together in our liberty culture, ringing praise of legal capitalism and what it teaches all of us about the empowerment of the impoverished and may effectively lead some to choose their course of action through those ideals. The question is, does the public have these choices, or are the choices selectively limited or controlled, perhaps even forced onto populations under state supervision. In some cases, the government may even be repressing the actions or movements of the electorate. Political theory and the development of persuasive tools have had 245 years to hone their strategies, and during that time, prosperity and liberty have become state assets to politicize and use as leverage to control the markets.

The common interests of a working market consumer and billions of people with rising middle-class values are striving for autonomy, steady growth, and evolution in standards of living. Americans, like any other State, have people who are thinking and feeling the need to protect themselves because those that would do harm, violence, or breach the rule of law do exist. This seems to be appropriate awareness given our current reality. People need and want the reassurance of due process and economic growth? The crisis seems to come regularly now. Is it possible for citizens to consider options in a 2022 voting booth? This appears to be the only place to escape political tyranny and legal oppression. Voting being a Constitutional right until it disappears. Would it make a difference if more of us started attending to our civic duties? Could we get a hold on legal democracy? What would that look like for the world? What do 330 million+ people look like standing together in sovereignty and

solidarity for drafting a New United States Constitution Restoration? We are at a turning point in American politics, American leadership, and American business law as we look at this issue.

One of the examples where there is a global effort to collaborate is with the Health Summits in Global Health Governance where there is an effort to create global health networks and global health policies to regulate and address health issues of the day.[9] There is also an effort to create platforms where all participants may share information and insights. This type of collaboration has the potential of elevating all participating countries to a higher level of understanding of health issues and of arriving at solutions to the identified problems in a timelier manner. And this effort, along with others like the intellectual property treatises and conventions, shows that collaboration is possible and finding mutual benefits is also possible.[10]

Identifying our Values

Take out a 100-dollar bill. Look at it, with Ben smiling? Is that real? He was real and perhaps, one of the great minds in history? But does his "likeness" or the likeness of any of our founders still contain the values represented by modern American society? Market economies and equal opportunities represent the values of our founders and have formed the foundation for the successes America has experienced. Do we need to remind the Supreme Court and courts all over our lands about the effect of the consumption of power? Separation of power is foundational to the ideology and philosophy of our legal doctrine and democracy solutions. The Republic depends on that function and requires justice for all. Courts must rule wisely from the bench

[9] Zhang Yanan & Ma Mengdi & Xie Qian & Chen Xuyu & Tan Xiaodong, *Health Summits in Global Health Governance*, Biomedical Journal of Scientific & Technical Research, Biomedical Research Network+, LLC, vol. 12(1), pages 8994-8995, 2018, https://biomedres.us/fulltexts/BJSTR.MS.ID.002202.php, (last visited March 21, 2021.)

[10] *WIPO Administered Treatises*, World Intellectual Property Organization, https://www.wipo.int/treaties/en/, (last visited March 21, 2021.)

and in chambers, engage seriously and carefully in researching, teaching, and mentoring colleagues about the sanctity of law, the absolute requirement that truth must always prevail. And never yield to self-interest solutions.

Let laws lend you guidance for responsible actions that provide the lessons and examples of virtue and values we seek as we strive to create systems of peace and future prosperity in trade and diplomacy. Law is a form of diplomacy and represents the finest attributes of fairness and consideration. We have much work to do in the larger legal community, to help dismantle the bureaucracy and correct flawed portions of the system by renewing our commitment and effort to grasp the wisdom of the law and apply it to our rules and regulations.

Our current reality requires we secure an understanding of intellectual property, property rights, constitutions, statutes, and regulations for tax law and business laws and financial equity laws as passed by Congress. And our courts play a major role in establishing these foundational rules and values. Becoming aware of laws that help run and secure economies and business activities lends us an insight into what it means to seek liberty. If people are weak or disabled, we have an easier time choosing to help them, because we consider ourselves a fair and just society. Another example of a court decision that seems to be adversely affecting our system of justice comes from labeling seniors or “experienced” work-force classes in terms related to “ageism.”

This injustice has been amplified by decisions of the Supreme Court which has yielded to corporate influence, driven by factors concerning economics and externalities.[11] Though "but-for" causation works beautifully with the resolution of tort claims, it is not working in concepts of civil rights There are no grounds on which to justify the imbalance or egregious miscalculation of case law in this vital area for 150 million or more American citizens dismissed

[11] Examples include: *Diaz v. Jiten Hotel Mgmt., Inc*., 671 F.3d 78 (1st Cir. 2012) , affirming the ongoing validity of the mixed-motive framework in all state discrimination claims; *Gorzynski v. JetBlue Airways Corp*., 596 F.3d 93, 106 (2d Cir. 2010), deciding that plaintiff met her burden of showing a triable issue as to whether her age was a "but for" cause of her termination; *Velez v. Thermo King de Puerto Rico, Inc*., 585 F.3d 441 (1st Cir. 2009) , vacating district court's grant of summary judgment in favor of defendant employer; *Leibowitz v. Cornell Univ.*, 584 F.3d 487 (2d Cir. 2009) overturning district court's grant of summary judgment in favor of defendant employer; *Evans v. Sears Logistics Servs., Inc*., No. 1:09-cv-2055, 2011 WL 6130885 (E.D. Cal. Dec. 8, 2011) denying defendant's motion for summary judgment on age discrimination claim; *Ray v. Forest River, Inc*., No. 2:07 CV 246, 2010 WL 3167426 (N.D. Ind. Aug. 10, 2010) denying defendant's motion for summary judgment on age discrimination claim; *Duckworth v. Mid-State Mach. Products*, 736 F. Supp. 2d 278 (D. Me. 2010), Duckworth has generated genuine issues of material fact that prevent summary judgment in favor of the employer; *Harth v. Daler-Rowney USA Ltd*., No. 09–5332 (MLC), 2012 WL 893095, at *3 (D. N.J. Mar. 15, 2012) deciding that Gross did not preclude a mixed motive analysis under New Jersey statute prohibiting discrimination on the basis of age, sex, race, and other traits; *Ferruggia v. Sharp Electronics Corp*., No. 05–5992, 2009 WL 2634925 (D. N.J. Aug. 25, 2009), affirming district court's denial of summary judgment; *Wagner v. Bd. of Trustees for Conn. State Univ*., 2012 WL 669544, at *11 (Conn. Super. Ct. Jan. 30, 2012), deciding that Gross did not preclude mixed-motive analysis under Connecticut state statute prohibiting discrimination on age, and other traits including sex, race, and national origin. See also Kevin Vance, *Senators Introduce Bill to Overturn Gross v. FBL ADEA Decision*, Mondaq, https://www.mondaq.com/unitedstates/discrimination-disability-sexual-harassment/169418/senators-introduce-bill-to-overturn-gross-v-fbl-adea-decision, (last visited Mar. 19, 2021), noting that the Gross decision "has not made it easier for defendants to get age discrimination cases dismissed via summary judgment or any other avenue before trial."

into obscurity because of Gross Domestic Product (GDP) and per capita considerations.[12]

Senior citizens generally have vast experience serving communities and still want to live in a country that says it protects all citizens from discrimination in employment, as well as any other law that would preclude those with the power to treat some differently. Disparate treatment is almost always intermingled with national economics, which means it often occurs in situations involving companies. Many times, companies are actively involved in trying to influence the passage of laws benefitting their need or to influence courts in their interpretation of laws so that the company's needs are the priority. The theory that companies provide income for a large segment of society is often one of the compelling theories used to get courts to support their side of an argument.[13] In 2014, the U.S. Supreme Court decided on a case with major implications for current and future reproductive rights laws. In a close 5-4 decision, the Court decided in *Burwell v. Hobby Lobby Stores, Inc*. that closely held corporations can refuse to provide birth control coverage to their employees if doing so would violate the corporation's "sincerely held religious beliefs.[14] Hobby Lobby had argued that their Christian faith precluded them from providing birth control as part of a larger health care benefits package.

Congressmen and courts must remember that regular workers, disabled or unemployable aging ones, also need consideration. They are not necessarily asking for entitlements. They want the right to work, and they want their rights protected and honored through our legal process. Recognizing and protecting these rights for all and interpreting the law in a just manner will create a very

[12] Zisk, Nancy L., *What Is Old Is New Again: Understanding Gross v. FBL Financial Services, Inc., And the Case Law That Has Saved Age Discrimination*, 58 Loy. L. Rev. 795 (2013), http://law.loyno.edu/sites/law.loyno.edu/files/Zisk-FINAL.pdf, (last visited on March 19, 2021.)
[13] *The Hobby Lobby Case: Contraception and Religious Freedom*, Findlaw, Thomson Reuters, (2018), https://www.findlaw.com/family/reproductive-rights/the-hobby-lobby-case-contraception-and-religious-freedom.html", (last visited 3/18/2021.)
[14] Id.

different reality within our system than we currently have. This would compel companies to abide by civil rights. Do we need an education platform on this area of law for new and older judges? What kind of oversight is there for judicial review? Let us not allow political ideology to sway our analysis of justice and fairness within the context of civil rights. We also need a better understanding of the duties of our policymakers in the legislative process, of the theories related to the laws they are attempting to enact, of the effect those laws will have on those who benefit and those who will be adversely affected. We need systemic thinkers in the White House, in our House of Representatives, and our courts of law.

International law requires the same discipline and systemic thinkers because cultures need treaties, pacts and accords, agreements, and contracts. Deals for a future of economic stability and societal improvements around the globe require well-informed and disciplined thinkers. Viruses may be heading our way because of a lack of attention to environmental concerns, poverty, and health concepts. Or perhaps because of water, food sources, animal management, fossil fuels, or pollution issues. This COVID-19 pandemic has brought attention to the fact that our global interests are now communal and collective.

Analyzing the Root Narrative Theory

Recently, insight about a concept called "Root Narrative Theory"[15] was made available. The theory invites us into a multi-disciplined approach with a unique lens and scholarly insight from works in sociology, psychology, and political science to unravel complex details of motives for how people react or anticipate responses based on preconceptions about philosophical and ideological beliefs, including legal theory. This research lends insights into how we recognize triggers or tell signs in conversations from both a self-identity perspective and to understand the person with whom we speak. The

[15] Simmons, Solon J., *Root Narrative Theory and Conflict Resolution*: *Power, Justice and Values*, Publisher: Abingdon, Oxon, 2020, https://lccn.loc.gov/2019045061 (last visited 4/3/2020.)

structure of our narratives has to do with layered perceptions of power, social and political influence, values, and ethical issues. Rival views present a choice of confrontation or diplomacy. In this study, we see an academic argument for conflict resolution based upon the emotional content within all humans.[16] A continuing problem remains of subjective analytics depending on historic views and academic perspectives. We are all influenced by our educational experiences and by the artful instruction and eloquence of mentors who seek to assist us in understanding our context. Simmons' book is a definition of philosophical content at its very core and helps define the rational perspectives sought in diplomacy.[17] The author constructs patterns and influences that shape our cognitive mapping as we seek resolutions to the conflicts that surround us. Power players at a political level or any power level may be converting their acts into symbolic representations for certain ideologies. Those who oppose the ideological constructs created by the power players are often interpreted as simply opposing the established leader.

It would appear that Power has the most compelling effect on our understanding and ability to evaluate the value of a theory or system. If that is true, then is humanity doomed to never be free? Must we develop the ability to accurately evaluate and interpret actions and theories based upon fact? Can we ever escape the influence of "power"? Can we have a mutually beneficial conversation within our relationships, even when there are opposing viewpoints?[18] As Simmons seeks to define the interrelationships of power and storytelling, of how to recognize the roots of moral authority, and describes the appropriate uses and abuses of power, he concludes that justice depends upon how we use these power tools.[19] Simmons opines that the moral fiber of value in our societal order is the result of commitments made in the family, in business, or continued learning. No two people and their moral structures are exactly alike, because people contrast at different intervals and interlay the foundations of our identities. It is this presence of a system of moral authority

[16] Id.
[17] Id.
[18] Id.
[19] Id.

that can bring forth honesty about deceptions and truth when people share their concerns and insights.

The lessons here may help lawmakers reason beyond the general practice of voter compensation, thereby creating a better sense of communication with cultural identity. There may be corresponding effects of new narratives rooted in principle-based constitutions. Members of the media may express their objections and deliver new messaging as a mutually beneficial conversation and interaction between citizens. Americans must ask themselves the hard questions about racial equality and discriminatory behaviors. And if Americans can successfully negotiate the difficult questions of racial equality and discriminatory behaviors, they may even begin to see solutions for environmental issues.

The social order and context of tribal life form an institutional framework and the formation seem to be unduly affected by a lack of reasoning and thoroughness. Philosophies and identities are like dance partners, some nervous, others bold, and some blend in very well together. But today, we pick our partners by conditions, not empathy and willingness to grasp how we can share the space. Our media industry spins the wheel, speaks of honesty and freedom for storytelling. Each speaker, editor, and writer have a message and takes a position to meet an agenda. Fear of lost time and money increases the pressure to accomplish the agenda, so we spin our stories ever faster to meet the identified need of self-preservation.

Should ‘Consumption’ and ‘King of the Jungle’ theories be our foundational theories? If ‘man’ has chosen to be ‘civilized’ in our laws, and rules, and regulation in patterns of natural law, then our performance does not live up to the expectations of our framers of constitutional ideology. We are still implementing a system using ancient perspectives, and to some extent, that may be one of the reasons why our barbaric natures continue to influence our choices of law and civility. Perhaps if we focused more on the goal of being a socially adept and technologically advanced society, of operating as a cohesive unit that both compliments its natural surroundings and relates well across a culturally diverse set of species, we would see greater progress.

These actions would generate the globalization of renewable, sustainable, and economically feasible community designs. We compete for that which we can achieve or acquire, sometimes with great hostility that can have a very negative impact on our global community. Perhaps a fresh perspective where we operate as partners on the same team, even on a virtually global scale, would enable us to implement innovations, and engineer our way into the 21st century more effectively. Being restricted today by media, monetary policy, and Federal expansion in all its forms, is a corruption of principles leading to a valuation of political ethics as a risk factor.

A Historical Perspective

A historical review of foundational legal system theories concerning national sovereignty can be instructive. We might begin with Jean Bodin's theories during the Renaissance period. Bodin was a Frenchman and philosopher, who is described as holding "a theory of absolute and undivided sovereignty."[20] Bodin had the reputation of caring more for civil peace than doctrinal truth.[21] Hobbes soon followed with concepts of the social contract and private rights. His theory advocated for a "monopoly of power within a given territory and overall institutions of civilian or ecclesiastical authority. On the other hand, Hobbes insists on the fundamental equality of human beings."[22] Hobbes was followed by Locke and Rousseau who embraced absolutism, the course for

[20] Edward Andrew, *Jean Bodin on Sovereignty*, Republic of Letters, Vol. 2, Issue 2, Stanford University, https://arcade.stanford.edu/rofl/jean-bodin-sovereignty, (last visited March 19, 2021.)
[21] Id.
[22] PLSC 114: Introduction to Political Philosophy, Lecture 12 – The Sovereign State: Hobbes, Leviathan, Open Yale Courses, https://oyc.yale.edu/political-science/plsc-114/lecture-12, (last visited March 19, 2021.)

freedom and equality in the sovereign and led the way to understand the concept of inalienable rights.[23]

But the question about the duality of meaning concerning state or individual rights may have given rise to the real birth of administrative, executive, and judicial power. Simultaneously, sovereign states began the process of defining trade and natural law as a balance for moral responsibility in both the sovereign systems and situations where individuals were looking to do business within the state. The issue of balance continues to plague us. And the question before us here in America, is how do we define our message of clear constitutional sovereignty with moral virtue, a temperament of faith, and equality in shared principles? Economics seems to have taken a front-row seat with sustainability following behind. Issues related to trade and monetary policies continue to be a driving force in our deliberations and quest for a working democracy. To understand the relationship between these systems of economics and power we need voter education to enable responsible citizen decisions and understanding. But the question remains, do the strong elites or powerful players of the world have prominence and "legal sovereignty".

Any system of governance that is solely based on status or title or wealth, without regard for principles and ethics will not build a stable environment. Conflict comes whenever some seek power within a system. According to OECD (Organization for Economic Co-Operation and Development), “Serving the public interest is the fundamental mission of governments and public institutions. Citizens expect individual public officials to perform their duties with integrity, in a fair and unbiased way. Governments are increasingly expected to ensure that public officials do not allow their private interests and affiliations to compromise official decision-making and public management. In an increasingly demanding society, inadequately managed conflicts of

[23] *Bill of Rights in Action*, BRIA 202C Hobbes, Locke, Montesquieu, and Rousseau on Government, Constitutional Rights Foundation, https://www.crf-usa.org/bill-of-rights-in-action/bria-20-2-c-hobbes-locke-montesquieu-and-rousseau-on-government.html, (last visited March 21, 2021.)

interest on the part of public officials have the potential to weaken citizens' trust in public institutions."[24]

The framers of our Constitution understood the ramifications of limitless sovereign power and took steps to limit that type of acquisition of power.[25] Many have opined that power consumes but remains unfulfilled and unfaithful because power in and of itself is insatiable. As observed by Lord Acton, "Power corrupts and absolute power corrupts absolutely."[26] He goes on to say in a letter to Bishop Creighton in 1887 that the same standards should be applied to all men, political and religious leaders.[27] Therefore, assigning special rights to some will harm the system. Perhaps we should work more diligently to share mutually beneficial ideas with the world populations in an ever-expanding, culturally diverse ecosystem of economists, technologists, and principled leaders addressing the solutions for global stability. Curious as we are as a species, perhaps the impulse of discovery and the exploration of those innovations can be a starting point for our national and international relationship models.

Bernard Bailyn, Harvard scholar and Fellow of the American Academy of Arts and Sciences, twice a Pulitzer Prize-winning author, and a National Humanities Medal winner, epitomizes the modern logic of how rational

[24] *Managing Conflict Of Interest In The Public Sector*, Organization for Economic Co-Operation and Development (OECD), 2005, https://www.oecd.org/gov/ethics/49107986.pdf, (last visited March 20, 2021.)
[25] *Constitution USA with Peter Sagal*, PBS, https://www.pbs.org/tpt/constitution-usa-peter-sagal/we-the-people/separation-of-powers/, (last visited March 20, 2021.)
[26] *Lord Acton writes to Bishop Creighton*, Liberty Fund, Inc. Online Library of Liberty, https://oll.libertyfund.org/quote/lord-acton-writes-to-bishop-creighton-that-the-same-moral-standards-should-be-applied-to-all-men-political-and-religious-leaders-included-especially-since-power-tends-to-corrupt-and-absolute-power-corrupts-absolutely-1887, 2021, (last visited March 20, 2021).
[27] Id.

liberalism in a republic ideology can manifest into a better working model to provide the function and balance needed for a democracy.[28] He advocated for a sovereign principle of virtue for civic duty, liberty, economy, property, and rights that exemplify a basis for the declaration of independence, governance, and the honor of public service.[29] Bailyn identifies the foundations of patriotic ideals and a sense of nationalism for modern-day democracies. That theory suggests a dialogue to present values across cultural boundaries. Perhaps it is time to begin those conversations. America must take a fresh approach and a bold step toward a focus on character, with recognition for contributions and a capacity to communicate and understand those with whom we are working. We need to embrace those shared ethical and moral values as we seek to move toward a more perfect future.

The Future Role for Business in America's Democracy

Politics is law in motion. The upcoming elections will be an opportunity for reformations or attempts to maintain the status quo. Businesses have been planning a substantial role in politics and governmental regulation. There are indications that companies around the world are now beginning to realize that customers are important to their business models, and they need to see efforts to increase their care and support. The question is whether consumers will demand that companies support their values or whether their only focus will be the quality of the goods and services. Companies may be evaluated based upon their expressed vision of the community they serve, and how these companies and the respective representatives plan to integrate their value system with their consumers, the voters, and the empowered citizen striving to understand "liberty" in our legal system. Whether companies can understand

[28] Bernard Bailyn, *The Ideological Origins of the American Revolution*, Belknap Press, 1967, http://tcpbckup1.yolasite.com/resources/The%20Ideological%20Origins%20of%20the%20American%20Revolution%20By%20Bernard%20Bailyn.pdf, (last visited March 20, 2021.)
[29] Id.

and embrace this consumer demand could be a game-changer. Major corporations may be faced with a need to break up their large presence into smaller business models, each providing a category of service for the community. The infrastructure we need in this country is sustainable development, with innovation and resources being the focal point in training, production, and service models.

