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# CONTENTS

<i>Letter from the Editors</i>	5
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## Articles

1	Small Islands Developing States and Climate Change: An Overview of Legal and Diplomatic Strategies	6
	<i>Valentina Baiamonte and Chiara Redaelli, Graduate Institute of International and Development Studies</i>	
2	Identifying Fraud: An Analysis of Whether Instances of Voter Fraud Drive State Legislatures to Enact Voter Identification Laws	27
	<i>Hal Brewster, Woodrow Wilson School of International and Public Affairs, Princeton University</i>	
3	Private Firm Incentives to Adopt Internal Carbon Pricing	56
	<i>Vivian Chang, Woodrow Wilson School of International and Public Affairs, Princeton University</i>	
4	Prison-based Gerrymandering and the Systematic Dilution of Minority Political Voice	78
	<i>Lindsay Holcomb, Swarthmore College</i>	
5	The Shanghai Cooperation Organization as a Multilateral Security Platform in Central Asia	101
	<i>Sarah Lohschelder, Georgetown University School of Foreign Service and Law Center</i>	
6	The Repeal of the Corn Laws and Brexit in Comparative Perspective: The Enduring Role of Interest Representation, the Renewed Role of Ideas	121
	<i>Nicolas Pose, London School of Economics and Political Science</i>	
7	From Narco-Terrorism to Informal Economy: Theorizing the State-Crime Nexus to Understand Afghanistan's Opium Dilemma	139
	<i>Stephen Reimer, London School of Economics and Political Science</i>	

## Essays

8	"Add Two Teaspoons of Women": Women, Empowerment, and Development Policy	155
	<i>Namitha Sadanand, London School of Economics and Political Science</i>	
9	Examining Nigeria's Learning Crisis: Can Communities be Mobilized to Take Action?	160
	<i>Eustace Uzor, London School of Economics and Political Science</i>	

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## Letter from the Editors

The aim of the Journal of Public and International Affairs (JPIA) is to shed light on the meaningful research, analysis, and writing of public policy-focused graduates students studying a wide variety of issues—from domestic problems in the United States to international challenges among nation states. JPIA is a unique venue to highlight some of the great work and thought-provoking ideas produced by graduate-level students.

We are pleased to say this year's Journal lives up to its goal of helping broadcast this work to a wide audience. From the United States to the Switzerland, this year's Journal draws on a diverse range of authors' experiences and studies to analyze a varied—yet timely—set of current issues. By spotlighting topics such as climate change, voting rights, and gender issues, JPIA contributes to the debates that are occurring today. The strong use of quantitative analysis and in-depth study of resources ensures that this year's Journal adds a select perspective to the debate that hopefully policymakers will find useful and actionable.

Such an accomplishment, however, would not be possible without the contributions of several key individuals and institutions. Princeton University and its staff provided the financial and logistical support needed to allow students from around the world to participate in JPIA's publication. Similarly, the Association of Professional Schools of International Affairs (APSIA) also contributed significant financial resources to the Journal. Leona Rosso-Dzugan, a graphic designer at Princeton, provided immense help in shaping the Journal to have its professional look. Lastly, but perhaps most importantly, there is a significant amount of time and resources that individual student editors put into the Journal. This year, we had 36 participants from 12 graduate schools participate in the production of the Journal. We are particularly grateful for the student editors who spent a long weekend in Princeton pouring over this year's submissions and helping craft the strongest Journal possible. Sam and Andi, the Princeton Contributing Editors to this year's Journal, played an invaluable role in orchestrating the logistics of the reading weekend. We are confident they will help lead the Journal forward next year and look forward to another successful year for JPIA.

Bethany Atkins and Trevor Pierce  
*JPIA* Editors-in-Chief

# 1

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## SMALL ISLANDS DEVELOPING STATES AND CLIMATE CHANGE: AN OVERVIEW OF LEGAL AND DIPLOMATIC STRATEGIES

*Valentina Baiamonte and Chiara Redaelli*

### INTRODUCTION

Small Islands Developing States (SIDS) are a group of 52 small countries mainly formed by islands and archipelagos; among them, 38 are members of the United Nations and 17 are non-UN members or territories (UN-OHRLS 2011, 2). These islands face common challenges and threats due to climate change, as they live in close contact with the ocean and are isolated from other continents. The International Panel for Climate Change (IPCC) has increasingly focused on SIDS due to the peculiar pre-existing environmental issues that have been aggravated by climate change (Parry et al. 2007). The IPCC has assessed possible scenarios brought by temperature increase and subsequent sea level rise. Most notably, climate change has a major impact on the availability of drinkable water, soil salinization, biodiversity and ecosystems (Ibid., 690-694). Although the sea will not fully cover the islands in the short term, salt from the encroaching sea is

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already affecting the fertility of the limited arable land that SIDS have (Ibid., 695). Climate change is therefore having a major impact on SIDS' relatively small economies, which are highly dependent on agriculture, fisheries and trade (Nath, Roberts and Madhoo 2010, 126).

Soil salinization and land loss affect not only human activities but also biodiversity and protected species. In 2016, a mammal rodent living in a small island off the coasts of Northern Queensland (Australia) was officially declared extinct due to human-caused climate change; over the last 10 years, 97 percent of this animal's habitat had been submerged by the sea as a result of sea level rise and frequent floods (Slezak 2016). In addition, the increasing frequency of extreme events such as typhoons, winds, and floods is adversely impacting human health, causing the spread of diseases and damaging economic activities (Parry et al. 2007, 700-712).

Confronted with the critical and pressing issues affecting SIDS, the international community has mainly limited its support to cases of extreme weather, while at the same time recognizing the need for a loss and damage fund to be used as a climate change adaptation mechanism. Nonetheless, these measures will not be enough in the long term. This paper will therefore explore feasible solutions for SIDS to improve their possible outcomes in the long run, with a particular focus on durable strategies.

This paper has two main sections. Section I analyzes the legal challenges related to the sinking islands phenomenon. First, we focus on whether the loss of nearly all the international law criteria of statehood could jeopardize sovereignty and membership to the international community for SIDS. Second, we show how the existing legal framework is utterly unfit to face the specific challenges of climate-induced displacement in the case of SIDS, while the conclusion of an *ad hoc* instrument does not seem likely. Lastly, we suggest possible solutions to tackle the legal gaps.

Section II will present how SIDS can enhance international cooperation on the environmental issues challenging their territories and population. The section is divided into three parts. First, we analyze bargaining issues facing SIDS. Second, we offer an interest-based explanation of the different attitudes other states can display towards SIDS. Finally, we devise a potentially effective diplomatic strategy based on issue linkage, a way to connect environmental issues together and enhance the bargaining power of a state. The paper asserts that both law and international relation theories offer solutions to increase the resilience of SIDS, and that these strategies are not mutually exclusive: the combination of legal tools and multilateral negotiations is crucial in order to tackle the negative effects of climate change on SIDS.

## SECTION I – LEGAL GAPS, CHALLENGES, AND POSSIBLE SOLUTIONS

### **Disappearing States: Statehood and Sovereignty at Risk?**

A state should possess the following qualifications in order to be considered as a person of international law: permanent population, territory, government, and capacity to enter into relations with other states (Montevideo Convention on the Rights and Duties of the States 1933, Article 1). The presence of all these criteria is necessary for the recognition of new states. However, international practice demonstrates that, once recognized as members of the international community, there is a strong presumption in favor of the continuing existence of states that have lost one of the aforementioned criteria (Crawford 2007, 715; Maas and Carius 2012, 9). The case in which the territory of one of the SIDS materially disappears or becomes uninhabitable and the population flees the state as a result, raises the question of whether that state would lose its statehood and international legal personality (United Nations General Assembly 2009, 20-21; Stoutenburg 2013, 57–88). In order to answer, it is necessary to analyze in turn the four criteria of statehood.

First, a permanent population is essential for the purposes of statehood. International law does not require a minimum number of people, only that the population is not transitory; the United Nations General Assembly (UNGA) confirmed this with regard to the Pitcairn Islands, the smallest non-self-governing territory.<sup>1</sup> Despite their population of approximately 48 people, the UNGA recognized their “right to become a sovereign State in exercise of their right to self-determination” (UNGA 1971, Stoutenburg 2013, 62). Moreover, international law does not require that the majority of the population reside within the state territory. Indeed, several Pacific states already have more than half of their populations overseas, but their sovereignty has never been questioned as a result (McAdam 2010a).

Second, although international law does not require states to hold a minimum amount of territory, a defined piece of land is a crucial requirement of statehood (Stoutenburg 2013, 61; Crawford 2007, 46). As aforementioned, sea level rise could turn these islands into uninhabitable rocks,<sup>2</sup> low-tide elevations,<sup>3</sup> or it could submerge them completely (Stoutenburg 2013, 60). Several solutions have been suggested to maintain the habitability of SIDS’ territories, such as using sea dikes. Nonetheless, they present several limitations: such dikes would be extremely costly, and they would only protect the land itself without preventing other problems such as water salinization. Most importantly, they are themselves subject



to erosion and they would be mere palliative, unable to offer a reliable solution in the long term (Yamamoto and Esteban 2010, 1-9).

The third requirement of statehood is an effective and independent government. This is crucial to guarantee sovereignty both internally (i.e. the control over territory and population) and externally (i.e. the external independence from other states) (McAdam 2010a). To this end, SIDS need to maintain “some form of political organization” over their population (Stoutenburg 2013, 66), capable of enforcing laws and sustaining international relations. However, it is foreseeable that *en masse* displacement and loss of territory could jeopardize the government’s effectiveness.

Lastly, the criterion that has raised more discussion among scholars is a state’s “capacity to enter into relations with other states,”<sup>4</sup> interpreted as the right to exercise “in regard to a portion of the globe ... to the exclusion of any other State, the functions of a State” (Crawford 2007, 89).<sup>5</sup> Should the government be relocated together with the population, it will have to operate in exile. This circumstance will necessarily undermine independence for SIDS; to operate overseas the government will need the consent of the host state which will be able to determine to what extent the government in exile will be able to exercise its sovereign powers over the population (McAdam 2010a).

Generally speaking, the lack of one of the criteria of statehood would not necessarily jeopardize a state’s sovereignty. This is confirmed for instance by the so-called “failed states”— despite the fact that they do not possess an independent government, they are still considered members of the international community (Maas and Carius 2012, 9.). However, the situation of SIDS is particularly vulnerable, inasmuch as they risk losing nearly all the criteria of statehood (Stoutenburg 2013, 68; Thürer 1999, 752). While the continuing recognition of a failed state could be justified on the basis of the temporary nature of its situation, the same could not be said for SIDS. Indeed, once the island has disappeared, government and population would never be able to return (Stoutenburg 2013, 68).

### **Climate Displacement: Gaps in the Legal Framework**

Despite the existence of numerous international instruments addressing forced migration, internal displacement, and climate change, international law does not offer *ad hoc* protection to people affected by climate displacement (Burkett 2011, 350). The unprecedented nature of the challenges posed by sinking islands is one of the causes of this legal vacuum. Nonetheless, international law will have to react, and the ways in which this could happen vary substantially.

One possible solution could consist in adapting the existing legal framework to the peculiarities of climate-induced displacement. The specific needs of climate-displaced people could thus be met through “creative interpretation or extrapolation by analogy” (Saul 2008). Alternatively, a new legal instrument could be adopted. Despite the fact that a new treaty could provide specific solutions to climate-change-related challenges, it would not necessarily solve the problem; notably, its effectiveness would depend on its ratification and implementation (Ibid., 1-2). Furthermore, due to a general lack of political will to negotiate a new instrument, this solution does not seem viable at the moment (McAdam 2011b). It is thus crucial to investigate the current legal framework, highlighting the specificities of climate-change-related challenges. Before proceeding with the analysis, it is necessary to put forward a caveat. Climate change is not the only circumstance that causes displacement: other factors contribute to vulnerability for SIDS, such as limited natural resources and poor socioeconomic conditions (Saul 2008, 6). However, focusing on climate change is crucial because it constitutes a threat to the very existence of these islands. Furthermore, while other factors may result in substantial migration from SIDS, the phenomenon of sinking islands will render such forced migration permanent.

### *Refugee law*

It is highly unlikely that climate-displaced people would be recognized as refugees under the Convention Relating to the Status of Refugees (hereinafter Refugee Convention).<sup>6</sup> First, a refugee is a person who has crossed an international border. However, many of the people displaced by climate change will tend to reach other islands within the same country, and will thus qualify as Internally Displaced People (IDPs). The Guiding Principles on Internal Displacement expressly include individuals who fled their home due to “natural or human-made disasters.”<sup>7</sup> Nonetheless, the principles are a soft law instrument, not capable of generating binding obligations (Saul 2008, 8). Second, it seems difficult to define climate change as persecution. Although there is no generally accepted definition of this term, it “entails violations of human rights that are sufficiently serious owing to their nature or repetition.... General claims based on ‘climate change’ do not meet this persecution mould” (McAdam 2011a, 2; Goodwin-Gill 2014; Goodwin-Gill and McAdam 2007). Furthermore, persecution must be grounded on one of the following reasons: race, religion, nationality, membership of a particular social group, or political opinion. This constitutes perhaps the main obstacle to recognize climate-displaced people as refugees: sea level

rise and extreme hazards affect the population indiscriminately (McAdam 2010a, 13). In light of the above, several national courts have concluded that individuals displaced by climate change would not meet the refugee definition: “natural disasters and bad economic conditions”<sup>8</sup> do not serve as grounds to be a refugee under the 1951 Convention.<sup>9</sup>

At the regional level, the Organization of African Unity (OAU) Convention (1969) provides a broader definition of refugee, which encompasses people who flee “events seriously disturbing public order in either part or the whole of his country of origin or nationality.”<sup>10</sup> Despite the fact that climate-change-related events could disturb public order, state practice would not confirm this interpretation of the Treaty: neighboring countries often host people who flee environmental hazards. Nonetheless, “receiving States rarely declare that they are acting pursuant to their OAU Convention obligations” (Edwards 2006, 204). Similarly, the Cartagena Declaration on Refugees of 1984 (hereinafter, “Cartagena Declaration”) includes in the refugee definition “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order” (Cartagena Declaration, Article III(3)). Although sea level rise and water salinization could fall into the scope of this provision, both the Cartagena Declaration and the OAU Convention require an imminent threat. Therefore, these instruments could not offer pre-emptive protection (McAdam 2011a, 14–15).

In sum, refugee law is unfit to provide an effective response to climate change displacement. Moreover, islanders directly affected by climate change have expressed discomfort in being considered refugees. The rationale underpinning the refugee status is a lack of protection by the government. However, in case of climate-induced displacement, SIDS governments are actively engaged in protecting the population, and most of them did not contribute to climate change (McAdam 2010b, 115).

### *Complementary Protection*

Complementary protection can be defined as “protection granted by States on the basis of an international protection need outside the 1951 Refugee Convention framework” (Saul 2008, 11). Certain human rights violations raise protection obligations, notably the principle of *non-refoulement*, which consists of the prohibition of returning a person to a country where he or she would face persecution, ill-treatment, or torture. This principle is a powerful tool to ensure protection of people in need who do not meet

the refugee definition (McAdam 2011a). Nonetheless, it is questionable whether climate-induced displacement falls within the complementary protection schemes.

First, climate change would not meet the current definitions of persecution, ill-treatment, or torture under international law.<sup>11</sup> Second, a lack of basic services would not be sufficient to ground a complementary protection claim, unless returning the person to the home SIDS would put his life in danger. Lastly, complementary protection requires an actual risk of harm, thus it is not adequate to respond in a pre-emptive manner to climate-change-induced displacement (Saul 2008, 11; McAdam 2011a, 32-34).

### *Statelessness*

International law does not offer clear answers in case of statelessness. The right to nationality is recognized only in soft law sources, such as Article 15 of the Universal Declaration of Human Rights, while human rights treaties do not protect it. Furthermore, the two conventions on statelessness do not envisage the eventuality of literal, physical statelessness (*de facto* statelessness),<sup>12</sup> but only the case of *de jure* statelessness (*i.e.* when a state refuses the nationality to an individual or a group of individuals) (McAdam 2010a, 13-14).

UNHCR has clarified that, even if the international community were to continue to recognize the existence of the SIDS after they become uninhabitable, the population would be *de facto* stateless. The government in exile would be unable to offer services beyond diplomatic protection. Therefore, the population would formally have a nationality, but it would be ineffective in practice (UNHCR 2009).

### **Possible Solutions to the Legal Conundrums**

Generally speaking, states that do not meet all the criteria of statehood are presumed to exist as members of the international community. Therefore, the most urgent question is not whether SIDS could continue to be recognized as states, but how they could do so. It is thus crucial for SIDS to find land to relocate their populations. This could happen in two ways: through a formal cession or a private contract.

#### *Acquisition of Territory through Formal Cession*

A formal cession is the only way in which one of the SIDS could exercise its sovereignty over a new territory (Soons 1990). Therefore, it consti-

tutes the most appealing solution to guarantee the continuing existence of small state islands, as the latter would “be secured in accordance with traditional rules of international law” (Rayfuse 2010, 8). Furthermore, the population could be relocated in the new land and issues related to the nationality would not arise, as the new territory would be under the sovereign jurisdiction of the small island state that acquired it. However, a formal cession of land is highly unlikely, given that states are reluctant to cede their sovereignty over portions of their territory.

### *Acquisition of Territory through Private Contract*

A second option could be to buy a territory through a private contract (McAdam 2010a). This would not grant SIDS the right to exercise full sovereignty over the territory: the limits of the control over the land would need to be agreed upon with the host state. Nevertheless, several SIDS are taking steps in this direction. For instance, Kiribati bought 5460 acres of land from Fiji, and the President of the Republic of Fiji, Ratu Epeli Nailatikau, affirmed “that the people of Kiribati will have a home if their country is submerged by the rising sea level as a result of climate change” (Office of the President of the republic of Kiribati 2014). Furthermore, Maldives is negotiating with India the acquisition of land in order to relocate the population therein, while India is pushing to have access to Maldives’ exclusive economic zone (EEZ) in exchange (Burkett 2011).

Once the population relocates to the newly acquired territory, the home state’s role will be limited to diplomatic protection (*i.e.* the jurisdiction that every state exercises over its nationals abroad). People will gradually start to acquire double nationality and the presumption of diplomatic protection will be solved in favor of the residence state, on the assumption that this is where the nationality is more effective. This could lead to extinction for SIDS (McAdam 2010a).

As for the governments of SIDS, two solutions can be envisaged. First, the governments could be resettled with the populations. However, they would not be able to exercise sovereignty over the new land, which would raise questions regarding their independence. Second, the SIDS could establish governmental outposts on the highest islands within each of the SIDS, such as a lighthouse. This could allow each of the SIDS to maintain its sovereignty and the EEZ (Maas and Carius 2012, 10; Burkett 2011, 356).

Alternatively, any of the SIDS could negotiate a model of self-governance in free association with another state. “Free association is a form of self-government developed in United Nations practice under which the associated entity has a special status short of independence, with certain

functions (including international representation and defence) carried out by another State, usually the former colonial power” (Crawford 2007, 624). One successful model of free association is the one adopted by Cook Islands and Niue with New Zealand. The associated territory maintains full internal autonomy: the legislation adopted by the New Zealand Parliament applies in Cook Islands only if so accepted by the Prime Minister, while the main functions related to foreign relations are covered by New Zealand. Furthermore, the population of the islands is granted New Zealand citizenship (Ibid.).

Analyzing climate change problems and possible solutions is not enough: SIDS will have to adopt viable strategies in order to obtain the best outcome during multilateral and bilateral negotiations. The next section examines the challenges that SIDS will face to bargain optimal solutions and the ways they could reach their aims.

## SECTION II

This section presents how SIDS can enhance international cooperation on the environmental issues challenging their territories and populations. The solutions proposed can also be used to push for the legal solutions explained in Section I of this paper.

### **Theoretical Framework: International Cooperation and the Case of SIDS**

The nature of the environmental issues experienced by small islands cannot be solved at the mere national and local level. For instance, small islands located in the Pacific and Indian oceans are mostly low-lying and at severe risk of losing large parts of their territories with an estimate of five millimeters per year of sea level rise (Parry et al. 2007, 967). Maldives, in particular, have all their land area below five meters above sea level (World Bank Database). Participation from the international community is therefore pivotal to adopt relocation schemes of the affected populations and develop *ad hoc* frameworks specifically devoted to climate change adaptation. In addition, vulnerability studies conducted on a sample of small islands show that the costs of climate change adaptation infrastructures would be a significant proportion of the GDP of those SIDS, well beyond the financial means of most small island states (Nurse et al. 2001). SIDS also only marginally contribute to climate change, accounting for 0.03 percent of total worldwide CO<sub>2</sub> emissions (Nelson, Adger and Brown 2007).

The combination of the geographical isolation and the disproportion between contribution to greenhouse gases and the damages brought by

climate change are at the basis of uneven bargaining power in negotiations including SIDS and other states. Environmental issues brought by climate change impact states unevenly. It is therefore particularly important to determine the conditions under which each actor cooperates, as well as its main interests and levels of commitment. States choose to cooperate or not on the basis of a possible set of solutions they find convenient (Krasner 1991; Sebenius and Geanakoplos 1983; Morrow 1994). Within an international negotiation, the presence of different sets of solutions, priorities, interests and timing for action are likely to jeopardize cooperation and fuel diverging opinions between the members of the international community.

The consequences of uneven bargaining power between SIDS and other states can be seen in the long negotiations taking place around the “Loss and Damage Fund.” In principle, the Fund was designed to devote money to climate change adaptation measures in more vulnerable islands and developing countries. The Fund was conceived as a mechanism to compensate land and biodiversity loss, ocean acidification or devastation brought by extreme winds and floods. In 1991, the Alliance of Small Island States (AOSIS) first mentioned the idea of developing a Loss and Damage Fund in the form of an insurance mechanism (UN Framework Convention on Climate Change 2012, 4). A Loss and Damage Fund was officially included within Article 8 of the COP21 Agreement achieved in Paris in 2015, with the intention of negotiating the practical mechanisms of the fund during the following COP22 in Marrakesh.<sup>13</sup> At the end of 2016, during the COP22 meeting, the international community agreed that a Subsidiary Body would determine the distribution of the Fund based on GDP and vulnerability indicators (Conference of the Parties 2016). In parallel, insurance schemes will also be deployed. However, these latter forms of funding mechanisms are hard to determine when facing long and permanent damage and loss of land, biodiversity and livelihood (Climate Policy Observer 2016). Twenty-five years after the first proposal from AOSIS, SIDS’ call for more prompt and effective answers towards climate change clashed against the international community, where diverging opinions on the extent of the contribution from individual states slowed down negotiations, negatively impacting debates around solutions for SIDS.

The recent negotiations that took place in Marrakesh for the COP22 have emphasized the importance of climate change adaptation mechanisms. This new trend in the debate around climate change is an important development for SIDS (Pelling and Uitto 2001, 56). However, cooperation between SIDS and the international community has to go beyond

the mere recognition of special needs and the establishment of limited financial aid; thus, there is still room for improvement. Financial tools are important and necessary steps that the international community can take in the short term, the nature of the environmental issues brought up by climate change are unique and new in the history of international relations; thus, they require new forms of innovative, durable solutions.

### **Climate Change Negotiations and SIDS: Between Conflicting Interests, Priorities and Levels of Commitment**

To better understand how SIDS could motivate more states to focus on their environmental issues, it is first necessary to look at the attitudes displayed by each state towards environmental issues triggered by climate change, in particular sea level rise.

Situations with symmetric negative externalities occur when the impact of environmental issues affects two or more states simultaneously and in the same way (Koremenos, Lipson and Snidal 2001). In this case, states are more prone to cooperate and develop narrow, issue-focused institutions or treaties, because the *status quo* is an outcome that is undesired by all the actors negotiating (Mitchell and Keilbach 2001). Symmetrical negative externalities do not require complex negotiating strategies or enforcing mechanisms because the interests of all the actors tend to be aligned in finding a common solution, equally desired on every side. However, more complex situations emerge when negative externalities brought by climate change are asymmetrical; namely, when some states suffer remarkable environmental issues without contributing to the cause of the issue itself. The situation facing SIDS represents an example of asymmetrical distribution of environmental externalities caused by climate change. Although SIDS are not substantially contributing to CO<sub>2</sub> emissions, they are the most affected states, due to their vulnerability to any change in sea level rise and ecosystem depletion. It is only in SIDS that climate change threatens the integrity of the whole territory and population. Several Pacific islands might become uninhabitable in the short term, leaving the populations with limited solutions available (Parry et al. 2007, 968-969). Therefore, SIDS represent a unique and important case to review current theories in international relations focusing on asymmetric negative externalities posed by climate change.

Sprintz and Vahtoranta (1994) provide a parsimonious interest-based theory to explain how domestic considerations can shape the willingness of a state to advocate for international cooperation and find solutions to certain environmental issues. From the perspective of SIDS, understand-



ing and predicting the position of a state towards an environmental issue is the first step to develop an effective diplomatic strategy and, therefore, achieve cooperation. According to Sprintz and Vaahtoranta, the interest and the level of commitment a state displays in solving a particular environmental issue depend on the level of vulnerability of the state, and the abatement costs necessary to find a solution. The level of vulnerability of a state towards an environmental issue can be defined in terms of threats to the integrity of the state's territory and the livelihood of its population. Abatement costs can be defined as the combination of investments necessary to physically put solutions in place and the urgency these investments have to be made available.

In the case of sea level rise, for instance, a state A can be the main producer of greenhouse gases while at the same time less affected by global warming and sea level rise. State A may also have more financial resources to tackle the problem and deploy climate change adaptation measures; thus, it does not urgently need international support. Conversely, a state B can be highly impacted by sea level rise, but have few resources to tackle the issue. Thus, state B would be more prone to advocate for stricter international emission regulations and cooperative solutions to tackle issues posed by climate change, both internationally and bilaterally.

The combination of "abatement costs" and "climate change vulnerability" brings us to dividing countries based on the following classification represented in Figure 1.

**Figure 1: Adaptation from Sprintz and Vaahtoranta (1994): 81**

		<i>Sea level vulnerability</i>	
		<i>Low</i>	<i>High</i>
<i>Abatement costs</i>	<i>Low</i>	(a) Bystanders	(b) Intermediates
	<i>High</i>	(c) Draggers	(d) Promoters

Countries in cell (d), *promoters*, would push for stricter environmental regulations at the international and bilateral level. This is, for example, the case of SIDS, displaying high levels of vulnerability towards sea level rise, and high abatement costs necessary to prevent salinification of soil or the enhancement of drinkable water systems for the population. More-

over, based on the altitude of an island, SIDS' populations may not have alternative solutions but to move elsewhere.

States in cell (b) act as *intermediates* as they have lower abatement costs and higher levels of vulnerability to sea level rise. They act as intermediates because, by experiencing high vulnerability to issues similar to those experienced by SIDS, they understand their urgency and concerns.

Countries in cell (a), *bystanders*, have little concern about sea level rise, and low abatement costs. This is the case of land-locked countries (i.e. Switzerland). They may have little environmental interests in advocating for sea level regulations; however, they tend to stand for ambitious positions because of lower costs sustained domestically and the lack of vulnerability they face.

Countries in cell (c), *draggers*, display low levels of vulnerability, yet, high costs, dragging the scope of environmental commitment behind. Draggers may be skeptical in joining costly international commitments focusing on sea level rise.

### **Issue Linkage to Overcome Asymmetrical Negative Externalities**

The previous section explored what positions different categories of states could hold towards sea level rise based on domestic considerations. How can SIDS overcome the different priorities given by states to environmental issues and achieve cooperation from as many states as possible? While asymmetric negative externalities represent an obstacle to cooperation, issue linkage can help avoid sub-optimal outcomes that leave SIDS unsatisfied (Martin and Simmons 2001; Haas 1980). A single environmental issue may not be attractive for dragger or bystander states. However, by connecting issues together—and relying on the role of intermediate states—the solution of one issue may lay the basis to solutions for another issue. The strategic connection of issues together can be applied by SIDS bilaterally by enhancing existing agreements with neighboring states, and internationally by further pushing the debates on climate change adaptation and mitigation.

From the perspective of SIDS, issue linkage can bring other issues into negotiations that are—directly or indirectly—linked to climate change and sea level rise. To increase SIDS' chances of success, new issues that enter negotiations must be of interest to those states without the same level of vulnerability caused by climate change. On the basis of how to formally link issues together, Martin and Simmons present two possible approaches: tactical and strategic (2001, 389-412).

In tactical issue linkage, problems belonging to different areas are linked on the basis of a common tactical ground. Despite SIDS' small territories,

they have exclusive jurisdiction over the EEZ, an area extending up to 200 nautical miles from their coasts, within which they are entitled to the living and non-living resources found in the sea. Rich in fish and natural resources, the EEZ can be used as leverage during negotiations for the purpose of increasing SIDS' bargaining power. In practical terms, fisheries or maritime transportation concessions over EEZ can be granted in exchange for better climate change adaptation mechanisms and to negotiate the solutions presented in Section I of this paper. Existing regional migration frameworks can also be included in the negotiations and shaped to consider migration as a potential climate change adaptation measures. Islands in the Pacific region, for instance, have already put in place high-skilled migration frameworks to facilitate access for students from the islands to the educational systems in Australia and New Zealand (Bedford and Hugo 2012). Existing migration frameworks can therefore be used as a starting point to enhance the scope of bilateral or international agreements and formally connect migration, resilience and climate change.

The success of tactical issue linkage depends on the shifting alignment of interests and the consensus around the interdependency of different issues (Haas 1980). That is why SIDS should first understand whether the position of a state towards a specific environmental issue is in line with draggers, intermediates, bystanders or promoters. Some groups of SIDS—such as South Pacific islands—are not new to successfully using tactical issue linkage to prompt international cooperation. SIDS have showed increasingly sophisticated diplomatic tools when it came to influencing regional powers to achieve or improve their national interests. For instance, under the umbrella of the Pacific Islands Forum established in 1971, SIDS led the negotiations on regional trade agreements and fisheries concessions in the Pacific region, reaching favorable agreements with the European Union and China (Fry 1981).

Substantive issue linkage refers to the practice of connecting together issues belonging to the same sector or sphere. In the case of SIDS, the protection of the environment could serve this purpose. Under the umbrella of climate change and protection of the environment, several issues can be included within the same negotiations: biodiversity, protection of endangered species and ecosystems (*i.e.* coral reef), sustainable tourism, or sea pollution. Connecting climate change to a wide range of environmental issues can boost the visibility of SIDS' current situation and increase the number of actors willing to team up with their cause. States facing similar environmental issues will be more prone to welcome SIDS' claims if issues are framed in a more interconnected way. Moreover, the civil society can

play an active role in increasing the visibility of SIDS' problems and raise awareness, both regionally and internationally.

The use of substantive issue linkage can be useful to make coalitions more compact under the lens of an intellectual coherence (Haas 1980, 360-362). The recognition of shared consequences brought by environmental issues caused by climate change is able to hold a coalition together by committing to a recognized social goal, even though each state presents different economies or juridical systems. Uncertainty about the future of climate change is also another factor that may bring states to converge on the same aligned interests and priorities.

## CONCLUSIONS

Due to climate change and the accompanying sea level rise, SIDS might turn into uninhabitable rocks or might disappear, completely submerged by the ocean. The physical disappearance or uninhabitability of an internationally-recognized state represents an unprecedented challenge for international law. This circumstance raises questions regarding the statehood of SIDS and the status of people displaced as a result of the aforementioned phenomena. International law does not offer clear answers, thus innovative solutions should be bargained at the international level. SIDS present a good case study to find solutions for countries that face high environmental vulnerability and high abatement costs, especially when entering negotiations with other states and points of view.

Issue linkage—both tactical and substantive—can be applied to the case of SIDS and negotiations around climate change adaptation, especially if carried out in a manner consistent with the interests of different groups of states. Tactical and structural issue linkage can be useful to achieve two outcomes. First, by introducing additional issues to the negotiations, more states and actors from the civil society would be involved in SIDS' campaigns, thus expanding and making the coalition more compact. Second, by finding solutions to issues facing SIDS, the international community or other states can also solve their own problems. Notably, SIDS can be the perfect location to fill in the lack of information on the effects of sea level rise and develop possible adaptation technologies. The populations from these islands have often referred to themselves as the “barometers of the oceans,” because the islanders own a cultural know-how that can be pivotal in the development of adaptation strategies that can be applied elsewhere (Kelman 2010, 606). The political solutions proposed in this paper could potentially be applied to any state facing high levels of vulnerability, as well as high costs.

