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DIRECTOR OF UNDERGRADUATE STUDIES
SENIOR CAPSTONE ADVISOR
DEPARTMENT OF POLITICS
DEVA WOODLY
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Cory grew up in Ann Arbor, Michigan before moving to California where she studied education and political science at Santa Monica College before transferring to the New School to study politics with a focus in legal studies.

Born in NYC, Julia has spent a handful of her childhood years growing up in the Middle East. She has a history in basic photography, and at her years at Lang, Julia has focused on politics with an interest in environmental studies. She hopes to pursue a future mixing the fields of art, the environment, and politics.

Emily spent her time in the politics department at The New School focusing on law and criminal justice. She has a special interest in wrongful convictions after taking a summer course on the topic. In the future she plans to potentially pursue a career in the legal nonprofit sector.

Cameron Cory is a Politics student, originally from Portland Oregon. Intertwining her psychology minor with her politics major, she has sought to find unravel societal paradigms within the current political atmosphere. She has a strong focus in gender studies, and prison abolition.
Mia Halsey is a writer and student at Lang and NSSR. She is interested in feminism as method, the politics of work, and technologies of colonial-imperial accumulation. She extends her gratitude to former professors Asma Abbas, Sandro Mezzadra, and Mayra Cotta for their intellectual generosity and unwavering commitment to another world.

Saleem grew up in New Delhi for most of their childhood. They are interested in the history of the state form under the capitalist mode of production. In the future they plan to pursue an MA in Historical Studies at NSSR.

Nicholas Lumalcuri has always possessed a passion for space. When he was young, he wanted to be an astronaut. Starting college he wanted to pursue a career as a naval flight officer to pursue a career as an astronaut. Sadly, he is not intelligent enough to comprehend basic math. He wants to pursue a career as a deck officer.

Christina Marshall grew up in Seattle, Washington, spending most of her time outdoors in the beauty of the Pacific Northwest. While at Lang, she studied Politics and History, focusing on environmental justice and its intersection with politics. Christina will work to help protect the beautiful environment that she grew up in,
Michelle Mason majored in politics with a focus in legal studies at The New School. She has dedicated her academic and professional career towards issues surrounding race, gender, and criminal justice. In the future, she hopes to obtain a degree in law.

Michelle Mason

Alice Sueko Müller’s (BFA Fashion Design at Parsons & BA Politics at Lang) interests lie within the intersection of politics, technology, business & design. Alice will be continuing her studies as a graduate candidate of 2021 for MSc & MA Innovation Design Engineering at the Imperial College London and Royal College of Art in the UK.

Alice Sueko Mueller

Alex is interested in critical theory, cultural communications, and the intellectual history of modern political thought. He will graduate in May 2019 with his BA in Politics and will pursue his MA in Politics at The New School for Social Research next semester.

Alex Sirgenson

Originally from Seattle, Washington, Jasmine has always had an interest in politics and international affairs. After graduation she plans on pursuing a career in her field and as both of her parents are teachers and grandparents are professors, possibly education.

Jasmine Short
Journal Production

Editor

Christina Marshall

Layout & Design

Alice Mueller

Creative Direction

Julia Arce
Emma Contreras
Nick Lumalcuri

Copy Editors

Alex Sirgenson
Mia Halsey
Cameron Cory
Saleem Koshy

Proofreaders

Cory Anderson
Jasmine Short
Michelle Mason

Cover Art by

Colin Harrington
The Limits of Progressive Prosection

Cory Anderson
Recently the United States has seen a rise in the number of individuals running for District Attorney on what has been referred to as a progressive platform, leading to a sharp rise in “Progressive Prosecutors.” Before that, we saw a spike in overzealous “traditional prosecution” in the 1990s, during one of the harshest periods in the history of the criminal justice system. The term “Progressive Prosecution” has a broad scope of meaning due to the sharp and narrow meaning of what is generally thought to be “traditional prosecution” and the abundance of discretion given to prosecutors. Additionally, the current discussion around Progressive Prosecution tends to be categorized a “new” movement, and largely excludes individual prosecutorial efforts prior to roughly 2016. This essay will examine the possible definitions of Progressive Prosecution and highlight individuals who fall under the umbrella of the “new” categorization of the term, while examining their career trajectories in terms of effectiveness and outcomes. It will also examine the shift in public attitudes concerning the expectations of prosecutors by comparing current public opinion with more historical public opinions and their implications for the changing paradigm of prosecution. By doing so, I hope to shed light on the limitations of pursuing a truly progressive agenda, by way of progressive prosecution within the bigger picture of the deeply flawed criminal justice system, and to refocus the light on bigger calls to reform.

Definitions

The origins of public prosecutors in English common law and their development in the American justice system is perhaps under-written about. In the same vein, it is not difficult to find an American citizen who is unaware of the function or purpose of a prosecutor, and voter turnout for District Attorney’s races often remains quite low (cite). The American federal system and the strong presence of local law enforcement, have contributed to the broad and considerably undefined autonomy of the federal prosecutor. In its simplest terms, however, most would define the American prosecutor as an individual who decides if a person who has violated the law should be charged. They typically are the legal party responsible for bringing a case against the individual who has been accused of violating the law and they most often represent the government. Prosecutors have a large amount of discretion in selecting which cases they pursue and little stands in their way to check them within this system (Harvard). Where there is a divide however, is in differences in prosecutorial philosophy regarding who your loyalty is to as a prosecutor.

Traditional Prosecution

The traditional role of a state prosecutor in the 20th and 21st century has been to be “tough on crime”, aligned with law enforcement, and viewed as protecting the public by putting criminals behind bars. Using a strong punitive approach has more often than not lead to the reelection of prosecutors, and was therefore thought to be a strong campaigning tactic. Often times these tactics ultimately even lead to their election in higher offices (The New York Times). Senator Kamala Harris, for example, is facing strong public scrutiny after announcing her bid for the 2020 presidential election, for her prosecutorial history as District Attorney in San Francisco from 2004 to 2011. As District Attorney, Senator Harris employed tough-on-crime tactics that were once thought to surely aid in political career advancements. Primarily due to the visibility of the Black Lives Matter movement in 2013, the Democratic electorate has largely shifted their views on policing and prosecution (Vice.) What would have boosted Senator Harris’s electability ten years ago is now perhaps the biggest hurdle she will have to address in her campaign. The current political climate is drastically different then that of San Francisco during her first campaign for District Attorney in which she beat out incumbent Terrence Hallinan who described himself as “America’s most progressive district attorney” (politico). Now the democratic electorate is asking Senator Harris to explain move from her past as a prosecutor, such as her support for a bill that called for the imprisonment of parents whose children were reported as repeatedly truant in schools (cite).

The practice of using prosecution as a springboard to politics is longstanding. Some ar-
gue that use of the career in this way- to further one’s own personal aspirations- has contributed to the growth in tough-on-crime standards and shaped the criminal justice system as we know it today. While this is certainly true, there has been a sharp departure from the traditional view of prosecutors. The public perception is now gravitating towards the idea that prosecutors are capable of doing great harm in the criminal justice system in some areas (NYT Book review). For the first time, we are seeing instances of politicians running for higher office being scrutinized for their tough-on-crime past as prosecutors. This reflects the opposite sentiments of the earlier eras of prosecution, which have granted the role the abundance of authority and discretion for which the position is known for today. The American prosecutor is a unique legal actor and unlike any other in the world. In 1704, Connecticut was the first to adopt a system of public prosecution as opposed to private. The logic behind its decision to have a public prosecutor was explained in a 1921 Connecticut court decision (sunypress):

In all criminal cases in Connecticut, the state is the prosecutor. The offenses are against the state. The victim of the offense is not a party to the prosecution, nor does he occupy any relation to it other than that of a witness, an interested witness mayhaps, but nonetheless, only a witness... It is not necessary for the injured party to make complaint nor is he required to give bond to prosecute. He is in no sense a relator. He cannot in any way control the prosecution and wether reluctant or not, he can be compelled like any other witness to appear and testify. (Mallery v. Lane 1921, p. 138)

This desire to shift prosecution from a centralized position to a decentralized one reflects the American colonists’ intention to shun any aspect of the centralized British government and to place authority in the hands of locals. This desire gave birth to the the very unique functions of the American prosecutor as we know them today. Up until 1820 during Andrew Jackson’s presidency and a push for democratization by way of favoring elections over political appointments, the prosecutor was an appointed position (Prosecution in America). Today, the election process remains the strongest of the very few checks existing against prosecutors.

Tough-on-crime

While many politicians and former prosecutors are now facing backlash for their tough-on-crime policies, this was certainly not always the case. In fact, many of these individuals experiencing criticism from progressives have noted that their policies weren’t even considered to be tough-on-crime at the time. They were simply doing their jobs and responding to the needs of the public. Emphasis was placed on protecting victims instead of incarcerating individuals. We now see this for the spin that it can be, but it wasn’t always so obvious. Many factors contribute to the perception of the prosecutor operating as the highest form of law enforcement. The functions of the job are plentiful and unclear. Over time, the DA has developed the authority to direct law enforcement in their districts, including the ability to tell these police departments where to increase their patrolling.

The United States criminal justice system has received increased criticism in the past five years, specifically towards the issue of mass incarceration and its racially disparate outcomes. The disproportionate targeting of black and minority communities can be traced back to a “backlash” of the progressive civil rights movement of the 1960s (Berkeley). The bottom-line results are that the United States is currently the world leader in prison population rate, and incarcerates more people than any other nation (Brennan Center). In the 1970’s we began to see the emergence of racially-laced fear tactics and rhetoric from both political parties that pushed for tough-on-crime policies. Nixon’s declaration of the “war on drugs” marked the point in which his deployment of a “tough-on-crime” response was to be carried out by law enforcement. During his time in office, the prison population
nearly doubled from 329,000 to 627,000, and disparately affected communities of color the hardest. This was driven primarily by legislation such as the 1994 Crime Bill, and aided by prosecutorial discretion and compliance. Not only was appearing to be the absolute toughest on crime the best political strategy for politicians, but the best political strategy for District Attorneys as well, resulting in the solidification of the tough-on-crime image of the job.

Black Lives Matter and Calls for Reform

Despite money being poured into reform-minded campaigns by Soros and various other donors, the country would not have elected these prosecutors with money alone. The Black Lives Matter movement primed the country for the movement of Progressive Prosecution, and thanks to BLM a push for criminal justice, reform has been sweeping the nation. The cultural impact of BLM and its ability to pave the way for mobilization efforts has been so utterly extensive that it is difficult to measure (ACLU, 2018.) The movement has had a profound impact on the current political and legal landscape, and not only is it directly responsible for the ability of progressive prosecutors to be elected into office, it also mobilizes the electorate to vote corrupt prosecutors out of office. Black Lives Matter and the organizational efforts that it encompasses aim to take cruel and corrupt prosecutors out of office and can be credited with the removal of one of the deadliest prosecutors in America, Angela Corey of Jacksonville Florida.

When Marissa Alexander fired a warning shot at her abusive husband in 2012, Angela Corey vigorously prosecuted her, securing her a twenty-year sentence. After a judge released Marissa Alexander and ordered a retrial, Corey fought to put her back in prison and wanted to secure a sixty-year sentence at her retrial (Slate, 2016.) She was finally released in 2017 after serving almost six years in prison. While Corey has received criticism for this among many other highly concerning actions, such as sending more individuals to death row in Florida’s history, she received her most high publicized criticism when she was accused in 2013 of botching the prosecution of George Zimmerman for killing Trayvon Martin. In 2016, Florida voters gave her just twenty-six percent of the vote while her reform-minded rival beat her out by a thirty-eight point margin.

Progressive Prosecutors

Kim Foxx

In 2016, Cook County Illinois elected Kim Foxx as its State’s Attorney, beating out her incumbent Anita Alvarez by almost 40 points (Bazelon, 83.) Prior to this election, dissatisfaction with Alvarez’s performance was brewing as Chicago was appearing on the radar of various reformers. Aspects of Alvarez’s prosecutorial record rung true to the principles of traditional prosecution, such as her support for mandatory minimums for gun possession (Bazelon, 81). While Chicago organizations such as The People’s Lobby and SOUL were sharpening their focus on unseating Alvarez, discontent over her decision to not file charges against the police officer who shot Laquan McDonald was also growing. This energy was primarily fueled by the work of Black Lives Matter. During this time, Kim Foxx proved herself to be a strong challenger against Alvarez. Foxx mirrored the growing frustration with Alvarez and traditional prosecution when she went on record saying “I became very frustrated by what I found to be not the pursuit of justice, but the pursuit of convictions” while talking about her experience working in Alvarez’s office (Bazelon, 82.)

With her magnetic campaigning skills, the growing energy of the public generated by Black Lives Matter, and $400,000 in contributions from George Soros to the Illinois Safety and Justice PAC, Foxx ultimately raised $3.8 million during her campaign (Bazelon, 83.) Her sweeping win signaled the beginning of an exciting and promising new strategy for reformers and activists to fast-track policy changes that had proved difficult thus-far. It marked a turning point in the movement for prison reform (Bazelon, 83). With the growing momentum and support from both activists and donors, elections like Foxx’s were made possible across the country. George Soros contributed an estimated $11 million across fifteen races from 2015 to 2016 and the
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Open Philanthropy Project contributed $6 million towards prosecutorial reform as well as an additional $1.25 million from its cofounder Cari Tuna.

**Kim Ogg**

Mirroring the prosecutorial reform efforts in Chicago, Harris County, Texas was the next city on the agenda. Despite the fact that Harris County (which encompasses Houston and its suburbs) hadn’t had a Democratic D.A. in four decades, Kim Ogg won the primary on a relatively progressive platform (add). With support from the Texas Organizing Project which previously focused its efforts on issues such as housing, education, and healthcare, they raised $1.5 million for her campaign while a PAC funded by George Soros contributed almost $900,000 (Bazelon, 84.) (Mention how Sandra Bland galvanized the Texas Organizing Project.) Kim Ogg was vocal from the beginning of her campaign about her goals to decriminalize marijuana and after a young Harvard Law School graduate in Texas sued Harris County on behalf of those who couldn’t make high bail set for small offenses such as driving without a license, she also focused her campaign efforts on bail reform. Once in office, she followed up on these efforts by directing her prosecutors to recommend the pretrial release of most individuals in Harris County accused of misdemeanors. About five months after Ogg’s election, a landmark decision in the bail reform suit was handed down by Judge Lee Rosenthal. In his opinion he quoted heavily a brief filed by Ogg on the side of the plaintiffs writing; “The Harris County District Attorney emphasizes that ‘holding un-adjudicated minor offenders in the Harris County Jail solely because they lack the money or other means of posting bail is counterproductive to the goal of seeing that justice is done.’ ” (Bazelon, 84-85.)

**Larry Krasner**

Shortly after Kim Foxx’s election, many other progressive DA candidates started to pop up around the country. One such campaign that garnered mass attention was that of Larry Krasner, a well known former criminal defense and civil rights attorney in Philadelphia. Before running for District Attorney of Philadelphia, Larry Krasner was a public defender for nearly 3 decades, during which time he sued the police department 75 times. The New York Times reported that during his campaign he promised to never seek the death penalty, to cut down on the prosecution of minor cases, to seek diversion and treatment programs for drug addicts instead of jail time, to abolish money bail, and to “decline to seek charges in any case he deemed to be based on an illegal stop and search” while also referring to what he called “the criminalization of poverty” as a symptom of the system which he explicitly set out to fight. In describing his progressivism, The New Yorker reported that on one of his early days in office Krasner asked a group of thirty-eight Assistant District Attorneys “Who here has read Michelle Alexander?” referring to the author of The New Jim Crow, a popular and informative analysis of mass incarceration (The New Yorker, 2017). Alexander’s legal research was delivered in a comprehensive and powerful way in The New Jim Crow and paved the way for public discourse on mass incarceration. Krasner’s decision to run for Philadelphia District Attorney was unexpected, to say the least. His fellow public defenders reportedly laughed when he announced the decision. The climate in Philadelphia was bleak. With the city having the highest incarceration rate of all the ten largest cities in America, the city’s tough-on-crime attitude of the past was at odds with the up and coming generation of political actors and diversifying population. Krasner’s campaign attracted significant waves of attention, garnering the support of celebrities to political activists. Despite this, Krasner was never formally endorsed by any mainstream newspaper outlets and was very slow to gain the support of more than a few Democratic elected officials (The New Yorker, 2017). Despite his sweeping win, Krasner is currently facing backlash for one of his most recent decisions that critics (and supporters alike) claim is in direct odds with his promises.

As was the expected response to Krasner’s progressive campaign, which sounded like a radical departure from the traditional prosecutor’s approach, his opponent, Beth Grossman, challenged him saying, “We already have one public defender’s office in Philadelphia. We don’t need the dis-
strict attorney to be a second”. On May 12th, of 2017 the Philadelphia Citizen published a heated letter written by a group of twelve former Philadelphia Assistant District Attorneys urging the public to vote no on Larry Krasner. The letter begins, We can no longer stand by in silence as a candidate who is dangerous to the city gains a foothold thanks to money from a European billionaire. Larry Krasner is not the progressive reform that Philadelphia wants and needs, rather he is a radical candidate with no experience prosecuting crime who is gaining traction by spreading alternative facts about the very office he hopes to lead. (Philadelphia citizen, 2019).

The money from a European billionaire that they are referring to was $1.65 million spent by George Soros on pro-Krasner mailers and television ads (The New Yorker). The letter goes on to describe the ways in which the 300 prosecutors of the Philadelphia District Attorney’s Office work hard for justice, in direct contradiction with Krasner’s critique of the office. It continues on with “and when we say they fight for justice, we do not mean that they blindly charge and jail people, as Mr. Krasner would have you believe. They relocate witnesses who are scared to go home to their block. They hold children’s’ hands while they prepare them to testify against their rapists (while Mr. Krasner calls them liars on the stand).” Despite this letter and other forms of scathing backlash, Krasner won an overwhelming 75 percent of the vote in the general election on November 7, 2017 (The New Yorker). Krasner has said that he believes his win was partially owed to backlash votes against national politics as voters were fearful of Trump “cracking down” on immigration and potentially rolling back federal oversight of police departments (NYT 75). Regardless of national politics, progressive initiatives in District Attorney offices and elections are popping up in red and blue states from both democrats and republicans alike. Some of Krasner’s initial and most notable criticism came unsurprisingly from the president of Philadelphia’s police union, John McNesby. McNesby at one time had called Krasner’s candidacy “hilarious” and referred to some of his supporters as “parasites of the city” (NYT 75). Maybe more surprisingly, Krasner’s most recent criticism has come in the form of his disinvitation to speak at a Yale Law School conference as keynote speaker. Krasner was to be one of four keynote speakers at the Rebellious Lawyering (RebLaw) conference at Yale, a group whose purpose is to “discuss innovative, progressive approaches to law and social change” according to its website (Philly.com). The decision to rescind his invitation comes in response to Krasner’s decision to appeal a ruling from a judge that was in favor of convicting the political activist and journalist, Mumia Abu-Jamal. Mr. Abu-Jamal was convicted in 1982 for a murder the previous year of Philadelphia police officer Daniel Faulkner. Originally he was sentenced to death but after multiple appeals, his death penalty sentence was overturned and he received a new sentence of life imprisonment without the chance of parole (Philly.com). Mumia Abu-Jamal’s case has been very widely watched and he is well known for his insightful writings from death row which were critical of the criminal justice system. Krasner’s office appeal a judge’s December 2018 ruling in favor of Mr. Abu-Jamal on January 25th that would allow him to reargue an appeal before the Pennsylvania Supreme Court. According to the RebLaw, the group who rescinded Krasner’s conference invitation, they gave the Philadelphia DA’s office a chance to address the concerns of law students and activists attending the conference. In a letter addressing their decision, RebLaw representatives wrote that they had invited Krasner to “join activists in a conversation about the promise and perils of ‘progressive prosecution’ including directly discussing his decision to appeal Mumia’s court decision.” but the District Attorney declined to participate in the conversation (philly.com). Some speculate as to where Krasner’s interests lie in his decision to make the appeal against Mumia Abu-Jamal and that he has pressure coming from many institutions, as is to be expected with the position. Harvard Law student, anneke dunbar-gronke, who planned on attending the conference voiced a popular concern about Krasner when she told The Inquirer that while Krasner is known for “progressive prosecution”, his decision was at odds with the intentions of the conference. She told The Inquirer, “If you’re a prosecutor who is putting people in cages, that’s just not rebellious lawyering”.

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While Krasner’s office faced mounting pressure from students and activists alike, he resisted the challenges from his constituency until Common Pleas Court Judge Leon Tucker released an opinion stating that Abu-Jamal was entitled to reargue his appeal. Krasner’s office released a statement that it decided to withdraw its challenge in response to the opinion in April. The statement read, “Given that the trial-level court has now addressed the concerns that led us to appeal in the first place, we have withdrawn the appeal.” It difficult to say that Krasner was held accountable by the demands of his constituency to drop the appeal, when the reason he provided did not cite the mounting pressure from voters. Furthermore, Krasner has been in direct contact with the widow of the police officer Abu Jamal was accused of killing throughout this entire process. Much of the anti-Abu Jamal sentiment in this case has been fueled by her public statements.

When Krasner’s office released its decision that it had decided to drop the appeal she said she was “devastated” by Krasner’s change of heart (Pilly.com, 2019.) While a prosecutor from his office attempted to notify her, she made a statement wondering why the decision was not discussed with her before being released and that she was informed of it by a spokesperson for the police union (philly.com, 2019).

In Houston, Kim Ogg is now facing similar criticism in terms of maintaining a progressive agenda. Ogg ran on a platform that she self described a progressive, and that passionately promised to not pursue low-level marijuana offenses. This is a popular move in the progressive wave of campaigning, oftentimes owed to the movement to legalize marijuana. While Ogg has followed through on this promise, she has recently failed to persuade Democrats on the Commissioners Court to fulfill her request for a budget that would fund 102 more district attorneys. Democrats question her motives for this, citing that the move would ultimately increase the prison population. Ogg argues that her ADAs are simply overworked with far too many caseloads. In comparison to her Republican opponent who she unseated in 2016, most would still agree that Ogg is a qualified member of the emerging league of progressive prosecutors (Houston Chronicle) which goes to show that the measure by which a prosecutor is part of the “progressive league” is a sliding scale.

In comparison to her newest opponent however, Audia Jones, Ogg’s efforts can seem like hallowed attempts. Jones is a member of the Democratic Socialists of America and has four years of experience as a prosecutor under Ogg and her Republican predecessor. She claims that Kim Ogg’s reform-minded rhetoric doesn’t line up with her actions in office and the people deserve someone who is going to push harder. “Being a woman of color, obviously the interactions with prosecution in our communities of color is not the best… But what I thought was, maybe I can get in here and really shake things up and be something that’s different,” says Jones (The Appeal, 2019).

Tools Available to Progressive Prosecutors

While this movement has started to make waves, the number of progressive prosecutors is still far outnumbered by traditional prosecutors. Many wonder if this movement will gain momentum. Furthermore, the culture of many District Attorneys offices remains deeply influenced by the conservative practices of the past forty years and head prosecutors show no signs of change in many of them. It is still too early to predict if this will continue to be a growing trend in elections across the country or if this new league of progressive prosecutors will plateau and remain among the far and the few. Furthermore, many of these prosecutors are at the beginnings of their career and were only elected to the position recently. It still has yet to be seen how true they can remain to their campaign promises and progressive objectives.

There are a set of tools that a progressive prosecutor has at their hands, as outlined by The Paradox of “Progressive Prosecution” in the December 2018 issue of the Harvard Law Review. These tools include nonenforcement, diverted enforcement, police accountability, and a set of other more general suggestions as laid out by Professor David Alan Sklansky who recently published The Progressive Prosecutor’s Handbook. In nonenforcement, the prosecutor uses her discretion to decide not to charge for certain offenses. The most popular of these offens-
es emerging in the conversation amongst progressive prosecutors is low-level marijuana cases. Both Eric Gonzalez and Larry Krasner in Brooklyn and Philadelphia have instructed their line prosecutors to avoid prosecuting such cases and many others have run on platforms promising to do the same. Diverted enforcement or “diversion” is the ability of the prosecutor to choose alternatives to conviction, such as community-based programs that often address social needs. Often times the District Attorney will work with law enforcement to launch police-assisted diversion programs that attempt to provide those struggling with substance-dependency with the resources they need. On the other hand, the third prosecutorial tool of police accountability strays from the traditional approach which is aligned with and collaborates with the police force. This has proved to be a difficult strategy to pursue for many prosecutors and many have faced backlash for attempting this tactic. However, many diversion programs have been implemented with much success and showed a drastic improvement in rates of re-arrest. Alternatives to the Court Experience (ACE) is a six-month diversion program in Washington, D.C. which begins by psychologically evaluating teenagers who commit offenses such as shoplifting and vandalism for stress, behavioral needs, and trauma. ACE then develops plans that can include school support, therapy, tutoring, and mentoring, and in its first two years of operation, over ninety percent of its participants were not re-arrested (Bazelon, 316.) Police accountability is a tactic that sharply contrasts with traditional prosecution, which is typically aligned with law enforcement, and has a tendency to be rather toothless in bringing charges against police officers who commit crimes. Marilyn J. Mosby who has been the State’s Attorney for Baltimore, Maryland since 2015, was in office when Freddie Gray was violently murdered while in police custody. Mass protests and national outrage arose for over a week after Gray’s death was announced, and before Mosby announced that she would seek criminal charges against the six police officers who were involved in the killing. She addressed the protesters directly, citing that she had heard their calls for “no justice, no peace” (Harvard Law Review). After the first three officers were acquitted, she announced that she was compelled to drop the remaining charges. An additional complexity of this case was that while Mosby maintains both Gray’s innocence and that he was unfairly targeted, she had ordered a narcotics initiative a few weeks before Gray’s death that directed enhanced law enforcement efforts at the exact intersection where the officers had encountered Gray before taking him in into custody (Harvard Law Review, 2018). Many traditional prosecutors flat out refuse to bring charges against police officers who break the law. Occasionally, pressure from constituencies for police accountability and fear of losing reelection can force these types of prosecutors to take action. In Ferguson, after eighteen-year-old Michael Brown was murdered by police officer Darren Wilson, public outcry forced the reluctant Robert McCulloch to file charges against Wilson. His reluctance proved the dominating factor in the case as he failed to convince the grand jury of Wilson’s guilt (Harvard Law Review, 2018.) Similarly, Emily Bazelon included these tactics in her book Charged: The New Movement to Transform American Prosecution and End Mass Incarceration, which she concluded with a list of Twenty-One Principles for Twenty-First-Century Prosecutors. In short, the list includes:

Challenges that Progressive Prosecutors Face

Implementing many of these principles and tools into District Attorney’s offices nationwide will likely prove easier said than done. Prosecutors face pressure from a whole slew of actors, including but not limited to: their constituencies, police departments, donors, activists, politicians, and their own prosecutors. All of these pressures considered, to expect the complete transformation of the criminal legal system to rest in the hands of nontraditional state prosecutors, ignores the underlying fact that the system was not built to keep minorities safe (Harvard, 2018.) In The Paradox of “Progressive Prosecution” the Harvard Law Review outlines three inadequacies of progressive prosecution and characterizes mainstream progressive pros-
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1. Make Diversion the Rule
2. Charge with Restraint and Plea-Bargain Fairly
3. Move Toward Ending Cash Bail
4. Encourage the Treatment (Not Criminalization of Mental Illness)
5. Encourage the Treatment (Not Criminalization) of Drug Addiction
6. Treat Kids Like Kids
7. Minimize Misdemeanors
8. Account for Consequences to Immigrants
9. Promote Restorative Justice
10. Shrink Probation and Parole
11. Change Office Culture and Practice
12. Address Racial Disparity
13. Create Effective Conviction Review
14. Broaden Discovery
15. Hold Police Accountable
16. End the Poverty Trap of Fines and Fees
17. Expunge and Seal Criminal Records
18. Play Fair with Forensic Evidence
19. Work to End the Death Penalty
20. Calculate Cost
21. Employ the Language of Respect

ecution as “silent on the project of redistributing power, and instead focuses on encouraging highly empowered individuals to usher in fairer policies.”

The first of these inadequacies deals with the relationship between lead prosecutors (the focus of this essay) and their subordinate, more junior “line” prosecutors. The authors acknowledge the autonomy of the line prosecutors, but point out the important power discrepancy between them and the lead prosecutor (the DA) who can make any decision they want without a judge or politician being able to overturn it. Given that reformers are focused on lead prosecutors who are subject to election by their constituencies in most states, this focus leaves open the possibility of non-compliance amongst line prosecutors who may experience a lack of buy-in to the reform goals of the lead prosecutor. Since the lead prosecutor cannot run every single case in their office and oftentimes oversees hundreds of line prosecutors, the ability to monitor every action of the office is limited. To this tune, Krasner ousted thirty-one members of the Philadelphia DA’s office upon his election (The Inquirer, 2018.)

The second of these inadequacies refers to the relationship between prosecutors and police officers. Due to the liberty that police officers have to decide who enters into the criminal legal system and how, prosecutors are faced with the imperfect model with which to monitor them. While many prosecutors can advise law enforcement efforts in their districts, they do not have direct authority over them and the reform-minded prosecutor’s efforts are likely to be at odds with law enforcement. Most police departments are accustomed to presenting the fruits of their labor to prosecutors and being met with approval. When a progressive prosecutor attempts to make a radical departure from a traditional prosecutor’s alignment with law enforcement, it is likely to be met with resistance from that department, and would require an expansive culture shift of no longer just their office, but the network of police as well. This is not to say that all traditional prosecutors are blindly aligned with law enforcement, but the historical trend demonstrates an alliance between District Attorneys and the police department, as their work has been largely intertwined. This inadequacy in the relationship between law enforcement and lead prosecutors is not dissimilar to the decision of Marilyn Mosby to direct increased law enforcement to the intersection where Freddie Gray was picked up before being killed. Likewise, it is strongly demonstrated by the recent protests against Krasner for decisions he has made in office, including those having to do with Mumia Abu Jamal’s case. These protests have been lead by the police union, which is now calling for Larry Krasner’s removal. According to the Harvard Law Review, the challenges faced by progressive prosecutors regarding the police extends past their working relationship and into the amount of funding that police-assisted diversion programs are receiving. Diversion programs are a common strategy the reformist attempt to focus their efforts on in place of court. Many of these diversion programs are strong community run alternatives to court but many of them are also run in conjunction by police departments and can impose more restriction and liability on defendants who then have to comply further with the department. Some diversion programs are funded by fees that defendants are required to pay to stay in the program. In Arizona, the only state where posses-
sion of any amount of marijuana can be tried as a felony possession charge, and where possession of marijuana is the most commonly prosecuted offense in the Maricopa County Attorney’s Office, diversion can seem like an appealing choice in contrast with being prosecuted for a felony. However, fees charged to participants account for 100 percent of the diversion program’s funding and participants are forced to pay approximately $1,000, with additional weekly fees for random drug and alcohol screenings. A recent lawsuit has been filed in Arizona to challenge the constitutionality of funding these diversion programs with participation fees (Civil Rights Corps.)

Finally, the movement to enact change by way of progressive prosecution focuses on lead prosecutors who are in the position to exercise their discretion, but only when voters choose to let them. Long before the movement for progressive prosecution began, scholars have been finding that tough-on-crime platforms in most elections are more likely to win. This is a strategy that has been seen in many political electoral processes, not just that of the prosecutor. Candidates for District Attorney often use their tough-on-crime platform and prosecutorial record to springboard into higher offices. Only recently has this backfired on a politician, when Kamala Harris recently announced her candidacy for the 2020 presidential election and is now facing scrutiny for what the progressive electorate is interpreting as a tough-on-crime past. While some areas of the country are expressing a desire for change concerning this traditional approach, they are still in the minority. Even if the movement continues to grow to other districts, it doesn’t eliminate the chance sparking backlash from fickle voters. While voters are inspired by the Black Lives Matter movement, there is no guarantee that any minute spike in crime could fuel another rise in the demand for tough-on-crime candidates once again.

**Real Systemic Reform**

Allegra M. McLeod, Associate Professor at Georgetown University Law Center, writes in Prison Abolition and Grounded Justice that “the general reluctance to engage seriously an abo-
The Limits of Progressive Prosecutors

Conclusion

The Democratic electorate is becoming excited at the idea of the political strategy of pursuing the election of more progressive prosecutors into office and will continue this pursuit. We are seeing direct and immediate results of this in cases like Philadelphia and Brooklyn, but this will be met with resistance and potentially spark a strong backlash from the right, regardless of concerns amongst conservatives about waste and spending related to mass incarceration. Regardless of political backlash, it will likely have its mechanical and procedural limitations and eventually, efforts will plateau as there are many logistical obstacles that progressive DAs must face once elected. The system itself was created for purposes that are at direct odds with their progressive agendas. It is for this reason that we must call for the abolition of prisons and a complete overhaul of the criminal justice system.

These newly elected prosecutors will be met with resistance from their inherited offices and even if you take the same approach as Krasner did in Philadelphia, by jumpstarting the overhaul of your office culture by firing a handful of your existing line prosecutors, these challenges extend further. Its a quick and appealing fix to view the D.A. as the single, beholder of power “who can start to fix what’s broken without changing a single law” as Emily Bazelon writes. But where is the security in reform without changing the law itself?

Data Sources:
1) New York State Department of Health (SPARCS);
2) City of New York Police Department.

Note:
East New York: Gun injury data were available for 12 months before and after Cure Violence implementation in the intervention area as well as in the comparison area. Shooting data were available for 24 months before and 12 months after Cure Violence implementation in the intervention area as well as in the comparison area.
South Bronx: Gun Injury data were available for 96 months before and 48 months after Cure Violence implementation in the intervention area as well as in the comparison area. Shooting data were available for 48 months before and after Cure Violence implementation in the intervention area as well as in the comparison area.
Bibliography


The rise of Progressive Prosecution is relatively recent and has yet to be observed through to the end. Campaigns run on a progressive platform are becoming sensationalized in the media.


Widespread backlash is shown against non-progressive prosecutors, specifically Kamala Harris.


Abbe Smith posits that the fundamental nature of the job of Prosecutor does not allow for a good person to be a good prosecutor. Due to the inherent traits of the position Smith would answer that the rise of “Progressive Prosecution” is paradoxical.


Professor Davis argues that there has been a shift in public attitude regarding the feasibility of Progressive Prosecution. She references as evidence the 2001 law review article “Can You Be a Good Person and a Good Prosecutor?” written by Professor Abbe Smith in which he responds to the question in the negative.


Jennifer Gonnerman gives a brief overview of Larry Krasner’s progressive career trajectory including his DA campaign which led him to win 75% of the vote in Philadelphia.


The author responds to Professor Abbe Smith’s question “Can a good person be a good prosecutor?” positively by emphasizing the importance of the decision of a prosecutor to work progressively and hold police accountable.


Student organizers of a Yale Law School conference have rescinded an invitation to Philadelphia DA Larry Krasner to participate in a conference about progressive approaches to law and social change in response to his decision to appeal a judge’s ruling that was in favor of Mumia Abu-Jamal, a man convicted of killing a cop.


The law review note defines the term “Progressive Prosecution” and arguing for that its limitations are set by an already rotten legal system. The note references the tools that are available to progressive prosecutors to support their agenda.


David Alan Sklansky notes that the rise of chief prosecutors winning office is occurring at an unprecedented rate and these prosecutors lack a road map of “best practices” once elected. Sklansky attempts to provide such with his short essay.


The authors examine what motivates state prosecutors to do their work.
The Syrian and Palestinian Refugee Crisis in Lebanon: How the Refugee Crisis has Lead to Tensions over Employment, Territory, Identity, and Individual Agency within Lebanon

Julia Arce
The global refugee crisis has reached a staggering number of displaced individuals. To be exact, a quarter billion people worldwide live outside their country of nationality (CFR, 2019). The issue of displacement due to political, social, and environmental concerns within countries has been prominent throughout history, and the question of how to accommodate such a growing number of displaced peoples as well as who will provide the help necessary to accommodate these individuals is an ever-present issue. The refugee crisis in the Middle East in particular involves a number of actors, on both the local and international scale, and has been a longstanding issue across the borders of Lebanon, Jordan, Palestine, Israel and Syria. Tensions have been present within the mentioned states, along with additional external conflict over who will host the refugee population.

In this paper, I will examine the Syrian and Palestinian refugee crisis in Lebanon by providing a brief historical and present-day overview on the conflict and its origins. The overview provided will address the actors who are involved, what has been done to help alleviate the crisis thus far, and what dire issues the Syrian and Palestinian refugee population face.

I will mainly examine how the refugee crisis has lead to tensions over employment, territory, identity, and individual agency within Lebanon. This will be used as a framework to support my argument that the tension within different communities in Lebanon is heightened by the struggle for economic and educational prosperity in the face of the current refugee crisis; if all communities in Lebanon were given equal opportunities for education, security, employment and recognition, this would greatly alleviate the internal refugee conflict. Failing to address these tensions allows for civil and human rights violations against the refugee population to consistently take place, while also widening the gap between the displaced population and the Lebanese.

This paper will be divided into sections to help comprehend the different aspects of the refugee crisis in Lebanon. First, I will provide a framework that outlines the conflict and defines relevant terms. Second, I will examine the current employment and education status of Syrian and Palestinian refugees in Lebanon through the use of both quantitative and qualitative data. Third, I will survey the general employment and education status of the Lebanese population. Finally, I will examine the issue of identity within Lebanon, and how this plays a major role in fostering political and social differences between communities in Lebanese society. The aim of this paper is to help understand what it means to live as a refugee in Lebanon, what your employment and education options are as a refugee in Lebanon, where tensions between the Lebanese and refugee population derive from and the potential solutions to help alleviate these struggles. Ultimately, I argue that the political problem of the refugee crisis is not that the two groups have conflicting interests, but rather that the interests of the Lebanese population and the refugee population are the same; both communities strive for economic and social prosperity. The methods in which these goals can be reached, however, are profoundly different.

History of the Refugee Crisis In Lebanon: Syria and Palestine

According to an executive summary published by CARE International, Lebanon remains the country that hosts the largest number of refugees relative to its national population (Petitbon, 2017). The community of displaced Palestinians was the first refugee population to enter into Lebanon since they began fleeing from the 1948 Arab-Israeli war, and has remained a strong presence in Lebanon since. The war in 1948 began after Israel was claimed an independent state by the head of the Jewish agency, David Ben-Gurion, with additional support from former U.S. President Harry Truman, who recognized the new nation the very same day.

The establishment of Israel’s independence and the violence that followed lead to the forced movement of over 700,000 Palestinians in search of refuge in neighboring Arab nations. Palestinians refer to the mass movement of 1948 as “Al Nakba,” which literally translates to “disaster.” (Al Jazeera) The permanence of the Palestinian population can be seen through the establishment of 12 recognized Palestinian refugee
camps that have existed in Lebanon since Al Nakba. About 450,000 refugees are registered under UNRWA, the United Nations Relief and Works Agency for Palestine Refugees in the Near East. The Palestine refugees currently displaced in Lebanon face a great deal of insecurities in their daily lives, which can be reflected in each of the 12 camps. These issues include extreme levels of poverty, overcrowding, unemployment, poor housing conditions and lack of infrastructure (UNRWA). The Syrian Civil War that began on March 15, 2011, extended the number of displaced peoples by forcing 5.6 million Syrians (as well as Palestinians living in Syria) to flee, searching for safety and security throughout the neighboring regions. (Huber, 2019) Currently, over 1.5 million Syrian refugees live in Lebanon, adding to the pressure on maintaining resources, employment opportunities, health care, education and overall social security. Though they have fled from the upheaval in Syria for mere survival, 90 percent of Palestinian refugees from Syria in Lebanon are under the poverty line and 95 percent are food insecure (UNRWA). Palestinian refugees from Syria are categorized as the most vulnerable population of refugees within Lebanon due to their status as twice displaced, meaning Palestinians who fled from their homeland to Syria, and have then fled from Syria to Lebanon.

Education, health, employment and housing are essential qualities of life that displaced Palestinians and Syrians are having difficulty accessing due to limited employment and education opportunities, funding for health care and resources, and an absence of citizenship on behalf of the government of their residing country. Due to their “stateless” identity, meaning they are not formally recognized as a citizen of any state, Palestinian refugees are not able to claim the same rights as other foreigners that live and work in Lebanon (UNRWA). Originally, when Palestinians entered Lebanon as displaced peoples in 1948, their long-term settlement in this host nation was unforeseen. The settlement of displaced Palestinians and the establishment of refugee camps was understood as a temporary affair, until they were able to safely return to their homeland. (Suleiman, 2017) The unforeseen permanence of displaced Palestinians positioned the way

Lebanese communities view refugees as a whole.

A prominent reason for present tensions against the refugee community by the Lebanese stems from the uncertainty as to how long the displaced population will remain. This can be exemplified specifically through the unpredicted permanence of the Palestinian refugee community and the necessary response for Lebanon to accommodate a population they felt ill equipped for: Syrians fleeing the Civil War enter into an environment of preexisting resentments towards the refugee community of Lebanon because of Lebanon’s unanticipated history of having to incorporate Palestinian refugees into the social, economic and political daily lives of the Lebanese for a period of time longer than anyone was prepared for. The UN Refugee Agency, UNHCR, categorizes this as a protracted refugee situation, in which refugees find themselves in a long-lasting, intractable state of limbo. This means that, though their lives may not be at risk, protracted refugees cannot access their basic rights as well as essential economic, social and psychological needs after years in exile. Because of this, refugees often cannot separate themselves from their reliance on external assistance often provided by humanitarian aid organizations. (UNHCR, 2004)

With reference to its deeply historical and multifaceted background, the refugee crisis in Lebanon can be understood as a basic human rights issue. The crisis is that Palestinian and Syrian refugees face legal and funding restrictions that limit them from accessing basic rights. Because of this, Syrian and Palestinian refugees are in competition over the prioritization of humanitarian aid, seeing as the arrival of Syrian refugees in 2011 drew a lot of international attention, furthering Palestinian refugees as a neglected minority (Charles, 2018). In addition to tension within the refugee population, tensions between the Lebanese and refugee communities also exist, stemming from competition over employment, affordable housing, education, health care and basic food resources. The influx of refugees from Syria heightens these tensions between the displaced community and the local host communities, many of whom struggle from Lebanon’s considerable economic divide. Since they largely receive treatment as second-class
citizens, refugees experience systemic discrimination within the spheres of education and employment. The grouping of these tensions deriving from and between such groups is what I would categorize as the conflict that Lebanon has found itself in at the face of a worldwide refugee crisis. With Lebanon’s refugee crisis beginning 72 years ago and continuing to take place, it is critical that both the community of displaced peoples and the local community address conflicts stemming from competition over territory, resources and employment opportunities in a diplomatic, productive and peaceful manner. This has often been done through third party actors such as UNRWA, UNICEF, and UNHCR.

In understanding how the refugee crisis impacts both host communities and those who are displaced, it is important to address three general aspects. The first involves the difficulties of adapting to a new society (accessing resources, finding employment, receiving proper education, participating in social life), the second is to examine how history plays a role in deep rooted tensions between different ethnic groups/nationalities, and the third is to acknowledge the discrimination against the refugee community while also recognizing the concerns of the native population.

**Lebanese Government**

Lebanon’s sectarian political system is the reason behind the majority of the country’s economic struggles. It took two and a half years for the country to elect the current Lebanese president, as well as an over eight-month period of struggle to form a current government. This perpetual difficulty in reaching a political consensus can be highlighted in the fact that Lebanon has spent over two of the last thirteen years without a functioning government. (Vohra, Aljazeera, 2019) The political system of Lebanon is based on a quota system, dividing power equally between Christians and Muslims. This is an attempt to keep power as evenly distributed between groups of different religious identities as possible. The naturalization of Palestinian refugees posed a disruption to this fragile demographic balance, creating additional religious and ethnic sects in an already varied representational system. Efforts were even made to naturalize Christian Palestinian refugees at times when Muslims showed higher birth rates. (Halabi, 2004)

The Lebanese sectarian political system ensures that the president is always a Maronite Christian, the prime minister a Sunni and the speaker of parliament a Shia. The requirements of religious diversity in representing the fragmented society of Lebanon result in the formation of Lebanese government to be a complex process. “Reaching a conclusion on anything, including the formation of a cabinet, requires confessional groups to put aside their differences. In a society divided along sectarian lines, this takes time.” (Economist, 2018) Because of the religious significance in dictating the political assemblage of the Lebanese government, (ensuring representation of Christians, Sunni and Shi‘ite Muslims) it is inevitable that religious and ethnic differences mix with politics. The two fields cannot remain separate. The sectarian political system of Lebanon is a reflection of the distinguished ethnic factions, which has been heightened through the influx of Syrian refugees, most of whom are Sunni Muslims. Attempting to keep a harmonious governing system in a state with such a large refugee population in addition to preexisting political disparities due to religion remains a challenge. It can be made clear here that the fragmentation in Lebanese society due to religious and ethnic differences is represented through multiple platforms.

**Lebanese Economy**

Lebanon’s struggling labor market is a reflection of the current economic state. In a report focusing on the Labor force in Lebanon, the International Labor Organization states, “The influx of large numbers of displaced populations from neighboring Syria in recent years has added to pre-existing labor market woes such as unemployment, informality, and vulnerability to workplace exploitation.” (ILO, 2018) When examining the countries history, Lebanon’s economic prosperity has been stunted by the existence of long-term political turmoil that began during the 1975 Civil
War. Since the financial consequences of the civil war, Lebanon’s economy has been further impacted by its history of Syrian occupation, clashes with Israel, and the influx of refugees due to the Syrian conflict. Because of its tendency in facing perpetual political instability, the labor market of Lebanon remains stagnant. (Heritage, 2019) In recent years, Lebanon’s GDP declined by 70 percent, inflation and public debt increased significantly, and its banking system has been further weakened. Large sums of money have been invested on behalf of the international community during the reconstruction of Beirut after the Civil War, (Lorraine, 2017)

In her study on the economic opportunities and challenges of both the Palestinian and Lebanese in the face of the Syrian refugee crisis, Charles Lorraine writes, “Lebanon’s low economic activity rates, high unemployment and a large informal economy have been aggravated due to the increased pressure of over one million refugees.” (Lorraine, 5, 2017) The unemployment rate in Lebanon measures the number of people actively seeking employment as a percentage of the labor force. In 2017, it was recorded that Lebanon had an unemployment rate of 6.30 percent, and is predicted to increase to 6.60 percent in 2020. (Trading Economics, 2019) The impact on unemployment, poverty and inequality has been significant since the increase in Syrian refugees, most of whom have settled into regions within Lebanon that were already extremely poor, exacerbating the levels of poverty and widening the gap between the rich and the poor. The number of Lebanese in poverty has increased since the influx of Syrian refugees, with as many as 1.5 million Lebanese nationals in a situation of vulnerability. (Lorraine, 2017)

In her report, Lorraine further states that, “the Syrian conflict has also caused increased competition for jobs, especially affecting unskilled youth. This has exasperated hostility between the two communities.” (Lorraine, 5, 2017) Though some groups feel these difficulties more than others, the Lebanese, Palestinians and Syrians all face similar challenges when it comes to accessing the labor market in Lebanon. This drives the vulnerabilities within each group to be expressed through increased competition over employment. The extensive informal economy in Lebanon has created inadequate working conditions for a significant portion of each of these groups, who face a work environment characterized by low wages, long working hours, irregular work schedules, no formal contracts and often hazardous working conditions. Additionally, workers lack retirement or other social security benefits, including difficulty accessing healthcare and education. (Lorraine, 2017)

Fragmentation of Beirut

The pursuit of peaceful dialogue between different communities within Lebanon has been a challenge; understandably so, with the existence of historical and present tensions over matters such as identity, space, religion and ethnicity. The Lebanese Civil War from 1975 to 1990, for instance, involved Israelis, Palestinians, Syrians and Lebanese of different religious affiliations, and lead to a political, social and physical divide between the Muslim and Christian communities within Beirut. The city was split into sections based on religious affiliation, and the violent chaos that erupted over the fifteen-year period also lead to the destruction of three Palestinian refugee camps. Like most conflict that takes place in the Middle East, the Lebanese Civil War was a multifaceted event that shed light upon a number of tensions, a substantial portion of which derived from mass levels of unemployment apparent within Lebanese society, in addition to the general battle over religious differences. In her analysis on the Lebanese Civil War, Halabi writes, “It was no surprise, in 1975, that the flame of civil war was ignited between Christian and Palestinian militias in a southern suburb of Beirut, where high levels of unemployment were coupled with political and military mobilization in both communities. The social inequality that provided a fertile ground for this mobilization was reinforced by conflicting identities and communal loyalties, again reinforced by the position of Lebanon in an unstable region and in the midst of the cold war.” (Halabi, 41, 2004)

This highlights the influence of weak social security in widening the gaps between communi-
ties who are already divided by religious and political differences. The fragmentation between different groups deriving from the Lebanese Civil War and prior can be further exemplified through the present-day segregation of different neighborhoods in Beirut. Beirut is sectioned into quarters that are recognized as mainly Christian, Sunni and Shiite Muslim, Palestinian or Syrian territories that are further fragmented in terms of class, sect and education levels. (Fordham, NPR, 2014)

An example of this social fragmentation can be seen through one of the 12 UNRWA regulated refugee camps in Lebanon- the Shatila Palestinian refugee camp, located in southern Beirut. The Shatila camp was established in 1949 and houses over 9,842 registered Palestinian refugees, made up of two schools and a health center (UNRWA). It is vital to mention the isolation of the camp, even though it is bare of physical borders separating it from the rest of Beirut. The recognition of the camp as more of a neighborhood and an, “urban ghetto,” (Charles, 2018) demonstrates the permanence of these initially temporary refugee camps, which host fourth, fifth and even sixth generation refugees.