Another way large corporate models can be newly imagined is through a concept referred to as regeneration, which is described in an article entitled, *Regenerative Economics 101*.[30] A diffusion of monopoly is analogous with the displacement of power in our governmental system. We use the principle now to divert tax dollars into a national liquidity accounting infrastructure. The excess reserves in cash are cycled back to the treasury through a bond platform, accompanied by a standardized interest rate with a 2-year term limit which is tied into voting cycles. Congressional members are greatly encouraged at that point, as are Administrations and the Judiciary to help define the benefit of our fiscal economic system which classifies our tax dollars as both public and private and allows the government to contribute funding to the financial markets from millions of small business capital owners who contribute to the United States GDP. All U.S. Funds are driven into the economic cash cycling model, thereby challenging public servants in the Federal Reserve, the (Federal Deposit Insurance Corporation) FDIC, the U.S. Government, and State Officials, to use a bank network in every state, to design the future of social security, healthcare, and education while beginning the platform for the theoretical Urban Design Models in planned communities. We could be linking our new infrastructures with small and mid-sized businesses and transportation technologies throughout the country. But we must make these new regenerative decisions consistent with our rule of law, which is also reflected in court judgments and moves our society forward towards equality and cohesion, tempered with fair justice.

[30] *Regenerative Economics 101*, Natural Capitalism Solutions, https://natcapsolutions.org/regenerative-economics-101/, (last visited March 20, 2021.)

Conclusion

We look to history and see failures reformed but repeated when dealing with the issue of controlling power. To avoid those same historical failures in limiting the negative influence of quests for power, we must identify those values which are to control our choices. Our democracy, although imperfect, reflects values found in the formation of our Constitutional government, values like separation of powers, and active participation by 'we the people.' The salvation of imperfect beings, living irrationally and erratically and irresponsibly and of course, unsustainably while attempting to correct our grasp of the concept of a workable democracy may be our most audacious and important moments of thinking. Underlying those historical efforts to create a 'more perfect union' were theories of equality and creating level playing fields so that all might contribute to innovations for growth and discovery. This 21st century may see people of inclusion and cultural intelligence become inspired to share their power and their discoveries for learning and innovation; when this happens, we will have created "true wealth" in the minds of nation builders.

Evolving towns and cities in countries and continents may form partnerships and multicultural business models that will become a future in which all may thrive. Our lives are at stake, this is about the salvation of the planet and building better systems in which we can operate and negotiate together, perhaps as a better root narrative. Will we be solution builders or are we just going to be part of the status quo? The financial climate needs to cross the philosophical bridge reconnecting us to an ecological mission, where we build small business models, owners, and contracts. We must embrace our future by being willing to embrace change. Bad Actors involved in decision-making at executive levels must be identified and no longer chosen by the people. For example, why did the European Union (EU) fail to bond their "States" together, even today with their currencies and with common purposes? The European States are fragmented in cultural identity and the exercise of political power and leadership direction. So, they choose instead to practice a collective austerity policy with trade and reform issues. Their decisions adversely affect their financial stability and economic growth. Yet, despite the changes, money market instability still exists because of currency

manipulations and contrasting ideologies of economic theory, philosophical principles, legal leadership, and connections to a newly forming European Identity. Despite the multicultural reality of the European Union, they never really dealt with the reality of a diverse community, nor did they deal with the need for inclusiveness. Ironically, after Britain withdrew from the EU, many are recycling the concept of the EU as a sustainability model that might link our globalization efforts.[31]

Fascinating how money determines values beyond the scope of the law, its perception for buying power and depreciates the value of virtue and liberty in the pursuit of those freedoms in democratic societies? They are striving to protect the intangible cost of unity or comprehensive sovereignty in times of peril. Perhaps this recent pandemic and the global financial crisis will either fragment even more of the EU or give cause for reflection on methods for a reconnection. It is not uncommon in times of crisis for those affected to seek unity in principles of equality, but always standing nearby are those considerations of self-interests, financial benefits, and efforts to avoid responsibility. Within the confines of our own 'State', we are all charged with responsibilities and operational guidelines or rules related to social conventions. Many times, it is the values underlying these social conventions that interfere with the formation of a united system of rules and expectations.

Executive decisions drawn from a regulatory body of principled lawmakers, policy engineers, and skilled administrators, empowering constituents with the underlining concepts, give rise to shared virtues and values. Do our values match a modernizing population of societies related to the changes in trade, power, governance, and economics? Some foundational human desires such as a desire to live well in thriving economies and communities teaming with collective solutions for science and medical research may be a good place to begin the quest for collaborative efforts to create universal systems that benefit all. Because of the success this country has experienced in the past, it has a

[31] *Europe 2020, A European Strategy for Smart, Sustainable and Inclusive Growth*, European Commission, https://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf, (last visited March 21, 2021.)

responsibility to lead by example and help others see the beauty of a working democracy. We are a system of governance, of communities, of people each charged with many responsibilities. We are the country of business innovation, and financial management, and those credentials may allow us to work with our global partners to find diplomatic solutions to the systems that are not functioning well globally. There is hope and there is much opportunity, but we must recognize and embrace our gifts for leadership and recognize that integrity and truth are the cornerstones of our success. America must welcome the insights of our global partners and look forward to healthy relationships of fair trade, environmental systems, and community support, all in the pursuit of continued prosperity.

DOES A PARTY SYSTEM PRODUCE INGENUINE AND BAISED VOTES IN ELECTIONS?

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Abstract

Party systems have existed since 1789, with all credit to Alexander Hamilton, James Madison, and Thomas Jefferson. The existence of political parties was unsettling to George Washington prior to the creation of them, predicting division within our democracy. The Federalist and Anti-Federalist Parties were the first two parties to exist, which fostered inspiration for the creation of other parties and sub-parties that now exist within the American Party System. Since the creation of party systems, ingenious voting and harmful party loyalty have raised questions regarding whether our democracy and government are divided due to the creation of party systems. What was the purpose of creating different parties? Is there any value in demanding party loyalty? What is needed in order to promote non-biased, policy driven voting?

Introduction

Party systems have existed since 1789, with all credit to Alexander Hamilton, James Madison, and Thomas Jefferson. The existence of political parties was unsettling to George Washington prior to the creation of them, predicting division within our democracy. The Federalist and Anti-Federalist Parties were the first two parties to exist, which fostered inspiration for the creation of other parties and sub-parties that now exist within the American Party System. Since the creation of party systems, ingenious voting, and harmful party

loyalty have raised questions regarding whether our democracy and government are divided due to the creation of party systems. What was the purpose of creating different parties? Is there any value in demanding party loyalty? What is needed in order to promote non-biased, policy-driven voting?

The History of our Party System

The first president of the United States, George Washington, did not involve or associate himself with any political party. In fact, he rejected the idea of political parties, predicting division within democracy. The party system was not intended by the Founding Fathers, which was addressed in the Federalist Papers No. 9 and 10.[1] In Washington's Farewell Address, he made it clear that he was opposed to the political party system because he believed that such a system would create division and conflict.[2]

The Federalist Party and the Anti-Federalist Party were the first two political parties to exist within American politics.[3] Alexander Hamilton and James Madison are considered founders of these first two rival parties, which is ironic since they wrote the Federalist Papers which were against political parties. Partisanship within the government became a reality following the leadership of Hamilton, Madison, and Jefferson.

The ideals of the Federalist Party consist of a preference for centralized banking and government with a close relationship with Britain. Madison and Hamilton did not agree with this part of the Federalists Party platform.[4] So,

[1] Roy Franklin Nichols, *The invention of the American political parties*. 1967, Macmillan, ISBN 9780029229200, archived from the original on 6/17/2016, retrieved 10/31/2015.
[2] Rosino, M. L., & Hughey, M. W., *Who's invited to the (political) party: race and party politics in the USA, 2016,* Ethnic and Racial Studies, 39(3), 325-332, https://www.researchgate.net/publication/283534149_Who%27s_invited_to_the_political_party_Race_and_party_politics_in_the_USA, (last visited April 5, 2021.)
[3] Id.
[4] Id.

these men created the Democratic-Republican party to run a government that fit their ideals.

From the 1820s to the 1850s changes and additions to the American Political Party System were realized, including the separation of the Democratic-Republic Party and the creation of the Whig Party. The Whig Party was created by Henry Clay, who expressed values that did not align with the Separation of Powers and capitalistic protections.[5] At the time, the Whig Party was popular, but shortly thereafter it became obsolete due to inconsistent advocacy and leadership. The newly formed and separated Democratic Party views were not aligned with the separation of power balances within the branches of government, however, the Party continued to remain popular and relevant. From 1854 to the 1890s, the Republican Party was deemed the anti-slavery party, having ideals and policies of the vanished party, the Whig Party.[6] Around this time, the Democratic Party was opposed to almost everything the Republic Party valued.

The Compromise of 1877 ignited the Republican Party and Democratic Party to turn into broad-based voting coalitions, in which the Republican Party catered more to recently enslaved African Americans, while white southerners were more into the Democratic Party.[7]

In the 1930s, political progression and liberalism began to arise, which initiated the swap of ideology between the Republican Party and the

[5] Robert J. Dinkin, *Campaigning in America: A History of Election Practices*, 1989, Greenwood Press, archived 4/20/2010 at the Wayback Machine.
[6] Roy Franklin Nichols, *The invention of the American political parties*. 1967, Macmillan, ISBN 9780029229200, archived from the original on 6/17/2016, retrieved 10/31/2015.
[7] Rosino, M. L., & Hughey, M. W., *Who's invited to the (political) party: race and party politics in the USA, 2016*, Ethnic and Racial Studies, 39(3), 325-332, https://www.researchgate.net/publication/283534149_Who%27s_invited_to_the_political_party_Race_and_party_politics_in_the_USA, (last visited April 5, 2021.)

Democratic Party.[8] Democrats became more appealing to minorities, progressives, and some white southerners, while Republicans became more conservative, a well-known, right-winged subgroup resembling today's political divide.

Party Loyalty and Ingenious Voting

When it comes to political party systems within the U.S, some factors impede voters from making a real choice of how to vote. These factors including demographics and cultural values, party loyalty, and Primary elections. The idea and existence of a party system prompt division between the people and the government, which does not promote a unified society. Congress is a great example of how the government is divided. Congress is also an example of the harmful effects of "party loyalty," which seemingly prioritized what is good for the party more than actual considerations of policy and ways of governing.

Party loyalty can mean many things. It can involve "race" and "cultural" loyalty, resulting in an election based on bias, not an election based on the office holder's work record or policy preferences. This is where demographics and cultural voting come into play. Despite concerns about actual policy preferences and ways of governing, most people tend to vote for those with whom they share cultural and/or demographical similarities.

The voter turnout for the 2008 election between Obama/Biden and McCain/Palin is an example of immense and probable demographic and/or party loyalty.[9] Records indicate that 95% of African Americans voted for Obama/Biden, whereas 5% of African Americans voted for McCain/Palin.[10]

[8] Id.
[9] *How Groups Voted in 1992*, https://ropercenter.cornell.edu/how-groups-voted-2008, (last visited April 5, 2021.)
[10] Id.

On the other hand, 43% of white Americans voted for Obama/Biden, whereas 55% of white Americans voted for McCain/Palin.[11] Then, we see that 67% of Hispanics voted for Obama/Biden, whereas 31% of Hispanics voted for McCain/Palin.[12] Looking at party practices, 89% of Democrats who voted, cast their votes for Obama/Biden, whereas 9% of Democrats voted for McCain/Palin.[13] And on the Republican side, 90% of the Republicans who voted, cast their votes for McCain/Palin, whereas 9% of the Republicans voted for Obama/Palin.[14]

Another example is the voter turnout for the 2012 election between Obama/Biden and McCain/Palin.[15] Those records indicate 93% of African Americans voted for Obama/Biden, whereas 5% of African Americans voted for McCain/Palin.[16] While 39% of white Americans voted for Obama/Biden, and 59% of white Americans voted for McCain/Palin.[17] Then 71% of Hispanics voted for Obama/Biden, while 27% of Hispanics voted for McCain/Palin.[18] Finally, out of the Democrats who voted, 92% cast their votes for Obama/Biden, whereas 7% of Democrats who voted, voted for McCain/Palin.[19] Then, 93% of Republicans who voted, cast their votes for McCain/Palin, whereas 6% of Republicans voted for Obama/Palin.[20]

Voter turnout for the 1992 election between Clinton/Gore and Bush/Quayle showed a similar pattern. Clinton/Gore was very popular with minorities and people of color. Records indicate that 83% of African Americans voted for

[11] Id.
[12] Id.
[13] Id.
[14] Id.
[15] *How Groups Voted in 2012,* https://ropercenter.cornell.edu/how-groups-voted-2012, (last visited April 5, 2021.)
[16] Id.
[17] Id.
[18] Id.
[19] Id.
[20] Id.

Clinton/Gore, whereas 10% of African Americans voted for Bush/Quayle.[21] While 39% of white Americans voted for Clinton/Gore, and 41% of white Americans voted for Bush/Quayle.[22] Then 61% of Hispanics voted for Clinton/Gore, while 25% of Hispanics voted for Bush/Quayle.[23] Finally, 77% of Democrats who voted, cast their votes for Clinton/Gore, whereas 10% of Democrats voted for Bush/Quayle.[24] And for the Republicans, 73% of Republicans who voted, cast their votes for Bush/Quayle, whereas 10% of Republicans voted for Clinton/Gore.[25]

There exists a pattern of likely party loyalty and demographic voting instead of genuine votes for specific policies and ways of governing. Many individuals believe that without party systems in politics, American politics would become disordered and tumultuous. However, since America has almost always had a party system, proving whether or not that assumption is correct would be nearly impossible.

Primary elections

Primary elections do help narrow down the number of candidates for the general elections. A primary election itself is not the problem, but how primary elections operate may provide impediments to genuine, non-biased voting. Primary elections only allow individuals that are members of that particular party to vote, while others who are not associated with that particular party or not associated with a party, in general, must wait to vote in the general elections. Primary elections do not choose who will be a front-runner in the general elections, only in primary elections because the list changes after the primary elections. "Hardliners" are more likely to vote in the primaries, to begin with, and are also likely to vote loyally for their party.

[21] *How Groups Voted in 1992*, https://ropercenter.cornell.edu/how-groups-voted-1992, (last visited April 5, 2021.)
[22] Id.
[23] Id.
[24] Id.
[25] Id.

Primary elections focus on personality cults instead of party policies and ways of governing. A solution to this two-party madness would be non-partisan primaries, followed by non-partisan general elections to promote genuine voting instead of party loyalty and demographic voting. The Constitution does not require a two-party system, therefore a plurality voting system could be a legal replacement within the primary and general elections.

Conclusion

The creation of political party systems has evolved and changed throughout the centuries. Even with the evolution and creation of many political parties, the party system, in general, divides the country into two to four massive political groups. This divide provides space for individuals to vote with bias and party loyalty. As mentioned before, the Constitution does not express, nor does it exempt, the existence of political parties. The Constitution also does not express, nor exempt, primary elections or general elections to be non-partisan. Having non-partisan elections may be the solution to generate votes that are non-biased or based solely upon party loyalty.

UNITED NATIONS VS. HUMANITY

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"International law defines the legal responsibilities of States in their conduct with each other, and their treatment of individuals within State boundaries."

- United Nations

Abstract

The United Nations (UN), as an international body of law, serves to maintain peace and security. Despite the UN's beginning in 1945, there have been countless genocides and a lack of peace within this world up to the present day. Different countries' involvement within peace councils, the power to veto, and member state's personal agendas, have affected the implementation of international law. The current Uyghur Muslims, who are being stripped of their human rights by China, are proof of this unrest and failure to maintain peace and security by the UN. The failure indicated that the UN is unfit to uphold international law or even to demand accountability for a state's actions outside and within their borders. Thus, it is necessary to push for countries internationally to redefine the structure of the UN or perhaps to replace it with a new system of international law that does not tolerate the violation of human rights.

The United Nations

The United Nations (UN) was established upon the extreme conditions that existed with humanity as a result of the overstepping of ethics related to treatment of the human condition by the German regime during World War II. In 1945, upon the creation of the UN, its first responsibility as stated in the UN charter was:

> To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace…To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and to be a center for
>
> harmonizing the actions of nations in the attainment of these common ends.[1]

The UN is divided into multiple councils, one of them is the United Nations Human Rights Council (UNHRC), which strives to ensure that rights are not withheld from anyone. Another is the United Nations Security Council (UNSC), which strives to maintain peace and has the power to deploy peace operations. It comprises 193 countries, 15 of whom are seated in the UNSC. Within the Security Council, the USA, UK, Russia, France, and China are all permanent members. These countries were chosen to be permanent and have

[1] United Nations Charter, United Nations, Peace, dignity, and equality on a healthy planet, Charter Article 1, Paragraph 1, https://www.un.org/en/about-us/un-charter/full-text, (last visited April 5, 2021.)

the power to veto.[2] Although not explicitly stated, it is implied that the input of these five countries holds more weight than others in most matters of peace operations. The United Nations regular budget is also composed of member countries' contributions. In 2020, China invested 18 million dollars and the United States provided 33 million dollars, making them two of the highest investors in the budget.[3] Therefore, their input and opinion as a member state hold high value within the hearings. The UNHRC and UNSC both were created to uphold the law and maintain peace between or within states. These councils, being international environments that have the potential to cause ripples of change, have powerful nations as members such as China, Saudi Arabia, and Egypt. They all have a say in human rights and security issues when they are all one of the biggest human rights violators, which is a detriment to the possibility of equality and justice for the UNSC and the UNHRC.

The U.S Ambassador, Nikki Haley, defined UNHRC as the United Nations' "greatest failure".[4] The councils have a repeated history of highlighting issues based on private agendas from other countries. Gerald Steinberg, president of Jerusalem-based NGO Monitor, stated, "Human Rights Watch (HRW) issued a report on the HRC that does not condemn the fact that China, Saudi Arabia, and Russia are on the Council and repeatedly overlooks widespread and systematic abuses in those countries.

[2] United Nations Security Council, https://www.un.org/securitycouncil/,(last visited April 5, 2021.)
[3] United Nations Secretariat, 2019. *Assessment of Member States' advances to the Working Capital Fund for 2020 and contributions to the United Nations regular budget for 2020*. p.7, https://www.un.org/en/ga/contributions/Scale%20of%20assessments_1946-2021.pdf, (last visited April 5, 2021.)
[4] Besheer, M., Haley: *Human Rights Council Is UN's Greatest Failure*, Voice of America, 2021, https://www.voanews.com/usa/haley-human-rights-council-uns-greatest-failure, (last visited March 11, 2021.]

For an organization claiming to uphold universal human rights, such bias is particularly unacceptable."[5] The UN Charter, signed by all member States, is the most widely known instrument of international law. Thus, for member States to use this organization for purposes that benefit their personal needs, is itself a violation of international law.

Another major portion of the United Nations that causes limitations and restrictions to its purpose, is the power to veto. This power, given to the five permanent members of the security council, allows them to stop the continuation of resolutions, secretary-general selection, or in some cases to even solely promote a specific issue. Although this power can be very useful to limit one country's dominance, it has become one of the main reasons for a lack of action in crimes against humanity or war crimes. On August 31, 2020, the United Nations vetoed the resolution proposed by Indonesia which dealt with threats to international peace and security caused by terrorist attacks, because it did not address repatriation.[6] The United States was the only country to have an objection, while fourteen countries supported the resolution. This, although very useful, can be destructive towards the desires of the majority of States. Another resolution that called for sanctions against Yemen was vetoed by Russia on February 28, 2019, because Iran was a violator of the law.[7] This was supported by 11 countries, but the Russian

[5] *Human Rights Council Has Failed to Protect Human Rights*, NGO Monitor, 2021, https://www.ngo-monitor.org/press-releases/human_rights_council_has_failed_to_protect_human_righ ts/, [last visited March 11, 2021.]

[6] Lederer, E., *U.S. vetoes UN resolution over Islamic State fighters' return*. The Washington Post, 2021,https://www.washingtonpost.com/world/europe/diplomats-say-us-veto-likely-on-un-anti-terrorism-resolution/2020/08/31/0a11e308-ebb7-11ea-bd08-1b10132b458f_story.html, [last visited March 11, 2021].

[7] Edith Lederer, *Russia vetoes U.N. resolution citing Iran violations of sanctions violations*, AP, Feb. 26, 2018, https://apnews.com/article/607f9a05c2ed491cb99f76e3642705bf, [last visited April 5, 2021.]

Federation, which has a very comfortable relationship with Yemen and Iran, vetoed the resolution.[8]

There is continued abuse of power that precludes resolutions from passing, despite the majority of countries being in favor of it. This feeds into the continued lack of action during times of humanitarian crisis, such as genocides.