## NOTES

- <sup>1</sup> Nauru is the second smallest state by population worldwide, with approximately 9540 inhabitants.
- <sup>2</sup> Article 121(3) United Nations Convention on the Law of the Sea (UNCLOS): ‘Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.’
- <sup>3</sup> Article 13(1) UNCLOS defines a low-tide elevation as ‘a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.’
- <sup>4</sup> Some authors argue that it ‘is not a criterion, but rather a consequence, of statehood, and one which is not constant but depends on the status and situation of particular States’ (Crawford 2007, 47). Furthermore, certain non-state and sub-state actors possess treaty-making competences (Grant 1998, 404–457).
- <sup>5</sup> Punctuation in the original.
- <sup>6</sup> According to Article 1 of the Convention relating to the Status of Refugees (1951), a refugee is “a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”
- <sup>7</sup> Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, §2: “For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”
- <sup>8</sup> See court case *Minister for Immigration v. Haji Ibrahim* [2000] HCA 55; 204 CLR 1, §140.
- <sup>9</sup> See, e.g., *Australian Refugee Review Tribunal*, 0907346 [2009] RRTA 1168 (10 December 2009), §51: ‘In this case, the Tribunal does not believe that the element of an attitude or motivation can be identified, such that the conduct feared can be properly considered persecution for reasons of a Convention characteristic as required. ... There is simply no basis for concluding that countries

which can be said to have been historically high emitters of carbon dioxide or other greenhouse gases, have any element of motivation to have any impact on residents of low lying countries such as Kiribati, either for their race, religion, nationality, membership of any particular social group or political opinion.’

<sup>10</sup> Article 1(2) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1974 (hereinafter, OAU Convention).

<sup>11</sup> Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987) defines torture as ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.’

<sup>12</sup> See the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).

<sup>13</sup> See Article 8 of the Paris Agreement and Decision 1/CP.21, §§48–52 (FCCC/CP/2015/L.9/Rev.1): ‘Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage [...]’

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# IDENTIFYING FRAUD: AN ANALYSIS OF WHETHER INSTANCES OF VOTER FRAUD DRIVE STATE LEGISLATURES TO ENACT VOTER IDENTIFICATION LAWS

*Hal Brewster*

## INTRODUCTION

Discussion of voter fraud has been among the most politically contentious issues of the last decade in the United States. It has been the subject of numerous media reports and pieces of political commentary, and just days after his inauguration, President Trump called for a major investigation into allegations nationwide of voter fraud in the 2016 election (Shear and Baker 2017). The topic animates people from across the political spectrum. Some conservatives, like the current President, assert that fraud undermines our democratic process by diluting ballots cast by legitimate voters. And some liberals respond that allegations of fraud are a farcical justification used to disenfranchise constitutionally eligible voters.

In the middle of this political crossfire stand state legislators and gov-

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ernors—those with the most power under our system of government to enact and amend election laws. Lawmakers in many U.S. states have cited the incidence of voter fraud as the motivating factor in enacting voter identification laws (e.g., Dunbar 2012). These laws will, the lawmakers contend, help restore the integrity of elections by making fraudulent voting more difficult.

The media, scholars, and numerous state and federal courts have weighed the evidence to determine whether these laws were motivated by legitimate or discriminatory intent.<sup>1</sup> My aim with this paper is add to this conversation by attempting to answer the following question:

Does the level of voter fraud in a state have an impact on whether state lawmakers pass a voter identification law?

The answer to this question is important. If it is yes, the results would lend credence to lawmakers' stated rationale and bolster their defense against court challenges to the laws. And if the answer is no, it supports the notion that these laws are designed principally to make voting more difficult for certain segments of the population.

My hypothesis at the beginning of this project was that there would be no statistically significant difference in the level of voter fraud between those states that have passed voter identification laws and those that have not. In full disclosure, I admit that I have long been skeptical of the claims that these laws are passed to dissuade fraud, which is derived, in part, from my experience interning as a law student in the U.S. Department of Justice's Voting Rights Section. Nonetheless, I have attempted to remain as objective as possible during my research, and when necessary, given the benefit of the doubt to lawmakers' stated objectives. In the end, I found no evidence that the level of reported fraud in a state drove that state's legislators to enact an identification law.

## DEFINING VOTING FRAUD

Part of the difficulty in analyzing voter fraud is that there is no widely accepted definition of the term. In fact, the states themselves do not consistently apply the term in statutes defining the scope of illegal activity. The Wisconsin statute 12.13(3)(d) (2008), for example, includes a laundry list of prohibited actions for electors and election officials, including everything from falsifying voter registration information to removing "supplies or conveniences placed in compartments or polling booths."

Some scholars contend that voter fraud can be perpetrated only by voters themselves, and that actions by others are often incorrectly categorized

as voter fraud. In her 2010 book, Professor Lorraine Minnite (2010, 36) offered this definition:

Voter fraud is the intentional deceitful corruption of the election process by voters ...All other forms of corruption of the electoral process and corruption committed by elected or election officials, candidates, party organizations, advocacy groups or campaign workers falls under the wider definition of election fraud.

Thus, if voter identification laws have obstruction of voter fraud as their principal motivation, they must address actions done by the voter him or herself. The laws should make actions such as voter impersonation or unlawful registration more difficult yet not impact other parts of the election administration process that have nothing to do with the actions of an individual voter.

But those that contend that voter fraud is a common occurrence do not always adhere to the distinction between voter and election fraud. Beginning in November 2011, the Republican National Lawyers Association (“RNLA”) began to publish a survey that listed counts of voter fraud by state. Their list indicates that 46 of the 50 states have had at least one prosecution or conviction of voter fraud in the last decade. The RNLA report received widespread media attention when it was released, with many criticizing it (e.g., Hines 2011). Taking aside the validity and numbers contained in the RNLA report, it is important to note the type of acts that are included on their list. Some items involve allegations of classic voter perpetrated fraud, including double voting, absentee voting fraud, and voter impersonation (RNLA, n.d.). But the list also includes allegations of voter intimidation, ballot tampering, and listing an incorrect address on a voting registration. These latter instances would more properly fall into the category of election fraud.

If the distinction is lost on an organization with the legal savvy of the RNLA, it is also likely lost on average citizens and state lawmakers who are often reacting to media stories. And it is the perceptions of these people on which my study focuses. If state legislatures are enacting voter identification laws in order to combat voter fraud, it is the lawmakers’ definition that is important, not the one used in scholarship. In this paper, I give the benefit of the doubt to these lawmakers in order to understand whether instances of fraud really drive their decision to enact these laws. As such, I count alleged and proven instances as voter fraud if they are labeled as such by any official in the state, regardless of whether they are

district attorneys, poll workers, personnel in the Secretary of States' offices, or legislators themselves. I also count the instances regardless of whether a requirement to show identification at the polling location would be effective in stopping someone from engaging in the action.

## DIFFICULTIES IN OBTAINING VOTER FRAUD DATA

Aside from the definition problem, any study must also contend with the problem of collecting an accurate measure of voter fraud frequency—a task made difficult for at least three reasons.

First, if voting fraud is done “correctly”—from the point of view of the perpetrator—it will go undetected; anyone with knowledge of the crime will not have an incentive to report it (Christensen and Schultz 2014, 311 and 313). Put another way, officials will only know about instances of voter fraud in which officials catch the perpetrator during the act or telltale signs point to the instance post hoc. Because the number of fraudulent votes in an established democracy will be relatively small, there is a good chance they will be lost among a sea of legitimate ballots (*ibid.*, 311). Thus, the reported numbers will almost certainly be lower than the true level.

Second, while elections are highly public events, they also encompass largely anonymous, opaque procedures, and this makes detection more difficult (Hood and Gillespie 2012, 76-77). Overseers can observe people voting and the final tally, but there is little information that connects the two. Scholars refer to this as the “black box” problem (*ibid.*).

Finally, detection of voter fraud is hampered by the manner of election administration in the United States. In our federal system, each state and the District of Columbia have chief election officials whose office will issue its own directives on election administration. But the process is further decentralized to the local level in the actual execution of elections (Minnite 2007). Depending on the states' reporting criteria, these officials may report instances of voter fraud to state officials, or, more often, they will refer the matter to the local district attorney for investigation and possibly prosecution. As such, the data on voter fraud are not uniform and often reside in multiple locations across a state rather than a central repository.

## REVIEW OF SCHOLARLY LITERATURE ON VOTER FRAUD

The difficulties in obtaining voter fraud data has also meant that scholarly investigation of voter fraud was relatively thin until recently. As the debate about voter fraud crept increasingly into the political zeitgeist, more researchers have focused their attention on the issue. Each has employed

different methodologies to answer the question about the overall level of voter fraud. Their conclusions are broadly similar—voter fraud is a rare occurrence in the United States.

Lorraine Minnite (2010, 57) of Rutgers University approached the question by looking at the number of investigations and prosecutions of fraud accusations at the federal and state levels.<sup>2</sup> She concludes “criminal voter fraud is episodic and rare relatively to the total number of votes cast in a given year or election cycle” (ibid). Similarly, a much-publicized report from the Brennan Center for Justice (Levitt 2007, 4) finds that a person is more likely to be “struck by lightning than . . . impersonate another voter at the polls.” The report also concludes that “benign errors or inconsistencies” or unintentional mistakes by voters can be mistaken as instances of actual fraud, and finds that many of the most salacious voter fraud headlines are baseless upon further investigation (ibid, 7-8, 11 and 13-22). In an earlier piece, Minnite (2007, 5) attributes a decrease in the overall level of fraud to three factors: the declining power of party machines, the strengthening of election administration, and an improvement in voting technology.

While Minnite and the Brennan Center’s research method—investigation of public records—is straightforward, it is also relatively rare in this area of scholarship. Other researchers attempt to suss out the instances of fraud that occur but were not investigated by authorities by focusing on irregularities in voting patterns. For example, Christensen and Shultz (2014, 314-316) developed a model to estimate voter fraud by concentrating on “orphan” and low propensity voters in Ohio, Florida, and Utah.<sup>3</sup> Their model looks specifically for people who have a low probability of voting in a certain election but vote in that election nonetheless. By winnowing out legitimate votes from the low propensity universe through a five-step process, the two find various anomalies in voting patterns in the three states. They conclude that innocent explanations, unrelated to electoral fraud, explain most—but not all—of these anomalies (ibid, 325-328).<sup>4</sup>

Hood and Gillespie (2012, 79-81) test a method called Knowledge Discovery in Databases against the voter rolls in Georgia and find very few instances of verifiable voter fraud. In attempt to discover individuals voting on behalf of deceased relatives or friends, they first merge the voting records of the Georgia Secretary of State with the record of recently deceased citizens from the Georgia Office of Vital Records. After removing any false matches (*e.g.*, people with the same name), they were left with 66 instances of deceased citizens voting in person or absentee in the 2006 election. After further investigation, the pair could eliminate all four in person instances as mistakes in the voting or vital statistics records, and

they were able to verify that 57 of the 62 absentee ballots were requested and returned prior to the death of the person. The team was unable to verify the remaining five absentee votes, but this was due in part to uncooperative local elections officials (*ibid*, 89-92).

Ahlquist, Mayer, and Jackman (2014) use rigorous survey list experiments to measure the incidence of multiple vote casting and vote buying in the 2012 election and reach similar results. List experiments allow researchers to determine the level of sensitive or illegal behavior by asking respondents how many (rather than which) of a list of potentially illicit activities apply to that individual (Gilens 2002, 232 and 241-243). Using this method, the team of researchers found that there is no evidence that voters cast fraudulent ballots systematically or that votes are systematically purchased from voters.

Another stream of scholarship focuses on the impact of voter identification laws on voter turnout. Alvarez, Bailey, and Katz (2008, 1, 9-10, 18, and 20-24) from the California Institute of Technology exploited the difference in time and geography of the enactment of these laws to measure the impact on voter turnout in the 2000 and 2004 presidential elections and the 2002 and 2006 midterm elections. They find that at the aggregate level, there is no reduction on overall voter participation in state with these laws. By looking at individual level data from the Current Population Survey, however, the team finds that the strictest forms of these laws have a negative impact compared with the least restrictive, and the impact is more negative for low income voters, regardless of minority or non-minority status. Erikson and Minnite (2009, 85, 88, 96-98), however, dispute these and other findings of depressed turnout related to the laws. They argue that the leading studies—including that of Alvarez et al—fail to use clustered standard errors. By employing their adjusted methodology, the pair finds that while there is a negative impact on voter participation in the states with the strictest voter identification laws, the impact is statistically inconclusive. Because of the constraints in the available data, they argue that readers should be wary of claims by either side on the impact (or lack thereof) of voter identification laws on voter participation.

## DATA

For the reasons I have described above, my search for data on instances of voter fraud was protracted. Eventually, I came across the work of News21. News21 (n.d.) is an investigative journalism project housed at the Walter Cronkite School of Journalism and Mass Communication at Arizona State University; its funding comes from a collaboration between the



Carnegie Corporation of New York and the John S. and James L. Knight Foundation. Each year, News21 embarks on a large investigative journalism project that combines the work of journalism students from around the country with that of career journalists. In 2012, their annual project focused on voter fraud.

Beginning in January 2012, 24 journalism students from 11 different universities began the project under the direction of a team of journalism professionals and professors (News21 2012). During the course of the project, the team traveled to more than 40 cities, conducted more than 1,000 interviews, and requested thousands of public document requests, ultimately reviewing more than 5,000 documents.

In the end, News21 compiled a database of 2,068 instances of alleged or proven voter or election fraud since 2000 (Khan and Carson 2012). By its own admission, News21's database is not a complete record of all voter fraud across the nation. Some states were helpful and forthcoming with their records, while others—like Massachusetts, Oklahoma, South Carolina, and South Dakota—did not respond to any News21 requests (*ibid.*).<sup>5</sup> There are no instances in the database from Hawaii, Vermont, or the District of Columbia.<sup>6</sup> Within states, there were instances where certain counties responded to requests and others did not. Still, even with these issues, News21 maintains that its dataset is “substantially complete and is the largest such collection of election fraud cases gathered by anyone in the United States” (Carson 2012). News21 also made the effort to link each entry in the data with documentation, if such documentation existed. As such, the News21 data include mostly verified entries. Based on my research, the News21 list is not perfect, but it is the most comprehensive that exists.

In order to build a more complete model, I merged the News21 databases with data that would allow me to control for partisanship control of the state legislatures and governors as well as the percentage of the state's minority population that voted in most recent election. I pulled the partisanship data from the online databases maintained by Carl Klarner at Indiana State University (Klarner Politics, n.d.). The racial voting data come from the reported datasets of the Current Population Survey (CPS) of the U.S. Census Bureau. The CPS survey is taken in late November of even numbered years, a few weeks after a Presidential or midterm election has occurred. Finally, the entries for the existence and severity of voter identification laws comes largely from the survey maintained by the National Conference of State Legislatures (Underhill, n.d.).

## RESEARCH DESIGN

Simply regressing the number of reported voter fraud cases on whether the state has enacted a voter identification law opens one up to a number of methodological issues, including, among others, omitted variable bias, differences between states which impact both voter fraud cases and voter identification laws, and a small sample size. I have attempted to mitigate these issues where possible.

As stated above, I counted all reported instances of fraud in a state, regardless of whether the report resulted in a conviction; whether the instance would have been more properly categorized as election fraud; or whether a voter identification law would have been successful in combatting the fraud. I summed the total number of instances of voter fraud per year for each state for which I had data. The News21 project had only requested files back through the year 2000, so I limited my analysis to the years 2000 to 2013.<sup>7</sup>

After dropping 12 states, the data contained information for 38 states, including 25 states that had passed a voter identification law and 13 that had not. For an explanation of which states I dropped from the model, please see Appendix A. The counts and averages of voter fraud per state are listed in Tables 1a and 1b. Importantly, a t-test of the averages of the number of instances of voter fraud before and after a state enacted a voter identification law was not statistically significant. Similarly, the difference in the annual averages between states that had not enacted a law and the average in states that had (before enactment) was also not statistically significant. With 14 years for each of the states that I kept, I was able to run my analysis using 532 observations.

One can imagine any number of variables that might lead a state legislature to enact a voter identification law, but I focused on two that had been floated as possible alternative reasons that legislatures had enacted their laws. The first was Republican control of the state government (e.g., MacGillis 2014). The second was a rise in the voter participation rate of a state's populations of color (e.g. Mendez and Grose 2014). For partisan control, I merged data from Carl Klarner's database about the makeup of each state's lower house (typically house of representatives), upper house (typically its senate), and governor in each year.<sup>8</sup> I used each of these three variables in one regression model. I also created a continuous variable with values 0 through 3 for Republican Control of state government. It took a value of 3 if Republicans controlled both chambers of the legislature and the governorship. The variable decreased by 1 for each of these that was controlled by Democrats in that year.<sup>9</sup>

In order to control for participation of African American and Hispanic voters, I merged data from the U.S. Census Bureau's Community Population Survey. The CPS includes data from each state for each election. It also includes the voter participation percentage for different segments of the state's population, including White, Black, Hispanic, and Asian citizens, when those populations are larger than 75,000.

There were two assumptions about the race variables that I had to make that are important for interpreting my results. First, the CPS data exist only for even numbered years, so I copied these levels from each election into the odd numbered year that followed. So, for example, the racial participation percentage for 2009 was drawn from the 2008 election data. I believe this assumption makes intuitive sense. If a legislature is reacting to the level of minority voter participation, it is most likely from the most recent election in those legislators' memory. Second, the CPS data have missing values for any year in which the total base for any segment of the population was less than 75,000 voters and therefore too small to derive an accurate measure from their sample. Rather than estimate the participation level myself, I replaced these missing values with 0 so that the corresponding observations would not drop out of my regressions. This affected some states with small populations of color—Maine for example—for each year in my data, and it affected some states only in certain years. Idaho, for example, had missing values for Hispanic voting levels before 2006, but the Hispanic population grew above 75,000 in the subsequent years. A complete list of the number of recoded race variables is included in Appendix B.<sup>10</sup>

I created two different dependent variables for my analysis. The first is simply whether a voter identification law was passed in a given year. It takes a value of 1 if the legislature passed such a law, and a 0 if it did not. But voter identification laws vary in restrictiveness in two important ways (Underhill, n.d., *supra* note 58). First is the type of identification required, with some states requiring photo identification and some allowing for different forms of non-photo identification. Second is the consequence of not having the required ID at the polls. "Strict" states require that the voter vote a provisional ballot and take additional steps later to verify his or her identity before the state will count the ballot. "Non-strict" states allow at least some voters without proper identification to cast a ballot that the state will count without any further action by the voter. To allow for these variations, I created a continuous variable with values ranging from 0 to 3. The value 0 indicates that no voter identification law existed, and a value of 3 indicates that a state requires a photo ID and is strict

about compliance. States with non-strict, non-photo ID laws get a value of 1, and states that are stringent on just one issue get a 2—that is states that have either a strict non-photo ID law or a non-strict photo ID law. I include a chart of which states (that remain in my data) fall into which categories in Appendix C.<sup>11</sup>

Finally, I have included two different variables of voter fraud. One lists only the number of instances of fraud in a given year, and one includes a running tally of the number of instances of fraud in the three previous years. The intuition with the latter variable is that legislators may be reacting to a trend in voter fraud that exists in more than just one year.

As I have stated at various points, I want to give all benefit of the doubt to the assertion that voter identification laws are enacted in response to a level of fraud. In this vein, I have used eight different models to test this assertion, rather than just one. Tables 2 through 5 have the same 8 models run on different segments of the data or with a different dependent variable. Models 1 and 2 test solely the effect of partisan control on whether a legislature enacted a law, and Models 3 and 4 do the same for either the number of violations or for a running tally of violations in the three previous years. Models 5 and 6 control for all the variables in my data, differing only in the use of the one-year count of fraud or the three-year running tally. Models 7 and 8 do the same but use state fixed effects rather than a regular linear multivariate regression.

Tables 2 and 3 have the binary new law as the dependent variable, whereas Tables 4 and 5 have the continuous severity variable as the dependent variable. Tables 2 and 4 run these regressions on the full data set. And Tables 3 and 5 drop observations for states in any year after they have enacted a voter identification law. The intuition for truncating the data is that observations after a state has implemented a voter identification law should not be included in a model that tests the impact of fraud levels prior to enactment.<sup>12</sup>

## RESULTS

In each variation of the models I ran, the number of instances of voter fraud had no statistically significant impact on whether a legislature passed a voter identification law in a year or not. In fact, the predicted coefficients deviated very little, if at all, from zero. These results, along with the ones I discuss below, are included in Tables 2-5.

The most significant variables in explaining an enactment of a new law were those indicating Republican control of state government. In each of the models in which the Republican control variable is included, it is

statistically significant at the 1% level. Depending on the model used in Tables 2 and 3, the results indicate that as Republicans gain control of one more entity in the state government, the likelihood of that state passing a voter identification law increases by 3-4 percentage points.<sup>13</sup> Republican control also has a statistically significant impact on the severity of the law passed. Depending on the model used in Tables 4 and 5, Republicans gaining control of an additional entity of government would, on average, increase the severity of the law on my 0 to 3 scale by somewhere between 0.09 and 0.15 points.<sup>14</sup>

My models indicate that the level of minority voting has little to no impact on the likelihood of a state enacting a law. In some of the models, an increase of Black voter participation by one percentage point had a tiny—albeit statistically significant (10% level)—impact on likelihood of enactment. Interestingly, the Hispanic voting coefficients in some models are negative, but they are also tiny and significant only at the 10% level. As discussed below, these results may suffer from negative bias. I did not run a model that lumped together the participation of all non-white voters in each state. Arguably, the perception of the white populace losing its majority could be more important than the characteristics of any particular group gaining prominence. This would be an excellent area for a future researcher to explore.

## LIMITATIONS TO MY RESULTS

I have found some modest impacts of certain variables, and importantly, I find that fraud variables lack impact. But there are several caveats to the interpretation of these results.

A statistical analysis is only as good as the data on which it relies. And while I believe the News21 data are as good as any that exists, it is still an imperfect compilation. The level of fraud reported in the data is a function of many things. First, the accuracy relies on how responsive a state was in responding to the News21 requests. By News21's own account, certain states were completely unresponsive. To the best of my ability I have removed these states from the analysis in order to minimize bias.<sup>15</sup> News21 also said that some localities in certain states were very responsive while others in the same state were not. I requested a list of which localities had stonewalled requests from News21 so that I could remove these states as well, but News21 was unable to provide me with such a list. As such, my results may suffer from reporting inaccuracies for which I am unable to control.

There is also an inherent issue in the type of data News21 gathered. By compiling a list of accusations, investigations, and prosecutions, the data more properly indicates the level of vigilance of the state rather than the true level of fraud that exists. Some states might have higher numbers simply because of zealous prosecutors or Secretaries of State, and unfortunately, I was unable to control for this difference.

There may also be a flaw in a key assumption of my model. By focusing on the level of reported fraud, I may be missing the more important factor: the perceived level of fraud. It may be an inaccurate assumption to say that public opinion—as well as the opinion of lawmakers—varies as a factor of the actual number of fraud cases in a state. Rather, it may be that only a handful of cases receive a great deal of media attention, and lawmakers then feel obliged to act. This is not included in my data.

A similar problem may impede my racial voting coefficients. It might be true that a one percentage point increase in voting participation by a state's Black population has little statistical impact. But it may be improper to think of racial voting as a continuous linear variable. The 2008 and 2012 elections saw an unprecedented level of Black voting participation in certain states, but these levels were only an increase—in most cases—of five percentage points. It may be that the difference between historic levels and these new levels were numerically insignificant but still exerted an important psychologically impact on state policymakers.

Even if lawmakers do respond to levels of reported voter fraud, it may be a difficult impact to measure. As I stated above, the level of voter fraud that is investigated and prosecuted is relatively low—even in the most zealous and largest states. As such, the small numbers may mean that a much larger dataset may be necessary to calculate an impact, if one exists.

## CONCLUSIONS

I am the first to admit that there are reasons to be cautious of accepting my results. But even with these caveats, this analysis adds some evidence to the existing study of voter fraud and voter identification laws.

As discussed above, the literature on voter fraud is not conclusive, but it does point to some major trends: voter fraud is a relatively rare occurrence, especially as compared to the total number of votes cast nationwide; and voter identification laws may—although it is not certain—depress voter participation among certain segments of the population. To these, I add my own conclusions that the level of voter fraud is not different at a statistically significant level between states that enact voter identification laws and states that do not. In my opinion, lining these up side-by-side makes

the validity of voter identification laws suspect from a policy perspective.

To be clear, nothing in this paper serves to condone voter fraud. It is a crime that threatens the central tenet of our democracy of one person, one vote. As such, it should be investigated and prosecuted when warranted. On the other hand, these laws risk disenfranchising citizens. That is also a substantial risk to our democracy.

Our society is no stranger to balancing important principles against one another. Indeed, it is the task of legislatures and courts across the country every day. I believe my results add evidence that favors resolving the balance in favor of free and open access to the ballot. It is true that we *may* risk a slightly higher incidence of voter fraud by eliminating these laws—a level that numbers, perhaps, in dozens of people across the nation each election. The alternative risk is taking away the voices of perhaps thousands of lower income citizens. And if my results are correct—that voter fraud is not the driving motivation for these laws and partisanship is—it begs the question: How can our society accept that risk?

## NOTES

<sup>1</sup> For example, the U.S. District Court for the District of Columbia denied the enforcement of the Texas Voter ID law under Section 5 of the Voting Rights Act, a decision that was later vacated by the U.S. Supreme Court. *Texas v. Holder*, 888 F. Supp. 2d 113, 114-15 (D.D.C. 2012) *vacated and remanded*, 133 S. Ct. 2886 (2013).

<sup>2</sup> Minniete's data would have been helpful for my analysis except that her state inquiry focused on only four states: California, Minnesota, New Hampshire, and Oregon.

<sup>3</sup> The two define orphan voters are those individuals who vote in low-profile elections (*e.g.*, county Sheriff in an odd numbered year) but not in preceding or succeeding high-profile elections (*e.g.*, Governor, Senator, or President).

<sup>4</sup> The two conclude that the anomalies in Daggett County, Utah are likely the result of election fraud, not voter fraud.

<sup>5</sup> Each of these four states have only one instance listed and these come from the RNLA list published in 2011. News21 was unable to confirm the details of the RNLA alleged instance in those states.

<sup>6</sup> It is not clear from the News21 website whether this is because these three states had no instances of voter fraud or whether they were not cooperative with the requests. I reached out to a contact at New21 for verification, but the person who responded did not think there was anyone still on staff that would be able to answer that question.

<sup>7</sup> Alabama and Oregon each reported one instance before 2000, in 1998 and 1999

respectively. As these were the only two entries prior to 2000 in the data, I dropped these observations. I include 2013 because the legislatures in those states could still have been reacting to instances of fraud in 2012, the last year in the News21 data.

<sup>8</sup> As I state in Appendix A, I dropped Nebraska from my analysis. I based this decision in part on the fact that Nebraska had only two entries in the News21 data. Nebraska also has a unicameral legislature in which no member has a stated party affiliation. As such, this would have complicated any analysis of partisanship control as an influencing factor.

<sup>9</sup> In a very few instances, states have an Independent Governor. These added 0.5 to the Republican control variable.

<sup>10</sup> These data reside, in most years, in the CPS Table 4b. The CPS only includes the data broken down by population segment when the population of that segment in the state is above 75,000. There are relatively few states that have Asian populations of more than 75,000. Indeed, there are a few states where 75,000 people constitute more than 10 percent of the state's entire population. I therefore did not include a variable for Asian voter participation because it would have had many missing values.

<sup>11</sup> Some states—such as Arkansas and Pennsylvania—passed a voter ID law that was ultimately struck by a state or federal court. Because I am studying fraud on state legislator actions, I disregard these court decisions and count the law as still being in place.

<sup>12</sup> Alabama and North Dakota each passed non-strict, non-photo identification laws in 2003, and then made the laws more stringent in 2011 and 2013 respectively. These later changes in the law are accounted for the in regression in Tables 2 and 4 but not in the regressions in Tables 3 and 5.

<sup>13</sup> In order to yield results that are more intuitively interpreted, all of my models employ OLS rather than logistic regressions.

<sup>14</sup> This result is statistically significant, but my 0 to 3 scale has real world implications only when the next full integer is reached.

<sup>15</sup> The twelve states removed (listed in Appendix A) are geographically, racially, and politically diverse from one another, and as such, it is difficult to determine whether each would systematically be more or less attuned to voter fraud or likely to pass a voter identification law.

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## TABLES

**Table 1a: States with voter identification laws**

State	Before Law Enacted		After Law Enacted	
	Number	Average Per Year	Number	Average Per Year
Alabama	11	3.67	4	0.36
Arizona	0	0.00	7	0.70
Arkansas	6	0.46	0	0.00
Colorado	2	0.67	20	1.82
Georgia	8	1.60	293	32.56
Idaho	6	0.60	6	1.50
Indiana	54	10.80	8	0.89
Kansas	214	19.45	2	0.67
Kentucky	11	5.50	99	8.25
Louisiana	0	0.00	4	0.31
Mississippi	70	5.83	4	2.00
Missouri	2	1.00	15	1.25
Montana	0	0.00	1	0.09

New Hampshire	20	1.67	0	0.00
North Carolina	22	1.69	0	0.00
North Dakota	0	0.00	3	0.27
Ohio	10	1.67	67	8.38
Pennsylvania	22	1.83	1	0.50
Rhode Island	3	0.27	2	0.67
Tennessee	6	0.55	8	2.67
Texas	82	7.45	22	7.33
Utah	51	5.67	0	0.00
Virginia	35	2.69	0	0.00
Washington	10	2.00	260	28.89
Wisconsin	46	4.18	10	3.33
Averages	27.64	3.17	33.44	4.10

*Source: News21 Voter Fraud Analysis*

**Table 1b: States without voter identification laws**

State	Number	Average Per Year
California	50	3.57
Illinois	23	1.64
Iowa	49	3.50
Maine	3	0.21
Maryland	2	0.14
Minnesota	10	0.71
Nevada	2	0.14
New Jersey	44	3.14
New Mexico	10	0.71
New York	18	1.29
Oregon	32	2.29
West Virginia	16	1.14
Wyoming	4	0.29
Averages	20.23	1.45

*Source: News21 Voter Fraud Analysis*

Table 2: Regression Results of Various Variables on New Voter ID Law (standard error)

	1	2	3	4	5	6	7	8
No. Voter Fraud Instances			0.0001 (-0.0006)		0.0005 (-0.0007)	0		
Rolling 3 Year Tally				0.0002		0.0004	(-0.0008)	0.0003
Voter Fraud				(-0.0003)		(-0.0003)		(-0.0004)
Republican Control of State Government	0.0312*** (-0.0089)				0.0398*** (-0.0098)	0.0393*** (-0.0097)	0.0424*** (-0.012)	0.0423*** (-0.012)
Rep Control House		0.0185 (-0.0199)						
Rep Control Senate		0.0341 (-0.0189)						
Rep Governor		0.0448* (-0.0182)						
Total Population					0 (0)	0 (0)	0.0001* (0)	0.0001* (0)

Table 2: Regression Results of Various Variables on New Voter ID Law (standard error) con't

	1	2	3	4	5	6	7	8
Percent Black Voted					0.0011* (-0.0005)	0.0010* (-0.0005)	0.0002 (-0.0011)	0.0003 (-0.0011)
Percent Hispanic Voted					-0.0016* (-0.0007)	-0.0016* (-0.0007)	-0.0003 (-0.0012)	-0.0003 (-0.0012)
Constant	-0.0033 (-0.0122)	-0.0045 (-0.0118)	0.0505*** (-0.0097)	0.0487*** (-0.0097)	0.0025 (-0.0172)	0.0026 (-0.0172)	0.0254 (-0.1436)	0.0351 (-0.1444)
Adjusted R-Squared	0.0222	0.0198	-0.0019	-0.0014	0.0473	0.0482	0.0638	0.0645
R Squared	0.024	0.0254	0	0.0005	0.0581	0.059	0.1396	0.1403
F	12.2555	4.849	0.0093	0.4122	3.7959	3.7918	0.745	0.7468
p	0.0005	0.0024	0.9232	0.5211	0.001	0.001	0.8831	0.8812

Source: News21 Voter Fraud Analysis, Klaner Politics, and Community Population Survey. \* = 10% significance; \*\* = 5% significance; \*\*\* = 1% significance.