The Shatila camp is made up of houses gathered closely together, most still standing from their establishment in 1949 (Fordham, NPR, 2014). No housing materials are allowed to enter the camp to ensure that Palestinians refrain from building permanent settlements in addition to the ones that already exist. “Palestinians are prohibited from legally acquiring, transferring or inheriting property in Lebanon. They are even prevented from making repairs to their homes because the entry of building materials into Palestinian refugee camps is prohibited.” (Charles, 2018)

Unlike most of the Palestinian camps, Shatila is more accessible and fairly incorporated into the city due to its absence of physical security barriers. However, in regards to the Lebanese, Shatila still remains an exclusively Palestinian territory. Other camps, such as Ain al-Hilweh, the largest Palestinian refugee camp in Lebanon, are enclosed with barbed wire, surrounded by multiple checkpoints and bordered by security walls. These security precautions attempt to ensure that any forms of violence that erupt within the camps are maintained within the confined area. Recurrent events of armed violence take place between rival militia groups, often proliferating during times of election. These opposing groups include members of the Palestinian Liberation Organization (PLO), the Islamic State of Iraq and Syria (ISIS), and other groups that are considered extremists. For instance, a 2017 report from the UN Office for the Coordination of Humanitarian Affairs states that fighting between the PLO faction Fatah and the extremist group Jund al-Sham that took place in July-August 2015 lead to 6 dead, over 70 injured and 3,000 displaced. (OCHA, 2017)

The presence of inner camp violence continues to impact the civilian population of Ain al-Hilweh (Mshasha, UNRWA, 2017). During an interview published by the Palestine News Network, an independent media group run by Palestinian journalists and editors, Palestinian women who fled from Syria were asked about the challenges they and their children face growing up as Palestinian refugees in Lebanon. One of the women responded, “When there is conflict in the camp the schools close. This stops our children from completing their school year or studying properly. I have four grandchildren at school and they find it difficult to continue studying when there is conflict. Last year they had official exams and their attendance at school dropped due to clashes, which affected their performance in the official exams.” (Qur, 2017)

Here, the instability of life within the camp is reflected through the limited accessibility to secure education. In addition, because their movement in and out of the camp is fairly restricted, residents of Ain al-Hilweh have difficulty in attaining education or employment opportunities outside of the camp, furthering the need for inner security to be maintained. Though internal tensions between different factions remains an instigator of violence within camps, external factors represented on an international scale can hold similar outcomes. On December 6, 2017, U.S. president Donald Trump recognized Jerusalem as the capital of Israel. This declaration resulted in an outburst of rage within the Palestinian and wider
Muslim world. Though the Lebanese government restricts Palestinians from protesting outside of the camps, unless granted permission, demonstrations within Palestinian camps like Shatila persisted, and were held daily for a week following Trump’s announcement. New York Times journalist Nada Homsi reflects on the protests in Beirut, writing, “Here in Beirut, the reaction in the first days after the announcement was focused in secluded Palestinian enclaves like Sabra. Youths on mopeds or dangling out of car windows zipped through the streets waving Palestinian flags and chanting, “Jerusalem is Arab! Jerusalem is Arab!” (Homsi, 2017)

The reaction to the U.S. recognition of Jerusalem as the capital of Israel was concentrated within Palestinian territories of Lebanon. Other groups within Lebanon, such as the Lebanese Christian communities, would not be as negatively affected because of potential pro-Israel perspectives. It can be argued that this is due to a fundamental power and identity issue. Seen as a stateless population, Palestinians strive for recognition within Lebanon as well as the international community. The limited individual agency of Palestinians is reinforced in the existence of blatant social stratification that has become an accepted norm in Lebanon. History plays a major role in the difficulty for different ethnic and religious groups to assimilate into Lebanese society and pursue peaceful coexistence. The Sabra and Shatila massacre that took place in 1982 remains a lingering thorn on the side of the Palestinian community. During this two-day outbreak of severe violence within the Sabra and Shatila refugee camps, Christian Militias, admitted through the camp by Israeli soldiers, killed hundreds, if not thousands, of Palestinians. (The exact number of those killed was not officially recorded) (Mohamad, Al-Jazeera) The Shatila refugee camp, especially due to its profound history, is recognized as a neighborhood that territorially belongs to the Palestinians. Some Lebanese regard this neighborhood as, “unsafe,” highlighting the reluctance for non-Palestinian communities to spend time in certain areas over others. (Fisher, Al-Jazeera) It seems as if the city has been silently divided over time, and the only shared sentiment between the different ethnic and religious groups in Lebanon is the mutual understanding that particular territories belong to particular communities.

Lebanese author and Assistant Professor of Arabic Literature at the American University of Beirut, Zeina Halabi, writes: “Chatila is without doubt an isolated peripheral city despite being close to Beirut’s center. Although the camp is still small in area, its inner streets are a labyrinth of unfinished structures, with expansion frequently taking the form of added stories.” (Halabi, 44) Halabi also addresses the roots of discrimination against the Palestinian refugee population through examining the limited civil and human rights they are given as a community. An example of this can be seen in the inability for Palestinian refugees to join the Lebanese workforce due to their placement under the “stateless foreigner” category within Lebanese labor laws. The refusal for refugees in Lebanon to be considered for any legitimate employment opportunities leads to irregular and scarce sources of income, a lack of social security and an absence of any form of work compensation.

In addition to suffering from limited-to-no employment opportunities, Palestinians also struggle to receive proper access to education. In referencing the state that the Palestinians experienced after the civil war in Lebanon, Halabi writes: “Lebanese public schools became inaccessible by unemployed Palestinians, rendering UNRWA almost the exclusive provider of education for Palestinian refugees. Legislative restrictions against settlements outside camp areas, and complete prohibition of Palestinian ownership of land and housing, confined the refugees to camps that lacked basic sanitary infrastructure. The situation within the camps deteriorated with the shrinking of UNRWA services, as a result of serious budget cuts and an alarming level of corruption within UNRWA’s administration.” (Halabi, 42)

With their exclusion from Lebanese society and lacking legitimate forms of legal protection, Palestinians require representation from supportive organizations that prioritize humanitarian aid. As can be exemplified through the distinguished Palestinian settlements and territories, even their physi-
cal placement in Lebanese society is detached from the rest of its surrounding community. The creation of both geographical and social space for Palestinians entering Lebanon was regarded as temporary. Halabi embodies this assertion when she writes:

“Denying Palestinians the benefit of the reconstruction process was also a way of preventing them from becoming too comfortable in Lebanon. In other words, the systematic impoverishment of the Palestinians has been seen as a way to speed up their repatriation. Unemployment in Palestinian camps has reached 95 per cent, and 11 per cent of all registered refugees benefit from the hardship-case program. This is the worst rate in UNRWA’s hardship-case programs in the four countries where this service is provided.” (p.43)

The argument made here is that the failure to successfully incorporate refugees territorially in a manner most ideal to the refugee community, where employment, education and healthcare opportunities are all met, is rather intentional in order to avoid any misunderstanding of their settlement as permanent. The geographical division represented through neighborhoods and settlements distinguishing between the refugee population and the local Lebanese embody the social, economic and political disparities that exist between those who are citizens and those who are displaced. This reasserts the social hierarchy of Lebanese society, in which the refugee population remains second-class citizens.

How Conflict Within Camps Spills Over Conflict that originates within Palestinian refugee camps can often be felt by the surrounding community. In her section titled, “Conflict over Identity,” Halabi writes, “The settlement of non-Palestinian groups in Chatila has influenced the social structure of the camp, arguably creating the context for intracommunal tension which, occasionally, degenerates into conflict.” (Halabi, 44, 2004) The 1975 civil war produced further populations of displaced communities, leading to the inclusion of Shiites and Syrian workers into the predominantly Palestinian Shatila camp. The additional pressure from groups of different ethnic and religious affiliation is a prominent factor in the eruption of conflict within the camps. Halabi writes,

“The fight over the identity of the camp is also manifest in the display of political allegiance. This is a country where playing a certain radio station reveals the listener’s place of origin, religion and political allegiance, and there are many stories in Chatila of Palestinian residents threatening their Lebanese neighbours when they turn on their politically oriented radio stations.” (45)

The shared social space of different ethnic and religious groups provides a tendency for conflict to be carried over throughout neighborhoods of Sunni, Shiite, and Christian backgrounds. This means that, when initiated, conflict has trouble staying within particular communities and territories.

Palestinian Refugees: Education & Employment

Similar to the Syrian refugee population, Palestinian refugees also face legal restrictions from the Lebanese government, inhibiting them from joining the workforce in Lebanon. The limitations that displaced Palestinians meet in seeking employment discourage young Palestinians from completing school and pursuing a degree. In previous years, the overall drop out rate for Palestinian students has been 39%, this is 10 folds higher than that of Lebanese students. (Amnesty International, 2006) The issue here is that the inability to legally join the labor market in Lebanon as a refugee leads to higher drop out rates within schools. Palestinian families interviewed by Amnesty International stated that the reason for the increased level of school dropouts is because young Palestinians see their years studying as purposeless, due to the understanding that even when equipped with a college degree, the likelihood of finding employment is little to none.

In comparison to the native Lebanese population, Palestinians have fewer options in regards to education opportunities. According to UNHCR, Palestine refugees are reportedly denied access to Lebanese public schools, leaving them with the options of either enrolling in private school or registering in one of the 68 schools (primary and secondary) run by UNRWA. In the case that Palestinian refugees are eligible and financially capable of enrolling in private school, it is found that places within these institutions are limited, and whenever
space is available, priority is given to Lebanese students. Seeing as the majority of the Palestinian refugee community cannot afford the high cost of secondary schooling, they often receive their education through schools run by UNRWA. (UNHCR, 2016) Through their education system, UNRWA aims to inform Palestine refugee students on humanitarian rights, as well encourage them as individuals to become “confident, innovative, questioning, thoughtful, and open-minded, to uphold human values and tolerance, proud of their Palestinian identity and contributing positively to the development of society and the global community”. (UNRWA)

Syrian Refugees: Education & Employment

As exemplified so far within this paper, Syrian and Palestinian refugees struggle to obtain legitimate forms of employment due to the inhibiting policies by the Lebanese government. It can be argued that this is an attempt on behalf of the Lebanese work force to protect the native population, and ensure that Lebanese citizens do not suffer from unfavorable competition in the labor market. Lorenza Errighi and Jörn Griesse argue that combined efforts on behalf of host governments and the international community are necessary to ensure better access to legitimate forms of employment for the refugee community as well as increasing the labor market potential for the native population. (Errighi & Griesse, 2016) The labor market in Lebanon has been negatively impacted by the influx of Syrian refugees, pushing already impoverished Lebanese into deeper pockets of poverty. It is estimated that the Syrian crisis has resulted in some 200,000 additional Lebanese pushed into poverty, adding to the preexisting population of 1 million poor. An additional 250,000 to 300,000 Lebanese citizens are estimated to have become unemployed since the outbreak of the Syrian Civil War, most of them categorized as unskilled youth. (World Bank, 2019)

Addressing the issue of competition over employment opportunities between Syrian refugees and the native population of Lebanon is crucial in attempting to alleviate fundamental concerns that heighten the gap between the two groups. The 2018 Vulnerability Assessment of Syrian Refugees in Lebanon report, compiled by three UN agencies, found that competition over employment was cited as the top factor for tensions with the host community. Thirty-eight percent of Syrian households surveyed listed jobs as the top factor, followed by competition over resources (11 percent) and services (9 percent), and cultural differences (6 percent).” (Migration Policy Institute, 2018) Limiting employment opportunities and neglecting the need for a stable source of income significantly restricts any sense of individual agency for displaced Syrians. It eliminates the freedom involved in the decision-making factors of life. In their overview on the Lebanese labor market challenges for Syrian refugees, Errighi and Griesse write,

“High levels of national unemployment may contribute to social tensions between the host population and the refugees. This risk is especially pronounced among the youth and the lowest income segments, since the Syrian refugee population in Jordan and Lebanon features a young average age, a low level of skills and a high incidence of poverty.” (Errighi & Griesse, 6)

Here, Errighi and Griesse also address the specific demographic of individuals who struggle in response to this issue of unwavering unemployment. The “low level of skills” that the Syrian refugee youth struggle with can be correlated to the lack of access to education. In Lebanon, about 55% of Syrian children are enrolled in primary school, and the percentage of Syrian students at all school levels tends to be low. (Ibid, 14) By eliminating the fundamental benefits that individuals receive through education, the economic and social opportunities that follow become less and less attainable. According to surveys conducted by the International Labor Organization, (ILO, 2014) it has been found that key reasons behind the failure to enroll Syrian children in Lebanese schools are related to three factors. The first is excessive cost of school fees, (47%) the second is lack of schools in proximity, (27%) and the third is the failure to meet the deadline for school registration, (25%). “Only 7% of the respondents indicated child work as a reason behind non-enrolment: this suggests that barriers in accessing education can play a role in increasing the incidence of child labor.” (Errighi & Griesse, 18)

The ability for labor market integration would have a noteworthy outcome for displaced
Syrians within Lebanon. Providing Syrian refugees with suitable employment opportunities is beneficial especially for the young population because it provides experience that can help returning Syrians find employment within their country. This can be made clearer in Errighi and Griesse’s examination report when they write, “For Syria itself, if and when its citizens can safely return and decide to do so, they will be better able to rebuild their own country’s economy if they have worked during their time abroad. This is because active employment spurs the development of new skills – or at least helps to mitigate the risk of skills atrophy which might result from a prolonged absence from the labor market. Better skills among returning refugees should underpin higher overall labor productivity in a post-conflict Syria.” (Errighi & Griesse, 8)

Though incorporating Syrians into the Lebanese workforce will evidently not solve the overall number of obstacles the population faces in pursuing a life within a country that is not their own, it certainly increases the likelihood for independency and autonomy that the Syrian community deserve, especially given the fact that these individuals are not fleeing their homes willingly, but for the sake of preserving life over death. The 1951 UN Refugee Convention and its 1967 protocol, ratified by 147 countries, remains to be signed by Lebanon and Syria. This convention allows for refugees to be involved in wage earning employment and self-employment within host countries. (Ibid, 11) An additional issue that derives from the inability for Syrian refugees to find legal work is the tendency for Lebanese businesses to take advantage of this vulnerability and illegitimately hire refugees for extremely low pay. This leaves Syrians susceptible to a number of potential work place violations such as inconsistent pension, inhumane or uncompensated work hours, lack of social security and healthcare, etc. “Displaced” Syrians are now required to sign a pledge not to work and can only sustain their livelihoods through humanitarian assistance provided by the Lebanese government and with support from the international community.” (Ibid, 11)

Humanitarian aid organizations such as UNRWA, UNHCR, Islamic Relief and Karam Foundation strive to prioritize the needs of those fleeing from Syria through forming innovative education programs, providing greater access to health care, and reinstating the need for humanitarian rights on behalf of the refugee community. Without any form of legal representation to protect the rights of Syrian refugees in the workplace due to the difficulty of inclusion, there is a great deal of room for fundamental individual rights to be infringed upon, and that is why the role of organizations such as these cannot be further emphasized.

Though it proves rather difficult, Syrians have the ability to obtain a work permit for what is characterized as a third sector job, (construction, agriculture, cleaning services) at a fee of 120,000 LBP. An added hurdle to the process of obtaining a work permit is that, before a Syrian can be considered for the job, the employer must first confirm that an adequately skilled Lebanese worker could not be found for the same job.

### How The Incorporation of Syrian and Palestinian Refugees Into the Labor Market Effects the Native Lebanese Population

The integration of refugees into Lebanon’s labor market would elicit positive effects from the demographic boost and in turn lift the level of the state’s GDP. This would help lower the public and external debt-to-GDP ratios, making it more likely for Lebanon to pay back state debt. (Errighi & Griesse, 2016) Moreover, employing Syrian refugees within Lebanese companies has the potential to create stronger bonds between the Lebanese and Syrian workforce. This would benefit Lebanese companies looking to grow their industries across borders, potentially using these bonds to win business in Syria once the reconstruction process following the end of the armed conflict begins. (Ibid)

The Lebanese government fears incorporating refugees into the labor market because being employed can act as an incentive for Syrian refugees to remain in their host country for a longer period of time, even after the armed conflict within their home country subsides. Refugee integration into the Lebanese work force would need to be achieved through a gradual process, seeing as such economic
adjustment, especially considering the large population of refugees, takes time. The current inability for refugees to take part in the workforce further the instability of the Lebanese economy by expanding unregulated employment activities. Restricting the legal access to work for Syrian refugees on behalf of the Lebanese government limits the possibility for them to acquire a stable income, in turn making it difficult for the refugee population to support themselves and meet basic needs. If the refugee population in Lebanon were given legal access to work, this would benefit Lebanese employers who are currently facing significant labor shortages in areas such as construction and agriculture. (Ibid) Though it must be done through a gradual approach, integrating refugees into the labor market would be beneficial to both the refugee and native population by eliminating unequal opportunities in accessing the workforce, providing Lebanese employers with more potential workers and large-scale business opportunities, diversifying the labor force and stimulating positive economic outcomes to help lower public as well as external debt.

**Conclusion**

What can be understood through the information presented thus far is the insufficient provision of opportunities for the Syrian and Palestinian refugee population to succeed in pursuing a lifestyle fit to meet basic rights to education and employment opportunities. This in turn reinstates the systematic inequalities faced by the refugee community, in which they remain second-class citizens within their host state. The existence of numerous ethnic and religious groups within Lebanon leads to an absence of collective identity, furthering the disparities between communities and heightening the reluctance to accept religiously diverse refugees into a society where religion dominates politics. A society where access to employment, education and healthcare opportunities differ between these existing groups, and in turn foster competition that undermine a peaceful coexistence.

The facts and figures presented by humanitarian agencies is helpful in understanding the weight of the refugee crisis in Lebanon and the critical need for assistance. However, it is also essential that those who are directly impacted have the ability to share the reality of what it is like living as an individual who carries the refugee title; one that we all too often read about through data reports or news slides. When asked about his experience as a Syrian who fled from his homeland in 2018, Elias Daoud, a 27-year-old musician and bartender, noted, “I’m one of the millions displaced all over the land! I am simply one of the problems of this world! We are the tragedies of news bulletins! We are the cause of increased congestion and traffic crises! We contribute to destabilizing the economy! We pose a threat to the safety of the countries we resort to! That’s what people say on television. While we are in fact a family looking for shelter, or a school student who cannot complete his or her education, or people who strive to claim their humanity—this cannot be achieved because of the absence in identity or identity papers.

People yearn for their family, their libraries, their grandmothers, and the smell of their coffee in the early morning. I left Syria a year ago and I knew that life would be difficult in Lebanon from my friends’ conversations. I got my first job interview and was refused employment because I’m Syrian. I do not remember my reaction completely but for the first time I felt racism because I am Syrian. The funny thing is that no one can distinguish the Syrian from the Lebanese through appearance, only in the dialect. I met many people and after long talks they were surprised that I was Syrian, saying things like, “Oh, you are like the Lebanese!” This is simply because I have long hair, a piercing, and I play rock. The sad thing is that the world does not know how life in Syria was and the quality of the people there. I did not know the meaning of racism and sectarianism except from the news and the Internet, until I reached Beirut. It’s the first time I’ve felt this feeling and now I feel it a thousand times.”

Because the global refugee crisis has been so prevalent in all scopes of our world, I believe it is easy to forget that this is not, and should not be, an accepted standard of living. As Elias argues, there is an undeniable restriction in individual agency re-
lected through the inability to access education and employment, two key sectors of society that have a strong influence in dictating the decisions one is able to make in order to pursue the life they want to live. I stand with the central argument that equal opportunities for both the native Lebanese population and the refugee population are essential in establishing a peaceful coexistence and safeguarding the fundamental principles of both civil and human rights, regardless of one’s universal status or title. What I am proposing is to provide refugees access to the labor market and appropriate education programs, which in turn would further enable communities of different backgrounds to integrate and confront any forms of social, economic, cultural, ethnic or religious differences on a status of equal importance within the education and occupation sector. Incorporating Syrian and Palestinian refugees into the social spaces of school and work would provide a platform for critical communication and socialization between the rather separated groups. With the implementation of increased funding for humanitarian organizations specializing in refugee support, as well as a reformation of Lebanese policies to further incorporate refugees into the labor market and schools, the standard of living would be significantly elevated for Lebanon’s refugee population.

If such solutions were prioritized for the Lebanese, Palestinians and Syrians to have access to dignified livelihoods, the Lebanese government, with support from the international community, would be required to address the economic challenges in Lebanon. Seeking to lift the economy within Lebanon would address the root of the destabilizing issues confronting Lebanese inhabitants, ensuring that all segments of the population have the ability to be self-sufficient. (Lorraine, 2017) Though this solution is considerably idealistic, it would go a long way in solidifying the opportunities for the refugee and Lebanese population, lessening the reasons for conflict between Lebanon’s communities. The more opportunity for the refugee community and the Lebanese community to have in common, the better the chances are for tensions to be addressed, unpacked or avoided entirely.

Bibliography


Justice for All?
The role of the Innocence Project and the Criminal Cases Review Commission in the filling the gaps within the criminal justice system

Emily Contreras
Nonprofit organizations generally exist with a purpose to educate, assist the less fortunate, promote human rights, and encourage civic advocacy without generating revenue for the purpose of harvesting income. Currently in the United States we are facing financial crises, which have left many who are accused of committing crimes unable to afford quality defense and general legal assistance, which is where the need for legal nonprofits arises. These organizations are critical to many who otherwise would be left at a huge disadvantage in a justice system that does not prioritize helping poor and disadvantaged populations. The Innocence Project is one legal not-for-profit organization that “exonerates the wrongfully convicted through DNA evidence and reforms the criminal justice system to prevent future injustice.” (Innocence Project). Using this organization as an example, I will show how important nonprofits are in the legal sector compared to a government funded operation. When our criminal justice system is failing one person it is failing society as a whole, and by creating nonprofits such as The Innocence Project there is a step being taken to make sure the holes in the system are being filled. If the role of the criminal justice system is truly to serve justice, it is irresponsible to ignore the injustice that exists within the realm of wrongful convictions. Through the works of scholars before me who have taken the time to write extensively about the work of the Innocence Project and its impacts on incarcerated people as well as the successes of these projects, I will further expand upon the true necessity of these organizations that often take a financial loss to fill a void in the system. The necessity of these organizations exists as a result of a political failure, but they thrive because they encourage a robust civil sector to engage with the system in which they live. The National Council of Nonprofits categorizes nonprofits into eight categories and has the percentage of how many out of the total amount of nonprofits are each type: Arts, Culture, and Humanities (9.9%); Education (17.1%); Environment and Animals (4.5%); Health (13%); Human Services (35.5%); International and Foreign Affairs (2.1%); Public and Societal Benefit (11.6%); and Religious (6.1%).

The Innocence Project can be put into a couple of these categories—mainly education, public and societal benefit, or human services, which are the categories that comprise of over half of all nonprofits.

We will also see that even when a government structure attempts to remedy the political failure that has led to the wrongful conviction problem it is not always a success.

“Nonprofits fill a void ignored by the private sector and rejected by the government.” (Krieger, 2011, 334).

Injustice

When we talk about the criminal justice system what are we talking about? What is justice? What is injustice? It is important to understand the concept of justice and injustice to truly see why the work of nonprofit organizations is so imperative to correcting injustice. The main theorist I plan on using to explain concepts about structural injustice is Iris Marion Young because she writes about this topic in a section from her book Responsibility for Justice. Right off the bat Young talks about how an individual does not experience injustice as a result of life history, but rather their position as a result of life (45). A person who suffers injustice within the criminal justice system may not be in the position of injustice as a result of any particular person’s actions towards them, but rather this is a position that many find themselves in as a result of structures that have been put in place that have not served them properly. Young’s exact definition of structural injustice is “moral wrong distinct from the wrongful action of an individual agent or the policies of a state,” further, “occurs as a consequence of many individuals and institutions acting to pursue their particular goals and interests…” (Young, 2010, 52). The way I see this relating to the issue of injustice within the criminal justice system is that there are underlying goals that those within the criminal justice system hold, and structural injustice occurs when the individuals acting within the system are blinded by achieving the underlying goals (goals such as higher conviction rates, tougher sentencing, etc.) rather than actually serving justice.
In keeping up with the title of her book, Young talks about whose responsibility it is to solve these structural injustices: “Young argues that there is no need to think that we have a binary choice between a focus on the personal and a focus on the structural.” (Young, 2010, xii). Everything is personal to some extent, otherwise injustice would never be solved, or attempted to be solved. Even though it is the structures that are the main source of injustice, individuals within the system can attempt to mitigate the injustice.

What is the Innocence Project?

In 1992 Barry Scheck and Peter Neufeld created the Innocence Project at the Cardozo School of Law in New York City. At the time of the creation of the Innocence Project, Scheck and Neufeld were law students who also saw themselves as activists and advocates of those whom the justice system had not properly served. The Innocence Project mostly works with DNA evidence as a method of exonerating individuals. According to the Innocence Project’s website, 364 individuals have now been exonerated based on newfound DNA testing and evidence. In addition to this notable accomplishment, 160 actual perpetrators have been found and rightfully convicted as a result of the work the Innocence Project is doing. This organization of only two original people has now expanded into an entire network dubbed The Innocence Network. The Innocence Network includes 68 Innocence Projects worldwide, including 55 Projects based in the United States and 13 non-U.S. based Projects, according the Innocence Network’s website. The mission of the Innocence Project is twofold. While the main objective is to right wrongs by exonerating the wrongfully incarcerated, these organizations also aim to implement reform within their respective justice systems in order to make the overall system more just. In addition to these broad objectives, the actual day to day work of innocence projects includes post exoneration help, administrative tasks, fundraising, education and outreach, lobbying, and policy reform (Krieger, 2011, 369). The Innocence Project does not actively seek out the wrongfully convicted, instead they accept requests to review cases. The volume of requests is further proof the necessity of this organization. In Steven Krieger’s investigation into the challenges faced by these Projects he cites that the average project receives an average of 600 requests per year. This is merely an average, and an organization may actually receive anywhere from 40 to 1,150 requests per year. Within the criminal justice system there are two types of innocence: 1. Factual/actual innocence in which the individual actually did not commit the crime. 2. Legal innocence in which there is one or more reason—procedural or legal—why the individual should not have been convicted of the crime (Krieger, 2011, 367). Currently, most of the Innocence Projects within the network only accept cases of actual innocence, most likely because these cases can be proven with DNA, whereas a case of procedural misconduct can be more difficult to prove. In Krieger’s study, “success is defined by locating and exonerating wrongfully convicted individuals as efficiently as possible.” (Krieger, 2011, 366). This definition of “success” is further complicated, however, because “the nature of innocence projects makes them objectively inefficient.” (Krieger, 2011, 377).

Criminal Cases Review Commission: The United Kingdom’s Response to Wrongful Convictions

While the nonprofit sector has proven to be the most successful method thus far in the United States, the United Kingdom has chosen a different approach. Instead of allowing the nonprofit sector to fully take on this realm of criminal justice, their government created their own publicly funded sector to address the problem, the Criminal Cases Review Commission (CCRC), which began work in 1997. While the CCRC was created by the government, it is important to note that it is an independent body. Impartiality is key for the Commission, so while the CCRC has access and legal powers to obtain information they actually work independently. While Innocence Projects now operate in the United States, Canada, New Zealand, and Australia, the United Kingdom became the first nation to
create a publicly funded body which is intended to “investigate claims of wrongful conviction, with the power to refer cases to the Court of Appeal.” (Roberts and Weathered, 2009, 43). However, even with the existence of this publicly funded body, Innocence Projects have also emerged within England and Wales. While the CCRC and the Innocence Projects have the same core aim, to exonerate the wrongfully convicted, their approaches are fundamentally different as the CCRC works primarily on miscarriages of justice, and they’re role is to merely refer cases. According to Roberts and Weathered in their examination of the CCRC, in the world of wrongful convictions there are two different types of ‘innocence’ that are slightly different than Kriegner’s categories that are used to gauge the plausibility of exonerating an individual. Actual innocence is more often used by the innocence project because it is relatively easier to prove factual innocence. Whereas the CCRC determines which cases they will take based on terms of factual innocence, which was previously referred to as legal innocence. Since the CCRC has the power to refer cases to the Court of Appeals and since it is within the actual structure of the criminal justice system, it is best for them to work within the system they’re already in and find faults from within. A body formed by the government may know better the ins and outs of the system and is closer to the problem, so this is how they may be better able to find and fix faults. As opposed to the innocence project, which is a completely separate body so they have better success focusing on the actual innocence of the client. The process of the CCRC is different from the innocence project as well. Cases are assigned a case review manager who uses their own resources and knowledge to investigate a claim, then there are a number of other statutory steps that must be followed until a committee of commissioners decided whether a case will be referred to the Court of Appeals. It is a lengthy process and as a result of the bureaucracy involved it may not be as efficient as the Innocence Project even though innocence projects are constantly battling with a lack of resources and funding. The existence of these two separate bodies also raises questions about the definition of innocence since there are so many categories broken down. In simple terms a person is innocent if they did not commit the crime, but the legal arena is constantly changing and thus definitions of innocence are not one size fits all. According to the CCRC website their main goal is “to review cases of those who feel they have been wrongfully convicted of criminal offenses,” and interestingly, “do not consider innocence or guilt, but whether there is new evidence or argument that may cast doubt on the safety of the original decision.” (CCRC). The use of the term ‘safe’ also brings up interesting questions of the relevance of terminology. “The Court of Appeal has interpreted ‘unsafe’ in two broad terms. One interpretation of ‘unsafe’ is that a factually innocent person has been wrongfully convicted (in the narrow sense of not committing the crime). The other interpretation emphasizes the Court’s supervisory role in assessing the overall fairness of the pre-trial and trial process.” (Roberts and Weathered, 2009, 51).

**Cases and Statistics**

How does one measure the success of one of these institutions? Can we call it a success if one innocent person is freed from prison, or should we achieve a certain percentage of exonerations total? I hold the belief that one exoneration of an innocent individual (whether it be factual innocence or legal innocence) makes the whole project a success, but in order to sustain these organizations there must be some type of continued success. Be it, advocating for reform or changing the way punishment is administered in the first place. The best way to evaluate whether the CCRC or Innocence Projects are ‘successful’ is to start by looking at statistics and data. The CCRC has a section of their website dedicated to data that says between April 1997 and January 2019 it has: “referred 658 cases, of the 648 cases where appeals have been heard by the courts, 437 appeals have been allowed and 198 dismissed, 705 cases are currently under review at the Commission and 148 are awaiting review.” (CCRC). They also have an up to date data set of the Commission’s Key Performance Indicators (KPIs), which show data sets about how long cases are with them, various expenditures, etc. The one I found more telling...
of their efficiency was the one that shows how many cases are closed within 12 months of application.

*data from CCRC

As of December 2018, 80% of cases reviewed by the CCRC are closed within 12 months of application. As far as efficiency goes, this is pretty impressive. In cases of possible wrongful conviction speed is important because it is a matter of someone’s life and liberty, and to delay the process further is not just. The efficiency of the Innocence Project is not so easily tracked as I was not able to find similar KPIs. However, as far as overall exonerations go, the numbers for innocence projects overall is much higher. Where the numbers presented by the CCRC are in the hundreds, the numbers provided by the Innocence Projects and the National Registry of Exonerations are in the thousands. I believe this to be result of manpower. The CCRC is just one group serving an entire country whereas innocence projects operate in smaller divisions all over the country (and the world), so they are able to get through more cases. According to the National Registry of Exonerations (NRE) there have been 2,410 exonerations in the United States between 1989 and 2019 accumulating 21,095 years lost.

Each year the number of exonerations in-
creases as awareness and resources for innocence projects increases. In addition to this graph, the NRE provides more in depth information about causes of incarcerations and the methods that were used to exonerate the individuals. Further, it is important to recognize victories and results besides exonerations. While exoneration of a wrongfully convicted person is the ultimate goal, it is not always possible. Other results include: vacated sentenced, parole successes, sentence reductions, and others. A 2016 Innocence Network Annual Report Summary included a section about their legal successes and shared that “the Innocence Network celebrated a wide variety of legal victories in 2016, including an incredible 48 exonerations (including client co-defendants); the highest number ever for a single calendar year.” They also included this chart in the Report to highlight other victories that can be counted toward the relative success of the network:

![Innocence Network Member Legal Victories](chart.png)

*data from Innocence Network

It is difficult to definitively say what counts as success, but both the CCRC and Innocence Networks have shared data and in their own words have called these victories, so they should be treated as such.

George Davis was convicted and sentenced to 20 years for armed robbery and wounding in London in 1974. Right off the bat, Davis claimed his innocence, and his friends and family did too. He became almost famous in the UK for what he believed to be a great miscarriage of justice. Only two years after his conviction his case was reviewed, and he was released since there was sufficient doubt in identifying him as the culprit of the robbery. Though he was released, his conviction was never quashed, thus he was still guilty in the eyes of the law. Only eighteen months after his release, he was caught stealing, and once again he was sentenced 15 years in prison (this was eventually reduced to 11 on appeal). This time there was no doubts about his guilt, and no one campaigned for his release. In February of 2011, Davis found himself back in court, this time at the hands of the CCRC, to resolve his original conviction from 1974. The CCRC was set up in 1997, partially in response to Davis’ case, so it makes sense that 14 years later, they would be the ones to refer Davis’ case to the court of appeals. A statement from the CCRC in The Guardian states the reasons for which they referred the case,

> The reasons for the referral are that non-disclosure at the time of Mr. Davis’s original trial of information which may have assisted the defence and/or undermined the prosecution’s case at trial, as well as evidence subsequently obtained by the Moulder investigation and, more recently by the CCRC, raise a real possibility that the court may quash the conviction.

Regardless of his second conviction, the CCRC continued to work to make sure his original conviction would be quashed. In May of 2011, the BBC reported that the Court had officially quashed the original conviction that pushed Davis to such notoriety, and the ruling judge, Lord Justice Hughes said, “‘We do not know whether Davis was guilty or not, but his conviction cannot be said to be safe.’” So, this case was a successful run for the CCRC. Though it was a success, however, it took many years to come to fruition. If Davis hadn’t been released 2 years into his original sentence, he would have still been in prison at the time of his appeal, and his whole sentence would have almost been through. The CCRC does not have the resources to deal with these cases swiftly as one may think they would since they operate technically within the government. It is also interesting to note that this case had no questions of DNA evidence, since in the modern time DNA evidence is what is most used to exonerate wrongfully convicted people. Additionally, the CCRC is not an advocacy organization. They do not attempt to better the system, they merely exist within it. So, in a case such as George Davis, yes he was exonerated and his name was cleared, but there is not effort on behalf of the CCRC to keep this from happen-
ing again, whether through pushing reform or any-
thing like that. This is one of the big differences I
see between the CCRC and the Innocence Projects.

In 1999 Horace Roberts was charged with
Second Degree Murder for the murder of Terry
Cheek in Riverside County California. His Tri-
al began in Spring of 1999, and the prosecution
provided evidence that Cheek had been struck over
the head and then strangled with a rope found near
her body. Roberts and Cheek had been having an
affair, so this along with inconsistent stories about
the timeline of the night of Cheek’s death, as well
as the discovery of a watch that was believed to be
Roberts’ that was found near Cheek’s body, the
prosecution believed they had found their murder-
er. In April 1999 the court declared a mistrial since
the jury could not reach a unanimous verdict. Rob-
erts went to trial a second time in May of 1999,
and one month later the court once again declared
a mistrial. Upon the end of the third trial in July
of 1999, the jury declared Roberts guilty of sec-
ond degree murder and he was sentenced to fifteen
years to life in prison. Roberts maintained his inno-
cence and filed for appeal in 2000, and the court
upheld his conviction. He attempted several other
routes of proving his innocence, and in 2003 the
California Innocence Project began investigating
his case. They requested DNA testing, which they
believed would prove his innocence. The petition
to use the DNA evidence, which had found that
the DNA found on the watch belonged to three
men, one of which being Cheeks’ husband’s son,
was denied even though Roberts’ DNA was exclud-
ed from the mixture. After this, the California In-
ocence Project did more DNA testing that once
again excluded Roberts’ DNA. In May 2018 the
CA Innocence Project asked the Riverside County
District Attorney to reexamine Roberts’ case. On
October 2, 2018, the prosecution agreed to vacate
Roberts’ sentence and immediately release him
from prison, two weeks later he was fully exonerat-
ed and Cheeks’ husband was charged for the crime.

The Innocence Project is highly involved
in the cases they take on, and they also have the
ability to use high technology to assist them in their
cases. Although they rely on donations, they take
in more funds than the CCRC, therefore, they
have the ability to pay for DNA tests, and things
like this that may increase the chance of exoner-
ating an innocent individual. Additionally, mem-
bers of the Innocence Project actively work to
implement reforms in the criminal justice system
to make changes that will help protect those who
have been wrongfully convicted. Members of the
Innocence Project also work to educate the pub-
lic about the issue as a way of gaining support
for the movement. It’s more of a wholesome ap-
proach to the problem than what the CCRC does.

Limits and Public Opinion

If one of my aims is to make a case for why
the Innocence Project is better equipped to handle
cases of wrongful convictions than the CCRC, it
is important to show the limits of each respective
organization. One of the best ways I have found to
see the limitations of the CCRC has been through
the press and public opinion. The Guardian, a Brit-
ish daily newspaper, has published several pieces
in the past few years that survey various lawyers
as well as share statistics about how the CCRC is
failing those who depend on it. One particular ar-
ticle, “Miscarriages of Justice Body is Not Fit for
Purpose, Lawyers Say,” accuses the CCRC of fall-
ing victim to systemic failures. This is an interesting
choice of words, in my opinion, since the cases the
CCRC review are miscarriages of justice (a result of
a failing system), and this system that was created to
solve the problem is now also failing. The Guardian
was given access to a survey of some of the UK’s
most prominent lawyers for this article. One lawyer
surveyed, Matt Foot of Birnberg Prince, is quoted
saying, “The CCRC has become an office-bound,
moribund organization. The people employed there
are not qualified to do what they’re doing, and of-
ten don’t understand the law… the biggest problem
is that it doesn’t actually investigate.” Additionally,
the survey showed that the amount of cases actual-
ly being referred to the Court of Appeals is much
lower than it was before the CCRC was created: “A
record low of 0.77% of cases seen by the CCRC was created: “A
record low of 0.77% of cases seen by the CCRC were referred back to the Court of Appeal in 2016-
17.” A case consultant from the Cardiff Innocence
Project “said so few cases were referred back to the appeal court because the CCRC’s remit was too narrow. The CCRC will only refer cases on a legal technicality or when there is significant new evidence.” The lawyers surveyed in this article called for the threshold of evidence to be changed, so the CCRC may be able to be more effective in the future. There is also the matter of funding, resources, and mere skill that the CCRC is lacking, which limit it from success. Another article from The Guardian with a similar topic, “The Criminal Review System is Failing Prisoners,” sums up the overwhelming feeling that “on paper, the CCRC provides a safety net for the wrongly convicted. But it has disappointed those who hoped the CCRC would deal swiftly and surely with miscarriages of justice.”

In my quest to explore the limits of the Innocence Project, I was not able to find public opinion about the limits so easily as I was for the CCRC. The response to the Innocence Project is overwhelmingly positive, as what this organization is doing is often seen as heroic.

### Finances

Finances undoubtedly play a key role in both the CCRC and the Innocence Projects. Both on behalf of the defendant and the organizations themselves. There is an overall lack of funding for public defenders in the United States as well as for the lawyers working in the Court of Appeals in the UK. In Roberts and Weathered’s piece about the CCRC they mention, “The lack of legal aid fund-

<table>
<thead>
<tr>
<th>Revenue Source</th>
<th>Amount Earned in 2016</th>
</tr>
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<tbody>
<tr>
<td>Individual donors</td>
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</tr>
<tr>
<td>Foundation grants</td>
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<td>Federal grants</td>
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</tr>
<tr>
<td>State/local grants (includes bar foundations)</td>
<td>$1,306,473</td>
</tr>
</tbody>
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*data from Innocence Network*

*Table 2.2: Top 5 sources of revenue earned by fundraising Network member organizations (excluding the innocence Project)*
amount of time fundraising and applying for grants just to stay afloat and do what they seek to do as an organization, so the thought of having a government funded body that does not need to spend so much time in search of money is enticing. While of course there are federal grants given to Network members, these grants are not a given and they give only one third of what individual members do in one year. This is all not even mentioning what the money is actually used for. These types of cases are expensive to take on. The evidence needed to exonerate someone is expensive. Most cases the Innocence Project takes on deal with DNA evidence and according to The 2016 Innocence Network Annual Report Summary a DNA test can cost around $1,400. This also does not take into account that the people working for one of these projects need to earn a salary. Much of this work is done pro bono, but the attorneys working the cases still need to make a living, so instead of payment coming from the client, the payment often comes out of the overall budget. The same report mentioned previously reports that the average salary of an investigator is $49,000, the average salary of an executive director is $74,500, and the average salary of a public interest lawyer is about $64,000. These positions don’t account for all of the people needed to run an organization such as an Innocence Project, but they demonstrate that the costs of running an Innocence Project add up quickly, and to keep it running through donations alone is tricky and time consuming merely as a result of how much it takes to keep an organization running at minimum.

More on Justice

Is what the Innocence Project and CCRC is doing a form of justice—regardless of “success?” Based on Young’s theories of injustice, being that it is the underlying goals of the system that are allowing injustice to prevail, the Innocence Project and CCRC exist as a means to an end, so to say. These organizations, no matter how much what they’re doing is helping people, serve as a check in a larger system. They are mitigating oppression, not serving justice. They are aiming to change the system or even just hold it accountable, so that the system can change in a way that is just.

The book The Decline of the Death Penalty and the Discovery of Innocence by Frank Baumgartner focuses on the innocence question within the death penalty debate. He frames an argument about how public policy issues are multifaceted, and this is directly related to what Young says about injustice being a result of a system, and not just one person or thing. For example, Baumgartner says, “The exonerated have become a powerful symbol of the dangers of error in the justice system.” (Baumgartner, 2011, 42). It is the system as a whole that is the cause of injustice.
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“File:Jean-Léon Gérôme, Phryne Revealed before the Areopagus (1861) - 01.jpg.” Wikipedia Commons, commons.wikimedia.org/wiki/File:Jean-L%C3%A9on_G%C3%A9r%C3%B4me,_Phryne_revealed_before_the_Areopagus_(1861)_-_01.jpg.
Dismantling the Whorerarchy

Cameron Cory
Sex work currently exists as a highly stigmatized, precarious labor market. Its stigma can be seen through state legitimized violence against sex workers, employment discrimination, and social ostracization. Yet, there is a hierarchy, what Tilly Lawless calls a “whorerarchy,” that characterizes sex work. The role of criminality establishes the way the whorerarchy is organized. Specifically, sex workers who are at higher risk of encounters with law enforcement are placed at the lower end of the whorerarchy, whereas sex workers whose occupations are legal are regarded as existing at the top. I argue that sex work, specifically the type that is characterized by its criminal status, exists in opposition to the state, due to the state’s inability to dominate and monopolize such work. To elaborate, full-service sex workers (sex workers who engage in prostitution), perform their labor without being under the stranglehold of a formal, capitalist, androcentric authority. Contrastingly, both the state and the free market, have exercised androcentric domination over legal sex work, through the control and regulation of commercialized sex-industries. Such authority can take the form of strip club owners, pornography sites that profit off of the work of actors and actresses. Pornography and exotic dancing can be examined as sites where capitalists have exploited the labor of its workers, as well as enforcing an arbitrary authority which negotiates the autonomy of the worker. Furthermore, I argue that the selective legality of some sex work is a product of both the androcentric gaze, and a capitalist system. Legal forms of sex work are characterized by identities that possess traits which satisfy the androcentric gaze, and through its legal status, are able to be maintained and regulated within a consumer market. Sexualities and identities that are recognized as being “Other” are excluded from legal sex work, as sex workers in this field are expected to uphold an image of femininity that adheres to the ideals that are given value within an androcentric, capitalist society. Those who not are white, cis-gender, heterosexual, and able bodied are excluded from accessing the legal, financial, and social privileges held by those who rest at the top of the whorerarchy. Furthermore, the illegality of full-service sex work heightens the alienation that all laborers face under a capitalist system. The criminalization of sex work further isolates sex workers from a greater labor struggle, as laborers in criminalized markets do not have the same agency to collectivize. Criminalization undoubtedly leads to further stigmatization of the sex worker. The formalization of such stigma takes form in the passing of legislation, which perpetuates violence against sex workers. Patriarchal discourses inform the increasingly sophisticated legislation aimed at criminalizing sex workers, as they restrict the agency and mobility of their bodies. Proponents of legislative measures which have criminalized sex work have often been masqueraded as champions of feminism, supporting bills like SESTA-FOSTA which conflates sex trafficking and sex work. These narratives simultaneously disregard the experiences of both the trafficked and the consenting, through generalizing the two as equivalent. As a result, heightened policing of already vulnerable identities have been justified by the purported “moral crusade” against human trafficking. An in depth analysis of America’s current legal atmosphere provides insight as to how it has perpetuated a toxic hierarchy within the field of sex work. Contrastingly, it can be observed that sex work is met punitively, because it has not been formally monopolized, and thus legitimized, by androcentric forces. This punitive attitude is demonstrated through present-day statutes that conflate consensual sex work with sex trafficking. Looking specifically at the recent passing of SESTA-FOSTA, I want to suggest that the elimination, or heavy surveillance, of websites that allowed sex workers to advertise their services freely, has systematically disenfranchised workers, especially those who are financially marginalized. Thus, I address how eradicating free-sites, while permitting sites that require fees, generates a hierarchy of legitimacy in relation to the socio-economic standing of the sex worker.

Section 1: What exactly is the whorerarchy?

Belle Knox describes the whorerarchy in the following terms:
“arranged according to intimacy of contact with clients and police. The closer to both you are, the closer you are to the bottom. That puts ‘outdoor’ workers, ie street-walking prostitutes, at the foundation. They are disdained by ‘indoor’ prostitutes, who find clients online or via other third parties. They are disdained by strippers and escorts who perform sex acts for clients, who are disdained by those who don’t. At the top sit sex workers who have no direct contact with cops or clients, such as cam girls and phone-sex operators”.

Other conceptions of the whorearchy position sugar babies at the top, as “sugar baby work is the most accepted as it is the closest to marriage in that it mimics monogamy and usually involves the exchange of material goods over cold hard cash (also, in a lot of places where sex work is illegal, sugar babying falls in a sort of legal grey space)”. Tilly Lawless goes onto explain that, “The whorearchy comes from both within and outside of the industry; non sex workers will view certain workers as dirtier/more disposable/less worthy of respect than others, and sex workers themselves will often throw other workers under the bus, in order to distance themselves from them and make themselves seem more respectable. It’s driven by assumptions and prejudice. While you will find people of all different races, backgrounds, genders etc in all different kinds of jobs within the sex industry, racist and classist assumptions feed into the whorearchy. For instance, a non-English speaking, immigrant WOC will be seen as “less valuable” than me (a white middle class woman) and further down in the chain of things. Often, more marginalized people will be forced to work in lower rungs, for example trans WOC often won’t be hired in brothels and so have to do street based sex work”.

Clearly, whorerarchy is a complex issue, encompassing structures of class, race, gender, sexuality, and immigration status. Of particular interest to me are encounters with the police. I chose to focus on this aspect of the whorerarchy because the varying spatial proxemics between sex workers and law enforcement, is a crucial element to assess when navigating through the whorerarchy. Furthermore, investigating the experiences of sex workers’ run-ins with the police places greater urgency on ending the legal persecution of sex workers.

Jaclyn Friedman provides further insight about the issue of the whorerarchy that exists within the community of sex workers. She references interviews with Tina Horn, an author and journalist who specializes in queer identity and sex work. Friedman quotes Horn, “The person at the top of the whorerarchy- the person who is least likely to be affected by anti-sex work stigma- would be the ‘high class call girl’ [...] She wears Agent Provocateur lingerie, her clients are high-powered, high-class, wealthy businessmen, for whom hiring a prostitute is a sign of status. She’s always skinny, she’s almost always white; if she’s not white, then she’s maybe Asian, or the color they make Beyonce look when she’s on the cover of a magazine” (Friedman 2017, 124).

Sex workers who have been positioned on the lower end of the whorerarchy are “the people that we see on Law and Order, when they want to show a police precinct and there is always a hooker in there, smoking and handcuffed to a chair. Of course those are the people who are more likely to be people of color; trans women, working class, or impoverished people, because they don’t have access to fancier clothes [that would give them] access to advertise in a place that screens the girls. Clients are racist. Clients are classist. A client who is paying $2,000 an hour expects class signifiers that some women might not be able to provide and so they have to work on the street” (Friedman 2017, 125).

Further elaborating on the classism and racism demonstrated by clients of escorting sites, I’ve provided screenshots of “sugardaddies” on the popular “companionship” site, Seeking Arrangements.

As for sex workers whose position exists somewhere between the top and bottom of the whorerarchy, Friedman points out how “you’ll find pro BDSM workers (who rank relatively high because they don’t tend to have sex with their clients), porn performers (who have the benefit of their job being legal but who bear the stigma of the permanent public evidence of their job), strippers, cam girls, and more. What you won’t find is enough sisterhood. Instead, you often get more of the same pernicious assumptions about women and sex, and the same concomitant pressure for the ‘good’ whores to define themselves in opposition to the ‘bad’ ones, as a way to stave off the greater stigma that comes from ranking lower in the whorerarchy” (Friedman 2017, 125-126).
Here, Friedman addresses the dismal reality that puts a damper on Leigh’s hopes for the term “sex work” to operate as a cohesive tool to collectivize, and thus liberate, sex workers. The whorerarchy, according to Friedman, is an obstacle to reaching this sisterhood. I argue that the (il)legal status of certain fields of sex work is crucial for understanding the production and maintenance of the whorerarchy.

**Section 2: Why is examining the whorerarchy important?**

The political stakes of the whorerarchy are high, insofar as the delegitimization of marginalized sex workers (marginalization being constituted by race, class, gender identity, and immigration status) has pushed their labor into more precarious environments. Interested in the character of contested markets, I explore how existing as a labor-
er within a highly contested, and illegal, market jeopardizes the safety of livelihood of sex workers. The increase in the policing of this market has systematically coerced sex workers into working in environments devoid of screening- as this is sent through having to engage in street based sex work. Further, some forms of legalized full-service sex work have also lead to the subjugation of sex workers, as legal prostitution in Nevada has been characterized as exploitative (Bindel, 2007). Existing as a regulated business in a free-market society makes sex work more vulnerable to being monopolized by those who are already privileged- as those with the social and financial capital are able to make money off of their employees (through house fees, taking cuts of their earnings, etc.), while simultaneously making the worker dependent on the network (of which was created by the strip club owner, or the brothel owner). These legal businesses of commercialized sex work demonstrate how, even under legalization, androcentric-capitalist forces inevitably exploit sex workers- much like any other form of labor under capitalism. This is why I am in favor of the decriminalization of prostitution, as it protects sex workers from legal persecution, yet still relatively out of reach from capitalist-business owners within the commercial sex industry.

The hierarchy of sex work is characterized by androcentric-capitalism, which produces an economic model that privileges those forms of sex work that are designed to satisfy a mass, heterosexual, predominantly male consumer population. Furthermore, the hierarchy is maintained through legislative bodies making an erroneous conflation between sex work and sex trafficking, exemplified by legislature which forbids economically disenfranchised sex workers from having access to free platforms to advertise to their clients, as well as screening them. This places sex workers in greater danger, as they are then left with no option but to pursue street-based sex work- placing them in closer contact with law enforcement, as well as being stripped of the ability to screen their clients more cautiously.