Genocides and Crimes Against Humanity

Article II in the Convention on the Prevention and Punishment of Crime of Genocide defines genocide as any of the following:

1. *Killing members of a group*
2. *Causing serious bodily or mental harm to members of the group*
3. *Deliberately inflicting on the group conditions of life calculated to bring physical destruction in whole or in part.*
4. *Imposing measures intended to prevent births within the group.*
5. *Forcibly transferring children of the group to another group.*[9]

These were designed to address the issues that occurred during the Holocaust and set precedent for who would be prosecuted as committing genocide. Crimes against Humanity is defined by the Rome Statute of the International Criminal Court in article 7 as:

[8] Ramani, S., *Can Russia play a role in ending the Yemeni civil war?* MEI@75, Aug. 12, 2019, https://www.mei.edu/publications/can-russia-play-role-ending-yemeni-civil-war, [last visited April 5, 2021.]

[9] *Convention on the Prevention and Punishment of the Crime of Genocide*. 260 A (III) United Nations, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf, (last visited April 5, 2021.)

1. *Murder*
2. *Extermination*
3. *Enslavement*
4. *Deportation or forcible transfer of population*
5. *Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law*
6. *Torture*
7. *Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity*
8. *Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.*
9. *Enforced disappearance of person*
10. *Crime of apartheid*
11. *Other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.*[10]

These definitions set the precedent for international courts to prosecute those who would violate basic human rights within or outside their countries. Despite these clear instructions given by international law, many genocides and crimes against humanity have continued to occur since the events of World War II. The double agenda of many countries within the UNHCR and

[10] *Rome Statute of the International Criminal Court*. Article 7, https://www.icc-cpi.int/resourcelibrary/official-journal/rome-statute.aspx, (last visited April 5, 2021.)

UNSC have caused major violations to be overlooked. For example, during the Cambodia genocide, Khmer Rouge was a key person in the creation of the UN resolution with the United Nations Transitional Authority in Cambodia and refused to be disarmed causing the mandate to be a failure.[11]

There have been many instances when the countries or diplomats involved in the UN value their political and economic stability more than protecting human rights. Alongside this, the veto power given to the five permanent members of the UNSC has also limited the UN from effectively providing aid and implementing resolutions. This was seen with the Iran hostage crisis when Russia vetoed the resolution that would save the United States citizens.[12] There have been many situations when politics have found a place in human rights issues that cause international laws to be manipulated. After ten peacekeepers died in the fight to prevent the Rwanda Genocide (1994), the UN troops were only directed to evacuate foreign individuals and not intervene to prevent the killings.[13]

[11] Widyono, B., *The Spectre of the Khmer Rouge over Cambodia*, 2021, United Nations, https://www.un.org/en/chronicle/article/spectre-khmer-rouge-over-cambodia, [last visited April 5, 2021].
[12] Kate Hewitt & Richard Nephew, *How the Iran Hostage Crisis Shaped the US Approach to Sanctions*, March 12, 2019, Brookings, https://www.brookings.edu/blog/order-from-chaos/2019/03/12/how-the-iran-hostage-crisis-shaped-the-us-approach-to-sanctions/, (last visited April 5, 2021.)
[13] The Conversation, *Lessons from the UN peacekeeping mission in Rwanda, 25 years after the genocide it failed to stop*, 2019, https://theconversation.com/lessons-from-the-un-peacekeeping-mission-in-rwanda-25-years-after-the-genocide-it-failed-to-stop122174#:~:text=In%20the%20power%20vacuum%20created, mass%20killings%20began % 2C%20the%20U.N. ntext=%E2%80%9CTroops%20were%20withdrawn%20when%20they, Ban%20Ki%2Dmoon%20in%202014, (last visited Mar 15, 2021.)

The Kashmir issue between Pakistan and India has occurred for years now.[14] There are rapes, kidnappings, and mass murders happening within the region while India forcibly controls the Kashmir region with military troops.[15] It is being overlooked simply because the UN does not wish to overstep their boundaries on the two countries, both of which happen to be nuclear powers. The United Nations has failed multiple times on other occasions as well, including the genocide in Cambodia, the Israel/Palestine issue, the civil war in Somalia, the Iraq invasion, the Syrian civil war, and the crisis in South Sudan.[16] This is a pattern of dysfunction that causes a serious wound in humanity and paves the way for crimes against humanity to occur.

Uyghur Muslims

There are about 12 million Uyghurs, a Turkish population who now reside in northwestern China, living in Xinjiang.[17] The group is also seen within Kazakhstan, Turkey, and many other countries.[18] There has been continued tension between the Uyghurs and the Han people, who happen to be a majority within China, since the first arrival of Uyghurs.[19] Since then, there has been a continuation of violence, riots, and conflict between the two about political independence, land occupancy, and ongoing discrimination. Xinjiang is a

[14] The Editorial Board, *The U.N. Can't Ignore Kashmir Anymore*, Oct. 2, 2019, The New York Times, https://www.nytimes.com/20 19/10/ 02/opinion/editorials/kashmir-india-pakistan-un.html?auth=login-google, (last visited Mar 15, 2021.)
[15] Id.
[16] *Twelve times the UN has failed the world*, 2018, TRTWORLD, https://www.trtworld.com/americas/twelve-times-the-un-has-failed-the-world-21666, (last visited Mar 15, 2021).
[17] Dou, E., *Who are the Uighurs, and what's happening to them in China?* Washington Post, 2021, https://www.washingtonpost.com/world/2021/02/11/china-uighurs-genocide-xinjiang/,(last visited April 5, 2021.)
[18] Id.
[19] Id.

region filled with a multitude of resources that ranges from oil, gas, and cotton, making it a hub for economic prosperity.[20] This economic benefit is also a reason why China wishes to contain the conflicts occurring within the city. The Uyghurs, the majority of whom are Muslims, have been persecuted since 2014 and began to be detained within education camps in the region of Xinjiang starting in 2017.[21] This massive re-education program seized approximately 1 million Uyghurs. Upon the commencement of the re-education programs, those who were seen practicing their religion, wearing hijabs, growing beards, having multiple children, or any other reason were targets and required to participate in the re-education programs.[22] They were also subjected to being tortured for practicing their religion, forcibly taught the Chinese language, and are now a part of labor trafficking that provides one of the world's largest supplies of cotton.[23] Xinjiang alone produces 80% of China's cotton, and is the country that happens to be second in the world as the largest cotton supplier of major clothing companies throughout the globe.[24] The Uyghurs are being forced not to practice Islam, deprived of food if they do not comply, along with beatings, or solitary confinement.[25] The Xinjiang government has also confirmed that there is a drastic decline in the birth rates

[20]Lehr, A. and Bechrakis, M., *Connecting the Dots in Xinjiang*, 2021, Center for Strategic and International Studies, https://csis-website-prod.s3.amazonaws.com/s3fspublic/publication/Leh rConnectingDotsX injiang_interior_v3_FULL_WEB.pdf, [last visited March 15, 2021.]

[21] Dou, E., *Who are the Uighurs, and what's happening to them in China*? Washington Post, 2021, https://www.washingtonpost.com/world/2021/02/11/china-uighurs-genocide-xinjiang/, (last visited March 13, 2021.)

[22] Id.

[23] Id.

[24] Lehr, A. and Bechrakis, M., *Connecting the Dots in Xinjiang*, 2021, Center for Strategic and International Studies, https://csis-website-prod.s3.amazonaws.com/s3fspublic/publication/Lehr_ConnectingDots Xinjiang_interior_v3_FULL_WEB.pdf, (last visited March 13, 2021.)

[25]Zainab Raza, *China's 'Political Re-Education' Camps Of Xinjiang's Uyghur Muslims*, 50 Asian Affairs 488-501, 2019, Semantic Scholar, https://www.semanticscholar.org/paper/CHINA%E2%80%99S-%E2%80%98POLITICAL-RE-EDUCATION%E2%80%99-CAMPS-OF-UYGHUR-

of Uyghurs within China, and there has also been the largest surge in sterilizations within Xinjiang specifically.[26] According to the policy report released by Newlines Institute for Strategy and Policy in March 2021, "China bears State responsibility for an ongoing genocide against the Uyghurs, in breach of the Genocide Convention". [27] This report also highlights the following items to be occurring:

- Intent of the Chinese government to Destroy Uyghur people
- Mass Internment and Government-Mandated Homestays
- Intentional Mass Birth-Prevention within Uyghurs
- Eradication of Uyghur Identity and Selective Targeting
- Killing or causing serious bodily harm to individuals who identify as Uyghur
- Forced Labor Practices
- Sexual Violence
- Psychological Torture
- Unauthorized Surveillance of citizens [28]

Upon the release of this report, there was a ripple of unrest amongst the international law community since it became the first report that did not make

Raza/a12918a6a06a23cd374eef853863a98e4e8bbc98, (last visited April 5, 2021.)
[26]Ivan Watson, Rebecca Wright & Ben Westcott, *Xinjiang government confirms huge birth rate drop but denies forced sterilization of women*, CNN, Sept. 21,2020, https://www.cnn.com/2020/09/21/asia/xinjiang-china-response-sterilization-intl-hnk/index.html (last visited April 5, 2021.)
[27] Newlines Institute for Strategy & Policy and Raoul Wallenberg Centre for Human Rights, 2021. *The Uyghur Genocide: An Examination of China's Breaches of the 1948 Genocide Convention*. [online] Available at: <https://newlinesinstitute.org/wp-content/uploads/Chinas-Breaches-of-the-GC3.pdf> [Accessed 2 April 2021].
[28] Id.

recommendations, better yet stated facts verified by lawyers and Chinese policies. This speaks volumes on the People's Republic of China which is a member of the Human Rights Council in the United Nations and serves only as a backstep in humanities progress upon the conclusion of the atrocities in World War II.

Gulbakhar Jailova, who spoke out about her sexual abuse, torture, and forced detention within these camps, stated that she was arrested without explanation for 15 months.[29] While the government denied her response, she asked for them to show proof of her well-fed and safe within that camp which had 24-hour video surveillance.[30] China did not respond. There is evidence of labor trafficking, sexual abuse, forced sterilization, the captivity of an enslaved ethnic group, and more, all of which have been revealed through leaks and individuals who have escaped. According to the definitions of crime against humanity and genocide by international law, what is occurring in China qualifies for the prosecution of this country under the United Nations.

Lack of Action

The People's Republic of China has continuously denied these allegations but have provided no adequate proof to back up their statements.[31] The response to these violations by China has surprisingly been divided since some supported China's actions. Despite that, China has an evident influence over countries, over the United Nations, and over international law, which may explain why some countries would stand with the State. Countries, specifically with a Muslim-majority, do not speak out for the sake of their own political and economic partnership with China. Instead, they support China and call

[29] Id.
[30] Id.
[31] Nick Cumming-Bruce, *'No Such Thing': China Denies U.N. Reports of Uighur Detention Camps*, New York Times, 2021, https://www.nytimes.com/2018/08/13/world/asia/china-xinjiang-un.html, (last visited April 5, 2021).

these accusations completely false.[32] Pakistan, a country that found its independence from India in the name of religious freedom, has also supported China in the hopes that their country's stability will not be adversely affected by this battle for humanity.[33]

China is also second to the United States in its contributions to the regular budget of the UN, making it have a large sway within the organizations and its ability to carry out legal operations.[34] Other countries though have taken the liberty to warn China and its violations of its citizens. During the 2019 General Assembly's Third Committee, the committee received two letters from the opposing sides, 39 countries against China while 45 countries supported China's actions.[35] The two sides were divided by western and eastern sides, with the majority of the western countries against China. Some have even placed legal limitations upon China to pressure the country to halt its violations. The Uyghur Human Rights Policy Act of 2020, passed by the United States, directed responsibility towards China and its actions in Xinjiang.[36]

[32]Alexandra Ma, *Why the Muslim world isn't saying anything about China's repression and 'cultural cleansing' of its downtrodden Muslim minority*, INSIDER, 2021, https://www.businessinsider.com/why-muslim-countries-arent-criticizing-china-uighur-repression-2018-8, (last visited Mar 13, 2021.)

[33] Michael Kugelman, *Imran Khan's Silence on Uighurs Undercuts His Defense of Muslims Worldwide*, Foreign Policy, 2021, https://foreignpolicy.com/2021/01/29/imran-khan-uighurs-muslims-china/#! (last visited Mar 13, 2021.)

[34] CGTN, *China and UN in graphics: A contributor to world peace*, 2021, https://news.cgtn.com/news/2020-09-18/China-and-UN-in-graphics-A-contributor-to-world-peace-TPwjeqR1cs/index.html#:~:text=As%20the%20world%20largest%20developing,contributor%20of%20all%20member%20states. (last visited Mar 13, 2021.)

[35] Catherine Putz, *2020 Edition: Which Countries Are For or Against China's Xinjiang Policies?* The Diplomat, 2021, https://thediplomat.com/2020/10/2020-edition-which-countries-are-for-or-against-chinas-xinjiang-policies/, (last visited Mar 13, 2021.)

[36] Uyghur Human Rights Policy Act of 2020, PUBLIC LAW 116–145, 2020, govinfo, https://www.govinfo.gov/app/details/PLAW-116publ145, (last visited April 5, 2021.)

Other countries, such as Canada, the United Kingdom, and France, have all spoken out against China and called for it to respect international laws that provide security for human rights.[37] Despite the response by many countries, the United Nations has not taken any adverse action towards China for violating clear rules and regulations provided by international law for protecting human rights.

Conclusion

Never Again was an international campaign that began with the idea that humanity and its preservation was the most important thing in our world. Despite this, like many other legal systems, international law is infested with politics and bias. These inconsequential politics and competitions between countries have continuously caused additional crimes against humanity to go without the respective actors being held responsible and accountable for their violations. With clear evidence, worldwide acknowledgment, and major sanctions placed by various countries, the Uyghurs within China remain helpless because the UN is not and was not ever equipped to handle genocides. The involvement of countries who themselves participate in crimes against humanity and use the power of the veto for their own agendas has moved this body of international law far from its original purpose. International law should prevent murders, not endorse them.

There should be a reexamination of the member-States involved within the UNSC and UNHRC, while also bringing up the proposal to eliminate the power to veto since both have caused resolutions to freeze. Many of these major countries provide a great budget to the UN and if this may be a reason for the organization to not take action, there should be a call for a new organization that does not benefit member States but only humanity. Council

[37] Louis Charbonneau, *39 Countries at UN Express 'Grave Concerns' About China's Abuses*, Human Rights Watch, 2021, https://www.hrw.org/news/2020/10/06/39-countries-un-express-grave-concerns-about-chinas-abuses#:~:text=%E2%80%9CWe%20call%20on%20China%20to,Palau%2C%20and%20the%20Marshall%20Islands, (last visited April 5, 2021).

membership should be bipartisan. The United Nations does not have the privilege to make mistakes, since its mistakes have charged this world thousands of lives and millions of dollars while their purpose is not served. Serious crimes are occurring by nations that violate international law but do not get justice because of the structure and procedures within the United Nations. In an evolving era with room for much growth, every individual on this earth has a moral obligation to hold each other accountable for others rights and freedom. Thus, for an injustice happening in today's time, there is no excuse for the deprivation of basic human rights for anyone.

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THE EFFECT OF CONFUCIANISM ON EAST ASIAN LEGAL SYSTEMS

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Abstract

Many will believe that the formal legal systems of all states around the world have a common jurisprudence in Western philosophy and are formed for the same purposes. But an exploration into the practices, regulations, and case law of certain East Asian nations will show a significant disparity between legal systems in the West and those in countries that have been influenced by Confucianism. Through a firm understanding of Confucian history, its principles, and the theories that have challenged it throughout history, we can examine the legal systems of East Asian states. For this analysis, we will look at the legal systems of China, Korea, and Japan in an attempt to see how differences in jurisprudence and cultural influences have affected their legal systems.

Introduction

Many will believe that the formal legal systems of all States around the world have a common jurisprudence in Western philosophy and are formed for the

same purposes. But an exploration into the practices, regulations, and case law of certain East Asian nations will show a significant disparity between legal systems in the West and those in countries that have been influenced by Confucianism. Through a firm understanding of Confucian history, its principles, and the theories that have challenged it throughout history, we can take an educated examination into the legal systems of East Asian states. For this analysis, we will look at the legal systems of China, Korea, and Japan in an attempt to see how differences in jurisprudence and cultural influences have affected their legal systems.

What is Confucianism?

Very few people today will have not heard of Confucius and his teachings, but even fewer have a requisite understanding of the disposition of its effect on the societies of numerous Asian countries. Confucius was a Chinese philosopher and official who lived in the 6th Century BCE and whose teachings became immensely popular.[1] While we do not know everything about his life, it is known that he held several positions and became extremely influential, but he never attained an official position of the type he sought before his death.[2] It is also worth noting that after Confucius' death, several other philosophers developed Confucianism further into what we see today.[3] Notable among these are Mencius and Xunzi.[4]

[1] Vu Hong Van, *Overview of Confucianism and the Basic Content of Confucianism,* 2 South Asian Research Journal of Humanities and Social Sciences 285, (2020), https://www.researchgate.net/publication/343065458_Overview_of_Confucianism_and_the_Basic_Content_of_Confucianism, (last visited April 7, 2021.)
[2] Id.
[3] Chongko Choi, *Ancient Foundations of East Asian Jurisprudence, 43* Seoul National University Law School Journal 141, (2002), https://s-space.snu.ac.kr/bitstream/10371/9114/1/law_v43n3_141.pdf (last visited April 7, 2021.)
[4] Id.

Confucianism provides an all-encompassing social philosophy that tells people how they should live based on the roles that they play in society.[5] At the base of the Confucian philosophy are the five virtues: benevolence, righteousness, observance of rites, moral wisdom, and faith.[6] Confucian teachings also saw itself divided into three sections.[7] The first of these is the *Jen*, or moral teachings of Confucianism, that made up the basis of all other teachings.[8] The second set of teachings are the *Li*, which describes the righteous actions one should take.[9] These also include the five relationships of Confucianism: father and son; elder brother and younger brother; husband and wife; an older friend and younger friend; and ruler and subject.[10] This section also includes the principle of respect for age as well as many other guiding principles which form the basis of legality in East Asia.[11] Finally, there is the principle of *Yi*, which accounts for the ritualistic behavior used in ceremonies, to the wearing of clothing, and to greetings and behaviors.[12]

Confucianism has always represented an opposite approach to the systemic approach of written law.[13] While Confucianism accounts for informal rules and principles that fall in line with many legal principles, such as respect for other people and trust in rulers, it seems compelling for people to do this in such a way that rewards and punishments are counterintuitive.[14] The theory calls on internal motivation to compel proper behavior instead of rewards and punishment.[15]

[5] Van, *supra* note 1.
[6] Id.
[7] Id.
[8] Id.
[9] Id.
[10] Choi, *supra* note 3.
[11] Id.
[12] Id.
[13] Elton Chan, Reconciling *Confucianism with Rule of Law: Confucianisation Or Self-Restraint?* 30 Asian Philosophy 275, 2020, https://doi.org/10.1080/09552367.2020.1844935, (last visited April 7, 2021.)
[14] Id.
[15] Id.

This does not come close to fully explaining the depth of Confucianism, its history and development, or its intricacies in each country and region where it has been influential. But a brief analysis of the influence of Confucianism on East Asian legal systems serves to provide an adequate basis for understanding East Asian jurisprudence. The importance of filial piety, social relationships, and social harmony are necessary for legal applications and will become more apparent in further reading.