Table 3: Regression Results of Various Variables on New Voter ID Law with Truncated Data (standard error)

	1	2	3	4	5	6	7	8
No. Voter Fraud Instances			0.0015 (-0.0018)		0.0008 (-0.0017)		0.0002 (-0.0022)	
Rolling 3 Year Tally								
Voter Fraud				0.0021 (-0.0012)		0.0015 (-0.0012)		0.0023 (-0.0014)
Republican Control of State Government								
	0.0438*** (-0.012)				0.0478*** (-0.0123)	0.0453*** (-0.012)	0.0555*** (-0.0163)	0.0552*** (-0.0163)
Rep Control House		0.0247 (-0.0243)						
Rep Control Senate		0.0515* (-0.0231)						
Rep Governor		0.0599* (-0.024)			(0)	(0)	(0)	(0)

Table 3: Regression Results of Various Variables on New Voter ID Law with Truncated Data (standard error) con't

	1	2	3	4	5	6	7	8
Percent Black Voted					0.0015* (-0.0006)	0.0014* (-0.0006)	0.0002 (-0.0014)	0.0004 (-0.0014)
Percent Hispanic Voted					-0.0019* (-0.0009)	-0.0019* (-0.0009)	0.0003 (-0.0016)	0 (-0.0015)
Constant	-0.0071 (-0.0147)	-0.0088 (-0.0146)	0.0589*** (-0.0123)	0.0480*** (-0.0126)	-0.0187 (-0.022)	-0.0205 (-0.0221)	0.0158 (-0.2663)	0.0419 (-0.2669)
Adjusted R-Squared	0.036	0.033	-0.0007	0.0107	0.0504	0.0564	0.0634	0.0716
R Squared	0.0385	0.0403	0.0018	0.0132	0.0624	0.0682	0.1625	0.1698
F	13.2369	5.1588	0.7032	2.8685	4.0842	4.0984	0.735	0.7488
P	0.0003	0.0017	0.4022	0.0911	0.0013	0.0012	0.8884	0.8736

Source: *News21 Voter Fraud Analysis, Klaner Politics, and Community Population Survey.* \*=10% significance; \*\*=5% significance; \*\*\*=1% significance.

Table 4: Regression Results of Various Variables on Voter ID Severity (standard error)

	1	2	3	4	5	6	7	8
No. Voter Fraud Instances			0.0006 (-0.0016)		0.0012 (-0.0017)		-0.0001 (-0.0019)	
Rolling 3 Year Tally								
Voter Fraud				0.001 (-0.0009)		0.0012 (-0.0009)		0.0009 (-0.0012)
Republican Control of State Government	0.0807*** (-0.0207)				0.1000*** (-0.0241)	0.0986*** (-0.0236)	0.1062*** (-0.03)	0.1062*** (-0.0301)
Rep Control House		0.0766* (-0.0314)						
Rep Control Senate		0.0586* (-0.0254)						
Rep Governor		0.1155*** (-0.0398)						
Total Population					0 (0)	0 (0)	0.0001 (-0.0001)	0.0001 (-0.0001)



Table 4: Regression Results of Various Variables on Voter ID Severity (standard error) con't

	1	2	3	4	5	6	7	8
Percent Black Voted					0.0030* (-0.0012)	0.0029* (-0.0012)	0.001 (-0.0028)	0.0012 (-0.0027)
Percent Hispanic Voted					-0.0029 (-0.0015)	-0.0029 (-0.0015)	0 (-0.0026)	-0.0001 (-0.0026)
Constant	-0.0345 (-0.0207)	-0.0354 (-0.0208)	0.1034*** (-0.0216)	0.0953*** (-0.0202)	-0.0557 (-0.0372)	-0.0558 (-0.0371)	-0.1926 (-0.315)	-0.1643 (-0.315)
Adjusted R-Squared	0.0298	0.0277	-0.0018	0.0003	0.0571	0.0595	0.0435	0.0445
R Squared	0.0316	0.0331	0.0001	0.0022	0.0678	0.0702	0.1209	0.1219
F	15.2221	5.2951	0.1205	1.2302	3.2259	3.2622	0.7153	0.7168
p	0.0001	0.0013	0.7286	0.2679	0.004	0.0037	0.9125	0.9112

Source: News21 Voter Fraud Analysis, Klaner Politics, and Community Population Survey. \*=10% significance; \*\*=5% significance; \*\*\*=1% significance.

Table 5: Regression Results of Various Variables on Voter ID Severity with Truncated Data (standard error)

	1	2	3	4	5	6	7	8
No. Voter Fraud Instances			0.0043 (-0.0045)		0.002 (-0.0043)		-0.0006 (-0.0057)	
Rolling 3 Year Tally								
Voter Fraud				0.0066 (-0.0035)		0.0049 (-0.0033)		0.0066 (-0.0035)
Republican Control of State Government	0.1127*** (-0.029)				0.1225*** (-0.0304)	0.1137*** (-0.0283)	0.1527*** (-0.0464)	0.1521*** (-0.0461)
Rep Control House		0.0992* (-0.0409)						
Rep Control Senate		0.0952** (-0.0342)						
Rep Governor		0.1558*** (-0.0537)						
Total Population					0 (0)	0 (0)	0.0002 (-0.0001)	0.0001 (-0.0001)

Table 5: Regression Results of Various Variables on Voter ID Severity with Truncated Data (standard error) con't

	1	2	3	4	5	6	7	8
Percent Black Voted					0.0042** (-0.0015)	0.0040** (-0.0015)	0.0019 (-0.0038)	0.0025 (-0.0038)
Percent Hispanic Voted					-0.0034 (-0.002)	-0.0034 (-0.002)	0.0012 (-0.0041)	0.0002 (-0.0039)
Constant	-0.0493 (-0.0264)	-0.0518 (-0.0269)	0.1194*** (-0.0275)	0.0832*** (-0.0268)	-0.1197* (-0.0525)	-0.1260* (-0.0532)	-0.4342 (-0.4467)	-0.355 (-0.4371)
Adjusted R-Squared	0.0468	0.0439	0.0003	0.0235	0.0672	0.0802	0.0535	0.0661
R Squared	0.0493	0.0511	0.0028	0.0259	0.079	0.0918	0.1536	0.1649
F	15.1126	5.2779	0.8893	3.5793	3.4776	3.5423	0.7213	0.7332
P	0.0001	0.0014	0.3462	0.0592	0.0044	0.0038	0.902	0.8902

Source: News21 Voter Fraud Analysis, Klaner Politics, and Community Population Survey. \*=10% significance; \*\*=5% significance; \*\*\*=1% significance.

## **APPENDIX A – AN EXPLANATION OF WHY CERTAIN STATES WERE DROPPED FROM THE ANALYSIS**

In total, I dropped 12 states from the analysis. News21 indicated that four states—Massachusetts, Oklahoma, South Carolina, and South Dakota—were completely unresponsive to their requests for information. As such, the only reported instances of fraud in these four states came from the RNLA list, and I determined that this was an inaccurate measure.

Additionally, there were no entries in the data for either Hawaii or Vermont. There was no indication on the News21 website as to whether these states were unresponsive or had just reported to News21 that no fraud cases existed in their states. Without this information, I dropped the states out of an abundance of caution.

Five states passed their voter identification laws prior to 2000, when the News21 data began. They include Florida (1977), Alaska (1980), Delaware (1996), Michigan (1996), and Connecticut (1999).<sup>1</sup> To include these states would have biased the results because it would have appeared that the states enacted their laws without having had any preceding instances of fraud.

Finally, I dropped Nebraska because of the uniqueness of its political system. Because it has a unicameral legislature whose members do not have party affiliation, I thought it would bias the impact of the partisan variables in the data.

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<sup>1</sup> Hawaii passed its voter ID law in 1970, but it was dropped already for a lack of data on fraud.

## APPENDIX B - STATES MISSING RACE VARIABLES (OUT OF 14 POSSIBLE YEARS)

### Percent of Hispanic Population Voting

State	No. of Missing Values
Alabama	12
Arkansas	8
Idaho	6
Indiana	2
Iowa	8
Kansas	2
Kentucky	10
Louisiana	4
Maine	14
Minnesota	2
Mississippi	14
Missouri	4
Montana	14
New Hampshire	14
North Dakota	14
Rhode Island	8
Tennessee	2
West Virginia	14
Wyoming	14

### Percent of Black Population Voting

State	No. of Missing Values
Idaho	14
Iowa	14
Kansas	2
Maine	14
Minnesota	2
Montana	14
Nevada	2
New Hampshire	14

New Mexico	14
North Dakota	14
Oregon	14
Rhode Island	14
Utah	14
West Virginia	14
Wyoming	14

### APPENDIX C – CATEGORIZATION OF SEVERITY OF STATE VOTER ID LAWS FOR STATES IN DATA<sup>2</sup>

	Photo ID	Non-Photo ID
Strict	<b>Code = 3</b> Arkansas Georgia Indiana Kansas Mississippi North Carolina Pennsylvania Tennessee Texas Virginia Wisconsin	<b>Code = 2</b> Arizona North Dakota Ohio
Non-Strict	<b>Code = 2</b> Alabama Idaho Louisiana Rhode Island	<b>Code = 1</b> Colorado Kentucky Missouri Montana New Hampshire Utah Washington

### No Voter Identification Law:

#### **Code = 0**

California  
 Illinois  
 Iowa  
 Maine  
 Maryland  
 Minnesota  
 Nevada  
 New Jersey  
 New Mexico  
 New York  
 Oregon  
 West Virginia  
 Wyoming

#### Notes:

- Arkansas and Pennsylvania enacted strict photo ID laws that were struck by various courts. Because I am studying the effect of fraud on state legislatures, I disregard the judicial review of the laws and treat the law as being in effect.
- Similarly, North Carolina's law, as passed, was not supposed to go into effect until 2016, but since it was passed in 2013, I am interested in the level of fraud in that year.
- Alabama and North Dakota each initially passed a non-strict, non-photo ID law in 2003. The two made the laws more stringent in 2011 and 2013 respectively. This table lists those laws according to their current, more stringent form.

<sup>2</sup> This chart is adapted from one available from the National Conference of State Legislatures, available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

# 3

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## PRIVATE FIRM INCENTIVES TO ADOPT INTERNAL CARBON PRICING

*Vivian Chang*

### INTRODUCTION

Putting a price on carbon is a significant tool for achieving major greenhouse gas reductions. A carbon price shifts markets and consumption behavior by accounting for the negative externalities of carbon emissions, such as global warming and sea level rise. In light of the uncertainty surrounding federal climate change policy in the United States, it is even more crucial that private companies fill the gap on advancing climate change goals. This paper analyzes the current status of internal carbon pricing by private companies around the world and makes recommendations for stakeholders in government, nonprofits, and the private sector that would seek to advance carbon pricing. While the United States is largest actor with uncertain climate policies, lessons from this paper can be applied to other countries seeking to create or strengthen a business environment that promotes carbon pricing.

Section 1 of this paper describes the economic theory of carbon pricing. Section 2 dives into internal carbon pricing, describing the types of prices, current usage by industry, and introduces the dataset this paper draws upon. Section 3 details the economic theories motivating the use of internal carbon pricing, and Section 4 evaluates these predictions against empirical data, both qualitative and quantitative. Section 5 provides policy recommendations for government, business, and nonprofit actors seeking

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to encourage carbon pricing, and Section 6 concludes with a look at the international implications. Through analysis of data from 562 companies in the Carbon Disclosure Project (CDP) and interviews conducted with sustainability officers, I find that firms adopt internal carbon prices to identify efficiencies, capture new markets, and prepare for regulation, even in the absence of external carbon taxes. I propose policy strategies to encourage more firms to adopt carbon pricing and create momentum on reducing greenhouse gas emissions. By incentivizing firms, we can create a path forward in the absence of federal domestic policy to combat global warming in the United States and other countries.

## I. BACKGROUND ON CARBON PRICING

Carbon pricing presents a policy opportunity to achieve climate change goals by aligning economic incentives. The environmental and economic impacts of climate change are increasing each year as concentrations of greenhouse gas in the atmosphere steadily increase. Global warming is already inducing flooding and sea level rise, and has caused major damage in the United States through heat waves and exacerbating extreme weather events such as Hurricane Sandy (IPCC 2014). Given that greenhouse gases are emitted by a variety of sectors across the globe, governments and nonprofits have a diverse set of policy options to pursue in reducing emissions from transportation, industry, agriculture, and other sources.

“Putting a price on carbon” is often proposed as the most economically efficient method for achieving greenhouse gas emissions reductions. Pricing carbon can occur in several ways, such as a direct tax on carbon emissions applied by the government, or an appropriately designed emissions trading system. Regardless of the structure, a carbon price acts as a Pigovian tax—a tax levied on any market activity that generates negative externalities to correct inefficient market outcomes, such as excess greenhouse gas emissions. The carbon price should reflect the marginal negative impacts and costs of greenhouse gas emissions in the price of goods and investments. In this way, it will induce investments in clean energy technology and energy efficiency, and shift demand away from carbon-intensive products. It affects short-term consumption choices as well as longer-term investments like fossil fuels extraction and purchasing of new fuel-efficient airplanes.

Carbon prices are typically measured in dollars per metric ton of carbon dioxide equivalent or CO<sub>2</sub>e emissions. The Japanese government applies a carbon tax of \$3/ton while Sweden applies a tax of \$137/ton, but such taxes can also be measured in dollars per barrel for oil or other measures for fossil fuels. Fundamentally, a carbon price accurately prices the externalities from green-

house gas emissions to achieve economically efficient levels of emissions. As Patricia Espinosa, the Executive Secretary of the UN Framework Convention on Climate Change, describes it, “a carbon price translates climate impacts into business language” and “encourages ownership of the issue” (Microsoft 2016, 3).

### *Limitations*

Although carbon pricing is Pareto efficient if designed correctly, there are limitations to its efficacy in shifting emissions behavior. To effectively shift consumer or firm behavior, an externally-imposed carbon price must be well designed and imposed globally. Otherwise, leakage can occur—in which firms or individuals shift to other markets where the carbon price is not imposed. Subnational carbon prices, such as the carbon tax in Boulder, Colorado, or the emissions trading system between California and Quebec, do not induce full responses in emissions behavior because firms and consumers can purchase some products outside of the area in which the carbon price is applied. For example, airlines could choose to “ferry fuel” when traveling to a state like California that has a cap-and-trade system: if the carbon price is too high, airplanes will carry more fuel on board to avoid purchasing fuel there and avoid paying the carbon tax (Tochilin 2016). This creates a perverse incentive to increase emissions by increasing the fuel load, but the leakage could be prevented for domestic flights if a carbon tax were applied in all states.

In addition, a carbon tax may not reflect the full social, environmental, and economic externalities of greenhouse gas emissions. It may omit externalities like non-economic environmental impacts, such as the effects on coral reef ecosystems, as well as costs of geopolitical conflicts over increasingly scarce resources and forced migration by climate refugees (IPCC 2014). In addition, a carbon price is not a silver-bullet solution, but rather it should be used in concert with other tools. Additional policies are needed to overcome financial and non-financial barriers to the development and adoption of new technology. Such barriers include extremely high upfront costs, lack of intellectual property protection, information asymmetries for consumers, and principal-agent problems, which a carbon price alone cannot address (Driesen 2014, 115).

Despite these limitations, pricing carbon is a highly efficient and effective method of reducing greenhouse gas emissions. Since 2015, five states and the District of Columbia have introduced legislation or ballot measures to tax carbon emissions from certain sectors (Baumon and Komanoff 2017). However, given the limited prospects for national policy

in the United States during the Trump administration, it is prudent to examine the options for encouraging companies to adopt internal carbon prices. Hundreds of companies, including at least 90 firms in the United States (CDP 2014, CDP 2015, CDP 2016), already put a price on carbon through their business operations. When companies use a carbon price to include the negative externalities of climate change in their business and investment decisions, it will overcome market failures in the absence of an external carbon tax.

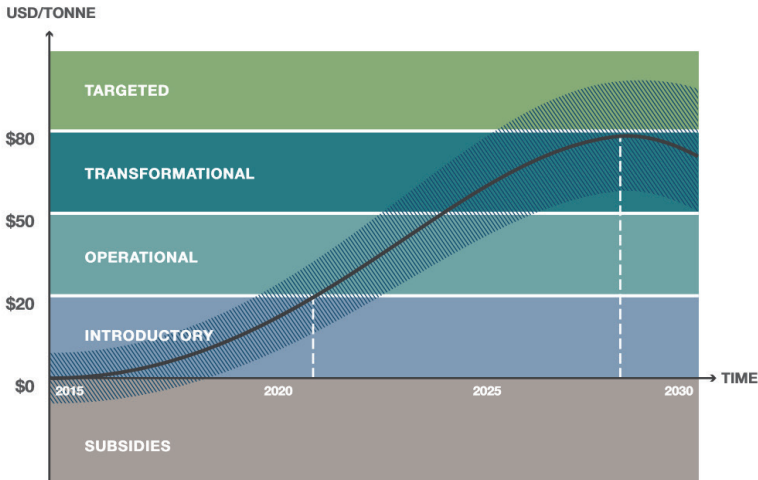
## II. INTERNAL CARBON PRICING

Internal carbon pricing refers to a range of methods to account for the cost of the negative externalities of carbon emissions in business and investment decisions. In the absence of a carbon tax, or in complement with existing climate policy, internal carbon pricing can induce firms to invest in zero- or low-carbon technology, adopt energy efficient processes, or reduce emissions indirectly by sponsoring carbon offset projects. The UN Global Compact (2015) describes two main types of internal carbon prices: shadow prices or internal fees/taxes.

*Shadow prices* are added to the calculated cost of each project to simulate an externally-imposed carbon tax or to quantify the effects of carbon emissions. They are often used to evaluate projections of investments or infrastructure, or to uncover inefficiencies in the supply chain. For example, many utilities use anticipated carbon prices when deciding on multi-year infrastructure investments, often deciding between new coal-fired or gas-powered plants. An *implicit price* is calculated based on the company's structure, or to uncover inefficiencies in the supply chain. For example, many CO<sub>2e</sub> reduced. Unilever uses an implicit price calculated from its annual spending on carbon offsets (CDP 2015, 19).

An *internal fee* or *internal tax* is charged for each business unit based on its emissions, and the fees are collected in a central fund that is re-invested into projects focused on energy efficiency, renewable energy, or carbon offsets. For example, Microsoft charges an internal fee of about \$5/ton and has used its fund to reduce emissions by more than 9 million megatons of CO<sub>2e</sub> from July 2012 to 2015 through behavioral change projects and renewable energy purchases (Microsoft 2015, 4). Managing an internal carbon fund requires a greater administrative structure beyond shadow prices and implicit prices. However, firms like Microsoft and Ben & Jerry's have so far required only one or two staff members to collect the fees and oversee distribution to projects (Asch 2017).

Figure 1: Carbon price levels to achieve major emissions reductions.



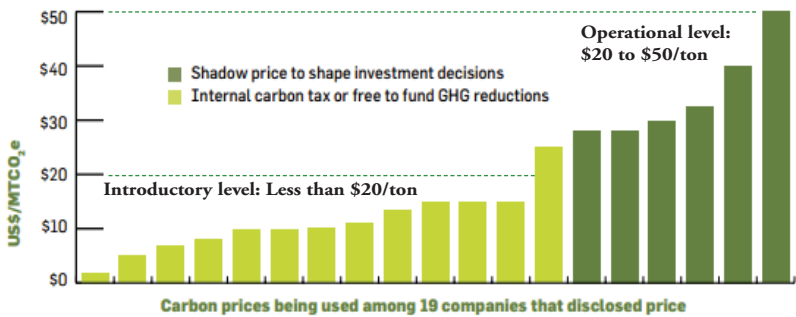
(Source: CDP and the We Mean Business Coalition, *Carbon Pricing Pathways*, 2015)

As seen in Figure 1, from CDP and the We Mean Business Coalition, carbon prices that are above \$80/ton are *Targeted* and can support specific policy objectives on their own. Currently, only Sweden (\$137/ton) and Switzerland (\$88/ton) have national carbon taxes at this level, with Finland (\$66/ton) and Norway (\$53/ton) following in the *Transformational* band (World Bank and Ecofys 2016). No company uses an internal carbon fee priced above the *Introductory* level, but more than a dozen firms use shadow prices of \$80/ton or higher to anticipate future climate policies, and at least two dozen use shadow prices above \$50/ton (CDP 2014, CDP 2015, CDP 2016). For example, Exxon Mobil has been using a shadow price of \$60 to \$80 per ton since at least 2013 (CDP 2013). The research on impacts of various carbon prices centers on government policies, but similar observations hold for internal carbon prices. Among companies that disclose their internal carbon price to the CDP, there is a statistically significant and positive relationship between the size of the price and whether the company reports an impact on budget or investment decisions due to the carbon price. To alter harmful emissions behavior, companies need to price carbon appropriately in their business and investment decisions.

When we examine actual carbon pricing behavior by companies from a UN Global Compact survey, the data demonstrate that internal carbon

prices are consistently lower than shadow prices (Figure 2). Companies that use an internal fee are charging the fee to their business units, so they tend to use a lower internal carbon price. The range in this survey is from less than \$1/ton to \$25/ton CO<sub>2</sub>e. In comparison, firms that use a shadow price or implicit price—which are not paying the actual cost for emissions—use a higher range of prices: firms in this survey used prices from \$25/ton to \$50/ton, but other surveys have found even higher shadow prices used.

Figure 2: Internal carbon prices reported by 19 companies.



(Source: *Caring for Climate Executive Guide to Carbon Pricing Leadership*, 2015)

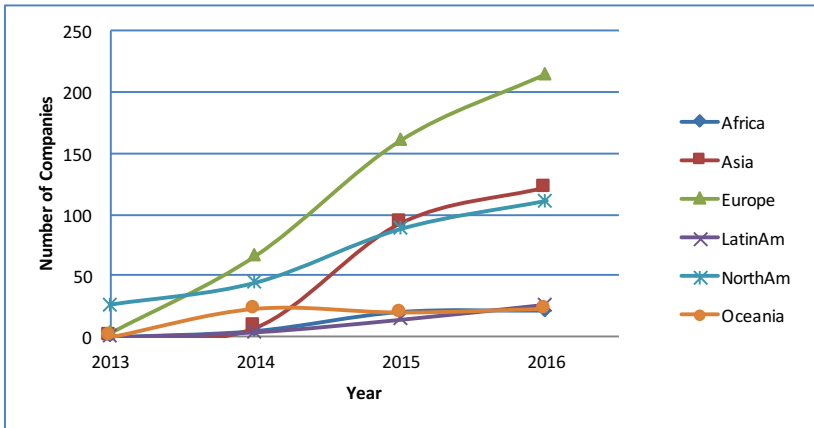
However, the vast majority of internal carbon prices will need to increase rapidly in the next five to ten years to achieve necessary emissions reductions and avoid greater and irreversible impacts of climate change. CDP and the We Mean Business Coalition (2015) estimate that carbon prices will need to be at or above \$20/ton by 2020 in the *Introductory* price range; at or above \$50/ton by 2025 in the *Operational* price range, which begins to enable structural changes like switching from coal to gas; and at or above \$80/ton before 2030 to achieve *Transformational* results in achieving a low- or zero-carbon future (see Figure 1). If prices are not set high enough, incremental change will occur, such as developing hybrid cars rather than electric vehicles. Such incrementalism could delay the decoupling of global economic growth from carbon emissions. Another example of gradual (not major) change can be seen in the recent agreement established by the International Civil Aviation Organization (ICAO). The ICAO Agreement requires airlines to reduce emissions or purchase carbon offsets to achieve emissions goals based on miles flown, rather than actual emissions. Using a framework of purchased offsets can also cause issues with additionality, where it is unclear whether carbon

offsets reflect additional emissions reduced or simply represent emissions that would already have been reduced otherwise. This design and the cheapness of carbon offsets could also cause more established airlines to simply buy carbon offsets rather than invest in more efficient aircrafts to reduce their own emissions (Tochilin 2016, Mansell 2016).

### *Current Status of Internal Carbon Pricing*

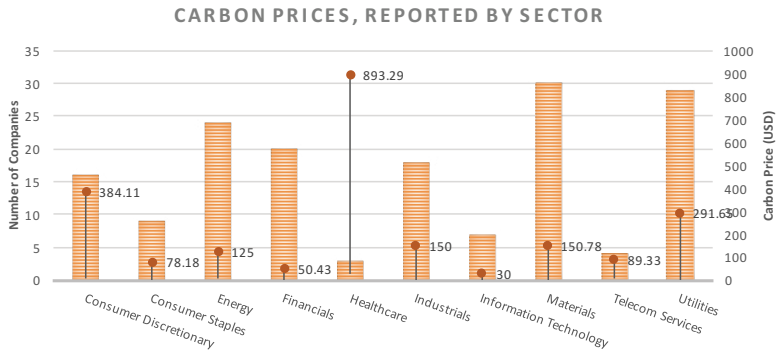
More than 550 companies have reported using an internal carbon price to the Carbon Disclosure Project (CDP) since 2013. Figure 3 below shows the growth in companies using a carbon price, with the fastest growth in reporting coming from Europe and Asia. In CDP's annual disclosures, companies are surveyed on their motivations for using a carbon price, whether it impacts their business, whether they have emissions targets, and the price itself.

**Figure 3: Trends in number of companies reporting use of an internal carbon price, by region**



(Data sources: CDP Report 2013, CDP Report 2014, CDP Report 2015, CDP Report 2016)

Figure 4: Range of carbon prices and number of firms reporting, by sector.



(Data sources: CDP Report 2014, CDP Report 2015, CDP Report 2016)

In the following sections, I use this data to evaluate several economic models for a firm's choice to use internal carbon pricing. CDP's 2016 data show that:

- Although certain companies like Microsoft and the Walt Disney Company are held up as unique examples of internal carbon pricing, companies in every business sector across the world use some form of internal pricing.
- The sectors with the most companies reporting are Materials, Utilities, and Energy, and the sectors with the highest percentage of companies using an internal carbon price in 2016 are Utilities (49 percent) and Energy (38 percent). These industries produce the highest greenhouse gas emissions, face the greatest financial risk from higher carbon prices, and could potentially save the greatest costs by reducing their energy expenditures.
- Most internal carbon prices are not high enough to be *Transformational* or *Targeted*, as defined in the Carbon Pricing Pathways report. By 2050, it will be necessary for a majority of the global economy to price at these levels. Nevertheless, currently nearly every sector includes firms that use prices in the two highest pricing bands.
- 732 companies report that they plan to adopt a carbon price within the next two years. The momentum for internal carbon pricing is growing: individual firms are beginning to recognize the importance of using a carbon price to mitigate risk and prepare for climate impact. It is crucial that government actors create policy interventions to accelerate the adoption of economy-wide carbon prices.

Given the evidence of widespread and increasing usage of internal carbon pricing, I next discuss the economic theories behind firms' choices for engaging in internal carbon pricing. There are a variety of motivations, even in uncertain regulatory environments. Based on the predictions of the models and companies' own statements on the experience of internal carbon pricing, we can make recommendations on how to encourage more companies to adopt an internal carbon price.

### III. ECONOMIC MODELS OF FIRMS' INCENTIVES

Why would firms adopt internal carbon pricing without external pressure from regulations? This paper explores three economic models that examine whether environmental regulations increase or decrease profits, and that companies may have unrecognized motives for adopting internal carbon pricing. The Porter Hypothesis is the dominant theory that explains how environmental regulations are not necessarily profit-decreasing, but in fact can help firms increase profits by inducing what are called product offsets and process offsets. Firms benefit from regulations that—in the case of carbon pricing—help them identify waste in the supply chain, reduce the risk underlying environmental upgrade investments, and contribute advantage to capturing new markets. Arguments from two other economic models contribute to the principles underlying firms' incentives for internal carbon pricing. The multi-phase model describes how firms anticipating an external carbon tax would use internal pricing to get ahead of the learning curve and prepare their business operations. Hotelling's Rule typically describes fossil fuel extraction in anticipation of scarcity or future limits.

#### *The Porter Hypothesis*

It is often assumed that environmental regulations are profit-reducing for firms. However, the Porter Hypothesis described by Porter and Lande (1995) states that firms generally are not perfect cost-minimizers, due to dynamic obstacles like incomplete information, limited attention (99), organizational inertia (100), and misaligned incentives. Regulations can assist companies in discovering inefficiencies they would not have found otherwise. Porter and Lande (1995) describe the phenomenon in which many companies did not invest in energy efficient lighting, until required to by the U.S. Environmental Protection Agency (EPA) Green Lights Program, despite 80 percent of the projects having payback periods of at most two years—that is, being profitable investments in the medium- and long-run (99). In regulating firm behavior, environmental standards can



also “trigger innovation that may partially or more than fully offset the costs” of compliance, also known as “innovation offsets” (98).

Instituting a carbon price is a type of environmental regulation, as it requires firms to pay for the negative costs associated with greenhouse gas emissions. The Porter Hypothesis predicts several outcomes of such regulation, given that it can focus firms’ attention on energy usage by making costs related to electricity, fuel, and production nontrivial. It builds on the idea that negative “emissions can carry important information about flaws in product design or the production process” (106), such as excess packaging, high disposal costs, or missed opportunities for additional revenue through recycling.

Environmental regulations can be profit-neutral or cost-reducing through two mechanisms:

- **Product offsets**, in which the regulation encourages higher-quality products, better safety, and higher resale value (101). One example comes from the Ben & Jerry’s internal carbon fund. The ice cream company collects \$10 per ton of emissions (calculated from two pounds of emissions per pint of ice cream). The fees are re-invested into a central fund, which Ben & Jerry’s provides as a financial incentive when working with its dairy farm suppliers to reduce emissions. One pilot project converted manure into a fertilizer and bedding material for cows, which was resold to surrounding farms, providing higher revenue for the farmer (Ben & Jerry’s 2014).
- **Process offsets**, in which the regulation leads to greater productivity, such as through higher yields, lower energy consumption, and lower waste disposal costs (101). Examples of process offsets abound in relation to carbon pricing: Microsoft, through its renewable energy and behavioral-change projects funded by its carbon fee, has saved \$10 million per year in energy costs (DiCaprio 2015).

The Porter Hypothesis has three primary predictions relevant to internal carbon pricing that I will explore in Section 4 (99-100). Firms benefit from carbon prices because they:

1. Highlight resource and supply-chain inefficiencies and opportunities for technological improvements;
2. Reduce the uncertainty that environmental investments will be valuable, since external regulations or business environments require such investments; and

3. Create an “early-mover advantage” (104) for companies that use environmental compliance methods to capture new markets for green products.

### *Multi-phase Model*

Firms will anticipate that future regulation of greenhouse gas emissions is coming and will permanently affect business operations. Companies that use internal carbon pricing in advance will get ahead of the learning curve to ease the transition. Devine (2004) states that “to the extent that regulatees anticipate future actions of the relevant regulatory board, the need for regulation itself is reduced” (70). This model predicts that firms are likely to adopt internal carbon pricing when carbon taxes or emissions trading schemes are implemented, or when there is a credible threat that national or regional governments will implement them.

### *Hotelling’s Rule*

The final model is Hotelling’s rule, which describes the extraction of non-renewable resources (typically fossil fuels) at different time periods (Hotelling 1931). The model describes how price responds to expectations of future supply and demand, to interest rates, and to scarcity rents. Hotelling’s rule is typically used to describe paths of fossil fuel extraction over time, given the varying expectations of oil demand at different stages, and the transaction costs required for extraction. In the face of future limits on fossil fuel usage—such as resource scarcity or pollution caps—firms will alter their extraction accordingly. Depending on the proximity of the oncoming limit, the preparedness of individual firms, and availability of substitutes, some firms may extract fossil fuels even more quickly to extract remaining profits, while others will reduce extraction to smooth out consumption over time. This model can be applied to carbon pricing as well, due to firms’ anticipation of zero- or low-carbon regulations.

## **IV. EVALUATING STATED MOTIVATIONS AGAINST THE MODELS**

In their annual disclosures to CDP, some companies report their motivations for using internal carbon pricing, which provides rich data for examining the question: Do companies’ stated motivations align with predictions from the economic models? Herein this paper examines the most common motivations given by firms that report internal carbon pricing to CDP, and the relationship to the economic models discussed prior.

### *1. Internal carbon pricing reveals hidden risks and opportunities.*

The pharmaceutical company Novartis uses a shadow price and an environmental profit and loss statement (EP&L) to identify projects with a return on investment. One result is that the company has generated surplus emissions allowances through its energy efficiency projects, which it can sell in the European Union Emissions Trading System (EU ETS) market. Covanta Energy has used internal carbon pricing to “demonstrate the economic benefits of landfill diversion and [generating] energy from waste,” increasing the resale value of its energy products (Weiss et al. 2015). Leveraging a carbon price to discover risks and opportunities stems directly from the Porter prediction that carbon pricing will provide a “signal about likely resource inefficiencies and potential technological improvements.”

Conversely, airlines are not incentivized to use internal carbon pricing; Delta reports that fuel costs are already nontrivial (99 percent of the airline’s energy consumption is jet fuel). Delta already considers carbon costs and energy costs in decisions to invest in certain aircraft, and Delta engages in fiscal hedging by owning and running its own oil refinery, which produces 80 percent of its domestic fuel. Airlines already have substantial incentives to reduce fuel costs (though not necessarily emissions) because they compose such a large portion of airline budgets (Tochilin 2016). In this respect, airlines are already cost-minimizing and do not see the need to engage in further carbon pricing beyond including expectations of future fuel costs when upgrading their fleets with more efficient aircraft.