Section 3: What is sex work?

Before delving into how exactly the whorerarchy is organized, it is important to understand the historical foundation of the term “sex worker”. Carol Leigh coined the term “sex work” in the late seventies. She stated that the term was “created in the context of the feminist movement, at a junction of opposing views of prostitution, the term ‘sex worker’ is a feminist contribution to the language. The concept of sex work unites women in the industry-prostitutes, porn actresses, and dancers- who are enjoined by both legal and social needs to disavow common ground with women in other facets of the business [...] The usage of the term ‘sex work’ marks the beginning of a movement. It acknowledges the work we do rather than defines us by our status. After many years of activism as a prostitute, struggling with increasing stigma and ostracism from within the mainstream feminist movement, I remember the term ‘sex work,’ and how powerful it felt to, at last, have a word for this work that is not a euphemism.”

The emergence, and now widespread prevalence of the term “sex worker” within political discourse, can be understood as an attempt to address the reality of sex work as a form of labor. Furthermore, Carol Leigh’s vision of the term “sex work” to be unifying “women in the industry-prostitutes, porn actresses, and dancers”, is unfortunately challenged by the segregating nature of the whorerarchy. Prior to the popularization of this term, sex work had been reductively understood as a crime- simply as “prostitution.” This vague understanding, and generalization of sex work has also lead to the misconception that all work within the industry is a product of coercion and exploitation. This speaks to contemporary movements that advocate for the passing of statutes actively conflating sex work and sex trafficking. Katherine Mackinnon, a prominent feminist thinker and proponent of the narrative of sex work’s intrinsic correlation with abuse, stated that “the abuse that is constant in prostitution, indeed endemic to it, requires dissociation from yourself and the world to survive. You may create another self, give her another name; she is the one who goes out and does this ‘work’ and may defend doing it” (MacKinnon 2009, 288). Interestingly, if we were to replace MacKinnon’s use of the word “prostitution”, with
“labor”, the essence of her argument would be, essentially identical, to Marx’s theorizations around the alienation of labor. When explaining what constitutes the alienation of labor, Marx writes,

“The fact that labor is external to the worker, that is, that it does not belong to his essential being; that in his work, therefore, he does not affirm himself but denies himself, does not feel well but unhappy, does not freely develop his physical and mental energy but mortifies his body and ruins his mind. The worker, therefore, feels himself only outside his work, and feels beside himself in his work. He is at home when he is not working, and when he is working he is not at home. His work therefore is not voluntary but coerced; it is forced labor. It is therefore not the satisfaction of a need, but only a means for satisfying needs external to it. Its alien character emerges clearly in the fact that labor is shunned like the plague as soon as there is no physical or other compulsion” (Marx 1844, 136).

I argue that it is crucial to question the fetishization of sex work as an exceptional form of labor, in contrast to other labor under capitalist domination. To segregate the labor of sex workers, from all other labor, perpetuates stigma and upholds the notion of Otherness that has been attached to sex workers, which in turn allows them to be criminalized. Understanding sex work as labor unveils a multitude of humanitarian demands- the general demand being that sex workers should be recognized as laborers whose work is not to be segregated from other forms of labor. The term “sex worker” challenges the societal and legal forces that have been put in place to separate the sex worker from the everyday laborer. This separation is most explicitly demonstrated through the treatment of sex work as a criminal activity rather than as a job.

Section 4: Social psych approach to understanding stigma

Applying a social-psychological approach to the stigma that sex workers face, as well as the more specific stigma reproduced within the whorerarchy, can provide further insight as to why such stigmas exist. Thus far, I have privileged legal and structural analyses of both sex work in general and the whorerarchy in particular. Here, I aim to understand the way stigma operates on a psychological level, specifically through examining the processes of dehumanization and moralization.

Kteily and Bruneau’s work demonstrates that the psychological process of dehumanization is correlated with support for punitive police measures. In a 2015 study, “The Ascent of Man: Theoretical and Empirical Evidence for Blatant Discrimination”, the conducted seven studies within three countries, finding that “more strongly associated with individual differences in support for hierarchy than subtle or implicit dehumanization” (Kteily and Bruneau, 2015, 1). In this study, Kteily and Bruneau look use five different stages of the “Ascent of man” to measure levels of dehumanization. Ascent of man refers to the several evolutionary stages of man, ranging from the less evolved primate to the modern day human. The authors argue that the varying characteristics of the Ascent of man “combine to make the measure inherently hierarchical, with each silhouette representing an advance—an ascent— over the previous one” (4). In their studies, they found that “individuals particularly likely to endorse group-based hierarchy were also more likely to perceive their group as more evolved than outgroups” (24).

Moralization is described as “the process through which preferences are converted into values, both in individual lives and at the level of culture” (Rozin 1999, 218). The merging of both individual experience, as well as the ubiquitous influences of culture, makes the process of moralization a highly reactive one as it is reflective and reactive of the culture an individual is situated in. In a culture that values monogamy, abstinence from premarital sex, heterosexual relationships, etc., moralization in context with sex work often results in opposition, or even disgust.

I hypothesize that the process of moralization is likely to lead to the internal process, and thus potential acts, of dehumanization. Because sex work is often met with moral scrutiny, as demonstrated in Gayle Rubin’s diagram in the previous section, the process and presence of moralization is difficult to avoid. Now, after one makes judgements subsequent to moralization, if the moralization falls in line with the hierarchy Rubin illustrated, the process of dehumanization is likely to
follow. This is because viewing someone’s sexual- 
ity/sexual practices as “wrong” or “immoral” often leads to the justification of violence. One in- 
stance of this relation between moralization and violence is victim blaming: sexual violence against sex workers is often justified, through the presum- tion that it is “in their line of work” to be subject, or be at risk of sexual violence. This justification of violence explicitly exhibits the process of de- 
humanization, as it implies that sex workers are deservant of violence, and therefore less human.

Section 5: Theoretical perspectives

* Figure 9.1 from Gayle Rubin’s Thinking Sex: Notes for a Radical Theory of the Poli- 
tics of Sexuality depicting “the sex hierarchy: the charmed circle vs. the outer limits” (53)

To demystify the criminality and social stig- 
ma against sex work, Gayle Rubin offers a diagram that depicts the hierarchies that exist in a “sexual value system” (Rubin, 1984). This system identi- 
fies sexualities that are “good, normal”, and ‘nat- 
ural’ should ideally be heterosexual, marital, mo- 
nergamous, reproductive, and non-commercial. It should be coupled, relational, and within the same generation, and occur at home. It should not in-

volve pornography, fetish objects, sex toys of any sort, or roles other than male and female. Any sex that violates these rules is ‘bad’, ‘abnormal’, or ‘unnatural’. Bad sex may be homosexual, unmarried, promiscuous, non-procreative, or commercial” (Rubin 1984, 152). Through a historical materialist method, Rubin’s categorization of in-group sexual- 
ities vs. out-group sexualities helps to explain the reasoning behind the state and social condemna- 
tion of sex work. Furthermore, she makes a comp- 
pelling argument which juxtaposes the persecution of deviant sexualities with racism- as the stigma- 
zation of out-group sexualities does not, as it claims, exist for the maintenance of “ethics”, given that “it grants virtue to the dominant groups, and relegates vice to the underprivileged” (Rubin 1984, 153). The materiality of this theoretical juxtapo- 
sition lies in the legal persecution of sex workers. Overall, Rubin’s dissection of sexualities within a socially-constructed hierarchical framework is foundational to understanding the stigma around commercialized sex. Simply addressing that “most people mistake their sexual preferences for a universal system that will or should work for everyone” (Rubin 1984, 154) serves as a gentle, yet essential, explanation behind the persecution of sex workers.

Section 6: State Legitimized Violence, Ex- 
amining the Prevalence of Sexual Violence Conducted by Law Enforcement Against Sex Workers

As it has been addressed in the previous sec- 
tion, encounters with law enforcement is a reality that sex workers whose labor is deemed a breach of the law, are subject to face. The prevalence of interactions with law enforcement are also a key component in locating a sex workers’ positionality within the whorerachy. State legitimized violence against sex workers does not lie solely in the risk of incarceration, but also in the risk of being vic- 
tim to sexual and physical violence by the hands of the police. In order to elaborate this point, I look to empirical evidence and present-day statutes which demonstrate the ways in which street based sex work encompasses a greater risk of being a target of
state-legitimized violence. Before turning my focus to criminalized, street-based sex work, it should be noted that legal sex workers, such as exotic dancers, are also subject to the surveillance of law enforcement. For instance, the recent widespread police raids and subsequent shutdown of adult entertainment clubs in New Orleans, has brought light to the issue of police violence and discrimination towards sex workers. In an interview with strip club workers, marching on Bourbon Street in protest of police crackdowns at their sites of employment, they expressed their refusal to accept the police raids as preventative measures against human trafficking. Reporter Jess Clark commented on how, “The police say they’re trying to protect the women who work in these clubs, but it’s safe to say their tactics aren’t giving club workers a sense of security. Some strippers have complained to the press that police officers mistreated them during the raids, verbally abusing them, watching them change or calling out their legal names in front of customers - a big no-no in the industry. Strip club manager Leatrice Jarvis was at the march. She says the raids only made workers less likely to seek police help”. Leatrice responded by saying that “They’re supposed to protect us. And right now they feel like more of an enemy. Like, I’m more afraid of them than I am to walk on the street”. Hanni Stoklosa, a co-founder of HEAL (a group aiming to provide support for victims of human trafficking), stated that “You cannot arrest. You cannot prosecute. You cannot rescue and raid your way out of trafficking.” The current political atmosphere of New Orleans demonstrates that sex workers whose work is perceived to possess some level of legality, are still subject to confrontations, and even abuse, at the hands of the police.

I cannot think of any other occupation that poses more risk than sex work, in regards to being subject to sexual violence by law enforcement. To reiterate, the rape and sexual assault of sex workers, perpetuated by law enforcement is a crucial component of the whorerarchy, as it centers sex workers who are able to keep contact with the police minimal to none, and obscures those who face daily run-ins with police. Because full service sex work in the U.S is recognized as a crime in all but one state (Nevada), violence against FSSW at the hands of the police is much more permissible, as there is legal grounds for detainment. In thirty-five states, there are no explicit rules within police protocol regarding consent between an arresting officer and the detainee. The absence of such protocol, facilitates a dangerous world for sex workers to exist in. This point directly pertains to the deeply flawed SESTA-FOSTA bill, which restricts sex workers’ ability to practice their work in an indoor setting away from the gaze of patrolling police.

A report conducted by the Sex Workers Outreach Project, states that “researchers focused on street-based prostitution primarily because these sex workers have the greatest contact with law enforcement and with the community at large, and thus receive the majority of police attention. Most are economically deprived and vulnerable” (Thukral & Ditmore 2003, 5). In addition to street-based sex workers, “people who are profiled by cops as sex workers include, in disproportionate numbers, trans women, women of color, and queer and gender nonconforming youth. This isn’t about policing sex. It’s about profiling and policing people whose gender and sexuality are considered suspect” (Grant 2014, 9). Before delving into the empirical evidence collected around this issue, I must stress police sexual misconduct towards sex workers has lacked visibility within mainstream social research. Zoe Carpenter addresses the obstacles that should be recognized when approaching this research, as “it’s hard to tell exactly how big the problem is, because few people are collecting data. Researchers have to rely on arrest reports and press accounts, which leave out unreported or unprosecuted cases.” The illegality of prostitution forces sex workers who have fallen victim to sexual violence at the hands of the authorities to remain silent. This minimizes the public’s perception of the issue, generating a sense of unawareness—ultimately contributing to a complicity in this systemic violence. Understanding this silence provides context for the small sample sizes used in the following empirical studies. In 2003, The Sex Workers Project interviewed thirty street-based sex workers located in NYC. Out of the thirty, twenty-four participants identified as non-white, five identified as white, with one remaining participant declining to answer. Twenty-eight
of the participants were women, two of whom were transgender. The remaining two were men. Twenty six participants reported living in an unstable housing situation. Twenty one respondents faced daily run-ins with the police. Five participants described experiencing sexual harassment by the police. These forms of harassment were in the form of; offering arrested women cigarettes in exchange for sex, stalking behavior, and in one case, rape. Two of the transgender participants reported that the police asked them to reveal their genitals.

In 2000, the center for impact research (CIR) began investigating prostitution in the metro areas of Chicago. CIR trained twelve ex-sex workers who interviewed 222 individuals engaged in prostitution. 51.4 percent of participants reported their prostitution taking place on the street, while the rest of their work was held in a variety of indoor platforms (exotic dance clubs, bars, parties, someone else’s residence, their own residence, etc.). Again, a majority of participants were women of color, with only 16.3 percent identifying as white. Half of the participants who conducted prostitution on the street, or in drug houses, reported being homeless. Twenty four percent of participants involved in street-based prostitution who communicated that they were raped, “stated a police officer was the perpetrator, while about one-fifth of other acts of sexual violence against women on the streets was attributed to the police” (Raphael & Shapiro, 2000).

In 2012, a study conducted by activist Terra Burns collected data on the issue of police violence towards Alaskan sex workers. Burns interviewed forty sex workers. The demographic breakdown of race was not provided, however Burns did include that the participants were comprised of several different racial identities. On stats concerning economic status, nineteen percent of participants reported seeking shelter. Eighty-three percent of those participants were denied shelter. Concerning sexual misconduct at the hands of the police, twenty-six percent of participants described being sexually assaulted by an officer. The demographics in these studies consistently communicate that street based sex workers are heavily comprised of economically disadvantaged women of color. This characterizes the systemic nature of this issue- as discrimination on economic, racial, and gendered levels are all present. In the Revolving Door Report, Parinita Bhattacharjee documents connections between police violence and ‘quality of life policing’ in New York City during the 1990s. She stated that, “such strategies focus on harassing, arresting, or incarcerating people who are poor, homeless, or simply hanging out on the street with the wrong skin color or the wrong clothes” (18). Thus, the repeated brutalization of target populations is not simply a matter of a few bad actors, or a few unfortunate situations, but is clearly an systemic issue that needs to be corrected through policy reform.

This injustice has been relatively clandestine in mainstream news. The criminalization of sex work complicates the coverage of police violence targeting the sex worker community, often justified through moralizing, victim blaming, and dehumanization. Currently in Alaska, a community of sex workers are organizing in support of the passage of Alaska’s House Bill 73 and Senate Bill 112. The companion bills would put an end to the loophole that gives the police the ability to engage in sexual contact with sex workers during prostitution stings. Alaskan Deputy Chief Sean Case argued that “If we make that act (of touching) a misdemeanor, we have absolutely no way of getting involved in that type of arrest” (Dancyger, 2017). However, the Alaskan sex-work community argues that the autonomy the police are given when performing prostitution stings have resulted in an abuse of power. Amnesty International issued an official statement, siding with the proponents of the companion bill, stating that the investigative tactics in question are “an abuse of authority and in some instances amounts to rape and/or entrapment” (Dancyger, 2017).

**Section 7: SESTA FOSTA**

Police violence directed towards sex workers must be analyzed in context of current day statutes that serve to criminalize sex work. Hence, an examination of the recently passed bill, SESTA-FOSTA, is foundational for my research. I intend to use the statute as a legal reference through
which to understand the state’s endangerment of many sex workers’ safety and livelihood. This bill has especially disenfranchised less financially privileged sex workers, as they no longer have access to sites that allow them to advertise their services freely. The three most pertinent aspects of this bill (H.R.1865 - Allow States and Victims to Fight Online Sex Trafficking Act of 2017, congress.gov) are: Although the implementation of companion bill SERTA-FOSTA has addressed Backpage’s heinous failure to remove images of underage girls, it should not be ignored that the supporters of this bill have given little to no voice to the community of sex workers that used Backpage on their own terms. A community organizer within the group, Survivors Against SERTA, had disclosed in a 2018 interview with VICE that, “I know so many people who were able to start working indoors or leave their exploitative situations because of Backpage and Craigslist. They were able to screen for clients and keep themselves safe and save up money to leave the people exploiting them. And now that those sites are down, people are going back to pimps. Pimps are texting providers every day saying ‘the game’s changed. You need me.’” Writer and journalist Natasha Lennard points out the intentional ambiguity of the language used in SERTA-FOSTA. The bill makes it so that any internet platform is subject to legal liability over content that signifies prostitution. She argues that the bill did not differentiate between the term “prostitution” and “sex trafficking”, thus engaging in dangerous conflation of the two. Furthermore, she states that, “The framing is vague, but the implication is clear: Sex work is not seen as legitimate work, and as such, sex workers can’t organize as workers. With little clarity on how the law might be implemented, online platforms as well as activist groups themselves are moving with pre-emptive vigor to remove content with any relation to sex work—including anti-SERTA-FOSTA political speech”. Significant backlash has undoubtedly occurred as a result of the passing of SERTA/FOSTA, often vocalized by sex worker advocates. In attempts to investigate the actual efficacy of the bill, and the safety it intended to facilitate as a result of the banning of these sites, I will refer to a recent study which explores
the possibility that sites such as Craigslist’s Erotic Services section have reduced violence against women. After the recent banning of sites that solicited prostitution, research has been conducted to examine the ways in which Craigslist’s ERS (erotic services section) decreased violence against sex workers (Cunningham, DeAngelo, John Tripp, Craigslist Reduced Violence Against Women, February 2019, Baylor University). The article brings attention to the fact that the passing of FOSTA (Fight Online Sex Trafficking Act), has jeopardized the safety and livelihood of sex workers who had used the website prior to its termination. Due to the recent termination of free sites such as Backpage, and Craigslist, sex workers who do not have the financial means to advertise their services on websites that require ad payments, are faced with the ultimatum of having to engage in street based sex work. It has been found that street based prostitution “has historically been considered the most dangerous market segment for sex services with a death by homicide rate over 13 times higher than the general population” (Potterat et al., 2004). The authors argued three points that correlated Craigslist’s ERS with the decline of violence against sex workers, these being; ERS provided more screening (allowing sex workers to discern whether or not their customer made them feel safe), ERS provided a consistent market that could facilitate “repeat business with low-risk clients, thereby making the market lower risk to sellers” (4), as well as ERS influencing a shift from engaging in outdoor sex work, to indoor sex work. Prior to the amendment of section 230 of the CDA, Craigslist’s ERS was protected by this section, as service providers were not held liable for “offensive material” posted by third party users. The authors summarized that that the three main reasons justifying the shutdown of Craigslist’s ERS, was due to; the difficulty to for law enforcement to tackle prostitution, critics of the platform purported that the “use of ERS was dangerous for the individuals involved” (8), and the existence of the “widespread belief that online platforms were utilized by human traffickers, and their growth and importance were therefore supporting the infrastructure of human trafficking networks (Delateur, 2016)”. The authors investigation of ERS primarily concerned the safety of sex workers, using four datasets to further understand the platform’s relationship with violence against sex workers. The first dataset showed the site’s user activity, beginning at the first month that ERS was up and running. The second dataset examined reviews from The Erotic Review, a site which allowed sex workers to exchange information about their clients. This was used as a tool to help promote safety among the sex worker community. Authors used the data to “measure whether a sex worker worked for an agency or independently, whether the provider provided an incall, the average hourly price, ratings on performance and appearance, and unstructured textual data provided by reviewers” (10). 344,561 reviews of 68,450 providers were reviewed between 1998 and 2009, all within the U.S. The third data set revolves around the FBI’s Supplementary Homicide Reports (SHR) from 1995-2009. This data lists the number of homicides, the gender of the victim and murderer, the circumstances around the murder- including the relationship between the victim and the murderer (11). Conclusively, the authors found that “ERS led to a 10-17 percent reduction in female homicides. These negative effects on female homicides are consistent with theoretical predictions made by Logan and Shah (2012) Persson and Lee (2016), suggesting that Internet platforms like Craigslist’s ERS improved market participant safety” (29).

Section 8: Issues with legalization

Urgent criticism of the criminalization of sex work should not be confused with a call for its legalization. Instead, efforts should be directed towards decriminalization. Within a capitalist society, the legalization of sex work would allow private industries to have more jurisdiction over their laborers, making sex workers more susceptible to exploitation. In addition, the legalization of sex work would potentially replace one managerial, authoritative body over another; the pimp is replaced with the business owner. The sex worker is distanced from her autonomy through a hierarchical power dynamic. Decriminalization would not
mandate the worker to provide his/her labor under state-sanctioned conditions. The state of Nevada exemplifies the undesirable consequences of legalization. Since the late 1980’s, prostitutes working in brothels in Nevada have reported working under inhumane environments. Prostitutes are required to undergo HIV testing weekly, while clients are not. Subsequently, the prostitutes must show their medical record to the police department, where their fingerprints would be taken. Such public registration puts the prostitute at risk of being denied health insurance, discrimination in future fields of employment, denial of housing, and in civil cases regarding child custody rights, she may be deemed as an “unfit mother”. Although legal, brothel owners operate similarly to pimps (and business owners in general), taking half of the prostitute’s earnings. The brothel requires tipping out other managerial bodies within the establishment, which sometimes include the cab drivers that bring the clientele to the brothel. Using Nevada as a case study for the failures of legalizing prostitution, it is important to note that its ethical failures are reminiscent of the failures of most business within a capitalist society. Legalization makes sex work readily exploitable by confining it to the domain of private business. The brothel owner has the ability to construct contracts designed to subjugate their workers’ through jeopardizing their health, finances, and psychological state- all for the sake of maximizing profits. Many contemporary feminists have defended the “Nordic Model” of sex work. Countries like Sweden, Northern Ireland, and Norway adopted this model to address the ethical issues around sex work. This model criminalizes the individual purchasing the sexual service, rather than criminalizing the sex worker. There are several issues with this model. The first issue lies in the obvious fact that the criminalization of the john poses economic strain on the sex worker, as their customer is taken into custody. Second, given that the criminalization of the john minimizes the sex worker’s clientele, the sex worker is at higher risk of resorting to a “seedier” clientele, as their ability to select clients becomes minimized by the Nordic Model. Third, this model infantilizes the sex worker, in that all legal accountability is placed upon the (usually male) john, which indicates that he alone is a subject with agency. The sex worker is merely an object that the subject (the john) was attempting to procure. In addition, this narrative reduces the sex worker to a victim of the industry, rather than an laborer working autonomously. Ironically, feminist organizations including the CATW (Coalition Against Trafficking in Women) and the European Women’s Lobby have advocated for this legislation “without any meaningful consultation with the women who sell sex” (Grant 2014, 40). Sex workers within this country have complained that the Nordic Model has not improved their safety, and have even described the model as putting “their lives at risk and undermines their human rights.” In contrast to the legalization of sex work, and the partial criminalization of sex work (The Nordic Model), New Zealand serves as a promising case study- demonstrating the efficacy of full decriminalization of sex work. The decriminalization model implemented in New Zealand in 2003, put forth by the New Zealand PRA (Prostitution Reform Act). Unlike the Nordic Model, sex workers were involved in forwarding this legislation. Their input was considered and integrated with decriminalization model. Five years after decriminalization, the Prostitution Law Committee reported that the sex industry did not increase in size, and that “many of the social evils predicted by some who opposed the decriminalization of the sex industry have not been experienced” (Crichton, 2015). Additionally, the review committee instructed the Christchurch School of Medicine (CSM) to conduct an independent review, evaluating the efficacy of decriminalization from the perspective of sex workers. Research found that approximately ninety percent of sex workers felt that the PRA provided them with rights pertaining to their health, employment, safety, and the law. Under the PRA, sixty-four percent of sex workers found that it was easier to refuse clients. The national coordinator of the New Zealand Prostitutes Collective, Catherine Healy, reported improvements between sex workers and the police. She stated that, through decriminalization, the dynamic between law enforcement and sex workers, “shifted dramatically, and importantly the focus on the sex worker wasn’t on the sex
worker as a criminal. It was on the rights, safety, health and well-being of the sex worker.” The case of New Zealand’s decriminalization of sex work demonstrates how once a market becomes legitimized by the state, the violence perpetrated by law enforcement is (theoretically) no longer justifiable. Not only is the market legitimized, but the experience of the identities and bodies involved in commercialized sex have become visible. The implications of this visibility is astronomical; as sex workers have the legal ground to report violence inflicted upon them, as their work is no longer a tool used to discredit their accounts of received violence.

**Section 9: Counter Arguments**

Katherine MacKinnon argues that the difference between indoor and outdoor prostitution is illusory, in that both forms of sex work are characterized by violence and vulnerability. Through this claim, she attempts to collapse the two, arguing that the “main difference between indoor and outdoor prostitution seems to be whether the public that does not use the women is aware, or faces the fact, that they are there. The indoor/outdoor distinction basically functions ideologically to feed the illusion, beloved by moralists of most all politics, that the women in prostitution who appear classy really have upper class options: that they are exercising free choice (perhaps even a bad one), being well paid, enjoying themselves, could leave anytime they want, are relatively safe if they are careful, and are not being compelled or hurt, at least not very much” (285).

Although MacKinnon wrote this piece prior to the passing of SESTA-FOSTA, the reality of the bill and its consequences puts MacKinnon’s assertions to the test. Firstly, the distinction she draws between indoor and outdoor prostitution, is dependent on “whether the public that does not use the women is aware, or faces the fact that, they are there.” The public, here, is portrayed as a neutral actor. It is imperative to understand that this “public” body MacKinnon is addressing, is composed of not only neutral bystanders, but agents of the state. Law enforcement routinely subject sex workers to violence, whether in the most literal sense (ex. physical and/or sexual force, interrogation), or in a more juridical manner, through arrest or incarceration.

Furthermore, MacKinnon’s disregard for the hierarchical organization of indoor and outdoor sex work also demonstrates a failure to recognize the effects of the whorearchy over the safety of sex workers. In a 2018, post SESTA-FOSTA interview with nine sex workers, the concern of being left with no choice but to engage in street-based prostitution was repeatedly expressed. Arabelle Raphael, a twenty-nine year old sex worker from California, stated that “This bill will and already has been responsible for the murder, rape [and] arrest of sex workers and will further push trafficked people underground.” Melissa, a thirty-two year old escort from Phoenix Arizona, expressed concerns that can be interpreted as directly challenging MacKinnon’s argument. “The bill has already affected me, and it’s nothing good. Because of this bill I’ve now been forced back to the one place I barely made it out of alive the first time, what [do] you think the chances are that I make it out alive again? It’s forcing me to go back the streets, walking up and down trying to find clients. Now I not only have to deal with the police, but now I’m forced to deal with tricks that know this bill is in effect, and trust me, they are taking full advantage of it by being more aggressive. And unlike being in the safety of my room, I’m in their car, I don’t have the option to leave or kick them out. I’m literally stuck in their car until they are finished with whatever it is they want from me”.

Opposition against prostitution itself is foundational to challenge, before dismantling the whorearchy. The fact that prostitution is illegal in 49 of the 50 U.S states communicates that public sentiment is opposed to accepting prostitution as a legitimate means of labor. Andrea Dworkin, a figurehead in anti-prostitution and anti-pornography feminist movements, has argued that “prostitution in and of itself is an abuse of a woman’s body […] In prostitution, no woman stays whole. It is impossible to use a human body in the way women’s bodies are used in prostitution and to have a whole human being at the end of it, or in the middle of it, or close to the beginning of it. It’s impossible. And no woman gets whole again later, after” (3). This argument is peculiar in the sense that Andrea Dworkin’s claim for women’s liberation is grounded in
the idea that a woman’s worth is predicated on the way men consume her. Dworkin essentially argues that a man’s purchase of her services will inevitably reduce her to dirt. One can also argue that society does treat women who sell sexual services like dirt, but we can also see that women who refuse sex with men, compensated or not, are also treated like dirt. We must remember that the theme of oppression is not solely circulated around the women who sell sex, but those whose identities who are categorized as “feminine” under an androcentric hegemony, are often reduced to objecthood. In conclusion, the claim made by Dworkin and others that the abolition of prostitution will help pave the way to “women’s liberation” is fundamentally illusory. For one, it removes the accountability from perpetrators of violence. Instead, it punishes the Other for engaging in such labor—whether that punishment take the form of incarceration, and/or social ostracization. It infantilizes those who use their autonomy to choose to consciously engage in sex work. Under Dworkin’s line of reasoning, sex workers are to live under constant degradation and humiliation—because the work is inherently an abuse of their bodies. This leads to another question; is there any form of labor under capitalism that is not characterized by abuse and exploitation? Again, I argue that it is crucial to recognize that the separation between sex work, and all other forms of labor under a capitalist system, perpetuates the legal and social stigma that sex workers routinely face. Employing a perspective which aims to achieve cohesion between the worker, and the sex worker, is a necessary step when seeking to dismantle systems of oppression which subjugate sex workers. Dworkin’s arguments against prostitution allow for further discussion regarding the social stigma of sex workers. She claims that “prostitutes experience a specific inferiority […] A prostitute lives the literal reality of being the dirty woman. There is no metaphor. She is the woman covered in dirt, which is to say that every man who has ever been on top of her has left a piece of himself behind; and she is also the woman who has purely sexual function under male dominance so that to the extent people believe that sex is dirty, people believe that prostituted women are dirt” (6). She continues that prostitution “is a political reality that exists because one group of people has and maintains power over another group of people” (10). In response, I pose the two-fold question; what oppressive social structures are not characterized by this exercise of in-group dominance over an out-group? Is the fundamental attribute of said outgroup to be abolished, in this case, prostitution?

**Conclusion**

The whorearchy is a complex social order which encapsulates the toxic forces generated by patriarchal, capitalist, and racist systems. Understanding sex work as a legitimate form of labor, is necessary for the destruction of this hierarchical organization of already marginalized bodies. Decriminalization would promote more public and critical discourses around disentangling the whorearchy, as sex workers would not have to live in fear of legal and social persecution. Challenging the motives of anti-sex trafficking activist groups is crucial to achieving decriminalization, as they push for legislation which envelopes sex workers into a narrative irrelevant to their struggle, which results in the jeopardization of both their occupation, and legal status. This legislation is deeply rooted in an otherization of individuals who do not fit in a hetero, monogamous, non-commercial, and reproductive model of sexuality, which in turn proves the oppressive effects of applying a universal perspective upon a highly complex social dimension.
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Commodity Fetishism, Gendered Embodiment and The Unnatural Mother: Towards an Ethical Reproductive Relation

Mia Halsey
“I love you: body shared, undivided. Neither you nor I severed. There is no need for blood spilt between us. No need for a wound to remind us that blood exists.” Luce Irigaray, When Our Lips Speak Together

Elena Ferrante’s novel The Lost Daughter follows an unnamed protagonist and self-described “unnatural mother” (Ferrante 2008, 1660) as she vacations in the Italian countryside. The story orbits around her preoccupation with a family on the beach; pages detailing playful gestures, glances, and touches shared between a young mother and daughter are interrupted every so often by fragmented vignettes of the narrator’s own fraught experience of mothering. These flashbacks, while comprising an expansive emotional register, are traversed by what Sophie Lewis terms ‘the morbidity of pregnancy’ (Lewis 2019). In describing the birth of her first daughter, the protagonist muses that “little Bianca, right after her beautiful birth, had suddenly changed and traitorously taken for herself all my energy, all my strength, all my capacity for imagination” (Ferrante 2008, 1470). Rather than giving way to a proclivity for mothering, this parasitic relation intensifies until the protagonist feels that she has no choice but to leave her children: “Ah, to make them invisible, to no longer hear the demands of their flesh as commands more pressing, more powerful than mine. I finished peeling the orange and I left. From that moment, for three years, I didn’t see or hear them at all” (Ferrante 2008, 1190). The protagonist is fascinated not only by the mother and daughter, Nina and Elena, but also by their relation to Elena’s doll. In one passage, she becomes increasingly distressed as Nina and Elena alternate attribute their own voices to the doll: “I felt an unease as if faced with a thing done badly, as if a part of me was insistent, absurdly, that they should make up their minds, give the doll a stable, constant voice, either that of the mother or that of the daughter, and stop pretending that they were the same” (Ferrante 2008, 198). Here, the doll serves as a kind of bearer of the mother-daughter relation understood in terms of pathological fusion; the doll is the object through which Nina and Elena can defy corporeality and speak as one. This is confirmed later when the protagonist steals the doll from the beach:

“Why had I taken her. She guarded the love of Nina and Elena, their bond, their reciprocal passion. She was the shining testimony of perfect motherhood. I brought her to my breast. How many damaged, lost things did I have behind me, and yet present, now, in a whirl of images. I understood clearly that I didn’t want to give Nani back, even though I felt remorse, fear in keeping her with me. I kissed her face, her mouth, I hugged her as I had seen Elena do. She emitted a gurgle that seemed to me a hostile remark and, with it, a jet of brown saliva that dirtied my lips and my shirt” (Ferrante 2008, 689).

It would be facile to conclude from this story that the normal mother-daughter relationship exemplified by Nina and Elena serves as the motif through which the protagonist can confront her own pathological inability to establish a healthy intimacy with her own daughters. I propose an alternative reading which centers processes of subjectification, fetishization, and embodiment. Disposing of the normal/pathological binary, I want to suggest that the point is not simply that Nina succeeds in adhering to the course of her destiny where the protagonist fails. The protagonist’s association of affective states such as hatred, unrequited love, resentment, sexual jealousy, and betrayal with mothering speaks to the falsity of a “natural” motherhood like the one embodied by Nina. In other words, motherhood is an uneven process of fetishization, at once determined by a drive towards abstract universalization and by an inability to fully sublimate the particularities of the subject. Further, this unevenness is precisely that which makes possible a politics of resistance; the protagonist’s own “failures” as a mother are what allow her to grasp “natural” motherhood as a violent and unattainable condition. If it is through the doll that Nina and Elena are able to speak as one, their needs and desires flattened, disembodied, then perhaps the act of stealing the doll can be understood as an effort to disrupt this mode of relation and imagine another. After returning the doll to an incredulous and furious Nina, the protagonist concedes, “I’m an unnatural mother” (Ferrante 2008, 1660). I am interested in how the language of an “unnatural mother,” parleys with the sketch above, wherein the unevenness of fetishization...
zation produces in the subject sites of both immense pain and dissonance. Through naming the morbidity of motherhood, the protagonist prefigures a more ethical reproductive relation. Understood in these terms, the figure of an “unnatural mother” is not the result of individual pathology but rather calls attention to the process through which motherhood is constructed as natural. Perhaps what we can learn from our protagonist is that all mothers are in fact “unnatural mothers.” The Lost Daughter serves as an entry point for thinking about the role played by processes of social mediation and exploitation in the making and unmaking of maternal subjectivity. This project is grounded in the use of commodity fetishism as an analytic resource, though I work with several additional frames, namely social mediation, subject-making, and embodiment, which I conceive of as interrelated but not identical. In the first section, I look to Marx and Irigaray in order to elaborate an understanding of gender as an abstract social value constituted through the violent erasure of materiality and difference and the appropriation of reproductive labor. Alongside feminist thinker Ewa Plonowska Ziarek, I suggest that both essentialist and social constructivist feminisms fetishize gender, albeit in different ways, and that consequently a reconceptualization of the materiality of gendered embodiment is in order. In this vein I turn to Alys Eve Weinbaum’s essay, Marx, Irigaray, and The Politics of Reproduction, focusing on the relevance of a Marxist theory of labor power and an Irigarayan conception of the maternal body for alternative feminist renderings of maternal subjectivity. Then, I look to Saidiya Hartman’s The Belly of the World: A Note on Black Women’s Labors, complicating the potentiality for liberatory modes of maternal subjectivity through an analysis of racial slavery as constituted by coerced reproductive labor and particular forms of racialized and gendered (non)subjectivity. Finally, I reevaluate the feminist politics of motherhood sketched in previous sections through an analysis of Sophie Lewis’s “gestational communism.” While I maintain that commodity fetishism serves as a generative conceptual tool for understanding the (re)production of gender, I push further and argue for a Marxist Feminist politics which seeks not only to disrupt the valuation of gender but value extraction as such. Through this lense, I suggest a return to the Marxist insight regarding the immanent relationship between the mode of (re)production and social relations, proposing a dual pronged thesis related to the abolition of the value form on the one hand, and a feminist reconceptualization of materiality and maternal embodiment on the other.

The Existence of the Things Qua Commodities

In order to understand the social mediation of gender as a process akin (or for Irigaray, identical) to commodity fetishism, it is helpful first to provide a skeletal outline of commodity fetishism as defined by Marx. The commodity is divided in two parts, use-value and exchange value; use-value as that which pertains to the definite, material properties of the object, and exchange-value as the abstract formal embodiment of human labor time. Through the transformation of the commodity into exchange-value, its “different qualities” must be eradicated such that the commodity as exchange-value “does not contain an atom of use-value,” “but are merely different quantities (emphasis mine)” (Marx 1867, 305). In a famed passage in Capital Vol 1, Marx writes, “The existence of the things qua commodities, and the value-relation between the products of labour which stamps them as commodities, have absolutely no connection with their physical properties and with the material relations arising therefrom. There it is a definite social relation between men, that assumes, in their eyes, the fantastic form of a relation between things. ... This I call the Fetishism ... of commodities” (Marx 1867, 321).

Thus, the fetishism of commodities is a process whereby the particular conditions of production are effaced and the value of the commodity is attributed not to proletarian labor-power, but to its exchangeability with other commodities. The facet of commodity fetishism which I take as my focus here, addresses the way in which the commodity as exchange value requires the annihilation of its differentiated material qualities in favor of an abstract
universality. Although it may involve an imaginative reading of Marx, I borrow Ziarek’s insights regarding commodity fetishism as a site of violence: “the obverse side of abstraction is an infliction of bodily injury: by ‘extinguishing’ all sensuous characteristics (C128) the value form mortifies and wipes out the physical body without a trace” (Ziarek 2010, 206). This understanding of commodity fetishism as constituted through bodily injury figures importantly in an analysis of the social (re)production of gendered embodiment and disembodiment, as will be made more clear in the forthcoming section on Irigaray.

Irigaray and the Gendered Economy of Commodity Fetishism

In her essay Women on The Market, Luce Irigaray intervenes in the Marxist theory of commodity fetishism, arguing that commodity exchange in a patriarchal society is organized in gendered terms as the division between producer-subjects, and commodity-objects. Though Irigaray is concerned chiefly with the symbolic order, her appropriation of political-economic language combined with occasional references to Marxist Feminist themes, such as the exploitation of reproductive labor in the family provide an opening for a different reading. My method for analyzing this text can thus be understood as a mode of reading Irigaray against herself, constituted by a break with literal interpretation and a privileging of political resonances relevant to my project. In this sense, I draw on the text as an interlocutor for questions regarding the production, valorization and exploitation of gendered subjects through the lense of commodity fetishism. For Irigaray, women are radically excluded from claims to subjectivity and rather function as fetishized objects appropriated by men. In her own words, “women’s bodies - through their use, consumption, and circulation - provide for the condition making social life and culture possible, although they remain an unknown ‘infrastructure’ of the elaboration of that social life and culture” (Irigaray 1985, 799). Exclusion, then, is perhaps an inadequate framework for understanding the point being made here, which is that patriarchal social life is deeply reliant on and indeed founded in the production and subsequent exchange of women-as-commodities. Through a direct engagement with Marx, Irigaray argues that women-as-commodities undergo the same split between use-value and exchange-value characteristic of other commodities, “into matter-body and an envelope that is precious but impenetrable, ungraspable, and not susceptible to appropriation by women themselves” (Irigaray 1985, 802). Importantly, this transformation involves the subordination of the “matter-body” as use-value to exchange-value as abstract social form. It follows then, that the value of women-as-commodities is not determined on the basis of any particular characteristics, but rather this transformation is one in the same as the the production of “women” as a coherent universal category of embodiment. Along these lines, she writes,

“Woman’s price is not determined by the ‘properties’ of her body - although her body constitutes the material support of that price. But when women are exchanged, woman’s body must be treated as an abstraction. The exchange operation cannot take place in terms of some intrinsic, immanent use value of the commodity. It can only come about when two objects - two women - are in a relation of equality with a third term that is neither one nor the other. It is thus not as ‘women’ that they are exchanged but as women reduced to some common feature” (Irigaray 1985, 801).

Thus, gender as a commodified social value requires the disappearance of its raw material, “matter-body.” Contained in this formulation are two distinct but related points: first, an understanding of the social mediation of gender as a violent severing of women’s bodies into two forms of value, and second, that ultimately both forms of value serve the patriarchal system that is the object of critique. It is my contention that these lines do not point to a feminist reclamation of “matter-body” as such but more radically call into question the violent process through which the gendered subject position of “woman” is rendered dually valuable. Thus, I am concerned with the way in which this passage problematizes the constitution of “women” as a universally exchangeable class, and reveals the violent erasure and subordination of
forms of differentiated material embodiment as its precondition. I want to suggest that it is precisely as women that they are exchanged, insofar as “woman” is an abstraction made legible through a reduction “to some common feature” (Irigaray 1985, 801). The distinction between the material and the essential which acts as a refrain throughout this paper perhaps becomes more legible here; the point is not to “return” to a mode of embodiment imagined as “intrinsic” and “imminent,” but rather to understand the divide between matter and social form as part and parcel of a regime of gendered exploitation.

In a brief passage on the role of the mother in commodity exchange, Irigaray introduces a third form of value, “natural value” (Irigaray 1985, 807). In my understanding, natural value is the term which theoretically links the desire for mastery over nature with the subordination of women in patriarchal society; the feminization of nature acts to socially legitimate and invisibilize the exploitation of reproductive labor. Accordingly, Irigaray defines the value of the mother in the following way:

“As both natural value and use value, mothers cannot circulate in the form of commodities without threatening the very existence of the social order. Mothers are essential to its (re)production (particularly inasmuch as they are [reproductive of children and of the labor force: through materiality, child-rearing, and domestic maintenance in general])” (Irigaray 1985, 807).

Mothers, then, are devoid of exchange-value because their entrance in the market would threaten the very logics upon which it is built-namely, the erasure of the conditions in which life is (re)produced. Within this schema, the male subject-producer is ontologically defined through his denial of and separation from the (re)productive labors of women, labors deemed “natural.” If, as Irigaray writes, “society is the place where man engenders himself, where man produces himself as man, where man is born into ‘human,’ ‘supernatural’ existence,”[Irigaray 1985, 805] then mothers endanger the producer-subject position as sole property of men and must be barred from the social entirely. Thus, what is being described here is a fetish of the maternal body that derives value from its “immediate” properties rather than from its abstract exchangeability. Irigaray argues that the performance of reproductive labor transforms the mother from woman-as-commodity into pure use-value. Importantly, the production of the mother as pure use-value, and the maternal body as immi-

1 All of the information in this paragraph relating to the “cult of motherhood” was sourced from Angela Davis’s Women, Race, and Class.
sonhood to (productive and/or) “reproductive instrument,” and the violent bestowal of a “purely material” body, all of which Irigaray misattributes to the condition of white motherhood. Paradoxically, in Women on the Market Irigaray develops a theory of commodity fetishism capable of accounting for the differential and complex operation of the value form, as it corresponds to different experiences of gendered embodiment. It is possible to glean from the passage on motherhood that the violence of fetishism does not lie only in the abstraction from the body but also in the translation of certain laboring subjects as merely bodies absent of social value. Put differently, de-valuing is not the obverse of valorization but rather another mode of its expression. Irigaray rightly brings to the fore the process through which the body is split into two distinct forms of value - both are alien to the subject and both are sites of violence and exploitation - and through the passage on motherhood makes compelling contributions to a theory of value. However, I contend that these insights regarding the social exteriority of “pure use-value,” and its function as the underbelly of gender as exchange value, remain entirely illegible, lacking an analysis of racial slavery. The following section takes up this problematic, thinking through gender and value in the “grammar of slavery.”

The Social Mediation of Gender: Dis/embodiment and De/vaulation

In ‘Women on the Market’: On Sex, Race, and Commodification, Ziarek seeks to reconceptualize the materiality of gendered embodiment through an analysis of commodity fetishism. For Ziarek, both essentialist and social constructivist discourses are underwritten by a fundamental misunderstanding of the process through which gender is made socially valuable. Through a close reading of Marx, Ziarek advances two important theses. On the one hand, processes of social mediation and abstraction never fully succeed in sublating the material from which they attain their form, and on the other, commodity fetishism necessarily requires the violent abdication of the body. Thus, critiques of social construction which posit an “absolute autonomy” of form from matter efface the violent process through which the material body is transformed into an abstract social value. In contradistinction, Ziarek argues that the fundamental law of (social and economic) value creation is that it can never be totalizing or absolutely “successful.” Social mediation, just like capitalist valorization, is self limiting; it continually destroys and reproduces its own material bounds. Contained in the fetishized commodity is always a remnant of materiality, an “excess” which is in turn cast in terms of sexual and racial difference; accounts of social mediation which discard this remnant fail to understand the injury that inaugurates the process of commodification. Along these lines, Ziarek argues that “by misreading this remainder as essentialism and by disregarding the damaging abstraction of social form, the social construction argument remains in complicity with the metaphysics of production, which asserts its ‘absolute’ autonomy and ‘tolerates nothing outside itself’ (H, 26)” (Ziarek 2010, 209).

In one sense then, the split between essentialist theories of gendered embodiment and social constructivist ones can be understood as the reproduction of the use-value/exchange value binary; while essentialist accounts urge for a return to an immediately knowable biological-ontological truth, constructivist accounts take as their focus abstract social mediations, forgetting the conditions under which they were produced. It is on the basis of this refusal to reproduce the violent obliteration of materiality engendered in the commodity that Ziarek proposes another method of feminist critique, through “the negation of both immediacy and the abstract autonomy of production” (Ziarek 2010, 209). In order to develop this method, Ziarek turns to Irigaray’s Women on the Market and Hortense Spillers seminal work Mama’s Baby, Papa’s Maybe. Ziarek’s interest in Women on the Market lies in its forceful reconsideration of commodity fetishism in terms of female embodiment. In particular, she commends Irigaray’s attention to the commodity form as that which violently abdicates the body in exchange for an abstract social value. However, Ziarek seeks to complicate an understanding
of the commodification of gender in terms of a teleological drive towards abstraction. Following Spillers, she writes that “one of the deadly contradictions of the ‘grammar’ of slavery is that the commodification of the captive body was in fact synonymous with the destruction of the social significance of gender” (Ziarek 2010, 210). Whereas for Irigaray the violence of commodity fetishism lies in the obliteration of the material body of the woman simultaneous with her abstract social valuation, in the context of slavery the violence at the heart of commodity fetishism has to do with the rendering of enslaved black people as essentially material bodies devoid of social value. In other words, “the difference between the commodified white female body and the enslaved black female body is that the economic value of the latter depends on its inability to spiritualize/specularize matter” (Ziarek 2010, 212). Thus, the analytic of gender (understood as abstract social value) is woefully insufficient for grasping the logics of sexual (un)differentiation projected onto the enslaved black female body. From these insights follows a radically different conception of the potentialities of alternate modes of gendered embodiment and subjectivity; the disclosure and subsequent appropriation of categories of social mediation such as gender is politically incoherent within this situation. Consequently, Ziarek’s reorientation of the essentialism/social constructivism debate towards commodity fetishism challenges feminists to consider the social mediation of gender as a process involving the differential distribution of dis/embodiment and de/valuation.

Reproductive Labor Power and Maternal Embodiment

At the heart of Weinbaum’s article Marx, Irigaray, and the Politics of Reproduction, is the articulation of the need for a feminist politics of reproduction attuned to the specificity of both the contemporary organization of reproductive labor and of the maternal body. She introduces this project by referencing two dominant positions within feminist debates around reproductive labor; the first hinges on a kind of moral outrage about the commodification of reproduction exemplified by surrogacy, the second has to do with the interpretation of the relation between the mother and the fetus as a unitary whole. For Weinbaum, these positions reflect an inability to account for either the material processes whereby reproductive labor is rendered valuable for capitalist accumulation or the forms of gendered subjectivity conceived in the labor process. Along these lines, she writes that “given this situation, the economic metamorphosis of reproduction heralded by surrogacy cannot be treated as an aberration, but rather requires a reconceptualization of the maternal body as a reproductive resource and, in turn, of the mother/fetus relationship” (Weinbaum 2002, 99).

Thus, the expansion of the surrogate labor market demands a reworked theory not only of the exploitation of the reproductive laborer herself but also of her relationship to that which she produces. In order to properly attend to this “economic metamorphosis of reproduction,” (Weinbaum 2002, 99) Weinbaum suggests a theoretical framework which combines Marxist insights on the valuation/exploration of labor power in capitalist society with Irigaray’s psychoanalytic feminist approach. At stake for me is not the phenomenon of surrogacy as such, but rather how it informs a Marxist feminist analysis of the relation between reproductive
labor, gendered embodiment, and subjectification. Weinbaum is centrally concerned with the possibilities of resistance engendered by a Marxist theory of labor power, and the utility of these insights for a feminist politics of reproduction. Critical of earlier Marxist feminists reliance on facile distinctions between reproduction/production, home/market, public/private, Weinbaum seeks instead to highlight the disintegration of these binaries, using the example of surrogate labor as a critical entry point. She posits the production of the baby by the surrogate laborer as analogous to the production of any other commodity in the capitalist relation; the value of the baby commodity is determined by the quantity of congealed reproductive labor time contained therein, and the concrete experience of the reproductive labor process is abstracted through its quantification as human labor in general. The point, however, is not simply that surrogate labor is value productive, but that revealing the commodity form as an abstraction which conceals the “hidden abode of production” implies a politics of resistance. To this point, Weinbaum writes that “Marx tries to give to all workers in the capitalist relation an understanding of that relation in terms of the flow of labor power. He does this by rendering the commodity in such a guise that workers can recognize in its value form that the labor embodied is their social labor” (Weinbaum 2002, 104).