The Development and Spread of Chinese Legal Culture

While the Confucian system accounted for much of the social control in early China, further philosophies and religions accounted for what became the full system of law seen in the various Chinese empires.[16] (and) [17] Chinese law resulted from a coexistence of Confucian, Legalist, Taoist, and Buddhist principles, as well as the various mythological influences.[18]

The notable and influential counter to Confucianism was Legalism.[19] Legalism is the antithesis of Confucianism in many ways.[20] Whereas Confucianism sees people as generally morally good, legalism sees them as bad.[21] Whereas Confucianism advocates for benevolence from leaders and an absence of formal laws and punishments, Legalism advocates for written law and severe punishments for any violation of the rules.[22] The balance of these two systems

[16] Luke T. Lee & Whalen W. Lai, *The Chinese Conceptions of Law: Confucian, Legalist, and Buddhist,* 29 Hastings Law Journal, 1978, https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2562&context=hastings_law_journal, (last visited April 7, 2021.)
[17] Weng Li, *Philosophical Influences on Contemporary Chinese Law*, 6 Indiana International & Comparative Law Review 327, 1996, https://doi.org/10.18060/17643, (last visited April 7, 2021.)
[18] Id.
[19] Lee, *supra* note 16.
[20] Id.
[21] Id.
[22] Li, *supra* note 17.

made up Chinese imperial law and makes up much of what we see in East Asian legal systems today.[23]

In addition to Confucianism and Legalism, early Chinese law and government saw extensive influence from Taoism and Buddhism.[24] These religions had an additional restraining influence on Legalism and Confucianism.[25] For instance, whereas Legalism promotes equality before the law, and Confucianism promotes societal roles, Taoism promotes the importance of the individual.[26]

Buddhism introduced several rational religious philosophies to China.[27] Chief among them is the concept of *karma.*[28] Karma is a reactionary belief that all actions (and inaction) generate either reward or punishment in some form.[29] Buddhism also introduced the concept of society's responsibility for the conditions that lead to bad behavior in people.[30]

While most of the Chinese empires established and retained great influence over surrounding areas, the Tang Dynasty is known for its immense impact on surrounding and distant societies.[31] Under the Tang rule, Chinese influence and control spread over much of Asia and Eurasia.[32] Tang China was the superpower of its day and for this reason, even the nations of Korea and Japan yielded to its leadership.[33] With Chinese control and the spread of Chinese

[23] Id.
[24] Lee *supra* note 16, Li *supra* note 17.
[25] Id.
[26] Li, *supra* note 17.
[27] Lee, *supra* note 16.
[28] Id.
[29] Id.
[30] Id.
[31] Craig Lockard, *Tang Civilization and the Chinese Centuries,* Microsoft Encarta Encyclopedia Anonymous , 2000, https://ccnmtl.columbia.edu/services/dropoff/china_civ_temp/week06/pdfs/tangci.pdf, (last visited April 7, 2021.)
[32] Id.
[33] Id.

culture, inevitably came its legal system and the influence of Confucian philosophy.[34]

Confucianism, in contrast to and in combination with other philosophical influences, shaped the Chinese legal system of the time.[35] The balance of ideas from Confucianism, Legalism, Taoism, and Buddhism shaped the philosophical and legal thought of the time.[36] The various Chinese empires, most notably the Tang Dynasty, gained enormous strength and regional influence.[37] As they grew, they began to influence and control the surrounding nations culturally, religiously, and politically.[38]

Modern Chinese Law

The country of China has faced immense change since the revolution and as well as change to Communist leadership. While it may have adopted a system that is of Western origin, China did not hesitate to infuse Confucian values into all areas of its political system, including its legal system.

It must also be noted that several Confucian values match well with Communist values.[39] Notably, both see little need for formal legal systems and elaborate written law.[40] For this reason, when the Communist party took power, they initially rid the country of legal professions entirely.[41] The party itself would take care of administering a Socialist form of law and ensuring that people did not fall outside the lines of what was right and proper for

[34] Id.
[35] Lee *supra* note 16, Li *supra* note 17.
[36] Id.
[37] Lockard, *supra* note 31.
[38] Id.
[39] Dana Zartner, East *Asian Legal Tradition: Confucius, Communism, and Community in China and Japan*, 2014, https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199362103.001.0001/acprof-9780199362103-chapter-7, (last visited April 7, 2021.)
[40] Id.
[41] Id.

society.[42] It was not until China sought to reenter the international community more largely that it developed a more formal system with written law, judges, and attorneys.[43]

Like many countries, China cannot administer formal litigation for all conflicts that arise, particularly civil conflicts between individuals or small businesses.[44] A method of conflict resolution that arose early in Chinese history and which falls squarely in line with Confucian ideals, is that of mediation, which is often used for this reason.[45] Mediation can come in various forms and be practiced in different ways, but the end goal is the same: to ensure all parties are as happy as possible. Because of the community nature of the culture, this also includes the direct and indirect families of those involved.[46] This method of conflict resolution works directly into the Confucian ideal of social harmony and ensures that the somewhat new legal system is not overtaxed.[47]

Another area of Chinese law worth discussing is its system of international law. Because of the Chinese State's historical apprehension towards and distrust of international law, it has always been standoffish in the adoption of international law and treaties.[48] This behavior has its origins in both Confucian and Communist ideals which dismiss intricate formal laws, but also in China's historical distrust of Western intrusion.[49] This comes largely because of early

[42] Id.
[43] Id.
[44] Vicki Waye & Ping Xiong, *The Relationship between Mediation and Judicial Proceedings in China*, 6 Asian Journal of Comparative Law (2011), https://www.researchgate.net/publication/277538974_The_Relationship_Between_Mediation_and_Judicial_Proceedings_in_China, (last visited April 7, 2021.)
[45] Id.
[46] Id.
[47] Id.
[48] Zartner, *supra* note 39.
[49] Id.

negative experiences the nation had when it opened itself to Western nations, particularly Britain.[50]

While China has experienced drastic changes and influence from very different governance systems in recent years, the underlying Confucian ideas persist and are even adopted by the new rulers.[51] Like many East Asian nations, the need and effort to participate in global systems has forced them to adopt a more formalized legal system, but this does not change the reality of the influence and reverence of Confucian values that have thrived in China for thousands of years.[52]

Modern Korean Law

South Korea, until the end of World War II, was controlled by Japan for much of its recent history.[53] After this time, it faced a brutal civil war over ideologies and is still technically in a state of war.[54] Despite this, the country has managed to develop a highly advanced democratic society.[55] South Korea is a country of paradoxes where technology and tradition meet. This same concept bleeds over into its legal system and the inclusion of Confucian and other traditional values.

[50] Id.
[51] Id.
[52] Id.
[53] Young Ick Lew, *Brief History Of Korea—A Bird's-EyeView,* The Korea Society, 2000, https://www.koreasociety.org/images/pdf/KoreanStudies/Monographs_GeneralReading/BRIEF%20HISTORY%20OF%20KOREA.pdf, (last visited April 7, 2021.)
[54] Id.
[55] Young, *supra* note 53.

Korea during and directly after the Korean war did not have the fully codified legal system that one would normally expect.[56] Certain events in the 1980s in Korea led to an immense push to codify and formalize the freedoms and rights of the people.[57] With this came a system of law and Constitutional Court that was modeled after Germany.[58] Of course, this system came with a heavy influence from the United States as well, which had and still has a large presence in the small country of South Korea.[59]

While Korea may have modeled its system after Western states in a decidedly non-Confucian approach, the influence of Confucianism on its legal system is undeniable. It has been preserved in case law. The landmark case of *Kara Bos* (or her Korean name *Kang Mi-sook*) is a classic example of Confucian influences on court decisions.[60] Mrs. Bos was found abandoned in a parking lot in Korea at a very young age and adopted and brought to the U.S. through an adoption agency.[61] She later returned to Korea to fight for her right to know who her biological parents are.[62] The court's famous and controversial decision was that she has the right to know her family origins and that this right outweighs the parents' right to privacy.[63] This decision counters the consensus within the U.S., and most Western states, in these situations.[64] The

[56] Kang Kook Lee, *The Past and Future of Constitutional Adjudication in Korea*, Studies in Comparative Legal History, https://www.law.berkeley.edu/files/koreanlaw.pdf, (last visited April 7, 2021.)
[57] Id.
[58] Id.
[59] Id.
[60] Sang-Hun Choe, *Korean Adoptee Wins Landmark Case in Search for Birth Parents*, New York Times, June 12, 2020 , https://www.nytimes.com/2020/06/12/world/asia/south-korea-adoption-Kara-Bos.html, (last visited April 7, 2021.)
[61] Id.
[62] Id.
[63] Id.
[64] *Adopted Child's Right to Information as to Biological Parents*, Stimmel, Stimmel & Roeser, https://www.stimmel-law.com/en/articles/adopted-childs-right-information-biological-parents, (last visited April 7, 2021.)

importance of knowing one's family origins, a hallmark of Confucian ideals, no doubt played a part in this decision.

Evidence of Confucian influence in Korean courts does not stop at the individual level. It has been seen in the very highest courts of the land. Korean legislation states that "A complaint shall not be lodged against a lineal ascendant of the principal himself or his spouse."[65] With this legislation, it was reinforced that a person may not submit a complaint against their parents regardless of whether or not their parents committed a crime against them. This legislation falls directly in line with the Confucian values discussed earlier.

Confucius was not Korean, but it is obvious that his influence on this nation is still strong to this day. From the development of a legal system to the application of provisions and court decisions that fully consider the importance of Confucianism to Korean society, these important ideals have shaped the system of law. While Korea, like most countries, is continuously modernizing its legal system to fall in line with international systems, Confucianism still plays a unique role.

Modern Japanese Law

Japan has a unique culture that likely developed as a result of its separation as an island nation.[66] It has many of its own cultural influences and even a religion that is specific to the country.[67] But that has not hindered the progress of Confucian influence in Japan, its culture, and its legal system Japan has inevitably had continuous contact with China, good and bad, throughout history.[68] The two nations are separated only by a small waterway, and trade,

[65] *Article 224 Limitation of Complaint, Korea Legislation Research Institute,* https://elaw.klri.re.kr/eng_service/lawView.do?hseq=22535&lang=ENG, (last visited April 7, 2021.)
[66] Zartner, *supra* note 39.
[67] Id.
[68] Id.

cultural exchange, and warfare were bound to occur. Through this variety of exchanges, Japan adopted a portion of its writing system from China, but also adopted Confucianism to a great extent.[69]

In 1995 Japan attempted to promote equality as the fundamental part of its political and legal systems.[70] In doing so, it attempted to remove laws and provisions that explicitly favor Confucian ideals at the expense of personal freedom.[71] Before these reforms were enacted, there was a landmark case in Japan, *Aizawa v. Japan*, in which a woman killed her father, who had been sexually abusing her for over fifteen years.[72] She argued against a provision of Japanese law that placed greater severity of punishments for the crime of patricide than homicide.[73] The court famously ruled against her, saying that filial piety was a central part of society and that murdering one's parents was a worse crime than murdering somebody else.[74]

While the system of law in Japan may have experienced some dramatic change in an attempt to remove Confucian ideals, those ideals continue to be a societal and jurisprudential influence. Japan is still a Confucian society, and these ideals still influence the decisions made at all levels of the legal system. While an attempt at equality may hamper the ability of certain Confucian sentiments to express themselves, the central ideas remain.

[69] Id.
[70] Id.
[71] Id.
[72] Jun-Ichi Satoh, *Judicial Review in Japan: An Overview of the CaseLaw and an Examination of Trends in the Japanese Supreme Court's Constitutional Oversight* , 41 Loyola of Los Angeles Law Review 603, 2008, https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2618&context=llr, (last visited April 7, 2021.)
[73] Id.
[74] Id.

Conclusion

A study into the effects that Confucianist ideas have had on the legal systems of East Asian countries requires an understanding of Confucianism foremost. Once one understands what Confucianism is and what its basic principles are, it becomes easier to see evidence of its effects in various legal situations.

Further analysis into the legal systems of China, South Korea, and Japan would yield more examples of Confucian influence. It is also worth mentioning that personal and societal habits are heavily influenced by Confucianism in all of these countries.[75] People act in Confucian ways and make decisions in line with these principles without even knowing it. It is important to understand that not all legal jurisprudence has the same origins, and it is especially important to understand how this can affect decisions made at all levels in the legal systems of East Asian countries.

[75] Elton, *supra* note 13.

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CHINA'S "RE-EDUCATION" CAMPS AND INTERNATIONAL CRIMINAL COURT POTENTIALITY

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Abstract

China's counter-terror policy implementation has rung alarm bells on the international scene. Many individuals, observers, and victims alike have claimed that the Xinjiang Uyghur population is experiencing a serious infringement of their basic human rights. After the appointment of Chen Quanguo as the new Communist Party Secretary of the Xinjiang Uyghur Autonomous Region in 2016, large-scale vocation education and training centers (dubbed "re-education camps") have emerged alongside the dramatic increase of police presence and surveillance. Chen Quanguo has gained a reputation as an ethnic policy innovator through his pioneering of new methods for securing Chinese Communist Party (CCP) rule over the Uyghurs, Tibetans, and other ethnic minorities in western China. These new methods have been effective in their purpose but could be put under the scrutiny of international law and body agreements, most notable the General Assembly Resolution 3/260 that adopted the Convention on the Prevention and Punishment of the Crime of Genocide. If certain allegations about the conditions of the vocation education and training centers prove to be true, then this would be considered criminal. Whether this means there is potential for Chen Quanguo to be tried in International Criminal Court, is still up for debate.

China's counter-terror policy implementation has rung alarm bells on the international scene. Many individuals, observers, and victims alike have claimed that the Xinjiang Uyghur population is experiencing a serious infringement of their basic human rights.[1] After the appointment of Chen Quanguo as the new Communist Party Secretary of the Xinjiang Uyghur Autonomous Region in 2016 large-scale *vocation education and training centers* (dubbed "re-education" camps) have emerged alongside the dramatic increase of police presence and surveillance.[2] Chen Quanguo has gained a reputation as an ethnic policy innovator through his pioneering of new methods for securing Chinese Communist Party (CCP) rule over the Uyghurs, Tibetans, and other ethnic minorities in western China.[3] These new methods have been effective in their purpose but could be put under the scrutiny of international law and body agreements, most notably, the General Assembly Resolution 3/260 that adopted the Convention on the Prevention and Punishment of the Crime of Genocide.[4] If certain allegations about the conditions of the vocation education and training centers prove to be true, then this would be considered criminal. Whether this means there is potential for Chen Quanguo to be tried in International Criminal Court, is still up for debate.

The Chinese government and the Uyghur people have been battling over the Xinjiang Uyghur Autonomous Region (XUAR) for years. Xinjiang covers an area of 1.66 million square kilometers and contained about 22.98 million

[1] *China's Repression of Uyghurs in Xinjiang,* Council on Foreign Relations, https://www.cfr.org/backgrounder/chinas-repression-uyghurs-xinjiang, (last visited March 29, 2021.)
[2] Id.
[3] Jing XuanTeng and Poornima Weerasekara, *Chen Quanguo:Leader of Zinjiang Crackdown Under US Scrutiny,* Barron's, https://www.barrons.com/news/chen-quanguo-leader-of-xinjiang-crackdown-under-us-scrutiny-01594401606, (last visited March 29, 2021.)
[4] *Convention on the Prevention and Punishment of the Crime of Genocide,*United Nations, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf, (last visited March 29, 2021.)

people by the end of 2014, and it is the largest provincial unit in the People's Republic of China.[5] Xinjiang is also China's largest administrative unit, located along a fifty-six kilometers border with eight nations.[6] The Uyghur people are Turkic-speaking Muslims who are the largest ethnic group in the XUAR.[7] Although Uyghurs were able to gain independence in 1949, forming what they called East Turkistan,[8] the Chinese government shows no signs of granting independence again because of Xin Jinping's future geopolitical ambitions surrounding the One Belt, One Road Initiative.[9] The One Belt, One Road seeks to revive the ancient Silk Road by linking Central Asian and Eurasian economies into a China-centered trading network.[10] XUAR is meant to be the "core region" in which all the trade happens, so gaining stability in the region is crucial to the legacy of Xin Jinping.[11] For a long time, XUAR has been a strategic zone of intercultural contact and conflict,[12] so the loss of Xinjiang would mean the loss of the Belt and Road Initiative and the billions of dollars the government has been spending since 1957 to assert its sovereignty and authority over this region.

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[5] Chien-peng Chung, *China's Uyghur problem after the 2009 Urumqi riot: repression, recompense, readiness, resistance*, 13 Journal of Policing, Intelligence and Counter Terrorism 185-201 (2018), https://doi.org/10.1080/18335330.2018.1475746 , (last visited March 29, 2021.)

[6] Adrian Zenz, *'Thoroughly reforming them towards a healthy heart attitude': China's political re-education campaign in Xinjiang*, 38 Central Asian Survey 102-128 (2018), https://doi.org/10.1080/02634937.2018.1507997, (last visited March 29, 2021.)

[7] Id.

[8] Angélique Forget & Antoine Védeilhé, *Surviving China's Uighur 're-education through labour' camps*, 2019, https://www.france24.com/en/20190510-reporters-plus-surviving-china-uighur-camps-repression, (last visited March 29, 2021.)

[9] Adrian Zenz & James Leibold, *Chen Quanguo: The Strongman Behind Beijing's Securitization Strategy in Tibet and Xinjiang*, 17 ChinaBrief 16-24 (2017), The Jamestown Foundation, https://jamestown.org/program/chen-quanguo-the-strongman-behind-beijings-securitization-strategy-in-tibet-and-xinjiang/, (last visited March 29, 2021.)

[10] Chung *supra* note 1, at 186.

[11] Id.

[12] Id.

Although Xinjiang became a province during the Qing Dynasty in 1884, it was not until the Communist Party's Anti-Rightist Policy of 1957, that opposed "local nationalism among ethnic minorities", that China began to actively oppress the region."[13] The oppression of minority groups grew during the Cultural Revolution of 1966-76 when religion was suppressed, alongside "ethnic language, cultural cuisine, and garb."[14] This was done to assist in the Sinification of the nation. The Uyghurs' "religious texts and mosques [were] destroyed, their religious leaders persecuted, and individual adherents punished."[15] China implemented more open policies between the late 1970s and early 1990.[16] Minorities used this leniency to speak out against what was seen as "discriminatory economic, religious, and political practices."[17] Under the direction of the Secretary of Xinjiang, Wang Lequan, police and military crackdowns increased in 1996 in response to these claims.[18] Open tolerance of religious minorities further declined after bearing witness to the terrorist attacks in the United States on September 11, 2001.[19] Following the aftermath of the terrorist attacks in the United States, China joined the "global war on terror" and enforced heavy-handed repression of millions of Uyghurs.[20]

The Uyghur people resisted these stricter policies and heightened discrimination by peacefully protesting, rioting, and enacting terrorism.[21] In

[13] Elizabeth Van Wie Davis, *Uyghur Muslim Ethnic Separatism in Xinjiang, China*, 35 Asian Affairs: An American Review 15-30 (2008), https://www.hsdl.org/?view&did=733939, (last visited March 29, 2021.)
[14] Id.
[15] Id.
[16] Id.
[17] Id.
[18] Chung *supra* note 1, at 185.
[19] Davis *supra* note 5, at 17.
[20] Amy Reger, *China Continues to Tyrannize the Uyghur Minority*, 2011, CCBC Library, https://library.ccbcmd.edu/record=b1210005~S4, (last visited March 29, 2021.)
[21] Elizabeth Van Wie Davis, *Uyghur Muslim Ethnic Separatism in Xinjiang, China*, 35 Asian Affairs: An American Review 15-30 (2008), https://www.hsdl.org/?view&did=733939, (last visited March 29, 2021.)