### *2. Internal carbon pricing provides an incentive to shift to low-carbon activities. It can also “make the business case for R&D.”*

The automobile company BMW reports that incentivizing lower-carbon products can increase its profitability in an environment of increasing energy prices, compared to business as usual (Weiss et al. 2015). As mentioned above, Ben & Jerry’s uses its internal carbon fund as a financial incentive for undertaking emissions-reducing projects in its dairy supply chain, which represents 42 percent of the company’s carbon footprint. In the United States, Ben & Jerry’s works with its partner farms on technology for manure management to reduce methane emissions. It also uses the funds from its European operations to invest in agro-forestry projects in Uganda, and applies some funding from each operation toward manufacturing, which represents 10 percent of the company’s emissions (Asch 2017). This motivator is an extension of the Porter Hypothesis that environmental regulations help highlight inefficiencies. Specifically, the Porter Hypothesis predicts that using a carbon price helps identify poten-

tial technological improvements and reduces uncertainty in the financial return for environmentally beneficial investments.

### *3. Using carbon pricing helps capture market share.*

Arçelik, a Turkish company that produces household appliances, reports that it aims to specialize in the most energy efficient appliances to capture the green market. Using internal carbon pricing helps the company target product inefficiencies and maintain its customer base. NRG Energy Inc. states that carbon pricing makes it “better positioned for low-cost compliance” and “competitively advantaged [with] clean energy products and services” (Bartlett et al. 2016). Air Products & Chemicals Inc. observes that “any carbon tax could drive new markets and/or grow existing ones,” especially in the area of carbon capture and storage (Weiss et al. 2015). This motivator relates to the Porter prediction of companies developing a “first-mover international advantage” if they adopt internal carbon pricing early relative to their peers.

However, innovating on emissions reductions does not attract customers in all sectors: Delta reports that the decision points in the airline industry are reliability, quality of service, ticket price, on-time arrival, and other factors that far outweigh airplane emissions. The company observes that only a few hundred customers purchase carbon offsets for their flights each month, which demonstrates a lack of consumer interest in including fuel efficiency and environmental performance into their travel decisions (Tochilin 2016).

### *4. Internal carbon pricing is a risk management strategy.*

The Austrian oil and gas company OMV describes carbon pricing as a “long-term risk management tool” and Wells Fargo & Company uses it as a risk management procedure to analyze how climate regulations could “affect customers’ ability to repay their loan” (Weiss et al. 2015). This motivator stems from the extended Hotelling’s rule, wherein financial investments in fossil fuels are analyzed with similar concerns about expected future costs, interest rates, and rates of return. Companies use internal pricing to hedge against asset risks, potentially changing the value of current collateral in anticipation of a future external carbon price.

However, companies may recognize the need to shift to lower-carbon assets, but may not do so completely due to industry and market conditions that affect payback periods. For example, if an airline were to upgrade its entire fleet simultaneously to more efficient models, it would be locked into today’s technology for the next twenty to thirty years (the average

lifetime of an airplane). Although it would achieve the greatest emissions reductions now, it would lose the opportunity to pursue more efficient and cheaper products in the future. Instead, airlines typically upgrade their fleets incrementally, such as by buying planes from other airlines that have upgraded their fleets (Tochilin 2016).

To examine the motivator of using carbon pricing as a method of preparing for anticipated carbon taxes, this paper looks at when companies in certain regions began adopting internal carbon pricing. Of the 24 South African companies that report to CDP, the majority began using internal carbon pricing in 2015 or 2016, in anticipation of the carbon tax bill that would have implemented a nationwide carbon tax starting in January 2017 (The Carbon Report 2015). Royal DSM, a materials company, reports that it seeks to “prepare for [an] external carbon price after [the] Paris [Agreement],” and it uses a shadow price of €0/ton, higher than current EU ETS allowance prices. Saint-Gobain, a plastics company, uses a shadow price across 66 countries in its operations to “prepare for [the] worst-case of no free ETS allowances after 2020” (Bartlett et al. 2016). Likewise, many energy companies in the United States have used shadow pricing for years, including ConocoPhillips (range of \$6-\$51 per ton), Exxon Mobil (\$60-\$80 per ton), and Hess (\$20-\$40 per ton), which have all shifted their prices depending on national carbon tax discussions. Exelon reported in 2016 that internal carbon pricing would help “analyze impacts of the Clean Power Plan” (Bartlett et al. 2016). The fixed costs associated with oil development are sunk; thus, fossil fuel companies need to insure against the outcome of abandoning their facilities before the ends of their lifetimes if a carbon price is instituted.

A few other motivations provided by companies that use internal carbon pricing reflect concerns about the broader physical and social environment for business. Harmony Gold, a South African mining company, reports a need to use internal pricing to “prepare for impacts” from climate change, especially potential water shortages in the future (CDP 2016). It uses a shadow price and sets company emissions targets that scale over time (22 percent reduction by 2025, and 90 percent reduction by 2045). The pharmaceutical companies Novartis recognizes that climate change “could result in increased prices for key inputs such as water and energy,” and that extreme weather events “could significantly impact supply chains or damage facilities” (Weiss et al. 2015). These companies anticipate the direct effects of climate change on business operations, and see it as a threat to industry that they must mitigate by shifting their own behavior. However, it may be that climate change mitigation goals and climate impact risk reduction goals

contradict. For example, the best option for a firm hedging against a water shortage may be construction of a desalination plant. However, this would generate greater carbon emissions and would be eliminated as an option if the carbon emissions of such a project were included in project costs.

Several of the leading companies that use an internal fee report being driven by moral or social concerns. Ben & Jerry's cites its primary reason for using a carbon price as "values." It views carbon pricing as consistent with its mission statement on "leading with progressive values," and a natural requirement given its public statements on instituting external carbon taxes (Asch 2017). Microsoft Corporation states that "we have a responsibility to minimize our impact on the environment" (DiCaprio 2012), and the Walt Disney Company believes that its focus on products and services for families "must extend beyond their entertainment to the world in which they live" (Fu et al. 2015). Although all internal carbon fees used are less than \$20/ton (i.e., in the *Introductory* band), these stated motivations represent a desire on the part of socially minded business to improve environmental conditions.

Companies are using internal carbon pricing for a variety of reasons, even in the absence of strict governmental regulations on greenhouse gas emissions. Although most firms that price without an external carbon tax do so in anticipation of a future economy-wide carbon price, there is currently room to push companies further in adopting carbon pricing and shift their emissions behavior toward a cleaner and low-carbon economy.

## V. POLICY RECOMMENDATIONS TO INCREASE FIRM ADOPTION

Given the multifarious motivators for companies to adopt internal carbon pricing, there are distinct roles that the private sector, government, and civil society can play to accelerate its adoption. They can use economic and business incentives in addition to traditional calls for environmental protection and appeals to the moral implications.

### Leading Companies

#### *A. Highlight the economic benefits:*

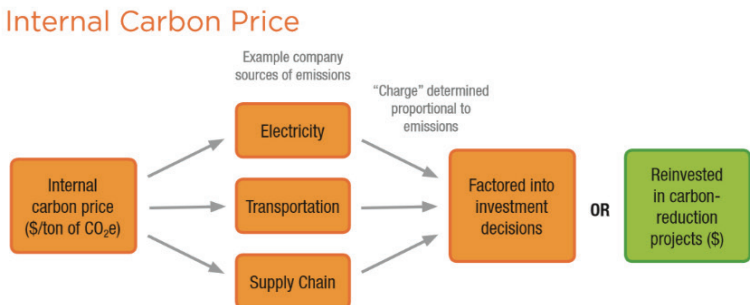
Companies that have seen increased profits by using internal carbon pricing should publicize the cost savings they have achieved, as Microsoft and Ben & Jerry's have done at a high-profile level. Although these two companies are often seen as outliers in sustainability, the reality is that many companies have achieved cost reductions alongside emissions reductions. If carbon-

pricing firms encourage other firms to follow, the leading firms will increase the cost-competitiveness of their own products. Hence, more companies should highlight the savings they have achieved through internal pricing, especially in supply chain costs and other areas where cost savings are less obvious. Microsoft publishes widely read reports on its carbon pricing success (DiCaprio 2015). Other companies in each industrial sector should do the same to provide social proof to peer companies of the benefits of an internal carbon price. These firms can also change the framing from pollution prevention to “resource productivity”—finding efficiencies to increase the quality and value of products and reduce unnecessary costs (Weiss et al. 2015).

### ***B. Facilitate knowledge-sharing among peers:***

Smaller companies across a diversity of sectors should publicize their internal carbon pricing achievements, to show that internal carbon pricing is achievable for all types of companies, not just major players like Microsoft. Nevertheless, these companies like Microsoft and Walt Disney can also lead roundtable forums to encourage other companies in the adoption of internal carbon pricing. Forums like the C2ES Internal Carbon Pricing Group facilitate learning about intricacies of pricing and best practices (Bhan 2016). In addition, trade organizations like the Retail Industry Leaders Association should share information widely that will simplify the process of adopting an internal carbon price (see Figure 5).

**Figure 5: Infographic published by the Retail Industry Leaders Association on the process of internal carbon pricing.**



(Source: Retail Industry Leaders Association, Institute for Market Transformation 2015)

***C. Emphasize the risks of climate change to business operations:***

Many companies use internal carbon pricing to hedge against or prevent future risks of climate change. They recognize that normal business operations will be radically altered by climate change and its impacts. By making public statements and signing onto climate coalitions, companies can change the paradigm of operations and risk management to include anticipation of climate change and encourage mitigation efforts. The more private companies speak up about the impacts of climate change on business, the more their peers will take this environment threat seriously and change business operations accordingly.

**Governments*****A. Advance climate policy and carbon tax discussions:***

The most powerful policy option for governments is to institute policies on climate change and greenhouse gas emissions to show growing regulatory momentum toward carbon regulations. Countries like South Africa that engage in national discussions of a carbon tax see a corresponding increase in companies that use internal carbon pricing. At the subnational level, states like Washington and Massachusetts have prominent coalitions pushing for external carbon taxes, and California and the Regional Greenhouse Gas Initiative (RGGI) in the northeast have established emissions trading systems to induce market movement. In addition, using supplemental policies like higher Corporate Average Fuel Economy (CAFE) standards for vehicles, or by subsidizing investment in renewable energy, reduces future profitability of carbon-intensive processes.

***B. Invest in clean energy and low-carbon technologies:***

Governments can provide funding for research and development of technologies for which there are high initial investment costs. In addition, governments have a unique role in closing the funding gap on projects for which there is a large wedge between the private benefit and the social benefit. By investing in these colloquially-named moonshot technologies, government actors can help bring them to market earlier and facilitate widespread adoption. This increases the availability of substitutes for carbon-intensive products, enabling companies to find viable alternatives when adopting a carbon price.

***C. Showcase companies that are using internal pricing:***

Companies enjoy garnering positive public exposure with low effort. For



example, the We Mean Business Coalition and the Carbon Pricing Leadership Coalition already have dozens of signatory companies that have signed on to raise their green reputations. Companies on the Dow Jones Sustainability Index gain economic profits from making it onto the list. Governments seeking to encourage internal pricing would need to avoid the pitfalls of green marketing, however; such labels or public pronouncements should require a set of minimum actions to ensure that participating firms are meaningfully changing their operations and emissions profiles.

## **Advocacy Organizations**

### ***A. Reduce the complexity of internal carbon pricing:***

A common barrier for companies is the perceived complexity of internal carbon pricing and the difficulty of selecting the “right price.” Organizations like CDP and World Resources Institute have developed standardized reporting tools for greenhouse gas emissions, and provide technical assistance to companies on carbon disclosure. Getting these tools into the hands of more companies will reduce one of the major barriers to internal pricing. Nonprofits have an important role to play as providers of technical support to companies that might be otherwise wary of anticompetitive practices. NGOs can also provide such information without intellectual property restriction, thus encouraging a common pool of research in advancing carbon pricing tools.

### ***B. Create consumer pressure for carbon pricing:***

Nonprofits can raise general awareness on internal carbon pricing, how it can reduce emissions, and which companies use it. Companies respond to consumer pressure: Nissan reports that its use of internal carbon pricing is supported by customers concerned about fuel consumption and carbon emissions, leading it to invest in electric vehicles as well (Weiss et al. 2015). Conversely, Delta’s general manager of sustainability reports that few customers purchase the carbon offsets available with each flight; this apparent lack of consumer interest makes it difficult to promote certain environmental measures as important for attracting customers (Tochilin 2016). It is crucial to raise consumer consciousness and demand for less carbon-intensive products. By leveraging strategies from the eco-labeling movement, nonprofits can move markets to favor companies that use internal carbon pricing.

### *C. Influence investors:*

NGOs can organize movements to combat the perception that greenhouse gas emissions do not have a significant impact on investment or project portfolios. CDP is highlighting the “investor’s perspective” and the World Resources Institute publishes fact sheets and works with companies in vulnerable ecosystems globally (Metzger 2015). A complementary push for investors is the fossil fuels divestment movement, which targets investment firms to sell their assets in oil and coal. Calls for divestment create pressure to move away from fossil fuels and toward sustainable investment portfolios (Carrington 2016); investment firms that find themselves the target of such petitions can introduce carbon pricing as a compromise or preemptive measure to avoid being labeled as making “dirty” investments.

## CONCLUSION

Pricing carbon is an efficient method for internalizing the costs of greenhouse gas emissions in the form of a Pigovian tax. Although it is not a panacea solution for mitigating climate change, carbon prices send strong economic signals that can alter firm and consumer behaviors if designed correctly. The motivations for firms to adopt internal pricing in the absence of an external carbon tax are multifarious, but are generally cost-reducing or at least profit-neutral, in accordance with the Porter Hypothesis that regulation compliance helps firms discover inefficiencies. Thus, private companies, governments, and civil society organizations have broad roles in highlighting the welfare-increasing benefits of internal carbon pricing, as well as shifting the policy and business environment to promote internal price adoption.

Further research should explore the prevalence of internal carbon pricing by firm characteristics. For example, do multinational companies engage more frequently in carbon pricing, controlling for company size and revenue? In addition, what is the influence of regulatory environments? Now that prospects of a national carbon tax in the United States are greatly diminished for the foreseeable future, do companies still feel the pressure to use internal pricing? Are investors and industries with carbon-intensive suppliers responding at similar levels? Will Brexit affect how U.K. companies use internal carbon pricing? The United Kingdom has its own carbon tax, but leaving the EU ETS may change the internal prices for multinational companies versus companies that only do business within the United Kingdom. We should also expect to see more airlines begin using an internal price after the late 2016 United Nations International Civil Aviation Organization (ICAO) Agreement.

Efforts to accelerate the adoption of internal carbon pricing will incentivize more firms to align with international goals on climate change. More than 500 companies report using an internal carbon price currently, including both shadow prices and internal fees. Economic theory identifies several factors that motivate firms to use internal pricing. An internal carbon price helps discover cost inefficiencies, incentivizes technological innovation by reducing uncertainty, captures green product market share, and helps firms prepare when they anticipate an external carbon tax. Survey data of more than 1,000 firms worldwide demonstrate an alignment between behavior and theory. Companies that use an internal carbon price report that they do so to reveal hidden opportunities; internally incentivize R&D; capture market share; and manage risk related to climate change. Using this knowledge of firm motivations, members of the government, nonprofit, and private sectors can facilitate greater carbon pricing. Aligning economic and social motivations around reducing greenhouse gas emissions can put a zero-carbon future within reach.

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## PRISON-BASED GERRYMANDERING AND THE SYSTEMATIC DILUTION OF MINORITY POLITICAL VOICE

*Lindsay Holcomb*

### INTRODUCTION

Whether through voting, attending a rally, writing to a representative, or otherwise, each citizen's ability to exercise her political voice is the most fundamental requirement of a well-functioning democracy. When left unconstrained, the freedom to communicate one's interests to policy makers enables the public to hold its elected officials accountable for enacting policies which reflect their wishes and address a broad diversity of needs. Because democracy—on etymological grounds alone—requires the rule of the people (or the demos), the mechanism of political voice can only be considered truly democratic if it fairly and proportionally represents the wide swath of politically-relevant experiences, characteristics, and needs that compose the entire citizenry.

In the United States, though the concept of equal and representative political voice has been celebrated since the nation's establishment, the extent to which it is realized in contemporary politics remains heavily contested. Several scholars—most notably, Schlozman, Verba, and Brady in *The Unheavenly Democracy* (2012)—have found that there are immense class-based divides in Americans' political involvement that privilege the economic elite. Focusing on disparities in political participation at the individual level, the Schlozman et al. (2012) study asserts that in com-

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parison to more affluent, white Americans, the political voices of racial minorities and those with low incomes or low levels of education are often unfairly diminished or silenced altogether. In a country as racially diverse and economically stratified as the United States, these stark disparities in political voice produce policies that do not fairly represent significant segments of the population.

While the Schlozman et al. (2012) analysis of unequal political representation focuses on the damaging effects of individual disengagement and politically active organizations, this study builds on their discussion to propose an additional cause of inequities in political voice. This paper asserts that “prison-based gerrymandering”—the practice of counting incarcerated persons at their places of confinement for the purpose of electoral redistricting—exacerbates existing political disadvantages for low-income, minority voters, and thus, distorts the distribution of political voice along lines of race and class. Though prison-based gerrymandering has affected every state in the United States, its distorting forces are felt most acutely in states with large urban centers and high rates of incarceration. For this reason, this paper will focus largely on the case of New York State, where high imprisonment rates in minority communities in New York City and the development of large state prisons in the state’s northern, rural counties created an ideal political and demographic environment for prison-based gerrymandering during the 2010 census.

The first section of this study explains the function of the decennial census in the redistricting process. The second section discusses ways in which this function has been rendered inaccurate due to the demographic changes caused by mass incarceration. Building on the work of previous scholars who have asserted that prison-based gerrymandering undermines the constitutional principle of “one person, one vote,” the third section focuses on the ways in which prison-based gerrymandering violates constitutionally-mandated principles of equal representation. The fourth section examines the way in which minority groups are most affected by the loss in political voice associated with prison-based gerrymandering, and the fifth section discusses the policy consequences of this acute racial inequity. Finally, the concluding section examines alternative methods that the US Census Bureau could pursue to remedy the democratic distortions wrought by prison-based gerrymandering and proposes a way forward to prevent future malapportionment. Ultimately, in order to foster a more equitable diffusion of political voice, reforms must be instituted to prevent the US Census Bureau from counting incarcerated individuals in the predominantly white, rural areas in which they are imprisoned.

## REDISTRICTING AND THE CENSUS

As theorized by the country's founders, political voice should serve as an equally distributed and representative function which would facilitate the communication of specific interests from individuals to their locally elected representatives, and ultimately to larger government bodies. As Harvey Mansfield writes in the introduction to de Tocqueville's *Democracy in America*, "When exercising sovereignty in this way, the people's reason is informed by firsthand knowledge and keen interest; they know how badly a road or a school is needed, and how well its costs can be borne. Because the consequences of choices are readily visible, choosing well seems worth the time and effort; good results evoke personal pride" (Mansfield 2002, liv). A fundamental requirement of the democratic process, therefore, is that the citizenry be able to articulate their needs to those who represent them and that these political representatives listen to the full diversity of opinions of their constituents. As Schlozman et al. explain, political representatives can only effectively produce policies that benefit those they represent if they hear the views of their constituents (2012, 105).

To formally establish that such channels of communication be guaranteed for all citizens, the writers of the Constitution included a numerically-based representative system in Article I, Section II, apportioning representatives among the states according to each state's respective population or "respective Numbers" (US Constitution, Art. I, Sec. II., Federalist Papers No. 10 and No. 55). Since 1790, the US Government has determined these "respective Numbers" using the population statistics collected by the US Census Bureau in each decennial census. State and local governments use the data from each census to draw election district lines or "redistrict," ostensibly ensuring the "equal and proportional" representation demanded by Article I, Section II by crafting legislative districts with numerically similar populations. In theory, this process is fair insofar as it affords each legislative district the same amount of political voice. However, in practice, the redistricting process is vulnerable to the fallibilities of the US Census—including how it counts prisoners.

The population counts collected by the census and used in the apportionment and redistricting processes are determined according to Public Law 94-171 or the "usual residence rule" (Ho 2011, 359). As the US Census Bureau's Population Division explained in 2010, "Planners of the first U.S. decennial census in 1790 established the concept of 'usual residence' as the main principle in determining where people were to be counted . . . Usual residence is defined as the place where a person lives



and sleeps most of the time. This place is not necessarily the same as the person's voting residence or legal residence" (US Census Bureau 2010, 2). Under the usual residence rule, individuals held in a "correctional residential facility," "detention center," "state prison," "local jail," or "municipal confinement facility" on Census Day are counted as residents of the legislative district in which they are confined (US Census Bureau 2010, 4). Throughout most of American history, the impact of counting these populations in what was determined to be their "usual residence" was so minimal that this practice did not meaningfully affect apportionment. Up until the 1970s, the incarcerated population in the United States was between 100,000 and 200,000 individuals, or barely more than "a blip" in the redistricting data (Wagner 2012, 1243). Since then, however, the major demographic changes caused by mass incarceration have transformed the seemingly innocuous "usual residence rule" into a mechanism by which the distribution of political voice is dangerously distorted.

## INFLUENCE OF MASS INCARCERATION

On Census Day in 2010, the total incarcerated population in the United States was upwards of 2.3 million individuals, a nearly 500 percent rise in total population from 1980 (NAACP 2009, 1). The demographic changes wrought by the incarceration of a population of this size are considerable. As Ho (2011, 358) explains, "Today, the total incarcerated population of the United States is roughly equal to our fourth-largest city (Houston); it is larger than that of fifteen individual states, and larger than the three smallest states combined. If the incarcerated population could form its own state, it would have qualified for five votes in the Electoral College after the 2000 reapportionment." Given that a vast majority of this population are from urban communities, but are incarcerated in rural towns far from the districts in which they normally vote and receive public benefits, their displacement has meaningful ramifications within the context of the census count (Huling 2002, 7). For example, during the prison boom of the 1980s and 1990s, more than 450 carceral facilities were constructed in rural and small-town communities, so that between 1980 and 1990 alone, non-urban communities where prisons were built experienced a population increase of 8.8 percent (Beale 1993, 17). To put this growth in perspective, the population in urban communities experienced only a 4.2 percent increase during this period. Today, rural prisons hold around two-thirds of the total incarcerated population despite the fact that rural communities—both prison-holding and otherwise—contribute to less than a quarter of the total population in the United States (Beale 1996, 25).

This massive increase in rural prisons is due in large part to the economic incentives provided by prison construction. In light of declines in employment in the manufacturing and agricultural industries, rural areas have competed for the ability to house prisoners within their districts because the management of a carceral-facility is often viewed as a means of crafting “recession-proof” job opportunities (Huling 2002, 6). Despite this rural prison boom, few incarcerated individuals are actually from rural areas. This is particularly clear in New York, where more than 60 percent of the state’s prisoners are from New York City, but more than 90 percent of these individuals are incarcerated upstate, in rural, minimally populated districts (See Figure 1). Such widespread displacement, which has been equated to a “migratory cycle” or a “permanent or recurring refugee crisis,” distorts the demographic data taken by the decennial census and undermines attempts to craft equally populous electoral districts during the redistricting process (Cadora and Kurgan 2006, 10).

**Table 1. New York prisoner population statistics**

	New York City	Long Island	Upstate
Where is the state population?	≈ 43%	≈ 20%	≈ 37%
Where are prisoners from?	≈ 66%	≈ 10%	≈ 24%
Where are prisoners incarcerated?	≈ 4%	≈ 5%	≈ 91%

*Source: Wagner 2002, 1.*

Politicians have long been aware of how the enumeration of bodies can distort political representation, and have therefore historically resisted efforts to redistrict following sizable demographic shifts. In 1920, for example, reapportionment accorded by the Census was blocked by Southern Conservatives in Congress who feared internal migration following the Civil War—in which hundreds of thousands of Americans moved from rural, southern states to industrial northern cities—would diminish the political voice of their constituents. These congressmen were worried that the reapportionment might create the false appearance of increased support for northern, industrial interests, when in fact, large subsets of these populations were temporary dwellers who were more ideologically aligned with the South. As Prewitt explains, “an urban America was something new and disturbing, especially to those who held the Jeffersonian belief that independent farmers best protected democracy . . . Conservatives

in Congress blocked reapportionment, complaining . . . that transient agricultural workers were ‘incorrectly’ counted in cities rather than on the farms to which they would return in time for spring planting” (2003, 2).

Today, these same claims of “incorrect” enumeration are conceptually applicable to the situation faced by incarcerated populations detained in rural areas. Like southern laborers in the 1920s, incarcerated individuals can also be considered a “transient” population insofar as they are displaced somewhat arbitrarily from densely populated, urban areas to penal facilities in remote, rural communities where they have no personal connections or enduring ties. Inmates are assigned to a facility according to a variety of considerations, including: punitive concerns (such as flight risk or the crime committed), administrative concerns involving a facility’s resources and prisoner capacity, sentencing discretions based on inmate behavior, dropped charges, or applications for parole. Furthermore, since incarcerated individuals are typically detained for less than three years, most will return to their native urban, minority communities well before the next census count, retaining their personal connections to these communities throughout their incarceration (Ho 2011, 373).

Given this transience, counting inmates where they are imprisoned facilitates inequitable re-apportionment in various communities whose high rates of incarceration diminish their census-counted population, and thus their appeared need for representation. Specifically, when prisoners from urban communities are counted as residents in the rural districts in which they are confined, their enumeration grants more representatives and resources than would otherwise be afforded to them. Simultaneously, representation and resources are diminished in the urban communities from which these prisoners came, and to which they will likely return. In this way, though the inmates of state prisons are stripped of their vote during detainment, the census creates a mechanism through which incarcerated individuals are still able to be politically active, albeit in a manner that does not accurately reflect their political preferences. As the incarcerated population in the United States continues to rise, the usual residence rule simply is no longer a fair or representative tool for the US Census Bureau to use to inform the redistricting process.

## VIOLATIONS OF ONE PERSON, ONE VOTE

Since the Civil Rights era, a crucial protection of equal political voice in the United States has been the “one person, one vote” principle defended by the Equal Protection Clause of the Fourteenth Amendment of the US Constitution. Several Supreme Court rulings in the latter half of the 20<sup>th</sup>

century—such as *Baker v. Carr* and *Reynolds v. Sims*—have established that states must make an “honest and good faith effort to construct districts . . . as nearly of equal population as is practicable” and that any redistricting plan that deviates by more than ten percent from the ideal district size “creates a *prima facie* [legally sufficient] case of discrimination” (379 US 870 (1964)). An important nuance of this mandate is that it applies to states as a whole, so that within a certain state, one district cannot be below five percent of the ideal size while another district is above five percent of the ideal size because the difference between the two would exceed ten percent (Ho 2011, 338). Though states have the freedom to use whatever census data they deem fit to conduct reapportionment, most states refer to the data provided by the US Census Bureau, given the Bureau’s historically nonpartisan stance and scientifically well-tested model. From small towns to large counties, legislative lines are drawn according to a formula in which the population counted by the census is divided by the number of legislators designated by the appropriate constitution, code, or charter (Burnett 2011, 6).

Because incarceration does not change an individual’s registered voting address in any of the 50 states, counting incarcerated persons in the legislative district in which they are confined allows for the creation of districts far enough outside of the ideal size for apportionment that they violate the 10 percent rule. The non-incarcerated residents of districts with prisons are granted votes not only for themselves, but also for the incarcerated individuals residing within their district, who cannot vote and whose census-enumerated bodies essentially serve as “inert ballast during the redistricting process” (Karlan 2004, 1). Thus, when elections occur, prison-holding districts with smaller voting populations have the same opportunity to elect a representative as neighboring districts without prisons, and with many more voters, thereby granting certain communities more electoral power than they should rightfully have (Uggen and Manza 2002, 782).

After the 2000 Census, the New York State Senate began a process of reapportionment with the intention of creating 62 Senate Districts, each with a population as close to the ideal size of 306,072 people as possible. Population changes recorded in the Decennial Census required redistricting in some areas of upstate New York where the census had recorded an influx of 43,740 New York City residents into a small handful of prisons in rural counties (Wagner 2002, 6). Within the context of the one person, one vote ruling, only a few thousand residents made the difference between several Senate Districts being considered “underpopulated” or “overpopulated.”

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As a result, several new Senate Districts had to be drawn to account for the population movements caused by incarceration throughout the 1990s (Wagner 2002, 7). Thus, by including recently-incarcerated individuals as new *residents*, the redistricting scheme politically rewarded districts with prisons, granting their small, non-incarcerated populations the same representation and political voice as the larger populations of districts without a prison.

The way in which such distortion plays out is particularly clear in the case of Clinton County, New York, which—at the time of the 2000 decennial census—housed three state prisons within the county’s second legislative district. The census that year counted 79,894 total residents in Clinton County, which established a redistricting scheme in which each of the 10 legislative districts in the county was apportioned one representative for approximately 7,900 residents. Nevertheless, because the second legislative district’s population was tallied to include the almost 3,800 incarcerated individuals detained in Altona Correctional Facility, Clinton Correctional Facility, and Lion Mountain Correctional Facility, the voting, non-incarcerated population of the second legislative district was only 3,700 individuals (see Figure 2).

Those incarcerated in this district could not vote under felony disenfranchisement laws, so when Clinton County held its quadrennial elections, the vote of each non-incarcerated resident of the second legislative district was effectively twice as powerful as each vote cast by residents of neighboring districts. If 51 percent of voters in the second legislative district—approximately 1,887 individuals—supported Candidate A over Candidate B, and 51 percent of voters in the neighboring first legislative district—approximately 4,049 individuals—supported Candidate B over Candidate A, the collective preferences of each district would negate each other in a county election despite the fact that the number of majority-preference voters in the first district would be almost four times larger than the number of majority-preference voters in the second district. Thus, the enumeration of incarcerated persons for purposes of apportionment can have seriously distorting effects on local elections.

Table 2. District population and incarceration statistics

Legislative District	Total Population	Prisons	Incarcerated Population	Non-Incarcerated Population
1.	7940	N/A	0	7940
2.	7498	Altona Correctional Facility; Clinton Correctional Facility; Lyon Mountain Correctional Facility	3794	3704
3.	7973	N/A	0	7973
4.	7761	N/A	0	7761
5.	7234	N/A	0	7234
6.	7961	N/A	0	7961
7.	7279	N/A	0	7279
8.	7699	N/A	0	7699
9.	7235	N/A	0	7235
10.	7520	N/A	0	7520

Source: Clinton County Government 2010.

Less visible, but equally damaging, is the dilution of political voice for voters in legislative districts that the incarcerated consider to be their usual places of residence. Because the prisoners were counted elsewhere by the census, these districts can be rendered *overpopulated* under redistricting rules. This is because their *actual* populations—which would include individuals temporarily incarcerated outside of the community—can exceed the ideal size of an electoral district. And these overpopulated districts are afforded less representation than they otherwise would have. For example, if the ideal size for a state district is 10,000 people, and District 1 has an *actual* population of 11,500, but a *census-enumerated* population of 10,700 (because 800 individuals from that community are incarcerated outside of the district), District 1 would be considered *overpopulated*; its *actual* population is more than 10 percent larger than the ideal district size which is not reflected in the census. Similarly, if District 2 had an *actual* popula-

tion of 8,900 but a *census-enumerated* population of 10,400 (because it contained a correctional facility with 1,500 inmates from another district), District 2 would be considered *underpopulated*; its *actual* population is more than 10 percent less than the state's ideal district size.

Those who cast ballots in overpopulated districts experience a comparatively diminished ability to express their preferences, violating Supreme Court precedent established in the *Reynolds v. Sims* case, which states that "Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based on factors such as race and economic status" (379 US 870 (1964)). If districts are not drawn in a way that reflects their actual voting populations and instead follow raw census data, many Americans will experience diminished voice in the political process, undermining the equal representation promised by Article I, Section II of the Constitution. The political inequity wrought by this flawed redistricting process is problematic not only for the constitutional threat it poses, but also for the ontological threat it presents to the rights of the specific, identifiable communities across the nation.