Understanding surrogacy through the lens of commodity fetishism brings into focus the endless creativity and exploitation of (re)productive labor power. Implied here is also an alternative mode of understanding of the social as the way in which we are brought in relation to one another through our respective positions in the labor process. In other words, the moment of abstraction wherein the particularity of labor processes is effaced and transformed into labor “as such” simultaneously contains the possibility for appropriating this abstraction towards liberatory ends. It is in this vein that Weinbaum reads Marx alongside a feminist scholar of the social right to abortion, a theoretical linkage out of which emerges “the double demand to claim the social power of the flow of reproductive labor and abortion as the vehicle for seizing control of the means of reproduction” (Weinbaum 2002, 104). Weinbaum recognizes the political instrumentality of a feminist rationalism which understands reproductive labor primarily through the frame of surplus value extraction. However, she cautions that by appropriating a capitalist logic of abstraction, feminists run the risk of naturalizing the erasure of materiality and difference contained therein. As a corollary, though she insists on the importance of understanding the overlap of productive and reproductive labor in the current historical juncture of capitalism, she laments that “when, as feminists, we think of reproduction as (re)productive, we lose the ability to articulate women’s concerns from a specifically gendered space” (Weinbaum 2002, 106). Though not explicit in Weinbaum’s text itself, these cautionary lines gesture towards an understanding of commodity fetishism developed in previous sections as a violent process which never fully succeeds in obliterating the materiality of its object. Consequently, it is in an attempt to not lose sight of those components of reproductive labor which exceed capitalist quantification, primarily those related to maternal embodiment, that she suggests turning to Irigaray’s psychoanalytic feminist perspective. Although I can only hope to scratch the surface of Weinbaum’s analysis of Irigaray, I want to flesh out the claim that the maternal body figures in Irigaray’s work “as material as opposed to essential” (Weinbaum 2002, 107) through a brief exploration of these nodal points: genesis, mimesis, and the relation of woman to mother. Present in Irigaray’s work is a tension surrounding the relation between the subject positions of woman and mother. Put simply, she acknowledges the translation of woman to mother as a site of violence, while also suggesting the possibility of a feminist reclamation of motherhood against the logics of capital and patriarchy. One site at which this tension is made readily apparent is in her work around the relation of the fetus and the mother, wherein she breaks with object relations theorists by positing “the maternal body as a relational situation rather than as a threatening or devouring unity” (Weinbaum 2002, 109) or as a “pathological fusion” (Weinbaum 2002, 109) of mother and daughter. In this sense, she proposes a theory of motherhood as
the language through which to conceive of an ethical relation between two subjects, while remaining attentive to the conscription of women to motherhood as a source of violence and exploitation. Though genesis perhaps appears in more broad terms throughout Irigaray’s work, of interest to me is its conceptual linkage with reproductive labor. Genesis is the motim through which Irigaray critiques the simultaneous erasure and exploitation of women’s labor and generative capacities, and thus figures importantly in her theory of the mother. It is worth quoting Weinbaum at length:

“The symbolic order’s stability and the subject are seen as contingent on the denial of the mother as generative of subjects of both genders and of herself. It is only when this primary relation, or ‘primal link’ is rethought that it becomes possible to narrate a genealogy in terms of the mother, a genealogy that begins to realize the possibility of another logic of subjectivity” (Weinbaum 2002, 108).

Thus, the object status/potential subject status of motherhood is inextricably linked to reproductive labor processes; the transformation of mother from object within phallogocentric system to mother as subject depends on this initial realization of her sacrifice. Building on an Irigaray schema, any appropriation of motherhood towards feminist ends must incorporate a different mode of genealogy. Irigaray’s use of mimicry can be understood in general as a political-linguistic tool to mediate the relationship between materiality and its representation and in particular as an effort to problematize the rendering of the maternal body immediately knowable through allusions to nature. For Irigaray, mimicry is the practice of making “‘what was supposed to remain invisible,’” -sexual difference- “visible, by an effect of playful repetition” (This Sex 79)” (Weinbaum 2002, 111). In this sense, mimesis operates parallel to a Marxist theory of labor power insofar as it reveals the conditions under which formal abstractions are produced, appropriating or “miming” these abstractions as an exercise in political power and subjectivity. Mimesis “is the term that best expresses women’s potential to disrupt the violent and essentializing codification of their biological selves” (Weinbaum 2002, 112) precisely because it keeps intact the tension between the material and the socially mediated. “In turning to the placenta, Irigaray refuses to posit a single cut between the signifier and signified, referent and reference. The two terms of this binary are rather imbricated within each other, and mimicry becomes her method of disclosing this.” (Weinbaum 2002, 11) Thus, Weinbaum seeks to explain Irigaray’s turn to the reproductive body not as a measure of essentialism but instead as a mimetic act intended to visibilize the construction of the maternal body as “natural.” In sum, Irigaray radically “renarrativizes” (to borrow Weinbaum’s language) the materiality of the maternal body, working against the violent essentialism which conflates woman with mother and renders the body immediate via biological abstraction; at the same time she suggests motherhood as fertile ground for feminist appropriation and for imagining alternate forms of ethical relation. As Weinbaum writes,

“Following Irigaray’s lead, one might venture the generalization (in a not too millennial tone) that we are all potentially mothers - whether we choose to mother or are biologically able or not - as it is the abstracted a-essential reproductive relation that allows all of us to grasp the social as the flow of our reproductive labor power” (Weinbaum 2002, 122).

In these lines, Weinbaum suggests the reclamation of motherhood not as an essentialized intrinsic condition, nor as merely an abstract social value. Instead, she suggests a conception of motherhood that calls to mind to the method advanced by Ziarek- one which attends to commodity fetishism as a contradictory process. Motherhood, in this sense, is the pre-figuration of a feminist mode of relation, grounded in the politicization of apparently abstract social forms. Black Feminist Politics of Reproduction In the Afterlife of Slavery In the introductory lines of The Belly of the World: A Note on Black Women’s Labors, Saidiya Hartman writes

“Gestational language has been key to describing the world-making and world-breaking capacities of racial slavery. What it created and what it destroyed has been explicated by way of gendered figures of conception, birth, parturition, and severed or negated maternity. To be a slave is to be “excluded from the prerogatives of birth” (Hartman 2016, 160).
To put it simply, The Belly of the World... deals with the constitution of the modern capitalist world order through the expropriation of black women’s reproductive labors. Building on the previous discussion of Spillers, enslaved black women were at once rendered gender undifferentiated and subject to gender-specific forms of violence, punishment, and labor. Reproductive labor, in this context, was inseparable from the reproduction of slavery as an institution:

“This reproductive labor not only guaranteed slavery as an institutional process and secured the status of the enslaved, but it inaugurated a regime of racialized sexuality that continues to place black bodies at risk for sexual exploitation and abuse, gratuitous violence, incarceration, poverty, premature death, and state-sanctioned murder” (Hartman 2016, 169).

In sum, the racially differentiated construction of gender - indebted to a living history of slavery (End Note #2) - involved a configuration of reproductive labor incomparable to that characteristic of white civil society. This reproductive regime, as noted by Hartman, is structured around forms of anti-black violence including but not limited to sexual violence. Thus, the immanent relation between the reproductive exploitation of enslaved black women and the reproduction of the institution of slavery, coupled with what Orlando Patterson terms “social death,” (Patterson, 1982) inaugurated a particular form of reproductive embodiment. In Hartman’s words, “the belly is made a factory of production incommensurate with notions of the maternal, the conjugal or the domestic. In short, the slave exists out of the world and outside the house” (Hartman 2016, 169). As noted by Angela Davis decades ago (End Note #3), the fervent opposition of enslaved women to this reproductive regime - and to the institution of slavery as a whole - is largely absent from, or gravely misrepresented in histories of black insurgency and social life. Hartman writes, “her freedom struggle remains opaque, untranslatable into the lexicon of the political. She provides so much, yet rarely does she thrive.” Cautious about the ethics of revolutionary subject making, and “[the imposition of] yet another burden on black female flesh by making it ‘a placeholder for freedom,” Hartman rejects the assimilation of the “recalcitrant domestic” into a grand narrative of political resistance (Hartman 2016, 171). Instead, she channels the language of survival and care:

“This brilliant and formidable labor of care, paradoxically, has been produced through violent structures of slavery, anti-black racism, virulent sexism, and disposability. The forms of care, intimacy, and sustenance exploited by racial capitalism, most importantly, are not reducible to or exhausted by it. They enable those ‘who were never meant to survive’ to sometimes do just that. This care, which is coerced and freely given, is the black heart of our social poesis, of making and relation” (Hartman 2016, 171).

The labor of care gestured to here is at once the historical product of racial capitalism and that which exceeds and undermines it; it is at once indebted to a legacy of racialized sexual, reproductive, and domestic exploitation and that which nourishes alternative reproductive relations.

Gestational Communism

In conclusion, I turn to the work of Sophie Lewis in her forthcoming book Full Surrogacy Now. Through an engagement with Irigaray, Weinbaum, Ziarek, Spillers and Hartman I have gestured to the possibility of alternative modes of conceptualizing reproductive labor and maternal embodiment. If by now I have failed to produce a cogent theory of the mother as subject, it’s because my concern lies elsewhere. The language of the mother is what enabled me to explore the latent connections between social mediation, racialized gender, the exploitation of reproductive labor, and the kinds of subject-formation that happen along these axes. In doing so, I remained wary of how a facile reclamation of motherhood as a site of resistance risks flattening its constitutive violences and reproducing the same fetishism I want to write against. Nonetheless, I suspect that this is an anxiety shared by all of these feminist thinkers and the distinct ways
in which they grapple with an alternative theory of the mother are worth returning to: Weinbaum combines a feminist critique of political economy with a psychoanalytic reading of the maternal body, Ziarek draws on Spiller’s theory of monstrosity and Irigaray’s sensible transcendental, and Hartman proposes fugitivity and care. Lewis goes in yet another direction, opting for a theory of “gestational communism” (Lewis, 2019). She asks, “what if we reimagined pregnancy, and not just its prescribed aftermath, as work under capitalism—that is, as something to be struggled in and against toward a utopian horizon free of work and free of value?” (Lewis, 2019). In replacing “mother” with “gestator,” Lewis deftly navigates the problem of how to politicize labor not even deemed labor at all; gestation is the heuristic tool through which motherhood is revealed as abstracted and congealed reproductive labor time (end Note #4) Further, the intentional gender ambiguity of “gestation” allows for a more expansive understanding of queer social reproduction, as well as the uneven and differentiated construction of gendered subjectivity through labor. Thinking gestation from a “labor point of view” might allow gestators to grasp their condition in relation to “global regimes of colonial and commodity exploitation,” a kind of incipient internationalist class consciousness which in turn “prefigures” another social reproductive mode:

“In fact, if I really think about it, what I loved best in my daughters was what seemed alien to me. In them—I felt—I liked most the features that came from their father, even after our marriage stormily ended. Or those which went back to ancestors of whom I knew nothing. Or those which seemed, in the combining of organisms, an ingenious invention of chance. It seemed to me, in other words, that the closer I felt to them, the less responsibility I bore for their bodies” (Ferrante 2008, 671).

4 In this sense, Lewis’s notion of gestation runs parallel to that of the “unnatural mother” explored in the introduction. The last line in particular calls to mind the alienation beget by a capitalist reproductive regime wherein social relations are permeated by legal-property relations - “responsibility” over the product of one’s “own” gestational labor acts as a barrier to closeness. As a corollary in this line it is also possible to glimpse the utopian impulse of “full surrogacy now” imagined as “a world sustained by kith and kind more than by kin” (Lewis, 2019).

**Conclusion**

Through the course of writing, I have explored themes related to materiality and social mediation, gendered embodiment, and the exploitation of reproductive labor. Drawing primarily on Ziarek, I have argued for the relevance of commodity fetishism as a method for understanding the social mediation of gender in its contradictory and differentiated dimensions, particularly insofar as it is crisscrossed by processes of racialization and histories of slavery. Through an analysis of Irigaray’s Women on the Market, I proposed that the violence of commodity fetishism lies not simply in its abstraction from the material body but in the initial splitting of the body into two distinct forms of value, and subsequently not simply in valuation but in devaluation. Returning to Ziarek, I repurposed this thesis in terms of the essentialism/social construction debate, arguing that each privileges one
form of valuation over the other whereas adopting commodity fetishism as a method enables a critique of the process of valuation in its entirety. Turning to Weinbaum, I worked through the fraught relationship between matter and its representation, drawing on her reading of a Marxist theory of labor power on the one hand and Irigaray’s theory of the mother on the other. Out of this engagement with Weinbaum emerges the possibility of a feminist appropriation of “motherhood” which seeks to undo the essentialization of the maternal body and direct attention to the flows of reproductive labor power. In the concluding section of this essay, I look to Saidiya Hartman in order to elaborate on the potentialities for feminist appropriations of motherhood, in light of the deep and structural linkage between the expropriation of black women’s reproductive labor and the reproduction of the institution of slavery. At this point, I suggest a parlay between Weinbaum’s theory of motherhood as “abstracted a-essential reproductive relation that allows all of us to grasp the social as the flow of our reproductive labor power” (Weinbaum 2002, 122) and Hartman’s urge to “never lose sight of the material conditions of her existence or how much she has been required to give for our survival” (Hartman, 2016, 171). Consequently, I am interested in a feminist theory of motherhood that can at once address the extent to which reproductive labor is world-generative while also seeking to destroy a world in which motherhood is rendered valuable. This brings me to my final point, which has to do with the political and theoretical motivations of analyzing gender in terms of the commodity form. The value form, with commodity fetishism as its mediating process, is not merely an analytic and certainly does not apply exclusively to gender; it is the primary operative logic which guides all capitalist accumulation. In light of this fact, I want to stress the inseparability of the valorization of gender from the broader set of social-political-economic relations in which it attains meaning, and reiterate the necessity of a Marxist feminist politics which aims to both re-conceptualize the materiality of motherhood and to abolish a society structurally oriented around the value form. To return once more to Lewis, I want to imagine a “gestational commu-
End Notes

1.) All of the information in this paragraph relating to the “cult of motherhood” was sourced from Angela Davis’s Women, Race, and Class.

2. ) This is a reference to Hartman’s work regarding the relation between slavery and freedom as one of continuity.


4. ) In this sense, Lewis’s notion of gestation runs parallel to that of the “unnatural mother” explored in the introduction.

Bibliography


Revolution and its Limits:
Problems in the January 25th Revolution and Social Movement Theory

Saleem Creighton Koshy
Prologue: Egypt in the spring

On January 25th of 2011 something became conflagrant in Cairo. Thousands poured into the streets, fighting their way past water cannons and police lines to take Tahrir Square. In the years that followed, the Square remained the epicenter of proliferating forms of contention: strikes were called, factories taken over, funerals turned to riots, barricades set ablaze, meals were cooked communally, garbage disposed of, infrastructure repurposed, film shot, music performed, and a regime crumbled and was remade. From Mubarak’s forced resignation to the election of the Muslim Brotherhood’s Mohamed Morsi, to the millions that called for General Sisi’s coup, the incredible upheavals that rocked Egypt could only be termed a revolution. Those in the streets had little to unite them beyond a shared commitment to revolution, as such - middle class homeowners charged their phones at the same street lights as residents of the ashwaiyyat - the informal settlements; unemployed university graduates jockeyed with grandmothers for attention from the media; and middle schoolers and rowdy football fans alike pitted makeshift slingshots against shotgun shells and tear gas grenades. A de facto consensus formed: ‘the people demand the overthrow of the regime’. But what any of that meant varied from one revolutionary to the next. All of this upheaval occurred under a dictatorship considered by the experts to be one of the most stable in the world and when the dust had settled the regime had exchanged one dictator for another. From one perspective the question might be asked: how did this happen? Equally important, however, is the question of why it only went so far. Revolutions as historical events have limits internal to themselves – contradictions the failure of which to transcend leads to the closure of the revolution (End Note #1). It is the contention of this paper that the tensions within the January 25th revolution that can least effectively be apprehended by Social Movement Theory are the tensions which point towards the beginnings of a break with the historical form of the social movement itself, the possibility of something completely new, and therefore the furthest limits of the January 25th revolution.

More than 20 different ways to approach a square

The revolution in Egypt was the second in the wave of uprisings termed the Arab Spring. Less than two weeks after popular mobilizations in Tunisia ousted the incumbent President Ben Ali people in Egypt seized their chance. In Cairo activists affiliated with the April 6th Youth Movement and the Facebook page “We are all Khaled Said” among other organizations called for multiple demonstrations to take place on January 25th, recently named National Police Day (Gelvin 2015, 51). Converging on Tahrir Square from multiple rallying points, an estimated ten thousand demonstrators were able to bypass or break through police lines to reach the square, chanting “the people demand the overthrow of the regime” and other slogans until they were cleared from the square late that night (52). Although the demonstrations in Cairo remained troubled the explanatory ability of the most commonly used frameworks of Social Movement Theory – political opportunity, mobilizing structures, and framing processes. As Henri Lefebvre writes “a theory of the movement has to emerge from the movement itself, for it is the movement that has revealed, unleashed, and liberated theoretical capacities.” (Lefebvre 1969, 103) To identify the phenomena within the January 25th revolution that troubled the theory that existed contemporary to it is to identify the points of departure for a theory revealed, unleashed, and liberated by the revolution. It is also one way of answering the twin questions of why the revolution occurred and why it only went so far. Revolutions as historical events have limits internal to themselves – contradictions the failure of which to transcend leads to the closure of the revolution (End Note #1). It is the contention of this paper that the tensions within the January 25th revolution that can least effectively be apprehended by Social Movement Theory are the tensions which point towards the beginnings of a break with the historical form of the social movement itself, the possibility of something completely new, and therefore the furthest limits of the January 25th revolution.
relatively peaceful, throughout the rest of Egypt the story was almost immediately different as rebels burned police stations and organized prison breaks “in coastal Alexandria, in the working-class neighborhoods of Cairo, down in Aswan, up in the villages of the Nile Delta”, effectively neutralizing the regime’s control throughout much of the country (Amar 2013, 42). The people who came together to reoccupy Tahrir Square three days later and those who continued to struggle collectively in their communities throughout the rest of Egypt consisted of young college graduates, organized workers, members of the Muslim Brotherhood, residents of informal settlements, feminists, and football fans; the sources from which they drew tactical lessons were equally diverse, including the nonviolent tactics of the Kefaya movement, recent wildcat labor actions, and the extensive experience in fighting the police possessed by both the rowdier football fans and the young members of the Muslim Brotherhood (Gelvin 2015, 58, 61). In the face of such broad opposition and as tens of thousands of striking workers paralyzed the economy then-President Hosni Mubarak was removed from power on February 11th by the Supreme Council of the Armed Forces, the executive body of the Egyptian military (62).

Mubarak’s removal signified little, as protests continued throughout the next two years. After deposing Mubarak, the SCAF quickly moved to consolidate power, using allies in the judiciary to give itself executive authority, interfere in elections, and dissolve the first Constituent Assembly (71). In June of 2012, Mohamed Morsi of the Muslim Brotherhood was elected president, taking back executive authority from the SCAF, giving himself full legislative authority in the absence of a parliament, and becoming the final arbiter of the drafting of a new constitution (76). Morsi quickly made enemies of both the SCAF and many of the protesters within Egypt, while outside he worked to earn the favor of foreign world leaders through cooperation with the Israeli military and by signing an agreement on economic restructuring with the IMF in November (Amar 2013, 32). In December the closure of the Constituent Assembly by armed members of the Muslim Brotherhood prompted hundreds of thousands of protesters to march upon Ittihadiya, the palace out of which Morsi’s administration was working, resulting in battles between anti-Morsi protesters and members of the Muslim Brotherhood (36). In April of 2013 the Tamarrod movement was founded by 5 former members of Kefaya and began its petition campaign that would reportedly collect 22 million signatures calling for Morsi’s resignation (Gelvin 2015, 77). On June 30th millions poured into the streets in the largest protest in human history, ultimately leading to the moment in which, for the second time in two years, the SCAF unseated the president and assumed executive authority (Amar 2013, 37).

From January 25th of 2011 to July 3rd of 2013 civil unrest throughout Egypt was ceaseless, as was violent and brutal repression by the state, regardless of who was in power, whether Mubarak, the SCAF, or the Muslim Brotherhood. In the wake of the coup that unseated President Morsi the military government instated emergency law and enacted a program of repression against both the Muslim Brotherhood and secular rebels that by its own admission killed 638 protestors at minimum, curtailting any further rebellious action for all but the most daring (Gelvin 2015, 81-82). These are the effective bounds of the January 25th revolution as a historical event. It is within these bounds, in the forms of contention utilized by so many different actors towards so many different ends that I locate my object of study. For the purposes of this paper the focus will be on the conception of SMT articulated in McAdam, McCarthy, and Zald’s Comparative Perspectives on Social Movements as well as definitions outlined by McAdam, Tarrow, and Tilly in the later Dynamics of Contention. In Dynamics of Contention McAdam, Tarrow, and Tilly outline a clear definition of their object of analysis: for them all contentious politics consist of “episodic, public, collective interaction among makers of claims and their objects when (a) at least one government is a claimant, an object of claims, or a party to the claims [and] (b) the claims would, if realized, affect the interests of at least one of the claimants (McAdam et al. 2001, 7). They further distinguish between contained instances of contentious politics in which additionally “(c) all parties to the conflict were previously established as
constituted political actors” and transgressive contention in which “(c) at least some parties to the conflict are newly self-identified political actors, and/or (d) at least some parties employ innovative collective action.” (7-8) This distinction is important because from it McAdam et al. derive their static model of public politics, represented visually by this model: (11)

In this conception transgressive contention occurs when a new political actor constitutes itself in relation to the model, or when one of the already constituted political actors employs a new means of claims making. All contentious politics necessarily represents an instance of claims making that involves the state, hence its central position in the model. Defined as such, the study of contentious politics does not just pre-suppose the involvement of the state in its struggle, have definite aims, and pursue these aims strategically. Furthermore, the organizational forms and tactics that it uses to pursue these aims must be comparable to the organizational forms and tactics of other social movements with different aims – in some sense the means and the ends of social movements must be capable of disarticulation for such a comparative analysis to work. This modularity in social movements is both described and historicized by Sidney Tarrow in “Modular Collective Action and the Rise of the Social Movement: Why the French Revolution Was Not Enough”. For Tarrow the modern and modular social movement replaced the older practices of groups “attacking their enemies directly” with the practice of using “the national state as a mediating fulcrum between themselves and those they opposed.” (Tarrow 1993, 83) When Tarrow speaks of the
rise of the modular social movement he means first, that its forms were relatively few and were very flexible; second, that they were distinct from the identity of those who used them and those they were aimed at; and third, that they could be adopted by different groups in a variety of settings and serve as a common denominator for different groups acting together or in series.

(77)

The modular social movement is thus the social movement that an analysis of political opportunity, mobilizing structures, and framing processes seeks to describe. Social movements – or rather forms of contention that can be understood through the frameworks of SMT – then have a definite historical origin in “the penetration, the standardization and the availability as target and fulcrum of the modern national state.” (83) According to Tarrow’s historicization of social movements SMT, though developed in the 1960s and 1970s, can first find its object of analysis in Europe around the 17th and 18th centuries. The continued applicability of the frameworks of SMT is dependent on the continuation of the tendency in state building that Tarrow identifies as originating in Europe and its transference to the rest of the world. My contention that the events of the January 25th revolution are not exhaustively described by the frameworks of SMT implies that the January 25th revolution at its furthest limits opened the possibility of contesting the process of state development that Tarrow identifies as being generative of the modern social movement. This paper is structured as a comparison, in a certain sense, of a form of theory with the events of a revolution - two objects that must be considered on markedly different terms. The difficulty of interpreting any revolution has been compounded twice in my study of the January 25 revolution: once by the great distance from which I must approach an event that happened half a world away and mostly in a language I don’t speak, and twice by the fact that not even a decade has passed since the beginning of the revolution and the events continue to resonate today. The angles at which I interpret the events of the revolution are decided both by what is accessible to me and by which moments of revolutionary or counter-revolutionary action appear to test both the limits of the propositions of SMT and the limits of what was possible in the revolution itself. I rely on newspaper articles, ethnographies, blog posts, and other sources for the terms on which I engage the events of the revolution. Viewed from a certain distance, or at a certain level of abstraction, it is possible to see a narrative of the January 25th revolution begin to emerge, a narrative somewhat like the one I outlined earlier in this paper. In this narrative view it is possible to see in the “overthrow of the regime” a common purpose that the various tactics employed by various revolutionaries were directed towards. In many ways the broad course of this narrative, as well as the individual parts of the narrative, can be explained by SMT. However, in tracing the limits of SMT I have attempted to break with a narrative view of the revolution. An abstracted narrative of the revolution may usefully describe the general momentum and direction of events as produced by the interactions of a diverse set of participants, practices, and relations of contention. However, I argue that assuming the unity of these participants, practices and relations within the revolution precludes an understanding of what made them so contentious in the first place. I first examine the practices of the Egyptian Ultras – organizations of diehard football fans – in the face of political repression. In the second section I chart some of the diverging paths taken by the popular committees – spontaneous and horizontal neighborhood assemblies originally formed to ensure community safety. In the final section I examine the transient success of the attempt to redefine the narrative of baltaga – thuggery – to include the regime. By viewing these participants, practices, and relations of contention in their concrete specificity I attempt to demonstrate that while from the outside the revolution may have appeared unified, internally it was anything but. These internal contradictions both represent answers to the questions of ‘how did it happen’ and ‘why it only went so far’ while simultaneously delineating the limits of the explanative power of SMT. While a modern social movement arises from the “the penetration, the standardization and the availability as target and fulcrum of the modern national state” (Tarrow 1993, 83) and achieves a coherent unity through its
relation – either contained or transgressive - to a specific national state, the fractures within the apparent unity of the January 25th revolution were the result of a situation wherein, from the 25th onwards, the concrete existence of the state itself was tangibly contested. As evidenced by the limits that I outline in this paper, the frameworks of SMT begin to lose their coherence when faced with examples of contention that themselves begin to break with the form of the modern social movement.

**Political opportunity: A football fan is glimpsed through a cloud of CS gas**

At the time of the revolution Mubarak’s dictatorship had lasted almost three decades, was backed by a military receiving 1.3 billion a year in American aid (Gelvin 2015, 69) and had a political apparatus capable of routinely orchestrating the disappearance of ordinary citizens. Experts were surprised by the events of January 25th, to say the least. The first of the three analytical concepts articulated in Comparative Perspectives on Social Movements - that of political opportunities - may explain this surprise. Seeking to outline specifically what constitutes a political opportunity, as opposed to “other kinds of facilitating conditions”, McAdam suggests four ways to interpret political opportunity. According to McAdam these categories can be interpreted as being explanatory of “the time of collective action and the outcomes of movement activity” as well as “movement form” itself (29). This last point is especially important, as McAdam’s contention is specifically that the first two dimensions - “changes in the legal or institutional structure that grant more formal access to challenging groups” and “the emergence of new allies within a previ-ously unresponsive political system” are likely to be linked to “the rise of a narrow and generally institutionalized reform movement,” while the latter two dimensions are more often productive of movements on “the more radical or even revolutionary end of the movement continuum.” (29-30) What the concept of political opportunities thus does is attempt to explain how factors within the political system that exists prior to and independent of contention act to shape that same contention. McAdam’s claim that it is primarily the latter two dimensions of political opportunity - the lack of a capacity for repression and the presence of temporary elite allies - that facilitate broader, more revolutionary movements deserves attention in the context of the January 25th revolution. Out of all the participants in the revolution it is the presence and the actions of the Ultras – notoriously fervent and dedicated football fans – that can best put into question both the assumption that state repression curtails the possibility of revolution and the assumption that elite allies act as facilitators for revolutionary change. The presence of Ultras is not unique to Egyptian football culture; the first recorded instances of Ultras groups were groups in Italy in the 1960s and such groups currently exist in much of Europe (Woltering 2013, 291). The Egyptian Ultras specifically have origins in fans of the al-Ahly football club, who set up online chat rooms in the 90s to organize support for their club, although it wasn’t until 2005 that such groups began to organize in support of other Egyptian football clubs and the name Ultras was adopted (293-294). In the years leading up to the revolution the culture of Egyptian Ultras developed similarly to Ultra culture in other parts of the world. At matches Ultras would make a practice of “staging spectacular shows, involving songs, dance, powerful firecrackers (shamarīkh) and grand, choreographed
“entrance scenes” (dakhlāt, sing. dakhla)” (Rommel 2016, 34). Ultras groups were organized with little to no formal administration and membership was commonly decided through informal judgements based on commitment to the practices of attending every match and supporting the team regardless of its performance (34). Ultras organizations at the same time could operate through complex and variable informal leadership structures. Woltering describes one such structure in an interview with an Ultra who had been made ‘capo’ in his group:

I ask him who decides that he can be capo. He explains that over the years he had impressed people in his group, made up of about 300 people. He was clearly a hard worker and he showed diligence in teaching the young Ultras: this made people in his group suggest him as capo to this group, which hails from Imbaba. The two leaders of the Imbaba group were thus approached, who consequently took this up with leaders from other areas, Giza and Bulaq. When they agreed, Hasan could be made capo. As capo, Hasan is in charge of a certain section (consisting of a few dozen individuals) of the Imbaba contingent, who are obliged to follow his instructions and directions in chants, songs, and – when it so happens, fights. (Woltering 2013, 299-300)

Ultras groups displayed a significant degree of heterogeneity in how they operated, however all Ultras groups shared certain commonalities. The culture of Ultras groups centered “anti-police, anti-media, anti-corporate, anti-state and anti-soccer professionalism” sentiments, which often resulted in contention between Ultras and the official management of football teams, as well as with the police as signed to football games (El-Zatmah 2012, 805). Up until the revolution broke out, however, the Ultras, for the most part, restricted their activities to showing up at football matches and supporting their teams. In the days leading up to January 25th rumors that the Ultras would be participating in the demonstrations circulated. Claims that the Ultras would be participating were made on the “We are all Khalid Said” Facebook pages of both Ultras Ahlawy and Ultras White Knights posted to their respective groups’ Facebook pages disavowals of any official participation in the protests, though they both stated that individual members were free to do as they pleased (295). Regardless of these official statements many Ultras did show up to the demonstrations, quickly proving their worth in the clashes on the Qasr al-Nile Bridge on January 28th and notably in the defense of Tahrir Square during the Battle of the Camels on February 3rd (El-Zatmah 2012, 808) While individual members of the Ultras were present in the streets from the very beginning, the organizations themselves, due to their explicitly apolitical stance, took much longer to declare explicit support for the revolution. In December of 2011, as protesters fought police forces along Muhammad Mahmoud Street, the Facebook pages of Ultras Ahlawy and Ultras White Knights continued to post statements of non-involvement (Rommel 2016, 38). Rommel argues that it was the December 21st death of Mohamed Mustafa, a member of Ultras Ahlawy, in one of the clashes with police along Muhammad Mahmoud Street, that catalyzed the shift from the unofficial participation of members of the Ultras to their participation as organized groups:

On the 23rd of the month, al-Ahly played Maqāṣṣa at Cairo Stadium, and the entire match was turned into a tribute to the martyr and a manifestation against the state violence that had killed him. Most Ultras fans present were dressed in black instead of the normal red, the dakhla (“entrance scene”) before kick-off covered the curva with a huge black and white portrait of their dead friend, and al-Ahly’s Portuguese coach Manuel Jose showed his sympathies by wearing a T-shirt under his grey tweed jacket, on which was printed “RIP Mohamed Mustafa.”

On the 1st of February 2012, police stood by as 72 members of Ultras Ahlawy were murdered while attending a match in Port Said, allegedly by supporters of the opposing team. Eyewitnesses reported that the men were armed with various deadly weapons and that prior to the massacre the stadium lights were switched off and the exits were locked from the outside (Fawzy 2013). In the wake of this tragedy many of the Ultras accused the police of having orchestrated the massacre at Port Said in
retaliation for their participation in the revolution. Woltering, in describing an interview with two Ultras from rival groups in July of 2012 notes that for an Ahlawy and a White Knight to sit next to each other would have been unthinkable before the revolution. Now there is even collaboration, especially after what happened in Port Said. Hasan and Islam are familiar with Ultras Miyadin al-Tahrir [Ultras Tahrir Square], but more so with what they have established themselves after the massacre in Port Said: the Ultras Freedom, in which Ultras from various clubs work together in order “to protect the revolution and establish freedom.” One of the youths who comes to greet Hassan wears an Ultras Freedom T-shirt (also bearing the acronym A.C.A.B.) (Woltering 2013, 300)

In the face of escalating state repression, the Ultras, rather than backing down, mobilized larger numbers, took more diverse forms of action, and dramatically increased the intensity of their contention, even going so far as to collaborate with supporters of rival teams in defending the revolution.

It has been argued that the January 25th revolution, especially the first 18 days, represents one case in which the failure of a regime to utilize the full intensity of its repressive apparatus led to its downfall (Chalcraft 2016, 445) (End Note #3). The story of the Ultras through the revolution is, however, a story of the ultimate failure of state repression. At the beginning of the revolution the Ultras were one of only a few participants who had extensive experience with police violence (the Muslim Brotherhood being another notable example). Since their founding they had experienced conflict with the police with such a frequency that, in an interview with El-Zatmah one Colonel in the Central Security Forces admits that “the Ultras’ fights and violence had been used by the security forces as training exercises for how to disperse political demonstrations” (El-Zatmah 2012, 806). Not only did their experiences with state repression prepare them to act with unparalleled initiative, coordination, and courage when confronted with a revolutionary situation, but the specific retaliation which they faced did little to curtail their participation in the revolution. If anything, the increased state violence that Ultras were made a target of caused them to organize inter-rival coalitions in an unprecedented display of revolutionary solidarity and to fight back with renewed fervor.

Simultaneously, the self-avowed apolitical nature of the Ultras challenges assumptions about the utility of elite allies. While other participants in the revolution have on various occasions endorsed alliances with parties within the regime or electoral campaigns in the 2012 elections, the Ultras have been generally disinclined towards such strategies even to the point of hostility. Rommel describes one rather tense interaction between a group of protesting Ultras and the Muslim Brotherhood that occurred about a month before Mohamed Morsi’s election:

United Ultras had organized a march estimated at some 5,000 people which was as loud as could be with songs, drums and fireworks. However, the very moment the march arrived at Tahrir Square, where the Muslim Brothers were dominating, at a hand gesture, they fell silent: no one spoke. They did express themselves nonverbally when Muslim Brotherhood preacher Safwat Hegazi saluted the Ultras from the stage. At that point the Ultras again made use of hand gestures. They remained silent however as they marched through the square and into Muhammad Mahmoud Street, where they picked up where they had left off shouting “hurriya! hurriya!” (Woltering 2013, 298)

Before the revolution began the Ultras had existed as devoted fans of football teams, profoundly disenchanted and hostile to the political regime as it existed. Even as they became involved in the revolution in an increasingly organized fashion, they would retain this sense of distrust, meaning that regardless of who was in power - Mubarak, Morsi, or the SCAF – there would be at least some Ultras on the ground with the requisite experience, courage, and determination to act. The circumstances of the Ultras’ specific history with state repression and their specific orientation against politics as usual made it so that when confronted with a revolutionary situation they were uniquely well positioned to take on the role of revolutionaries. The literature suggests, based on a wealth of historical evidence, that violent repression will stymie revolutions and their successes will be accomplished through elite alliances; the concrete practice of the Ultras engaged in the January 25th revolution has been to challenge both assumptions at every step of the way. Rather than attempting to understand the Ultras as a coherently organized group with coherent-
ly articulated aims – for they seldom acted like this – I contend that the Ultras’ participation in the January 25th revolution represents a tendency towards diminishing returns on both repression through violence and recuperation through elite alliances.

**Mobilizing structures: A few neighbors huddle on the corner, each with a secret of his own**

The analytical concept of mobilizing structures seeks to explain how “the choices that activists make about how to more or less formally pursue change have consequences for their ability to raise material resources and mobilize dissident efforts as well as for society-wide legitimacy” (McAdam et al. 1996, 141). John D. McCarthy defines mobilizing structures as those “ways of engaging in collective action which include particular ‘tactical repertoires,’ particular ‘social movement organizational’ forms, and ‘modular social movement repertoires’ [as well as] the range of everyday life micromobilization structural social locations that are not aimed primarily at movement mobilization, but where mobilization may be generated” (141). The analytical concept of mobilizing structures seeks to understand how the form of organization in service of the aims of a given social movement is determined and how it determines, in turn, the actions taken and their success or failure in achieving the aims of the social movement. It follows from this that social movements, for various reasons, may organize to achieve their goals through different structures of varying degrees of formality. One of the most significant phenomena that the January 25th revolution is remembered for is the “astonishing coordination amid spontaneity” that gave it a profoundly horizontal nature (Chalcraft 2012, 6). John Chalcraft notes that educated Egyptian activists like Alia Mossallam prefer to speak of “leaderful” rather than “leaderless” movements. Everyone participates - each of his or her own accord and in any way that counts at the time. Pharmacists bring medicines, cooks prepare food, doctors treat wounds, skilled workers wire the square for electricity, surgeons operate, bakers distribute bread, rich kids from Zamalek buy armor for the lads from the popular quarters, football fans fight, worker - poets incense songs and chants, students set up tents, manual laborers break pavement slabs for use against thugs, shopkeepers fetch cell phone chargers and so on. (8)

Chalcraft argues that “the million-strong mini-city that Tahrir became between January 25 and February 11, 2011 was thoroughly supplied and stocked on this basis.” (8) It is certainly the case that much of the contention that occurred during the January 25th revolution, both within Tahrir Square and throughout the rest of Egypt as well, can be understood as spontaneously and horizontally organized. However, the relationship between horizontalism and the January 25th revolution deserves more consideration than a simple celebration of the merits of horizontal and spontaneous action. Horizontalism can be understood as a specific form – or lack thereof – that participants in a social movement adopt in the pursuit of their goals; many participants in the revolution did, whether consciously or unconsciously, organize in ways that avoided formal leadership structures and encouraged “participation, creativity, and consensus” (6). However, I argue that attributing the quality of horizontalism to the January 25th revolution itself necessitates a conception of horizontalism as a phenomenon that is more complex than the strategic choice of a specific organizational form. The popular committees that communities throughout Egypt established during the first 18 days of the revolution can serve as an example of both horizontalism as a specific organizational form and horizontalism as a characteristic of the revolution itself.

Beginning on January 25th police withdrew from much of Egypt and prisoners were released, either by revolutionaries or by the guards themselves under orders from the regime. It seemed that the Mubarak regime hoped that the rapid disappearance of the police would cause a panicked citizenry to back down; in response communities organized lagaan shaabiyya, variously translated as popular committees, popular defense committees, or civil defense committees (Bremer 2011, 71). These committees were organized both incredibly rapidly – by January 29th “virtually every block had an organized group dedicated to protecting the lives, prop-
property, and safety of its residents” – and spontaneously throughout both informal working-class settlements and middle- and upper-class suburbs, with “each neighborhood organized in its own way” (71-74). Popular committees tended to be almost completely composed of men, although participants varied in age, with at least one committee formed early in the revolution being made up entirely of boys between the ages of 13 and 18 (Hussein 2015, 158). Bremer notes that although the popular committees were formed independent of any central organization, they tended to operate in remarkably similar fashion: regardless of location, groups developed systems for operating security checkpoints, scheduling shifts, identifying members, and communication with other groups as well as with the military, which controlled the main streets. Once established, these structures continued with few changes until security was partially restored with the assumption of military control of the country. (Bremer 2011, 74)

In the absence of the police it made sense for community members to organize in a way that essentially recreated the functions of the police. From a distance, the story of the popular committees – neighbors who banded together to ensure the safety of their communities while proving, contrary to the regime’s expectations, that they could do just fine without the police – stands as a shining example of the latent force within a community that can be harnessed through spontaneous and horizontal organization. This story is not inaccurate insofar as many of the popular committees formed in the early days of the revolution did organize horizontally and spontaneously towards these specific ends. However, upon closer examination, the concrete practices of specific popular committees tend to be “neither as universally democratic nor as novel as they are thought to be.” (El-Meehy 2012, 30)

Past the surface level aim of providing for community defense in the absence of a police presence, many popular committees were mobilized towards different economic, religious, and even state purposes that cannot easily be squared with revolutionary aim of “the overthrow of the regime”. Asya El-Meehy writes about one popular committee set up in Basatin, an informal settlement outside Cairo, housing anyone “from day laborers to small workshop owners to the “middle class poor”, people of high educational achievement who nevertheless survive on the margins” (30). In Basatin, after community members rallied in support of the victim of a police killing, beating the police officer in question to death, a popular committee “concerned with improving the community’s image” was set up:

Under the banner “Toward a Better Basatin,” the group organized a series of brainstorming sessions in the months after Mubarak’s ouster. These events drew middle-class residents who wanted to “beautify” Basatin – cleaning streets, fixing water fountains and painting buildings. Proponents of these projects spoke of “showcasing Basatin as a ‘civilized’ area” and “reforming individual behavior in order to improve living conditions in the area.” Notably absent from the group’s agenda were the concerns of the poor. (30-31)

El-Meehy’s study found that the norm for popular committees in rural areas was that, like the one in Basatin, they often “excluded the poor, reinforced tribal hierarchies and, in many instances, welcomed members of Mubarak’s National Democratic Party.” (31) Bremer, in her study of popular committees, includes the Salafi movement, which, at the time of the revolution, “had a previously established network of neighborhood connections, anchored in mosques.” (Bremer 2011, 80) During the low tide of the state’s security apparatus, the Salafi movement, even more so than other popular committees, was well equipped to organize for neighborhood safety as well as for the provisioning of vegetables and butane gas canisters at reasonable prices. In addition to these more standard tasks the Salafis also coordinated with the military to oversee other popular committees, organized “the recovery and return of stolen goods [and] provided protection to police stations at the time of major protests” (80-81). Finally, in December of 2011, seeking a legitimacy “that evoked the solidarity and active citizenship of the [initial] 18-day uprising”, the military-led regime set up a protocol by which local activists would be recruited to deliver butane cylinders to households. But the protocol also gave the committees a broader mandate to cooperate with authorities in providing literacy classes, vocational and leadership skills training, encouraging religious tolerance, cleaning
up square and supporting the families of the imprisoned. (El-Meehy 2012, 31-32)

The committees that became signatories of this protocol were quickly required by the state to reorganize themselves into, in the words of one activist, “a legitimate entity”, and were brought under the jurisdiction and regulations of the Ministry of Insurance and Social Affairs, losing any horizontality in their structure in the process (30).

Viewed from one level of abstraction the popular committees which were formed for community survival in the absence of the state, showcase the transformative power of the mobilizing structure of horizontalism – a diversity of peoples, organizations, and tactics working towards the overthrow of the regime. Many of the popular committees did work in exactly this way and the formation of the popular committees was likely necessary for the overthrow of Mubarak. However, viewed in their multiple concrete existences the popular committees stand as an example of the horizontalism of the revolution itself – a diversity of peoples, organizations, and tactics mobilized working towards a diversity of aims. For a specific organization to be horizontally organized is one thing, however the horizontalism that is typically ascribed to the January 25th revolution refers to a more profound phenomenon. The forms of contention that spread across Egypt like wildfire contested, fractured, and, in some cases, even obliterated the institutions comprising the state. Faced with this tangible absence a wide array of actors – variously political, apolitical, and newly political; state, non-state, and becoming-state – were galvanized into taking a wide variety of actions towards ends that only sometimes corresponded to the overthrow of the regime, even broadly defined.

**Framing processes: In the news appear the heroes of the nation and the thugs**

Framing processes as a conceptual tool work to describe “the central importance of ideas and cultural elements in understanding the mobilization of participation in social movements and the framing of political opportunity.” (McAdam 1996, 261) Mayer N. Zald identifies six specific topics through which the interactions of movements, culture, and society at large can be understood:

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<th>The cultural construction of repertoires of contention and frames</th>
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<tr>
<td>2</td>
<td>The contribution of cultural contradictions and historical events</td>
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<td>3</td>
<td>Framing as a strategic activity</td>
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<td>4</td>
<td>Competitive processes that represent the context in which frames are selected and come to dominate</td>
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<td>5</td>
<td>Mass media, through which frames are transmitted and reformed</td>
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<td>6</td>
<td>The outcomes of framing competition on policy and on the cultural stock</td>
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(261-262)

The outcomes of framing competition on policy and on the cultural stock (261-262)

From the third, fourth, and fifth topics follow a key set of assumptions. Social movements engage in framing processes strategically: they “actively engage in the construction of meaning, the portrayal of injustice, and the definition of pathways to change” in order to “persuade authorities and bystanders of the righteousness of their cause.” (269) Access to these “bystander publics” must be mediated through a variety of different media (270). In strategically engaging in framing processes movements draw on a “cultural stock of how to protest and how to organize” to which different movements have different levels of access (267). Finally, the ways movements protest and organize “have to ‘fit’, to ‘be appropriate to’ the injustice” in order to appear just and proportionate to authorities and bystanders (267). Many of the participants in the January 25th revolution did engage in widespread practices of competitive framing around the uses of violence on the parts of both regime forces and revolutionaries. Over the course of the revolution, however, a widening contradiction emerged between the framing of revolutionary violence and the uses of violence deployed by both revolutionaries and the regime.

In November of 2012 American journalist Peter Hessler was covering the anti-Morsi protests in Tahrir square for the New Yorker. He describes the scene:
The protestors included a large number of affluent and educated people; it was common to see women whose heads were not covered. But this crowd stuck to the center of the square, away from the violence. The fighting raged a block away, along Mohamed Mahmoud, where young boys and men clashed with the police. They threw rocks and Molotov cocktails; periodically a tear-gas cannon boomed and everybody scattered. Sometimes the police used firehoses, as well as guns and bird-shot. When I asked one young man why he had come, he answered in perfect English, “To beat the fuck out of the police.” (Hessler 2012)

The young man mentioned at the end of this paragraph seems to provoke a mild confusion in Hessler’s writing, not merely because of his unexpected fluency in English. The young man goes unnamed and unmentioned through the rest of the article as Hessler quickly moves on. One must wonder: did he have more to say that Hessler either wouldn’t hear or couldn’t make sense of for the purposes of his final draft? Did he feel that such a terse response was all he owed to yet another nosy American looking for a story? Or is it possible that the reason he gave for his participation in the protests – participation that involved a considerable risk of injury, imprisonment, and death – not only an honest and forthcoming response, but a thoroughly exhaustive one as well? One approach to untangling the contradictory appearance of this young man sandwiched between the paragraphs or Hessler’s writeup may be to examine the rhetoric of baltaga – thuggery – as a framing of criminality, masculinity, and violence.

In 1999 Ahmed El-Magdoub of the National Centre for Sociological and Criminological Research gave a concise definition of a baltagi: “a thug, usually a young, unemployed, poor, illiterate man, lives in a shanty or slum area, but he usually works in the middle and upper class districts where people need his services to replace the rule of the law.” (Tadroz 1999) Salwa Ismail argues that the term baltagi (of which baltagiyya is the plural) was first mobilized by the modern Egyptian state in the 1980s and 1990s as a pejorative for Islamist leaders. As the state began to widen the scope of its policing operations the discourse of baltaga was also applied to a wider section of the population, with popular media street vendors, residents of the informal settlements, and even children as baltagiyya (Ismail 2006, 140-143). In 1998 the National Assembly passed Law 6 – the Baltaga law – which “provides the police with the power to arrest and detain citizens suspected of undermining public order through displays of aggression and physical strength, or through the intimidation that they will cause harm to others” (139). Ismail argues that “by transforming baltagiyya into celebrities, by enumerating the range of baltaga acts, and by identifying episodes of social conflict as ones between state agents and baltagiyya, baltaga has been woven into the national security narrative.” (144) In the years leading up to the revolution this was how the discourse was utilized by the regime, however, even in the period before the revolution the term was not uncontested. It was not uncommon for residents of the informal settlements to term police officers and their informants in the community as baltagi (144-145). In the early days of the revolution the regime was quick to apply the label of baltagiyya to everyone from the most non-violent protesters in Tahrir square to those who directly attacked police stations and prisons. During the first days of the revolution Farha Ghannam was in close contact with residents of the Cairo neighborhood of al-Zawiya al-Hamra and was able to track their changing perceptions of the occupation in Tahrir square. Initially residents of al-Zawiya al-Hamra “blamed the protesters for disrupting their access to work, threatening their safety, and destabilizing the country … they thought poorly of the activists and used the lines offered by government propaganda” (Ghannam 2012, 33). However, these perceptions drastically shifted in the aftermath of the so-called ‘Battle of the Camels’, when hired supporters of the regime attacked the protesters mounted on horses and camels and armed with weapons both lethal and non-lethal while police stood by and watched. Ghannam argues that this spectacular display of violent repression was able to provoke a shift in her interlocutors’ perceptions because, unlike the regime’s definition of a baltagi, the residents of al-Zawiya al-Hamra understand that “a baltagi is a person who uses force to bully others, take over their property, extract mon-
Revolution and its Limits - Koshy

This reversal in perception through which the frame of baltagiyya was displaced from the protesters to the regime was possible because for the residents of al-Zawiya al-Hamra the definition of baltagi was already contested. The definition of baltagi that, in this instance, was used by the residents of al-Zawiya al-Hamra is, though analogous to the framing deployed by the regime, fundamentally different in that it associates baltaga with violence that is both egregious and self-serving. The protesters in Tahrir square, both consciously and unconsciously, were able to appeal to this framing of baltaga on February 2nd because they were defending themselves from violence on the part of the regime that was both egregious and self-serving. Emerging as the apparent victor of this competitive framing process was what Ismail describes as “the Ultras, the residents of popular quarters, and the middle class youth [who] coalesced as al-sha’b (‘the people’)… the collective subject of the revolution” (Ismail 2012, 458). However, from the beginning this alliance – perhaps existing in appearance only – was rife with contradictions. In November of 2011, almost exactly a year before the protests Hessler witnessed, historian Lucie Ryzova was present for what would come to be known as the battle of Muhammad Mahmoud street. Protesters reoccupied Tahrir square in full force after the SCAF led regime brutally suppressed a small sit-in organized by family members of the martyrs of the initial uprising. Ryzova, writing in Al-Jazeera saw this phase of the uprising split in two, asymmetrically organized halves. On the one hand was the occupation in Tahrir square “marked by an articulated political culture and clear political stances and demands,” and on the other hand the battle that raged along Muhammad Mahmoud Street, a “rain of tear gas and shotgun shells, and moving back and forth closer and further from the Ministry of Interior.” (Ryzova 2011) The revolutionaries who came to fight the security forces, most of them men, many of them wilad sis – unemployed or precariously employed residents of the informal settlements – were not there for “any high-minded outcome such as democracy,” but rather for karama, or dignity: “karama for them means their bodies not being subject to torture, not being mistreated at checkpoints and police stations, and having the small cash in their pockets extracted by each officer they pass” (Ryzova 2011). In Ryzova’s description the cultural frames that structured participation in the Battle of Muhammad Mahmoud Street related to violence in a markedly different way from the frame of gid’aan that the residents of al-Zawiya al-Hamra used to interpret the revolutionary violence deployed in the Battle of the Camels. Yet, as Ryzova notes, this tension was internal to the uprising itself: the frontline and the Meidan are also part of one whole. The frontline’s raison d’etre is (partly, originally) to protect the Meidan, even if it also developed into a fight for its own sake. Without the on-the-ground crowd of ultras and the wilad sis prepared to stop police violence with their own bodies, and most importantly, to hit back, the largely middle-class opposition could not have held the Meidan for long … Without the protection of the greater cause of the Meidan, the not-so-photogenic fighters would have been crushed by the brutal force of the army a long time ago, with nobody paying any attention. They would be both swept away and forgotten as vandals and baltagiyya.