2009, a mass riot took to the streets of Urumqi, Xinjiang's capital.[22] At least one thousand Uyghurs gathered at Urumqi to protest about the Shaoguan incident.[23] In Shaoguan, it was reported that a former Han Chinese Xuri toy factory worker posted a false report on an internet bulletin board stating that six Uyghurs had raped two Han women workers at the factory.[24] In response to this post Han workers at Xuri allegedly stormed the Uyghur dorms, armed with clubs, iron bars, and machetes, and attacked the Uyghur workers.[25] Chinese authorities at the scene claimed that two Uyghurs were killed and 118 more people of unspecified ethnicity were wounded, but images of the fight and its aftermath circulated the internet and showed that there were more Uyghur casualties than what was stated by the officials.[26] The Uyghur community was outraged by this and planned to march on July 5, 2009, to Urumqi's People's Square to call for a more thorough investigation of the Shaoguan incident on June 26, 2009.[27] Around one thousand people gathered in Urumqi's Nanmen area and after some time, security forces moved in to surround them and began beating, detaining, and according to some accounts, shooting at them.[28] Demonstrators called friends and relations elsewhere in the city and relayed the news that their peaceful demonstration was violently repressed.[29] Uyghur people, offended by this unnecessary violent response, began to riot across the city and attack Han Chinese residents.[30] According to figures released later in a People's Republic of China (PRC) State Council

[22] Zenz and Leibold *supra* note 5, at 17.
[23] James A. Millward, *Introduction: Does the 2009 Urumchi violence mark a turning point?*, 28 Central Asian Survey 347-360 (2009), https://doi.org/10.1080/02634930903577128 (last visited March 29, 2021.)
[24] Id. at 349-50.
[25] Id. at 350.
[26] Id.
[27] Id. at 351.
[28] Id.
[29] Id.
[30] Id.

white paper, 197 people were killed, over 1,700 injured, 331 shops and 1,325 motor vehicles destroyed or burned.[31] Although Chinese media covered the violent Uyghur attacks on the Han Chinese, there was little to no coverage on the violent repression of the security forces that led to the uproar.[32] And 2009 was not the only time Urumqi was headlined as a place of great violence enacted by Uyghurs. Violence sprung in Urumqi in 2014 as well. In April 2014, a bomb went off in Urumqi, resulting in forty-three deaths and ninety injuries.[33]

On March 29, 2017, lawmakers in the Xinjiang People's Congress' Standing Committee passed the first region-wide legislation to combat religious extremism.[34] Article XIII of Chapter III of the Regulations on the Radicalization of Xinjiang Uyghur Autonomous Region states, "De-radicalization shall be carried out with great preaching, great learning, and great discussion, with modern scientific and cultural knowledge to educate the masses to advocate science and civilization, with legal knowledge to educate the masses to learn the law in accordance with the law, with religious faith in the origin, refute the myth of evil, guide the religious masses to establish good faith, consciously resist radicalization."[35] This "De-radicalization," continuing into Article XIV, should do a good job of "education transformation" and combine "ideological education, psychological counseling, behavior correction, and skill training."[36] Chen Quanguo established vocation education and training centers as a means of the education transformation highlighted in this policy; they are meant to be 'political education center[s]' designed to

[31] Id.
[32] Id.
[33] Chung, *supra* note 1, at 194.
[34] Id. at 115.
[35] *Regulations on De-radicalization of Xinjiang Uygur Autonomous Region*, March 29, 2017, https://baike.baidu.com/item/**新疆**维吾尔自治区去极端化条例, (translated by Google), (last visited March 29, 2021.).
[36] Id.

provoke "thought reform."[37] People in these "re-education" camps are to learn Mandarin Chinese, recite laws and policies, watch Chinese propaganda videos, shout pro-government slogans, and rectify their political stance to one that aligns with the Chinese Communist Party.[38]

One could be put in a center by engaging in what Xinjiang authorities consider extremist religious practices. Practices include "growing a beard, praying regularly, inviting too many people to one's wedding, giving children names of Islamic origin, wearing veils, headscarves, or long clothes in Muslim style, reciting an Islamic verse at a funeral, and making the pilgrimage to Mecca."[39] One must also be wary of "possessing sensitive digital content (especially 'illegal' religious content) on a mobile phone or computer, the "use of Western social media apps or websites," "traveling or studying abroad," "links to relatives abroad (especially ones from one of the 26 'sensitive' countries)," "association with 'outsiders'(especially foreign journalists)," "voicing open criticism," "insufficient patriotism," and "illiteracy or poor Chinese-language proficiency" to name a few.[40] Engaging in any of these activities could result in involuntary placement in a "re-education" camp.[41]

Most Uyghurs are terrified of the possibility of being put in a camp, and those who are let out never want to go back. One Kazakhstani Uyghur woman interned in Urumqi described how the thirty women in her cell could shower only once a week, using one bar of soap divided into thirty pieces, and with two women showering together for one minute.[42] Many former internees speak of how poor the quality of the camp food is, "saying they were fed steamed buns or thin soup, and rarely given meat, and that food poisoning was

[37] Chung, *supra* note 1, at 189.
[38] Id.
[39] Joanne Smith Finley, *Securitization, insecurity and conflict in contemporary Xinjiang: has PRC counter-terrorism evolved into state terror?*, 38 Central Asian Survey 1-26 (2019), https://doi.org/10.1080/02634937.2019.1586348.
[40] Id.
[41] Id. at 6.
[42] Id.

common."[43] Mihrigul Tursun was separated from her young triplets during internment in 2015; one subsequently died in unclear circumstances, while the others developed health problems.[44] During her second internment in 2017, she was deprived of sleep for four days, interrogated, and subjected to an intrusive medical examination.[45] The third time, Tursun spent three months in a prison cell with sixty other women.[46] They were forced to take pills that made them faint and a white liquid that caused bleeding in some women and loss of menstruation in others.[47]

Many internees report the psychological and physical torture endured during their stay in a camp.[48] Some cases claim there were beaten for not learning the Chinese language and laws quickly enough or not making their beds.[49] Based on these claims, there is more happening in these camps than mere "re-education". If these accusations hold true, then that would mean many people in these camps are subject to torture, physical abuse, emotional abuse, psychological abuse, starvation, poison, and sleep deprivation.[50] Chen Quanguo's vocation education and training centers could be considered criminal in its means of covert ethnic cleansing and arguably genocide.

Article II of the Convention on the Prevention and Punishment of the Crime of Genocide states, "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

[43] Id.
[44] Id. at 7.
[45] Id.
[46] Id.
[47] Id. at 8.
[48] Id.
[49] Id.
[50] Id.

> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;
>
> (e) Forcibly transferring children of the group to another group.[51]

This definition of genocide could provide the basis in claiming China is enacting genocide on its ethnic and religious minority population through its use of "re-education" camps. Article VI of the Convention continues to state, "Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."[52] Assuming China would not try Chen Quanguo since the CCP's central leadership is cognizant of the program, scale, and effects of securitization and mass internment, it would be up to the international penal tribunal to try Chen Quanguo and other close parties.[53]

These allegations could be investigated by the International Criminal Court (ICC) if the situation were to be referred to them by the United Nations Security Council in the case that they consider the actions taken by Chen Quanguo to be genocidal or/and a crime against humanity.[54] This course of action may also prove to be futile because China is one of the permanent members of the Security Council, meaning they have the power to veto any

[51] UN's General Assembly, *Convention on the Prevention and Punishment 1-4*, 1948, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf, (last visited March 29, 2021.)
[52] Id.
[53] Id.
[54] *Uphold International Law*, United Nations, https://www.un.org/en/our-work/uphold-international-law , (last visited March 29, 2021.)

unfavorable decisions.[55] This is problematic if there is truth to the claims of the observers and alleged victims of these "re-education" camps. Chinese authorities have long pushed back against foreign concern for human rights as an infringement on its sovereignty.[56] If the Chinese state wants to prove the legitimacy of their *vocation education and training center* and alleviate the concerns expressed by certain Member States, they may want to invite the Special Rapporteur on Terrorism to assess the conditions of their centers and publish a report on their findings. This should be no issue if the allegations made against them are false.

[55] *Voting System*, United Nations Security Council, https://www.un.org/securitycouncil/content/voting-system, (last visited March 29, 2021.)
[56] *China's Global Threat to Human Rights*, Human Rights Watch, 2020, https://www.hrw.org/world-report/2020/country-chapters/global#, (last visited March 29, 2021.)

INTERNATIONAL RULE OF LAW: CHINA-UYGHUR CRISIS

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Abstract

In 2015, China's Standing Committee of the 12th National People's Congress adopted the Anti-Terrorism Law of the People's Republic of China. Only 15 months later, the Standing Committee of the 12th People's Congress of Xinjiang Uyghur Autonomous Region. The enforcement of these counter-terrorist policies under the Communist Party Secretary of the Xinjiang Uyghur Autonomous Region, Chen Quanguo, is rather questionable. Quanguo has conducted large-scale vocation education and training centers holding Uyghurs, Kazakhs, and other Muslims and dramatically increased the police presence in Xinjiang as a means to combat potential terrorist threats. China's counter-terrorism practices raise red flags when considering United Nations Rule of Law and relevant documents. China's treatment toward the Uyghur population can be considered a violation of the Rule of Law, especially when understanding its connection to human rights.

In 2015, China's Standing Committee of the 12th National People's Congress adopted the Anti-Terrorism Law of the People's Republic of China. Only 15 months later the Standing Committee of the 12th People's Congress of Xinjiang Uyghur Autonomous Region adopted the Regulations on the Radicalization of Xinjiang Uyghur Autonomous Region. The enforcement of these counter-terrorism policies under the Communist Party Secretary of the Xinjiang Uyghur Autonomous Region, Chen Quanguo, is rather questionable. Quanguo has conducted large-scale *vocation education and training centers* holding Uyghurs, Kazakhs, and other Muslims and dramatically increased police presence in Xinjiang as a means to combat potential terrorist threats. China's counter-terrorism practices raise red flags when considering United Nations Rule of Law and relevant documents. China's treatment toward the Uyghur population can be considered a violation of the Rule of Law especially when understanding its connection to human rights.

For years, the Uyghur people and the Chinese government have been battling over the Xinjiang Uyghur Autonomous Region (XUAR). Xinjiang, covering an area of 1.66 million square kilometers and containing about 22.98 million people by the end of 2014, is the largest provincial-unit in the People's Republic of China.[1] The Uyghur people are Turkic-speaking Muslims who are the largest ethnic group in the XUAR.[2] When Xinjiang became a province during the Qing Dynasty in 1884, it was not initially colonized or settled.[3] Muslim inhabitants kept their own religious leaders who were bound by salaries and titles to the Qing state.[4] Those in Xinjiang were subject to no harsh policies or restrictions, for China was initially declared a multinational

[1] Chien-peng Chung, *China's Uyghur problem after the 2009 Urumqi riot: repression, recompense, readiness, resistance*, 13 Journal of Policing, Intelligence and Counter Terrorism 185-201, 2018, https://doi.org/10.1080/18335330.2018.1475746, (last visited April 9, 2021.)
[2] Id.
[3] Elizabeth Van Wie Davis, *Uyghur Muslim Ethnic Separatism in Xinjiang, China*, 35 Asian Affairs: An American Review 15-30, 2008, https://doi.org/10.3200/AAFS.35.1.15-30, (last visited April 9, 2021.)
[4] Id. at 17.

state in 1949.[5] It was not until the Communist Party's Anti-rightist Policy of 1957, which opposed 'local nationalism' among ethnic minorities, that China began to crackdown on religions.[6] This oppression of minority groups grew during the Cultural Revolution of 1966-76 when religion was suppressed, alongside "ethnic language, cultural cuisine, and garb."[7] This was done to assist in the Sinification of the nation. The Uyghurs' "religious texts and mosques [were] destroyed, their religious leaders persecuted, and individual adherents punished."[8] China implemented more open policies between the late 1970s and early 1990.[9] Minorities used this leniency to speak out against what was seen as "discriminatory economic, religious, and political practices."[10] Under the direction of the Secretary of Xinjiang, Wang Lequan, police and military crackdowns increased in 1996 in response to these claims.[11] Open tolerance of religious minorities further declined after bearing witness to the terrorist attacks in the United States on September 11, 2001.[12] Following the aftermath of the terrorist attacks in the United States, China joined the "global war on terror" and enforced heavy-handed repression of millions of Uyghurs.[13]

Although Uyghurs were able to gain independence in 1949, forming what they called East Turkistan,[14] the Chinese government showed no signs of granting independence again.[15] The Uyghur people have resisted since then by

[5] Id. at 17.
[6] Id.
[7] Id.
[8] Id.
[9] Id.
[10] Id.
[11] Chung *supra* note 1, at 185.
[12] Davis *supra* note 5, at 17.
[13] Amy Reger, *China Continues to Tyrannize the Uyghur Minority*, Human Rights 138, 2011.
[14] Angélique Forget & Antoine Védeilhé, *Surviving China's Uighur camps* , 2019, France 24, https://www.france24.com/en/20190510-reporters-plus-surviving-china-uighur-camps-repression, (last visited April 9, 2021.)

peacefully protesting and rioting.[16] In response to the resistance, the Chinese government pushed forth specific laws to combat terrorism and other radical behaviors.[17] These laws include the Anti-Terrorism Law of the People's Republic of China of 2015 and the Regulations on the radicalization of Xinjiang Uygur Autonomous Region of 2017. These counter-terroristic measures became even more heavy-handed in the wake of China selecting Chen Quanguo to lead Xinjiang as the Communist Party Secretary of the Xinjiang Uyghur Autonomous Region in late August 2016.[18] Under Chen Quanguo, large-scale *vocation education and training centers* holding Uyghurs, Kazakhs, and other Muslims emerged.[19] The Muslim people of Xinjiang live under the daily pressures of being watched by over 150,000 cameras every day,[20] and live with a constant fear of being taken to a *vocation education and training center* involuntarily. These counter-terrorism practices raise concerns over the preservation of human rights and fundamental freedoms of the Uyghur population.

On December 27, 2015, the National People's Congress passed the country's first comprehensive 'Counter-terrorism Law', which took effect on January 1,

[15] Adrian Zenz & James Leibold, *Chen Quanguo: The Strongman Behind Beijing's Securitization Strategy in Tibet and Xinjiang*, 17 ChinaBrief 16-24, 2017, The Jamestown Foundation, https://jamestown.org/program/chen-quanguo-the-strongman-behind-beijings-securitization-strategy-in-tibet-and-xinjiang/, (last visited April 9, 2021.)

[16] Elizabeth Van Wie Davis, *Uyghur Muslim Ethnic Separatism in Xinjiang, China*, 35 Asian Affairs: An American Review 15-30 (2008), https://doi.org/10.3200/AAFS.35.1.15-30, (last visited April 9, 2021.)

[17] Chung, *supra* note 1, at 188.

[18] Adrian Zenz, *'Thoroughly reforming them towards a healthy heart attitude': China's political re-education campaign in Xinjiang*, 38 Central Asian Survey 102-128, 2018, https://doi.org/10.1080/02634937.2018.1507997, (last visited April 9, 2021.)

[19] Id. at 102.

[20] Id. at 106-12.

2016.[21] Article I of the Anti-Terrorism Law of the People's Republic of China states, "this Law is enacted in accordance with the Constitution to prevent and punish terrorist activities, strengthen anti-terrorism efforts, and safeguard national security, public safety, and people's lives and property."[22] Article III defines terrorism as "the propositions and acts of creating social panic, endangering public security, violating personal property, or coercing state organs and international organizations to achieve their political, ideological and other objectives through violence, destruction, and intimidation."[23] Activities that are considered terrorist in nature include:

> (I) Organizing, planning, preparing to carry out, carrying out activities that cause or are intended to cause casualties, major property damage, damage to public facilities, social disorder, and other serious social hazards;
>
> (II) promoting terrorism, inciting terrorist activities, or illegally possessing articles that promote terrorism, and forcing others to wear clothing or symbols that promote terrorism in public places;
>
> (III) organizing, leading, or participating in terrorist organizations;
>
> (IV) Providing information, funds, materials, services, technology, places, etc. to support, assist and facilitate terrorist organizations, personnel of terrorist activities, the implementation of terrorist activities, or the training of terrorist activities;

[21] Chung, *supra* note 1, at 187.

[22] 授权发布：中华人民共和国反恐怖主义法-新华网, Xinhuanet.com (2015), http://www.xinhuanet.com//politics/2015-12/27/c_128571798.htm, explained in the *Unofficial Translation of the Counter-Terrorism Law of the People's Republic of China, The US-China Business Council*, https://www.uschina.org/china-hub/unofficial-translation-counter-terrorism-law-peoples-republic-china, (last visited April 9, 2021.)

[23] Id.

(V) Other terrorist activities.[24]

The final point provides a place for unforeseeable conduct of terror and leaves room for interpretation as to what may be included as other terrorist activities. The most recent Communist Party Secretary of Xinjiang, Chen Quanguo's interpretations and actions were taken and has led to much debate today.

Chen Quanguo was formerly in charge of Tibet and through his work there, was dubbed the "ethnic policy innovator."[25] Quanguo pioneered a range of new methods for securing the Chinese Communist Party (CCP) control over potential terror threats in accordance with the Anti-Terrorism Law. Quanguo implemented a security strategy to guard against terrorism that monitors and regulates the lives of Xinjiang residents through both the use of the latest technology and old-fashioned neighborhood watch schemes.[26] He instructed Xinjiang authorities to increase the presence of high-definition video surveillance cameras.[27] These cameras were placed in public buses, bus stops, roads, alleys, markets, shopping centers, schools, and mosques.[28] Authorities put metal detectors in major public areas, including mosques, bazaars, malls, hotels, railway stations, and airports.[29] Police spot document checks are carried out on pedestrians and their mobile phones are inspected for prohibited content such as extremist videos and foreign apps.[30] Quanguo also initiated a reward system as a means of catching potential terrorists. Rewards for terror tip-offs are given to incentivize old-fashioned watch schemes.[31] Monetary rewards for the apprehension of a suspected terrorist or violent criminal can be between 50,000 yuan and 100,000 yuan, about $7,100 to $14,200 USD, respectively.[32] The Communist Party Secretary of Xinjiang has also increased

[24] Id.
[25] Zenz and Leibold, *supra* note 15, at 16.
[26] Chung, *supra* note 1, at 191.
[27] Zenz and Leibold, *supra* note 15, at 22.
[28] Chung, *supra* note 1, at 192.
[29] Id.
[30] Id.
[31] Id. at 189.
[32] Id.

the hiring of security jobs in the Xinjiang region. Quanguo ordered Xinjiang to advertise 90,866 security-related positions between August 2016 and July 2017.[33] His order was a massive increase from the 5,800 positions that were being advertised between 2003 and 2008 under the former Secretary of Xinjian, Wang Lequan.[34] The increase in security positions has created a massive military force in Xinjiang.

Quanguo has showcased his military might with an astonishing amount of police force as a means of following through with the counter-policies passed. On December 31, 2016, authorities in Xinjiang staged a massive show of military force with an anti-terror exercise attended by Chen Quanguo, senior party and government officials, and security forces. [35] The drill paraded armored vehicles, rescued fake hostages, and demonstrated how police booths that dot the streets of Xinjiang can defend themselves if they come under attack.[36] A rally was also done on February 18, 2017, in Urumqi, which included approximately 1,000 police officers and members of the People's Armed Police.[37] Urumqi holds significance because major Uyghur terrorist activities occur there. Following this rally were similar rallies in Hotan and Kashgar, both oasis towns in southern Xinjiang with predominantly Uyghur populations.[38] All rallies touted the slogan, "'Showing power to intimidate, [by] lining up the forces', we're the biggest in recent years."[39]

On March 29, 2017, lawmakers in the Xinjiang People's Congress' Standing Committee passed the first region-wide legislation to combat 'religious extremism' which took effect April 1, 2017.[40] Massive *vocation education and training center*s emerged after this law was passed.[41] Article XIII of Chapter

[33] Zenz and Leibold, *supra* note 15, at 17.
[34] Id.
[35] Chung, *supra* note 1, at 187.
[36] Id.
[37] Id. at 188.
[38] Id.
[39] Id.
[40] Id.
[41] Zenz, *supra* note 18, at 115.

III of the Regulations on the Radicalization of Xinjiang Uyghur Autonomous Region states, "De-radicalization shall be carried out with great preaching, great learning, and great discussion, with modern scientific and cultural knowledge to educate the masses to advocate science and civilization, with legal knowledge to educate the masses to learn the law in accordance with the law, with religious faith in the origin, refute the myth of evil, guide the religious masses to establish good faith, [and] consciously resist radicalization."[42] This "De-radicalization" program, continuing into Article XIV, is intended to enhance "education transformation" and combine "ideological education, psychological counseling, behavior correction, and skill training."[43]

Chen Quanguo's establishment of *vocation education and training centers* are done as a means of the education transformation as highlighted in this policy; they are meant to be 'political education center[s]' targeted to provoke "thought reform."[44] People in these centers are to learn Mandarin Chinese, recite laws and policies, watch Chinese propaganda videos, shout pro-government slogans, and rectify their political stance to one that aligns with the Chinese Communist Party.[45] One could be put in a center by engaging in what Xinjiang authorities consider extremist religious practices.

[42] *Regulations on De-radicalization of Xinjiang Uygur Autonomous Region*, March 29, 2017, https://baike.baidu.com/item/**新疆**维吾尔自治区去**极**端化条例, (translated by Google), (last visited March 29, 2021.)
[43] Id.
[44] Chung, *supra* note 1, at 189.
[45] Id.

Practices include "growing a beard, praying regularly, inviting too many people to one's wedding, giving children names of Islamic origin, wearing veils, headscarves, or long clothes in Muslim style, reciting an Islamic verse at a funeral, and making the pilgrimage to Mecca."[46] One must also be wary of "possessing sensitive digital content (especially 'illegal' religious content) on a mobile phone or computer, the "use of Western social media apps or websites", "traveling or studying abroad", "links to relatives abroad (especially ones from one of the 26 'sensitive' countries)", "association with 'outsiders'(especially foreign journalists)", "voicing open criticism", "insufficient patriotism", and "illiteracy or poor Chinese-language proficiency" just to name a few.[47] Engaging in any of these activities could result in involuntary placement in a re-education center.[48] China, much like many other nations, has created policies on terror interference and counter-terrorism. The implementation of these policies, however, may be considered a direct violation of the Rule of Law established by the United Nations.