## VIOLATION OF PROTECTIONS FOR MINORITY VOTERS

While the distortion caused by prison-based gerrymandering affects all voters, irrespective of whether or not they live near a prison, it acutely disadvantages one demographic group. Following the prison boom of the 1980s and 1990s, the negative political effects of prison-based gerrymandering are felt most strongly by communities which suffer most from the punitive policies of mass incarceration: low-income, minority, and urban communities (Rabuy and Kopf 2015, 1). In particular, racial disparities in policing and sentencing have created an American prison population that does not reflect the demographics of the population. Despite committing crimes at comparable levels, African Americans and Latinos are incarcerated at dramatically higher rates than their white counterparts (NAACP 2009, 1). African Americans and Latinos amount to just 17 percent of the total populace, but constitute roughly 60 percent of the US prison population (see Figure 3). Given that a vast majority of these incarcerated people of color are from majority-minority, inner-city, urban communities, such racially stratified incarceration trends are important because they deplete the adult populations of minority districts (Wacquant and Wilson 1989, 13). Thus, when these individuals are counted within the legislative districts of their incarceration, this enumeration creates an unrepresentative demographic portrait of majority-minority electoral districts.

Table 3. Demographics and incarceration statistics

Race / Ethnicity	Percentage of US Population	Percentage of US Incarcerated Population	National Incarceration Rate per 100,000
White (non-Hispanic)	64%	39%	450
Hispanic	16%	19%	831
Black	13%	40%	2,306

Source: Sakala 2014, 1.

Given the definitive racial and geographic divides in the incarcerated population, the dilution of votes by prison-based gerrymandering violates not only the constitutional mandate for equal representation but also the legislatively enforced protections for minority citizens (Beale 1993, 18). Section 2 of the Voting Rights Act of 1965 states: “No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color” (42 USC §§ 1973 to 1973aa-6). In 1982, this section was amended to include protections against any “voting qualification or prerequisite to voting, or standard, practice, or procedure” that had the *effect* of “denying or abridging the right of any citizen of the United States to vote on account of race or color” (42 USC § 1982). With this amendment, irrespective of whether a minority voter legally retains the right to vote under a certain policy or procedure, if her ability to exercise this right is diminished by that policy or procedure in a way that does not affect white voters, it is considered a violation of her voting rights. Given that a truly democratic notion of suffrage entails the ability for one’s vote to meaningfully choose a representative, the right to vote is subverted when an individual’s vote carries less weight than her neighbor’s. When the ballots of minority voters are given less electoral purchase than the ballots of white voters, or when issues affecting minority voters are decided by representatives they did not have a fair opportunity to choose it violates Section 2 of the Voting Rights Act.

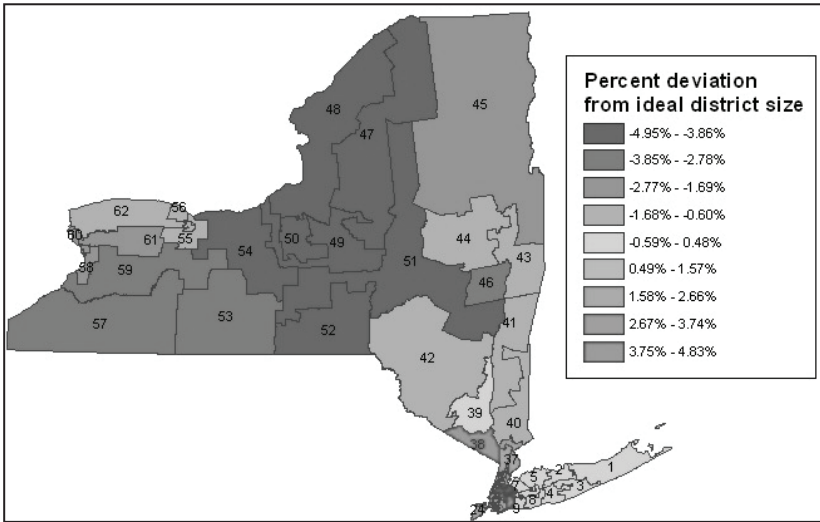
In the context of prison-based gerrymandering, the discrimination outlined by a Section 2 legal claim is applicable to the experiences of individual minority voters living in legislative districts with high rates



of incarceration. In New York State, two-thirds of the total incarcerated population is composed of inmates from New York City, 90 percent of whom are confined outside of the city in white, rural areas upstate. Almost all of these individuals are minorities who normally reside in one of the state's six majority-minority districts (all of which are located in New York City), so when they are counted as residents of majority-white districts, their registered absence from their home districts diminishes the voting power of those who continue to reside in these districts (Ho 2011, 390). Meanwhile, white voters in districts like New York State's 114th State Assembly district—where 82.6 percent of the African American “constituents” are incarcerated—experience inflated voting power. Thus, the weight of individual ballots cast in the state is transferred from residents of majority-minority, urban districts to predominantly white, rural districts.

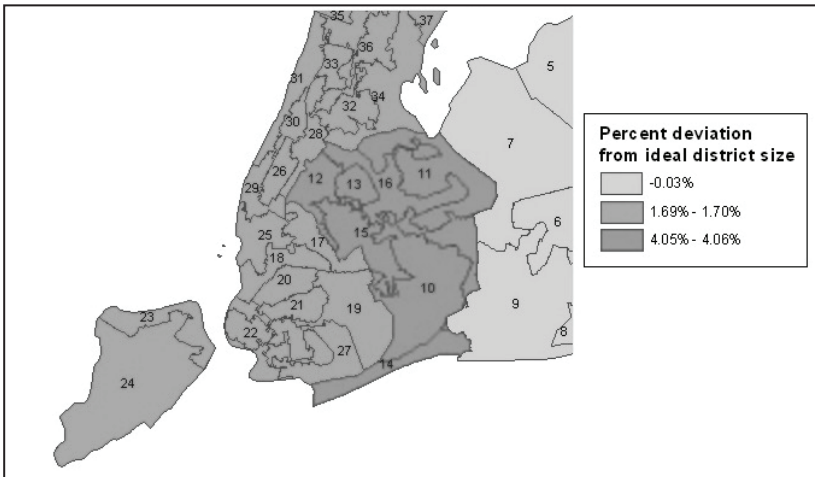
According to the Prison Policy Institute, in the redistricting process that followed the 2000 Census, a total of seven districts would have been considered underpopulated if their prison populations were not counted. As can be seen in Figures 4 and 5, even with the enumeration of incarcerated persons at their place of residence, New York State was already experiencing significant deviations in ideal district size between rural, upstate communities and those located in and around New York City. While the rural 47th, 48th, 49th, 50th, 51st, 52nd, and 54th districts were between 3.86 percent and 4.95 percent less than the state's ideal apportionment size, the urban 10th, 11th, 12th, 13th, 15th, and 16th districts were between 4.05 percent and 4.06 percent greater than the state's ideal apportionment size, so that the state's maximum deviation was 9.01 percent. As Wagner explains, “It's as if the New York State Senate said, ‘We want a vote in New York City to be worth 1.69 percent or 1.70 percent less than the average voter in the state’ (Wagner 2002, 8).

Figure 1: New York district map of ideal district size deviation



Source: Prison Policy Initiative 2002, 1.

Figure 2: New York district map of ideal district size deviation

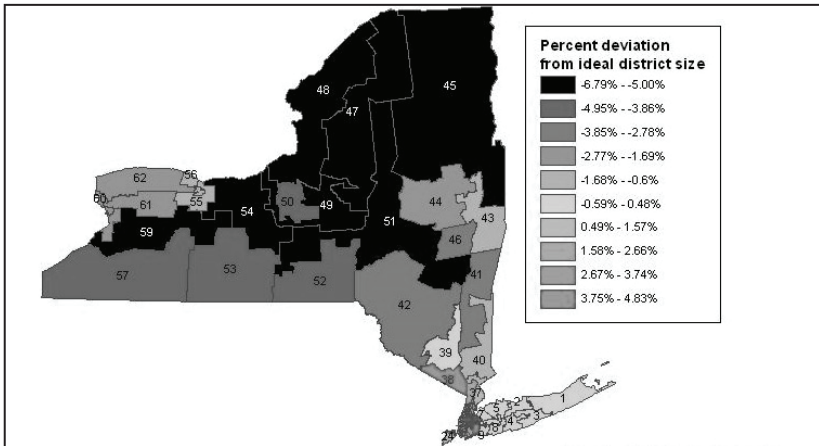


Source: Prison Policy Initiative 2002, 1.

At the same time, the New York City Senate Districts that legally housed the state's newly counted 43,740 prisoners prior to their incarceration were undercounted and subsequently drawn to be larger to meet apportionment requirements. Had the incarcerated residents of these districts been

counted in their homes on April 1, 2000, the populations of these urban districts would be deemed severely overpopulated according to redistricting rules because their actual populations would have been in excess of 10 percent from 306,072 (See Figure 6). Assuming that each district in New York City had an equal number of individuals incarcerated outside of the city, the population of each of the city's Senate Districts would be 1,800 individuals higher than the number counted by the census (Wagner 2002, 6). In Queens alone, if 1,800 incarcerated residents were to be allotted to each district, seven districts would be considered overpopulated, given that Queens's 10th, 11th, 12th, 13th, 14th, 15th, and 16th Senate Districts had already been counted as possessing more than 318,000 residents and barely within 10 percent of 306,072 (Wagner 2002, 7).

**Figure 3: New York district map of ideal district size deviation**



*Source: Prison Policy Initiative 2002, 1.*

In the 10th Senate District, for example, adding 1,800 incarcerated individuals to the population count would make for a total of 320,281 district residents. The gravity of this additional population is clear when we consider that under the 2000 redistricting plan crafted after the census, these individuals were granted the same number of representatives, state-allocated resources, and political voice as the 285,305 non-incarcerated residents of the majority-white 59th Senate District upstate. Furthermore, because the 10th district has almost 35,000 more residents than the 59th district, the Senator for the 10th district was accountable to a constituency roughly 11 percent larger than her counterpart in the 59th district,

taking for granted the fact that a majority of the estimates 1,800 prisoners counted in the district will be released from confinement and return home before the next census. Given that many districts with particularly high rates of incarceration would likely be stripped of far more than 1,800 residents on census day, counting these individuals where they are detained has troublesome implications, politically impeding already disadvantaged minority communities.

## POLICY CONSEQUENCES

That urban, minority districts tend to vote cohesively has been demonstrated in several studies of voter preferences undertaken in recent decades. Since the 1960s, many factors—including housing discrimination, forced segregation, factory booms, economic collapses, and familial ties—have crafted contemporary American cities and legislative districts that are heavily divided along racial and economic lines (Wacquant and Wilson 1989, 11). Poor, minority communities have distinct needs dictated by the fact that many of their residents participate in public benefits programs, are unemployed, do not own cars, and have not received a college education (Wacquant and Wilson 1989, 20). These racialized structural disadvantages undoubtedly shape the political attitudes and policy preferences of those who inhabit America's most disadvantaged urban spaces, crafting "shared outlooks, modes of behavior, traditions, belief systems . . . that emerge . . . in settings created by discrimination and segregation, and that reflect collective experiences within those settings" (Wilson 2009, 1). Through this shared lens, shaped by collective experience, it is not surprising that urban, minority communities feel particularly strongly and uniformly about certain political issues—such as criminal justice, housing, and public benefits—that fall along definitively racial and economic lines. Thus, when these communities experience a dilution in voting power due to prison-based gerrymandering, their interests are not promoted with the political clout they deserve, and the spectrum of perspectives articulated in legislative bodies is narrowed from their exclusion.

Such systematic omission is not without political consequence. As Schlozman et al. assert, low-income, minority communities have political interests that are often very different from those that are articulated most frequently in Congress as well as more local political bodies. In particular, these politically disadvantaged communities are more likely to have policy preferences "animated by a distinctive bundle of issue concerns, one that gives greater emphasis to matters of basic human needs...urging greater government efforts in alleviating economic need" (Schlozman et al. 2012,

581). In comparison to their wealthier, more educated, and often white, counterparts, low-income, minority individuals are far less likely to favor conservative economic and “tough on crime” policies, and far more likely to favor government subsidies for food, housing, healthcare, and education (Schlozman et al. 2012, 246). Thus, when their concerns are not articulated in legislative bodies, this exclusion enables an unfair and unrepresentative preponderance of privileged interests in political bodies.

The racially- and geographically-delineated disparities in political voice are further dangerous in that they incentivize political leaders in the rural, white districts where prisoners are housed to advocate for “tough on crime” policies and to promote redistricting schemes that perpetuate prison-based gerrymandering. Given that state legislators will pursue legislation that is more likely to yield electoral victories for themselves and fellow party members, if such legislators are aware of the electoral benefits yielded by retaining large prison populations in their districts, it is politically advantageous for those representing rural prison districts to advocate policies that perpetuate mass incarceration (Bentele and O’Brien 2013, 1093). This is seen clearly in the case of New York State, where four of the seven Republican senators representing districts which would be considered underpopulated if their incarcerated populations were not counted pressed to sit on the state’s Codes Committee and used their positions to sustain the harshly punitive Rockefeller drug laws. As Wagner explains, “The inflated populations of these senators’ districts gave them little incentive to consider or pursue policies that might reduce the numbers of people sent to prison or the length of time they spent there” (Wagner 2012, 1244). Two of these senators counted 17 percent of the state’s incarcerated population as their constituents (Ho 2011, 364).

Furthermore, given the specific districts and voters that benefit from the political effects of prison-based gerrymandering, and the heavily racialized nature of mass incarceration, prison-based gerrymandering is undoubtedly a partisan issue. As Paul Frymer asserts in *Uneasy Alliances*, African American voters—particularly low-income, urban, African American voters—are considered to be “captured” constituents by the Democratic Party insofar as it is rarely the strategy of the Republican party to speak to their specific wants and needs. They overwhelmingly vote for the Democratic Party, they are ideologically left-of-center on a number of divisive social and economic issues, and in a heavily divided two-party system, they find themselves in an electoral position in which one party makes “little or no effort to appeal to its interests or attract its votes” (Frymer 2010, 8). Thus, when the political voice of inner-city legislative districts with high

rates of incarceration and high concentrations of African American voters is systematically diminished, the Republican Party benefits, while the Democratic Party is disadvantaged. Ultimately, this practice undermines the party system in a way that further disadvantages politically vulnerable populations and provides political conditions ripe for the passage of draconian criminal justice policies and the perpetuation of mass incarceration.

## CONCLUSION

Given the threat that prison-based gerrymandering presents to the democratic guarantee of equal political voice, retaining the current redistricting system only delegitimizes the assumptions of equality inherent to the ideals of American citizenship and political participation. Even still, the Supreme Court has never addressed the issue, so those voices calling for reform have mostly come from advocacy and research organizations such as the Prison Policy Initiative, the NAACP Legal Defense Fund, and the Brennan Center for Justice, who have demanded that states amend their methods of counting prisoners to grant a more fair apportionment of political voice.

The two most commonly suggested solutions are counting prisoners at their addresses prior to incarceration during the census process or excluding prisoners from census counts entirely. Though both of these options have their merits for the purposes of remedying the distortion of political power in each state, only the former of these alternatives is truly just in a way that is cognizant of minority rights. While exclusion would correct for the vote dilution suffered by legislative districts without prisons that neighbor districts with incarcerated populations, it would not address the inequities faced by those living in incarcerated individuals' home districts. In particular, excluding inmates from census counts instead of counting them in their home districts would take an injurious toll on the provision of certain needs-based government programs—such as Temporary Assistance for Needy Families (TANF), the Public Housing Capital Fund, Medicaid, and Unemployment Insurance—that rely on census data to allocate funds (Reamer 2010, 11). Insofar as most incarcerated individuals will return home in less than three years, where they will rely on such federally-funded programs, their exclusion from census counts would underrepresent the amount of aid truly needed by the communities in which they reside. Furthermore, removing prisoners from the census count would undermine their status as citizens of the United States, dangerously denying the civil existence of hundreds of thousands of particularly low-income, minority individuals. As Ho explains, “When some groups of individuals no longer

count as ‘persons,’ it becomes easier in some sense to treat them as though they have no rights that society is bound to respect” (2011, 392).

For this reason, it is only fair that the immediate solution to prison-based gerrymandering be a reallocation of prisoners to their home addresses during census counts. This process is by no means infallible given that it would miscount those individuals who will never return home either out of personal choice upon release or because of the length of their sentence as residents of their former communities. Nevertheless, this number is small enough—around 49,000 individuals across the country—that until some more nuanced mechanism of enumeration can be attained, counting residents in their chosen residence prior to incarceration is a far more accurate means of census taking than the current practice. For this reason, it is politically, economically, and socially, a far more justifiable remedy than complete exclusion.

Despite its long-term benefits, including decreasing democratic distortion and contributing to a more equitable distribution of political voice throughout the country, such a drastic change to present census enumeration policy is not without its challenges. First, counting prisoners at their homes would require the collection of address information for prisoners either through individual interviews or through access to administrative records, each of which poses unique difficulties. While interviewing each prisoner would demand rigorous scheduling, participation, and coordination within and amongst each correctional facility, administrative records are often incomplete or have not been updated to reflect a prisoner’s change in residence. Second, counting prisoners at their homes would cause inconsistencies in the methods in which “group quarters” are counted in the census and could potentially affect the way that college and university students, military personnel, and those residing in nursing or other healthcare facilities are counted. Third, counting incarcerated persons at their permanent homes of record could slow down the census counting process by forcing census officials to find safe, confidential ways to interview inmates within the facilities in which they are detained. Finally, the process of interviewing incarcerated individuals in facilities across the country would likely be significantly more expensive than the Census Bureau’s present method of counting correctional facilities, which utilizes systematic sampling of 2.5 percent of each facility’s population. Conducting individual in-person or telephone interviews, distributing paper and online questionnaires to inmates, and analyzing the received data to achieve the level of detail required to correctly count prisoners at their real home addresses would necessarily require an increase in field representatives, census materials,

data analysts, and general quarters contacts. Understandably, for all of these reasons, the Census Bureau has been hesitant to orchestrate such a significant change in practice.

Until the Census Bureau accrues the resources, technical strategies, and field expertise to correctly count prisoners at their home addresses, establishing a more nuanced manner of counting prisoners would require each state to devise its own method of enumeration, expanding—or even eschewing entirely—the current data collection methods used by the Census Bureau. Nevertheless, since states are not required to use federal census data to determine their apportionment schemes, each state is within its rights to count its incarcerated population however it sees fits. Kansas, for example, recently elected to not count nonresident military personnel and nonresident students in its census, causing districts with large universities and military bases to see their numbers decline from prior censuses (McCabe 2012, 2). Though each state must maintain its current redistricting plan until the results of the 2020 census are released, states can change their process of enumeration prior to the 2020 census to require that federal census data be adjusted before the next redistricting process begins. This process would include, first, barring local legislative districts from counting any incarcerated persons as “residents” of the correctional facility regardless of whether their address prior to incarceration is known, and second, standardizing the collection of home address information for inmates immediately upon their entrance into custody. By counting all inmates as “address unknown” until their home address is determined, states can immediately prevent rural legislative districts from inflating their electorate with a large incarcerated population. While this would not completely solve the vote dilution caused to the residents of those inmates’ home districts, it would reduce the margin of deviation from ideal size within prison-holding districts.

Some states have already begun this process. In 2010, New York Governor David Patterson signed Part XX of Chapter 57 of the Laws of 2010, requiring that incarcerated persons be allocated to the address preceding their incarceration for state legislative redistricting purposes. Though Part XX was challenged by rural senators who benefitted from their inflated constituencies, the constitutionality of Part XX was successfully defended in a 2011 decision by the New York Supreme Court. Since then, Maryland, Delaware, New York, and California have all amended their redistricting practices in similar ways, signing bills that require prisoners to be counted at their home addresses for redistricting purposes into law (Brennan Center 2011, 2).

To aid each state’s process of adjusted enumeration, the Census can



amend the way in which it counts prisoners by collecting and disseminating more detailed information regarding those incarcerated in the United States. Since according to Wagner, “Mathematically, counting incarcerated people at the prison location has a larger vote dilutive effect than simply failing to count them at the correct home address,” ameliorating the manner in which the US Census Bureau enumerates group quarters could be the most meaningful manner of correcting the errors (2016, 2).

Recently, the Census Bureau made progress in this area by announcing that they will publish earlier reports regarding those living in adult correctional facilities, juvenile detention centers, nursing facilities, college and university student housing, military quarters, non-institutional facilities such as emergency shelters or religious quarters, and health care facilities such as nursing homes or rehabilitation centers. Whereas in the past, data regarding “group quarters” was not published until the year after the decennial census, making it too late to inform the redistricting process, now, this information will be available during the redistricting process. This more prompt notice will enable states to distinguish between incarcerated and non-incarcerated “residents” during the redistricting process, so that incarcerated populations can be eliminated from the census counts of prison-holding districts (Wagner 2016, 3). This exclusion of incarcerated individuals will create a more accurate picture of the apportionment needs of each district, thereby facilitating a more equitable distribution of political voice during the redistricting process.

As Schlozman, Verba, and Brady conclude in their study of political voice, the most powerful factor contributing to the unequal representation of citizen interests in the United States is socio-economic class. Their study demonstrates that those who have the least political voice also share many politically relevant characteristics such as being “less likely to have health insurance, more likely to live in dilapidated dwellings and neighborhoods... [and] more likely to have a need for government assistance.” They are also more likely to be African American or Latino, have low levels of education and have low levels of income (2012, 581). It is no coincidence that these same attributes are considered to be risk factors for incarceration, and that they characterize those urban, majority-minority electoral districts most likely to be undercounted by the census and underrepresented in legislative bodies due to prison-based gerrymandering. That the communities most victimized by inequitable apportionment are not random, but in fact are highly specific and readily identifiable, supports the assertion that Schlozman et al. make that such political disadvantages are a result of systematic inequities built into the American democracy with the intention

of subverting the political voice of certain vulnerable groups. In order to realize any parity amongst each American's ability to express her political voice—thereby satisfying the constitutionally and legislatively mandated principle of equal representation—it is essential that those mechanisms, which foster inequities in the American Democracy, are dismantled. Insofar as prison-based gerrymandering is a relatively recent phenomenon, and therefore not as deeply embedded in the structure of American politics, addressing the issue is a critical first step towards crafting a more equitable system of representation in the United States.

Ultimately, redistricting processes that utilize more accurate and nuanced census information will benefit all Americans by incorporating more voices and resources into the political process, affording more representatives to overpopulated, urban communities, and most importantly, augmenting the perceived legitimacy of the electoral process. In a time when faith in the equality and efficacy of the American political process is particularly low, and rates of incarceration remain particularly high, these reforms appear more pertinent and necessary than ever.

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# THE SHANGHAI COOPERATION ORGANIZATION AS A MULTILATERAL SECURITY PLATFORM IN CENTRAL ASIA

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## INTRODUCTION

The Shanghai Cooperation Organization (SCO) is a somewhat opaque organization with many commentators questioning its purpose. Particularly in the security domain, they ask whether the SCO has lived up to its potential as a viable security organization for Central Asia. The SCO has fallen short of the high expectation that it constitute a “bulwark” against the North Atlantic Treaty Organization (NATO) (Chung 2004), and has achieved relatively little in the realm of fighting extremism, separatism, and terrorism. Similarly, the SCO has achieved only superficial military cooperation among its member states. Nevertheless, the SCO meets other interests: it is an effective venue for the member states to engage in balancing hegemonic powers in the region and, to some extent, it legitimizes the claims of a terrorist threat, thus stabilizing the Central Asian regimes by creating an enemy to be protected against. The SCO’s effectiveness is limited by the recently sovereign Central Asian states trying to establish their national identities, leading to skepticism toward regional cooperation; the member states’ preference for bilateral relations; and the exis-

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tence of competing organizations such as the Collective Security Treaty Organization (CSTO). Its greatest potential lies in the development of a common Afghanistan policy and the potential for closer cooperation with international organizations to achieve border security and combat drug trafficking in the region. Potential challenges include the inclusion of India and Pakistan in the SCO and impending leadership successions in Uzbekistan and Kazakhstan. The United States has so far mostly ignored the SCO. This is an unfortunate oversight because the SCO is one of the venues Russia and China are using to challenge US hegemony globally. The United States should closely monitor SCO activities and engage the SCO on areas of common interest.

## I. BACKGROUND

The SCO grew out of the Shanghai Five—China, Russia, Kazakhstan, Kyrgyzstan, and Tajikistan—negotiating borders between the latter four and China in the 1990s. Thus, the SCO's first success occurred prior to its creation: the peaceful settlement of a 3,000 km long land border (Pan 2009). In 2001, the Shanghai Five were joined by Uzbekistan to form the SCO as an official intergovernmental organization. The SCO is a non-aligned partnership (Al-Qahtani 2006), rather than an alliance or collective security organization (Chung 2004; Ferdinand 2007), and operates based on the “Shanghai Spirit” (Godehardt 2014) of “mutual trust, friendship and good neighborliness” between the member states (Charter of the Shanghai Cooperation Organization [hereinafter SCO Charter], Article 1). Dominated by China (Hoagland 2016), the SCO provides a platform for elite government communication and cooperation among its member states (Herd and Ryabkov 2015). It is not a supra-national organization but aims at consultation, cooperation, and protection from Western pressures (Laruelle 2015).

## II. INTERESTS

Each of the state parties is constantly assessing the extent to which the SCO meets its security interests. Meeting member states' interests is crucial to the success of any international organization because of the anarchic nature of international relations—sovereign states need incentives to commit to the organization and invest in it. Many international organizations do not provide for enforcement mechanisms in their founding treaty (*see e.g.* North Atlantic Treaty, Article 5) but rather rely on public shaming and political enforcement, thus making it crucial that they be perceived as

useful by the relevant constituencies (Chapman 2009). The core weakness of the SCO lies in a lack of political agreement on what the organization is supposed to be and which interests it is supposed to meet: “China blocked Russian efforts to convert the SCO into a military alliance and Russia blocked Chinese efforts to convert the organization into a trade bloc” (Blank 2013). Violating the principles of the SCO or making few commitments to meet the stated objectives of the SCO incurs minimal political costs for the member state governments.

China, as the initiator of and driving force within the SCO, was primarily concerned about security in Xinjiang (*ibid.*). While initially addressing this as a security challenge, China has expanded its view to pursue economic cooperation and development through the SCO to secure its western region (Herd 2015). Russia’s main interest in the SCO is to maintain its influence in Central Asia, which it still considers its “near abroad” (Denoon 2015) twenty-five years after independence, by balancing against China and the United States (MacHaffie 2010). The primary foreign policy goal of the Central Asian member states is simply to maintain their “independence, sovereignty and territorial integrity” (Hoagland 2016). In recent years, China’s increased interest in the region has provided both an opportunity and a challenge for the Central Asian states: they can use China to keep Russia at bay, but they may fear Chinese domination more than Russian domination. One commentator on Kazakhstan provides an evocative image: “Kazakhs have a choice between two potential yokes: Russian and Chinese. The Russian yoke is made of leather. It can gradually be worn out. But the Chinese yoke is made of iron. One can never free oneself from it” (Kasantzev 2008).

The main security interests of the state parties can be categorized as follows: (1) regime stability, which includes combatting extremism, separatism, and terrorism, (2) keeping a balance of power in the region, and (3) military cooperation to achieve both of the above goals. The SCO in fact plays a limited role in maintaining regime stability and serving as an avenue for military cooperation. However, the SCO has successfully served as a venue for power balancing.

### **A. Regime Stability: Extremism, Separatism, and Terrorism**

The official goal of the SCO is to fight the “three evil forces” of “terrorism, separatism and extremism” (SCO Charter, Article 1). Since these three evils pose a threat to regime security, all member states have a common interest in suppressing them. However, since the SCO is distinctly not a collective security organization and places great emphasis on individual

sovereignty (Chung 2004), each state party has had to rely on its own resources in pursuing this goal. Given limited cooperation, the SCO has only had limited success in this area. However, with the emergence of a joint approach to Afghanistan and transnational crime issues, there is some potential for greater coordination in the future.

The SCO has had some success in fighting separatism, mostly from the Chinese perspective. China has long had problems with its Uighur population in Xinjiang, who make up roughly one sixth of the total Chinese population (Smith 1996). Despite the state's relocation of ethnic Han Chinese into Xinjiang to dilute its ethnic make-up (Sheives 2006), the underdeveloped region is still 60 percent Muslim (Smith 1996), ethnically linked to the one million Uighurs living in Central Asia (Sheives 2006), and politically tied to the East Turkestan movement, which seeks its own independent state (Craig and Denyier 2015). The Uighur region is strategically important to China not only because of its large size and population but also because it contains nuclear test sites and many of China's penal colonies and prisons (Sheives 2006). Furthermore, any progress toward independence achieved by Xinjiang would set a precedent for Tibet and Taiwan (Karrar 2010). Central Asia has historically been the gateway for separatist movements undermining the Chinese government (Blank 2005), with Uighurs outside of China providing moral support and a connection to the international community that the Chinese government cannot control (Sheives 2006). Through the SCO framework, China has obtained the support of the Central Asian governments in suppressing the Uighur movement, particularly by repatriating Uighurs to Chinese control "where they are presumably executed" (Blank 2013). The SCO's Shanghai Convention on Combating Terrorism, Separatism and Extremism was the first counter-terrorism treaty of the twenty-first century (Pan 2009) and, in the wake of the 9/11 attacks, provided China with such a convincing counter-terrorism stance that other governments, including that of the United States, adopted Chinese rhetoric on the Uighur issue, including the branding of the East Turkestan movement as a terrorist organization (Olimat 2014).

China is certainly not the only member state with potential ethnic conflicts or separatist movements. Kyrgyzstan hosts a large Uzbek population (Chung 2004), and Uzbekistan and Tajikistan have long been accusing each other of fomenting unrest (*ibid.*). The region watched the "color revolutions"—the Rose Revolution of 2003 in Georgia, the Orange Revolution of 2004 and Maidan of 2013 in Ukraine, and the Tulip Revolution of 2005 in Kyrgyzstan—with great concern (Hoagland 2016). The combination of



ethnic tensions and the securitization of socioeconomic underdevelopment (Herd 2015) have created a dangerous mix that could potentially destabilize Central Asian regimes.<sup>1</sup> However, the SCO has been much less effective in countering this threat than in helping China manage its Uighur problem in its own heavy-handed way. Providing internal security, even in the face of an uprising, remains a fundamentally domestic task for the member states. For instance, the SCO chose not to intervene during a time of unrest in Kyrgyzstan which resulted in tens of thousands of refugees fleeing to neighboring Uzbekistan and led to the removal of President Kurmanbek Bakiyev in 2010 (Herd 2015). This was a principled decision in that the SCO placed a high value on sovereignty, but it also shows the weakness of the organization since addressing a public uprising or cross-border refugee flows simply was not one of the contingencies the SCO was prepared for (*ibid.*). Despite some rhetoric to the contrary (see *e.g.* Askhat Safiullin 2014), the SCO is clearly not a collective security organization.

The success of the SCO in combatting terrorism has also been limited. There is a commonality across the four Central Asian member states of authoritarian secular leaders ruling over Muslim societies (Denoon 2015). Islamic extremist movements have been active in the region, particularly the Islamic Movement of Uzbekistan (IMU), trained by the Taliban, which has operated in the Ferghana Valley shared by Uzbekistan, Tajikistan, and Kyrgyzstan (Buszynski 2005). Al-Qaeda is also active in the region (Pan 2015), and ISIS declared a “Kingdom of Khorasan” stretching across Central Asia (Hoagland 2016). In response to such threats, the SCO created the Regional Anti-Terrorism Structure (RATS) in 2004 in Bishkek (now in Tashkent) (The Shanghai Convention on Combating Terrorism, Separatism and Extremism, Article 10) to serve as an information sharing institution to combat terrorism and to organize joint military exercises (SCO: The Executive Committee of the Regional Counter-Terrorism Structure). While the Kazakh government claimed that RATS helped thwart 99 terrorist attacks in Kazakhstan in 2009 (McDermott 2012), this number appears inflated and most commentators agree that RATS has in fact been very limited in the support it has provided to the counter-terrorism efforts of the region (Allison 2004, Sheives 2006).

The success of RATS is difficult to assess accurately in part because the actual terrorist threat in Central Asia is difficult to assess. The concept of terrorism has been used by all regional actors in a politicized manner to pursue goals other than national security. For instance, Russia has exaggerated the terrorist threat to induce Central Asian leaders to turn to Moscow for security (Hoagland 2016). Interestingly, the way Central

Asian states fight terrorism domestically still bears a distinctly Soviet mark with an amorphous definition of terrorism in the criminal codes and a call on the general population to report dissidents to the regime (Horseman 2005). This demonstrates the way in which Central Asian governments themselves have elevated terrorism to an existential threat, i.e. securitized it, as a pretext for quelling opposition movements (Fumagalli 2007). There has also been a trend to create a “false dichotomy between authentic, loyal and apolitical domestic Islam” in the Central Asian states as opposed to “foreign, extremist, destabilizing Islam,” to support the claim that the opposition movements being suppressed by the Central Asian states are “foreign,” thereby denying the existence of legitimate domestic opposition (Horseman 2005). A somewhat similar move may be attributed to China’s unsubstantiated claim that the Uighurs were somehow related to bin Laden (Blank 2005). Overall, the actual terrorist threat level in Central Asia is not quite clear and the success of RATS in combatting it appears limited. However, in terms of meeting member states’ interests, RATS may be counted as a successful institution because it allows governments to create a rhetoric and lend legitimacy to their suppression of opposition movements, thus solidifying their hold on power.