In the square were those who were in one way or another concerned with strategically contesting certain cultural frames in order to appear to the media and to the general public - as legitimate, respectable, and unified in their aims. At the edge of the square and along the streets where battles raged were those whose frames of action were not strategic, were not at all respectable, and were not necessarily related to the articulated aims of the occupation. Ryzova’s ascription of the frame of karama to those members of the lower classes fighting on the
front lines is not an uncommon narrative—many of the texts I’ve encountered that mention violent confrontation with the police do so in terms of ‘getting even’. Whether or not the frame of karama fully explains the risks taken by those on the front line seems unclear; what it does clarify, however, is that those rebels defined a priori by the regime’s discourse as baltagiyya would remain “baltagiyya, whenever the camera gets uncomfortably close” (Ryzova 2012) and would only receive a nominal inclusion in al-sh’ab. During the Battle of the Camels protesters in the square were able to contrast their judicious use of violence with the regime’s egregiously violent repression, thereby winning the competitive framing process, appropriating the frame of baltaga against the regime, and in the process constituting a revolutionary subjectivity that included the members of the lower classes that the frame of baltaga was originally meant to criminalize. However, by the Battle of Muhammad Mahmoud Street, the limits of this apparent victory became tangibly drawn as “after 4 days of fighting the army erected concrete walls in the streets that lead up to Tahrir Square” and “protesting became legitimized in the walled-off space of Tahrir Square.” (Riphaegen and Woltering 2018, 126) In January of 2012 the SCAF cancelled the state of emergency and restored legislative power to the parliament, garnering praise from the US State Department while hanging on to its full repressive capabilities through the inclusion of one small caveat—emergency powers still applied when dealing with cases of “thuggery” (Egypt Independent 2012). By the time Peter Hessler ran into the young man with the perfect English in November of the same year it had been made abundantly clear that despite the strategic efforts of certain more respectable revolutionaries, the Egyptian state’s framing of baltaga remained operative in structuring media access to “bystander publics”, determining which tactics were “appropriate to the injustice” and maintaining differential access to the “cultural stock of how to protest and how to organize” (McAdam 1996, 267-270). In this context the desire “to beat the fuck out of the police” (Hessler 2012) articulated to a journalist reporting for The New Yorker must be understood not as a strategic engagement in a framing process but as the ultimate product of the competition fought over the framing of baltaga in which, despite early victories made by the occupiers of Tahrir Square, the regime was the ultimate victor. While it initially made sense for the more respectable revolutionaries to moderate their use of violence in order to frame the regime as baltagiyya and maintain an appearance of legitimacy, for many of their allies this legitimacy would remain impossible to achieve, and ultimately the regime would demonstrate that, regardless of the spectacularly violent repression it continued to use, the frame of baltaga would continue to be useful to regime purposes.

**Epilogue: Order prevails in Cairo, a world on fire**

The three frameworks of SMT that I have evaluated in reference to the January 25th revolution remain exhaustive only as long as the contention in question, whether contained or transgressive, whether revolutionary or reformist, occurs in a more or less stable polity centered around a state, and the political actors involved engage in claims making that revolves around state. I have attempted to show what happens when the contention in question begins to challenge the stability of the state itself as well as the entire order of politics centered around it. “The people demand the overthrow of the regime” meant many different things to many different people, at least one of these meanings contained the potential for not just the removal of a president but also the destitution of the entire regime around which contentious politics addresses claims. In choosing the January 25th revolution as my object of study I adopted certain boundaries, both spatial and temporal. The revolution is assumed to have begun with the demonstrations of January 25th, 2011 and ended with the brutal repression that followed the Mubarak’s deposal and the return to military rule. The revolution is also assumed to be confined to the territory governed by the Egyptian state. These were useful assumptions to make insofar as they worked to define a phenomenon that is treated as discrete in much of the scholarship discussing it and was, in many
ways, actually discrete. However, in making these assumptions something is necessarily lost in abstraction. The fires that burned throughout Egypt from 2011 to 2013 were not kindled within Egypt’s borders nor did they cease to spread even as the revolution died down. As I write similar fires burn in Algeria, France, Sudan, and Haiti, to name but a few, and there is little indication that they will not continue to spread. However, the contention ongoing in any one of these places is markedly different from the contention in the rest, and from the contention in Egypt that I have studied here. It is unclear to me that there is anything to learn from the study of such cases. The comparison of social movements – phenomena that are by definition and in reality comparable – generates knowledge that is potentially useful for both specialists in making social movements and specialists in suppressing them. It seems unclear to me, however, that there is as yet any positive knowledge to be garnered from the study of something like the January 25th revolution, something that begins to break with the logic of the social movement by breaking with the political order of the national state. Rather than attempting to extract lessons from a history of the revolution that began on the 25th, perhaps it is best to let it stand as “example, as occasion for celebration, and as duty” (End Note #4).

End Notes

1.) The assumption I make here that revolutions contain within themselves the conditions of their own failure is mainly inspired by the debate between Theorie Communiste and Troploin concerning the successes and failures of the European communist and anarchist revolutions of the inter-war period: Preliminary Materials for a Balance Sheet of the 20th Century (London: Endnotes UK).


3.) The general notion that the state can freely choose between different degrees of repressive force and the specific argument that the Mubarak regime could have chosen a different strategy of repression should be questioned. For a account of how attempts at utilizing violent repression in the first 18 days were frustrated by protesters through both violent resistance and non-violent fraternization see (Ketchley 2014)

4.) Here Kristin Ross is referring to the London socialist movement’s remembrance of the Paris Commune, another historical event that, for a time and in a place, demolished the political order of the national state. The full quote reads: “The Commune as example, as occasion for celebration, and as duty: these three together provide an apt approximation of what was felt then as solidarity – a set of practices that exceed the conditions, motivations, and reasons of an event and that grow out of and define political experience as such.” (Ross 2015, 96)
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Launch of space shuttle Atlantis STS-122 (NASA 2008)
Space Force

Nicholas Lumalcuri
The idea of a United States Space Force often gets an eye roll at first mention. The prospect of waging war in outer space comes off as jingoistic. While the physical impracticality of a space war is beyond the scope of this paper, (it’s not possible) I aim to argue that the expansion of our warfighting capabilities out of the Earth’s atmosphere is nothing to fear. In fact, the formation of a ‘Space Force’ is something that should be championed by proponents of space travel. If U.S. military space assets are consolidated into a sixth branch of the armed forces, investment in outer space exploration will be optimized in the long term. The United States Armed Forces is the highest funded military on the planet by a long shot. Proponents of space exploration should recognize the investment potential of tapping into the military-industrial complex. The United States Military receives close to 16 percent of the total federal budget (National Priorities Project n.d.). The National Aeronautics and Space Administration receives less than half a percent. And that Number is estimated to decrease in the next four years (Government Publishing Office 2019). The creation of a Space Force will supplement the funding that NASA arguably should receive if Space exploration is to be a priority. Logically following, the funding of the Space Force will boost the current space industry in the private sector. Government sponsored research will result in new, innovative technologies inevitably making space travel more accessible. After all, Military technology often merges into the civilian world. Technologies linked to military interests in aerospace include but are not limited too: Global Positioning Systems (GPS), radar, jet and rocket engines. Infrastructure, such as launch pads, space stations, and communications networks, will also follow in tandem. Finally, a space force will create a ‘space workforce’ as retired veterans transition to the private sector with knowledge and skills of the industry.

This paper will begin with a short introduction to the political implications of the Space Force. Following will be the official modus operandi of the Space Force, outlined by United States legislation, and actual role it will provide to our armed forces. This is to establish that the Space force is not an institution that will promote violence in space. I will also look at how global politics will shape the future of Space Travel, and how the beginning of a second Space Race between military powers will be beneficial to Space Technology as a whole. Second, I will predict the potential innovations that will result from the formation of a Space Force. New technology will develop with the ability to put more human resources into outer space. The formation of a Space Force will expand the space workforce. Servicemembers will gain experience working for the armed forces, and carry this knowledge into the civilian world. I will look at previous examples of this, particularly how pilots retired from the military with flight knowledge that companies needed. Third, I will look at the history between military technology and the private sector, specifically how and when these merge. Government investment has lead to innovation that we all use on a daily basis, most notably the internet. I will also look at how technological innovation shapes how wars are fought, and argue why a Space Force may lead to the most peaceful era in human history. This paper is designed to get people to see the Space Force not as an expansion of military power into space, but as a means to advance science, technology and innovation as a whole. If the United States is to create a branch of the military dedicated to advancing its interests in space, the likely outcome will be a renaissance of aerospace and cyber development.

First, why should we, as humans, go to space? Becoming a space faring species bares many benefits. The applied science developed in order to achieve space travel will advance technology. Perhaps this is my imagination, but I picture space as the final frontier, with endless possibilities awaiting mankind. But in a more practical sense, the ability to develop technology to become an interplanetary species can save humanity from a more grim fate. Residing on earth presents some potential problems for humankind. If we were to experience a mass extinction event, whether it be a disease, a supervolcanic eruption, or a meteorite, having colonies on other planets would allow the species to continue. Each planet provides a quarantine from the other, and this allows for a safety net protecting humans off planet. I want you to consider in this paper
that my argument for a Space Force will push humanity in the direction of multi-planet speciesism.

Many of the sources I will cite in this paper advocate for the creation of a Space Force purely in a defense mindset. Many of these authors are Navy and Airforce veterans, or have written extensively on military funding, spending, technology, and doctrine. Admittedly their interests are in the strongest military possible for national defense sake rather than for the innovations that the military will provide to the space community. I do believe that in their arguments, of what a Space Force will do, the combat role it will provide, and the institutional framework, back up my claim that it will be an institution of peaceful innovation.

A logical response to my argument might be to advocate for more funding to NASA. In an ideal world, absolutely. NASA is woefully underfunded, receiving less than half of the Federal budget with an estimated decrease in funding in the next few years. The potential of a second space race may change this. For proponents of NASA, sparking a militarily based space race might be the perfect opportunity to exploit national fervor in favor of peaceful space exploration. I don’t wish for military occupied space. My argument is the base on which to begin new interest in space travel. Arguably a space force is a good place to advance the agenda of space travel, particularly in a nation that holds it’s armed forces in such high a regard. The formation of a Space Force would lay the groundwork for the exploration of outer space, and this would merge with the civilian sector. NASA and the private sector would likely get a boost in fresh minds looking to put their newfound knowledge of aerospace, cybersecurity and engineering to work. This would boost competition, not only for companies, but for workers as well. A Space Force would also play in the imagination of the public, and allow a pathway into space work for those who are otherwise unable to reach it.

An argument I often make of the Space Force is that it will open the door to people, who have no access to the means, of space work. By this I mean that a Space Force will train and invest in its staff the knowledge and know how of the industry. Currently, the pipeline to a job at NASA or any private space agency is through years of mathematics, science or engineering at university, something out of the reach for those who are unable to afford school. A Space Force will provide people with training, experience, and knowledge that they will then carry with them into the civilian sector. When aviation took off as a career path in the post war era, over 80 percent of civilian pilots were ex military (Dam 2018). This can be largely attributed to the availability of military flight school, and the military was “the primary method of gaining flight experience for a later career at the airlines” (Dam 2018). Now, this number has shrunk to roughly 40 percent, but it was these early pioneers of military aviation that opened this career up to civilians. Similarly, it was through the military that pilots trained to be astronauts. President Eisenhower directed NASA to select its Astronauts from a pool of active duty servicemen. Neil Armstrong was the first astronaut selected who was not an active duty serviceman, however he was a Navy veteran with test pilot experience (Forbes 2017). NASA still requires it’s astronauts to have 1,000 hours of pilot-in-command time flying a jet aircraft (NASA n.d.). As of 2016, 219 of all 330 NASA current and former astronauts were military veterans (Essner 2016). This can be attributed to the skills these pilots pick up during their time in the service. Astronauts and other service members working in the Space Force will bring their expertise to civilian agencies such as NASA, and corporations such as SpaceX, Boeing, Virgin Galactic, and Blue Origin. Essentially, all this means is taking advantage of a large government socialist program for funding, educating, and training workers for jobs in the business world. The military can be very attractive for those looking to pick up skilled work without having to pay for a formal education.

In aerospace corporations such as Boeing or Lockheed Martin, Veterans are overrepresented in the workforce. Roughly 15 percent of Boeing’s workforce are veterans (Boeing n.d.), while Lockheed Martin reportedly has a veteran workforce of 28 percent. And while both of these corporations have been making their own advances into space, these companies have played instrumental roles in NASA research. engineer-
ing rockets such as the Saturn V, and Titan IV, and planetary probes such as Curiosity, Opportunity, and the Martian Climate Orbiter. It is no coincidence that veterans are overrepresented in the aerospace field. Many veterans have spent years working skilled mechanical work with high demand in the industry. A Space Force would increase the number of skilled laborers needed in the Space Field. Over time, I believe the numbers of Veterans working in the aerospace development field will decrease, just as the percent of veteran pilots has decreased over time. However we cannot discount the important role they play in establishing a field, by transferring knowledge, training and the culture of the field to their civilian counterparts.

One major implication of the creation of a Space Force will be the revival of the space race, however this time between the United States, and China. Nations such as India and Japan and Russia will likely also contend. The world’s powers are fearful of the others laying claim to extra terrestrial bodies, as they could be used as bases for weapons or spying technology. As a result nations are investing in their space warfighting capabilities. This is one of the reasons President Trump has taken interest in the construction of a Space Force. This competition will be a leading driver in innovation, as each nation competes in launching satellites, establishing communication networks, and even landing people on celestial bodies. As I have stated previously, the SSF has been making strides in the cyberwarfare and space warfare department. The SSF collaborates heavily with the China National Space Administration (CNSA), sharing infrastructure such as launch pads, rockets (Hendrix 2019). China has been making strides in their aeronautical technology. The CNSA has been in the headlines as of late because of their Chang’e-4 moon landing on January 3 2019. Many people are calling this the beginning of a new Space Race. In fact, the United State’s has been increasing its space defence spending in response to Chinese interests in Space. The Air Force is increasing its spending on space systems by 18 percent over the next four years (Harper 2018). We can expect these nations to compete in regards to technology and events that will, in the future, hold historical significance. Others feel that China will follow with increased militarization of space, and territorial claims on extraterrestrial bodies. Whatever the case, this revitalization of competitive space exploration will certainly drive, not only innovation, but a renewed interest in space. After all, it was competition between the Soviet Union and the United States that pushed these states to pursue space in the 1950s and 60s. Fear gripped the United States after the Soviets launched the first man-made satellite, Sputnik, into space in 1957 (History 2010). It was this event that pushed the U.S. to increase spending of NASA, and ultimately land human beings on the moon in 1967. Perhaps a second space race could spark similar innovation within space technologies.

There is also the question of heavily militarized space and the claiming of celestial bodies. For one point, fighting a Space War is impractical and rather counter intuitive. As stated previously, any damage to Satellites in orbit around a planet will result in more space junk, and consequently more kinetic weapons posing a threat to both sides. Thus, destroying an enemy satellite clutters up the “battlefield” making it equally more dangerous for both sides. It is unlikely any Space Force would risk destroying all their own space systems just to damage an enemy’s. The second point is how space is generally used for war today. The only practical way of utilizing space as a field of battle without filling up the Earth’s orbit with debris and junk is through launching Intercontinental Ballistic Missiles (ICBMs) outside of Earth’s atmosphere that fall back to the planet. While a Space Force would likely have jurisdiction over weaponized missile launches, it is not a weapon that would begin there. Current ICBMs are distributed throughout the military, and a Space Force would likely (if at all) take reign of the ones operated by the Air Force. The issue of weapons of mass destruction is not a Space Force issue; governments will continue to sponsor nuclear bombs. Weapons of mass destruction must be countered on the political level through popular support for disarmament.

To ease fears of a nuclear backed conflict in the orbit of earth, starting in the 1967 the United Nations has sponsored multiple treaties outlining the peaceful advancement of space exploration in
accordance to international law. The first treaty, signed and ratified by 131 states, outlines that space is to be area of peace. The placement of weapons of mass destruction are banned in outer space, and any celestial bodies according to Article I of the treaty (United Nations 2002). Claiming of extra terrestrial property is also forbidden by Article II the treaty on the basis that “Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.” (United Nations 2002). This treaty, and subsequent treaties, have laid a peaceful regulating framework for space exploration. The nuclear powers of the world, the U.S., China, Russia, France, and England, are all signatories who have ratified the treaty. Now I cannot predict whether these nations will violate international law in regards to space exploration. But these states should be held accountable by their citizens, to uphold their agreements as leaders on the international stage.

In his article Commercial Space Needs Regulatory Clarity, Todd Harrison argues that the rising Space Industry is largely in need of a regulatory body to provide oversight. “What is needed is a streamlined, minimally burdensome regulatory process that addresses the full range of mission parameters. It needs to provide clear standards companies can rely upon when planning missions and developing business plans” (Harrison 2016). While I do not believe it is ideal for the Space Force to become this body, perhaps it is a good place to begin. The Space Force could work as a ground for the government to experiment and set boundaries. Because the Space Force is funded by the government, it may play as a good area for experimentation where for-profit companies may be hesitant too. As the military does not need to worry about profit margins it may take more of a risk in developing space technology, pushing the boundaries of innovation. Large corporations will be more focused on turning a profit, and naturally, that will be their focus.

What Will A Space Force Do? To answer this question we must first look at Article X in United States Code, which is federal law that mandates the roles of each of the armed forces. Each of the armed forces are responsible for the organization and training of each of their servicemembers (Title 10--Armed Forces 1956). For example, the United States Marine Corps is required by law to develop amphibious warfare doctrine, and the technology involved with doing so. A Space Force would need its own Article X section. This would likely involve the development of a space warfare doctrine. It is important to note, that after service members are trained by their respective branches, they are assigned to one of the six United States Geographic Combat Commands. These theaters divide the world into geographic sections that are responsible for executing military policy in that area. Space Force units would be deployed to these sections after they were trained and organized. There they would fulfill the United States Space Force’s Mission Statements.

Likely, a Space Force would be heavily based on the United State’s Space Command. The Air Force, which currently receives more than 80 percent of the DoD’s space funding, is largely tasked with the government’s warfighting capabilities in outer space (Harrison 2018). The Air Force Space Command’s mission statement is as follows: “Provide resilient, defendable and affordable space capabilities for the Air Force, Joint Force and the Nation (AFSPC).” While it is true that this generally means maintaining high combat readiness, the reality is not the warfighting one would first imagine. A Space Force must first ensure access to space before it is to engage in supportive or direct combat roles (Hendrix 2019). This includes building infrastructure to successfully carry out its mission. Space missions, termed Space Control and Space Force Operation, are outlined in Joint Publication 13-14: Space Operations. This publication is meant in its own words to provide “joint doctrine to plan, execute, and assess joint space operations” (Scott n.d.). The publication stresses the importance of Space Situational awareness (SSA) which includes “integrating space surveillance, collection, and processing; environmental monitoring; status of US and cooperative satellite systems; understanding of US and multinational space readiness; and analysis of the space domain”, terrestrial and space environmental monitoring, and the protection of friendly
space systems. In other words, relatively peaceful missions. While a space force will fill a warfighting roll, arguably the space force will allocate most of its resources to tracking weather and space debris to fulfill their mission. This is partly to maintain current satellites and launch new ones into orbit. However the largest role the space force will fill is supportive in providing GPS, weather data, and communications networks for the Armed Forces. This will include the construction of communications infrastructure, namely satellites, and the construction of infrastructure on the ground such as launch sites and weather tracking bases. The Space Force will also provide the nations cyber warfare defense against hackers and information breaches. Thus, the argument that the Space Force will bring war to space is largely misinformed. The Space Force is not an institution that should be feared; It should be embraced for its innovation potential. The Space Force will maintain a relatively peaceful role in contrast to the modus operandi of the other branches of the military.

A Space Force, for this reason, would likely not lead to an arms race that would avoid war simply due to deterrence theory. Weapons of Mass Destruction are outlawed outside of Earth, and the job of the Space Force more than likely would not lead to an arms buildup in orbit around Earth. However, if a rogue state did decide to implement a nuclear armed satellite, a Space Force would be crucial in developing defenses to protect from such a threat.

I would argue that the Space Force, if created, should allocate some of its resources to the removal of space debris. Space debris, sometimes referred to as ‘space junk’, is defined by NASA as “any man-made object in orbit about the Earth which no longer serves a useful function”. This includes “nonfunctional spacecraft, abandoned launch vehicle stages, mission-related debris and fragmentation debris” (NASA 2015). Due to the physics of orbital mechanics, space debris poses a threat to ongoing and planned missions. Debris often travels at speeds up to 17,500 miles per hour, and threatens to damage existing satellites through collision. There are currently more than 500,000 pieces of debris in orbit around the earth (NASA 2015). Space debris must be carefully tracked to ensure the safety of astronauts and the protection of satellites. Debris will continue to collect around the orbit of earth as humans continue missions in space. A Space Force will likely perform space junk collection out of necessity for its mission success. Any damage to satellites will not only cost millions of dollars, but damage to satellites will exponentially grow the amount of space junk as the object breaks apart. Thus, as the military increases its footprint in space, they are more liable for any damage or death caused by debris.

A common argument against a separate Space Force is that the United States space defense needs are fulfilled by the military as it exists. All five branches of the military already maintain some level of space systems. The formation of a Space Force would entail grouping these systems under one umbrella branch. One may rightfully ponder why this merger is necessary. A Space Force would require a new bureaucracy, uniforms, and would cost a considerable amount of money. The question is whether this investment is worth it. I put that this consolidation will be beneficial to the space industry. The Air Force receives roughly 80 percent of the DoD’s space budget, with the other twenty percent being divided up amongst the four other branches (Harrison 2018). This causes major issues when dealing with space operations. One, space is not the priority of any of the five branches, including the Air force. This means that resources and funding are not prioritized to space. This also hurts prospective career paths, as Promotions within space command structures do not keep pace with promotions outside the field (Hendrix 2019). Space workers are also rotated in and out of space assignments further ruining space expertise and career prospects (Harrison 2018). Thus, where people looking to join the military to build a space resume will be unable to do so. For the space workforce that does exist, it’s scattering across five branches, limiting communication and innovation. Another problem that exists is the prioritization of terrestrial operations over space operations. Space systems are not the priority of the armed forces. Their space assets are used with space operations. One, space is not the priority of any of the five branches, including the Air force. This means that resources and funding are not prioritized to space. This also hurts prospective career paths, as Promotions within space command structures do not keep pace with promotions outside the field (Hendrix 2019). Space workers are also rotated in and out of space assignments further ruining space expertise and career prospects (Harrison 2018). Thus, where people looking to join the military to build a space resume will be unable to do so. For the space workforce that does exist, it’s scattering across five branches, limiting communication and innovation. Another problem that exists is the prioritization of terrestrial operations over space operations. Space systems are not the priority of the armed forces. Their space assets are used in support of their warfighting specialty. Space operations will never receive adequate funding unless there exists an institution to advocate for it.

The Military has proved itself as a machine of innovation. It is often through the military where
governments invest heavily in research. I want to talk about some of the technological innovation that has derived from investment in aeronautics and cyber warfare. Outer space exploration has its roots in one of the darker periods in human history, World War 2. During the second world war jet and rocket propulsion technologies were developed by Nazi scientists for the purpose of creating “Wunderwaffe”, literally ‘miracle weapons’ that would give them an advantage over the Allies. These weapons, while proving to be fruitless in the greater scale of the global conflict, revolutionized the aerospace industry. After the defeat of the Axis powers, top German scientists were taken to either to Soviet Union or the United States to continue their research in the context of the cold war. These states furthered innovation in military research. However at the same time these technologies merged with the civilian sector. Jet fighters became commercial jet airliners, and ballistic missiles became launch vehicles for astronauts and satellites. Military systems such as satellites in turn led to more innovation. Satellites now comprise the infrastructure for the Global Positioning System, or GPS. GPS technology began in the 1960s as a means to track submarines and pinpoint their location on the earth. The current GPS system is operated by the United States Air Force, however if a Space Force were to be created, the GPS would likely fall under their jurisdiction. The internet was similarly developed in a similar trajectory. The DoD began sponsoring a communication and file sharing network for the Armed Forces in 1969 (Bidgoli 2004). This was termed the Advanced Research Projects Agency Network, or ARPANET, and was originally not intended for public use. However as government research continued, network technology developed into the internet that we all have access to today.

Technological innovation is is heavily pushed by the military. The military needs to constantly adapt in order to deal with threats it is tasked with dealing with. Part of maintaining a high combat readiness is utilizing the newest and best equipment. As a result the DoD is constantly investing in research. Despite what might come to mind, most military innovations are not the newest fighter jets, small arms, or warships. The technology developed by the military is often computer hardware. The military runs it’s own awards for technological innovation called the Military & Aerospace Technology Innovation Awards. The winners of 2018 were microchips, transistors, and solid state drives all designed for streamlining information technology more efficiently. A Space Force would push innovation towards a Space Focus as companies jump to win development contracts with the DoD for space systems.

Technology constantly changes the way wars are fought. Eric Brose’s book The Kaiser’s Army: The Politics of Military Technology in Germany DUring the Machine Age argues that the development of new technologies shaped the way wars were fought during the late 19th and early 20th centuries. New innovations in military technology such as machine guns, airplanes, and tanks made war more deadly and life costing than ever. We are similarly living in an age where military technology is transforming warfare. This is largely due to the world’s most powerful militaries shifting to cyber warfare. Since the end of the 1980s, there has been a major doctrinal shift towards cyber warfare (Parker and Parker 2019). A nation’s transition away from conventional warfare to cyber warfare, a Space Force, with cyber-space warfighting capabilities, is a logical step for this nations self defence. China’s armed Space Force, the People’s Liberation Army Strategic Defence Force (SSF), has been accused of executing network based attacks on U.S. servers by the DoD. These attacks stray from conventional warfare by targeting infrastructure, such as electrical grids (Gorman 2009). While these attacks are by no means harmless, they are much less deadly than conventional warfare. If military technology is pushing war down a path where human life is not lost, surely that transition is good?

In conclusion, a Space Force will play a major role in innovating space travel. The military, particularly in the aerospace department, has played a crucial role in developing air and space technology, and is largely the reason we have achieved space flight in the first place. The military and space travel have thus far gone hand in hand. All of the technology associated with space,
rockets, jets, satellites, and the internet, started as military technology. Veterans pioneered space travel, from being the first astronauts in space, to the workforce that designed and built the infrastructure to get us up there. The military provides people with the opportunity to work in this field. School is expensive, and enlisting can serve as an entry into an otherwise unattainable path into this field. However, current space assets are divided amongst five branches, and pursuing a career in this path is difficult due to institutional fracturing. A Space Force would provide a more streamlined career path, and one that would more easily transition into the civilian sector where veterans could find jobs and thus contribute to the space economy. A Space Force would also spark renewed interest in space, not only as a career path, but as a road for government sponsored innovation into space. New technologies would be developed as this institution came together. Technologies in weather mapping, satellite launching, and communication networking would need to be developed for the Space Force to fulfill its mission. And arguably space junk collection would start to be taken more seriously as the military aims to protect its satellites and personnel working in planetary orbit. All of this buildup in space would almost certainly spark a second Space Race, pushing the great powers of the world to invest more heavily in space travel. China, which has a dedicated Space Force attached to the PLA, has successfully landed a probe on the moon. Fear of one nation dominating the cosmos may just be the spark needed to push for more attention to space technology. Finally, a Space Force may shape warfare itself as cyberspace becomes the new battlefield. While cyberwarfare may be damaging to a nation’s economy or infrastructure, it will certainly save lives. It is unlikely that a Space Force will lead to any major war. Rather, it is more likely that this will lead to innovative competition, and more accessible space travel. Technology developed by a Space Force will certainly make its way to the civilian sector. NASA and aerospace corporations will benefit from the influx of new technologies and skilled laborers. As a result of all of this, I believe that a Space Force should be championed by all proponents of space travel. I advocate for a Space Force as an individual who sees the benefits of humanity as a multi-planetary species. Any and all investment in space travel is worth it. Long term investment in space will be beneficial to not only the space industry, but to humanity as a whole. While in the short term, a Space Force seems like a jingoistic and nationalistic prospect, in the long term, it will lead to more peaceful innovation, scientific progress, and more accessibility to space travel.
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Environmental Justice and Changing Administration in the United States

Christina C. Marshall
In the 1960's the book Silent Spring warned the American people of the dangers of a changing environment. Soon after, when the Nixon Administration took office, President Nixon established a new independent government agency, the Environmental Protection Agency (EPA), that would act as a watch dog for all environmental matters within the United States. As the administration has changed hands throughout the following decades the EPA's functionality has been affected. In 1994 the EPA was expanded to enforce environmental justice under the Clinton administration, who enacted new policy in direct response to the growing scientific evidence proving low income and minority communities were receiving a larger brunt of environmental harm than other communities. Executive Order 12898 established protection for low income communities based on this evidence. This paper will take a close look at each administration changed the EPA since environmental justice was introduced. The next administration, under President Bush, cut funding and removed the requirement for government agencies to take poor communities into consideration when making impactful decision, saying that all communities need to be protected; this implied no extra consideration for low income communities. When the Obama administration took office in 2009, the EPA was again expanded, received more funding, and carried the ability to impose sanctions and force more cooperation. The negative impact on low income communities was again emphasized, this time with a clear plan. When the Trump administration took office in 2017 the EPA was once again significantly cut. The consistent changing of the EPA and the uncertainty with every new administration, hinders the EPA in protecting these communities. A long-term policy is needed to protect the environment, short-sighted policy will not be effective. Lasting change is the only thing that can protect current and future generations from environmental and health hazards. The purpose of this paper is to explain that the EPA is an inherently partisan institution, affecting the EPA's ability to protect all communities, but especially low-income and minority communities.

Summary & Methodology

This paper is in two sections. First, in order to evaluate the partisanship of the EPA I will give a review of each Presidential Administration’s viewpoint and their nomination of the EPA Administrator. By looking at the history of each candidate, an evaluation of how the EPA has been used as a federal institution is possible. Second, I will define “environmental justice” and use that definition to evaluate how each administration change effects the EPA's ability to protect low-income and minority communities, who have been proven to carry a larger burden of environmental and health hazards. It was the original purpose of the EPA to control and protect all Americans from environmental dangers.

First, the EPA is arguably the most politized US Government institution. Market regulations and controls are inherently partisan and to properly evaluate how each administration runs the EPA I will consider whom they put in charge and what each President has said pertaining to the EPA while campaigning. Each Administrator nominee has been controversial but it should be noted that criticisms mainly run along party lines: the nominees are considered either too pro-business or an environmental extremist. Republican Presidents have typically elected nominees that publicly aim at loosening regulations, while the Democratic Presidents have done the opposite, nominating individuals with a history of working to decrease the EPA’s policies of protection.

Housing in America has historically been, and continues to be, racially segregated. Low income and minority communities are often located closer to hazardous waste sites more than middle or upper-class predominantly white neighborhoods. This has caused a noticeably disproportionate effect on health and environmental safety in poor neighborhoods. For example, air quality is much worse in low income communities causing lung and heart damage, asthma, chest pain, wheezing, and an increased risk to infection (NIEHS, 2007). The main way the US government protects communities from environmental and health hazards is through the EPA. The EPA's current mission statement is, “We are committed to providing clean and
safe air, water, and land for all Americans. We are building on the enormous progress EPA has made since it was established in 1970 – increasing the safety of lakes and rivers, reducing smog, cleaning up contaminated lands, and guaranteeing the safety of chemicals in the marketplace” (EPA, 2019).

**EPA Administrators**

It is important to note what each President said about how they intended to run the EPA while they campaigned, along with whom they nominated to be head administrator once in office. The EPA can be treated as a regulating force. When enforcement is high and standards are stringent the EPA can heavily regulate what federal agencies and companies are doing to either protect or harm the environment. However, the EPA can also be treated as an institution that loosens these regulations.

The Clinton campaign ran on the platform of “Putting People First,” an idea that was reflected in his environmental policy platform. Al Gore, Bill Clinton’s running mate, was known for his attention to environmental concern. In 1992, Gore published, *Earth in the Balance: Forgoing a New Common Purpose*, in which he described the current state of the planet as a predicament and called for major policy changes. He called attention to climate change and various other world-wide ecological problems. He also proposed a Global Marshall Plan that would ask all countries to act quickly to protect the environment. His goals were reflected in the administration and once the Clinton Administration took office, one of its first major changes to the EPA was making Carol Browner the director.

Browner accepted the position with little pushback, receiving a unanimous vote from the Senate during her confirmation (Greenhouse, 1993). The little skepticism about her nomination came from her close ties with Vice President Al Gore. Nevertheless, she was appointed with cheers and criticisms from both sides of the aisle. Some profiles on Browner claimed she was too business oriented while big corporations had the opposite fear (Iorio, 1993). Browner had experience working on environmental matters in her home state of Florida, successfully making the Florida Department Environmental Regulations one of the most active departments in the state. By appointing an experienced politician whom was considered both pro-environment and pro-business, it opened up a new chapter for the EPA. Browner called for a more progressive approach, a new bureaucratic reorganization, and better use of taxpayer’s money (Graham, 1994). Her new approach to the EPA allowed for policies, such as the Food Quality Protection Act, to be introduced and quickly incorporated into existing policy.

The Bush Campaign ran on a platform of being pro-business, and this continued during his presidency. President Bush continuously denied anthropogenic climate change, meaning that he denied that climate change was man-made, despite the consensus of scientists. He regularly worked towards protecting big businesses, decreasing the role of scientists in the EPA’s reports. The Union of Concerned Scientists released a document explaining, “There is strong documentation of a wide-ranging effort to manipulate the government’s scientific advisory system to prevent the appearance of advice that might run counter to the administration’s political agenda” (Union of Concerned Scientists, 2005). The report also cited, “There is evidence that the administration often imposes restrictions on what government scientists can say or write about sensitive topics” (Union of Concerned Scientists, 2005). The role of scientists in environmental policy is undeniable, scientists are needed to identify targeted communities, identify the hazards, and create new solutions for the affected communities. However, during the Bush Administration, enhancing the rights of businesses became the main goal of the EPA. For example, Bush allowed the EPA to open millions of acres of the wilderness for mining, oil, gas, and logging industries (Goldenberg, 2009).

During the Bush Administration the EPA changed hands twice. From 2001-2003, President Bush nominated Christine Todd Whitman as the EPA’s administrator. Todd Whitman was the Governor of New Jersey and known for being pro-business. Her time as EPA administrator reflected that ideology. One of her most controversial decisions was to set an acceptable level of arsenic in drinking water, which received harsh criticism from both...
sides of the aisle (Seelye, 2003). In 2003, Todd Whiteman resigned, and Bush designated Stephen L. Johnson, a scientist. Although Johnson was the first scientist to lead the EPA, he was another controversial pick. He had a history of using humans as test subjects, and even during the time of his confirmation hearing was leading a study that evaluated the risks of exposure to pesticides during a young age (Janofsky, 2005). Both of the chosen administrators during the Bush terms were controversial due to their histories of assisting big business and slowing environmental protection laws both in states and federally (Coile, 2012). Other roll backs of environmental protections to enhance business included deregulating the Endangered Species Act, Clean Air Act, and Clean Water Act, defunding programs in charge of cleaning up toxins, endorsing commercial whaling, and approving mountain-top removal for coal mining (Goldenberg, 2009). The EPA was actually used more to slow down policies instead of enacting new ones. Although Bush did not change the EPA’s budget, he reduced the ability of the EPA with subtle moves, such as changing definitions, slowing decisions, and denying climate change.

The next change in administration brought Democratic rule back to the EPA. During his campaign, Barak Obama made environmental justice one of his key problems facing the nation. He made many promises surrounding environmental justice, including improving water quality, regulating livestock pollution, pursuing a wildfire management plan, and expanding access to hunting and fishing for indigenous peoples (Grits, 2012). Although he was criticized by environmentalists for his support in expanding coal-to-liquid technologies, he eventually won their support through his tough environmentalist agenda and a promise to increase funding on environmental problems. His agenda intentions included acting on climate change, adding more species to the Endangered Species Act, increasing the number of protected lands, and creating more stringent pollution targets. These promises indicated that Obama had the intentions to expand the role of the EPA in protecting low-income and minority communities.

Once taking office, President Obama nominated Lisa P. Jackson as head Administrator of the EPA. Jackson was a controversial choice for both parties: she had been actively working against the coal industry but was involved in hydraulic fracking, the hazards of which she denied despite scientific evidence to the contrary (C-Span, 2011). Eventually, Jackson stepped down, citing President Obama’s support of the Keystone Pipeline, which Jackson claimed targeted low-income and minority populations, as well as disproportionately harming indigenous populations (Margolin, 2013). In 2012, President Obama designated Gina McCarthy. Like her predecessors, McCarthy received criticisms from both sides of the aisle. Leaders on both the right and left claimed she was an environmental extremist. She was confirmed with a 59-40 vote, largely on the party line (Tracy, 2013). McCarthy had worked at the EPA as Assistant Administrator for the Office of Air and Radiation Office and was known for her tough policies. While administrator, she received GOP pushback, and was even the target of a resolution that attempted to impeach her. Although that resolution never went to a vote, she remained at the forefront of criticism within the EPA. Through her leadership, the EPA underwent many changes, introducing new ambitious initiatives to control and regulate pollution in the air and water. The EPA received an increased budget (APHA, 2018) that was used to process more enforcement mechanisms and new cap-and-trade pollution targets. Through these new EPA Administrators, the Obama Administration pushed the EPA further in terms of imposing new policy, progressing old policies, and increasing enforcement.

During Donald Trump’s 2017 campaign, he referred to the EPA as a waste of tax payer’s money and vowed to slash its budget more than ever before. Trump’s agenda for de-regulating the EPA including increasing skepticisms for scientific evidence, eliminating evidence-gathering programs and offices within the agency, leaving the Paris agreement, cutting carbon-emission targets, and lifting the memorandum to control coal leasings (Dennis and Eilperin, 2017). Once elected, President Trump’s nominees for Administrator of the EPA was extremely controversial. Originally, he designated Edward Scott Pruitt. Pruitt followed Trump’s agenda of de-regulating the EPA and fought for more pro-en-
ergy regulation, stating, “The American people are tired of seeing billions of dollars drained from our economy due to unnecessary EPA regulations, and I intend to run this agency in a way that fosters both responsible protection of the environmental and freedom for American businesses” (Jackson, 2016).

Pruitt worked against the Obama Administration’s EPA regulations in his home state of Oklahoma (Jackson, 2016), bringing a case against those regulations which stated that it was a reach for a federal agency to impose such stringent policies. He regarded the EPA under Obama as an over-reaching federal institution, wanting more responsibilities on the state governments to protect their own environment. This nominee was controversial to the Democratic and Republican Party alike and members from both parties requested his resignation following a controversy of excessive travel and unnecessary spending (Dlouhy, 2018). He resigned in July, 2017, and was replaced by his deputy, Andrew R. Wheeler. Wheeler was officially elected April, 2018, again largely along party lines, with a vote of 53-45 (Mufson, 2018). He had previously worked as a coal lobbyist (Farrick, 2017), arguing in favor of big companies over environmental protections.

The change in EPA Administrators in the middle of a Presidential Administration is not uncommon. However, it shows a growing controversy within the structure of the EPA. The nominees have become more politically driven as time has gone on. The Democratic and Republican party have historically disagreed on how much power the EPA should have, but this trend has grown exponentially since the introduction of environmental justice. With each change, the EPA has either lost or gained its ability to protect low-income and minority communities. This has also affected the ability of the EPA to enact lasting policies.

In the graph below “Senate Votes for EPA Administrator Over Time” it is clearly shown how the EPA has become more political overtime. From the beginning of the EPA in 1970 until 2003, the Senate unanimously voted for the president’s proposed EPA Administrator. After 2003, the selection for the EPA Administrator begins to have pushback. By 2005, the Administrator was voted ** indicated a vote by voice, and so no official tally can be made
for mostly along party lines, with the exception of Lisa P. Jackson who was voted for by voice, in which there is no record of the exact “Nay”. In the twenty-first century, the choice of EPA Administrator is being more scrutinized by the opposite party.

**Environmental Justice Changing with Each Administration**

Environmental and health hazards are not spread out evenly throughout America. Studies have shown that hazardous waste sites are more likely to be near low-income and minority communities. Low-income communities, with high poverty rates, low education, and high unemployment rates, are typically located near highways, refineries, coal-fired plants and hazardous waste sites. These contribute to the increased rate of environmental hazards these communities face. Typically, their are mobilization problems and little resources to stand against these local facilities. This, along with other environmental hazards, affects the health and wellness of targeted communities. This type of segregation and its effects has become known as “environmental justice.” Low income communities and communities of color are much more likely to see harsher results of environmental hazards than suburban, wealthier communities. The history of environmental justice is relatively short, environmental problems were not wide spread until the 1960’s, and two decades later, studies revealed that targeted communities, mainly those of color, receive a larger burden of the effects. A localized example can be seen in Los Angeles, California. The poor, predominantly Hispanic community of Boyle Heights in East LA is surrounded by highways and rail yards, which has caused a much higher rate of pollution in this neighborhood than the predominantly white neighborhoods (Katz, 2012). This is a result of longstanding racial segregation in the United States and the disproportionate placement of toxic waste sites. Their lack of political mobility has allowed politicians to ignore these communities in the decision-making process, resulting in the disproportionate effects of environmental and health hazards.

“Environmental Justice” was not a common term until the 1980’s. The first shocking document was released by the U.S. General Accounting Office in 1983. This study found that African American communities in the South were host to more toxic waste sites than any other community (Brulle, 2005). This was followed by a report from the United Church of Christ Commissions on Racial Justice, Toxic Waste and Race in the United States (Brulle, 2005), “The United Church of Christ (UCC) study concluded that race was the most important factor in predicting where these sites would be located” (Brulle, 2005). After the release of these two studies, the disproportionate placement of toxic waste sites became a publicized problem in the United States.

To understand the facts behind environmental justice, the results of racial segregation must be discussed. The study American Apartheid explains that certain mechanisms are used to place African Americans in restricted communities, these de facto rules “Include real estate agents steering people of color into racially segregated neighborhoods, discrimination in lending practices, and the phenomena of ‘white flight’ to the suburbs” (Brulle, 2009). After centuries of legally restricting where African Americans can live, de facto regulations became mainstream, resulting in racial segregated communities, with low income communities being largely minority populations (Massey, 1998). This meant, “Many people of color are concentrated in highly segregated communities that are significantly more disadvantaged than those of the white population” (Brulle, 2009). When determining the placement of toxic waste sites and other environmental hazards, politicians and large companies look for communities that will express the least resistance. These communities are commonly left out of the decision-making process, and thus are more likely to become home to these hazardous activities.

Recent studies show the harsh results of the disproportionate effects. A study in 2018 focusing on toxic pollutants found, “Those in poverty had 1.35 times higher burden than did the overall population, and non-Whites had 1.28 times higher burden. Blacks, specifically, had 1.54 times higher burden than did the overall population” (Public Health Association, 2018). This study showed that race was even more of a determining factor than
income status. “Disparities for Blacks are more pronounced than are disparities on the basis of poverty status” (Public Health Association, 2018), meaning that African Americans are 54% more likely to be exposed to toxic pollutants. In addition, oil refineries are more likely to be located closer to communities of color. “Fumes Across the Fence-Line” a study conducted by the National Association for the Advancement of Colored People, the Clean Air Task Force, and National Medicine Association found that, “The air Black Americans breathe is nearly 40 percent more polluted than their White counterparts. And they are 75 percent more likely to live in ‘fence-line communities,’ which border oil and natural gas refineries” (Byrd, 2017).

Being located near hazardous waste sites have an array of environmental and health effects associated with air quality. The number of low income and minority communities above the PM2.5 National Air Quality Standard has increased by 43% from 2006 to 2016, (Mikati, 2018), and the cost of increased exposure led to an increased risk of heart and lung cancer, aggravated respiratory diseases such as emphyema, bronchitis and asthma, common wheezing chest pain, dry throat, headache and nausea, and an increased risk of infection (EPA, 2019). Longer term effects can include exacerbated allergies, birth defects, cancer, dermatitis, emphysema, fertility problems, goiter, heart disease, immune deficiency disease, kidney disease, lead poisoning, mercury poisoning, nervous system disorders, osteoporosis, pneumocystis, Queensland fever, reproductive disorders, sunburn and skin cancer, tooth decay, uranium poisoning, vision problems xeroderma pigmentosa, and Yusho poisoning (NIEHS, 2007).

For health reasons, the EPA is in charge of protecting all Americans from environmental hazards. However, as previously noted, the ways the EPA protects Americans change with each administration. President Clinton released an Executive Order and a Memorandum to call on the EPA and federal agencies to enact “environmental justice” policies, clarifying that to mean low-income and minority communities needed to be considered and not discriminated against. President Bush changed the jargon to protect “all communities,” and therefore loosened the regulations protecting low-income and minority communities. The next change in administration brought even more environmental justice policies to the EPA. President Obama enacted a deadline for all federal agencies to enact an environmental justice plan, followed by more stringent policies that would protect these communities. Then, once the Trump Administration took office, these policies were once again loosened, with a huge decrease in budget and a change in the EPA’s “enforcement” policies.

The Clinton Administration

Throughout the 1960’s and 70’s environmental problems became a major topic in the United States political sphere. For the first time the environment was discussed and restrictions on harmful activities were enacted and enforced by the EPA. By the time the Clinton Administration took office in 1993 environmental problems were no longer at the forefront of political debate. Yet the Clinton campaign ran on a platform supporting pro-environmental regulations. The ambitious goals of this administration can be seen in the way the term “environmental justice” was used, the way it was integrated into existing policies, and the new restrictions put in place to protect low income communities. Swift action was taken to incorporate environmental justice into policy.

In February of 1994, Clinton signed Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” In one of his first executive orders as president, Clinton solidified his stance on protecting these areas from environmental harm. This executive order called for all federal agencies to provide extra protections, with the larger goal of providing environmental protections to all, which coincides with his campaign slogan “Putting the People First.” The executive order states its’ goal as:

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and...
One of the main points of this order was to promote nondiscrimination within government agencies. Each agency was responsible for incorporating environmental justice into its policies, and the EPA was to regulate and enforce this order. Although this Executive Order was significant, it actually served as merely a suggestion for federal agencies. They were not legally required to take any action.

President Clinton also created a memorandum that set out more guidelines for environmental justice within federal agencies. The “Presidential Memorandum for the Heads of All Departments and Agencies Executive Order for Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” underscored existing laws that helped federal agencies incorporate environmental justice into its policies. It claimed:

The purpose of this separate memorandum is to underscore certain provisions of existing law that can help ensure that all communities and persons across this Nation live in a safe and healthful environment. Environmental and civil rights statutes provide many opportunities to address environmental hazards in minority communities and low-income communities (Clinton, 1994, Page 1).

This memorandum cited existing laws, such as the Civil Rights Act of 1994, to reinforce protections and deter discrimination on the basis of race, color, or national origin. Existing laws, such as the Clean Air Act, which provided the EPA with the ability to evaluate environmental effects on minority communities was also cited. Finally, this memorandum called for all federal agencies to share environmental health information with the public in accordance with the Freedom of Information Act. Although this Memorandum and the coinciding Executive Order are more suggestions, President Clinton reminded federal agencies that they are already required to protect targeted communities with existing laws.

Within this executive order, there is no clear definition of “environmental justice.” The term was used throughout the order to identify low-income and minority communities that are more prone to environmental hazards, but the definition was left up to the EPA. In 1994, the EPA released a working definition of environmental justice:

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies (BOEM, 1994).

The call for protection of “all people regardless of race, color, national origin, or income” clarified that equal protection must be awarded to all people within the United States. Many studies found that communities were discriminated against, and Clinton argued that all federal agencies needed to stop this discrimination.

One of the biggest achievements of this order was the establishment of the Federal Interagency Working Group on Environmental Justice (IWG). The IWG became a committee within the EPA that regulated and enforced environmental justice. The IWG was to work with representatives from eleven federal agencies and through these partnerships, set guidelines and provide guidance for achieving environmental justice by addressing areas of weakness and “disproportionately high and adverse human health or environmental effects on minority populations” (Executive Order 12898, 1994). The IWG was also to coordinate with researchers who evaluated the most targeted community, then take this data and translate it into policy. Holding public forums and increasing public participation was one of the center goals of the IWG, mobilizing certain communities to address environmental hazards. While the order called for the creation of this group within three months, EPA Administrator Browner had it working in a shorter time frame (EPA, 2019).

With a new leader, a new goal, and a new committee to enforce environmental justice, the EPA had to then incorporate these ideas into its existing policies. The 1963 Clean Air Act, one of
the first steps towards the EPA's creation, called for air pollution control on a national level. These guidelines determined how the EPA was to address poor air quality and evaluate the health and environmental hazards that polluted air can cause. Environmentalists had already argued that this act gave the EPA the ability to protect low income and minority communities (Lazarus, 1999). When the first order was signed, the Clean Air Act incorporated in the protection of these targeted communities because it already had stringent targets and enforcement mechanisms. Through this act, violators could be issued fines and sanctions for a lack of compliance. This act was also used to evaluate the disproportionately low air quality. However, although the guidelines established by the Executive Order were ambitious in tackling environmental justice, the incorporation of these guidelines into the Clean Air Act was still incomplete by 1999, five years after their introduction. In 1999, the EPA released a “Final Guidance for Consideration of Environmental Justice in Clean Air Act.” In this analysis, the EPA sets more guidelines to address environmental justice using the Clean Air Act:

If the potential for adverse effects is identified, agencies should analyze how the environmental and health effects are distributed within the affected community. Demographic data and information on the ecological characteristics and biophysical impacts of the proposed action and any alternatives should be analyzed to identify if disproportionately high and adverse impacts will affect the minority and/or low-income communities. Before commenting on an agency proposal, the EPA reviewer should see how the agency concluded that an impact may or may not be disproportionately high and adverse and the rationale behind the proposal (EPA, 1999, Page 13).

These new guidelines called for a reevaluation of data collected paying specific attention to low-income communities, therefore reinforcing the environmental justice guidelines laid out in Clinton's Executive Order.

Incorporation of environmental justice into existing policies became a key element for the EPA at this time. The Clean Water Act became law in 1972, calling for water regulations and standards throughout the country. After the introduction of environmental justice this act was to be used to ensure clean water was available to low income communities. The Construction Grant Program was offered to the EPA, with the goal of bringing new types of clean water to all communities. The distribution of this grant was to help low income communities as:

The Strategy was prepared in response to President Clinton’s directive to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations in the United States... (Imperial, 1999, Page 101).