The Rule of Law is a principle of governance in which all are accountable to laws that are "publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards."[49] The rule of law focuses on the idea of the advancement of human rights.[50] There are three pillars of the rule of law: international peace and security, human rights and development.[51] It is believed that through the

[46] Joanne Smith Finley, *Securitization, insecurity, and conflict in contemporary Xinjiang: has PRC counter-terrorism evolved into state terror?*, 38 Central Asian Survey 1-26 (2019), https://doi.org/10.1080/02634937.2019.1586348, (last visited April 9, 2021.)
[47] Id.
[48] Id. at 6.
[49] *What is the Rule of Law*, United Nations, and the Rule of Law, https://www.un.org/ruleoflaw/what-is-the-rule-of-law/, (last visited April 9, 2021.)
[50] *Guidance Note Of The Secretary-General: UN Approach to Rule of Law Assistance*, 1-7 (2008), https://www.un.org/ruleoflaw/files/RoL%20Guidance%20Note%20UN%20Approach%20FINAL.pdf, (last visited April 9, 2021.)
[51] Id.

advancement of these principles, economic growth is sustained, sustainable development is achieved, poverty and hunger are eradicated, and all human rights and fundamental freedoms are protected.[52] Well-established rights under international law that embody these pillars include but are not limited to due process, free expression, and privacy.[53] Temporarily impeding on these human rights and fundamental freedoms in the name of combating terrorism has grown in prominence since 2001.

Since the September 11, 2001, terrorist attacks on the United States, there has been a massive increase globally in counter-terrorism practices which have and continue to violate human rights.[54] Many of these laws tend to restrict or violate the rights of suspects and can be used to stifle peaceful political dissent or target particular religious, ethnic, or social groups.[55] China's counter-terror conduct can be considered those of a nation that has chosen to violate human rights in order to control alleged "terrorist" activities. The disproportionate infringement of Uyghur rights violates the international rule of law. The arbitrary detention and restrictions on freedom of movement of Uyghurs, and other Muslim and minority communities in Xinjiang are a serious violation of the principles set forth by the United Nations rule of law.

Quanguo's methods of implementing the Anti-Terrorism Law of the People's Republic of China and the Regulations on the Radicalization of Xinjiang Uyghur Autonomous Region are discriminatory. Although claiming that their

[52] *The Rule of Law in UN Intergovernmental*, United Nations and the Rule of Law, https://www.un.org/ruleoflaw/the-rule-of-law-in-un-intergovernmental-work/, (last visited April 9, 2021.)
[53] *In the Name of Security*, Human Rights Watch, 2012, https://www.hrw.org/report/2012/06/29/name-security/counterterrorism-laws-worldwide-september-11, (last visited April 9, 2021.)
[54] Fionnuala Ní Aoláin, Special *Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism on the human rights challenge of states of emergency in the context of countering terrorism*, United Nations Human Rights, 2021, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/52,(last visited April 9, 2021.)
[55] Human Rights Watch, *supra* note 53.

purpose is to de-radicalize potential terrorists, the detention centers stifle the Uyghur identity and culture and render the Uyghurs illegitimate. Activities that are strongly associated with the average Uyghur, like growing beards, praying regularly, and wearing veils, headscarves or long clothes in Muslim style are regarded as radical enough behavior to be sent to re-education camps. Many innocent Uyghurs have been put into these re-education centers due to these extreme regulations. Those that are not in centers are still forced to endure a heavy police presence, surveillance, and occasional threatening militaristic parades that are meant to invoke fear.

The fear of terrorism in China is a legitimate one, but China's policies to combat terrorism also seem to aim to erase force Uyghurs to turn their backs on their culture, language, and religion in the name of deradicalization as if the Uyghur identity in itself is radical. These policies undermine their identity, stifle their rights, and violate the principles set by the United Nations' rule of law. The actions of China have gained international attention and certain Member States of the United Nations have joined together to sign a letter addressed to the president of the UN Human Rights Council and UN High Commissioner for Human Rights calling on China to end some of its policies in Xinjiang.[56] In contrast, other nations have joined China in submitting a similar letter in defense of these counter-terror policies.[57] Regardless of which nations are in support or against these policies, what remains evident is the violation of the international rule of law. Rule of law and human rights are two sides of the same principle as fully recognized in the Universal Declaration of Human Rights. China needs to recognize its divergence from the fundamental principles established by the UN and correct its policy implementation.

The Human Rights Council has established a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and the Special Rappoteur has recommended plans of

[56] Catherine Putz, *Which Countries Are For or Against China's Xinjiang Policies?* The Diplomat, 2019, https://thediplomat.com/2019/07/which-countries-are-for-or-against-chinas-xinjiang-policies/, (last visited April 9, 2021.)
[57] Id.

action for nations that have potentially targeted minority groups.[58] Although this does not provide a comprehensive solution to this issue in China, it is certainly a good place to start.

[58] *Protection of human rights and fundamental freedoms while countering terrorism*, United Nations Digital Library, 2005, https://digitallibrary.un.org/record/547276?ln=en, (last visited April 9, 2021.)

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IS AT-WILL EMPLOYMENT OBSOLETE?

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Abstract

Employers may fire you for any reason, except for cases of discrimination. This is called the at-will employment doctrine. So, what is at-will employment? Well, its origins can be traced back to a treatise written by Horace C. Wood titled Master and Servant, which outlined the at will employment doctrine, basically stating that employees and employers should be able to mutually terminate their relationship for any reason. Unfortunately, this doctrine has not aged very well. Its evolution seems to reinforce a modern-day Master/Servant relationship. Not only that, but because it has been combined with non-compete agreements, there is no longer parity in the relationship, the employer appears to have all the power and that has a negative on the overall employee morale as well. Some would say that this doctrine results in no significant changes, but the facts indicate otherwise.

Introduction

Employers have always been able to fire you for any reason, except for cases of discrimination. This is called the "At-Will Employment Doctrine." At-Will Employment can trace its origins back to a treatise written by Horace C. Wood titled *Master and Servant*,[1] which outlined the At-Will Employment Doctrine,

[1] Ronald Standler, *History of At-Will Employment Law in the USA*, Rbs2.com, 2000, http://www.rbs2.com/atwill.htm, (last visited Mar 26, 2021.)

stating that employees and employers should be able to mutually terminate their relationship for any reason.[2] Wood cited four cases in the *Master and Servant Treatise* as supporting his at-will theory. but others have found no support for the at-will doctrine in those cases.[3] Many have described the emergence of the at-will theory as a mistake made by Wood. The court wrote in Footnote 8 of its opinion in *Magnan v. Anaconda Industries, Inc*, "Scholars and jurists unanimously agree that Wood's pronouncement in his treatise, Master and Servant § 134 (1877), was responsible for nationwide acceptance of the rule. They also agree that his statement of the rule was not supported by the authority upon which he relied, and that he did not accurately depict the law as it then existed."[4] So even as this doctrine emerged, it was based upon flawed logic and reporting.

For people in the working-class, this doctrine has not aged very well either, since it propagates a modern-day "Master/Servant" relationship. Beyond that, it is also plausible that the doctrine influences overall employee morale as well. But some would say that this doctrine changes nothing and is still fair. This research will argue that a law that has no legal support since its inception should not be a part of our law in the first place.

Examining At-Will Employment

Master and Servant[5] is a peculiar name for a document that serves as a basis for employee contract law. Considering that without employees, businesses cannot exist. When employees are initially chosen for a job or position, they

[2] Id.
[3] Id.
[4] *Magnan v. Anaconda Industries, Inc*, 193 Conn. 558, Footnote 8, 1984, https://casetext.com/case/magnan-v-anaconda-industries-inc-1, (last visited April 8, 2021.)
[5] Id.

are presented with what is usually an adhesion contract,[6] which includes two specific characteristics, (1) the unequal bargaining power between employee and employer and (2) the choice to either accept all terms of the contract or none of them at all.[7] This robs the worker of any autonomy in deciding who they want to work for, and as such, there is a certain unfairness created when one is not able to negotiate their own terms. The employee is the most vital aspect of any business, so why does the law now reflect this notion that the employer gets everything their way and the employee has no rights?

Public Policy & At-Will Employment

Sometimes systems that are put into place to protect us, fail in their purpose. Take the courts, for example. When Horace first introduced the treaty,[8] there was no opposition or examination, there were no efforts to check or debate Horace's sources, nor was there debate concerning implementing the doctrine when it came to making decisions about employment contracts.[9] One of the first challenges to this theory was the occurrence of workplace discrimination.[10] It was only after several adaptations, changes, and amendments, that the legal theory was amended to include a limitation on the employer's right to fire anyone for any reason, and that limitation was if the firing conflicted with "public policy" it was not allowed. One can surmise, however, that the courts have a very narrow view of public policy, since the courts appear to have chosen to leave the development of the relevant laws to the legislature.

[6] Id.
[7] Id.
[8] Id.
[9] Id.
[10] Id.

According to John Orth, this is not true. In his article, *The Role of the Judiciary in Making Public Policy,*[11] Orth explains that judges are tasked with interpreting statutes and developing them into common law, and are tasked with restating this common law and applying it, which is why judges often base their decisions on precedents.[12] Common-Law refers to non-statutory law made by previous judicial decisions (precedent) to keep public policy consistent, so as society develops so does public policy along with it.[13] If judges fail to update common law then the legislature steps in, but in the case of at-will employment, the interests of large, wealthy, and powerful companies have a substantial stake in the development of the legal theory. And since the legislature will not want to annoy or turn against large, wealthy companies, they are not motivated to do away with at-will employment.[14] In this particular case, the evolution of the at-will doctrine, judges have really chosen not to influence public policy as society has changed. The ideas introduced in *Master and Servant* are outdated, including the idea that employees and employers are on equal footing. This growing power imbalance in the relationship between employee and employer as a direct effect of adhesion contracts is something the judges are failing to consider. Beyond that, judges are also failing to apply the fact that most contracts that employees are under are adhesions contracts. These contracts do not give the working-class employee any other option than to accept the terms of the contract out of financial necessity.

[11] John Orth, *The Role of the Judiciary in Making Public Policy*, North Carolina Periodicals Index, April 1, 1981, Digital.lib.ecu.edu, https://digital.lib.ecu.edu/ncpi/view/388 (last visited Mar 26, 2021.)
[12] Id.
[13] *Common Law*, LII / Legal Information Institute (2021), https://www.law.cornell.edu/wex/common_law, (last visited Mar 25, 2021.)
[14] John Orth, *The Role of the Judiciary in Making Public Policy*, North Carolina Periodicals Index, Digital.lib.ecu.edu (2021), https://digital.lib.ecu.edu/ncpi/view/388, (last visited Mar 26, 2021.)

Drawing a Connection: Public Policy & At-Will Employment

Adhesion contacts do influence employee morale. It also changes how employees view upper management. Liz Ryan, author of the Forbes article *Ten Ways Employment-At-Will is Bad for Business,*[15] did not explicitly mention *Master and Slave,* but she does allude to a one-sided relationship between management and employer, stating that the idea of employment At-Will "keeps lousy management in place at every level of the organization chart."[16] She also suggests that this is proof of an inherent power imbalance between employee and employer. Employees are the backbone of any organization, especially the ones at the very bottom of the corporate ladder. She also adds that this policy creates a "good little worker" effect that prohibits employees from bringing their creativity to their work.[17] Simply stated, not giving employees a voice in the matter of their terms of employment does not lead to good business practices.

Conclusion

At-Will employment reflects a doctrine introduced in an era where the employer/employee had a different relationship, but as societies and businesses change, the doctrine has not, and that is why we must strike it completely from legal theories applied to modern day situations. Beyond its detrimental effect on work morale, it also propagates the notion that employees are lesser contributors to the company's systems, and to the overall economic system in America. Society can change this by knocking on doors and communicating with and educating judicial authorities, society must demand to know why this has not been at the forefront of our attention and why this policy has not been removed from appropriate legal theories. A doctrine based on falsehood should be obsolete.

[15] Liz Ryan, *Ten Ways Employment-At-Will Is Bad for Business,* Forbes, https://www.forbes.com/sites/lizryan/2016/10/03/ten-ways-employment-at-will-is-bad-for-business/, (last visited Mar 20, 2021.)
[16] Id.
[17] Id.

THE FUTURE OF NATURAL GAS LEGISLATION

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Abstract

The contentious interpretations of the role of natural gas as a player in the United States' path to decarbonization raises significant questions about the future of state and federal natural gas legislation. Using the court case PennEast Pipeline v. New Jersey as a lens through which these issues are examined, this paper analyzes the jurisdictional disconnect between state and federal authority on natural gas pipelines and argues that the use of natural gas and natural gas liquids, while serving as a precursor to the transition to a clean-energy future, is not adequately regulated in the current natural gas policy. In order to address the legal questions surrounding the implementation of natural gas pipelines, natural gas policy must be amended to clarify the extent of the Federal Energy Regulatory Commission's authority to override state agency regulation over property and to redefine the role of natural gas as a component of the public interest.

Legislative History of the Natural Gas Act and Natural Gas Policy Act

Natural gas, or fuel whose components contain in part or in whole any part of natural gas, liquid, petroleum gas, synthetic gas from natural gas liquids or

petroleum, any combination of natural and synthetic gas, or biomethane, as defined by Congress is considered as a server of the public interest by the Natural Gas Act of 1938 (NGA).[1] However, this act was amended in 1947 to grant permission to natural gas companies to exercise the right of federal eminent domain in the district court of the United States for cases originating in the State courts.[2] This amendment inherently posed constitutional questions surrounding the 5th Amendment,[3] which guarantees the right to due process and requires the government to compensate citizens when it takes private property for public use. Section 717(j) of the Natural Gas Act permitted any state, municipality, or state commission to apply to the Federal Power Commission (FPC) by petition.[4] The cases of *FPC v. Natural Gas Pipeline Co. (1942)*[5] and *FPC v. Hope Natural Gas (1944)*[6] upheld the constitutionality of the NGA by citing the 5th and 14th amendments respectively to equate Congressional authority for price regulation in interstate commerce with state authority to regulate intrastate commerce. [7]

The NGA provided adequate guidance prior to the economic downturn of the natural gas market that characterized the 1970s. This took place as a byproduct of the uptick in prices of gas and oil following the OPEC (Organization of the

[1] *15 U.S. Code Chapter 15B – Natural Gas*, Legal Information Institute, https://www.law.cornell.edu/uscode/text/15/chapter-15B, (last visited March 30, 2021.)
[2] *Launching Energy Advancement and Development Through Innovations for Natural Gas Act of 2019*, (2021), https://www.govinfo.gov/content/pkg/CRPT-116srpt118/pdf/CRPT-116srpt118.pdf (last visited Mar 6, 2021).
[3] *Fifth Amendment of the U.S. Constitution*, Legal Information Institute, https://www.law.cornell.edu/constitution/fifth_amendment, (last visited March 30, 3021.)
[4] *15 U.S. Code § 717j.State compacts for conservation, transportation, etc., of natural gas*, 717j, 1938, https://www.law.cornell.edu/uscode/text/15/chapter-15B, (last visited March 30, 3032.)
[5] *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 US 575 (1942), Justia, https://supreme.justia.com/cases/federal/us/315/575/, (last visited March 30, 2021.)
[6] *Federal Power Commission v. Hope Natural Gas Co.*, 320 US 591 (1944), Justia, https://supreme.justia.com/cases/federal/us/320/591/, (last visited March 30, 2021.)
[7] Id.

Petroleum Exporting Countries) institution of an oil embargo against the U.S. that occurred as a result of the U.S. support for Israel in the Arab Israeli War of 1973.[8] The original NGA's federal regulation of natural gas permitted the federal government to set rates that natural gas companies themselves charged for their products. The FPC could no longer adequately address all producers' rates, whose price controls were initially based on geographic regions.[9] The Federal Power Commission in 1974 deemed area-wide pricing unfeasible, which lead to the eventual passage of the Natural Gas Policy Act of 1978.[10]

Approved by the 95th U.S. Congress and signed into law by President Jimmy Carter, the Natural Gas Policy Act of 1978 (NGPA) revised the NGA by addressing the flawed price controls on natural gas.[11] One year prior, the Federal Power Commission had evolved into the Federal Energy Regulatory Commission (FERC), thus authorizing the regulation of interstate and intrastate natural gas production.[12] The goal behind the establishment of the NGPA was to set forth a national natural gas market that could effectively equalize supply and demand while setting price ceilings for wellhead gas prices in order to dish economic incentives out to natural gas producers.[13] However, the market response to the NGPA between 1980 and 1985 was negative: Natural gas reaching consumers in the producing states were

[8] Greg Myre, *the 1973 Arab Oil Embargo: The Old Rules No Longer Apply*, Npr.org (2013), https://www.npr.org/sections/parallels/2013/10/15/234771573/the-1973-arab-oil-embargo-the-old-rules-no-longer-apply, (last visited Mar 8, 2021.)
[9] *Address to the Nation on Energy*, Miller Center at the University of Virginia, (1977). https://millercenter.org/the-presidency/presidential-speeches/april-18-1977-address-nation-energy, (last visited March 30, 2021.)
[10] Id.
[11] Id.
[12] William Flittie & James Armour, *The Natural Gas Experience - A Study in Regulatory Aggression and Congressional Failure to Control the Legislative Process*, 19 SMU Law Review (1965), https://scholar.smu.edu/cgi/viewcontent.cgi?article=4283&context=smulr, (last visited Mar 9, 2021.)
[13] *Address to the Nation on Energy*, Miller Center at the University of Virginia, (1977), https://millercenter.org/the-presidency/presidential-speeches/april-18-1977-address-nation-energy, (last visited March 30, 2021.)

thriving markets and experienced no shortages. But the customers in the consuming states did experience gas shortages which led to schools and factories being forced to close.[14] This reality led to additional regulation of prices by the FPC and state utility regulators, which resulted in a dramatic rise in average wellhead prices and a consequent decrease in demand that essentially flipped the economic status of the natural gas market from good to bad from the 1960s and 70s.[15]

To mitigate this, the 1989 Natural Gas Wellhead Decontrol Act eliminated the price ceilings that regulated the natural gas wellhead prices, completely leaving the prices of natural gas up to the market. The FERC Order No. 636 consolidated the deregulation of the interstate natural gas industry and ordered the separation of transportation and sales services in natural gas pipelines to give more freedom of consumption choice to customers.[16]

Current Natural Gas Policy

The status of natural gas as a player in the fight against climate change is undeniably a controversial topic. Proponents of natural gas often cite it as a prerequisite to a smooth economic and environmental transition to a decarbonized society as well as a means to shift away from dependence on oil imports from the Middle East. On the other hand, opponents of natural gas cite it as a primary emitter of methane, a greenhouse gas that accounts for higher levels of environmental degradation than carbon dioxide and comprises fugitive gas emissions. Conflicting interpretations of natural gas lend themselves to conflicting policies around natural gas across states.

[14] *The History of Regulation,* NaturalGas.org, http://naturalgas.org/regulation/history/, (last visited March 30, 2021.)
[15] Id.
[16] Id.

House Bill 1084 (HB 1084),[17] a Washington state bill prohibiting natural gas infrastructure at the state level, is the first statewide natural gas ban proposal, introduced in January 2021. There are, however, numerous prohibitions of natural gas on local levels in states like California and New York.[18] Other states' legislation, like that of the states of Kansas and Missouri, look to "ban the ban" of natural gas as a result of perceiving these bans as economically unfeasible, despite specific cities' wishes to ban natural gas.[19] Many of the statewide and local proposals that have come this year are still in progress. Some cities, such as Salt Lake City, Utah, while they are not considering a ban, are aspiring to incentivize the use of resources aside from gas and natural gas.[20]

At the federal level, recent developments surrounding natural gas have particularly surrounded interstate natural gas pipelines. On February 18th, 2021, the Federal Energy Regulatory Commission (FERC) proposed an amendment to its regulations of business practice standards for natural gas pipelines based on revisions made by the North American Energy Standards Board (NAESB).[21] These standards consist of maximized transparency surrounding tariff provisions and compliance with the respective standards in

[17] *HB 1084-2021-22*, Washington State Legislature, https://app.leg.wa.gov/billsummary?BillNumber=1084&Initiative=false&Year=2021, (last visited March 30, 2021.)
[18] Danielle Muoio and Marie J. French, *New York slow to curb natural gas in new construction*, Politico, Feb. 26, 2020, https://www.politico.com/states/new-york/albany/story/2020/02/25/new-york-slow-to-curb-natural-gas-in-new-construction-1263585, (last visited March 30, 2021.)
[19] David Benson, *Washington State Legislature Considers First of its Kind State-Level Natural Gas Ban the* National Law Review (2021), https://www.natlawreview.com/article/washington-state-legislature-considers-first-its-kind-state-level-natural-gas-ban, (last visited Mar 9, 2021.)
[20] Dan Charles, Rebecca Ramirez & Madeline Sofia, *The Fight Over the Future of Natural Gas*, NPR.org (2021), https://www.npr.org/2021/03/02/972812659/the-fight-over-the-future-of-natural-gas (last visited Mar 9, 2021.)
[21] *Recent Highlights*, ferc.gov (2021), https://www.ferc.gov/industries-data/natural-gas,(last visited Mar 9, 2021.)

conjunction with streamlining the transactional processes for market competition in the wholesale natural gas industry.[22]

The Biden Administration issued executive orders to discuss new standards for control of the Natural Gas industry. However, because executive orders do not hold the capacity to ban overall fracking for natural gas and the banning of fracking would have to take place through Congress, Biden's *Executive Order on Tackling the Climate Crisis at Home and Abroad* primarily halted new natural gas leases without a necessarily complete review of what next steps are to be taken.[23] Given that specific states are exercising state jurisdiction over their own natural gas policies, the weight of federal natural gas policy against state gas policy poses new grounds for analysis.