A significant source of insecurity in the region is Afghanistan. The concerns are partly of a terrorist nature with fighters and ideology sweeping across the border and partly of a criminal nature with Central Asia having turned into a “highway for narcotics” from Afghanistan (Azarkan 2010). Often, the two are combined; for instance, with the large number of small arms in Afghanistan giving rise to insecurity (Akmalov and Akmalov 2009) and the IMU deriving a significant part of its funding from its involvement in Afghan drug trafficking (Cornell 2014). These issues are of particular concern to Afghanistan’s neighbors, Uzbekistan and Tajikistan, but also to the region in general. With China joining the Quadrilateral Coordination Group to pursue peace talks with the Taliban (Tiezzi 2016), the SCO may take a greater interest in Afghanistan and strive toward a coherent policy among its member states. The SCO granted Afghanistan observer status in 2012 (SCO: Press Communiqué of the Meeting of the Council of the Heads of the Member States of the SCO 2012). Afghanistan also has greater geopolitical significance: Russia and China initially welcomed the US presence in the region to fight terrorism (Xing 2015). However, both have since become wary of US troops in the region and China is worried that US actions in Afghanistan would send the Taliban to Western China in search of refuge (Swaine and Ng 2010).

In the realm of combatting extremism, separatism, and terrorism,

the SCO has had limited success. It failed to address internal uprisings but provided for some cooperation in fighting terrorism. This was most beneficial to China and to some extent also to the Central Asian states. The Central Asian states benefited in a different way, namely by gaining a forum lending legitimacy to their perceived terrorist threat, which they leveraged to gain support from outside powers (Allison 2004),<sup>1</sup> and suppress opposition movements. Thus, the Central Asian states do benefit from the SCO in this realm although not directly in the sense of fighting terrorism.

### **B. Balancing: Multilevel Hegemony**

While not explicitly one of its official goals, the SCO has been highly successful as a platform for its member states to engage in geopolitical balancing behavior. This can be seen between the powerful member states, Russia and China, among the Central Asian states against Russia and China, and against outside powers, most notably the United States.

The Central Asian states find themselves in an interesting situation internationally. In the 1990s, the balance of power was multileveled, a situation that Deyermond (2009) described as “Matrioshka hegemony.” The United States was the global hegemon, Russia was the regional hegemon, and Uzbekistan was striving to become the sub-regional hegemon. The system was clear and produced relatively few clashes because the different hegemons were secure at their own level of hegemony. This is no longer the case with both China and Russia competing against each other for regional hegemony and challenging the United States to create a multipolar international system (*ibid.*). At the sub-regional level, Uzbekistan is still asserting hegemonic claims with its strong military inherited from the Soviet Union, while Kazakhstan attempts to serve as the economic sub-regional hegemon (*ibid.*).

In this context, the Central Asian states engage in multi-vector diplomacy in an effort to maintain several strong bilateral relationships with the various hegemonic powers to balance them against one another (Laruelle 2015). One example is the overlay of institutions in the security realm (Ziegler 2010): Kazakhstan, Kyrgyzstan, and Tajikistan are all members of the Chinese-led SCO (SCO: Member States) as well as the Russian-led CSTO (Collective Security Treaty Organization: Basic Facts), and are in the Partnership for Peace program of the US-led NATO (North Atlantic Treaty Organization: The Partnership for Peace Programme). Uzbekistan is a member of the SCO and the NATO program (Collective Security Treaty Organization: Basic Facts; North Atlantic Treaty Organization: The

Partnership for Peace Programme). Uzbekistan joined the CSTO, did not renew its membership in 1999 when it re-oriented itself toward the United States, rejoined the CSTO upon focusing back on Russia in 2006, and again suspended its membership in 2012 (Kilner 2012). These multiple strategic reversals are a sign of “negative” multi-vector diplomacy, where the different bilateral relationships are played off against one another and are a sign of “geopolitical instability” as Laruelle (2015) argues. Such “negative” competition is characteristic of the multi-vector diplomacy efforts of all Central Asian states except Kazakhstan which has managed to “build links in multiple directions, rather than opposing the actors against one another, and in having this strategy recognized by its partners” (ibid.).

The SCO has clearly engaged in balancing behavior against the United States as the major outside power impacting the region despite the fact that the SCO has been careful since its inception to emphasize that it is not directed against any third party (SCO Charter, Article 2). Following the 9/11 attacks, the United States became interested in Central Asia for security reasons. To support its operations in Afghanistan, the United States erected military bases in Kyrgyzstan and Uzbekistan and concluded agreements on security cooperation with Tajikistan and Kazakhstan (Deyermann 2009). Both China and Russia initially welcomed the United States into the region to combat terrorism (Swaine and Ng 2010). However, the longer the US presence in the region persevered, the more skeptical China and Russia became about what appeared to be a long-term commitment of US troops to Central Asia. China began to feel encircled by US troops to its west (Central Asia), its south (South Korea, Japan) and its east (the United States itself) (ibid.). Similarly, Russia perceives US action as strategic encirclement in Europe and Asia (Jacques 2007). Furthermore, Russia became worried that the United States might provide the Central Asian states better counter-terrorism support than Moscow could, thereby undermining the Russian position in its “near abroad” (Buszynski 2005). Both agreed that a US military presence in Central Asia after NATO’s troop withdrawal from Afghanistan was not desirable (Denoon 2015).

The Central Asian states experienced a similar change of opinion: initially, they appreciated the increased assistance for counter-terrorism measures from the United States and saw an opportunity to reduce their dependence on Russia and China (Azarkan 2010). However, they too became worried about excessive US influence in their region, in particular given the “norm competition” that emerged from the US emphasis on civil society and democracy promotion—factors that do not complicate their relationships with Russia and China (Fumagalli 2007)—leading to

suspicions that the United States supported color revolutions (Khamidov 2015), and rendered the governing regimes less stable (Buszynski 2005). Thus, the SCO member states demanded at their 2005 Summit in Astana that the United States should set a timeline for withdrawing its troops from the region (Sheives 2004). Shortly thereafter, Uzbekistan followed the Astana Declaration with a demand for the United States to vacate the premises of the Karshi-Khanabad air base, which the United States did before the end of the year (Katz 2008). At this point in time, the SCO was for the first time perceived internationally as a strong organization that successfully challenged US hegemony (*ibid.*).

Similarly, the SCO was often the venue used by the other member states to balance against Russia. The Central Asian states were not consulted when Russia, Ukraine, and Belarus signed the Belavezha Accords to dissolve the Soviet Union (Khamidov 2015). This had two consequences: first, it was an early sign of the dominant Russian position, often leaving the Central Asian governments excluded from decision making processes that impact their region. Russian dominance became a theme in Central Asian-Russian relations with some commentators describing Russian policies in the region as the pursuit of a “Monroeski Doctrine” in analogy to the declared US sphere of influence over the Americas in the 19<sup>th</sup> century (Freiré 2009).

Second, the way the Belavezha Accords came about meant that the Central Asian states had little advance warning of their impending independence and were glad of the Russian military presence in the early 1990s, allowing them to focus on state consolidation without having to expend considerable national resources on the military (Splitsboel-Hansen 1997). Once the Central Asian regimes became stronger, however, they sought to reduce their dependence on Russia. Similarly, once China became more interested in the region, it sought to counter Russian influence to create opportunities for engagement with Central Asia. Thus, China attempts to use the SCO to balance Russian power by institutionalizing the way Russia exercises its power in Central Asia (Blank 2005). For instance, China clearly asserted its non-interference policy by using the SCO as a venue to oppose Russian intervention in the Kyrgyz crisis in 2010, thereby avoiding a precedent of UN Charter Article 51 application in its backyard (Blank 2013).

The Central Asian states benefit from this Chinese effort to balance against Russia. These balancing maneuvers are most obvious in two cases: support of NATO operations in Afghanistan, and lack of support for Russian actions in Georgia. As mentioned above, all four Central Asian

states hosted US military bases or had military cooperation agreements with the United States in the early 2000s, enabling NATO to operate in Afghanistan (Deyermund 2009). The United States also provided equipment and training to Central Asian militaries, challenging the Russian monopoly in this sphere (Buszynsk 2005). The Georgian case is another example where the Central Asian leaders reacted angrily to being left out of the decision-making process. Moscow did not consult with the SCO member states prior to taking military action in Georgia but asked for SCO support after the fact (Khamidov 2015). The SCO refused to endorse Russian operations in Georgia in August 2008 because they violated the SCO principles of sovereignty and non-intervention in domestic affairs (*ibid.*). The Central Asian leaders were also painfully aware that Moscow's justification of protecting Russian passport holders in Georgia could just as easily be used to justify military interventions in their states which also host significant Russian minorities (Katz 2008). Furthermore, the SCO refused to recognize Abkhazia and South Ossetia as independent states, sending a clear signal to Moscow (Blank 2013). Thus, the SCO has served as a venue for balancing policies against Russia.

Similar to the realm of regime stability, China seems to benefit the most from the SCO and has experienced very little counter-balancing against its presence in Central Asia. China has been careful to avoid the impression of imperialistic expansionism (Olimat 2014) and has instead emphasized its intention to rise peacefully in a manner that is beneficial to its Central Asian partners (Sheives 2006). China shares the security concerns of separatism and terrorism with the Central Asian states and otherwise emphasizes economic cooperation with its One Belt One Road (Zhu 2016) effort to create a New Silk Road (Wu 2013). This has led to relatively few clashes of interest between China and the Central Asian states. Russia has joined the SCO in an attempt to contain Chinese power (Freiré 2009) but has largely accepted the fact that any Chinese activity in Central Asia is likely to be at the expense of Russian influence (Xing 2015). The SCO has to some extent also served as a venue for Kazakhstan, Kyrgyzstan, and Tajikistan to balance against Uzbekistan as the emerging sub-regional hegemon (Kazemi 2003). Institutionalizing security relations with Russia and China has helped keep Uzbek power in check although this is clearly less of a priority than balancing against Russia and the United States.

The SCO has successfully served as a platform for all member states to engage in balancing and containment activities, most importantly against Russia and the United States. In this way, the SCO is highly beneficial to the Central Asian states by allowing them to cooperate to play one

hegemon off against the others. The winner in this arrangement is China, however, which has used the SCO to limit Russian and US power in the region but has experienced very little balancing against itself.

### **C. Military Cooperation: Continued Bilateralism**

There has been some military cooperation within the SCO although it has been far less extensive than one might expect from a security organization. RATS and the Secretariat have organized several combined anti-terrorism exercises (Olimat 2014), some of them of significant size such as one in the Ural Mountains in August 2007 which included 6,500 Chinese troops (Ziegler 2010). The SCO is a convenient venue for China to support combined exercises because China is eager to maintain the image of a benevolent rise and because Russia has opposed a Chinese military presence in Central Asia (Blank 2005). However, it is notable that the combined exercises have achieved little in terms of integrating units from different member states or achieving tactical inter-operability. This became obvious in 2010 when the SCO was unable to respond to the unrest in Kyrgyzstan (Herd 2015). Thus, military cooperation within the SCO appears to be largely political: designed to project an image of power rather than actually achieving greater military cooperation.

For member states seeking deeper cooperation, the bilateral route is preferred. Russia has or had military bases in Uzbekistan (2006–2012), Kyrgyzstan (2003–present), and Tajikistan (1995–present) as well as a bilateral defense treaty with Kazakhstan (Freiré 2009). Russia also concluded an agreement with Uzbekistan providing for the reciprocal use of each other's military bases by both countries' troops (Deyermond 2009). Similarly, military procurement has been achieved bilaterally with the Central Asian states still relying heavily on Russia for equipment and repairs (*ibid.*). Overall, military cooperation through the SCO has been very limited.

## **III. MULTIVECTOR DIPLOMACY**

The above analysis of the security interests of the SCO member states permits certain conclusions on why the SCO has been successful in its balancing function but has achieved little in terms of fighting terrorism or creating deep military cooperation. The Central Asian states are ambivalent about regional integration and prefer bilateral engagement as a vehicle for implementing their multivector diplomacy. To the extent that regionalism is pursued, alternative organizations, primarily the CSTO, compete with the SCO.

### **A. The Problem with Regionalism in Central Asia**

The regional organizations observed in Central Asia are all hegemon-sponsored (Allison 2004): this is true for the Chinese-dominated SCO and the Russian-dominated CSTO, as much as for the Russian-led organizations in the economic realm, the Eurasian Economic Union and the Customs Union. This means that any efforts at regionalism are perceived as being either pro- or anti-Russian, rendering Russian domination or Russian opposition an inherent risk factor (Freiré 2009). For example, Uzbekistan left the CSTO to avoid security binding to Russia (Buszynski 2005). The relatively young Central Asian states are still working on the creation of a national identity for themselves which leads to hesitation in fomenting strong regional identity (Safiullin 2014). Individual leaders such as President Nazarbaev in Kazakhstan or late President Karimov in Uzbekistan harbored deep distrust toward each other and are unwilling to see the other become preeminent in any regional construct. From the hegemons' perspective, both Russia and China avoid committing too deeply to international organizations, for instance by not including a collective security obligation in the SCO Charter (Konarovsky 1994). This hedging of the hegemons constitutes an "in-built weakness" for regional organizations (Allison 2004).

The overlap of SCO, CSTO, and NATO partnerships is beneficial to the Central Asian states for balancing purposes but demonstrates a lack of commitment similar to that of the hegemons. Since all member states value flexibility and seek to limit commitment, regional organizations are based on the "lowest common denominator" and are thus constrained in their operations (Laruelle 2015). This appears to be a weakness if compared to the strong integration achieved by NATO or the European Union (EU). However, it is better suited to the Central Asian region and could even model a new kind of international organization: rather than being "identity-based and ideological" like the EU, the SCO is "open, functional, and interest-based" (Chung 2004). By avoiding a supranational character, the SCO does not impose values or policies upon its members but serves simply as a venue for cooperation where their interests align. This necessarily creates a weaker organization and leaves closer binding to the bilateral realm (Blank 2013).

### **B. Competing Multilateral Organizations**

Another factor weakening the SCO is that the member states can turn to alternative organizations. The CSTO is the Russian-led counterpart to the SCO in Central Asia. Excluding China and Uzbekistan (currently at least)



but including most of the Caucasus region, the CSTO has a distinctly more Russian focus (Buszynski 2005) although the CSTO, similarly to the SCO, did not recognize South Ossetian and Abkhazian independence in 2008 (Katz 2008) and failed to intervene in Kyrgyzstan in 2010 (Herd 2015). The CSTO is more potent than the SCO in some ways: it has established a rapid-reaction force to combat terrorism, drug trafficking, and military aggression (Global Security 2016), and has conducted combined exercises against simulated terrorist attacks (Buszynski 2005). The Organization's Charter is modeled on the North Atlantic Treaty and the CSTO is seen in Moscow as NATO's natural counterpart globally with each organization being responsible for security in its own regional sphere (Ziegler 2010). The CSTO is strengthened by the historic Russian presence in Central Asia, bilateral defense treaties between Russia and the other member states (Denoon 2015), and bilateral military cooperation amongst the members (Freiré 2009). With an exclusive military focus, the scope of the CSTO is more limited than the SCO's increasing focus on economic cooperation. In many ways, the CSTO provides the Central Asian member states with the same, if not better, services in the realm of regime stability and military cooperation, although, without a Chinese presence, it allows for less multivector balancing than the SCO does.

#### IV. FUTURE POTENTIAL OF THE SCO

Thus, the SCO has not made much tangible progress in fighting terrorism and providing for military cooperation among its member states. However, the SCO does meet some important interests of its member states by legitimizing the claim of a terrorist threat and by providing a venue for balancing global and regional powers. Where can the SCO go from here? Some future developments are already foreseeable: India and Pakistan joined the SCO earlier this year which will impact the organization's trajectory; the SCO is in the process of developing a joint approach to Afghanistan; the SCO will eventually be faced with leadership succession questions in its largest Central Asian member state, Kazakhstan, following last year's succession of Uzbek President Karimov by the Acting President Mirziyoyev; and finally, the SCO may decide to deepen its security cooperation internally and with other international organizations. These events could be milestones for the SCO depending on how it chooses to handle them.

India and Pakistan, previously Observer States, joined the SCO as full members on June 9, 2017. While this enlarges the reach of the SCO, the main benefits will likely be economic. The inclusion of Pakistan is sensible from a security standpoint—Russia has previously advocated using

the SCO as a vehicle for jointly addressing the terrorist threat emanating from Pakistan (Blank 2005)—but it also seems to weaken cohesion within the SCO. India and Pakistan have a long track record of distrusting one another in military matters and bringing the two together in a security organization is likely to diminish the level of military cooperation within the SCO even further. Thus, the Center for International Governance and Innovation (CIGI) report rightly asks whether this move is far-sighted or rather constitutes over-stretching (Hoagland 2016).

The SCO has begun developing a joint approach to Afghanistan (Pan 2015). The Central Asian states and Russia have long been concerned about insecurity in Afghanistan (Wilson Center 2010). With greater involvement of China through the Quadrilateral Coordination Group (Tiezzi 2016) and with the drawdown of US troops in Afghanistan (Roberts, Ackerman and Rasmussen 2015), the moment seems ripe for a joint Afghanistan policy. Common interests falling within the mandate of the SCO are border security on Uzbek, Tajik, and Chinese borders with Afghanistan to stop drug and arms trafficking as well as fighters crossing the border. Soon, this strategy may include the Indian and Pakistani borders with Afghanistan, thus achieving almost complete coverage. Afghanistan and Iran both have observer status at the SCO, so the organization appears to be an ideal platform for addressing many of the sources of regional insecurity. Progress in this area depends on political willingness to agree on concrete measures and provide resources for their implementation.

Uzbekistan's President Karimov passed away in September 2016. While any leadership transition is a critical time for a nation's politics, this one is particularly interesting for Uzbekistan because it is the first in post-Soviet Uzbek history. Under the Constitution, the Chairman of the Senate Nigmatilla Yuldashev should have served as Acting President, but he declined and left the post to Prime Minister Shavkat Mirziyoyev until elections can be held (Marat 2016). Kazakhstan is also likely to face its first leadership transition in the next few years. Kazak President Nazarbayev is in his mid-seventies and it is unclear whether he is interested in another term (Khamidov 2015). If the successions lead to instability, it is questionable whether the SCO would intervene: on the one hand, Kyrgyzstan set a clear precedent of non-interventionism in 2010; on the other hand, the SCO member states are clearly interested in the outcome of the succession struggle. This may be of greatest interest to Russia, which is well aware that its direct involvement could be counterproductive (*ibid.*). Therefore, Russia may be tempted to use the SCO as a vehicle for intervention, much like it tried (and failed) to do in Kyrgyzstan—a move that would put it in

direct opposition to China which has consistently and firmly held onto the principle of non-intervention.

There are many ways in which the SCO could strengthen its ability to provide security to the member states—many programs are already under way and could be deepened further. RATS could provide for closer cooperation in military and intelligence matters. As discussed above, India and Pakistan joining may hamper these efforts. RATS signed a protocol on cooperation with the Central Asian Regional Information and Coordination Center on the fight against illicit drug trafficking (McDermott 2012) and could deepen its capacities in this area. The SCO could further strengthen the pursuit of its own goals by cooperating more closely with other international organizations. One example would be the EU-funded Border Management in Central Asia (BoMCA) program that is being implemented by the United Nations Office on Drugs and Crime, the Organization for Security and Cooperation in Europe, the Asian Development Bank and other stakeholders (European Commission 2016). This provides an opportunity to cooperate on achieving mutual goals and draws international funds for border protection to Central Asia. As with the above recommendations, the crux will be political—to what extent do the member states share common interests and how deeply are they willing to commit?

## V. A ROLE FOR THE UNITED STATES?

So far, the United States has shown little interest in the SCO. This is a lost opportunity: the United States should keep a close eye on SCO activities and use the SCO to seek greater engagement with the Central Asian states at the regional level.

The lack of US interest thus far can be explained by the fact that the SCO has achieved little in terms of actual security improvements which is what the United States would be most interested in. However, changes are under way and the United States should track the SCO closely to not be caught unawares. The greatest potential for US cooperation with the SCO presents itself if the SCO does choose to develop a common approach to Afghanistan or engage with outside actors to provide border security, combat drug and arms trafficking, and fight terrorism. These issues provide opportunities for positive engagement since all SCO member states and the United States have clearly defined and largely overlapping interests in these areas.

Thus, the United States should closely monitor SCO activities and actively seek to engage the SCO in these areas when there is an opportunity

for joint action. The United States may even consider becoming a dialogue partner to formalize its relationship with the SCO. Dialogue partner with the SCO is a low-commitment relationship status awarded to countries as far-ranging as Belarus and Sri Lanka (SCO 2017). To further reinforce these opportunities for cooperation, the United States should emphasize issues of common interest to the region in its bilateral relationships with SCO member states. In doing so, the United States can further the slow development of regionalism at least to the extent of cooperating on shared security concerns.

## VI. CONCLUSION

The fundamental weakness of the SCO is a lack of political commitment by its member states. For this reason, the SCO has not succeeded in rivaling NATO or being a considerable force in the fight against terrorism or separatism in Central Asia. However, the SCO has been successful in other ways, especially by allowing the Central Asian states to engage in balancing behavior. The limited commitment of member states may therefore be the SCO's major strength by providing the flexibility the Central Asian states desire to engage in multivector diplomacy. China has benefited the most from the SCO by controlling Uighur ties to Central Asia and challenging Russian influence in the region. Russia has lost the most from Chinese encroachment although it sees the SCO as a beneficial method of institutionalizing Chinese power. The areas with the greatest potential for cooperation among SCO members are Afghanistan policy, border security, drug and arms trafficking, and terrorism—all areas the United States has an interest in. The United States should engage the SCO on these areas and seek cooperation wherever joint approaches are possible.

## NOTES

<sup>1</sup> Herd describes this as the emergence of an “uncivil society,” a section of society that is distinct from the government but does not fit the liberal conception of civil society either. Drawing on unsatisfied populations, this “uncivil society” comes to pose a serious risk to regime stability and is increasingly labeled terrorist or extremist – labels from the security realm which imply a military response rather than an economic response focused on development and societal inclusion.

<sup>2</sup> Allison describes that the perceived terrorist threat induced Russia to lend military support to its Central Asian neighbors. Similarly, the United States provided military assistance.

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# THE REPEAL OF THE CORN LAWS AND BREXIT IN COMPARATIVE PERSPECTIVE: THE ENDURING ROLE OF INTEREST REPRESENTATION, THE RENEWED ROLE OF IDEAS

*Nicolas Pose*

## INTRODUCTION

Major policy shifts are unusual. As Charles Lindblom (1959) explained more than fifty years ago, the day-to-day of policymaking can be understood as a “muddling through” process. Decision makers usually adjust policies on the margins and avoid radical changes. Therefore, when substantial shifts occur, we tend to consider their causes unique. But is this the case, or are there general patterns that can be identified across these phenomena? This essay addresses this question in relation to two of the most significant policy shifts in British history: the repeal of the Corn Laws in 1846 (hereinafter referred to as “repeal”) and the decision to abandon the European Union (EU) in 2016 (hereinafter “Brexit”). The objective is to assess the configuration of interests, ideas and institutions that led to these key decisions for parallels and differences.

At first glance there are not evident similarities in the political configuration in which these decisions were made, apart from the fact that both were

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marked and largely unexpected policy shifts. Repeal was a parliamentary decision about a relatively well-defined aspect of trade policy. In contrast, Brexit resulted from a referendum that involved a broader set of policies in just one question, and in which the potential consequences were unclear.

Were the underlying logics of interest representation, ideas and institutions completely different, as this first approximation would suggest, or are there commonalities in the broader aspects of political representation and ideational contestation? I argue that similar interest representation processes arose in both events, as self-interested political representatives responded to the shifting preferences of their electorates. However, the way those preferences were built was fundamentally different.

In the case of repeal, Schonhardt-Bailey (2006) argues that the emergence of new economic ideas, the electoral reform of 1832, the activities of the Anti-Corn Law League, and the conservative ideology all played a role in shaping the process towards the final outcome. Nevertheless, in the end, according to the author, the division within the Conservative party that produced a majority for repeal had an “interest representation” cause: the fraction of the party that followed the initiative of Prime Minister Sir Robert Peel –the Peelites– represented more free-trade-oriented constituencies, whereas the fraction that opposed it represented more protectionist-oriented ones. Therefore, following the insights of the public choice approach, which suggest that politicians maximise their own utility function by being (re)elected, and that in order to achieve this they pursue the policies that maximise the economic welfare of their constituencies, the shift in the position of the Peelites is explained by the need of these Members of Parliament (MPs) to represent the interests of their constituents.

Since Brexit was decided through a referendum, the first reaction would be to discard an interest representation argument. However, the proposal to hold a referendum came about as a strategy devised by the Prime Minister David Cameron to solve the division that the membership to the European Union (EU) provoked within the Conservative party. Why did this division take place? Building on Schonhardt-Bailey (2006) work on repeal, I argue that it was also caused by an office-seeking logic of interest representation, in which the Conservative MPs that pushed for Brexit did so in response to demands from their constituents. To sustain this claim, I show empirically that Tory MPs who supported leaving the EU represented constituencies in which the vote for Leave was significantly higher than in the constituencies of their party colleagues who backed Remain.

On the other hand, the way that the demands for a policy shift were built points to a substantial difference. In repeal, even if the move to free trade

was an “unprecedented course” for Britain (Howe 1997, 2), the interests at stake, and therefore the policy preferences, were clear;<sup>1</sup> landowners were favored by protection and hurt by free trade, while manufacturers were in the opposite situation. Economic ideas were used as political weapons, and non-economic ideologies, such as the value of traditions and religious beliefs, were part of the debate (Schonhardt-Bailey 2006). But the link between material conditions and policy implications for the major agents did not rest primarily on ideational elements.

In the case of Brexit, the standard open economy politics framework that links the material position of individuals and groups in the global economy with their policy demands in terms of interests (Lake 2009) is not enough to understand the support for Brexit among the British electorate. Thus, the notion of ideas as political weapons to make the case for a pre-established preference, as in Schonhardt-Bailey’s (2006) account of repeal, is unsatisfactory. As will be addressed in more detail, vote for Leave was linked with the deterioration of material conditions—which were exacerbated after the 2008 financial crisis—at the individual level (Goodwin and Heath 2016a). But unlike repeal, there was not an obvious connection between leaving the EU and material improvement for the supporters of this choice. Seeking to solve this puzzle, this essay incorporates the reflections of authors such as Blyth (2002; 2003) and Rodrik (2014), who contend that, on certain occasions, ideas constitute interests rather than reflect them. In this case, the proposed link between economic troubles and issues such as immigration and EU regulations, combined with identity reactions against changes in traditional values, and the successful diffusion by political entrepreneurs such as the United Kingdom Independence Party (UKIP), provided a causal narrative to build an interest in Brexit within the losers of recent economic phenomena. If this was the case, as I argue, then both shifts are partially explained by changes in the material conditions of the electorate that led to the need to represent different interests within the Tories. But in the translation of these conditions to policy preferences, I will show that ideas played a much more relevant role in Brexit than in repeal.

Apart from this introduction, this essay is organized in three sections. The first reviews different explanations about repeal and exposes, based on previous literature, an argument in terms of the configuration of interests, ideas, and institutions that led to this outcome. The second explores the causes of Brexit by following the insights provided by the case of repeal; here the parallel in the logic of interest representation and difference in the role of ideas are developed. The final section concludes.

## INTEREST, IDEAS, AND INSTITUTIONS IN THE REPEAL OF THE CORN LAWS

### **The way towards repeal**

The Corn Laws were introduced in 1815 as a response to the falling prices in agriculture after the end of the Napoleonic Wars. The objective was to protect the economic activity that was the main source of revenue for the traditional landed aristocracy in Britain. Since at that time Parliament was dominated by landowners, they found little difficulty in securing the passage of this protectionist measure. The legislation allowed the import of corn when the price was above 80 shillings per quarter, but prohibited it automatically when the price fell below this benchmark. Since the scheme was too rigid, subsequent modifications introduced sliding scales, but the objective of assuring a floor for the price of corn that was acceptable for landowners remained intact (Schonhardt-Bailey 2006).

However, the industrial revolution brought about significant changes in the structure of production, and the rising industrialists had, unlike landowners, a clear interest in free trade. Nevertheless, because the franchise was based on land ownership, manufacturers were underrepresented in Parliament. For this reason, an early milestone leading toward repeal was the Reform Act of 1832, an institutional change in the electoral system that enfranchised the growing middle class by creating new urban constituencies and relaxing the conditions required to vote. With new access to decision-making spheres, manufacturers gained a greater capacity to politicize the cause of free trade (Schonhardt-Bailey 2006).

It was not until 1838 that systematic opposition to the Corn Laws arose in the form of the Anti-Corn Law League, which has been described as the first modern pressure group in Britain (McCord 1968; Schonhardt-Bailey 1991a; 2006). The League was the vehicle through which manufacturers campaigned heavily for repeal, and while their influence in the final decision has been highly debated (Howe 1997), their success in terms of mobilizing funds and spreading free trade ideas across the country is widely acknowledged (McCord 1968; Schonhardt-Bailey 1991a; 2006). According to Schonhardt-Bailey (1991a; 2006), the concentration of the textile industry in Lancashire, combined with the deconcentration of a broader exporting sector, allowed the League to overcome collective action problems and provided a national structure to spread their message.

First, the strategy of the League consisted of large propaganda campaigns. By highlighting the potential reduction in the price of bread and objecting landowners' arguments that corn liberalization would push wages

downwards, Leaguers sought to “nationalize” the interest in free trade. In doing so, they portrayed the Corn Laws as a burden with the sole objective of benefiting the landed aristocracy, and a policy shift as an improvement for the majority of the population (Schonhardt-Bailey 2006).<sup>2</sup> Second, the League conducted massive electoral registration campaigns, using a legal loophole and the creation of new urban constituencies with the Reform Act of 1832, in order to increase the presence of free-traders in Parliament (McCord 1968; Schonhardt-Bailey 1991a; 2006).

### **The conversion of the Peelites and the Lords’ reaction: ideas or interests?**

Despite the League’s efforts, the 1841 election meant a victory for protectionism, since the Conservative Party won power on a strong protectionist mandate (Brawley 2006; Schonhardt-Bailey 2006). Therefore, the puzzle has been to explain why the repeal of the Corn Laws took place under these conditions. The Liberal MP and member of the League Charles Villiers introduced a motion every year seeking repeal, but his proposals were systematically defeated (Brawley 2006). However, in 1846, the Conservative Prime Minister Peel introduced his own motion, and with the support of a fraction of his party, plus the opposition, succeeded in securing a majority in the House of Commons. A month later, even more strikingly, the House of Lords, an unelected chamber composed primarily of landed aristocrats, failed to invoke its veto. The consequence for Peel and his party were disastrous: the dissolution of the government, a deep intra-party split and decades out of power (Schonhardt-Bailey 2006). Observing this record, academics have asked: why did Peel shift to repeal? Why did a fraction of his party follow him? Finally, why did the Lords choose not to veto the decision?

One of the main arguments in the literature is that the free trade ideas developed earlier by political economists were the main drivers of this conversion (Kindleberger 1975; Irwin 1996; Howe 1997). According to this logic, Peel and the Peelites changed their position because they were persuaded by the convincing intellectual case for free trade. But Peel himself had endorsed these ideas earlier; what prevented him from translating them into policy was the desire to maintain the traditional foundations of the country—because of his conservative ideology—to which protectionism was seen as a necessary condition (Brawley 2006; Schonhardt-Bailey 2006). And for the Peelites in general it is difficult to reconcile an ideational shift with the fact that they voted systematically against repeal up to 1846. Schonhardt-Bailey (2006) proposed and tested a plausible mechanism:

Peelites may have been the focus of particular ideational pressure by the League, until finally they changed their votes. However, her analysis of the propaganda in local newspapers as a proxy for ideational pressure in Peelites' constituencies does not reveal evidence to support this hypothesis.