However, critics claimed that this idea was just talk, and that even with the promotion and financing of clean water technologies, clean water was still disproportionately missing in low income communities:

Even though the CGP has been replaced by the SRLP, the question of whether $60 billion in funding was distributed in a manner that systematically favored some communities over others is an important public policy question. . . . If the funding distribution was biased in favor of certain types of communities, then other types of communities were left to finance the construction of POTWs themselves or rely on the more expensive SRLP to comply with the CWA requirements (Imperial, 1999, Page 101).

Although this grant intended to enforce environmental justice and bring clean water to communities who needed it, the results varied and low-income communities still had disproportionately dirty water. Although this grant was an attempt to incorporate environmental justice into the Clean Water Act, the usage actually proved otherwise. By evaluating the incorporation of environmental justice within the EPA’s two largest policies, the Clean Air Act and the Clean Water Act, it becomes apparent that protecting low income communities is not as easy as signing an Executive Order. Although the Clinton Administration took swift action in extending environmental protections, success could not be achieved in only the eight years that the Clinton Administration was in office.

The Bush Administration

After the Clinton Administration left office in 2001, the Bush Administration took over. From 2001-2009, they worked at de-regulating the EPA and decreasing the role of scientist’s involve-
The continued need for environmental justice policies can be seen in a 2003 report released by the EPA, showing that targeted communities still were not identified and a clear plan and strategy to protect all communities was not completed. In addition, by de-regulating hazardous environmental practices and waste, which were scientifically proven to target low-income and minority communities, the Bush Administration promoted a business agenda at the expense of low-income communities. One of the first changes the Bush Administration made to “environmental justice” in the EPA was to give a new definition. The new definition of the term became:

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environmental in which to live, learn, and work (EPA Website, 2007).

This new definition had several very serious implications. First, it did not address low income and minority communities specifically. Second, it excluded the importance of nondiscrimination, one of the main points of Executive Order 12898. By excluding discrimination, it ignored the problem of disproportionate effects. Finally, this definition put the burden of protecting low income and minority communities onto the communities themselves. By claiming that “Protection from environmental and health hazards and equal access to the decision-making” is needed for all communities the new definition ignored evidence that certain communities were excluded from the decision-making process. This change further hindered the EPA’s ability to pay special attention to certain communities. One of the biggest changes was a call for communities to protect themselves, becoming more involved and participate in this process.

One of the documents released during this administration was the EPA’s Evaluation Report, “EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice.” This 2004 report called for a need to identify targeted communities, saying:

In the absence of environmental justice definitions, criteria, or standards from the Agency, many regional and program offices have taken steps, individually, to implement environmental justice policies. This has resulted in inconsistent approaches by the regional offices. Thus, the implementation of environmental justice actions is dependent not only on minority and income status but on the EPA region in which the person resides (Carroll, 2004, Page i).

The lack of a clear plan for implementation led states to either implement environmental justice on their own terms or, as was the case in many states, to not bother. This report explained that by not identifying affected communities, the EPA failed in enacting environmental justice policies. The change also affected the EPA’s ability to implement an effective strategy to target environmental justice issues. Statistical evidence was also cited, proving that low income and minority communities were still being left out of the decision-making process and continued to receive a larger amount of environmental and health effects. This report called for a reaffirmation of Executive Order 12898 and the memorandum that went with it. The recommendation stated:

We recommended that the Acting Deputy Administrator issue a memorandum reaffirming that Executive Order 12898 is an Agency priority and that minority and low-income populations disproportionately impacted will be the beneficiaries of this Executive Order. Additionally, EPA should establish specific time frames for the development of definitions, goals, and measurements. Furthermore, we recommended that EPA develop and articulate a clear vision on the Agency’s approach to environmental justice (Carroll, 2004, Page ii).

The continued need to develop a clear strategy was still being called for in 2004, ten years after the original Executive Order. Although the Bush Administration did not decrease the EPA’s overall budget it pursued a de-regulated market, one beneficial for businesses. The EPA faced an uphill battle in protecting low income and minority communities due to the reduced regulations and decreased the role of sci-
entists. For example, fracking became one of the largest environmental hazards low-income communities faced as this polluting act usually took place in low income communities who became home to the harsh chemicals of fracking waste. Hydraulic fracturing, which uses high pressure water injected into rock to release gas or oil, has a chemical called heavy water leftover as waste, and this waste is commonly stored in vulnerable communities (Rakia, 2016). A study conducted in 2016, explains:

They found that — after controlling for population density — people in areas that were more than 80 percent minority were twice as likely to live near permitted wastewater wells than areas less than 20 percent minority… Of the more than 217,000 minorities living less than three miles from a disposal well, 83 percent were Hispanic, according to the study published last month in the American Journal of Public Health (Rakia, 2016).

Fracking waste was just one of the environmental hazards that has affected low income communities the hardest (Golden, 2015). Through de-regulation efforts and minor changes in definitions, the Bush Administration effectively reduced protection on low-income and minority communities. The Obama Administration

When President Obama took office in 2009, environmental justice had a promising outlook. Obama promised to make climate change and environmental justice one of his main focuses and he enacted a new Memorandum calling for all federal agencies to provide a strategic plan to protect low-income and minority communities. In addition, he pursued a 2020 Action Plan that would target needy areas of environmental justice. President Obama was also the first to put “environmental justice” into law, and with his hazardous waste sites revisions, he specified that low income and minority communities needed to be protected. Although some critics claim President Obama fell short on fighting for environmental justice, it was clear that he did more than his predecessors to protect low-income and minority communities.

The Obama Administration also promised to make changes to existing environmental justice policies, releasing a Memorandum of Understanding that reinforced the original concept of President Clinton’s 1994 Executive Order 12898. The “Memorandum of Understanding on Environmental Justice and Executive Order 12898” called for new enforcement on protecting low-income and minority communities, reinforcing the idea that these communities received a larger burden of environmental and health hazards. This Memorandum called for a publicized strategy on targeting environmental justice and expanding the involvement of all federal agencies. “Thereafter, each Federal agency will periodically review and update its Environmental Justice Strategy as it deems appropriate and will keep its current Environmental Justice Strategy posted with a link provided to the Interagency Working Group” (Obama, 2011). By identifying the need for a clear strategy, the Obama Administration theoretically took the first real step in protecting low-income and targeted communities. This Memorandum also called for an annual report from each federal agency describing how they were progressing in their Environmental Justice Strategy. The guidelines laid out were specific. Federal agencies are to:

1. implementation of the National Environmental Policy Act; 2. implementation of Title VI of the Civil Rights Act of 1964, as amended; 3. impacts from climate change; and 4. impacts from commercial transportation and supporting infrastructure (“goods movement”). These efforts will include interagency collaboration. At least every three (3) years, the Interagency Working Group will, based in part on public recommendations identified in Annual Implementation Progress Reports, identify important areas for Federal agencies to consider and address, as appropriate, in environmental justice strategies, annual implementation progress reports and other efforts (Obama, 2011, Page 3).

This was the first step in implementing a strategy to protect targeted communities. In addition, a new Office of Environmental Justice was created within the EPA to help enforce these new guidelines. President Clinton was criticized for his Executive Order 12898 because it was nothing more than a suggestion, President Obama corrected this. All federal agencies were required to create a clear plan and public plan.

This Memorandum was a big step forward, for environmental justice and another large step came in 2016, with a four-year action plan. “2020 EJ Action Plan” was submitted by the EPA outlin-
ing a clear four-year path protecting targeted communities. The three main goals were first, “deepen EJ practices within EPA programs to improve the Health and Environment of Overburdened Communities” with special attention on rulemaking, permitting, compliance and enforcement, and science, second, “work with Communities to Expand Our Positive Impact Within Overburdened Communities” highlighting the importance of state and local government participation, federal agencies, community based work, and tribes and indigenous peoples involvement, and third, “demonstrate Progress on Significant National Environmental Challenges” calling special attention to lead disparities, drinking water, air quality, and hazardous waste sites (EPA, 2016). This was by far the most detailed agenda to protect low-income and minority communities from environmental harms, indicating that protecting targeted communities is a cross-border and cross-agency agenda and all federal agencies must work together and individually to protect them. While this action plan called for sweeping change, it was riddled with vague language and the key results section was far too advanced for the short time frame stated.

President Obama was the first to legally recognize environmental justice. The Memorandum and Action Plan was a huge symbolic step for low-income and minority communities. However, it was not until there was an update on the hazardous waste recycling rule that low-income communities were legally recognized as being discriminated against. In 2008, the Bush administration reduced governmental oversight over certain hazardous waste sites. In 2011, the Obama administration changed the rule to instead strengthen the protection of targeted communities. Vernice Miller-Travis, an environmental justice expert explains:

I am pleased to see that the findings of the peer reviewed environmental justice analysis have been incorporated into the final rule. This should set a precedent for the Agency that there is value in incorporating environmental justice analyses to determine if communities already burdened by environmental and public health threats will see their circumstances improved or worsened before a final rule is set in place (Earthjustice, 2014).

However, others were not so impressed. Lisa Evans, Earthjustice Senior Administrative Counsel claims:

Today’s rule was a major test of EPA’s commitment to environmental justice under Obama, but for all the agency’s solid preparation, it has missed an opportunity to pass that test. The comprehensive, peer-reviewed analysis inspired high hopes that EPA would finalize a strong rule and start taking environmental justice seriously in all of its rule makings. But we needed and expected a stronger rule that would have closed all loopholes left by the Bush rule and by decades of exemptions from regulatory standards. This rule still fails to protect sufficiently the nation’s most vulnerable communities from exposure to hazardous waste (Earthjustice, 2014).

This updated regulation was the first-time environmental justice was legally recognized and put in as a stringent law. However, the standards still did not protect targeted communities to the extent needed. The rule called for closer regulation of hazardous waste sites but did not specifically protect low-income and minority communities from them. Although a milestone, this rule did not fulfill Obama’s 2008 campaign promise to enact laws on environmental justice.

The Trump Administration

While campaigning, President Trump promised to cut the EPA’s budget to “Little Bits” (APHA, 2018), and that he did. President Trump’s first proposed budget cut EPA’s budget by 31%, more than any other federal agencies (APHA, 2018). The budget cuts affected the EPA’s ability to regulate and enforce its standards. Similar to the Bush administration, the Trump administration sought to distort the role of scientific data and evidence on the EPA’s website, “It has removed or obscured information about climate change from Web sites, dismissed scientific advisory panels, blocked scientists who receive EPA grants from advisement, and put a political appointee in charge of scientific grants” (APHA, 2018). The EPA’s budget typically accounted for $8 billion out of a $4 trillion budget. In the graph below, it is apparent that the EPA received a larger budget cuts under the Trump Administration than any administration prior (APHA, 2018). These cuts resulted in a loss of annual spending, reducing the number of staff and special offices, including the Office of Environmen-
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tal Justice. When considering the controversial office spending under Pruitt, the budget cuts have had even more serious repercussions (Lockhart, 2018).

These budget cuts have had serious effects upon the EPA and their ability to protect the environment. Under the Clinton Administration, the EPA referred 600 cases a year to the Department of Justice, while under the Trump Administration, only 166 referrals took place in two years (Greshko, 2019). The National Enforcement Initiative was changed to the National Compliance Initiative which changed the EPA's ability to support stringent regulations, taking a softer approach. The EPA's website explains this change, claiming that “the improved program is named the National Compliance Initiatives (NCI) program, a name that better conveys the overarching goal of increased compliance and the use of not only enforcement actions, but the full range of compliance assurance tools” (EPA, 2019). The change from “Enforcement” to “Compliance” showed that the EPA is more willing to negotiate repercussions for certain environmental damages, decreasing their ability to force cooperation and enact environmental protection. Without passing any new laws or regulations, the Trump Administration has created a loophole for companies that violate existing environmental protection laws. The EPA and the Trump Administration have sought to explain this decline, insisting “That the declines reflect its shift to informal enforcement actions, which agency leadership claims will bring about compliance more quickly than more formal initiatives” (Fredrickson, 2018). However, there is no evidence to show that compliance has increased at all, and even informal compliance mechanisms seem to be decreasing, as can be seen in the graph below (Fredrickson, 2018).

Even beyond cutting the budget and a low enforcement record, the Trump administration has reduced environmental justice through the Affordable Clean Energy (ACE) Rule. Through these changes, more coal power plants will be allowed to admit more pollutants to the air. Harold P. Wimmer, CEO of the American Lung Association explained:

“With today’s proposal, President Trump and Acting EPA Administrator Wheeler abandon much-needed public health safeguards against power plant pollution, placing the health of all Americans at risk, and especially those who are most vulnerable, including children, older adults, and people with asthma and heart disease…Today’s proposal is a dangerous substitute for the Clean Power Plan and a careless giveaway to polluters that will delay meaningful progress in the future” (American Lung Associate, 2018).

Under the Obama Administration, ACE aimed at “Reducing greenhouse gas emissions from power plants by 30% below 2005 levels by 2030” (Christensen, 2018). The pollution of greenhouse
gasses targeted low income and minority population, because the location of these power plants is disproportionately closer to these communities. By de-regulating the pollution limits, the Trump Administration has increased the risks these communities face. The combination of budget cuts, the new compliance initiative, and de-regulation of protection efforts have hindered the EPA’s legal ability to protect low-income and minority communities.

Conclusion

The role and decisions made by the EPA have become more political since the introduction of environmental justice under President Clinton. The chosen administrator of the EPA has become even more controversial, with each president electing someone representing only their parties’ interests and not the environment as a whole. This constant swing in policy has affected how the EPA can function as an institution. When the head administrator and policies change so dramatically each time, the ability of the EPA to enact lasting change is hindered. Environmental policy cannot be short sighted. To protect communities from long term harm, consistent law and enforcement is needed. Republican Presidents have treated the EPA as an institution to be slowed and heavily de-regulated. Democratic Presidents have done the opposite, strengthening the EPA and enhancing its ability to enforce protecting policies. Environmental justice policies, which are embedded in all of the EPA’s policies, are the first to be de-regulated or increased. This constant change has affected the EPA’s ability to protect low-income and targeted communities, who receive a larger burden of environmental and health hazards.
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Police Accountability:
How Police Get Away With Brutality Without Liability

Michelle Mason
Introduction

On March 18th, 2018, Stephon Clark, an unarmed 22 Year old black man in Sacramento California was shot and killed by two police officers. The police arrived behind the home Clark shared with his family, responding to a 911 call that claimed a man in a black hoodie was breaking the windows of a truck.

Less than three days later, Sacramento police released body camera and helicopter footage that revealed exactly what led to the officers firing 20 shots at Clark. The officers said that they believed Clark possessed a weapon, the only thing found on his body was a cell phone. This video footage has created a divide amongst experts on whether the officers were “reasonable” in shooting Clark.

In the weeks after his death, protesters in the community took to the streets to demand justice for the death of yet another unarmed black man at the hands of the police. Policy makers and citizens alike vocalized their dissatisfaction with the way in which the police responded to the situation. Protests even shut down an interstate highway.

Public outcry, including the Mayor of Sacramento, members of congress and the California legislature, condemned the officer’s use of deadly force and advocated for criminal charges to be brought against the officers. As a result of this public pressure, the Sacramento District Attorney’s office launched an investigation into the officers use of force. On March 2nd, 2019, in a 61 page report of the incident, the DA announced they would not pursue criminal charges against the officers who killed Stephen Clark.

On January 28th, the Clark Family filed a wrongful death lawsuit against the City of Sacramento, claiming a violation of various Civil and Constitutional codes (Hagan 2019). The lawsuit has yet to be decided, but legal precedent suggests it will rule in favor of police if it does not settle.

The story of Stephon Clark and his families struggle for justice against police officers’ use of deadly, but decidedly reasonable force, is a struggle that has been persisting for decades. In February of 2017, the California State legislature sought to address this problem by introducing an assembly bill that would change police officers’ reasonable force standard to a necessary force standard. This bill would aim to shift police policy and culture towards a stricter standard for using excessive or deadly force with a suspect. This may also alter the way in which criminal and civil litigation can hold officers accountable, if they were to use excessive or deadly force. Like Clark’s civil litigation, this bill has yet to be decided on. It’s still unclear exactly how one decision may affect the other, or other cases to come.

Claims

This paper sets out to analyze both the legal and political reasonings that have allowed police officers to avoid both civil and criminal liability for using excessive and deadly force against civilians. In the current debate on police brutality/police reform, we tend to focus on demonizing individual officers. Though individual officer’s actions may be laced with malicious intent, bias, lack of professionalism, or negligence, the core problem is that our criminal justice systems and civil jurisprudence empowers officers to carry out brutality with little to no consequence (End Note #1). It is important to note that officers may also use excessive or deadly force with no ill intention, other than the understanding that their actions are protected by “probable cause” and law enforcements legal theory on what is “reasonable”. I argue that both officers with good faith intent and officers with malicious intent are instruments of a larger systemic and institutional authorization of brutality against citizens.

This paper aims to evaluate the case law and institutional structures and procedures for police accountability. In our justice system, there are two main ways of holding violators of laws and perpetrators of harm accountable. Either through criminal prosecution or monetary damages. I will use the case of Stephon Clark, as well as other cases, to explain how the legal system responds to police brutality and how citizens and officials are working to reform it. I seek to answer the questions:

1. Why have police officers rarely been held accountable for brutality?
2. Under what circumstances should police officers be held criminally or civilly liable?
3. How has the law, which protects police over citizens, harmed communities of color?
4. Would a necessary standard for use of force make communities safer?
5. How effective can criminal justice reform proposals be in reducing brutality and holding police accountable?

In order to answer these questions, I will address both the civil and criminal legal structures as they relate to police accountability (End Note #2). I will analyze four main claims on how the structure of the justice system has systematically sanctioned police brutality. The first claim addresses the decentralization of systems of accountability in both the criminal justice system that inhibits prosecutors from bringing aggravated assault or homicide charges to police officers. The second claim seeks to address the discretionary power of both police officers and prosecutors in the criminal justice system. This discretionary power has enabled officers to make split-second decisions without repercussions and for prosecutors to decline to prosecute cases. The third claim is that there is an abuse of deference for police in both the civil and legal system that has created great harm to the community. Though the job of police comes with risks and responsibility, it also comes with great privilege and immunities. Judges, juries, and prosecutors defer to the subjective position of police officers when evaluating what is reasonable force. The fourth and final claim addresses the inherently discriminatory nature of how the justice system has directly sanctioned the killings of black men by the hands of police officers.

Throughout, I will be returning to the case of Stephon Clark to explain how both the civil and criminal path to justice has been for his family. Following the analysis of the Stephon Clark case, I will present and evaluate the current reform effort the California legislature is advocating in order to address police and their use of excessive/deadly force. Lastly, I will analyze other police reform efforts and evaluate their ability to overcome the structures that have allowed excessive/deadly use of force and left police officers unaccountable for their actions.

In the following section, I will be presenting the historical role and context of policing in America to better understand how it has informed the four claims (decentralization, discretion, deference, and discrimination) this paper seeks to analyze in terms of the U.S. civil and criminal system.

**Terms**

There are varying ways in which we define the type of force an officer may use. They inherently are compelled to use a degree of force carrying out their duties, such as arresting and detaining individuals. The definition of what is a reasonable amount of force in those circumstances is highly debated and will be addressed throughout the later sections of this paper.

Today, the social movement Black Lives Matter seeks to address brutality committed by officers in the midst of their use of force. In the text, Above the Law: Police and the Excessive Use of Force, Brutality is defined as “a conscious and venal act committed by officer who usually take great pains to conceal their misconduct” (Fyfe 1993, 19). An officer is committing brutality when there is a level of intent, malicious intent, that they know is unreasonable. Regardless, an officer will do what he has to, to conceal that brutality and veil it in reason or secrecy.

Different from brutality, but equally as harmful, unnecessary force is defined as “ineptitude or insensitive, such as, when well meaning officer’s unwisely charge into situations from which they can extricate themselves only by using force” (Fyfe 1993, 20). Though the force is unnecessary, it can be defined as a good faith mistake (End Note #3). In later case law presented, the nuances in definitions of both necessary and brutal definitions will be addressed by the court.

In many ways, those terms can be hard to define when applied to real life officers. Brutality can be mistaken as necessary and vice versa with the amount of evidence produced to prove an officers intent. The court mainly focuses on assessing necessary and reasonable use of force. Evaluating what is necessary and reasonable can also be just as contentious.

The textbook, Law Enforcement and the 21st Century, defines reasonable force as “the amount of force used in the circumstances confronting the officer” (Coffey 2006, 297). In other words, if a suspect is unarmed and standing still, an officer is expected to simply restrain and handcuff. If a suspect has a gun pointed at the officer, then it would be reasonable for the officer to also use his weapon. Necessary force is defined as, “as much force as is required to make an arrest, regardless of the seriousness of the of-
fense” (Coffey 2006, 298). This would mean that if an officer is dealing with a suspect who is fighting back or resisting arrest, the officer still should not escalate more force than is necessary to make the arrest and detain the suspect. Both necessary and unreasonable force are used with a protocol that ensures officers use all non-violent means for incapacitating a suspect, before slowly escalating the force within reason.

There are debates on whether to change the standard from reasonable to necessary when using force, as well as when courts determine what is excessive or deadly use of force. In a later section, this paper will be addressing the legal stake in changing the standard from reasonable to necessary in the form of state legislation.

The national awareness around policing and the detrimental impacts on citizens has been growing. This awareness is met with a myriad of opinions that create a divide of pro-police or anti-police attitudes. This is due to the agitation of social movements and the subsequent rise in media attention of police brutality cases, such as Stephon Clark’s. According to a study by Pew Research, 78% of the public surveyed said they did not feel bad when police were held accountable (Pew 2017) (End Note #4).

Police brutality, specifically against people of color, has been brought to mainstream attention within the last 8 or so years by the Black Lives Matter movement. This movement was born out of the killing of an unarmed black teenager, Trayvon Martin, by a neighborhood watch coordinator, George Zimmerman. The media picked up this case and followed it through a criminal trial, where a jury ultimately acquitted Zimmerman of any charges.

The death of Trayvon Martin sparked a national debate on the disparate use of force in policing communities of color. In response, the Black Lives Matter movement (BLM) was created to raise awareness around and advocate for policy that combats the violence and oppression that has been inflicted on the black community by the criminal justice system. This movement brought attention to widespread practices of police brutality which are ubiquitous in every state in the country. Through protest and social media, BLM has exposed the injustices black Americans have faced at the hands of law enforcement. Excessive/deadly use of force, overzealous discretionary power, racial bias, and the lack of accountability are among some of the issues that BLM has sought to address in looking at law enforcement practices (McLaughlin 2018) (End Note #5).

The majority of the black community has been aware of police brutality and the lack of repercussions for officers, as well as the lack of reparations for those impacted. The excessive and deadly policing of the black community has existed since the first slave ship arrived in North America (End Note #6). “According to available data (End Note #7), police kill over 1,000 people each year in America - a rate far higher than other developed nations[,]” those deaths disproportionality impact people of color (Sinyangwe 2016). Police have been authorized to use excessive due to decades of legal precedent that has protected the killing of civilians by officers based off of one word: “reasonable.”

The “reasonableness” of an officer’s use of force derives from Fourth Amendment case law that has sought to protect government officials from lawsuits that would “disrupt the smooth and efficient flow of government” (Rudovsky 1989, 43). This begs the question: Is it reasonableness that allows government officials to kill citizens without any accountability (End Note #8)?

The Role of Police: How The Police acquired So Much Physical and Legal power?

The Role of Police:

Police are defined in, Police and Society, as “non-military individuals or organizations who are given the general right by government to use coercive force to enforce laws and whose primary purpose is to respond to problems or individual and group conflict that involve illegal behavior” (Roberg 1993, 13). Throughout their historical development, the roles and goals of police have evolved. What remains the same is their enforcement of laws to prevent and punish crime that directly harms public safety. Public safety is supposed to be the welfare and safety of the general public. In terms of law enforcement, public safety is ensured by protecting citizens from harm, specifically individuals deemed harmful, that may be caused by the breaking of a law.
How the Police Acquired Funding for Equipment, Officers, Education and Weapons:

The 1968 Omnibus Crime Control and Street Safety Act gave federal funding to police departments to support projects, programs, and assist in the education of police officers. This initiated a history of federally incentivized loans to law enforcement agencies across the country (Vila 1999, part 5).

By the late 1980’s police departments had even more funding for equipment, education, and police training from myriad acts of legislation, such as the Military Cooperation with Civilian Law Enforcement Agencies Act and the Comprehensive Crime Control Act. This came with the agreement that the departments would shift their focus from a general enforcement of laws, to a focal interest in enforcing drug laws. This was coined the “War on Drugs,” and it led to a massive increase in drug arrests in a short period of time. This targeted crack-down provided federal reasoning for an increase in funds and weaponry for police departments. The war on drugs was a militarization of the police force that created a combative relationship between police and communities of color, who were disproportionately targeted. This funding and incentivization went well into the early 2000’s, where even more military equipment and incentivized arrests were being supported by federal funds (Alexander 2011, 74-80).

Overall, police began as a non-military force that was far less powerful and present in society. As the American population grew, so did the force. As politics around policing began to change, the tools of policing evolved as well. It is important to consider time periods in technological advancement of policing tactics and weapons in mind throughout the rest of the case law that is presented in this paper. Additionally, the relationship between the community and policing provides context for inquiring why, at this current point in time, there are mass movements calling for police accountability.

Public Perception of the Role of Police and Race (End Note #9):

When looking at the state of modern policing, it is necessary to evaluate how the public views the role of police in society. According to a 2017 research poll done by the Pew Research Center, 53% of the public agree that the role of police is to protect citizens and enforce laws equally. This begins to change once the poll is broken down by race. Only 14% of Hispanics and blacks saw the local police as protectors. Between 33% and 39% saw their local police as enforcers of the law. This differs from the way the police view their job. 62% of police officers said they enforce and protect equally (EndNote #10).

These statistics reveal the disconnect between how police view their role and how individual communities have experienced police. As addressed in previous sections, the role of police has been defined by enforcing criminal law and ensuring public safety. Still, communities of color have not felt as though their safety has been ensured by law enforcement. Communities of color have historically felt that police have been a direct threat to their safety. In fact, the study also revealed that communities of color have felt that deadly encounters with police are signs of a broader problem, versus an isolated incident. 79% of the black public said the deaths of blacks during encounters with the police are signs of a broader problem, and a little over half the amount of the white public polled agree. The overwhelming majority of police who were polled believed that these deadly encounters were just isolated incidents (Pew 2017, 81). These results are the product of a history of invasive policing and legislative initiative that have disproportionately affected communities of color.

This current discrepancy in how law enforcement perceives themselves executing their job and how the public experiences the police in their communities reveals a deeper disconnect between the purpose of measures law enforcement uses to ensure safety, and the realities they create for communities of color. This poses the dire question; how and why do the specific measures police have taken while on the job, have evoked fear and distrust within communities of color?

Stephon Clark’s Civil Case

On January 28, 2019, Stephon Clark’s fam-
ilies lawyers filed a wrongful death suit against the City of Sacramento and the two individual officers who shot Stephon. The Clark family is seeking damages on various Constitutional and civil violations. Three of the complaints for damages are under the Fourth Amendment violation of §1983, and one is for a substantive due process claim under §1983.

The claim alleges that Clark was shot “twenty times, striking him approximately eight times, including multiple shots to his back” (Clark 2019, 6). The suit argues that Clark did not pose an immediate threat to the officers and the officers failed to verbalize a warning that they may use deadly force. They allege that the officers could have used appropriate verbal commands to let Clark know the officers were approaching. Due to Clark being unarmed and displaying no clear signs that he was looking to harm the officers or others, the suit is seeking damages for an unreasonable detention and arrest, a denial of medical care, as well as an unreasonable use of excessive use of force. Overall, the suit alleges that the violation of Clark’s fourth amendment rights has granted him the substantive due process claim that is meant to protect him from the city and the officer’s deprivation of “life liberty or property in such a manner as to shock the conscience,” which includes interfering with Clark’s life and his relationship with his family (Clark 2019, 12).

All of these structures work together to create a justice system that favors police over victims. In the following sections, the case of Stephon Clark will serve as a real time example for the was in which the structures of discretion, deference, and decentralization, have left the Clark family unable to find justice for Stephon and creating a precedent of police accountability for future police shootings.

Deference:

Deference to the expertise of police officers has been crafted through the civil law rulings previously discussed. Those in the civil legal system have expressed a hands-off approach when determining the whether or not an officer’s actions are reasonable. Looking at the tort law, doctrinal and constitutional development of immunization and determination of excessive/deadly use of force claims illustrates the complicated departure from the original intentions of the statutes and amendments they are based off of. It is important to note that many judges across the country have always dissented and advocated against the development of this case law. In 2018, a Fifth circuit judge dissented on a police immunity case, criticizing legal precedent and advocating for the protection of constitutional violations, such as the right to be free from invasive search and seizure (Ford 2019).

The majority of complaints listed in Clark’s civil suit pertain to federal and constitutional law that was originally enacted to allow citizens to receive compensation for abuse and violence carried out by the state. When an individual seeks to bring a suit against the police for excessive/deadly use of force, they must identify a specific Civil or Constitutional rights violation(s) that were committed “under color of law” (End Note #11). Then, they have the ability to recover damages under the federal statute 42 U.S.C. §1983, which was created to protect citizens from the state depriving them of their Constitutional right (Rudovsky 1989).

§1983 is established under the post-Civil War Federal Civil Rights Act of 1871. The Act was originally created to hold accountable through federal prosecution ex-confederate soldiers and
Klu Klux Klansman who were violently destroying, killing, and intimidating members of their community and public officials in order to sustain white supremacy. The Act was helpful in prosecuting Klansman during the Reconstruction era. Paradoxically, use of the statute went dormant for decades while a repeated history of abuses and brutality by state officials against African Americans would continue uninterrupted until the Civil Rights Movement in the 1960's (Ford, 2018).

Since the decision in 1961, §1983 has undergone a plethora of jurisprudential evaluation and interpretation (Ford 2018). This once straightforward federal statute has been defined, refined, and restricted through Supreme Court case law. Violation of this statute in excessive use of force cases was once able to be brought by citizens to protect both their Fourteenth Amendment’s Substantive Due process Clause and the Fourth Amendment’s unreasonable seizure clause (Brown 1991). As case law progressed, the court rejected Fourteenth Amendment claims, and ruled that the defining standard for a §1983 claim is the “objective reasonableness” standard from the Fourth Amendment.

The use of Substantive Due Process was overruled after a Supreme Court held in 1989 that excessive use of force claims during arrest brought under §1983 must be “analyzed under the fourth amendment’s ‘objective reasonableness’ standard” (Graham 490 at 394). In the case of Graham v. Connor, the plaintiff brought an excessive use of force claim against an officer who was performing an investigatory stop, in which officers cuffed Graham while he was suffering from a diabetic episode. The Supreme court denied the application of the Glick test used by lower courts in this case, stating that the application of the test in excessive force claims “without considering whether the particular application of force, might implicate a more specific constitutional right governed by a different standard” (Graham, 490 at 393).

The court explained that plaintiffs must bring excessive use of force claims under a constitutional provision, mainly Fourth and Eighth Amendment violations. The court then can inquire upon the facts of the case as they happened in an objective manner, omitting officers subjective intent or motivations (Graham, 490).

When weighing importance, the scales have tipped in favor of law enforcement at the cost of citizens constitutional rights and lives. Judges are now obliged to rule in favor of law enforcement due to the legal precedent. Police are seen as the only means of protecting and enforcing public safety, therefore we rarely want to call their split second decisions to use deadly force into question.

The “objective reasonableness” standard under which all of Clark’s Fourth Amendment claims will be evaluated gives a tremendous amount of deference to officers. Under Graham, unless Clark’s attorneys are able to find specific evidence of malintent, the court is unable to step in and decide what is and is not reasonable. Judges fear making independent determinations of what is and is not unreasonable because the jobs of police officers are seen as extremely dangerous (Brown 1991, 1280).

While the courts were determining the standard in which excessive use of force claims should be evaluated under the Constitution, they were also developing supporting doctrine stemming from §1983. Qualified immunity also finds its constitutional protection in the Eleventh Amendment, which establishes presidential, municipal and individual immunities from lawsuits. The purpose of qualified immunity is to protect government officials from the cost of trial and tort litigation, in order to protect the effectiveness of governing and agencies. Traditionally, the defense of qualified immunity is invoked early on or in pretrial proceedings. This gives an adequate amount of time for a hearing, and is meant to protect the courts and tax funded institutions from frivolous lawsuits and trials.

The use of the qualified immunity defense could inhibit any future litigation in the Clark case. The courts look at qualified immunity for police officers under the fourth amendment’s objective reasonableness standard. Officers have been empowered by Anderson v. Creighton, which uses a similar objective reasonableness standard as Graham, stating that if a reasonable officer would believe their conduct was legal, they would then be immune (Rudovsky 1989, 47).

This compelled deference towards police, gives officers an initial advantage when a case is
brought. Using the four prong reasonableness standard set out by Graham (End Note #12), one can imagine how the defense will present Clark’s case: The police were called to the scene due to a report of a burglary. They claimed to have given verbal commands to Clark, which he did not respond to the way the officers wanted. Burglary is a felony, therefore in most jurisdictions, reasonable force can be used. Only the officers can offer testimony on how they felt threatened. Clark had been shown to be moving around the backyard and the officers could conclude that he was either capable of harming them or others if he escaped. Additionally, if they were prepared to make an arrest due to the probable cause from the tip, they would be able to use force as a means to incapacitate.

Overall, the law has given police testimony the greatest weight in considering evidence. In the case of Stephon Clark, deadly force was used, and he is unable to testify on his experience. Regardless, unless there was proof the officers went out with an ill-intent towards Clark, the officers will most likely win the case.

**Discretion:**

The role of discretion, as it relates to the hindrance in police accountability, is most present in the criminal justice system. For Stephon Clark, the Sacramento DA declined to prosecute after an investigation deemed the officers actions reasonable under the circumstances and the law. The decision to use prosecutorial discretion in this cases of excessive force is far more complicated than just believing the officers were reasonable.

Prosecutors have the discretionary power to bring charges against both citizens and police. They apply the crimes, but the level of charge is too skewed to hold those who commit crimes against police to a more severe punishment. Prosecutors have a harder time deciding whether or not to even indict police, due to the complicated nature of police and prosecutor relationships. Historically, even when prosecutors do bring charges juries tend to not convict police.

Additionally, prosecutors rely on police for the majority of their job. Police are their means in providing evidence, both tangible and testimonial, for their cases. In his book, The End of Policing, Alex Vitale explains how it is reasonable to believe that many prosecutors and police officers have developed relationships with one another through their work. Without the police, prosecutors would essentially fail at their job. This is the first of many reasons as to why prosecutors often decide not to indict officers. Other than the clear conflict of interest, harming the relationship between the police and the prosecutors office only harms their ability to do their job on other cases (Vitale 2018, 18).

If a prosecutor does choose to press charges against an officer, they still need to rely on police officers to effectively build their case. Part of a prosecutor’s job is to assess the ability for them to zealously represent the people through a compelling case. When officers refuse to cooperate, they are risking the trajectory of their trial (Vitale 2018, 18).

Additionally, Vitale seeks to understand the complications associated with the political nature of District Attorneys appointment to power, which is determined by the people’s vote. In cases of excessive/deadly use of force, they are put in a precarious political situation in deciding whether to bring charges. Any given community may feel justice and the assurance of public safety is to be carried out by any means necessary, while still wanting to see their prosecutors fairly assess all crimes. Though officers can invoke their reasonable defense for their use of force, the community may still want to see a fair trial. Balancing these competing political ideologies, as well as the relationship between the police and prosecutors is extremely tricky. DA’s often fail to prosecute (Vitale 2018, 19). If prosecutors do decide to bring their claim to a Grand Jury, they are met with the decision of how they wish to present their case. Vitale explains a case from the Saint Louis County DA, where the DA presented the jury with a plethora of conflicting evidence and little guidance of how to evaluate and apply the law. This DA ultimately sought to play both sides of the political spectrum in assuring there would be no indictment, while still seemingly holding police criminally accountable (Vitale 2018, 19).

Prosecutors and police rely on one another to run the criminal justice system. Though it is un-
understandable why prosecutors choose to not harm their working relationship with police, they enable police to again become immunized from accountability. Still, the outcomes during trials also factor into why prosecutors choose to not bring charges. Juries also fail to convict police, even after they have heard both the prosecution and the police’s defence.

In a recent report done by The Washington Post and Bowling Green State University, they found that within the last ten years, fifty-four officers were charged with fatal shootings and only eleven were convicted (Vitale 2018, 18). When asking the question, why do jurors not convict, even on cases that have had large amounts of public attention and outlash, there are multiple factors. Jury selection, jury bias, and the defenses of reasonableness all play major roles in whether or not a jury will choose to convict.

Police have a large amount of discretionary power themselves, and this discretion has been framed as expertise, no matter how experienced or well trained an officer is. Juries, like judges in civil cases, fear making judgements of what is an is not reasonable for an officer.

The problem with police discretion, is that it fails to reign in any power, especially when an officer is employed to use deadly weapons. Any reasonable person can believe that they are under threat if they are being called to a scene of a crime. Whether you are a judge or a prosecutor, you could imagine what it is like to fear for your life. Prosecutors and judges are not working as officers. They are not given the privilege and responsibility to carry guns, nor or they given the discretionary power to use them when they feel is reasonable.

Defence and discretion work hand in hand to protect police from evaluating their actions and the impact of their actions. Perhaps, instead of giving officers deference and a reasonableness standard, they should be held to a higher standard. Perhaps if the Sacramento DA decided to prosecute, they could have opened a larger conversation around what the use of police force should be.

**Decentralization:**

The largest hindrance on any progress in the Clark case, future excessive/deadly use of force cases, and police reform, is the way in which the governmental structure has been crafted to trump lower level legal decisions. Police departments are able to make codes of conduct on how they wish to handle cases and police reform, is the way in which the governmental structure has been crafted to trump lower level legal decisions. Police departments are able to make codes of conduct on how they wish to handle cases and
the laws constitutionality (Rudovsky 1989, 37-38).

Harlow v. Fitzgerald created a two part test for immunity, that first evaluated whether an official’s job is sensitive and imperative for effective governance. Once that prong is satisfied, the court then had to evaluate the subjective state of mind of the individual in carrying out their duties (Rudovsky 1989, 43). In terms of rationalizing police’s use of force, the job of a police officer is seen as integral to keeping the public safe. They are given weapons that have the ability to seriously injure and kill someone. Assessing the second prong, the police’s defense is supported by their own assumption that their action fulfilled their duty to protect themselves and the community.

Today, the courts looks at qualified immunity for police officers under the Fourth Amendment’s objective reasonableness standard. Officers have been empowered by Anderson v. Creighton, which uses a similar objective reasonableness standard as Graham, stating that if a reasonable officer would believe their conduct was legal, they would then be immune (Rudovsky 1989, 47).

The legal rationale behind the reasonableness standard developed through civil law also effects prosecutors when determining if they should bring criminal charges. Prosecutors can charge officers with going against their departmental codes, only the department can punish them. Prosecutors look at both state and federal laws to determine whether officers acted accordingly. In the case of Stephon Clark, the DA’s investigatory legal analysis found that the police fell inline with California State Penal Code (Anne Schubert 2019, 57). The State has a standard that allows officers to use weapons based on reasonable force in self defense. The decision to not prosecute might have been the smartest option for the DA despite the public criticism. The defense would have a strong case built in legal statutes, which do not only protect officers from being prosecuted for their use of force, but enables them to use force.

California State has been looking to address the police’s use of force standard in response to the media attention California police departments are receiving, in regards to a report from the California Department of Justice. This report revealed that 172 civilians were killed by police in 2017 (Open Justice). On February 16, 2017, Assembly Bill No. 931 was introduced by activists and lawmakers, in hopes of moving the state of California from a reasonable use of force standard, to a necessary use of force standard.

Still, the decentralization of the governmental structure is at issue. Even if the state law changes to a necessary standard, federal precedent of reasonableness is still in place for a defense in both civil and criminal cases. This begs the question: Can any legislative reform actually hold police accountable for excessive/deadly use of force?

**Legislative Reform**

In February of 2017, the California Legislature worked to produce an assembly bill, AB 931, that would change criminal procedure in the use of deadly force by officers, in turn re-defining the practices officers use when policing AB 931 would change the process of adjudication criminal proceedings of officers who are being prosecuted or sued for their use of deadly force from a reasonableness standard, to a necessary standard. On November 30th of 2018, the bill ultimately died in the senate.

In another attempt to address the use of force the California Legislature introduced another bill on February 6th of 2018, AB 392: California Act to Save Lives). The bill is seeking to, again, address the use of deadly force, by amending criminal codes to require a necessary, in order to clearly define the difference between homicide and self defense when defining the actions of officers.

Both AB 931 and AB 392 are controversial bills. Police have vocalized their fears that such bills could create a greater harm for the community. By creating a stricter standard and requiring officers to go through exhaustive lists of methods before using deadly force, police feel that these bills would prevent them from being able to effectively ensure public safety. In turn, police have supported another bill in the California Legislature on February 7, 2019, AB 230. AB 230 aims to solely address the criminal law that has authorized the use of deadly force for a fleeing arrestee, as well as introduce state mandated local programs for police departments.
All three legislative reforms are a response to a bill that was made effective in 2016, AB 71, which mandated that all law enforcement agencies in California release statistics on use of force that resulted in death or bodily harm. Open Justice compiled a report of the 2017 statistics on use of force in California and found 707 reports of civilian injuries. 52.6% of those injuries resulted in serious bodily harm and 23.2% of those injuries resulted in death. It is also important to consider the demographic data yielded by this study. 43.9% of the civilians were Hispanic and 19.3% of them were black, while 55.7% of the officers who inflicted the death and injuries were white. (Open Justice).

Further data derived from this report reveal the complexities that are attempted to be addressed through legislation, in a way that can either explain why police should use deadly force or why they should have a delayed authorization through criminal procedure. The report unveiled that in 61.3% of the use of force was due to police perception that the individual was armed. Only 47.1% of those perceived armed civilians had a weapon on their person. Regardless, 52.6% of civilians were severely injured by police, and 23.2% of them were killed by officers. In juxtaposition, only two of the 707 reported incidents resulted in the death of a police officer (Open Justice).

The collected statistics at hand can be evaluated in many different ways and have been interpreted by each respective assembly bill to address what they feel police should ensure public safety. Advocates for AB 931 and AB 392 have sought to change the legal procedure behind the evaluation of the use of force to reduce the most common use of force, civilian death by firearms. Advocates for SB 230 aim to address the policing culture and education, that may help officers make more informed decisions when dealing with situations.

When looking at each legislation, keeping the statistics in mind, one must also evaluate the way in which the legal systems structure can support any of these reforms. Can any of the assembly bills being adopted by the California Legislature genuinely hold police accountable for deadly/excessive use of force in the civil or criminal legal system? AB 931: Assembly Bill (AB) 931 was introduced, in an attempt to address the deadly use of force by police officers by changing the reasonable use of force to a necessary one in criminal procedure. AB 931 explicitly sought to address the way in which case law has authorized police to use deadly force based off of their reasonable assumption that an officer or the community may face death or bodily harm by a suspect, as well as to stop an arrestee from fleeing if they are suspected of committing a felony (AB 931).

The bill itself, is an attempt to centralize the way in which police in different local police municipalities operate. This would have influence the codes of conduct for departments in a way that would homogenize a precedent of deadly force as an absolute last resort. The bill sought to shift the narrative that police are “making split second decisions” in order to maintain public safety, to an adoption of stricter policies that employ police to thoroughly assess a situation and prioritize the preservation of human life holistically. The well being of the suspect is just as important as the well being of the community and the officers life.

Under the current reasonableness standard in California criminal law, if an individual was exhibiting behavior that could possibly injure themselves, police are authorized to use deadly force to stop the situation. The bill would have also prohibited police from using deadly force to stop a fleeing individual. A police officer would only be authorized to use deadly force against a fleeing felon if the officer had both: “probable cause to believe the person... [committed or intends to commit] a felony involving death or serious injury,” as well as the the existence of a “threat of imminent death or serious bodily injury to the [police] officer of to another person if the subject is not immediately apprehended” (AB 931, 5). Ultimately, the bill aimed to introduce a new standard practice for California police, that would require police to introduce “reasonable alternatives,” in an “attempt to control an incident by using time, distance, communications, and available resources in an effort to deescalate a situation whenever is is safe, feasible, and reasonable to do so” (AB 931, 2).

Additionally, AB 931 introduced legal language that attempted to change the way in which
Clark had a gun. The officers did give an initial verbal command before shooting, and Clark did not follow the instructions to raise his hands. In that moment, the officers may have felt they were in imminent danger and reasonably believed that Clark was capable of firing the perceived firearm at them.

The plaintiff or prosecution could argue that with an evaluation of the totality of the circumstances, despite any reasonableness defense, the officers did not have enough facts to invoke probable cause to shoot. The officers were only aware that there was an alleged burglary. In our judicial system, you are innocent until proven guilty. The role of the police should also to be to collect possible evidence for a crime and strategically evaluate the incident they are responding to. There was no evidence or report that Clark was committing a violent felony. In fact, Clark was moving about freely in his own family’s backyard. Though the officers may not have known that was his place of residence, they never attempted to communicate with Clark about the situation. Though the officers did give him a verbal command to put his hands in the air. Anyone could imagine that once Clark realized he was being confronted by police that his initial response to that command was simply to freeze. Though he did not follow the command exactly. Between the seconds between the command and the shooting, Clark was not given a fair amount of time to fully process the command. Additionally, Clark did remain still and displayed no signs of fleeing or action to harm the officers, therefore unsuccessfully fulfill the imminence prong for the probable cause evaluation.

In the case of Stephon Clark, AB 931 would have allowed for an equal opportunity to accumulate facts. The totality of the circumstances would not completely enaculate the defense of reasonableness by the standards of general police perspective, but it would attempt to give deference to the suspect by making probable cause claims more rigorous. Perhaps the greatest weakness in the bill was the lack of specific procedural standards that all law enforcement agencies could have adopted. 

**AB 392:**
AB 392 is far more specific in regards to how each aspect of the law would be applied to the methods of police, and the standard for civil and criminal proceedings. Like AB 931, AB 392 still possess the reasonableness standard that has been discussed in previous case law. AB 392 also specifies that “necessary” use is not simply about the totality of the circumstances, but it also must have concluded that there were no other reasonable alternatives.

The major difference in AB 392 relates to the concrete instructions given to police. Police could be required to identify themselves clearly as officers and give verbal communication that the individual may have deadly force inflicted upon them if they continue to or begin to flee. In terms of Stephon Clark, his response to stop moving after the command from officers would be a reason not to use deadly force.

Unlike AB 931, AB 392 specifies how the law can apply to civil and criminal law differently. The criminal prosecution would follow the same standards discussed in AB 392, but the definitions of how one would determine immanence maintain the strict threshold of criminal law. For civil law, immanence is relying on the “totality of the circumstances” and the immanence of the harm is evaluated by “not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed” (AB 392, 3). This differentiation between civil and criminal law provides those looking to sue officers with the ability to have legal grounds to evaluate evidence for the plaintiff, on why they were wrongfully killed and not simply rely on the testimony of the officers perspective in feeling fear.

Weaker elements of the bill include the deaccelerations that are made in an attempt to address a cultural issue, but they fail to give legitimate legal procedural instructions. Claiming that the legislature expects all claims to “be evaluated carefully and thoroughly” are simply words. Prior to the bill, use of force was evaluated carefully, the laws were just not there to provide a fair evaluation. Much of the wording in the bill reflects the federal case law that has made police accountability a challenge. Reinforcing totality of the circumstances in a way that still must avoid the “benefit of hindsight” come from the decisions in Garner and Graham. Additionally, the clarification that all “persons are free from excessive use of force by officers acting under color of state law” does not address the presence of federal law that trumps it (AB 392, 2). As explained in the Anderson decision, police are being evaluated on what reasonable officers believed to be a violation of rights, even if that differs from the actual law.

Overall, though the reforms are presented with good intentions and could sustain themselves in California local and state courts, the U.S. legal system still has the federal legal precedent that can be used as a defense for police officers. If the Clark family makes a civil claim off of AB 392 the officers can still sight Graham and narrow the evaluation back to the objective reasonableness standard that gives full deference to law enforcement unless explicit mal-intent can be found. In many ways, the reform bills are an attempt to influence the procedure and methods of policing, in hopes to change the way in which law enforcement uses force. Consequently, though officers may have departmental guidelines, they still are aware of the civil defense afforded to them by the Graham standard. In criminal law, AB 392 does little to afford prosecutors with more tools to turn self defense claims into homicides, other than on technicalities if an officer never gives a verbal warning.

**SB 230:**

SB 230 aims to address both the governmental law and criminal law surrounding police’s use of deadly force. Unlike AB 392, SB 230 directly references the federal case law that authorizes the reasonableness standard for the use of force as supported by the Constitution. While AB 392 and 931 ignored the presence of federal precedent that could challenge the shift from a reasonable standard to a necessary standard, SB 230 aims to centralize federal, state, and local police practices and legal procedure. Though this decision would directly benefit the defense of police officers, it avoids any possibility of a constitutional conflict between the U.S. federal government and the state of California.

SB 230 details the way in which the crimi-
nal law is supposed to treat homicide by the hands of police officers. Rather than differentiating between what would be self-defense and what would be homicide, SB 230 claims homicide is “justifiable” as long as the officer “reasonably believes” they are under an “imminent threat” (SB 230, 3). The bill would also justify homicide if deadly force was used to stop a fleeing felon, with the vague criteria of the reasonable perception that the felon reasonably appears to pose a threat is apprehension is delayed or holding a reasonable belief that the individual is suspected of committing a felony that did or could result in serious harm or death.

The bulk of the bill is about establishing policing standards for all California police departments, as well as training for officers. Though these may be valuable strides in correcting police behavior, they do not necessarily incentivize police to not use excessive or deadly use of force incorrectly or maliciously. Though the language given and used by law enforcement agencies would be clarified, departments could still make independent decisions on how they would choose to chastise officers who break from the policies. The bill does little to provide civil and criminal procedural reform that could hold police accountable or liable.

From a legal standpoint, SB 230 would be the most constitutional reform, based solely off of federal precedent. Enacting AB 392 may be difficult when convincing legislatures of the constitutionality of the bill. Again this ties back to the decentralized nature of having competing laws and precedent. Still, one could wonder if the judicial review of a case that is being addressed under AB 392 would be the only chance for the Supreme Court to revisit the use of force standard evaluation under the constitution. The only way to change the standard across the country would be to appeal a case that would give the court a chance to overrule the Graham decision. It is imperative to note that as long as police avoided appealing cases based on constitutional claims, California could adjudicate their use of force claims with the AB 392 legal reasoning. Still, the likelihood of an officer not making the appeal or a higher court ignoring an appeal on a case that has a full constitutional case law history would be unlikely.