Essentially, natural gas policies do not only raise questions about the legitimacy of natural gas in combating environmental degradation, but they also raise questions about state vs. federal authority and how the Federal Energy Regulatory Commission's authority weighs against the federal government's authority.

PennEast Pipeline v. New Jersey

The court case *PennEast Pipeline v. New Jersey* is an optimal court case for analyzing the authority of the Federal Energy Regulatory Commission and weighing state and federal authority around natural gas laws, specifically natural gas pipelines. Through a *writ of certiorari* issued to the U.S. Court of Appeals for the 3rd Circuit, the case made its way up to the US Supreme Court, which agreed on February 3rd, 2021 to hear the case.[24]

[22] Id.
[23] Joe Biden, *The Biden Plan for Clean Energy Revolution and Environment Justice*, Joe Biden for President: Official Campaign Website (2021), https://joebiden.com/climate-plan/ (last visited Mar 9, 2021).
[24] *PennEast Pipeline Co. v. New Jersey*, SCOTUS blog, (2021), https://www.scotusblog.com/case-files/cases/penneast-pipeline-co-v-new-jersey/, (last visited Mar 9, 2021.)

The *PennEast Pipeline Company* (PennEast), in wanting to construct a liquefied natural gas (LNG) pipeline throughout the State of New Jersey (New Jersey), obtained federal approval and sued to gain access to properties in New Jersey.[25] However, New Jersey cited the 11th amendment as a constitutional argument against these suits, arguing that the NGA did not permit PennEast to exercise jurisdiction over these territories; the U.S. District Court for the District of New Jersey permitted *PennEast*'s access to the properties and New Jersey appealed to the U.S. Court of Appeals for the 3rd Circuit.[26] Upon this appeal, the 3rd Circuit ruled that New Jersey was immune, under the 11th amendment, to *PennEast*'s suit under the NGA.[27] Consequently, *PennEast* appealed this ruling to the Supreme Court; the case is set for argument on April 2021.[28]

The case begs the question of whether the 3rd Circuit properly exercised jurisdiction over this case, as well as what the NGA requires jurisdictionally under the concept of *eminent domain*, and whether FERC certificate holders have the federal authority to exercise *eminent domain* over state claims concerning land.

FERC, Federal and State Authority and the Natural Gas Act

Given that the FERC is a federal commission, its jurisdictional responsibility does not consist of regulation of municipal power systems, water quality certificates, or oil pipelines, nor the regulation of local distribution pipelines of natural gas, nor regulation of natural gas sales to consumers.[29] The

[25] Id.
[26] Id.
[27] Id.
[28] Id.
[29] *The History of Regulation,* NaturalGas.org, http://naturalgas.org/regulation/history/ , (last visited Mar 30, 2021.)

aforementioned responsibilities are assigned to the State Public Utility Commissions (SPUC) instead.[30] FERC ultimately answers to the US Congress, meaning that FERC's decisions are to be appealed, if need be, before federal courts. This appears to offer a conspicuous answer: if FERC is an agency of the federal government, why would it not be able to exercise federal *eminent domain*?

It is critical to note that *PennEast*, in this case, cites the 1938 Natural Gas Act,[31] whose designation of energy infrastructure to federal government authority, is contingent on the infrastructure being in the public interest; conflicting modern state laws around the country pertaining to natural gas brings the status of natural gas infrastructure as being in the public interest into question. Furthermore, due to Congress' lack of authority to prevent State authority from asserting limits on its own court's jurisdiction, the FERC orders do not necessarily address sovereign immunity, and any authority to do so is not mentioned in the NGA. Sovereign immunity is tied to the 11th Amendment, and the constitutional validity of the NGA has only been established through the 14th and 5th Amendments-- not the 11th.[32]

Historical examples as cited by *PennEast* point to an unsuccessful arrangement when states exercised their powers concerning the construction of NLG pipelines; these arrangements did not contain approval processes by FERC to authorize the acquisition of land for natural gas infrastructure development.[33]

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[30] Id.

[31] *15 U.S. Code Chapter 15B – Natural Gas*, Legal Information Institute, https://www.law.cornell.edu/uscode/text/15/chapter-15B, (last visited March 30, 2021.)

[32] Eric Holmes, *This Land Is Your Land? Eminent Domain Under the Natural Gas Act and State Sovereign Immunity*, Congressional Research Service, (2019), https://crsreports.congress.gov/product/pdf/LSB/LSB10359/2 (last visited Mar 9, 2021.)

[33] *PennEast Pipeline Co. v. New Jersey*, SCOTUS blog, (2021), https://www.scotusblog.com/case-files/cases/penneast-pipeline-co-v-new-jersey/, (last visited Mar 9, 2021.)

However, the success of these arrangements is somewhat subjective, particularly due to the contentious role of natural gas as a facet of the public interest and a catalyst for environmental protection (or degradation). The installation of NLG pipelines is also inherently contentious; with states like Washington and California beginning to implement local and statewide natural gas ban bills, federal authority to install NLG pipelines on state land without necessarily requiring state approval will innately cause tension, and this tension needs to be mitigated through new, more specific language in the NGA.

While the proceedings of the *PennEast v. New Jersey* case will most likely end up abrogating future attempts to weigh state authority against FERC authority, there are still further questions to consider – FERC approval is required for *PennEast* and other natural gas companies to lay NLG pipelines; however, there is also an issue with the question of *PennEast*'s authority following the permission as a private company. As a result, the citation of the NGA does not fully address the issue at hand, it only addresses eminent domain by the certificate holder-- not necessarily by FERC itself.

Furthermore, the landscape of natural gas usage has considerably changed since the 1990s. From the Trump administration to the Biden administration, the use of natural gas is projected to change further. The Energy Information Administration (EIA) projects that natural gas use will inevitably decline this year as a result of economic recovery from COVID-19 in tandem with inflation of natural gas prices, but then increase again in 2022 as a result of growth in other regions.[34] Essentially, certain U.S. regions will begin the process of phasing out natural gas for renewable energy sources while certain U.S. regions will start to use more natural gas than before, seeing it as a fitting

[34] Maya Weber, *EIA lifts forecasts for US gas production, trims 2021 price estimates*, S&P Global Platts, Spglobal.com (2021), https://www.spglobal.com/platts/en/market-insights/latest-news/natural-gas/020921-us-eia-raises-expected-q1-gas-marketed-production-by-36-bcfd-to-9868-bcfd#:~:text=Overall%2C%20EIA%20is%20forecasting%20that,gas%20consumed%20for%20electric%20power, (last visited Mar 9, 2021.)

transitional energy source. The disparity in state interpretations of natural gas will inevitably lead to different levels of tension that would likely be raised should natural gas companies assert eminent domain over states.

To alleviate this tension, the findings of the *PennEast Pipeline v. New Jersey*[35] need to be codified into the NGA, but that will not necessarily address all aforementioned concerns. What needs to be implemented is a renewed definition of the public interest, whose role is a prerequisite to the implementation of natural gas pipelines in the NGA, given the differing ideas of states as to whether natural gas is good, as well as clarification on the authority of certificate holders versus the authority of FERC itself in regard to jurisdiction over both federal and state authority.

Conclusion

The timeline of the NGA from its passage in 1938 to its multiple stages of evolution over time has shown the ever-changing nature of issues that are capable of coming up in such a contentious manner with critical environmental, economic, and legal implications. *The PennEast Pipeline v. New Jersey*[36] court case exemplifies the tension that may take place in environmental policy between the federal level and the state level, particularly under the Natural Gas Act which permits certificate holders to exercise eminent domain over states with natural gas pipelines being categorized as part of the public interest.

With increasing disparities among state policies surrounding natural gas, it is critical that the NGA establishes, despite the fact that many of its issues will be answered in the proceedings of the *PennEast Pipeline v. New Jersey* case, a clear explanation of both the certificate holders' right to *eminent domain* and the rights and authorities of FERC itself, and that the proceedings should state

[35] *PennEast Pipeline Co. v. New Jersey*, SCOTUS blog, (2021), https://www.scotusblog.com/case-files/cases/penneast-pipeline-co-v-new-jersey/, (last visited Mar 9, 2021.)
[36] Id.

whether states have successfully barred natural gas pipelines from their jurisdiction.

The path to decarbonization in the energy sector is a long road that constantly presents ever-changing legal questions, and it is imperative that they continue to be answered to establish clarity and facilitate an effective road to a green future.

AN ERA OF NEW POLICING: EXPLORING THE DEFUNDING OF THE POLICE

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Abstract

Discussions of defunding the police began after the gruesome killing of George Floyd, which sparked outrage in the U.S. and abroad. This incident led to massive protests around the United States demanding change and demanding police reform. The question that arises is whether police reform is suitable for our society? Furthermore, how do we make the changes needed to achieve police reform? To understand this issue, we must explore more important aspects of this situation, acknowledging the different perspectives on this matter and what would be the possible outcomes of the decision.

Introduction

Defunding the police is a topic that is being debated publicly. For some, it means reducing the funds that are put into law enforcement and alternatively placing the funds into specialized groups that perform specific types of functions.[1] Discussions of defunding the police began after the gruesome killing of George Floyd, which sparked outrage in the U.S. and abroad. This incident led to massive protests around the United States demanding change and demanding police reform.[2] The question that arises is whether police reform is suitable for our society? Furthermore, how do we make the changes needed to achieve police reform? To understand this issue, we must explore more important aspects of this situation, acknowledging the different perspectives on this matter and what would be the possible outcomes of the decision.

Defining "Defunding of the Police"

To clarify the definition of what defunding the police entails: defunding police does not mean the police will be non-existent or abolished. However, it means minimizing the funds that are used to support the police, to be reallocated for other resources such as education, health care, and housing.[3]

[1] Raquel Croston, *Defunding the police: What it means, how it works and why we need it.*, UWIRE Text 1 (2020), https://go.gale.com/ps/i.do?p=EAIM&u=gale15691&id=GALE%7CA629406026&v=2.1&it=r&sid=EAIM&asid=d2698356, (last visited Mar 22, 2021).

[2] Adrienne Kennedy, *Police reform in the United States*, Salem Press Encyclopedia 1 , 2020, http://eds.a.ebscohost.com/eds/detail/detail?vid=4&sid=b77c2079-3a2a-4aeb-842f-803d5829a944%40sdc-v-sessmgr03&bdata=JkF1dGhUeXBlPXNoaWImc2l0ZT1lZHMtbGl2ZSZzY29wZT1zaXRl#AN=146920886&db=es, (last visited Mar 22, 2021).

[3] Id.

Over the years, numerous events have caused citizens to question the safety, judgment, and reliability of the police community. The peak of this discussion came when a video of George Floyd was released. The video displayed a police officer's knee on Floyd's neck for almost eight minutes, killing him as a result.[4] This tragic event struck a nerve on the issue of racism and especially for people of color. During this time, church gatherings or large gatherings were not permitted. However, protests took place in many states across the nation, such as the one at Brooklyn's Grand Army Plaza where 15,000 people participated in the protest.[5] As a testament to the anger that was sparked because of George Floyd's death, and following the nationwide protests, significantly more citizens had an updated understanding of why the police reputation was so damaged. Furthermore, there was an outpouring of demand for a dramatic change as it relates to the police and the law enforcement community. This outpouring included a demand to defund the police.

A History of the Police

The history of the police began in the mid-1600s, where the policing system in the United States followed the same structure of policing as the one in England. However, in the Southern states, policing was largely different. With police organizations in the South known as the "Slave Patrol", the first slave portal was created in the Carolina colonies in 1704 and had three main functions: (1) chase down and return runaway slaves, (2) discourage slave

[4] Sheila Davis & Gary Davis, *The "George Floyd "of Healthcare*, 16 Online Journal of Health Ethics 3, 2020, http://eds.b.ebscohost.com/eds/pdfviewer/pdfviewer?vid=3&sid=43e47c08-ad6a-42f1-bdcc-6ae041aebeae%40sessionmgr102, (last visited Mar 22, 2021).

[5] *After the death of George Floyd, fifteen thousand people gathered in Brooklyn's Grand Army Plaza to protest.*, First Things: A Monthly Journal of Religion and Public Life 2, 2020, https://go.gale.com/ps/i.do?p=EAIM&u=gale15691&id=GALE%7CA642621889&v=2.1&it=r&sid=EAIM&asid=96f90177, (last visited Mar 15, 2021).

revolts, and (3) maintain discipline for slave workers.[6] Today, slavery, segregation, and race-based laws have been abolished. However, police officers are still viewed by some as a group that tries to regulate the actions of some of the population-based upon the subjective preferences of the police officer.

Policing is an honorable career, and many police officers and law enforcement professionals choose this career to assist and help people. Due to the dangers of the job, they leave their families without knowing if they will return home safely. Police Culture is defined as, "A set of widely shared outlooks that are formed as adaptations to a working environment characterized by uncertainty, danger, and coercive authority and that serves to manage that strains that originate in this work environment."[7] Two of the categories that make up the culture in policing are the management cop culture and street cop culture.[8]

Unfortunately, the police system was built on a faulty foundation of slave patrol, and the record of police brutality in the 1960s points to this.[9] Many behavioral activities are included in the list when it comes to the expression, "problem officers." Examples of these behaviors include excessive force, which is defined as more force than what is necessary; police corruption (using the status of a police officer to access benefits unjustly); and treating certain individuals without decency. There are theories presented that explain

[6] Dr. Gary Potter, *The History Of Policing In The United States, Part 1*, Police Studies Online, Eastern Kentucky University, 2013, https://plsonline.eku.edu/insidelook/history-policing-united-states-part-1, (last visited Mar 15, 2021).
[7] Ismail Cenk Demirkol & Mahesh K Nalla, *Police culture: An empirical appraisal of the phenomenon*, 20 Criminology & Criminal Justice 319-338, 2019, https://journals.sagepub.com/doi/10.1177/1748895818823832 (last visited Mar 16, 2021).
[8] Id.
[9] Dr. Gary Potter, *The History Of Policing In The United States, Part 1*, Police Studies Online, Eastern Kentucky University, 2013, https://plsonline.eku.edu/insidelook/history-policing-united-states-part-1, (last visited Mar 15, 2021).

why police misconduct happens, and these are described as Social Learning, Social Structure, Social Process, and Social Conflict. For instance, the Social Learning theory describes that behavior is learned from observing others. Police academies focus training on firearms and the use of force, but perhaps more focus should be put on de-escalation training.[10] De-escalation training discourages further conflict and allows both parties to have a peaceful resolution. However, most of the time, police officers have qualified immunity to order to protect their rights. Qualified immunity states that executive branch officials, including police officers, are protected from lawsuits that pertain to claims of a violation of constitutional rights. This stands if their actions do not violate the person's known rights.[11]

The topic of the defunding of the police stems from high-profile cases of police officers killing African Americans. One prominent case was Breonna Taylor, where a No-Knock raid was performed on Taylor's home after it was suspected that it housed illegal narcotics. During this raid, Taylor's boyfriend assumed that his home was being burglarized, which led him to shoot at the police, prompting the police to shoot as well. As a result, Breonna Taylor was killed while lying in her bed. Reactions to this event included No-Knock warrants being banned in Taylor's hometown, in addition to protests held across the country demanding a change in the U.S. police system.[12] These cases prompted police reform to become a major topic in the nation. Both

[10] Eric Nieves, *Criminology Explains Police Violence*, 14 Theory in Action 7, 2021, http://eds.a.ebscohost.com/eds/detail/detail?vid=3&sid=c456ffe7-9cbc-4bfc-a50e-094ebb2748f1%40sessionmgr4007&bdata=JkF1dGhUeXBlPXNoaWImc2l0ZT1lZHMtbGl2ZSZzY29wZT1zaXRl#AN=148612499&db=hus, (last visited Mar 15, 2021).
[11] Katherine Crocker, *Qualified Immunity And Constitutional Structure*, 117 Michigan Law Review 58, 2019, http://eds.b.ebscohost.com/eds/pdfviewer/pdfviewer?vid=3&sid=4b7346e5-d7f5-4ac6-acec-ba73423d1c77%40sessionmgr102, (last visited Mar 15, 2021).
[12] Tyler Biscontini, *Shooting of Breonna Taylor*, 2020, http://eds.b.ebscohost.com/eds/detail/detail?vid=1&sid=bc7ec91b-3ae4-44f3-b3f7-789df04e2223%40pdc-v-sessmgr02&bdata=JkF1dGhUeXBlPXNoaWImc2l0ZT1lZHMtbGl2ZSZzY29wZT1zaXRl#AN=146920892&db=ers, (last visited Mar 15, 2021).

cases sent shock waves around the world, as they pierced the emotions of the community.

Statistical Analysis & Interpretation on Crime Rates

Police need better conflict management skills to manage social issues in the minority community. Regarding crime in the black community, research indicates African Americans have a higher number of aggressive crimes than any other group. In Nathaniel J Pallone's article, Blacks *and Whites as Victims and Offenders in Aggressive Crime in the U.S. Myths and Realities,* Pallone says that research shows that blacks have a homicide level of 315%, which is significantly more than their representation in the population.[13] However, in regard to offenders, other races are underrepresented. African Americans are considered "high-risk" for victimization in homicides, as well as being at a disadvantage as a victim in assault situations. Statistics show that a white victim is five times more likely to be involved in an altercation with a white individual, than with a black individual. Furthermore, black males are at risk for victimization in homicide and homicide offending, throughout their adolescence and adulthood.[14]

Political Viewpoints on Defunding of the Police

Returning to the main topic of defunding the police, there are various opinions surrounding the topic of police reform. One of those opinions comes from President Joe Biden. In 2008, then Vice-President Joe Biden was proudly an

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[13] Nathaniel J Pallone, *Blacks and Whites as Victims and Offenders in Aggressive Crime in the U.S. Myths and Realities.*, 30 Journal of Offender Rehabilitation 33 , 2000, http://eds.b.ebscohost.com/eds/detail/detail?vid=2&sid=5d7ed30f-ed57-4e1a-bbc2-9b03bd854fac%40pdc-v-sessmgr01&bdata=JkF1dGhUeXBlPXNoaWImc2l0ZT1lZHMtbGl2ZSZzY29wZT1zaXRl#AN=27707067&db=eue, (last visited Mar 16, 2021).
[14] Id.

ally for the police. Due to the ongoing injustice present in the United States, now-President Biden has pushed for police reform.[15] Many current police officers believe that President Biden will bridge the divide between police issues. However, on both sides there is pressure regarding police reform, on one side questions arise about his 1994 crime bill.[16] On the other side, it is believed that since the President has supported the reform, that he has relinquished his relationship with law enforcement. Along with the President's support, there is legislation that is supported by Democrats who would ban all chokeholds and create a police misconduct registry.