Others have examined the role of religion (Hilton 1988), and the importance of the Irish potato famine (McLean 2001) in shifting the Peelites' position. But along with economic ideas, and following the insights of modern public choice accounts of trade policy, the main competing explanation has focused on interest representation dynamics (Schonhardt-Bailey 1991b; 1994; 1997). As previously stated, this argument is based on the assumption that politicians maximize their own utility by being (re)elected, and that in order to achieve this, they pursue the policies that maximize the economic welfare of their constituents. Therefore, repeal is explained as the consequence of rising industrialists with an interest in free trade, and some landowners who having initiated a process of asset diversification in industries and railways, allowed by the development of capital markets in Britain, had lost their interest in protectionism (Schonhardt-Bailey 1991b; 1994). But, like ideational accounts, this explanation faces a pressing question: "Had constituency interests really changed sufficiently between 1842 and 1846 to make protectionism rational in 1841 and free trade so five years later?" (Howe 1997: 30).

One answer is given by Brawley (2006). He argues that Peel's motion gained support because, unlike Villiers' motions, it contained a compensation scheme for high farming (i.e. for landowners that implemented more capital-intensive production techniques). In his explanation, this turned the interest of this segment of agriculture to free trade, and therefore the vote of their representatives in Parliament, allowing the creation of a majority for repeal. Schonhardt-Bailey (2006) advances another argument that indeed the Conservatives were a party united by one ideology—the value of traditional British institutions—but two dissimilar interests: an agricultural sector which benefited from protection and was represented by non-Peelites, and more free-trade-leaning constituencies represented by the Peelites. In her view, Peelites rejected repeal motions until 1846 because they regarded protection as an important piece to support the traditional territorial constitution of the country. In other words, the reason was ideological. However, at some point constituents' pressures were overwhelming, so Peelites had to act as delegates in order to survive politically. As a result, they shifted to repeal. Peel resorted to a rhetorical strategy of justifying this move as a way to save, rather than to undermine, British traditional institutions. But in the end the driving force, according

to this account, was the need to represent material economic interests.

Even if these two accounts of repeal based on interest representation are appropriate for an elected chamber like the Commons, we must explain the unelected House of Lords' decision. The response may lie in the fear perceived by the majority of this House that a veto would unleash a popular reaction with unexpected consequences (McLean 2001; Schonhardt-Bailey 2006). In other words, the Lords acted in their self-interest, assuming that repeal was the necessary price to pay if a revolution was to be avoided. Nevertheless, free trade ideas were important in highlighting the interests that were at stake; in its absence, the Lords may have been able to justify a veto on public interest grounds. Similarly, without the pressure of the League, the fear of a potential political revolution may not have emerged.

In sum, following Schonhardt-Bailey (2006), to understand the final outcome in question both ideas and institutions are important, but the "engine" that led to repeal was a change in the structure of production and the consequent logic of economic interest representation.

## **BREXIT: A SIMILAR CONFIGURATION OF INTEREST REPRESENTATION AND IDEAS?**

### **Interest representation in the way towards the referendum**

Brexit cannot be understood as a decision without considering the institutional setting in which it was taken. The referendum held on June 23, 2016 allowed an unmediated aggregation of preferences, which determined that the majority of the British electorate supported the option of leaving the EU. On the contrary, in Parliament, a clear majority of MPs (73 percent) preferred the opposite option (Business-Insider UK 2016). Therefore, had the decision been taken following the normal procedures of a parliamentary democracy, the outcome under examination may not have occurred. This highlights a stark difference with repeal. Nevertheless, does this mean that interest representation did not play any role in this process? The answer is no. Indeed, the decision to hold a referendum in the first place was a strategy devised by Cameron in order to settle an issue that divided the Conservative party, as the Corn Laws had. Of course, this division did not necessarily mean that Cameron had to follow this path, but since he did it, then it becomes relevant to understand the source of the split, and here is where the interest representation logic is relevant.<sup>3</sup>

Britain accessed the European Economic Community (EEC) in 1973 under a Conservative government. This caused internal divisions within the Labour party, settled after a national referendum in 1975 in which the British electorate largely ratified this choice; since then, both major

political formations in Britain supported the membership. However, during Margaret Thatcher's government disagreements arose over the contributions to the ECC budget and a Eurosceptic sentiment started growing inside the Conservative party, causing problems for subsequent Tory administrations. Nonetheless, it was not until recently that the pressures from the Eurosceptic side of the party became stronger. In 2011, 81 Tory backbenchers defied their government on a referendum bill about the EU membership which was presented after a 100,000 people petition to discuss the issue, double the size of the last challenge that a Tory Prime Minister had faced over a European matter in 1993 (BBC 2011). In this context, Cameron campaigned towards the 2015 general election on the promise of renegotiating the terms of the agreement with the EU and holding a referendum to ratify the eventual deal.

Why did this split within the Conservatives take place? As with repeal, the explanation lies in an interest representation dynamic. I hypothesize that the MPs that put pressure on the leadership to hold a referendum did so because in their constituencies the preferences for leaving the EU were stronger than in the ones of MPs who supported the permanence in this organization. Therefore, with the objective of seeking re-election, and threatened by the growing support for UKIP, they had to perform their role of delegates raising the issue within the party.

To test this argument, I created a dataset with three main variables, in which the constituency is the unit of analysis: the result of the referendum,<sup>4</sup> the party affiliation of the MP, and the position the MP on the referendum.<sup>5</sup> This allowed me to match the position of all Conservative MPs on the referendum with support for Leave in their constituencies. Of course, some MPs backing Leave may have publicly positioned for the referendum but not pushed for it before; nevertheless, my assumption is that the majority of them did so. Further research could explore the veracity of this assumption. Since the vote for UKIP in the European elections in 2014 is highly correlated with the vote for Leave—0.73 (Goodwin and Heath 2016b)—it is reasonable to suppose that MPs in these areas were facing stronger pressures to represent this sentiment.

Table 1 shows the position of Conservative MPs on the referendum divided by the level of the vote for Leave in their own constituencies. Three categories were built. If the vote for Leave was below 45 percent, the constituency is considered to have a strong Remain preference, whereas if it was above 55 percent it is regarded to have a strong Leave preference. To be conservative, constituencies in which support for Leave was between 45 percent and 55 percent are considered to be in an "indifference zone"



because it is reasonable to expect that some voters made their decisions during the campaign and for the reason that the results by constituency are estimations rather than official numbers (see footnote 4). Therefore, it would be risky to argue that MPs from these districts felt a clear mandate to push for any option within the party before the referendum.

**Table 1. Conservative MPs' position on the referendum by vote for Leave in their constituencies**

		Vote for Leave in constituency			
		<45%	45%-55%	>55%	
Leave		9.6%	31.1%	59.3%	100%
		(13)	(42)	(80)	(135)
Conservative		12.9%	44.6%	42.5%	100%
MP position	Remain	(24)	(83)	(79)	(183)

*Source: Author's elaboration based on Chris Hanretty estimations of results by constituency and Daily Mirror data on MPs' positions on the EU referendum.*

Data from Table 1 show that a clear majority of the MPs who voted against the EU (59.3 percent) represented constituencies with strong Leave preferences, while 31.1 percent represented "indifferent" constituencies and less than 10 percent strong Remain constituencies. On the contrary, the majority of pro-Remain MPs (44.6 percent) represented constituencies defined as "indifferent," whereas 42.5 percent represented strong Leave constituencies and 12.9 percent strong Remain constituencies. Table 2 confirms that the average vote for Leave in constituencies of Conservative MPs who backed this option was higher than in constituencies of their party colleagues who supported Remain (55.9 percent v 52.3 percent). An additional T-test was unable to reject the hypothesis that this difference in the means is statistically significant at a 99 percent confidence level (see appendix). Therefore, the empirical analysis supports the argument that, as in repeal, the division within the Conservative party around Brexit was caused by MPs that were representing constituents with different preferences around the same issue.

**Table 2. Mean comparison of vote for Leave in constituencies represented by Conservative MPs supporting Remain and Leave**

Vote Conservative MP	N	Mean	Standard deviation	Mean of standard error
Remain	186	53.3%	9%	1%
Leave	135	55.9%	8%	1%

*Source: Author's elaboration based on Chris Hanretty estimations of results by constituency and Daily Mirror data on MPs' positions on the EU referendum.*

### **In whose interest? Globalization and identity politics hypotheses**

So far, this essay has found parallels between repeal and Brexit in terms of interest representation. However, repeal was about a well-defined aspect of trade policy while Brexit involved a broader set of policies and a choice with the terms of an eventual withdrawal not clear before voting—i.e. “soft” versus “hard” Brexit (Portes 2016). Therefore, while in the former it was evident that a move to free trade was in the interests of industrialists and landowners with diversified portfolios, in the latter it was not obvious who was going to benefit. This poses a challenge for a rational model of interest representation, which derives the interests of groups and individuals from their position in the structure of the global economy and the potential consequences of a specific policy shift (Lake 2009). Thus, although we were able to infer that Conservative politicians who pushed for Brexit were responding to the “interest” of their constituencies, the material foundations of those interests are problematic.

One strategy to overcome this problem consists of looking at the characteristics of those who voted for Brexit. Studies analyzing socio-demographic data find that the less-educated, the elderly, manual workers with stagnant wages, and people living in regions affected by deindustrialization and import competition were the main supporters of Leave (Financial Times 2016; Goodwin and Heath 2016a; 2016b; Langella and Manning 2016; The Economist 2016a). Thus, they generally conclude that the Brexit vote can be understood as a response of those “left behind” by economic globalization and in a situation of economic insecurity. If this was the case, then we could infer a material interest representation dynamic between the losers of globalization and politicians pushing for Brexit. Nevertheless, this interpretation faces the challenge that the Leave campaign was not primarily portrayed as a way of compensating individuals and regions affected by

changes in the global economy; indeed, the voters more concerned about the impact of Brexit on the economy and jobs were more likely to support Remain. On the contrary, Leave voters tended to mention immigration and sovereignty as their major concerns (Lord Ashcroft 2016; Prosser, Mellon and Green 2016).

An alternative explanation explores the role of social conservative values and the formation of preferences based on membership to a particular nationality, race or other social group, usually called identity politics. In this view, personal attitudes are not a function of material interests but of personality dimensions, what social psychologists call “right-wing” authoritarianism or, as Kaufmann (2016) prefers to frame it, a tendency to privilege order rather than openness. Following this logic, different studies report associations between support for Leave and rejection of multiculturalism and other social liberal values English self-identification (Lord Ashcroft 2016), and even support for the death penalty (Kaufmann 2016). Thus, some argue that the Brexit vote is better understood as a reaction against changes in traditions and values rather than a consequence of material losses (Kaufmann 2016). However, this argument misses that both historically (Polanyi 1944) and currently (Burgoon 2009) the rise of nationalism and other even stronger expressions of identity—such as xenophobia—are associated with increases in the transnational flux of goods and factors of production, economic insecurity and the absence of strong compensation mechanisms.

This seems to be the case of Britain, a country well integrated into the global economy in which influential experts—such as the governor of the Bank of England and its chief economist—and specialized magazines warn about the gap between regions in terms of income and productivity, the consequent growing inequality and the lack of active policies to reverse these trends (BBC 2016a; 2016b, The Economist 2016a). Furthermore, anecdotal and survey evidence highlight a link between identity reactions and economic complaints about the perceived negative effect of immigrants on wages and the welfare state (The Economist 2016b, YouGov 2016). As an illustration, consider the following affirmations of a taxi driver when interviewed by The Economist (2016b):

We just physically haven’t enough room for them... The schools are overfilled with foreigners.” He adds that some of them are hard workers, but “in Cliftonville [next to Margate], you might as well be in Romania. A lot of them are gypsies.” Asked if being British is important to him, he declares a narrower identity: “It’s being English. *English*.”

Therefore, to understand how this feedback between material interests and identity reactions became politically relevant in order to influence Brexit, we turn to the role of ideas and narratives.

### **Ideas constituting the “interest” in Brexit**

In 1997, support for leaving the EU was higher in “cosmopolitan areas of growth” (31 percent) than in “provincial backwaters experiencing decline” (22 percent) (Jennins and Stoker 2016: 374). In 2016, the latter areas were strongholds of Brexit. In the middle, important changes in the material situation of voters took place as a consequence of the global financial crisis in 2008. Nevertheless, as we saw, these material changes alone cannot account for the “interest” in Brexit, neither by inferring the material consequences of a policy shift nor by considering the terms in which the campaign was portrayed. To solve this puzzle, it is useful to incorporate a growing literature that challenges the notion that agents are able to automatically translate their material situation into “interests” and then into policy preferences (Rodrik 2014). From rationalist accounts (Goldstein and Keohane 1993) to bounded rationality perspectives (Weyland 2007), to more constructivist arguments (Blyth 2002; 2003), the claim is that worldviews, heuristics and other ideational devices help individuals and groups to define their interests and choose the ways to achieve them.

Following this insight, I argue that after the financial crisis, a moment in which ideas are particularly powerful (Blyth 2002), two narratives about the sources of the problems of the country entered into a competition. One blamed the financial sector and austerity policies, while the other focused on the effects of immigration and the loss of sovereignty due to EU membership. A YouGov poll in 2016 illustrates this difference: for Remainers, the causes of the problems in Britain were the British banks, the Conservative government, and growing inequality; for Leavers, they were EU regulations, immigrants willing to work for low wages, and the previous Labour government (YouGov 2016).

Clearly, the second narrative succeeded, even if academic studies question the claim that immigrants harm British workers and put pressure on the welfare state (Petrolongo 2016).<sup>6</sup> How this occurred deserves more research; however, the role of UKIP as a political entrepreneur able to spread this message within the losers of recent economic phenomena is a necessary starting point. In this sense, it is possible to trace a parallel between UKIP and the League, since both are single-issue organizations committed to spreading a set of ideas in order to achieve a policy shift, despite one being a party and the other an interest group. While the League

sought to nationalize their interest in free trade, UKIP tried, by linking the EU with British problems, to constitute an interest in Brexit.

This may also explain why all but 10 Labour MPs supported Remain—according to the Daily Mirror database—despite the fact that 70 percent of them represented constituencies that voted for Leave (Hanretty 2016).<sup>7</sup> The way Brexit was portrayed was acceptable neither to the “Blairites” who embrace globalization, nor to the “Corbynistas” who may see the EU as a neoliberal project, but regard identity politics as an expression of racism, as one Labour MP recently explained (Kinnock 2016). On the contrary, Conservatives could fit a discourse that highlighted the value of preserving British traditions in terms of restricting immigration and defending parliamentary sovereignty, hence a group of them decided to follow this path as a strategy to remain in power. If this interpretation is correct, then ideas and narratives played a much more important role in Brexit than in repeal.

## CONCLUSION

Big policy shifts are unusual, but it is possible to find strong parallels between them. Undoubtedly, the repeal of the Corn Laws and Brexit are two of the most significant changes in Britain’s foreign economic policy. Certainly, the context in which the decisions were taken, and the extent of the issues involved in each of them differ to a large degree. Nevertheless, similar dynamics of interest representation were at work in both cases. Politicians seeking to remain in elected positions must represent the interests of their constituents, and in these two crucial events they did so regardless of party unity, as long as they could fit their demands within their broader ideologies. Indeed, a split within a Conservative party which represented constituencies with different preferences ended in both the repeal of the Corn Laws in Parliament in 1846 and the decision to hold a referendum on the EU membership in 2016.

Of course, there are also clear differences. The institutional setting in which the decisions were taken is the clearest example. In spite of the split in the Tory party over the EU, in Parliament, unlike repeal, a large majority for policy continuity existed. Nevertheless, since the referendum was a consequence of the division within the Conservatives, the institutional setting in Brexit can be treated as endogenous.

However, more subtle—although substantial—differences can also be detected. In repeal, free trade ideas played an important role in setting the direction of the change, as did the Anti-Corn Law League as a central pressure group in spreading those ideas. Nonetheless, the most important

agents had a clear understanding of how their interests would be affected by policy modifications. On the contrary, Brexit exemplifies a case with more diffuse potential consequences, and in which the role of ideas was fundamental to constitute the “interest” of voters in it. The more uncertain economic implications for groups and individuals, the interaction between an economic crisis, lack of compensation mechanisms and identity reactions, and the role of UKIP are all potential factors that further research needs to examine to better understand this policy preference.

In conclusion, this comparative analysis of two of the biggest policy shifts in British history reveals that the logic of interest representation, with politicians transmitting the demands of their constituencies to remain in office, continues to be a powerful instrument to account for the politics of economic policy. But simultaneously, it suggests that analysts should pay even greater attention to how the role of ideas influences the definition of those interests in the first place.

## APPENDIX

### Independent Samples Test

		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
% leave	Equal variances assumed	.048	.827	-2.678	319	.008	-.02605	.00973	-.04520	-.00691
	Equal variances not assumed			-2.707	299.493	.007	-.02605	.00963	-.04499	-.00711

*Source: author's elaboration based on Chris Hanretty estimations of results by constituency and Daily Mirror data on MPs' positions on the EU referendum.*

## NOTES

<sup>1</sup> With the possible exception of workers, who in any case had virtually no access to decision-making spheres.

<sup>2</sup> There was an interesting confrontation between the League and the Chartists, a working-class movement that pursued a broader agenda for change. Leaguers sought to maximize workers' support for their cause while avoiding a larger involvement in other workers' demands, facing Chartists opposition (Schonhardt-Bailey 1997; 2006). Nevertheless, since workers lacked voting rights, their political influence was severely diminished.

- <sup>3</sup> Parties are occasionally divided over relevant issues, but leaders do not always choose open up a window for change, and if they do the result is not necessarily a policy shift. Since in this case Cameron did choose to do so, the source of the division becomes relevant.
- <sup>4</sup> The referendum was organized by local authority, so there are not official results by constituency. However, Chris Hanretty from the University of East Anglia has estimated these results. I rely on his estimations for the analysis. Data is available on [https://docs.google.com/spreadsheets/d/1wTK5dV2\\_YjCMsUYI-wg0l48uWWf44sKgG8uFVMv5OWIA/edit#gig=893960794](https://docs.google.com/spreadsheets/d/1wTK5dV2_YjCMsUYI-wg0l48uWWf44sKgG8uFVMv5OWIA/edit#gig=893960794).
- <sup>5</sup> The position of each MP on the referendum, with their party affiliation, was compiled by the Daily Mirror up to June 21, two days before the referendum, from “letters, statements, tweets, local press, campaigns, debates and where that fails, calling the MPs themselves” (Daily Mirror 2016). The information is available for all but 14 MPs. Data is available on <http://www.mirror.co.uk/news/uk-news/how-mp-vote-eu-referendum-9187679>.
- <sup>6</sup> Additionally, it is worth noting that areas with the highest proportions of immigrants voted for Remain, although areas with low absolute levels but high recent changes in immigration voted for Leave (The Economist 2016c).
- <sup>7</sup> Furthermore, according to the data I compiled, those 10 represented Remain-leaning constituencies.

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# FROM NARCO-TERRORISM TO INFORMAL ECONOMY: THEORIZING THE STATE-CRIME NEXUS TO UNDERSTAND AFGHANISTAN'S OPIUM DILEMMA

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## INTRODUCTION

The cultivation and trafficking of opium is illegal in Afghanistan, but this economic enterprise constituted roughly 5 percent of the country's estimated GDP for 2016, or approximately \$0.9 billion USD (UNODC 2016). According to the *2016 Afghanistan Opium Survey*, a report on opium cultivation and production produced annually by the United Nations Office on Drugs and Crime (UNODC), 201,000 hectares of land were used to grow poppy plants in Afghanistan in 2016, a 10 percent increase from the estimated land usage in 2015. 2016 had the second highest rate of hectares used for opium cultivation since 1994. The United States (US) Department of State's *2016 International Narcotics Control Strategy Report on Afghanistan* states that drug crop agriculture and the trafficking of

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opium continues to fuel the Afghan insurgency, with the Taliban generating significant profits from trafficking drugs and taxing supplies that pass through areas under their control. Other actors are involved in the opium economy as well, from impoverished farmers who derive a livelihood from growing poppies, to wealthy warlords embedded in transnational drug trafficking networks (Gibson 2011).

Despite having been the site of an extensive US- and European-led state-building mission for over a decade, and the subject of billions of dollars of direct and indirect development assistance, the illicit opium industry continues to wreak havoc on the functional capacity and legitimacy of the Afghan state. The prevalence and persistence of the actors and informal criminal networks that perpetuate this industry is puzzling, especially when one considers the amount of money and the magnitude of counternarcotic efforts that have been employed towards dislodging these networks since the signing of the Bonn Agreement in 2001.

I contend that the prevalence of the industry and the forces that maintain it is the result of an ineffective *mélange* of counternarcotic and counterterrorist policies that have been drafted while looking at the problem through an analytical lens that falsely identifies the salient actors as being solely terrorist groups acting in contestation with the state. This analytical lens can be labeled the “narco-terror nexus.” I propose that an analysis of opium in Afghanistan through an informal economy/organized crime lens will lend additional explanatory power to our understanding of how and why the illicit drug economy has prevailed despite extensive effort to remove it. Adopting this “state-crime nexus” as our lens of analysis will also reveal why past policies that placed too much emphasis on counter-insurgency and terrorist financing have largely failed.

After defining some key terms, establishing a methodology, and laying out the scope for this analysis, I will interrogate the literature and policy choices that have targeted opium in Afghanistan at the narco-terror nexus. I will then compare the narco-terror nexus with the state-crime nexus and reconceptualize the situation in Afghanistan through the latter framework. Finally, I provide some policy recommendations before concluding.

## DEFINITIONS, METHODOLOGY, AND RESEARCH SCOPE

In any essay seeking to investigate the difficulty of dislodging informal and criminal networks in post-conflict contexts, a clear understanding of what constitutes an informal or criminal network is vital. Informal or criminal networks can be understood as networks in which those who participate in an informal or illicit economy exist in opposition to some

“formal” economy, or simply “the state.” Guha-Khasnobis et al. (2006) states that an understanding of informal economy involves spectra of low to high government “reach” or influence, and structuration. An informal economy arises under conditions of low levels of government reach and manifests in the form of self-organizing structures, which appear unstructured relative to the institutionalized formal economy. Feige (1990) notes that all variations of informal economy possess a certain relationship with the established rules (i.e. government regulations, laws, and statutes). Economic actors participate in the formal economy when their activities adhere to the established rules, while activities that circumvent or are noncompliant with the rules mark participation in the informal economy. The legitimacy of those entities that institute rules will be salient in subsequent discussion of Afghanistan’s opium economy within the context of externally-led state-building.

Based on this understanding of informal economy, we can make sense of the inter-personal systems that operate within it. Organized crime groups specialize in enterprises as opposed to predatory crimes such as looting or robbery (Naylor 1997). They employ or threaten violence systematically as opposed to erratically, and are structured hierarchically (Naylor 1997). To Reuter (1983), organized crime groups are defined by durability, hierarchy, and involvement in multiple criminal activities. The United Nations (UN) Convention Against Transnational Crime (Article 2a) uses a broader definition that does not presuppose hierarchy, which allows the definition of “organized crime actors” to include mafia-style criminal networks. This is key for the case of Afghanistan.

An organized crime network can withstand the removal of any individual member, even if that individual trafficker or kingpin represents a key nodal point, as connections can re-form around new actors quickly (UNODC 2002). Additionally, personal loyalties and connections (as opposed to group ones) are most salient in an organized criminal network, and most actors may not explicitly consider themselves “criminals” (UNODC 2002). Organized crime networks can quickly adapt to changes in social, economic, and political contexts, making them much more agile and malleable than adaption-averse law enforcement institutions (UNODC 2004).

This examination theorizes drug cultivation as a part of the illicit economy in Afghanistan through the dual lenses of “narco-terror nexus” and “state-crime nexus.” The basis of this dichotomous frame approach has been adopted from De Danieli (2014) and has been modified slightly using scholarship from Bjornehed (2005), Stepanova (2010), and Kaldor (2012). The foundational elements of the typology are represented in

Figure 1 below.

**Figure 1: The Narco-Terror and State-Crime nexuses compared**

	<b>Interest in the drug trade</b>	<b>Relationship to the state</b>	<b>Salient Actors</b>
<b>The Narco-Terror Nexus</b>  (or)  <b>“Narco-Terrorism”</b>	<ul style="list-style-type: none"> <li>- Revenue source for fighting the state militarily through <i>political violence</i> (Bjornehed, 2005)</li> <li>- Adopted this strategy after funding taps turned off post-Cold War (Kaldor, 2012)</li> </ul>	<i>Conflictive</i> , seek to reform or revolutionize the state to fit their ideological convictions (Bjornehed, 2005; Stepanova, 2010)	Non-state armed groups, or “terrorists” (the Taliban)
<b>The State-Crime Nexus</b>	<ul style="list-style-type: none"> <li>- Personal <i>capital accumulation (wealth)</i></li> <li>- Seeks to acquire or maintain influence within an alternative (non-state) center of power</li> </ul>	<i>Symbiotic</i> , work in mutually-beneficial relationship with the state and want to remain within the state structure (Bjornehed, 2005; Stepanova, 2010)	Organized criminal networks (includes non-state armed groups)

This analysis will be restricted to the context of Afghanistan’s external state-building mission, in that Afghanistan’s “post-conflict” phase will be defined as the period beginning with the deployment of the International Security Assistance Force (ISAF) that was established shortly after the signing of the Bonn Agreement in 2001. Although opium had been cultivated in Afghanistan long before the arrival of the ISAF, contemporary policies aimed at attacking the drug trade have been primarily colored and motivated by structural realities emanating from Kabul as the host of an international administration.<sup>1</sup> Most important for our purposes are the normative underpinnings of the mission, especially the international state-builders’ conceptions of Afghan state weakness, and their biases towards what kind of state should be built, as reflected in the Bonn Agreement.<sup>2</sup> State-builders conceptualize state weakness in post-Taliban Afghanistan as a lack of state capability, whereby a weak government is unable to provide political goods throughout its territory, and is similarly unable to main-

tain a monopoly on the legitimate use of force within its internationally recognized borders (Migdal 1988). To rectify this weakness, state-builders seek to develop a centralized state, where power rests within strong and impartial state institutions.

## **THE PREVAILING NARRATIVE: THE NARCO-TERROR NEXUS AND OPIUM IN AFGHANISTAN**

### **The rationale**

As an international administration seeks to establish a centralized state in post-Taliban Afghanistan, it has formulated anti-opium policies through the narco-terror lens. These anti-opium policies aim to eliminate drug crop cultivation and trafficking as a means of bankrupting the Taliban and other non-state armed groups, thus allowing the central government in Kabul to (re)gain control over the entirety of Afghan territory (Mansfield 2016). After the 2000–2001 Taliban-imposed ban on opium cultivation, which served to consolidate their control over the illicit drug economy while driving up prices, British and later American counterterrorism policies in Afghanistan adopted a strong counternarcotic dimension (Curtis 2013). The Americans, after taking the helm from the British following the backfiring of a crop eradication compensation program, regarded drug money as the Taliban's primary source of financing (IISS 2007; Felbab-Brown 2013). This, combined with a post-9/11 determination to destroy or severely weaken the transnational capabilities of the Taliban, set the Americans on a path towards endeavoring to bankrupt the Taliban as the country's most powerful spoiler (Latypov 2009). Narco-terrorism became the new buzzword.

The motivation to curtail opium cultivation and trafficking stemmed from the idea that the drug trade was being used by non-state armed actors/terrorists (i.e. the Taliban) to fund military operations *against* the centralized state being fostered in Kabul. If not used to fund kinetic operations against Kabul, the narco-terror lens suggests that winning the hearts and minds of the impoverished inhabitants of the hinterlands was a secondary and equally effective way that the Taliban could use narcotics profits to erode the legitimacy of and undermine the central western-backed government (Felbab-Brown 2005).

### **Policies**

The National Drugs Control Strategy (NDCS), which was revised as the National Drug Action Plan in 2015, has guided much of the American-Afghan counternarcotic policy agenda by prioritizing six modes of fighting

opium: institution-building, crop eradication, alternative livelihoods, law enforcement, judicial reform, and demand reduction (IISS 2007). Despite this even-handed policy menu and some effort dedicated to implementing it (for example, the creation of a Ministry of Counter Narcotics and the provision of American funding for addiction treatment programs and school/public education) (US Department of State 2016), the United States over-prioritized crop eradication. Pressure to provide the US Congress with encouraging numbers of hectares of opium eradicated may be one of several upward accountability issues that skewed the American-Afghan counternarcotic agenda towards eradication, a mistake with disastrous and counterproductive consequences. With US funding, the Ministry of Counter Narcotics (MCN) continues to operate both a Governor-Led Eradication program and a Good Performer's Initiative (GPI), which respectively reimburse and reward provincial governments for reducing poppy cultivation (US Department of State 2016). The MCN, in accordance with the objective of the NDCS, established the Counter-Narcotics Police of Afghanistan (CNPA) and the Afghan Special Narcotics Force (ASNF) to implement counternarcotic policies. Both organizations rely heavily on support from the United States and the United Kingdom for funding and training.

## Outcomes

There is now near-universal consensus that crop eradication strategies in Afghanistan have been ineffective if not unequivocally counterproductive. Felbab-Brown (2013) notes that American and European troops have been met with armed resistance from farmers who had been driven into the hand of the Taliban due to crop eradication strategies. Support for the Taliban remains significant in rural areas where opium is grown and crops are protected from indiscriminate eradication (Curtis 2013). In this way, the Taliban forms and maintains alternative centers of power. Clinging to the relative security that the Taliban offers is rational if the decision to cultivate opium is analyzed through a rural livelihoods perspective. A plethora of factors inform household decisions, including religious norms, moral convictions, and access to land, water, and cheap labor (Macdonald 2007). The Obama administration quickly scaled back eradication in 2009, at which time the US Special Representative for Afghanistan and Pakistan Richard Holbrooke reported that despite costing about \$1 billion USD per year, "the US eradication program may have been the single most ineffective program in the history of American foreign policy [...] We were recruiting Taliban with our tax dollars" (Bewley-Taylor 2013). Most of the assistance provided through the GPI, which is intended to fund



alternative livelihood assistance programs for (former) cultivators, is often pocketed by governors themselves (Curtis 2013; Felbab-Brown 2012).

The curbing of eradication as the American method of choice for countering opium cultivation and trafficking was followed by a gradual turn towards interdiction under the Obama administration, whereby focus was placed on the targeted disruption of high-level, Taliban-linked traffickers within the market network. However, interdiction now frequently targets small-scale farmers and low- to mid-level opium traders representing the “low-hanging fruit” of the opium trade, i.e. individuals who are unable to sufficiently bribe CNPA and ASNF forces on interdiction missions (Bewley-Taylor 2013). Additionally, interdiction strategies undermined American-led counterterrorism operations by alienating human intelligence sources, which helped the Taliban to further assert its dominance over the national drug trade by eliminating their competition. The US presence and its array of strategies have emboldened the forces that they seek to weaken, and have, ironically, created conditions favorable to the development of mini narco-states rather than a centralized state (McCoy 2003; Gibson 2011).

## THEORIZING THE STATE-CRIME NEXUS: AN ALTERNATIVE ANALYTICAL LENS

The state-crime lens should help fill gaps left by the narco-terrorism approach, and should help to explain why it has been difficult to dislodge informal and criminal drug networks in post-conflict Afghanistan. In their discussion of organized crime and aid subversion, Bojicic-Dzelilovic et al. (2015) characterize organized crime as existing in a context of state social-embeddedness or relationality,<sup>3</sup> whereby organized crime is not distinct from the state—in stark contrast to the narco-terror view, which sees corruption as the penetration or infiltration of the state by criminal/terrorist groups in a series of singular transactional acts. Godson (2003) stipulates that this kind of social embeddedness of criminal networks is most pervasive in places with weak institutions or in regimes that lack checks and balances, which formal political opposition or pressures from a strong civil society can provide. Furthermore, in a transitional economy that lacks fully entrenched rule of law, a legacy of the regime arbitrarily enforcing formal laws has turned non-compliance with established rules into an informal norm (Feige 1999). Rapid and drastic change to social and political structures and discourse, as was evident in the early stages of the state-building mission in Afghanistan, engenders a crisis of the social legitimacy of rules. The social legitimacy of rules, which relies on the social

legitimacy of whoever is making those rules (i.e. the American-European-sponsored government in Kabul), colors all aspects of the state-crime nexus.

### **The salient actors: organized criminal networks**

The state-crime nexus, with its focus on close relations between the state and non-state, would suggest that seeking out individual criminal actors for law enforcement to target focuses on the wrong unit of analysis. Recalling the UNODC's study of criminal networks, individuals can be evacuated from the network, but linkages will organically and rapidly reform around other individuals. Shaw's (2006) work demonstrates that in the case of Afghan opium, a complex web of primary cultivators, small- to middle-level traders, and traffickers occupy the network and engage in a multitude of financial and goods-exchange transactions with one another. The networks bleed into the formal state structure, which makes the possession of dual allegiances to both criminal networks and the formal state the norm among civil servants and politicians as opposed to the exception. To root out corrupt actors in this way would likely necessitate a complete lustration of the formal state structure, including law enforcement officials. This allows us to evacuate the notion that prevails at the narco-terror nexus—that revolution-bent armed groups have penetrated the otherwise methodically operated and sanitized state. Scholars and practitioners should shift their focus toward understanding relationships between nodal points in the now broadened criminal network structure in the absence of an actionable distinction between “bad guys” and “impartial police or bureaucrats” (Bojicic-Dzelilovic et. al. 2015).