Overall, the state legislature does not seem to be the most effective way in which advocates can begin to hold officers accountable through the legal system. Though the presence of policy changes for local law enforcement may aid as a deterrent for brutality and deadly force, without constitutional protection, police are able to commit homicide with little to no consequence.

**Conclusion**

The structure of the U.S. legal system has been crafted in a manner that has authorized a militant force to persecute and execute citizens with little to no accountability. The way in which police have been granted an extreme privilege of discretionary power and an inviolable deference to their experience, has given both well meaning and ill meaning police officers the authorization to take away the life of an unarmed and innocent civilians. Though the job of a police officer employs them to be the first responders to potentially dangerous situations, the court’s inability to hold them to a higher professional standard has created a public safety risk for the most marginalized communities.

Through the evaluation of federal statute, case law, possible legislative reforms, and the structure of government in the U.S., it is clear that the civil and criminal court system is not equipped to address police accountability. A case with proper facts that would directly address the constitutional questions would have to appeal through the court system in order for the possibility of a reevaluation of the mechanisms for justice and accountability for police. The system has been designed to subjugate minority communities and allow police to exist above the law that all citizens must be held to under the Constitution.

The family of Stephon Clark, like thousands of families across the country who have lost loved ones to police uses of force, have made it clear they are seeking justice. Perhaps we now need to shift our focus from finding justice in our legal system and find alternative forms of justice that equalize accountability, along with a holistic re-evaluation of the role of police as the guardians of public safe-
ty. Current reform puts an uneven analysis of who is to blame solely on police. As a society, we need to fully address the systems and institutions that authorizes police to carry out their violence and decide if we will continue to rely on the U.S. government structure as the orchestrator of our justice system.

End Notes

1.) Brutality is defined as “a conscious and venal act committed by officers who usually take great pains to conceal their misconduct”. Unnecessary is defined as “ineptitude or insensitivity, such as, when well meaning officer’s unwisely charge into situations from which they can extricate themselves only by using force… Unnecessarily force may be a good faith police mistake” (Alpert 1994, 488).

2.) I begin with civil law because the development of that case law supports many of the legal reasonings that form the logic behind decisions in prosecuting criminal cases.

3.) Good Faith- meaning a genuine intent to not cause harm.

4.) It is not clear of how the research framed “bad” policing. This could include a myriad of misconduct and corruption outside of just brutality. Still, it is important to note that there is a large population of the country that does not believe police have been held accountable for their actions.

5.) (From Appendix A:1).

6.) In the seventeenth and eighteenth century, the colonies began to rapidly grow and diversify. Citizen police officers were appointed or elected to monitor their communities. The primary function of the police was to “maintain order, enforce laws, and administer punishment” (Vila 1999, 26). This was to enforce communal sovereignty and maintain order in their territory. As American territories began to develop, U.S. marshals were dispatched to organize towns and help foster police to protect towns’ interests. Additionally, it’s important to note that individual landowners had police power of their estate. As depicted in Michelle Alexander’s text, The New Jim Crow, this often resulted in the policing of slaves by their master, which” [maintained] opportunities for supervision
and discipline and minimized the potential for active resistance or rebellion” (Alexander 2011, 27).

7.) Despite research data being commanded by the Freedom of Information act, police agencies are not required to track, report, or share all of their data.

8.) Accountability will be defined as being held liable in both criminal and civil court, as well as being reprimanded or fired from their individual police departments.

9.) (See appendix A:3b-c for the historical development of distrust between communities of color and law enforcement.)

10.) Pew Research Center, Jan. 2017, “Behind The Badge: Amid protests and calls for reform, how police view their jobs, key issues and recent fatal encounters between blacks and police.”

11.) “Under Color of Law” means: This means that the defendant must have acted in an official, government capacity, clothed with the authority of the state, in order to be held liable (“Police Misconduct and Civil Rights Law.” Findlaw. Accessed March 19, 2019).

12.) 1. Assess the facts and circumstances. 2. Assess the severity of the crime. 3. Assess the immediacy of the threat to the public. 4. Assess if the plaintiff was attempting to or evading arrest. (Rudovsky 1989, 58).

13.) As realized in the California DOJ report, 48.7% of the reason for contact was due to a call of service (Open Justice).

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The Shepherd and the Sheep:  
On AI and Policy

Alice Sueko Mueller
“We call ourselves Homo sapiens—man the wise—because our intelligence is so important to us. For thousands of years, we have tried to understand how we think; that is, how a mere handful of matter can perceive, understand, predict, and manipulate a world far larger and more complicated than itself. The field of artificial intelligence, or AI, goes further still: it attempts not just to understand but also to build intelligent entities.”

Introduction

“I am an optimist and I believe that we can create AI for the good of the world. That it can work in harmony with us. We simply need to be aware of the dangers, identify them, employ the best possible practice and management, and prepare for its consequences well in advance.”

We are within and at the cusp of acceleration of the next technological revolution, termed by some as the 4th industrial revolution. Its transition period will, as previous industrial revolutions have, cause a lot of change, disruption and upheaval in varying degree within all segments of society.

This revolution has been fueled by a combination of emergent technologies and capabilities of delivering technology at greater scale and strength. A crucial technology at the crux of this technological push has been the emergence and ever growing deployment of Artificial Intelligence (AI) technology. AI deployed at present day is known as Narrow AI, as it automates simple, pattern driven, repetitive cognitive human tasks. It is defined as narrow as its intellectual capabilities only pertain to excelling at one specific task – it is therefore smart in one task but stupid in any other general action that we humans do and take for granted of such as getting out of bed, walking to the kitchen and making a cup of morning coffee. Narrow AI has shown the potential to cut costs and environmental footprint dramatically for corporations, consumers and cities through smoother logistics, more accurate and quicker prediction, stronger performance and greater insights. AI in itself are types of algorithms (an algorithm is a mathematical equation akin to a cooking recipe used in software) that compared to other algorithms has the capability to learn. To learn and function properly it is fed data. Data can range from information a machine produces, such as running time, temperature, units produced etc. to footsteps you walked today and the apps you interacted with or the websites you visited. On the prior example AI has shown great efficiency gains for companies and society, such as improving agricultural crop yields and lowering water usage through greater and more precise weather and plant insights. On the latter example within the consumer space AI has proven to help companies improve their products and perfect advertising targeting while at the same time raising a lot of ethical and privacy issues as to what happens with user data.

In this paper I would like to focus on the principles of transparency and data governance to democratize AI technology and to increase equity by empowering individual’s sovereignty through a share in production. These policy interventions will be crucial to ensure a strong society where everyone can blossom and share the benefits of AI and the 4th Industrial Revolution within the 21st century.

The 4th Industrial Revolution differs from previous technological revolutions in that the digital field is becoming more tightly integrated with our physical social landscape. The Internet of Things (IoT) movement aims to connect all of our physical products to the Internet combined with their own computer chips and interfaces supported by AI technology. Your fridge, apartment and lighting will become “smart”, automatically adjusting the cooling, heating and lighting level to optimal environmental efficiency. Due to predicted global population growth, urbanisation and a growing global middle class IoT is being pushed to ensure maximum energy efficiency. More people will want to consume more and therefore need more energy; a massive overload on the global ecological system already endangered by current business as usual practices. Further AI developments that have caused headlines are autonomous cars, whose narrow AI software is fueled by data from radars, lidars, cameras and sensors on the car to then recognize if it should break or accelerate. Future shared autonomous vehicles, again as with IoT, promise great ecological and economic efficiency (today on average all cars are parked 95% of the time, using superflu-
ous space, energy and cost) that will be necessary to ensure that humanities population can grow without overbearing nature more, as well as saving the majority of the 1.25 million people who die in road crashes each year and the additional 20-50 million who are disabled or injured. Within the military AI is enabling the advent of lethal autonomous weapons, by removing the human from the loop of defense and attack, justified to save more soldiers. Due to the dangers posed by lethal autonomous weapons in enemies hands, adversarial cyberattacks and various other technical issues, autonomous weapons have raised a lot of ethical and moral debate. It’s danger has been described as the third revolution in warfare after gunpowder and nuclear arms. The importance and breadth of AI, from business, innovation, defense to consumers and effects to every citizen, is clearly not to be understated. To reap the predicted benefits, promises and ensure a benevolent development of this AI revolution we need correct principles of governance at the national and global level. The European Union has released seven essential ethics guidelines April 8th 2019 to achieve trustworthy AI. These include:

Human agency and oversight; AI systems should enable equitable societies by supporting human agency and fundamental rights, and not decrease, limit or misguide human autonomy. Robustness and safety; Trustworthy AI requires algorithms to be secure, reliable and robust enough to deal with errors or inconsistencies during all life cycle phases of AI systems. Privacy and data governance; Citizens should have full control over their own data, while data concerning them will not be used to harm or discriminate against them. Transparency; The traceability of AI systems should be ensured. Diversity, non-discrimination and fairness; AI systems should consider the whole range of human abilities, skills and requirements, and ensure accessibility. Societal and environmental well-being; AI systems should be used to enhance positive social change and enhance sustainability and ecological responsibility. Accountability; Mechanisms should be put in place to ensure responsibility and accountability for AI systems and their outcomes. To better understand the field of AI before turning to AI policy, global dynamics at play with the development of AI, dangers posed, transparency and ownership. Let’s begin.

**Historical and Technical Landscape**

In 1956 a group of 10 scientists decided to come together for a two months summer workshop at Dartmouth for the study and goal of significant advancement within artificial intelligence. That summer has become known as the birth of the scientific field of artificial intelligence. The project proposal stated: “We propose that a 2 month, 10 man study of artificial intelligence be carried out during the summer of 1956 at Dartmouth College in Hanover, New Hampshire. The study is to proceed on the basis of the conjecture that every aspect of learning or any other feature of intelligence can in principle be so precisely described that a machine can be made to simulate it. An attempt will be made to find how to make machines use language, form abstractions and concepts, solve kinds of problems now reserved for humans, and improve themselves. We think that a significant advance can be made in one or more of these problems if a carefully selected group of scientists work on it together for a summer.”

Although the workshop did not lead to any major breakthroughs, these 10 scientists with their student and colleagues at Stanford, MIT, CMU and IBM would come to dominate the field of AI research for the next two decades. After this summer workshop instead of growing into a branch within the field of mathematics AI became its own independent scientific field, as it addressed the idea to duplicate human characteristics such as language, creativity, self-improvement, used a methodology derived from the field of computer science and attempted to build machines that would function autonomously in changing, complex environments that no other scientific field was pursuing in such an interdisciplinary complex way. Until 1969 the field experienced a lot of early successes that relative to today might seem miniscule but nonetheless was considered the first AI boom. It was astonishing whenever a computer did anything remotely elev-
er, due to the primitive programming tools, weak computational efficiency and social stigma that computers couldn’t possibly do more than perform arithmetic, driving the overconfidence among scientists and predictions that simulated human level intelligence would be reached within one or two decades. This overconfidence was mainly supported due to the positive performance that most early AI system, that aimed to emulate the general purpose solving skills of a human brain, showed on simple examples. This era’s dominating form of structuring AI software was rule-based programming where the programmers explicitly specified all rules that defined a computer’s program behavior that today became known as “good old fashioned AI” (GOFAI) and which inherently posed performance limitations. These GOFAI AI systems unfortunately failed miserably when applied to a wider and more difficult selection of problems as they didn’t know anything of their subject matter in depth but instead worked by means of simple syntactic manipulations, relied on limited fundamental architectures and failed to deal with the rapid growth of a problems’ complexity - known as combinatorial explosions - that often resulted in drastic failures.

One of these failures happened with the launch of Sputnik in 1957, which lead to the U.S. government funding machine translation efforts to speed up the translation of Russian scientific papers into English. These early AI translation systems failed due to the above mentioned reliance on simple syntactic manipulations instead of deep subject knowledge and background comprehension to resolve language ambiguity and establish sentence meaning.

“the spirit is willing but the flesh is weak”
translated from Russian into English as
“the vodka is good but the meat is rotten”

These systemic difficulties as illustrated by the above mentioned notorious tale of a failed machine translation eventually lead to the U.S. Defense Department stopping all funding into AI translation in the 1970s and marking the beginning of the first dip in AI funding known as the first AI Winter. In response to this, research departments started to focus in the 1980s on developing AI systems known as Expert Systems that would tackle domain specific problems and therefore solve more realistic problems instead of trying to emulate the human brains’ general problem solving abilities as was done with GOFAI systems before. In 1981 Japan announced the “Fifth Generation” project, a 10 year plan to build intelligent computers that triggered rapidly growing public and private funding into the field of expert system AI. In response to Japan, the U.S. government started to invest into the field of AI again to ensure national competitiveness. This advent of expert systems that carried with them greater promises and hype and the entering of Japan, led to the second AI boom in the 1980s until 1988 that led to hundreds of companies building expert systems, robots, vision systems, software and specialized hardware. The Japanese economy collapsed and expert systems were not living up to their extravagant promises leading to the second AI Winter. Since the end of the second AI Winter the AI field has been dominated up until today by the subset of artificial intelligence known as Machine Learning (ML) that has dominated the AI research field, public and private applications and especially headlines. ML has benefited from the global technological innovations of cheap information/data and increasingly growing and cheaper computational power. Within the subset of ML the method of Deep Learning (DL) and its artificial neural networks (ANN) or neural networks have shown a lot of advancements. DL grew out of the belief that human level general intelligence, also known as Artificial General Intelligence (AGI), could possibly be achieved by learning from neuroscience and simulating how our human brain works and learns. ANNs, a network of interconnected nodes, were inspired by a simplification of how our brain’s neurons work together. Still today opinion among researchers is split as to how AGI should be achieved, through simulating neuroscience and our brain or by addressing intelligence from another direction. Today’s massive AI development, growth in popularity and application started to gain traction in parallel when big data started to grow and computation became cheap. Public commercial use of the Internet began in 1989, growing rapidly in
reach and in the late 1990’s growing exponentially in user interaction, while simultaneously prices for personal computers and phones dropped consistently and usage picked up. More physical devices such as phones, microphones, cameras, satellites etc. became connected with the Internet and gained ability to sense and store information. Internet users started to create data through interaction with the World Wide Web, while many industries transitioned to heavily digitalize their businesses. Information humans shared among friends, families, nations, businesses, governments globally exploded, growing rapidly in quantity and dropping quickly in price; information became cheap. Moore’s Law, as famously predicted by Gordon Moore in 1965 while working at Fairchild Semiconductor before founding the leading company in semiconductors Intel, predicts that the number of transistors per silicon chip would double every two years and therefore that computational power would grow exponentially and prices would drop in accordance. Moore’s Law was correctly validated into the 21st century; computational power became strong and cheap. Many computer scientists came to the realisation that the previous emphasis on perfect algorithms, before and during the expert systems era, might have been overvalued compared to the importance of large data sets to increase the performance of many inference based AI systems with the revival of machine learning within the AI field. “Machine Learning is the branch of AI that involves creating algorithms that can learn from data. Another way to put this is that machine learning algorithms are computer programs that essentially program themselves by looking at information. You still hear people say “computers only do what they are programmed to do…” but the rise of machine learning is making this less and less true. There are many types of machine learning algorithms, but the one that has recently proved most disruptive (and gets all the press) is deep learning”

ML was coined by Arthur Samuel in 1959, but only gained popular attention within the research field in the 1990’s after expert systems failed to deliver their promises in the 1980s, which led to the second AI Winter. ML solves a specific problem or performs a task not based on explicit rule-based programming, as was done within expert systems, but instead relies on patterns, inference and non-explicit instructions by the programmer. This suggests that all the knowledge an AI system might need to solve a certain problem, would be solvable by learning the methodology and having the data to learn from at hand instead of laboriously engineering the data into the algorithm. ML systems benefited from the increase in cheap data availability at the end of the 1990s and cheap computational power that were both needed to train ML systems, such as deep learning, that led to today’s explosion of enthusiasm for the field. “Deep Learning is a type of machine learning that uses deep (or many layered) Artificial Neural Networks - software that roughly emulates the way neurons operate in the brain. Deep learning has been the primary driver of the revolution in AI that we have seen in the last decade or so” A well trained ML system exceeds beyond human intelligence in many narrow, repetitive intellectual tasks where pattern recognition is vital. Deployed across a wide spectrum of societal functions ML has been leveraged for outputs among thousands of others include email spam filtering, translating languages, chat boxes, social media, smart speakers, diagnosing medical images to image recognition as needed among other features for autonomous driving. There are three general ways of teaching a ML system to learn; supervised learning, unsupervised learning and reinforcement learning. Supervised learning requires the availability of carefully structured and labeled training data e.g. an image of a dog with the correct description “dog” as well as tons of images of pictures with no dog labeled as “no dog”. Once the images are available they are fed into the learning algorithm as training data. The parameters get adjusted so that the failure rate to recognize dog images shrinks to zero. The ML is hopefully well enough trained to now feed it new images it never has seen before and correctly detect “dog” and “no dog” images. Supervised learning currently accounts for 95% of practical ML applications. “One problem with supervised learning is that it requires massive amounts of labeled data. This explains why companies that control huge amounts of data, like Google, Amazon, and Facebook, have such a dominant position in deep learn-
Reinforcement learning works by feeding the learning algorithm unlabeled data. The algorithm is set loose to learn by trial and error and gets rewarded for correct decisions. Due to the need for a large amount of trial runs before it functions well, reinforcement learning is mainly used today for training AI within games or other applications based in a simulated world. The AlphaGo system, which won against the best human Go player in 2015 (Go is a Chinese strategic board game), was mainly trained on reinforcement learning. Unsupervised learning is how we as humans learn. The ML system is fed unstructured data coming directly from its environment and learns the way a child learns a language, by observing. Unsupervised learning has been the most promising method within AI development as it doesn’t need a lot of labeled training data, which could lower the entry barrier for smaller tech companies. It is still barely in use due to its technological challenges that still persist. Much is said that if a machine could efficiently learn by itself unsupervised it would be a massive breakthrough within AI and that AGI would be possible. AGI refers to a thinking machine on the level of human intelligence, being on par with us on creativity and complex thinking. Today most AGI’s are to be found in sci-fi movies and stories, such as HAL from 2001 A Space Odyssey or C3PO from Star Wars. Each of these today still fictional systems would have the capabilities in theory to pass the famous Turing Test where they have to be able to carry out a conversation with a human and be indistinguishable to another human being. Many new aspects have been considered to improve the Turing tests to possibly test and measure an AGI in the future, including haptic, motion, visual and emotional intelligence. Further discussions on the need for the AGI to be conscious and sentient to constitute human level intelligence are in discussion, though this still remains very wage as the concept of consciousness in itself is still barely understood. Alan Turing, considered the father of the field of artificial intelligence and theoretical computing who famously helped decode the German Enigma machine during WWII, proposed the Turing Test in his 1950 paper Computing Machinery and Intelligence, showing that achieving an AGI was the goal from the beginning. How AGI could be achieved varies by opinion. Some proponents state that the development of AI and therefore later AGI should be democratized to ensure greater chances for a benevolent AGI to emerge, more on this later. If AGI is ever achieved, the next step would be Superintelligence (SI), artificial intelligence that goes beyond general human intelligence to the level of a deity that has been warned could mean the end for humanity or the beginning of an immortal life depending on the nature of the SI. Nick Bostrom, a professor at Oxford University and the director of the Future of Humanity Institute has been notorious for popularizing the term Superintelligence in his book Superintelligence that lays out the dangers of how such a superintelligence could develop and take off. The discussion of SI has lead to the famous alignment problem or control problem among futurists and theoretical computer scientists. How can we ensure that an AI’s values are aligned with humanities as a whole? How do you control an AGI? Or an SI if it becomes smarter than you? This is an important debate within AI safety research that has spread into the policy and public discussions to decrease the chances of a catastrophic AI scenario. Eliezer Yudkowsky has been a big proponent of the necessity to develop friendly AI, and the importance of developing it early before AGI or SI even emerges. The respectable Futures of Humanity Institute at Oxford University has been warning on the priority for correct AI governance: “Currently, artificial intelligence can outperform humans in a number of narrow domains, such as playing chess and searching data. As artificial intelligence researchers continue to make progress, though, these domains are highly likely to grow in number and breadth over time. Many experts now believe there is a significant chance that a machine superintelligence – a system that can outperform humans at all relevant intelligence tasks – will be developed within the next century. In a 2014 survey of artificial intelligence experts, the median expert estimated that there is a 50% chance of human-level artificial intelligence by 2040, and that once human-level artificial intelligence is achieved, there is a 75% chance of superintelligence in the following
30 years. Although small sample size, selection bias, and the unreliability of subjective opinions mean that these estimates warrant scepticism, they nevertheless suggest that the possibility of superintelligence ought to be taken seriously. If a superintelligence comes to exist, it will plausibly usher in economic, social, and political changes of a magnitude significantly beyond those wrought by the Industrial Revolution. While it could certainly offer many benefits, such as increased economic productivity and solutions to various technical problems, superintelligence could also be a factor in increasing existential risk. Firstly, it could exacerbate other existential risks by destabilising political equilibria or by enabling the creation and deployment of other dangerous technologies. Secondly, it could cause grave harm through unintended consequences: the technology could be so opaque and powerful as to make it hard to ensure that it behaves in a way conducive to human good. There are a number of difficult technical problems related to the design of accident-free artificial-intelligence systems that have only recently been recognised. If superintelligence comes to exist before these problems are solved then it could itself constitute an existential risk.

If the construction of AI’s goals are not aligned with humanities greater good as a whole from the beginning it could lead to physical, moral, psychological and ethical mistakes in the short term to harmful, existentially catastrophic ones for human cohesion and societies in the long term. The merging of our physical infrastructure with the digital world, ranging from connected toothbrushes, apartments to electricity grids and water management, fueled, improved and analysed by AI further exponentiates these challenges and highlights the infrastructural risks of dangers such as adversarial AI cyber attacks.

**AI Policy**

Today’s climate is marked by the change that AI, especially the branch of ML, has shown a lot of practical successes due to cheaper and faster computation, greater data access and a more digitized global community. These successes have highlighted what wonderful benefits AI could bring society from lowering costs, freeing up time, greater insights and analysis to improving our carbon footprint by making our cities and industries smarter among many others. Some state that AI today is still in its infancy, a “proto-AI” barely having permeated through society, while others argue that AI will never impact society as much as it is predicted to. Citizens today have never been as connected with each other as before and knowledge has never been closer at their fingertips. The public has awoken towards policing AI due to publicly proclaimed issues such as data privacy, oligopolistic tech giants, growing inequality, lack of technology diversity, deepfakes and warnings of how AI could lead to surveillance states, genocidal autonomous weapons, greater cybercrime and other malicious misuses of the technology against humanity. This has led to greater pressure on national governments to increase regulation towards the academic and private developments of AI. Ryan Calo writes: “In 1960, when John F. Kennedy was elected, there were calls for him to hold a conference around robots and labor. He declined. Later there were calls to form a Federal Automation Commission. None was formed. A search revealed no hearings on artificial intelligence in the House or Senate until, within months of one another in 2016, the House Energy and Commerce Committee held a hearing on Advanced Robotics (robots with AI) and the Senate Joint Economic Committee held the “first ever hearing focused solely on artificial intelligence.” That same year, the Obama White House held several workshops on AI and published three official reports detailing its findings. Formal policy making around AI abroad is, if anything, more advanced: the governments of Japan and the European Union have proposed or formed official commissions around robots and AI in recent years.”

These three globally influential reports published by the Obama White House in 2016 to help coordinate federal activity in AI and monitor technological advances were “Preparing for the Future of Artificial Intelligence,” “The National Artificial Intelligence Research and Development Strategic Plan,” and “Artificial Intelligence, Automation, and the Economy.” The Trump administration was the first to specifically name artificial intelligence as an
Administration R&D priority in his 2019 Budget Request to Congress. The current administration further included AI for the first time in the National Security Strategy to help the U.S. lead in technological innovation as well as its critical role in surveillance, information statecraft and weaponization. The National Defense Strategy by the Trump administration additionally included AI and described it as one of the technologies that will strongly change the character of warfare, increasing the capabilities of America’s adversaries and non-state actors. To better understand the vast policy environment surrounding AI a grasp of the power dynamics on a global level between nations, allies and foes and on a national level is necessary. We have seen that the field of AI is over 70 years old. Why are we talking about AI policy now? Since AI’s inception as a scientific field, a lot has changed. At the beginning, as the case with many scientific breakthroughs, the field was limited to mainly American academic institutions funded by the U.S. government, often for national defense purposes. As the field showed greater promises, the private sector moved in. In these 70 years since the field’s inception the global geopolitical landscape has in parallel shifted dramatically. The end of the Cold War marked the apparent end of history as predicted by Francis Fukuyama, with liberal democracy winning over communism and fascism to dominate the ideological world order and therefore world peace. China and other smaller communist or authoritarian states were supposed to follow suit. 911 changed the world dynamics issuing in proxy wars and xenophobia. Since the financial crisis of 2007-2009 and the subsequent further booming of the tech industry, inequality has been widening among many developed nations, while at the same time many other global metrics, such as child mortality, hunger and extreme poverty have improved and barriers have been drastically lowered as more and more people get access to the world’s knowledge through the Internet over cheaper smartphones. This digital revolution with the global economy has further enabled jobs, from low skill to high skill, to be less location dependent. Yet since the financial crisis the world has seen a resurrection of populist national leaders within many developed nations pushing back on globalisation. Reasons for why vary by nation, detail and point of view, though inequality reigns as a major reason among all of them. AI technology, due to its pervasiveness, can exacerbate inequality if not correctly managed by the whole of society. “Unlike more specialized innovations, artificial intelligence is becoming a true general purpose technology. In other words, it is evolving into a utility - not unlike electricity - that is likely to ultimately scale across every industry, every sector of our economy, and nearly every aspect of science, society and culture”

As we have seen from how AI learns, the popular ML branch needs lots of data and lots of computing power to perform perfectly. We produce on average 2.5 quintillion bytes of data each day though that pace is accelerating as more devices and users join the Internet usage and in the last two years have produced 90% of the world’s data alone. Since the last AI winter the field of AI has been dominated by industry taking the lead in furthering research. The top global technology companies, Alphabet, Amazon, Apple, Facebook, IBM, Microsoft from the United States and Alibaba, Baidu, Huawei and Tencent from China are currently leading the development and applications of AI, as well as attracting the major talent for AI development notorious for paying PhD holding AI developers seven figure wages. On average 77% of searches are globally conducted on Google (a subsidiary of Alphabet Inc) with Google processing 40’000 searches a second, which does not include all of the other products through which Google gains data from such as how we interact with Gmail, Gmaps, Google Home or other Alphabet Inc subsidiary products. The proprietary access of these tech giants to big data and big money has fueled high entry barriers for small AI competitors to get an AI market start, as well as restricted consumers of controlling their own data production and access. It cannot be understated that the rise of China and its powerful state controlled tech sector has had major influences on the American tech sector. China, with its 1.4 billion population and 800 million of them accessing the Internet, has become the greatest global data producer today, housing some of the largest tech companies in the world. Kai-fu Lee, a Taiwanese AI
Expert who led Microsoft Research Asia, Google China and worked for Apple before founding Sinovention Ventures, one of the biggest venture capital firms in China, states that Chinese digital users care less about data protection if their user experience improves, that data regulation policing is not an issue compared to Western democracies among the Chinese Communist Party and that the tech environment is therefore more welcoming to AI. Since big data availability is a main ingredient for AI, Lee argues that this lax data climate will allow China to rapidly advance within the global AI race surpassing the United States and Western democratic nations that are debating data and big tech regulation. This AI Arms Race has been compared to an AI Cold War and has gained a lot of political traction in the last three years. How much of it is hysteria and how much of it is adequate caution and competition is yet to be seen, as some argue that big data although crucial for training AI as Lee argues is overhyped.

Yet understanding this global political power dynamic explains to a certain degree why American tech giants haven't experienced rigorous antitrust enforcement by the US government yet, the same way US banks haven't, that might have been more feasible in a pre-globalised one hegemonic world scenario before China's rise. It further explains why the recent antitrust enforcements against tech giants, mainly American ones, have only come from the European Union, who missed building up their own globally dominant tech sector and tech giants in the last two decades. China announced in 2017 that it laid out a plan to become the world leader in AI by 2030, surpassing the US in AI leadership to foster innovation in China, improve living standards and their smart cities. Western countries have particularly spoken out about the dangers and risks attached to this development that China would take advantage of AI's capabilities to control, censor and surveil the Chinese people. In addition western countries, especially the United States has been very vocal about the dangers to global security, world order and values if China misused AI within the military to gain defensive global dominance. Next to China pushing for AI leadership development, Vladimir Putin has been known for openly remarking that the stakes for national AI leadership are stark: “It comes with colossal opportunities, but also threats that are difficult to predict. Whoever becomes the leader in this sphere will become the ruler of the world.” An AI race among nations is in the going. Opinions are split among observers in relation to the severity of it due to the unpredictable nature of AI's exact impact itself. Understanding this global technological race is nonetheless important to form suitable policy decisions, and to understand why antitrust enforcement within America against American tech giants might be implausible due to their importance on a global stage. Much ethical and moral criticism towards AI systems have been raised with varying degree of warning spanning across a wide range of domains. The danger posed by autonomous weapons within the military, has caused much upheaval and debate with the necessity of launching ethical military codes. Autonomous and unmanned weapon systems would be excluding humans out of the loop, that has been argued to be an ethical advancement on one hand by saving soldiers, by letting the machine completely decide on itself on how to act in a militarized setting, which on the other hand has been argued to be highly dangerous in respect to hacking or software errors. Cheap access and abilities to connect devices to form swarm intelligence defense systems further pose big regulatory questions. “If any major military power pushes ahead with AI weapon development, a global arms race is virtually inevitable, and the endpoint of this technological trajectory is obvious: autonomous weapons will become the Kalashnikovs of tomorrow. Unlike nuclear weapons, they require no costly or hard-to-obtain raw materials, so they will become ubiquitous and cheap for all significant military powers to mass-produce. It will only be a matter of time until they appear on the black market and in the hands of terrorists, dictators wishing to better control their populace, warlords wishing to perpetrate ethnic cleansing, etc. Autonomous weapons are ideal for tasks such as assassinations, destabilizing nations, subduing populations and selectively killing a particular ethnic group.”

Powerfully militarized nations such as the U.S., China, Russia and Middle Eastern nations have been in a race to develop autonomous weapons.
Apart from a race, the sale of autonomous weapons and the rise of consumer accessible drones that have made ethical discussion within the U.S. seem obsolete. AI is dependent on the data it receives and the structure it was designed into to learn how to make decisions. Biased data and subconsciously biased programming errors by developers lead to biased AI systems, which has caused for further criticism towards AI systems and tech giants that have shown gender, racial or socioeconomically biased outcomes. At the same time, counter to popular headlines, it has been shown in many cases the people that the AI is replacing are on average more biased than the AI itself, meaning that the use of algorithms in many settings has actually reduced bias on average. Nonetheless it has remained a priority for the private and public sector to increase their corporate diversity to build more inclusive AI programs in response. Due to the pervasiveness of AI within every aspect of society and every sector, many policy decisions are currently being developed within the domain itself, such as ethics for AI in relation to consumer goods, healthcare, finances or defense. “Indeed, the unfolding development of a professional ethics of AI, while at one level welcome and even necessary, merits ongoing attention. History is replete with examples of new industries forming ethical codes of conduct, only to have those codes invalidated by the federal government (the Department of Justice or Federal Trade Commission) as a restraint on trade. The National Society of Professional Engineers (“NSPE”) alone has been the subject of litigation across several decades. In the 1970s, the DOJ sued the NSPE for establishing a “canon of ethics” that prohibited certain bidding practices; in the 1990s, the FTC sued the NSPE for restricting advertising practices. The ethical codes of structural engineers have also been the subject of complaints, as have the codes of numerous other industries. Will AI engineers fare differently? This is not to say companies or groups should avoid ethical principles, only that we should pay attention to the composition and motivation of the authors of such principles, as well as their likely effects on markets and on society.”

Though ethical discussions are crucial, their malleability can become a weakness. Policies have to be rigorous, while leaving room for flexibility and adjustment. Policy should encourage AI development and not stifle it with bans as a “precautionary principle”, but find a balance with “permissionless innovation” and ensure that the development is funneled in the correct way for society as a whole to reap the greatest benefits of it. Although opinions are split, general laws about AI might be too early at this stage, whereas domain and task specific ones, such as within warfare or autonomous cars are crucial for agreeing on international governance policies and national ones. In relation to lethal autonomous weapons international treaties concerning chemical, biological and nuclear mass destructive weapons have proven as important cornerstones for reducing global conflict and suffering overall, although there have been several cases were single nations broke these crucial peace agreements. Today within the U.S. AI has been mainly regulated by sector: The Food and Drug Administration (FDA) overlooks the use of AI software within medical diagnostic devices, the application of AI systems within consumer products is watched by the Federal Trade Commision (FTC), the use of drones that are powered by AI is authorized by the Federal Aviation Administration (FAA) and the financial markets that have been one of the fastest sectors to incorporate AI systems is regulated by the Security Exchange Commission (SEC). In addition to sector specific policies the timeliness for preventative policies to prepare society for the effects of AI have been widely discussed. Such preventative policies start with education, the crux of every nation, to include more computer science understanding or computational knowledge while encouraging human traits that are harder to emulate by a computer such as creativity, compassion, ethics, curiosity, imagination, collaboration, passion, critical understanding, care for nature, care for society and persistence from an early stage on. In the shorter term government needs to accrue greater technical expertise in computer science and AI. Experts who can understand the relationships and impacts between AI technologies, programmatic objectives, and overall societal values to better weigh and govern an AI supported nation.
“Absent sufficient technical expertise to assess safety or other metrics, national or local officials may refuse to permit a potentially promising application. Or insufficiently trained officials may simply take the word of industry technologists and green light a sensitive application that has not been adequately vetted. Without an understanding of how AI systems interact with human behavior and societal values, officials will be poorly positioned to evaluate the impact of AI on programmatic objectives.”

The same Stanford study panel further notes that the government should be funding more private and public interdisciplinary studies of AI’s societal impact to better understand its consequences: “As a society, we are underinvesting resources in research on the societal implications of AI technologies. Private and public dollars should be directed toward interdisciplinary teams capable of analyzing AI from multiple angles. Research questions range from basic research into intelligence to methods to assess and affect the safety, privacy, fairness, and other impacts of AI.” On a consumer level privacy concerns of data usage has cause wide discussion, with Europe leading the regulation of big tech companies. Other fears on a global scale is that AI could be misused by governments to surveille and control its citizens with the famous example of China investing heavily in facial recognition AI technology. At the same time due to the widespread use of camera and Internet enabled smartphones the power of surveillance within the 21st century has simultaneously shifted to citizens changing societies into a surveillance and sousveillance state; “if you watch me I will watch you”. This sousveillance advantage is dependent on the nation and the government’s control on internet filtering and information dispersion.

Transparency is needed to better understand the transactions and effects AI systems have on society. Access to building, using and understanding AI technology needs to become democratized to foster greater transparency, that at the moment is highly mystified by the closed use, production and understanding of AI within big tech. Technologies such as blockchain and companies such as SingularityNET built on a blockchain, have been trying to democratize AI technology, capital benefit and data access within the commercial sphere, opening up AI access to more citizens beyond large tech companies. Blockchain does this by operating on a peer-to-peer basis as a public ledger within a distributed network of computers, which enables it to circumvent middle men such as banks within transactions. SingularityNET aims at creating the largest AI marketplace to ultimately strive towards the creation of a global AGI accessible to all citizens. SingularityNET believes that AI should be used and developed by everyone instead of just within big tech or government to achieve the most benevolent version and applications of it possible and that the majority of citizens can benefit from its achievements. It tries to do this by building a network of single AI nodes that together create a large marketplace. Anyone with Internet access and a good idea can build an AI system to attach to the network as a further node. These AI nodes trade jobs among each other making transactions through SingularityNET’s AGI token, which ultimately gets paid out to the AI node developer. As inspirationally laid out in its Whitepaper: “Today’s AI tools are fragmented by a closed development environment. Most are developed by one company and perform one extremely narrow task, and there is no straightforward, standard way to plug two tools together. SingularityNET aims to become the leading protocol for networking AI and machine learning tools to form highly effective applications across vertical markets and ultimately generate coordinated artificial general intelligence. Most AI research today is controlled by a handful of corporations—those with the resources to fund development. Independent developers of AI tools have no readily available way to monetize their creations. Usually, their most lucrative option is to sell their tool to one of the big tech companies, leading to control of the technology becoming even more concentrated. SingularityNET’s open-source protocol and collection of smart contracts are designed to address these problems. Developers can launch their AI tools on the network, where they can interoperate, creating a more
synergistic, broadly capable intelligence. For example, if a text-to-speech AI and an Italian-to-English translation AI were both on the network, then the network as a whole would be capable of using Italian text to produce English speech. Within this framework, AI transforms from a corporate asset to a global commons; anyone can access AI tech or become a stakeholder in its development. Also, anyone can add an AI/machine learning service to SingularityNET for use by the network and receive network payment tokens in exchange."

Its ambition to democratize one of the most important technologies today to foster transparency, based on the observation that on average the majority of humans will act in good faith, is an inspirational lesson. Such an aspiration is also needed within data governance to ensure greater equity and self-determination among citizens. Much has been said about growing inequality due to the technology industry. Better policies such as taxing the 1%, large corporations and breaking up the big tech firms has been widely discussed. No policy is perfect. To circumvent the dangers of making the American economy globally less competitive and reducing incentives for innovation while ensuring greater individual autonomy and sovereignty we should consider data ownership models to build greater economic participation among citizens with technology and democratize the tech industry more. Data has a lot of value, it is necessary to build great AI systems, will become pervasive with the spreading of IoT and some have called it the oil of the 21st Century, yet we owners and data producers do not get compensated for it. If every citizen who produces digital data used by the big tech companies, becomes an active economic participant and partner within the tech industry by lending their data directly to the tech companies, the value of tech companies would gradually become distributed as data lenders receive a weekly paycheck for their data that was put to work to further all technical endeavors for which data was needed.

"The extractors can afford it. Google and Facebook have high double-digit profit margins because they do not pay for their raw inputs — our data. But we should own our own personal information. And if the extractors use it, they should have to compensate us. If the US imposed a 50 per cent digital dividend payment, for example, the four major categories of data harvesters — platforms, data brokers, credit cards and healthcare firms — would have to pay every American who uses the internet $308 by 2022, assuming current growth rates, according to Mr Shapiro. Or the extractors could be forced to put a portion of that money into a public fund that invests in education and infrastructure. The same levy on digital revenues could plug the majority of an American infrastructure spending gap estimated to be $135bn by that date, according to Mr Shapiro’s calculations using World Bank figures."

To ensure that this loss of capital will not reduce American tech companies competitiveness in the face of Chinese ones that would take up their American market share instead, consumers need to not just become lenders of their data to the tech industry, but become active contributors and creators within it to foster its growth and add strength. Conditional incomes have been widely discussed as an option in the face of greater unemployment caused by AI. Conditions that could apply to data lenders that lost their jobs to receive the added income could be reskilling with an apprenticeship or online learning from a tech company to increase technology talent that is in short supply for the tech industry. There could be various options for how long you lend your data for, which kind of data, for what kind of use etc. Such a data ownership model could support to decrease inequality, unemployment levels, unproductive governmental policies to curb inequality and animosity towards the tech industry’s move towards greater automation and innovation. A third guide that needs to be considered, is emotional intelligence and a reconfigured economic value system. Most highly developed nations’ populations are aging. It is predicted that greater automation of low skill jobs will create more demand for high skill jobs and physical jobs that need high levels of human emotional skills and dexterity such as elderly care, physicians, child care and masseuse that so far have received low economic value within society. We need to expand our social value perception to increase the value of skills such as empathy, care, kindness and emotional intelligence, that will become increasingly important and hardest to automate by AI.
Conclusion

AI is a neutral technology. It will improve a lot, excel at certain tasks, perhaps even jobs, but it won’t develop uniformly. Owing to its dual-use nature, its applications will be highly beneficial to society but could also cause damage and harm to our social fabric. Technological advance is innately not bad nor good. It is the responsibility of the people and the democracy shepherding its growth that policies are enforced that will amplify the good and mitigate the bad and to bend industries, applications and technologies to be positive for humanity overall. A failure of AI will mean a failure of our political system and our democracy. To deal with this new industrial revolution we need to structure AI in alignment with the values we aspire to, which should be greater democracy, equality, prosperity, sovereignty and freedom. Through greater transparency and data ownership lending models and democratization of AI technology we need to empower citizens to become active technology participants, contributors, benefiters, innovators and entrepreneurs within tomorrow’s ever more intertwined global world.
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SILENCE = DEATH

Why is Reagan silent about AIDS! What is really going on at the Center for Disease Control, the Federal Drug Administration, and the Vatican?
Gays and lesbians are not expendable…Use your power…Vote…Boycott…Defend yourselves…Turn anger, fear, grief into action.

From the Stonewall Riots to Neoliberal Recuperation of Queer Life: An inquiry into the category of identity under conditions of ‘post-political’ neoliberalism

Alex Sirgenson
One of the most consequential political artifacts from the twentieth century left for progressives to excavate today is the legacy of that peculiar uneven and combined development of the principles of economic liberalism and political democracy in advanced capitalist societies. The reconciliation of these principles forced together two different ordering principles for liberal political and civil society. The tensions that would arise from merging the systemic logics of a liberal capitalist society with an egalitarian political democracy were managed by the liberal state during the capitalist West’s economic growth period known as the ‘Thirty Glorious Years’ from approximately 1945 until the 1973 oil crisis and the advent of neoliberalism. I describe the tension between liberalism and democracy as contradictory because each are ordering principles for society that signify vastly different – and often contradictory – standards for determining categories of truth, legitimacy, subjectivity, as they adhere to different sets of social, historical, philosophical, political, and ethical theories of ‘the good life.’ By this, I mean that for economic liberalism the ideal social goal is equilibrium, achieved through the flattening of social difference in the market and civil society, while the real social tendency for political democracy is to engender agonistic social relations through critical public debate and the mobilization of politicized identities (Habermas, 1962; Mouffe, 2000). In the liberal bourgeois state and civil society, to understand contemporary so-called ‘crises’ of democracy, governability, and the stability of the liberal social order itself it is crucial to further explore the problem of ‘hollowing out,’ a term which Wendy Brown has used to describe the rollback of state welfare provisions, but which has also been read as a broader project of depoliticizing popular conceptions of democratic participation and the public meaning of collective social movement (Brown, 2015). While the crisis of liberal democracy frames critical debates about the state of post-democracy, the post-political, and the ‘end of ideology’ in advanced capitalist societies initiated by Jacques Rancière, Stuart Hall, Slavoj Žižek and Colin Crouch in the 1990s, I seek to explore specifically how such ongoing neoliberal crisis tendencies are reshaping the ideological functions of the (neo) liberal state and civil society, namely its tendency and capacity to incorporate interests from formerly mis/unrecognized political subjects or identities (primarily, I am referring to the subjects of the ‘new social movements’ of the twentieth century; namely egalitarian and oftentimes anticapitalist racial justice, women’s and queer liberation, anti-colonial, student, and worker’s movements). More specifically, if it is true that we live in a post-political era, where the most important policy decisions are increasingly determined by a few private actors outside of conditions of critical publicity and an autonomous legislative public, how is the neoliberal regime form – as Wendy Brown suggests – constituting itself as a governing rationality? To use the prefix ‘post-’ to describe the status of democracy and the political public sphere in the aftermath of the antagonisms that generated a rift between liberalism and democracy is to suggest that liberalism as a universalizing social philosophy, an ideology, has historical significance (at least for Marxists) because of its tendency to push beyond political, ontological, and spatio-temporal barriers in the perpetual pursuit of capital valorization processes. Understood this way, the neoliberal political regime collapses the distance between the social site of the market where economic activities occur and the sites of political representation per se, and all subjective desires and political wills are brought within the apparatus of economic neoliberal normative criteria for evaluation, namely those of marketability, human capital, fungible efficiency, and profitability.

This process has already been described in critical scholarship as the “colonization” or “taming” of the political by the market (Brown, 2015; Douglas, 2017). Specifically, I am concerned with how neoliberal state and private elites make claims to truth, social justice, and identity that appeal to the liberal theoretical inclination to render categories of knowledge and justice static and essential in order to always make them complementary to the interests of the liberal state and capitalist producers. As Wendy Brown has explained, popular conceptions of political justice and social knowledge (defined in critical terms as “dissociated” or “disaggregated” sociality) are determined by the discur-
sive ‘rules’ put into play by a dominant ideology (in Marxian terms) or a governing rationality (in Foucauldian terms) before being presented to the public for critical evaluation in order to inhibit citizens from recognizing their relations to state and civil society (private, economic relations) as potential sites of political contest. I argue that it becomes possible to explore contemporary neoliberal discourses and government-practices as propagandistic and totalitarian insofar as liberal universalisms increasingly demonstrate the tendency to impose themselves as unchallenged social truths. In this sense, liberalism assumes a totalitarian character whose appearance is ‘inverted’ by translating its own progressive philosophy of history as the forceful realization of equilibrium and consensus (Wolin, 2011; Boltanski & Chiapello, 2005). As its instrumentalized economic rationality moves from the confines of the market to assuming its world-historical role as a universalizing social philosophy, we can observe a tendency for market principles and the interests of neoliberal elites to overcome the collective democratic aspirations of a communicatively united citizenry in neoliberal regimes. Such theorists as Brown and Sheldon Wolin seek to expand the applicability of the concepts of totalitarianism and propaganda beyond a mere association with outwardly violent and authoritarian practices of statecraft. Brown and Wolin recognize that neoliberal political discourses and practices are totalizing and universal in both scope and effect. They propose a political re-framing of the history of liberal capitalist modernity that foregrounds a close reading of the power relations enabled by the liberal tendency, or capitalist class strategy, to flatten social difference when it cannot be activated as a source of disunity in the working class. If totalitarian ideologies are those which seek to violently repress social difference, then neoliberal government-practices and discourses are just as ‘totalitarian’ as those of the old state ideologies of the twentieth century (i.e. fascism, state socialism, social democracy). From this view, there is a further inversion to the discursive operations of a liberal totalitarian regime because one of the defining characteristics of liberalism lies precisely in its ideological aversion to recognizing the political character of its own social-philosophical presuppositions. Reading neoliberalism as a totalitarian regime form, then, suggests the urgency for the left to locate the points in neoliberal society where antagonisms already exist and where future ones may be possible in order to demystify contemporary myths about political consensus and the end of the need for social struggle and coherent political theorizing. In my reading, the ultimate neoliberal political strategy has been the maintenance of a sustained regime of post-politics, coupled with the imposition of the economizing logics of privatization and ‘hollowing out.’ Together, they have sought to make political dissent unlikely by de-activating democratic protest movements by de-politicizing public discourses and group identities. This process has resulted in neoliberal formulations for repressing egalitarian organizing, the mass inter-group mobilization of political identities, and attempts at unseating power over forms of knowledge.

In the present it appears as if political democracy has been almost wholly subsumed by economic liberalism, characterized by a neoliberal political rationality and the structural disintegration of the public sphere. The effects of neoliberal political rationality on the queer liberation movement are many, but I seek to explore a common underpinning logic: in its ongoing attempt at forging a renewed liberal lifeworld, neoliberal elites translate the social philosophy of the bourgeois state and civil society in ways that reinvent popular ideologies about social justice and political democracy that appeal to special interest groups in order to subsume political protest by incorporating it into the capitalist social totality (Blasius, 2001). Neoliberal regimes rely on ongoing processes of dispossession sustained by radically and antidemocratically dissociating sexuality from a larger dynamic of social reification enforced by capitalism which for queer politics has culminated in a unique contemporary capitalist “reification of desire” as Kevin Floyd has already suggested (Floyd, 2009). The two prevailing liberal views on the political function of social movements from the post-war period until the dawn of neoliberalism in the 1970s were to 1) either dismiss protest movements as irrational expressions of mass hysteria interpreted as “system overload” (Huntington, Crozier & Watanuki, 1975); or 2) to moderately tolerate social movements so long as they can be interpellated as Madisonian-style interest fac-
tions whose political wills can be incorporated into the liberal state (Rawls, 1971). This center-right/ left liberal framework was widely accepted in liberal political theory and in liberal government-practices as politically necessary for the maintenance of a liberal civil society in which political opposition may articulate its antithesis to the established hegemonic order represented by the state. This social liberal political regime was dominant during the postwar political order. The liberal-democratic arrangement – reactionary as it was – at least acknowledged the existence of contestatory politics and really-existing patterns of social struggle that allowed for the complications to its mythologized ideal of the harmonious civil society to be made visible. The queer liberation movement associated with the 1969 Stonewall Riots, similar to its contemporaries in feminist and Black liberation struggles, entrenched itself politically and articulated demands in the democratic sites of the public sphere associated with civil society: namely mass protests, political parties, mass media, and independent organizations (Blasius, 2001; Chávez, 2013; Downing, 2000).

Complications arise, however, in framing and interpreting the political meaning of the “democratic surge” attributed to the new social movements. On the one hand, the New Right framed this political experience as an “overload” on democracy, exaggerating what progress had been made while calling for a rollback or abrupt halt to the expansion of political democracy in the form of legal rights and social welfare provisions, as conservatives often do. However, the political right’s simple formulation of direct repression became less popular by the 1980s-2000s than what Nancy Fraser calls “progressive neoliberalism,” a complex term but one that nevertheless remains analytically helpful in expressing the hypocritical sentiment felt from the double-bind of a new articulation of capitalism that is just as ferocious as ever while it also re-invents dominant ideologies about social justice and political consent that seemingly yield to some of the demands made by progressive social movements.

The paper deploys the critical concept of “liberal totalitarianism” to suggest an antidemocratic trajectory of neoliberal political development driven by the intensified implementation of market rationality as political rationality, as done by Brown and Wolin so far. In so doing, I seek to understand how neoliberal capitalist societies resolve the problem of maintaining the appearance of political democracy by tending to the fragile political ideology that power is diffuse, consensual, and therefore democratic in a polity marked by exacerbated social class inequalities. The hegemony of consensus politics that has characterized the liberal state and parliamentary traditions since the 1970s has corresponded to the disintegration of party politics and the centralization of what Nicos Poulantzas calls the “bureaucratic-authoritarian” state (Poulantzas, 1978). The encapsulation of social movements into the post-political imaginary is perhaps one of the best places to turn for a glimpse into the theoretical aspirations of neoliberal political rationality and the empirical consequences for social movements incorporating into the liberal tradition. Liberalism as a political or governing rationality comes to hold a normative last word in its self-declared final historical epoch in which the universal world market may overcome all social difference. Politics and free communication are displaced by the market via universal recognition from the bourgeois state and civil society whereby the effects of personal prejudices and individual ignorance are intended to be mitigated by a sustained universal social philosophy: neoliberalism.