In contrast to this viewpoint is former President Donald Trump who received endorsements from police groups, as he described himself as the "law and order" candidate.[17] However, before leaving office, then-President Donald Trump signed an executive order to prompt police reform, mandating police training and a tracking database that highlights police misconduct.[18] Despite public opinion, after the killing of George Floyd and Breonna Taylor, Democrats were in pursuit of legislation that would ban chokeholds and No-Knock warrants, instill body camera requirements, and improve police training

[15] Molly Nagle and John Verhovek, *Joe Biden once pushed for more police. Now, he confronts the challenge of police reform,* abc News, 2021, https://abcnews.go.com/Politics/joe-biden-pushed-police-now-confronts-challenge-police/story?id=71177383, (last visited March 31, 2021.)
[16] 42 U.S. Code Chapter 136 - *Violent Crime Control And Law Enforcement*, LII / Legal Information Institute, 2021, https://www.law.cornell.edu/uscode/text/42/chapter-136, (last visited Mar 24, 2021).
[17] Mark Berman & Tom Jackman, *Biden, a longtime ally of police, will enter White House pushing for reform,* The Washington post, 2021, https://www.washingtonpost.com/politics/2021/01/11/biden-police-reform/ (last visited Mar 24, 2021.
[18] Amita Kelly & Brian Naylor, *Trump, Hailing Law Enforcement, Signs Executive Order Calling For Police Reform, NPR.org*, 2020, https://www.npr.org/2020/06/16/877601170/watch-live-trump-to-sign-executive-order-on-police-reform, (last visited Mar 24, 2021).

standards.[19] On March 3, 2021, the house approved the George Floyd Justice in Policing Act. This bill:

1) bans chokeholds;

2) end racial and religious profiling;

3) eliminate qualified immunity for law enforcement;

4) establish a national standard for the operation of police departments;

5) mandate data collection on police encounters;

6) reprogram existing funds to invest in transformative community-based policing programs; and

[19] John Yoo & Horace Cooper, *Genuine Hope and Change: "Defunding the police" is just a new way for cities to throw good money after bad--bad social programs, that is. There are better ways to tackle crime and promote opportunity.*, Hoover Digest 29, 2020, https://go.gale.com/ps/i.do?p=OVIC&u=gale15691&id=GALE%7CA641011979&v=2.1&it=r&sid=OVIC&asid=8df3ca66.%20Accessed%2021%20Mar.%202021, (last visited Mar 24, 2021).

7) streamline federal law to prosecute excessive force and establish independent prosecutors for police investigations.[20] It also requires the use of body and dashboard cameras for federal officers engaged in police investigations.[21] Republicans believe that said legislation does not allow the police to do their job, since it would "weaken and possibly destroy our community's police forces," as stated by Republican Representative (FL-26) Carlos Gimenez.[22] Arguably, police reform has begun. The question now, is how will this change policing as we know it?

The Impact of Police Reform

A lot has occurred to get to this juncture. The police are not going to have the same funding, as promised as a part of President Biden's campaign, and regarding police reform, and alongside the George Floyd Justice in Policing Act, which was enacted in early March 2021. Police officers across the country need to relearn how to reprimand an offender, adapt to new policies, and develop a new way of policing in America. At this juncture, it is unclear how this bill will impact the culture of policing, how the budget will be re-allocated, and how police officers will respond to the public in dangerous situations.

[20] *House Passes H.R. 1280, the George Floyd Justice in Policing Act*, U.S. House Judiciary Committee, 2021, https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=4430, (last visited Mar 24, 2021).
[21] Id.
[22] Chole Weiner, House Approves Police Reform Bill Named After George Floyd NPR, 2021, https://www.npr.org/2021/03/03/973111306/house-approves-police-reform-bill-named-after-george-floyd (last visited Mar 24, 2021).

Conclusion

In March 2020, the COVID-19 pandemic ravished our country, and the crime rates in the United States increased. While the pandemic was ongoing, as an example, it was reported that felonies significantly increased in New York City.[23] Due to the pandemic, the courts, probation departments, and pre-trial services in some jurisdictions were closed to the public, which led to less tracking and supervision for offenders. However, other widespread events such as natural disasters caused an impact on crime rates. An increase in burglaries after hurricanes occurred, since the probability of homes being unattended increased.[24] It is a perfect storm for the pandemic and police reform to take place at the same time, especially considering how evident it is that crime has influenced society due to the pandemic. This is a solution that law enforcement must come up with and their solution must be founded on the principle of protecting communities in this changing world, and they must do it with reduced funding. Community leaders, stakeholders, politicians, and society must collectively come up with solutions during these turbulent times.

[23] Heather MacDonald, A *New Crime Wave—and What to Do About It, City* Journal, 2021, https://www.city-journal.org/new-york-city-violence-surging, (last visited March 24, 2021].

[24] Matthew P. J. Ashby, *Initial evidence on the relationship between the coronavirus pandemic and crime in the United States*, 9 Crime Science, 2020, https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-020-00117-6#citeas, (last visited Mar 24, 2021).

AMERICA: SOCIETY, LAW, & PHILOSOPHY

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"We shall be as a city upon a hill, the eyes of all people are upon us."

- John Winthrop

Abstract

American Exceptionalism and the idea of America being a utopia, has caused many people to immigrate to the United States, but why? The U.S. is no more exceptional than any other democratic country. To get this answer, this article examines the philosophical utopias by both Plato and Aristotle and a contradiction to Aristotle's utopia. It is also important to examine the form of government the founders chose and why other countries thought the United States would fail. It is also important to analyze the relationship of the United States government with its people, and how that relationship helps laws get ratified for the public's benefit. Exploring the history of people coming to America and the changes in the country that made more people want to come to the United States is also helpful in understanding the system. Though we know that the U.S. is not perfect, we also know that there must be strong relationships between the government and the people to ensure proper

governance. It is because of these existing factors that people see America as a utopia.

Introduction

America has been viewed as the beacon of hope, freedom, liberty, and opportunity around the world. Many people wish for the chance to leave their country and come to America, where they can live the "American Dream." Since John Winthrop's *City Upon a Hill*[1] speech, America has been the place to recreate what you have lost and create what you do not have. This idea of American Exceptionalism has existed for centuries, creating the idea of the American Utopia.[2] However, America has its flaws like any other nation, including racism, sexism, inequality, etc.; but people still see America as a Utopia.[3] Why is that? Is it because of the way the U.S. government has made a connection with its people and how that relationship has influenced its laws? We may be able to gain insights by focusing on why other countries "failed,"[4] and how American Exceptionalism has played a role in being seen as such.[5]

Philosophical Approach to a "Perfect Society"

The term "utopia," was first coined in Sir Thomas More's book *Utopia.*[6] His book described a fictional island in the Atlantic that depicted the island's

[1] John Winthrop, *3c. Massachusetts Bay – The City Upon a Hill* ,1630, U.S. History, https://www.ushistory.org/us/3c.asp, (last visited April 7, 2021.)
[2] Thomas More, *Utopia Planetebook.com*, 2021, https://www.planetebook.com/free-ebooks/utopia.pdf (last visited Mar 21, 2021).
[3] Id.
[4] Id.
[5] Id.
[6] Id.

society, religion, social, and political customs.[7] It is an imagined community or society that possesses highly desirable or nearly perfect qualities for its citizens. Some would say that his book described it more like a monastery. However, this is not the first time a utopia was described after Plato and Aristotle published their views on a utopia. In *The Republic*, Plato discusses one of the first notions of justice, focusing on a fair polis (city-state) and the just man.[8] Plato writes that the ideal society has three classes, the producers, the auxiliaries, and the guardians, and for that society to be ideal, their relationship must be at equilibrium, perfect.[9] The classes all have their function: the producers are the people who create/produce goods, the auxiliaries are the police/military, and the guardians are the politicians, the rulers. And they must focus on their work and do their job correctly and perfectly so that a society can maintain its status as just.[10]

Aristotle has his own idea of the "perfect society" in his book *Politics*. Aristotle somewhat believes there is no such thing as a perfect society, but one can be comfortable in society, by having political power.[11] But, to have that political power you must be part of the polis. Aristotle believes "man is a political animal," [12] and that a man can do good or bad with his power. He identified the good as being a constitutional government, an aristocracy, or a kingship. The bad would be a democracy, an oligarchy, or tyranny. Aristotle said the polis goal is to help every citizen be happy, which is a realistic goal if the government, military service, religion, and land are all shared among the individuals. Many disagree with Aristotle and his "perfect society," because it is seen as being more feasible but less utopian, while Plato and *The Republic* are the opposite. Steven Thomason argues that Aristotle's ideas are not

[7] Id.
[8] Plato, *The Republic*, translated by Benjamin Jowett, http://classics.mit.edu/Plato/republic.html, (last visited April 7, 2021.)
[9] Id.
[10] Id.
[11] Aristotle, *Politics the History of Economic Thought*, 1999, translated by Benjamin Jowett, https://historyofeconomicthought.mcmaster.ca/aristotle/Politics.pdf, (last visited Mar 21, 2021.)
[12] Id.

feasible nor are they recommendations. Instead, they are experiments or thoughts.[13] However, people still prefer Plato's ideas because it envisions more of a utopia, rather than suggestions on how to live a "comfortable" life.

Becoming the Dystopia

When America got its independence from Great Britain, it was a shock to the world. Not only because Great Britain lost land, but also because of their form of government.[14] When the revolution started in America, the colonists thought they could change the British government's law and rules by revolting against them. It did not take long before the colonists realized that there had been no change.[15] The colonists needed to choose a type of government they hoped would rule the new nation if they won the war. There were very few successful governments that they could choose from, and they knew they did not want to choose a monarchy. Republics, such as Rome and England, often fail, as well as a number of Republics in Europe, many of which were smaller than the colonies.[16] The American colonists feared Democracies because of the writings of Plato[17] and Aristotle.[18] So, they looked within and realized they wanted the people to have a say, but they want elected officials to have "the final" say. So they decided to take a gamble, with a Democratic-Republic, which they just called a Republic.

[13] Steven Thomason, *Aristotle's Ideal Regime as Utopia,* Brewminate, 2017, https://brewminate.com/aristotles-ideal-regime-as-utopia/, (last visited Mar 21, 2021.)
[14] James Truslow Adams, *The Epic of America*, Internet Archive https://archive.org/details/in.ernet.dli.2015.262385/page/n1/mode/2up, (last visited Mar 21, 2021.)
[15] Id.
[16] Id.
[17] Plato, *The Republic*, translated by Benjamin Jowett, http://classics.mit.edu/Plato/republic.html, (last visited April 7, 2021.)
[18] Aristotle, *Politics the History of Economic Thought*, 1999, https://historyofeconomicthought.mcmaster.ca/aristotle/Politics.pdf, (last visited Mar 21, 2021.)

Many countries did not believe the United States would survive, because they choose to organize as a Republic and after George Washington stepped down, many believed that his successor, John Adams would not be able to lead effectively. Because America chose to be a Republic and Republics were associated with Rome,[19] which many associate with the concept of self-destruction after the fall of the Roman Republic.[20] The norms established in Rome were broken constantly.[21] The Senators murdered Julius Caesar, the Roman general and statesman that the Roman people liked the most. Augustus Caesar, the first Roman emperor, thought he could save the country, but by the time he was empowered Rome was too far gone, and the people revolted against the government. There are lessons to be learned from Julius Caesar and Augustus Caesar if compared with Washington and Adams, respectively, because when a popular leader is gone, and a less great leader steps in, their people usually disapprove of the lesser leader.[22]

Another comparison would be England when they were a Republic. The Commonwealth (or the English Republic) during the period of interregnum (a period of time between two reigns) on the British Isles, occurred following the English Civil War and the execution of King Charles I. After the execution, Parliament ran the country and it was called Rump Parliament. Oliver Cromwell, one of the leaders of the Roundheads during the English Civil War and referred to as Lord Protector, dissolved parliament because he viewed them as worse than the King they executed saying, "I command ye, therefore, upon the peril of your lives, to depart immediately out of this place,"[23] and he

[19] Michael Crawford, *The Roman Republic* 2nd Edition, 1978, Fontana.
[20] Id.
[21] Plato, *The Republic*, 2020, translated by Benjamin Jowett, http://classics.mit.edu/Plato/republic.html, (last visited April 7, 2021.)
[22] Rachel Feig Vishnia, *State, Society, and Popular Leaders in Mid-Republican Rome 241-167 B.C.*, Routledge, 1996.
[23] Thomas Carlyle, *Oliver Cromwell's Letters & Speeches: With Elucidations*, Volume 2, Chapman & Hall, London, 1845.

ended his speech with, "In the name of God, go!"[24] At first, his reign seemed better than that of Charles I and better than the Rump Parliament, and while some viewed him as better, his record shows he was worse and more oppressive. After his death, his son, Richard Cromwell,[25] became Lord Protector. He was weaker than his father, and the former English/Scottish Monarchy saw that, and they used that to take back the British Isles.[26]

The Progression of American Law and Society

The founders of the United States and the authors of the U.S. Constitution were very fortunate that their "gamble" worked well.[27] The success of the Republic established in America made the country very attractive to immigrants. Many of the first immigrants to the US were of Irish, British, and German descent.[28] The U.S. was perceived as being a very inviting place for white men. These immigrants left their countries because their countries did not have the freedoms and opportunities that were available to them in America.[29] They had the chance to do anything in America and saw America in the words of Seymour Martin Lipset as, "the first new nation."[30] In the immigrants' countries of origin, it was common for only people of high socio-economic status to participate in government. And those people did not represent the public, they represented themselves. But in America, people of

[24] Id.
[25] Godfrey Davies, *The Army and the Downfall of Richard Cromwell*, Huntington Library Bulletin #7, 1935, JSTOR, https://www.jstor.org/stable/3818178?seq=1, (last visited April 7, 2021.)
[26] Id.
[27] Peter Gowan, *The Global Gamble: Washington's Faustian Bid for World Dominance*, 1999, Verso.
[28] James Truslow Adams, *The Epic of America*, Internet Archive, 2021, https://archive.org/details/in.ernet.dli.2015.262385/page/n1/mode/2up (last visited Mar 21, 2021.)
[29] Id.
[30] Seymour Martin Lipset, *The First New Nation*, The Sociological Quarterly, Vol 6, No.2, 1965, Taylor & Francis, Ltd.

low economic classes and social status could participate in government, but not only that, it was their *right* to participate in government.[31] By the 1830s, French diplomat and philosopher, Alexis de Tocqueville, described the US as "exceptional,"[32] and from then on, the US was seen as "exceptional."[33]

Along with the right to participate in government, immigrants saw the U.S. had many other rights that could not be taken away. Other countries said the people had rights, but nothing as detailed as the rights in the U.S. Constitution, particularly the Bill of Rights and the other Amendments.[34] The Amendments detail the rights of the people and how there would not be an infringement of the people's rights. And the people were not afraid the government would take away their rights. The people saw the U.S. government as looking forward, instead of regressing.[35] This led to some people seeing the United States as a utopia, something they thought was impossible or unrealistic.[36]

During the Civil War, many immigrants joined the Union Army.[37] They saw there was a need for more progress in U.S. history, and many wanted to be part of it, to be able to say we needed to make sure all men had rights, regardless of their race. In 1885, the U.S. received the Statue of Liberty as a gift from France, after World War I. The statue became a beacon and symbol

[31] James Truslow Adams, *The Epic of America*, Internet Archive, 2021, https://archive.org/details/in.ernet.dli.2015.262385/page/n1/mode/2up, (last visited Mar 21, 2021.)
[32] Alexis de Tocqueville, *Democracy in America*, 1835, The Project Gutenberg EBook, https://www.gutenberg.org/files/815/815-h/815-h.htm, (last visited April 7, 2021.)
[33] Id.
[34] Peter Gowan, *The Global Gamble: Washington's Faustian Bid for World Dominance*, 1999, Verso.
[35] Id.
[36] James Truslow Adams, *The Epic of America*, Internet Archive, 2021, https://archive.org/details/in.ernet.dli.2015.262385/page/n1/mode/2up, (last visited Mar 21, 2021.)
[37] Susannah Ural Bruce, *The Harp and the Eagle: Irish – American Volunteers and the Union Army*, 1861 – 1865, NYU Press, 2006, https://www.jstor.org/stable/j.ctt9qfhdw, (last visited April 7, 2021.)

of hope and liberty to many, especially immigrants.[38] During World War I, the U.S. tried to stay out of the war, because the issue and cause of the war had nothing to do with America. But, following the Zimmerman Telegram, the U.S. entered the war.[39] After the war, the U.S. ratified the Nineteenth Amendment,[40] which gave women the right to vote, and the U.S. helped create the League of Nations. Though the U.S. would never be part of the League of Nations, President Woodrow Wilson tried in vain to join.

America the Superpower

Though there have been changes to the U.S., the American government has remained virtually the same, there have been some additional amendments to our Constitution, but the U.S. legal structure, has not changed substantially. Some countries fail and neighboring countries even fear they may be the next to fail. That was the case when the Russian Tsar failed and the remaining monarchies in Europe feared being next to fail.[41] However, because of the relationship between the government and the people, the balance of power, and the stability experienced by the U.S. and its Constitution, this fear of failure has not traditionally been a part of the American psyche. And with this close and interactive relationship, the government can make appropriate laws to help the people. This is what many countries lack, a relationship. Because

[38] James Truslow Adams, *The Epic of America*, Internet Archive, 2021, https://archive.org/details/in.ernet.dli.2015.262385/page/n1/mode/2up, (last visited Mar 21, 2021.)
[39] Evan Andrews, *What was the Zimmermann Telegram*, History, Aug. 31, 2018, https://www.history.com/news/what-was-the-zimmermann-telegram, (last visited April 7, 2021.)
[40] Id.
[41] Leon Trotsky, *History of the Russian Revolution*, 1930, Library of Congress Catalog Card No. 8083994, https://www.marxists.org/archive/trotsky/1930/hrr/, (last visited April 7, 2021.)

they are so separated, the government does not know what the people want or need, which many times leads a people to revolt or flee the country.[42] This is where American Exceptionalism[43] comes into play. The relationship that exists is unseen; as a result, many people want to live in the United States.[44]

When the Great Depression struck, the U.S. was not able to recover quickly, nor was any other country. But the Hoover Administration failed to lead the charge to stop the Depression,[45] resulting in President Franklin Roosevelt, winning the 1932 Election. Roosevelt saw the need for social and economic programs to help better the U.S. economy and the people suffering from the effects of the Depression.[46] Roosevelt was also not afraid to help the British from 1939 to 1941 with the war efforts, even before the U.S. entered World War II. After World War II, the U.S. emerged as one of if not the largest superpower in the world.[47] This drew even more immigrants to the U.S., because of its ability to maintain stability from the end of World War I through the Great Depression and World War II and emerge on top after three devastating events covering about thirty years.[48] The U.S. also pioneered the creation of the United Nations,[49] an organization that was needed more than ever post-World War II. That leadership, establishing the United Nations, led America to be the symbol of progression, not only domestically, but also

[42] Id.
[43] Alexis de Tocqueville, *Democracy in America*, 1835, The Project Gutenberg EBook, https://www.gutenberg.org/files/815/815-h/815-h.htm, (last visited April 7, 2021.)
[44] James Truslow Adams, *The Epic of America*, Internet Archive, 2021, https://archive.org/details/in.ernet.dli.2015.262385/page/n1/mode/2up, (last visited Mar 21, 2021.)
[45] Lionel Robbins, *The Great Depression*, 1934, https://mises.org/library/great-depression-0, (last visited April 7, 2021.)
[46] Id.
[47] Charles S. Maier, *The Politics of Productivity: Foundations of American International Economic Policy after World War II,* International Organization, Volume 31, 1977, University of Wisconsin Press, https://www.jstor.org/stable/2706316?seq=1, (last visited April 7, 2021.)
[48] Id.
[49] Id.

internationally. From the end of WWII to 1991, the U.S. led in the fight against Communism. Even though some argue that the U.S. was looking at Communism from the "wrong angle", it did stop dictatorships that oppressed people's rights.[50] And from the 1980s to the present, the US led in the fight against terrorism, helping to make the world a more secure place and enable it to progress into the future.[51]

Conclusion

American Exceptionalism continues to be seen today. People still take chances to come to the United States because they see it as a utopia. The U.S. has always chosen to pursue progress, never to regress. The United States truly understands the meaning of "adapt or die". And because of this, it is seen as a model for a utopia, though there are still issues that need to be fixed. President Theodore Roosevelt said, "This country will not be a good place for any of us to live in unless we make it a good place for all of us to live in."[52] Citizens of the U.S. try to practice this quote because they understand even though there are problems, a strong bond exists between the government and the people. If the government knows what the people need, they can be helped. Americans are not afraid to fix those problems that are identified and then to lead the charge to make the idea of the American utopia a reality.

[50] Kathleen D. McCarthy, *From Cold War to Cultural Development: The International Cultural Activities of the Ford Foundation 1950-1980*, Daedalus, The MIT Press, Vol. 16, 1987, https://www.jstor.org/stable/20025087?seq=1, (last visited April 7, 2021.)
[51] Id.
[52] Jane Ellison and Carolee Hayes, *Effective School Leadership: Developing Principles through Cognitive Culturing*, 2006, Rowman & Littlefield Publishers.

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