### **Relationship type: symbiosis with the state**

Cockayne (2011) builds on the concept of organized crime as state cooperation rather than competition (Stepanova 2010) by theorizing organized crime as a system or strategy of governance, whereby the regime depends on organized crime networks to support (or at least not challenge) their political control. State actors and elites activate and perpetuate this strategy of governance by remaining somewhat distant from illicit activity while still benefitting from it. Maintaining a degree of plausible deniability allows elites in the government to “keep their hands clean” while engaging in an exchange of favors (De Danieli 2014), whereby state actors protect criminal syndicates from prosecution in exchange for “distanced” access to and mobility within the illicit economy (Godson 2003). In such a reciprocal relationship, gaining, holding, and wielding power is effective for both criminal networks and state actors (who are themselves a part of the network) in a violent political economy.

## **Conflict and violence**

Stepanova (2010) identifies the “post-conflict phase” as being particularly favorable to the illicit drug economy given that violence and conflict are fragmented and low-scale. This period is even more favorable in spaces where the structural causes of conflict are not addressed and where the state’s capacity to maintain a positive presence in conflict-torn and/or rural areas is compromised. Criminal networks that benefit from the fragile security conditions that prevail in the post-conflict period therefore have a vested interest in maintaining the status quo, which will likely lead them to attempt to spoil a peace process or long-term state-building and institution capacity-building process (Williams & Picarelli 2005), or at least motivate them to shape these processes to their advantage. Contributing to the maintenance of a criminal network that erodes the legitimacy of state institutions is one such way of achieving this goal. The system is thus self-sustaining and extremely difficult to dislodge.

## **THE STATE-CRIME NEXUS AND OPIUM CULTIVATION AND TRAFFICKING IN AFGHANISTAN**

To understand the pervasiveness of the opium industry in Afghanistan and the ubiquity of the organized criminal networks that underpin it, one must use the state-crime lens to analyze the period of history beginning with the establishment of the international state-building project.

Beginning in late 2003, the international community established “post-conflict” disarmament, demobilization, and reintegration (DDR) programs in Afghanistan as part of a war-to-peace transition that prioritized the de-linking of armed actors from their formal structures. Approximately 60,000 combatants were demobilized, but most of these individuals had limited economic opportunities as few were qualified to join the newly refashioned Afghan National Army (Shaw 2006). This perfunctory and inept peacebuilding strategy contributed greatly to the formation of criminal networks invested in opium cultivation and trafficking, as interpersonal connections between these armed groups remained without a coherent reintegration mechanism in place within the DDR program. These former combatants’ prevailing personal connectivity persisted after they shed formal structures, which allowed them to move seamlessly into the informal economy.

During the transition period, the “big-tent” approach favored by the authors of the Bonn Agreement and later President Hamid Karzai brought Afghan warlords into the formal state apparatus. This institutional po-

sitioning of former warlords decreased the conceptual distance between themselves (now “state” actors) and members of organized crime networks outside the state, and facilitated the envelopment of the state within such networks (Bojicic-Dzelilovic et. al. 2015). However, politicians and criminal colleagues have cultivated a cognitive distance to keep up a façade of impartiality and accountability to the institutions of the state. A vetting process for potential candidates in the 2005 Afghan election sought to identify individuals who would do exactly this: bring the criminal networks further into the formal state apparatus (Shaw 2006). Many were allowed to stand for election despite maintaining connections with their “criminal past” with intent to act on them once in power. Role-mutation as opposed to role-switching is key to understanding the difficulty of dislodging illicit economic actors and processes from the state and society. Godson (2003) notes that even for those who would like to adopt role-switching outright, these people will typically be physically or psychologically coerced into role-mutation by contacts from their “old jobs.”

Though foreign-backed law enforcement organizations, such as the Criminal Justice Task Force (CJTF), have investigated and prosecuted public officials charged with drug-related crimes, this method has achieved superficial results at best. In 2015, the CJTF primary court prosecuted a mere 34 public officials, including a general in the Afghan National Army who was convicted of trafficking offenses involving 19 kilograms of morphine (US Department of State 2016). These convictions represent the “low-hanging fruit” that bribable law-enforcement institutions in Afghanistan are capable of capturing. Afghan officials have admitted that perhaps up to 80 percent of personnel at the Ministry of the Interior benefit from the drug trade (Goodhand 2008). This could involve anything from the acceptance of bribes to the strategic appointment of police chiefs to protect and promote criminal interests (Shaw 2006). Highway police have been known to undertake drugs smuggling in government vehicles, and police chiefs in poppy-growing areas can expect to receive \$100,000 USD in bribes over 6 months while occupying a job that pays \$60 USD per month (Goodhand 2008).

The “privileged-access for immunity from prosecution” relationship that Godson (2003) describes as being the crux of criminal networks’ operations within the space of the formal state is also evident in the case of Afghanistan. Shaw’s “Pyramid of Protection and Patronage” (see Shaw 2006) demonstrates how a multitude of actors—from farmers and small-scale traders to key traffickers, law enforcement officials, and public officials—exchange immunity and protection for fees and privileged access to the market as described above. This symbiosis becomes self-sustaining

and self-protecting, as participation in trafficking eventually requires political protection, as anyone without it is likely to be picked off by the plethora of counternarcotic law enforcement institutions developed by state-builders. These are likely to be those traffickers who do little business and cannot afford to pay bribes. Therefore, the system becomes increasingly consolidated and controlled by fewer actors who become increasingly “untouchable” due to their endowment of political protections.

The social legitimacy of rules, another key element of understanding the state-crime nexus, could also help explain why individuals who become public officials do not sever connections to the “illegal sector.” In a state of transition, new rules or laws are not immediately ingrained in the psyche of the public. New rules of the game are developed ad-hoc in a space of uncertainty about what behaviors are accepted. In this way, the state is run neither by the old or new institutions, but by some sort of hybrid socialized legal system of common understanding. Goodhand argues that the formal illegality of the drug trade (i.e. its inclusion in the constitution) does not mean that the practice is illegitimate, or even morally condemnable in the eyes of Afghans, even if they are public officials. Indeed, “traditions, familialism, nepotism, and gift giving” are viewed as illicit or corrupt acts when employed in the public sphere per an imposed Western legal code (Bewley-Taylor 2013), a consequence of the ongoing state-building mission that seeks to recast Afghanistan in the mold of a unitary, centralized state.

Finally, it must be underscored that organized crime in the state-crime nexus relies heavily on fractured low-level conflict. Aside from being a barrier to the expansion of the central state into areas of endemic rural poverty, unpredictable violence has repeatedly caused NGOs—and their limited capacity to substitute for state-services or livelihood alternatives to opium cultivation—to pull their operations from provinces in the south of the country, where poverty and cultivation rates are the highest (Shawn 2006). Low levels of conflict are advantageous for the cultivation of drug crops: too much violence will restrict the movements of traffickers and the personal safety of cultivators, while too little conflict may welcome the expansion of the central government into the hinterlands where cultivation takes place.

The state-building project that seeks to establish a centralized Afghan state has been instrumental in weaving the opium industry into the societal fabric of the country. As the state-crime nexus demonstrates, opium cultivation and trafficking has financially and politically supported alternative centers of power outside the reach of the capital. Such weak state

penetration will not be rectified without addressing the state-crime nexus, and the current president of the country will forever be little more than the “Mayor of Kabul” (Gibson 2011).

## POLICY RECOMMENDATIONS

- 1) *Reduce the number and size of counternarcotic institutions to enhance their efficiency and durability.* Considering the overlapping mandates of the CNPA, ASNE, CJTF, and the MCN, streamlining the array of counternarcotic institutions operating in Afghanistan may have positive impacts. A strong, consolidated team of law enforcement experts conducting investigations of both public officials and suspected drug traffickers should be arranged from the existing infrastructure to avoid the needless duplication of efforts and potential for miscommunication between units. Reducing the size of the civil service could also help reduce the points of contact between the state and the non-state realms of the criminal network.
- 2) *Secure higher wages for a streamlined counternarcotic force to remove counterproductive effects of interdiction.* Recalling Goodhand (2008), a police chief working in an area of high poppy cultivation can expect to receive over 200 times his monthly salary in bribes taken from criminal networks involved in opium cultivation and trafficking. Giving wages that are competitive with what traffickers can afford in bribes could help increase the effectiveness of a reduced law enforcement apparatus. Current interdiction strategies are akin to fighting the Hydra of Greek mythology, as criminal network theory demonstrates that new nodes of connectivity will quickly replace those that are removed by law enforcement. Higher wages and the expected resultant increase in bribe immunity could help solve the issue of prosecutions being primarily lodged against “low-hanging fruit”—a consequence of the current strategy that is counterproductive because it removes the competition of the most powerful and politically protected strains in the illicit drugs economy, serving to enhance their formidability and pervasiveness. Well-paid, dedicated law enforcement officials may become immune to the culture of bribery the currently allows for the upper echelons of the network to operate with impunity.
- 3) *Redirect funds to address the underlying drivers of conflict that enhance the informal opium economy’s pervasiveness, and to enhance public trust in the government in Kabul.* While some public officials have been punished for their illicit economic activities under the current system, they represent a very small fraction of the total number of individuals in the formal state structure who are thought to be involved in the drug trade. In this way, making and

wielding poor counternarcotics laws does not enhance state legitimacy, as such policies developed at the narco-terror nexus attack the consequences and not the causes of illicit economic activity and enterprise development. With such a low rate of return on improving the rule of law, funds dedicated to these programs might be better spent on projects aimed at rectifying the underlying drivers of conflict in the country, not least of which include rural poverty and economic insecurity. Without a “miracle crop” available to replace the economic returns of cultivating opium, redirected funds should be applied to non-farm alternative livelihoods for opium cultivators. An additional consequence of an enhanced rural development strategy could be greater legitimacy directed towards Kabul, as rural populations see and experience the presence of the central government in their territories.

## CONCLUSION

Replacing the narco-terror nexus with the state-crime nexus as the lens of analysis elucidates the challenge of dislodging informal and criminal opium cultivation and trafficking networks in post-conflict Afghanistan. Focusing on organized crime, informal economy in transitions, and Afghanistan’s international state-building project has revealed why past policies have largely failed to dislodge such networks. In the case of Afghanistan, three broad yet interrelated drivers help to explain the pervasiveness of informal economic actors in the post-conflict period. First, we can better clarify the difficulty of dislodgement when the opium industry is understood to be perpetuated by pliable and regenerative criminal networks who can circumvent policies aimed at their removal, considering that such policies misguidedly target non-state armed groups. Second, the state-crime nexus explains pervasiveness when the relationship between “criminals” and “the state” is symbiotic rather than conflictual. In this case, informal networks come to envelop much of the state and its internationally legitimized institutions. Third, the state-crime nexus reveals the essentiality of low-level, fractured conflict to the continued entrenchment of the opium trade in Afghanistan. Low levels of conflict hinder the extension of the state into the opium-growing hinterlands, but are manageable enough to allow traffickers and cultivators to conduct their activities with relative security.

These drivers of the prolongation of the Afghan opium trade suggest areas where new policy research on drug-related organized crime in Afghanistan ought to be conducted. By adopting a criminal network approach, policy researchers will be better able to understand the motivations of participants in the drug trade and identify how to disincentivize

them. Symbiosis between crime and the state should inspire policies that abandon the “amputation approach,” whereby “corrupt” officials can be rooted out of the state to preserve the health of what is left. Finally, efforts to secure Afghanistan should focus on eroding the alternative centers of power that breathe life into the illicit drug trade.

Although the state-crime nexus theorized here is an invaluable tool for understanding the situation in Afghanistan, its main limitation—and therefore the main limitation of this paper—is that it is highly context-specific and thus difficult to generalize. This does not bode well for the transferability of the study to other post-conflict contexts. Indeed, few other post-conflict contexts are likely to possess most of the factors that contribute to proliferation of the state-crime nexus in Afghanistan, especially when one considers the importance of the international state-building context in Afghanistan to the explanatory capacity of this lens. Aside from Iraq and perhaps Kosovo, there are no comparable cases to which specific lessons drawn from the international mission in Afghanistan can be extrapolated. However, the state-crime nexus can still inspire investigation into similar facets of informal economy, its pervasiveness, and its relationship to the state in other countries recovering from conflict.

## NOTES

- <sup>1</sup> Some relevant characteristics of the international state-building mission in Afghanistan will be discussed here, but will only provide a partial picture of the complexities present there. For more detail see Cramer & Goodhand (2002) and Maley (2006).
- <sup>2</sup> Consider perambulatory clause 7, as well as articles I (4) on elections and III (C,6) on human rights (Agreement on Provisional Arrangements in Afghanistan 2001).
- <sup>3</sup> See Evans (1995).

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# ADD TWO TEASPOONS OF WOMEN: WOMEN, EMPOWERMENT AND DEVELOPMENT POLICY

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Decades ago, the field of development shifted towards women-oriented projects, with the belief that placing women at the center of change would produce optimal results for all. While a welcome transformation in policy, such a gendered approach in practice continues to miss the mark, largely ignoring the underlying division of labor that exists in most societies. Specifically, projects that focus on expanding women's market-based choices completely ignore the one domain in which women face no choice at all: the household. This paper argues that in the absence of a careful consideration of the sexual division of labor, adding women to such development programs does *not* in fact empower them. Instead, it adds market-based work to their existent household burden. While much research has been done on this subject over the last several years, the fact that it is still a widespread problem across the development sphere justifies continued attention on the matter.

To understand the ways in which development programs reinforce the sexual division of labor, it is first important to understand the reasoning behind this division. The traits of *altruism and selflessness* are largely attributed to performing unpaid housework; these traits are then considered integral to women, and by extension, the work that they do. Marçal (2015, 18-28) argues that the division of activities performed in both the market and the household are inherently tied to the motives with which these activities are

performed. The former functions on self-interest, while the latter functions on altruism. The exclusion of housework activities from the realm of paid labor has been given countless justifications, ranging from biological to economic. The institutionalization of such thinking is also evident in policies regarding childcare across the world, not just in development practice. For example, in the case of the United States, the reluctance of the government and employers to bear the costs of childrearing by employees is reflected in a lack of government support for day care and maternity leave. This has kept women in the role of primary caregiver, and allowed them to be treated as a "reserve army of labor." Even when they do enter the workforce, unfriendly policies in the United States make it harder for them to survive as equals (Folbre 1984, 72-88). After generations of reinforcement of this norm in society, the underlying assumption that women are obligated to be primary caregivers becomes internalized by women themselves. For example, women might be willing to undertake relationships in which they do not have an equal share of power because they consider it a natural part of motherhood (Razavi and Miller 1995, 17).

The main shortcoming of simply replicating conventionally-advocated development policies for women's empowerment is that the results are not in fact reformatory, since they are often based on this sexual division of labor. This point is well highlighted in the two primary ways that gendered development policies have been executed over time. In the first approach, women's empowerment is viewed as an instrument to achieve other goals that are deemed important for development, such as children's health and education. Here, development interventions simply improve the efficiency of women's activities within their pre-determined role as primary caregivers, which Kabeer (1999, 450) argues cannot be seen as empowerment.

Programs that rely on social networks built by women are also guilty of this utilitarian approach. Such programs hold onto preexisting informal social networks as an important factor in development interventions. According to Molyneux (2002, 178), although such a "social capital" approach includes women, it is primarily through treating them as unpaid volunteers. This again draws on the assumed *altruistic* traits of women as part of their social responsibilities. As Menon (2009) points out, this emphasis on gendered roles is blindly reproduced in many Indian development schemes specifically, and is viewed and evaluated as "empowerment." For example, with regards to the extension of women's nurturing responsibilities in forest management programs in India: although they include local women in conservation efforts, this leaves their status quo fundamentally

unchanged as they are obligated to report to men, and have no control over forest protection rules (Cornwall 2003).

In the second approach, women are eased into the market to enable them to enter the paid labor force. This differs from the previous approach, as it tries to go against the grain of social norms. However, it excludes the corresponding expansion of men's roles. While the methods used vary, the most common approach is to provide some form of monetary push to boost entrepreneurial activity. As explained in Goetz and Gupta's study in Bangladesh (1996), access to such incentives in most situations is not transformational, as it is the men who eventually siphon off the funds or decide how to use it.

Similarly, as a result of export sector expansion in many developing countries, the feminization of the labor force has certainly given rise to economic opportunities for women. Unfortunately, it is also widely known that these opportunities are marred by abysmal working conditions, job insecurity, and poor wages. The only factor considered by employers in this situation is the comparative advantage that women offer, namely the systemically low wages at which they can be employed as compared to their male counterparts (Çağatay and Özler 1995). While this form of employment in such situations is better than the status quo, in the words of female workers themselves, the exploitative comparative advantage is a reflection of a systemic undervaluation of women's labor (Kabeer 2004).

What then are the practical problems arising from these approaches, and why does the sexual division of labor need to be addressed in development programs? The rigidity of this division creates a suboptimal situation for women, one where choices are open to them, but their ability to choose is limited by their primary role as caregiver. Termed as the "double" burden, this problem is further exacerbated in developing countries where no alternative arrangements for housework can be availed. This is especially problematic for poor women (McNay 2005). A simple example of this is in a recent United Nations International Children's Emergency Fund (UNICEF) project in Guatemala where female volunteers were expected to work eight hours a week with no support for care at home. Many volunteers involved in the project ended up quitting, as the burden was simply too much (Molyneux 2002).

Empirical evidence shows that the trade-off between hours spent on leisure, remunerated work, and housework is often quite high for women regardless of the level of development in their country. For example, as analyzed by Kabeer (1999), a study by Pitt and Khandker shows that while Bangladeshi women who had access to credit put in more time in

the market, men who had access to credit (either by themselves or through their wives) reported a higher number of hours spent on leisure, a luxury women could not afford in this context. Chen et al. (2007) find analogous evidence for women in Germany. This shows that ignoring such significant cultural and gendered differences within the household not only dilutes the impact of women-centric development interventions, but also leads to detrimental personal and economic effects for women.

Although there are tangible benefits that can arise from development programs for women, and they have the potential to provide an absolute benefit—such as an increase in household income, or the improvement in a mother's health status—does this truly *empower* them? While these programs may increase the choices available to women in terms of exploring new avenues, these options are secondary to their duties of housework. To ease this burden on women, it is critical that development programs support policies that can help distribute this burden across parents, both male and female. The policy implications of such an approach are not highly demanding, especially if supported by political will. As Folbre (1984) argues, the welfare of children is an asset with public externalities, and the contribution of the state towards public day care and parental leave can help reduce the burden of the existing division of labor by a substantial degree. This can also avoid the possible inequalities caused by the privatization of care (Parreñas 2008). Development programs set against this background, with that of basic security for mothers and fathers alike, are far more likely to yield sustainable, positive results. Because, while it can be argued that the marginal benefits of policies now can be a “stop-gap” solution, they are in fact more likely to translate into empowerment if an optimal division of labor is achieved.

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# EXAMINING NIGERIA'S LEARNING CRISIS: CAN COMMUNITIES BE MOBILIZED TO TAKE ACTION?

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## INTRODUCTION

Until recently, policy design and intervention for basic education in developing countries was unduly focused on increasing school enrollment, with little attention paid to improving the quality of learning. Despite appreciable progress in reducing the number of Out-of-School Children in line with the global Millennium Development Goals, evidence continues to show that children are not in fact learning (Duflo, Dupas and Kremer 2015; R4D 2015). The 2014 World Bank Education for All Global Monitoring Report showed that of the world's 650 million primary school aged children, "250 million...are unable to read, write, or perform basic mathematics" (UNESCO 2014, 19). One way countries have addressed this issue is through the use of School-Based Management (SBM) systems, which seek to improve accountability and educational outcomes through the involvement of teacher, parent, and student input.

This essay will examine the extent to which SBMs mobilize both private and collective action, that is, actions taken by parents or community members to improve accountability and the learning outcomes of students. Using Lagos and Kano (the two largest cities in Nigeria)

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as case studies, this study discusses a variant of SBM, the School-Based Management Committee (SBMC), and its effects on learning outcomes. Learning outcomes are assessed through composite surveys that were collected by the Education Sector Programme in Nigeria (ESSPIN) and the Oxford Policy Management (OPM) institute in 2012 and 2014. This paper finds both positive and negative effects of SBMCs. When functional, SBMCs improve intermediate outcomes, such as school resources and student enrollment, however, there is little evidence to suggest they improve the learning outcomes of students. Because SBMCs vary widely in functionality—based on differences in local politics, poverty, and other contextual cultural factors—the ability of SBMCs to engender collective action seems to differ based the quality of their leadership.

## WHY DOES SCHOOL-BASED MANAGEMENT MATTER?

According to the World Development Report (WDR) *Making Services work for the Poor*, low-income populations are more likely to hold their country's service providers accountable if they are empowered with information and are part of the decision-making process. Unfortunately, developing countries are often plagued by pervasive corruption and weak infrastructure, which makes it more difficult for citizens to hold their representatives and policymakers accountable for their performance. To reverse such trends, especially in the education sphere, many developing countries have adopted the SBM model to expand accountability measures of public service institutions, and in turn improve the quality of basic education (Carr-Hill et al. 2016). Introduced in most Sub-Saharan African countries since the early 2000s, SBMs transfer school decision-making on school authorities and responsibilities to local stakeholders, like principals, teachers, students, and community leaders (Bruns, Filmer and Patrinos 2011). Through the ability of stakeholders to have input on decisions such as financing, teacher training, and school governance (Geo-Jaja 2004), the SBM aims to enhance stakeholders' ability to hold frontline service providers *directly* accountable, which in turn is expected to improve the quality of service delivery (Bruns, Filmer, and Patrinos 2014).

## RELATED LITERATURE ON INFORMATION, BENEFICIARY PARTICIPATION, AND SERVICE DELIVERY

Since the SBM model is still relatively new, more empirical research is certainly needed to assess the program in full. Of the studies that have been done, it is evident that SBMs result in both positive and negative outcomes. While some authors argue that increased school autonomy and strength-

ened accountability through SBMs can enhance school outcomes (Duflo, Dupas, and Kremer 2015), others have found that contextual factors like ethnic fractionalization considerably hinder the ability of citizen-clients' to hold service providers accountable (Björkman and Svensson 2010). Moreover, in an assessment of SBMs in Nigeria, Geo-Jaja (2004) argued that they could serve as a cost sharing method to reduce the government's financial burden of providing free education.

In another study conducted in India, Banerjee et al (2008) found that despite the SBM model providing information and training for stakeholders, in addition to organizing volunteers, it resulted in no change in levels of participation, teacher effort, or student learning outcomes. The study concluded that although beneficiaries valued education, they faced constraints, which hindered their participation to improve public schools. For instance, there was a general skepticism among poor villagers (parents and community members) on whether the quality of education is something worth fighting for. Similarly, another study from Kenya showed that an SBM-driven information campaign, which sought to increase citizen activism through parental participation, had no impact on learning outcomes, private or collective action (Lieberman, Posner, and Tsai 2014).

## CONTEXT, DATA, AND ANALYTICAL FRAMEWORK

With more than 8.7 million Out-of-School Children—the highest in the world—Nigeria continues to find ways to enroll students in primary school, and improve their educational outcomes. A recent household assessment of Nigerian children's literacy and numeracy skills shows that even when in school, children are barely learning even basic skills. In 2006, the SBMC model was adopted in Nigeria by the National Council on Education to improve the quality of basic education.

Nigeria's SBMCs are composed of community stakeholders, and have objectives synonymous with standard SBMs. Aside from participating in school governance, SBMCs in Nigeria are also expected to mobilize resources for school development, ensure the quality of education delivery, promote accountability, and provide a productive and safe environment through which all children can learn (Gershberg et al. 2015).

When SBMCs were first established, several assessments showed that they were not functional. (FME 2012). For example, one study in 2009 pointed to a lack of resources and training among SBMC stakeholders, which resulted in poor educational quality (Hughes 2009). As a result, in 2010, the Education Sector Programme in Nigeria (ESSPIN) partnered with the Universal Basic Education Commission (UBEC) and other

Civil Society Organizations (CSOs) to implement a six-year program to strengthen the capacity of SBMCs through trainings and mentorship programs (Pinnock 2014). Since then, ESSPIN has activated and trained 10,437 SBMCs in accordance with Nigeria's Ministry of Education's effectiveness criteria. SBMCs were implemented in all schools in Lagos in 2012-2013 and in Kano in 2013-2014. In Lagos, each SBMC serves a cluster of up to 10 schools, whereas in Kano, each school has an SBMC, based on its distance between schools (Hughes 2009; Bawa 2009). Survey data from Cameron and Ruddle (2015b) show that overall functionality of SBMCs in Lagos schools increased from 14 percent in 2012 to 74 percent in 2014, whereas it stagnated and remained low at 10 percent in Kano (Cameron and Ruddle 2015a).

To date, there has been little quantitative research done to assess these SBMCs. Therefore, to understand their outcome on learning, this paper provides an analysis of composite surveys conducted in 2012 and 2014 by OPM. It also analyses data from various Cast Study Reports on SBMCs in Lagos and Kano State. Evidence of actions taken, or motivated by SBMCs, is used as a barometer for voice. The impact of their activities on educational outcomes is used to examine the extent of accountability. Outcomes are analyzed at the school-level (resource mobilization and school infrastructure), teacher-level (competence, head-teacher effectiveness, and presence) and student-level (enrollment, retention, progression, and test scores). The functionality of SBMCs (Table 1) is used to show the dimensions along which SBMCs differ.

## ANALYSIS

The functionality of SBMCs is highlighted through the extent through which they mobilize collective action. In Table 1, *collective action* is assessed by the number of criteria each SBMC fulfills. If an SBMC fulfills 5 out of 10 criteria, it is seen to embody positive collective action. The criteria for functionality were selected by ESSPIN and Nigeria's Ministry of Education. In each city, rounds of Composite Surveys (CS) were conducted in 2012 (CS1) and 2014 (CS2), to assess the progress of SBMCs in meeting the criteria for functionality. Positive and negative signs are also listed to denote places where SBMC's improved (denoted by +) from 2012-2014, and places where SBMCs fell short or got worse (denoted by -). The numbers in Table 1 represent the percentage of total surveyed schools that meet each of the criteria.

As is demonstrated by the table, SBMCs in Lagos have made progress in encouraging local actors to push for improved education service deliv-

ery. However, SBMCs in Kano still face collective action problems. This is reflected in the fact that although many SBMCs conducted awareness campaigns and networked with local stakeholders, the percentage of schools meeting SBMC functionality fell between CS1 and CS2, showing a decline in their ability to take collective action. Variations in the functionality of SBMCs also point to the role played by contextual factors such as local politics and the prevalence of poverty in generating collective action.

**Table 1: SBMC functionality in CS1 and CS2**  
*(% of schools meeting SBMC criteria)*

Criteria for functionality	Lagos			Kano		
	CS1 (2012)	CS2 (2014)	+/-	CS1 (2012)	CS2 (2014)	+/-
(1) 2+ meetings this school year	30.9	80.9	+	37.2	16.3	-
(2) Conducted awareness-raising activities	29.8	75.2	+	32.9	53.2	+
(3) Addressed exclusion by taking actions	21.8	40.6	+	24.3	16.6	
(4) Networked with CBOs/traditional and religious leaders/institutions/other SBMCs	5.1	66	+	8.8	56.9	+
(5) Interacted with local education authorities (LGEA) on education service delivery issues	16.4	43.7	+	16.3	11.6	
(6) Has women's committee	22.2	64.4	+	2.8	11	+
(7) Has children's committee	22.6	66	+	17	10.6	
(8) Contributed resources for school development	27.3	77	+	38	55.1	
(9) Chair visited school 3+ times from the start of new school year	10.6	51.6	+	21.3	6.4	-

<i>Schools meeting functioning SBMC standard</i>	14.4	74.3	+	19.8	10.3	
<i>Number of SBMC functionality criteria met (19)</i>	2	5.6	+	2	2.6	

*Source: Cameron and Ruddell (2015a, 2015b), with author's modifications.*

*Note: + denotes significant improvement between the 2012 and 2014, while - signifies the opposite (using a t- test;  $p < .05$ ).*

Table 1 also shows that SBMCs in Lagos and Kano differ based on the number of meetings each holds, and if the Chairman visits at least three times during the school year. This evidence demonstrates the importance of leadership in the success of SBMCs.

There is also evidence here that SBMCs take actions to improve educational outcomes. In both Lagos and Kano, SBMCs inspired actions by local education stakeholders. In fact, this is supported by a study that was conducted in both states and found that traditional and religious leaders took direct actions to resolve the issues that were raised after each SBMC forum. For example, in Lagos, a religious institution rebuilt a previously vandalized school fence, and a traditional leader financed the hiring of 20 additional teachers for riverine schools facing teacher shortages. In both instances, student enrollment increased, and children learned in safe and productive environments (Durnin, 2016).

Similar evidence of action is apparent in Kano. In two separate instances, SBMCs mobilized communities to contribute to school infrastructure projects (ibid.). In one community, the construction of a junior secondary school block increased the number of students who successfully transitioned from primary to secondary school. Also, available evidence indicates that SBMCs collaborated with religious and traditional leaders to reduce child marriage, which increased girls' access to schools, and improved overall child protection. Unfortunately, Kano continues to face a widespread problem with children dropping out of school due to issues related to poverty. As such, scholars suggest more research be conducted on poverty as a barrier to education to fully understand the effectiveness of SBMCs in Kano.

In both cities, evidence shows that SBMCs have been the most effective at mobilizing cash and in-kind donations to support school development. Usman (2016) shows that SBMCs in ESSPIN-supported states raised an equivalent of GBP4.8 billion between 2012 and 2015. The high percentage of resources raised within communities also points to the strong local support for basic education. Unsurprisingly, SBMCs in the rural areas

spent more resources on school infrastructure (construction/renovation), compared to their urban counterparts, which spent more on teaching and learning quality.

SBMCs in both cities have also been key in reducing teacher absenteeism and lateness, as well as incidences of sexual harassment and bullying in schools, particularly in rural areas (Pinnock, 2012). This is a result of SBMC meetings boosting the voice of school children as well as encouraging their active participation in school operations and decisions. Specifically, in Kano, by acting in line with the children's desires, SBMCs improved teacher timeliness and behavior (Pinnock 2014; Little and Pinnock 2014). SBMCs in both cities have also used local stakeholder power to reverse the local government and educational authorities transferring or replacing high-performing head-teachers, a sign that SBMCs are enhancing head-teacher effectiveness in some areas, namely because it has created an incentive for teachers to work effectively and collaboratively with SBMCs and their host communities to improve school governance.

Furthermore, the evidence indicates that in both cities, SBMCs play a pivotal role in increasing primary school enrolment and retention, especially for disadvantaged girls. This influence appears stronger in rural areas as compared to urban areas, which suggests the importance of community engagement in improving educational systems. Increases in enrollment have been particularly evident in Kano. According to Nigeria's Annual School Census data, between 2009 and 2013, enrolment in ESSPIN supported schools with SBMCs was 60 percent, as compared to the statewide enrollment at 40 percent (Cameron and Ruddle 2015b).

While SBMCs have garnered positive outcomes in both Kano and Lagos, there is evidence of their negative impact in some communities. Notably, in Kano, SBMCs campaigns in Kano have inadvertently affected the quality of student learning. For example, average scores remained unchanged between 2012 and 2014 (*ibid.*). Furthermore, although SBMCs in urban areas in Kano spent a portion of their resources on teacher development, there is no direct evidence to support that these efforts improved teacher quality. It is important to note that the limited impact of SBMCs in Nigeria could reflect the fact that they have only functioned for a short time—too short, perhaps to generate tangible impacts. A study of SBM reforms in the United States, for instance, found that it took at least eight years for reforms to yield significant test score changes (Berrera-Osorio et al. 2009)

## CONCLUSION

This paper argues that increasing stakeholder participation and voice via SBMCs can improve educational outcomes and accountability in Nigeria. The activities of SBMCs are shown to improve intermediate outcomes including enrollment, teacher attendance, and school resources. Successful and unsuccessful SBMCs seem to differ mostly on strength of leadership, yet there is still more research necessary to understand the effect of SBMCs on overall learning outcomes. More research is especially necessary to assess the role of parental expectations and local politics in improving school outcomes. As national and international development institutions continue to expand access to education in the developing world, understanding the important role played by SBMs would be key to improving the quality of education.

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