An important historical rupture occurred in the 1980s as the rise of neoliberalism coupled with the emergence of the New Right produced a rightward shift in most prevailing Western political parties and a series of social, economic, and political assaults on the public spaces that had defined the democratic setup of the liberal post-war consensus between liberal-capitalist interests and national-democratic interests. In the literature the concepts of post-democracy and post-politics offer insight into the feared colonization of the political by politics – the enclosure of points of tension and conflict in society in favor of procedures “that operate within an unquestioned framework of representative democracy, free market economics, and cosmopolitan liberalism” (Swyngedouw & Wilson, 2014). I argue that the historical rupture indicated by the neoliberal order and the re-emergence of the far-right restructured the ways social movements mobilize and articulate themselves as political op-
position, producing twofold consequences, one empirical and one normative, for the queer liberation movement: 1) The tendency of neoliberal politics to arrest political democracy for the unhindered development of economic liberalism has increasingly depoliticized the theories of political justice to which the queer liberation movement may appeal through the implementation of a neoliberal political rationality. Neoliberal political rationality prompts citizens and activists to demobilize en masse, to re-frame their politics as their short-term interests, and to incorporate into state bodies and capitalist firms. In my reading, this process has been responsible for a degraded status of queer politics, queer theory, and queer subjectivity towards a process of systematically marginalizing and silencing queer people, namely poor queer people, queer nonwhite people, women-identifying queers, trans people, and radical queer activists in favor of a dominant ‘gay rights’ discourse that is compatible with the ideological and institutional arrangements of capitalism, patriarchy, and white supremacy that harden already-existing class, sex, and race categories within the queer community; 2) We ought to read this phenomenon not as something that happened of the queer liberation movement’s own volition (its own imagined political project), but as a process of recuperation by neoliberal elites to re-confirm the ideological and political hegemony of the forces of reaction that were once threatened by militant social movements. By twisting dissent to salvage its own ends, neoliberal hegemony enables a process of recuperation that is an act of symbolic violence. In this conception, the category of identity itself is at stake. The effects of a neoliberal political rationality are not only felt in the taming of queer protest actions but in the taming of the entire category of queer identity that limits conceptions of justice, freedom, and liberation that were beginning to be explored through protest and the use of public spaces in queer movements in the 1960s-90s. In neoliberal society, appeals to a (liberal) gay identity have displaced projects of forging an emancipatory queer political subjectivity that might be the motor for a radically communitarian or otherwise anticapitalist project. As a result of “progressive neoliberalism,” the politics of an elite queer minority became conflated with the “identity politics” of the entire queer community. Queer people, therefore, have indeed emerged from the neoliberal assault with an identity politics, but one that is suspiciously detached from the really-existing struggles, identities, and politics of the queer community’s most vulnerable members.

The paper offers a brief political history and survey of the concepts of democratic crisis, namely post-democracy, post-politics, and neoliberal political rationality and their effects on the queer liberation movement. This situates my reading of the trajectory of queer politics in our current political conjecture. Where the 1969 Stonewall Riots represented a radical political contest to the interests of state and private elites, neoliberal conceptions and articulations of justice in political organizations that claim to represent queer interests are fragmented. There are considerably less radical and experiential dimensions to the political project present in liberal queer politics with its primary interests in gay marriage, property-related rights, and moderate hate crime legislation (Bernstein & Verta, 2013). The second half of this paper deals with answering the question ‘How has the queer liberation movement’s conception of political justice been made more compatible with neoliberal capitalism?’; in other words, in what ways did the queer liberation movement transition away from entertaining the possibility of queer anticapitalist revolution towards a point of referencing marriage (literally) with bourgeois society as the ideal illustration of being incorporated into a liberal teleological narrative about ‘winning’ recognition and political inclusion in marriage, the military, and the law? I answer this question historically and theoretically from the point of entry that the politics of solidarity and democratic experimentation associated with the queer community were systematically undone during the intense period of reaction signified by neoliberalism: the ‘hollowing out’ of public spaces, the introduction of a post-political governing rationality, and the elimination of political contest for the development of the market. In other words, the ontological and epistemological foundations of a community built upon radical solidarity and belonging devolved into a hyperindividualized and commodified conception of ‘being gay’ that evokes the standards of masculinity, whiteness, and financial success for recognition and legitimation by bourgeois civil society. A sense of shared history and
struggle has been detached from the understanding of queer identity under post-political conditions in neoliberalism’s historical attempt to depoliticize identities in favor of the increased marketability, management, and production of bio-needs and desires. Where once a radical politics commonly informed the political strategies of the queer liberation movement, the neoliberal articulation of identity-based justice made it possible – and preferable – to be a queer but not a radical. The more existential understanding of identity proposed by the left (that to exist with a marginalized identity is inherently political) was replaced by a neoliberal understanding of identity that is highly compartmentalized, commodified, and reified, and which paved the way for already-existing hierarchies to solidify within the queer community, privileging elites who essentially betrayed the radical needs and demands of the queer community writ large and formed an unholy alliance with what I refer to, in the spirit of US National Security Advisor John Bolton, as the real “troika of tyranny”: capitalism, patriarchy, and white supremacy. In this conception, the queer movement was simultaneously beaten back from its enemies outside and sold out from within by political and economic elites who ‘happened to be gay’, situated amidst a neoliberal ideological recuperation of perceived losses of legitimacy in the social order.

Social liberalism emerged out of the bourgeois state’s attempt to reconcile the class conflict between labor and capital. There, the analytical distinction between political democracy and economic liberalism first became apparent in its integral relation to the dynamics of class struggle. For example, the brilliance of Keynesianism was found in its political ability to obfuscate real class relations by pegging popular democratic participation to working class people’s concerns over policies about wages and welfare provisions. One of the consequences of the social-democratic welfare model is that much of whatever democratic empowerment did come from increased access to entitlements was hijacked by the neoliberal conception of citizens-as-consumer. Citizens were ‘laid off’ from their roles as clients of the welfare state, but promised the ‘easier’ and ‘cheaper’ processes of obtaining social goods in consumer markets upheld by regimes of financial speculation that became embedded in the integral state-economy relation. In this period, political democracy was seemingly strengthened, and politics viewed as a contest between elected governments and political opposition. As democratic theorist Colin Crouch claims, “For the first time in the history of capitalism, the general health of the economy was seen as depending on the prosperity of the mass of wage-earning people... social compromise was reached between capitalist business interests and working people” (Crouch, 2004: 7). Despite his social-democratic romanticizing, Crouch’s observation implies something important: that the means to control public debate were more open to democratic contestation under conditions of political democracy organized against liberal capitalism. For identity-based social movements, these conditions suggested that political imaginaries and identity-formations could remain more organic (determined by the people involved in the movements themselves) and more radical (possessing highly contestatory political preferences and engaging in more direct protest actions) than they would under conditions of unbridled capitalist enterprising, as we experience with neoliberalism. While left-critics of Crouch remain skeptical of ‘class compromise’ as a false promise of liberalism, social liberalism at least provided channels of recourse that engendered hopeful democratic collective action and demo-

I. Postwar social liberalism, “progressive neoliberalism”, and liberal totalitarianism: learning to eliminate political contest

This section of the paper lays out the periodization of political democracy in relation to economic liberalism (capitalism) between: post-war social liberalism, “progressive neoliberalism,” and liberal totalitarianism. To distinguish between forms of liberalism and to stress the volatility of neoliberalism in particular is neither entirely new nor is it to suggest a stringently demarcated historical point of departure for one or the other, but rather to flesh out what gets constituted and becomes conscious as class ideology and democratic opposition to liberal capitalist society and how anticapitalist political opposition communicates protest to bourgeois liberal political society at various moments in the class struggle.
ocratic activity within social movements themselves.

The queer politics associated with Stonewall fall within the historical context of social liberal political conditions. What is important from this period is the relationship between social movements, the public sphere, and media (communications). John Downing in his book Radical Media studies empirically how queer activists in the 1960s and 1970s used radical media to communicate with the bourgeois public sphere, and in so doing critiques the Habermasian conception of the public sphere as a singular and unified essence of publicists (Downing, 2000: 44-63). For Downing, the presumption that successful discussion and review of a matter only operates, and can only operate, in a completely anti-septic rationalistic mode is a liberal and masculinist one. More important than rational debate between equals is the struggle between parties exercising asymmetrical communication patterns. This means Habermas’ lament for the disappearance of a bourgeois public sphere overlooks the work done to identify alternative zones for radical debate. Downing’s review of queer radical alternative media: show very clearly, through their use of irony, satire, caricature, cartoon, slander, innuendo, salacious public gossip, and pornography, that sober, clearly argued debate was no more victorious then, or the dominant mode of discourse, than we see it to be today (Downing, 2000: 28). Once again, however, we are confronted with the problem of overlapping terminologies. Social movements, the public sphere, communication networks, and audience are all concepts with an implied interrelatedness to informal constructions of group identities and intra-group legitimacy. In Downing’s conception, the notion of networks moves the idea of public audience beyond a conception of atomized individual subjects and underscores the internal connectivity of social movements and the centrality of that practice as technique in the interplay between movements and media. The public sphere is thus something tangible between members of interlocking circles whose mutual communication engages them at many levels, not just at the level of rational, ordered debate.

Because no group is a homogenous political entity, cultural communication has a dual effect: it offers the possibility to communicate across difference but also contains the possibility of reproducing oppressive discourses. As queer communications theorist Karma Chávez puts it, “The normative is violent” (Chávez, 2013: 86). The post-war manifestation of what has been called “queer liberalism” by David Eng, according to Chávez, is a historicopolitical sublimation of the category of “queer.” Because queer liberalism developed alongside the “Euro-American liberal humanist tradition of freedom and democracy”, the extension of the logics of nationalism, imperialism, capitalism, colonialism, and patriarchy become evident when a radical identity is recuperated by means of representation of the group (Chávez, 2013; Eng, 2003). The political salience of representation in the post-war social liberal period is communicatively important for Chávez because while representation has the negative political consequence of staging a distance between the represented and the representative, it is also one of the primary means of transmitting agreed upon understandings of government premised upon consent. Extensions of political democracy were sustained by relative economic prosperity until the neoliberal moment associated with the 1973 oil crisis. Economic crisis coupled with increased political demands by social movements propelled the West’s dominant articulation of liberalism into crises of democracy, legitimation, governability, and hegemony, all pointing to something in common: neoliberal politics is the un-linking of substantive political democracy from economic liberalism. In other words, one reading of neoliberalism is that it indicates the onset of a state of what Colin Crouch describes as “post-democracy” (Crouch, 2004). For Crouch, post-democracy indicates that “politics and government are increasingly slipping back into the control of privileged elites in the manner characteristic of pre-democratic times; and that one major consequence of this process is the growing impotence of egalitarian causes (Crouch, 2004: 6). Active democratic participation conceived of positively by Crouch as “positive citizenship, where groups and organizations of people together develop collective identities, perceive the interests of these identities, and autonomously formulate demands based on them, which they pass on to the political system” is substituted with a negative conception of polit-
ical participation reduced to “the negative activism of blame and complaint” (Crouch, 2004: 13).

As opposed to the electoral-contestatory politics of social liberalism, post-democratic politics is characterized by compartmentalized policy ‘planks’ and depoliticization of public discourse writ large. Parties with coherent ideological worldviews are replaced by organizations that “enable us to choose highly specific causes” such as “self-help groups, communitarian networks, neighborhood watch schemes, and charitable activities trying desperately to fill the gaps in care left by a retreating welfare state... However, precisely because they involve turning away from politics, they cannot be cited as indicators of the health of democracy, which is by definition political” (Crouch, 2004: 15). The criticism is that neoliberal political parties and organizations are ‘post-democratic’ or ‘post-political’ insofar as they attempt to perform necessary social care work in ways that deactivate mass egalitarian (or, socialist) politics by supplanting politicized claims to social welfare with neutered language about ‘adjusting markets,’ ‘bipartisan agreement,’ and ‘finding responsible solutions.’ Crouch makes the important observation that the vitality of cause organizations is “evidence of a strong liberal society; but this is not the same as a strong democracy” (Crouch, 2004: 16). The politics of solidarity and partisanship get displaced when “boredom, frustration, and disillusion have settled in after a democratic moment” (Crouch, 2004: 19). Crouch’s insight into the condition of post-democracy will return when discussing the queer liberation movement. His argument that the character of political communication has been degraded, challenging the ability of social movements to maintain high participation rates and to articulate coherent multifaceted demands, is a fruitful contribution to a theory of “de-democratization”: the abandonment of the public sphere and welfare state and the subsequent strengthening of social institutions like the private firm, the family, and the military as sources from which citizens derive political meaning. We will return later to see how this critical negativity has been reified by neoliberal queer politics.

The complexity of neoliberalism’s democratic crisis runs deeper than Crouch’s social-democratic observation that the state is ‘retreating’ from social care in the name of renewed faith in economic liberalism. For Nicos Poulantzas, the movement of the ‘strength’ of the state is not linear, and the directionality of the force of the movement remains indeterminate. Poulantzas argues that at the same time as the state appears weakened, its administrative, or “bureaucratic-authoritarian” apparatus, is enlarged. Poulantzas contributes to the literature of post-democracy with the concept of authoritarian statism, namely the hollowed out vestiges of a formal democracy characterized by “intensified state control over every sphere of socioeconomic life combined with radical decline of the institutions of political democracy and with draconian and multifurcated curtailment of so-called ‘formal’ liberties” (Poulantzas, 1978: 203-4). For Poulantzas, authoritarian statism develops parallel to liberal celebrations of the ‘pluralism of power’ in the postwar period. The apparent integration of more interests and demands, in absence of a structural transformation of the mode of production, resulted in integrating them through extraordinarily unpopular means. The authoritarian-bureaucratic state thus constitutes the effect of a tendency to strengthening-weakening of the State, the poles of which develop in an uneven manner. The authoritarian statism of the contemporary State is terrifyingly real. But in spite of this (or rather because of it) the State remains a clay-footed colossus, fleeing ahead on treacherous ground; it should indeed be remembered that wild animals are most dangerous when they are wounded (Poulantzas, 1978: 205). Political crisis is constituted insofar as the reproduction of capitalism is outpaced by its decay as the “last possible state form before the necessary advent of socialism” (Poulantzas, 1978: 206). The resolution of political crisis by means of strengthening-weakening the state (and social movements) is the backdrop against which the rise of neoliberal gay politics in the late 1980s-2000s developed with its trinitary focus on marriage, the military, and hate crime legislation.

II. Neoliberal recuperation of queer politics

If there is not an evident linear develop-
ment of contemporary capitalist political strategy, then to understand the dialectical nature between neoliberal claims to social justice and anti-democratic concentrations of power, it is necessary to conceptualize deployments of symbolic political power as recuperation. A politics of recuperation describes a moment in which subversive political ideas and practices once confined to critical discourses reappear in the popular political conscious as rehabilitated, but no longer existing as they once did to challenge dominant ideologies. Feminist theorist Susan Stanford Friedman argues, “Recovery, recuperation, by a ruling class is thus an act of manipulating and distorting communication since it uses one or a few particular events to generalize them to a set, in order to influence perception of meaning. It can also consist in diverting the meaning of the words of a person by making reference in a given field and using them as an argument of authority (‘tokenizing’ by replacing reasoning with resorting to the conclusions of a person mentioned as authoritative on a topic). Neoliberalism’s imposition of a universalizing political mode of being is confronted with another one of its foundational logical inversions: the liberal ‘magic’ of extrapolating information about processes from a particular set of events and assuming that the rational generalization of those logical processes (say, related to a market transaction) can and ought to become ordering principles for social relations in the public sphere more generally. This offers a way-in for neoliberal ideologies about marketability and commodification to attach themselves to fragmented conception of identities in a capitalist society in which political and social relations increasingly resemble market relations. I argue this conflates the class interests and identities of a marked ‘successful’ or ‘respectable’ queer population with the material basis for a queer politics in general. To understand the politics of recuperation and the queer movement, it is necessary to turn to queer social philosophy to recover a queer materialist conception of the categories “queer,” “subjectivity,” and “identity” as they relate to capitalist social relations. When queer politics focuses on minority emancipation instead of human liberation, it implies an adherence to liberal humanist social philosophy rooted in the belief that there is no political economy of sexuality and that to further a positive emancipation is to remove the fetters of homophobia and personal prejudice without attending to the structure of the market as a historically contingent truth, not a permanent universal one. I read queer theorist Randall Halle’s “Marx and the Limits of Emancipation” as a queer materialist critique of recuperation. Recuperation in the queer context is when “…sexual desire is not freed but now acts as a means to make contingent commodity-oriented desire appear as need” (Halle, 2004: 126). Capitalism’s recognition of the possibility to tap into homosexual and queer desire as an incitement or invitation to consume commodities and to do the unpaid care work of neoliberalism because it is part of their essence as queers to attend the gap in socially necessary care work. Halle argues: The culture industry has realized that it can sell consumer products through the activation of the social or spiritual desire that once was a repository of anticapitalist activity. Now consumers are spurred on by promises that their purchase of everything will improve the world, the environment, the conditions of the starving children of Africa, and their own personal appearance and sex appeal. Indeed, in advanced industrial society capitalism and political emancipation need no longer be in opposition. Capitalism can continue its necessary expansion through the relentless opening of markets by relying on the elimination of exclusions from political emancipation (Halle, 2004: 126). In producing a bio-need, neoliberal capitalism draws sexual desire into its totalizing activity. Sexual desire retains a transformative relationship to the mode of production, however, in a capitalist – and particularly in a neoliberal capitalist formation – queer desire is aimed at desiring production itself, stripping queer identity of its status of functioning as a potential motor of social revolution. Any attempt to transform forms of existence for queer people must attend to the transformation of the mode of production, sexual dissidence, and subversion lest they be encapsulated into a liberal anti-queer conception of gay politics. For Halle, liberal queer pol-
Politics signifies the “integration of individual into a [Kantian] state of ‘independence from the compulsive arbitrary will of another’” (Halle, 2004: 101). Here, there is no withdrawal of the state’s limits or jurisdiction, meaning that power is not relinquished, and only a reconfiguration of the social relation and its forms of knowledge and power take place (Foucault, 1997; Halle, 2004). If queer politics is to attain the status of an oppositional group which seeks collective liberation, the reconstitution of queer life as a negating force is imperative.

Kevin Floyd introduces the Marxist concept of reification to sexuality studies in order to develop a queer materialist theory of the history of surplus as political command that binds sexual desire to the mode of production and presents itself as need like all other capitalist commodities. Part of the process of reification results in displacing the seat of social knowledge from open public debate to points of determination by a ruling class interest or ideology. Floyd evokes Lukács to suggest that reification is a “distinctly passive form of subjectivity” (Floyd, 2009: 41). For Floyd, “Reification enforces an objective but false, ‘frozen’ immediacy that causes human beings to experience historical processes as natural laws that govern human life and elude human control” (Floyd, 2009: 41). The impact of social knowledge on bodies (discipline) is foregrounded by a queer conception of reification. Neoliberal templates like human capital and universalisms like the site of the world market presuppose a capitalist ‘productivist lens’ that is heteronormative and relies on unpaid care work that ‘seems to take care of itself’ (Floyd, 2009: 46-50). Capitalist attempts at coordinating consumption with production result in the manufacturing of static queer identities which have qualities related to queer people’s relationships to commodities ascribed to them as subjects.

Tapping into sexual identity for the purpose of regulating knowledge and expanding capitalist production has recalibrated queer social philosophy. The commodification of sexual desire – queer desire in particular – is a process of material manipulation (Halle, 2004). According to Halle: [Sexual desire] now tenaciously straddles the divide between bio-need and contingent desire, bridging them, yet not fully drawn into the coercion of capital. Sexual desire retains a transformative relationship to the mode of production, foremost because retains both a form outside the hetero-coital imperative and a function distinct from commodity consumption...The portion of sexual desire that remains outside the mode of production becomes a subversive or queer desire. Within Marxism revolutionary activity ultimately arises from an ontological...A form of revolutionary consciousness, queer desire results from the mode of desiring production itself (Halle, 127-8). For Halle, the progressive liberal promise to delegate queer people the status of recognized sexual minorities misses the political meaning and potential of queerness. Marxism in this sense revolutionizes the Kantian and Hegelian conceptions of subjectivity as autonomous self-mastery by acknowledging that sexual desire has been brought into the flow of capital. Similarly, queer sexuality as a social category must be revolutionized (socialized) to demobilize gender categories and sexual desire as vehicles for capitalist commodity exchange and sites of social capital valorization.

The queer liberation movement associated with the 1969 Stonewall Riots was enmeshed during its formative years in the political climate of social liberalism. Often militant and partisan, queer activists envisioned conceptions of identity that were signified by the Stonewall Riots that framed queer politics as a contest between uncompromising interests. LGBT historian Jim Downs claims that the ideological foundations of the Stonewall-era queer movement were revolutionary. Downs argues that the community formation of the Stonewall-era gay liberation movement was linked to radical political imaginaries. Downs writes, “Gay people in the 1970s found one another and together created a lexicon, an idiom, newspapers, prayer groups, churches, beauty contests in bars, bookstores of their own - a culture and history that said their name. That culture, now largely forgotten, sustained them as they stood together as a community inspired by the promise of liberation” (Downs, 2016: 36). The relationship between identity and political partisanship challenges liberal ideological conceptions of a dichotomic split between individual identity and abstract reasoning about politics and culture.
Downs goes so far as to suggest that the modern queer liberation movement was necessarily related to a socialist politics and that the gay identity demanded radical politics in its moment of historical formation. Queer politics, in contrast to the liberal narrative, did not initially seek recognition from the state but in fact turned away from the state to build alternative nodes of power. Downs writes: Stonewall is important, but not because it initiated the beginning of claims on state rights. In fact, the opposite is closer to the truth: the political fervor of Stonewall launched LGBT people on a much deeper, more difficult journey. They began to rethink the very meaning of political power, ideology, and the role of the government. Instead of turning toward the state for recognition, they often turned away from it (Downs, 2016: 41-42). Downs’ position that queer identity is inherently opposed to the established state of things and that it ought to embrace its radical difference rather than seek to recuperate it establishes itself as a clear ideological and existential threat to liberal conceptions of identity that reproduce a defense of the status quo. In other words, for Downs, the liberal narrative about the gay rights movement is a myth told about queer history, not by it. “Certainly, gay people throughout the 1970s were engaged in political struggles for rights, but that is only part of the story,” claims Downs, “The LGBT movement was also infused with socialism, and this engagement led to a reconceptualization of rights, of strategy, of identity” (Downs, 45). The socialist conception of identity rooted in radical political egalitarianism, new epistemological foundations, and more socialized modes of communicative freedom for which Downs advocates pairs identity with a conception of justice and way of being that would become the target of neoliberal politics (Duggan, 1992).

The ideological aims of the liberal state can be understood as propagandistic insofar as, like Jason Stanley claims, the state reproduces a politics of representations to uphold an ideological consensus. Stanley writes, “What will be needed to keep the state stable, to keep the citizens from fomenting dissent, is some way to hide the gap between illiberal reality and professed liberal ideals” (Stanley, 2016; 8). Two fundamental Marxist theoretical concepts proposed by Gramsci help to illuminate this point: the elaboration of the notion of hegemony and its new conception of the integral state. The Gramscian notion of hegemony implies that the whole intellectual and cultural dimension of the class struggle is political, and that political relations are thought of in two ways: not only as coercive (class domination), but as an effort to elicit consent (hegemony). This dual structure to the class struggle implies a redefinition of political power, to which Gramsci’s notion of the “integral state” corresponds. Gramsci refuses to reduce the state to “political society”, that is to say, to its repressive aspect, but considers that civil society must be conceived as part of the state, for it constitutes the set of institutions through which the ruling class manages to guarantee its status. For Gramsci, a social institution “attaches one to a specific social group, it influences moral conduct and the direction of will, with varying efficacy but often powerfully enough to produce a situation in which the contradictory state of consciousness does not permit of any action” (Gramsci, 1988: 333). What Gramsci is suggesting is that the capitalist state relies so heavily on ideological consensus to mitigate class conflict that the aim of the state becomes propagandistic, or to repress any counter-discourse. Capitalism in the liberal state can attempt to resolve its conflicts, antagonisms, and contradictions only on its own terms.

The calculated effort of the neoliberal state to obtain consent from those political subjects who should otherwise be opposed to the interests of neoliberal elites is what can be centered and identified as propagandistic and totalizing (hegemonic). The object of capitalist-state propaganda is to construct forms of subjectivity and consciousness that exist only within the hegemonic bloc of neoliberal rationality. Neoliberal ideologies about justice present a political imaginary to proletarian subjects which suggest that those subjects will achieve a better life within the constraints of the system that exploits them in order to prevent them from turning to a counter-hegemonic politics. “The philosophy of praxis does not tend to leave the ‘simple’ [people] in their primitive philosophy of common sense,” Gramsci writes, “but rather to lead them to a higher conception of life” (Gramsci, 1988). The logic of liberalism begs the materially deprived political subjects of the liberal state...
to conceive of a life in which they achieve social mobility to improve their material welfare as opposed to improving their material welfare through a radical restructuring of social relations. Gramsci continues, “Consciousness [in capitalist society], therefore, is contradictory and lacking critical unity... But when the ‘subaltern’ becomes directive and responsible for the economic activity of the masses, a revision must take place in modes of thinking because a change has taken place in the social mode of existence” (Gramsci, 1988: 336). Capitalist actors embedded in the liberal state, for Gramsci, face crisis caused by the internal contradictions of capitalism and seek to constantly reshape the political imaginary in ways that appear new and responsive to social ills but do not fundamentally challenge the dictatorship of capital over labor.

Stonewall’s symbolic power in the queer movement is its role as a cultural artifact that serves as the point of reference for two stories, dubbed broadly the liberal and the radical narratives, that produce conflicting interpretations of historical events. The liberal narrative uses Stonewall as a point of reference for the ‘place’ where the gay rights movement began on its journey to obtain justice through recognition by the state which finally culminated in 2015 when Obergefell v. Hodges legalized gay marriage. This is not a mere caricature of the liberal narrative, but is rather actually demonstrative of how liberal ideology ‘works’ in practice to explain social movements. The Activist New York exhibit at the Museum of the City of New York, for example, identifies “Key Events” for the gay liberation movement that highlights instances of what Nancy Fraser would call “the politics of recognition” from the state, naming the 2011 legalization of gay marriage in New York as the final milestone event in “the gay and lesbian struggle for civil rights” (Activist New York, 2018). The power relationship present in a cultural institution’s decision to frame the history of a social movement is one of silencing some voices and privileging others. Conversely, the radical narrative will celebrate the 1969 riots at Stonewall, the moment of a community recognizing itself and militantly organizing against the apparatus of the liberal state, and point to Stonewall as a monument that has lost meaning in a world where the imaginaries of the dominant queer political voices are limited to formalistic-legal conceptions of justice (Bernstein & Verta, 2013).

At first, liberal stories about the gradual dissipation of state violence directed against minority groups sound like they might apply vaguely to the relationship between the state and queer people as a minority political group (i.e. it seems reasonable to suggest that it is less likely today that the police will raid the Stonewall Inn than in 1969). However, the liberal theories of political violence fail to grasp the nature of violence as something that also takes form in 1) material deprivation of resources, and 2) embodied discipline and the coerced adherence to ideologies that are not one’s own. This is the same liberal politics that fails to understand – or in my view, understands but ignores – the forms of structural and symbolic violence that became empowered at times of the temporary legal weakening of forms of ‘real violence’ (see Poulantzas). Laurence Pedroni compares the two moments of queer politics to which I refer, concluding that the radical movement at Stonewall “served as a break from the politics of assimilation and from class politics that dominated earlier gay politics” (Pedroni, 2016: 25). Pedroni points to “forceful exclusion” as the explanatory variable for the radical political articulations of justice associated with the early queer liberation movement. For Pedroni, one of (neo)liberalism’s chief political innovation was its ability to expand formal inclusion of identities while at the same time intensifying policies that materially deprived vast swaths of queer people through the gutting of public housing, access to healthcare, and employment precarity. However, neoliberalism maintained its claims about diversity and often obtained consent and agreement from economic and political elites associated with the queer community. By detaching the existential urgency of identity and the material reality of resource distribution from the discourse of rights, the legal-formal conception of justice “puts the discrimination at a much higher level by normalizing it. By normalizing this discrimination, it becomes institutionalized and systemic, making it much harder to change” (Pedroni, 2016: 27).
III. Towards a resubjectification of queerness

A coherent socialist critique of “identity politics” is less a decrying of identity politics per se than it is a demand to supplement a politics of recognition with a politics of economic justice and theories of transformative social change. Political theorists Nancy Fraser and Axel Honneth perhaps most famously discussed a socialist conception of justice in terms of the “politics of recognition” and the “politics of redistribution.” Fraser observes that by the close of the twentieth century, many radical social movements had almost entirely transferred leadership to voices that abandoned labor politics and other radical left politics in an attempt to distance themselves from Cold War imaginaries of ‘Soviet communism’ and to also obtain political legitimacy on the terms of the political order established in the neoliberal period in which identities could be commodified and converted into economic, cultural, and social capital, giving the illusion of increased recognition of marginalized groups that is possible without all the talk about revolution against the entire social order (Fraser & Honneth, 2003). Though Fraser notices a paradox: “Struggles for recognition occur in a world of exacerbated material inequality” (Fraser & Honneth, 2003: 68). Fraser’s concern is with the seemingly contradictory nature of a progressive expansion of recognition of rights at the same time as a massive rollback of economic redistributive justice.

Fraser notices an ideological function to the paradox of an imbalance between identity justice and economic justice which is to say that there is a false dichotomy between the two. The articulation of identity-as-commensurability that supplanted the notion of identity-as-difference was the theoretical foundation for a politics of recuperation that sought to align capital with the progressive nature of an expanded notion of rights and recognition. Fraser argues that capitalism and patriarchy have demonstrated that they can absorb ‘shocks’ in the realm of recognition so long as class differentiation is not undermined. Fraser proposes bringing class conflict back into the lexicon of the left: “Thus an approach aimed at redressing injustices of distribution can help redress (some) injustices of recognition as well” (Fraser, 2003: 85). What is particularly important to Fraser’s analysis is not her observation that capitalism will occasionally give concessions to its political opponents to secure its own social power, but rather that the entire hegemonic ideological system of the capitalist West was undertaking a strategic logic of recuperating perceived losses and threats of radical social movements.

Synthesizing the relationship between a reductive Marxist analysis of political economy and a broader cultural theory has been the bane of the left for much of the past half-century. What critical theory did do positively to assist the classical Marxist framework is to demonstrate that capital is not an abstract autonomous force with its own determinant logic, but rather that capital exists amidst other agonistic power relationships and that capitalists have the need to invest much of the surplus that they command in securing the material as well as the ideological conditions for the reproduction of class society. That is to say, capitalists may make decisions for reasons besides “rational-economic” ones when necessary to secure ideological hegemony by recuperating from periods of strong counter-hegemony. I refer to John Downing’s view that recuperation means “that the ruling class could twist every form of protest around to salvage its own ends” (Downing, 73). Downing’s work, informed by the Gramscian notion of hegemony, grapples with the ways in which capital does not ‘chase’ its perceived allies but rather that capital structures the social relations of the subsumed and fundamental classes and at the same time social relations determine the allocation of capital.

Capitalism goes through periods of expansion and consolidation of not just capital, but of real and symbolic social power. It is necessarily from this point of view that Marxian critical theories about culture, society, and politics emerge. Downing summarizes, “Capitalism maintained and organized its leadership through agencies of information and culture... The perspectives on the wider society generated within these institutions often produced an unquestioning view of the world that took the status quo as inevitable and ruling class power as founded on that class’s unique,
self-evident ability to run the nation” (Downing, 28). The neoliberal moment, from the perspective of maintaining ideological hegemony, was initially characterized by a legitimacy crisis. Capitalism existed for most of its recent history in bourgeois liberal democracies, but capital found itself in a position after the 1989 ‘collapse of socialism’ where it needed liberalism (state-enforced access to markets, bourgeois individualism, and property rights) but did not necessarily need the democracy (social welfare, regulation, redistribution) associated with it.

IV. Real and symbolic violence

The intense privatization of public spaces and the construction of the neoliberal homo economicus has had violent consequences for queer people. I argue that the process of recuperation by ruling elites that took the form of neoliberal reaction was an act of what Pierre Bourdieu would call symbolic violence. As Bourdieu explains, “symbolic violence” does not mean to refer to something that is fundamentally different from or more important than “real violence” but rather attempts to add an ideological dimension to the analysis of violence’s functionality. Bourdieu’s concept of symbolic violence focuses on the analytical category of perception, considering the politics of misrecognition as a form of structural or symbolic violence. Bourdieu and Loïc Wacquant argue, “[We] call misrecognition the fact of recognizing a violence which is wielded precisely inasmuch as one does not perceive it as such” (Bourdieu & Wacquant, 2003: 272). Symbolic violence is concerned with the ways in which trivial everyday choices, speech-acts, and arrangement of life symbolize social similarity and difference by ascribing practices and associations to them. It is a process of submission whereby the dominated perceive the social hierarchy as legitimate and natural. The dominated integrate the vision that the dominant have of the world. This leads them to make themselves a negative representation. Symbolic violence is the source of a feeling of inferiority or insignificance among the dominated which leads the dominated to take for granted, or at least presuppose, the operative logics of the dominant social classes.

The discourse around gay marriage, for example, presupposes the logic of marriage as something that ought not be contested, only expanded. The form of violence present herein is found in the process of assimilation that is prompted for queer people who incorporate into an institutional arrangement that was never developed by them. In Against Equality, radical queer activist Yasmin Nair argues that the “holy trinity of liberal gay politics” (gay marriage, gays in the military, and hate crime legislation) leads queer politics to a forced adoption of sexual violence and aggression that underpin the institutions of family, military, and capital”. This sexual violence becomes interpreted as symbolic violence when it is neither a direct process of influence nor a vast manipulation of speech (in the Habermasian sense). It is a collective belief that helps maintain hierarchies. It has the effect of subjecting the dominated without the dominant needing to resort to force, similar to Gramsci’s concept of hegemony. Symbolic violence consecrates the established order as legitimate. It thus conceals the power relations that underlie the social hierarchy, and it serves to pacify relationships within the social structure. “Insofar as this is the case,” summarizes Elliot Weininger, “the misperception of social space - which characterizes both the dominant and the dominated, albeit to the advantage of the latter - is also ‘symbolic violence’” (Weininger, 2005: 145). Symbolic violence is the space where the ‘real violence’ of the past does not disappear but reconstitutes itself in the organization and regulation of queer life.

Tracing the forms of contemporary ‘soft’ coercive power as violence’s alternative expression to raw state violence, as Foucault suggests with his genealogical conception of biopower, remains equally unsatisfying. Foucault’s dichotic split between forms of sovereign and biopolitical power is too ‘neat’ for a Marxist understanding of both the historical persistence of violence across economic modes of production and the constant drive to innovate ‘new’ articulations of violence. Achille Mbembe’s necropolitics – the politics of determining who must die and who may live – combined with Foucault’s biopolitics – the politics of determining
how the living may live – produce a modified and more dynamic way of reading power in neoliberalism’s recuperation of the queer movement that is based on the double-movement of granting a radical expansion of formal subjecthood (recognition) to queer people that, in doing so, brings queer people into the apparatuses of the state and private capital which may then determine precisely which versions queer life will exist. Foucault’s work on the emergence of modern bourgeois rationality and procedures for measuring, calculating and organizing sexuality in 18th and 19th century Europe, as well as his subsequent reflections on the practices of governmentality, focused precisely on the emergence of this modified modern form of power (Foucault, 1997). For Foucault, such a biopower no longer depended on the capacity to give death associated with sovereignty, but rather on a varied and organized arsenal of normative processes that were at once creative, useful, disciplined, and effective in their purpose of creating and preserving life by fashioning ways of life and forms of collective knowledge in the social body which could be easily determined and anticipated by ruling elites.

Mbembe critiques Foucault’s conception of biopower for assuming that it is immediately universalizing – that once the transition from sovereign power to biopower begins, it is generally linear and developmental in its operative logic, bringing more bodies into the regulation of life and leaving behind the ‘old’ forms of power. For Mbembe, various types of power with different logics and temporalities can coexist in the same space at the same time. Mbembe considers the political situation of those who live in spaces where the dominant regime of biopower forcibly excludes them and relegates their forms of existence to the forms of raw state violence that liberal theorists once pronounced dead. Mbembe writes, “My concern is those figures of sovereignty whose central project is not the struggle for autonomy but the generalized instrumentalization of human existence and the material destruction of human bodies and populations” (Mbembe, 2011: 14). To apply Mbembe’s conception of sovereignty and power to queer politics and queer bodies, it is possible to conceptualize how there are present within the same community subjects who live lives of relative privilege, unaffected docility, or constant threat; what Mbembe calls a “concatenation of the biopower, the state of exception and the state of siege” (Mbembe, 2011: 22). For Mbembe, the identities in a subaltern social group that are most fundamentally contradictory to the dominant order or ideological narrative are subjected to a reign of terror in an ongoing process of violent expropriation for wealth.

V. Conclusion

The current articulations of gay politics offered by neoliberal elites represent a caricature of the ideal post-political social movement: a movement that is motionless. Stripped of its political history out of the neoliberal backlash against the feared victories of militant social struggles. Liberal and assimilationist politics do not function as the ‘peaceful’ march towards progress, but rather as an ideological smokescreen behind which the reactionary tendencies of capital accumulation instigate a historical blowback against radical social transformation. The task of a radical queer politics is not to sequester legal recognition from the bourgeois state, but to carefully invent a politics of another sort. The Stonewall Riots in 1969 represented a revolutionary act of self-defense in the spaces in which liberal bourgeois society penned a community. Neoliberalism’s totalizing ideological apparatus attempts to force queer people to abandon political grounds in favor of a festive consumerism and to convert gay identity into a conservative force that breaks down networks of solidarity in favor of isolation and competition. Nostalgia for whatever an imagined political past might be is futile, but a transformative queer politics is critically necessary for reframing the prospects of human liberation and political democracy. Through struggles to reclaim labor and political subjectivity, queer politics must take up the task of abolishing the public-private split, the state of post-political activism, and ultimately all the repressive antagonisms inherent to neoliberal capitalist society.
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Reproductive Regimes: Construction, Maintenance, and Resistance

Jasmine Short
Introduction:

Governments have found ways to involve themselves in human life from conception to death throughout history and in all parts of the world. This type of involvement can take on the form of interference in woman's reproductive rights, the decision of whether or not incarcerated people can be executed by the state, and if it is legal to, as a subject of the state, take your own life. In all of these instances, human life is in the hands of the government. Beyond the regulation of bodies, government injects itself into the process by which life is formed. There are laws and judgments made about who must and must not reproduce and on what grounds those who can should do so. Some of these laws and judgments have incorporated themselves so neatly into daily life that they are rarely contested, others have been subjects of mass resistance. But both the mundane and the extraordinary make up a state implemented reproductive regime. These reproductive regimes have shaped and changed the way in which governments and those subjected to the regime interact and have defined the way that we view the role of the government in human life.

The word regime can be used as a synonym for government or can correspond to an ideology or specific individual. This can be seen in the form of fascist regime, military regime, neoliberal regime, etc. A regime could also be a set of rules, norms, or institutions and though the word itself has gained a negative connotation from its association with dictatorship or fascism, it is not tied to either. In this framing, a reproductive regime would encompass any governmental institution, set of laws, or norms that regulate or monitor reproduction. These regimes do not only apply to the most extreme cases, each government has its own form. Some features have been part of society/law for so long that they go unnoticed and integrate into daily life, making subjects unaware of the regime itself. Others, especially newly implemented regimes or large changes will trigger reaction and shape the lives of those affected with greater force.

Two of the strongest examples of reproductive regimes in modern history are the laws in place surrounding abortion and woman's reproductive rights in the United States and the recently expired one child policy in China. The ways in which these regimes were constructed, maintained, and resisted set a precedent for the reach that government has into the life of the citizens of their respective countries. While both the one-child policy and the fight for abortion rights have extensive histories, I will be covering both from the 1970’s, when both the one-child policy was enacted and the landmark Roe v. Wade case was decided. I will be examining both the way the governing bodies establish these regimes and the ways those who are subject to them respond, comply, or rebel. Along with this, I will be investigating how these regimes define our view of how involved the government should or can be in human life.

US Case:

Background:

On January 22nd 1973, in a 7-2 supreme court ruling, it was decided that the right to privacy guaranteed in the 14th amendment of the US constitution encompassed the woman’s right to an abortion. This decision was based on the legal precedent set by Griswold v. Connecticut a decade earlier which guaranteed the right to medical privacy. But this was not the first time abortion had been legal in the US. It wasn’t until 1860 that abortion was criminalized in the first place when the Catholic Church condemned the practice (Greenhouse, 2011). Before Roe, there was no federal law on abortion, it was up to the states to create their own policies, none of which allowed safe and legal abortion prior to 1970. The supreme court case originated with 21-year-old Jane Roe, or Norma McCorvey, seeking an abortion to end her pregnancy with her third child. The state of Texas, where McCorvey resided, provided exception to the illegality of abortion for cases of rape, incest, and when birth would pose a threat to the mother’s life. Qualifying for none of these, McCorvey sought out an illicit abortion service that she found out had been shut down. This resulted in McCorvey seeking out legal representation to send her case to the district, and ultimately the supreme, court. Roe was not the
first case of this nature to be seen, leading up to Roe was the 1971 charge of manslaughter on Shirley Wheeler whom had an illegal abortion and was turned in by hospital staff after complications, she had begun hemorrhaging after an illegal abortion provider had inserted a catheter in an attempt to induce a miscarriage. Wheeler was the first American woman to be charged and convicted of manslaughter of this nature. Originally threatened with 20 years in prison, she was given only two years probation, but with conditions forbidding her from going to bars, staying out late at night, and requiring her to marry the man she conceived the child with. This case gained wide sympathy and acknowledgement and was a first step for popular support of Roe. Wheeler spoke at Women’s National Abortion Action Coalition rally in Washington DC where the crowd greeted her carrying signs saying “Defend Wheeler” and even the notorious Playboy Magazine showed their support. The conviction was ultimately overturned by the Florida Supreme Court (Nordheimer, 1971). Doe v. Bolton was an incredibly similar case involving a 22-year-old woman seeking to terminate a pregnancy in Georgia in 1970. The decision on Doe v. Bolton was made in conjunction to Roe v. Wade and was announced on the same day, but remains the lesser known case. The Doe v. Bolton decision also supported the women’s right to abortion and came to the same ruling as Roe. By the time the supreme court decision was made, both Roe and Doe had given birth (Faux, 1988).

Government Reach:

In Ruth Bader Ginsburg’s 1985 essay Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade, Ginsberg continually refers back to individual, reproductive, and women’s autonomy in relation to the landmark case. She addresses the relation between reproductive autonomy and personal autonomy in other facets and examines the role of government involvement in life and bodies. Ginsberg argues that the Roe v. Wade decision was rooted in personal autonomy coming from the due process guarantee, not just the right to privacy guarantee in the 14th amendment. Though Ginsberg has been a longtime supporter of the Roe decision, she provides pointed criticism on the ruling. The court ruled that, under the right to privacy, the decision to have an abortion was between a woman and her physician. Ginsberg’s criticism of this phrasing is that it ties a woman to her physician, not giving her full autonomy in the decision. She also disagrees with the lack of connection made between abortion prohibition and discrimination against women and argues that focusing on just the autonomy of a women to be pregnant or not is too narrow. To this she says, “The conflict, however, is not simply one between a fetus’ and a woman’s’ interest, narrowly conceived, nor is the overriding issue state versus private control of a woman’s body for a span of nine months. Also in the balance is a woman’s autonomas charge of her full lifes course—as Professor Karst put it, her ability to stand in relation to man, society, and the state as an independent, self-sustaining, equal citizen” (Ginsburg, 1985, 382). In this she is saying that the right to abortion not only important for a woman’s right to autonomy of the body, but encompasses the right to the autonomy of her whole life.

Ginsberg then takes a turn to address the ways in which women of different classes and races are affected by Roe and addresses the concerns of genocide that often surround the topic. In 1971 Ginsberg attended and spoke at a conference on women in law and while the majority of her comments were not on the topic of abortion, the majority of the questions she received afterwards were. Many audience members, particularly Black men, were worried that the Roe decision was not solely based on concern for women’s rights and personal autonomy, but instead population control, preventing low income women from having children, and suppressing minorities. These audience members addressed the worries that there would be state sponsored or supported abortions to control population according to class or race. These concerns are not baseless, the United States has a long history of regulating Black bodies, especially in the form of reproduction. In her book, Killing the Black Body, Dorothy Roberts stresses the importance of these events historically and in the present. Roberts was originally moved to write on this topic after hearing
of Black women who were imprisoned in the 1980’s for using drugs while pregnant, which she saw as a persecution of Black women for having children and a regulation of reproduction. Roberts’ study spans from slavery to present day America. From 1619-1865 white slave owners had complete control over the bodies of their slaves, including reproduction. During this time period Black women had no legal right to their own reproductive systems or whether or not they could bear children. They were used by slave owners for means of reproductive labor and childbearing was seen as an economic resource. Roberts says this “led to a regime of practices, and laws, and ways of thinking about black women’s bodies that permitted coercion of their reproduction” (Roberts, 1997). Long after slavery was abolished, the reproductive rights of Black women are still being contained and controlled by the state. Eugenics, promoting certain groups as genetically inferior, is a prime example. This was coupled with the forced sterilization of Black women in America, relating directly to the worries that the legalization of abortion could expand into something like this. One year before Roberts published her book, Bill Clinton enacted the Personal Responsibility and Work Opportunity Reconciliation Act which put in place policies that deterred women on welfare from having children. Roberts argues that this was a form of regulating the Black women's body and is based in the stereotype of “welfare queens who supposedly had children just to get a welfare check”. Killing the Black Body was published 20 years after Roe and Roberts main concern at this time was restricted access to abortion for women of color. On reproductive regimes as a whole she says “Reproductive justice is grounded in the struggle for social justice that goes beyond an approach that focuses on individual women’s choices”(Roberts, 1997).

The 1976 Hyde amendment remedied some concerns on race/class selective abortions imposed by the state by barring the use of federal funds to pay for abortion with the exception of women whose life would be jeopardized by birth. This amendment created another set of problems, however, less about whether poor women would be forced or encouraged to abort by the state, but instead whether they would now have access to abortion at all. Ginsberg sites the Hyde amendment as “creating the middle class right to abortion” (Ginsburg, 1985, 378). This debate established the fine line between too much and too little government involvement in reproductive issues. While the government was not giving any federal funds to abortions, they were still paying for childbirths. This is also seen as a partisan move by the US government as they would financially support giving birth, but not terminating a pregnancy. This poses the question, to what extent can and should the US government support or condemn abortion and childbirth without being culpable for too little or too much involvement?

Negative Freedoms:

In her essay, Ginsburg refers to abortion as a negative right. These rights are in conjunction to negative and positive freedoms that one has in respect to government involvement in their life. Negative liberty in respect to the government and the individual is the freedom from interference. Many of these negative liberties are guaranteed in the Bill of Rights preceding the constitution, which calls on specific limits of governmental power. The courts argue that the right to an abortion being a negative right, the government does not have the right to infringe upon it, but also does not have the responsibility to provide any support. In contrast, if abortion was a positive freedom the government would have a responsibility to support it and be involved. Positive freedom refers to the ‘capacity to’ rather than ‘freedom from’ and is the place that most collectivist decisions come from and is essentially the role of government (Van Hees, 1998).

Resistance:

Before and after the Roe decision, individuals pushed back on the government on both the pro-life and pro-choice platforms. Pro-life activists argue that abortion is a form of infanticide and that the moment of conception is when life begins. Pro-lifers believe in greater government involvement into the reproductive systems of women. These move-
ments focus on the short term picture of reproduction or the nine months between conception and birth, but have little concern with women’s bodies, lives, or reproductive rights pre and post pregnancy. This perspective makes the pro-life view a relatively short sighted one. On the other hand, pro-choice activists believe that it is the woman’s right to choose whether or not to abort a fetus. They utilize this negative freedom-style argument by demanding that government stay out of the reproductive systems, bodies, and lives of women. Pro-choice movements look at a greater scope of issues such as reproductive rights pre-conception, like access to contraceptives, and considers a woman’s life and wellbeing post birth. Before the establishment of Roe, one of the largest forms of resistance to this overreach of governmental power was a silent one. While large demonstrations were held in New York’s Central Park, on the steps of the capitol in Washington DC, and across the country demanding rights, one of the most effective forms of resistance was simply not abiding by the laws. Pre-Roe, there was no federal law regulating abortion, being up to the states to determine, most banned abortion completely with exception of threat to the mother’s life. Going against the grain, New York State legalized abortion in 1970 and, while only three years before Roe legalized abortion on the federal level, was a major form of resistance to not only the previous New York ban on abortion, but a challenge on the bans in other states. Between 1970 and 1972 it is estimated that clinics in New York preformed 400,000 abortions, the vast majority, around two thirds, being women from out of state (Jacobs, 2018). This was a way for women to resist their own state laws, of course due to the expense of traveling to New York and the additional expense of the procedure, this wasn’t a form of resistance afforded to everyone. For those who could not travel for an abortion, other forms of resisting the law by simply not abiding were available. In most states where abortions were not yet legal, there were still doctors and under the radar clinics that would perform the procedures. Others who performed procedures were individuals with medical experience but not in the field of reproductive care, like chiropractors, or by complete amateurs who figured out a way to give an effective abortion themselves. Women who could not gain access to or afford even a back alley procedure would often perform the procedure on themselves by ingesting poisons or chemicals or by using a sharp metal object like a knitting needle or famously a coat hanger to get rid of the fetus. Tragically, these risky, self inflicted procedures led to around 200 deaths a year (Page, 2006).

Despite sometimes being a dangerous option, the formation of underground abortion clinics by medical and non medical providers was also a large form of resistance. In 1965 Chicago, nearly a decade before Roe, an illegal abortionist group, coincidentally named Jane, advertised their services around the city through word of mouth or fliers put up in subways and other public places. The fliers read “Pregnant? Don’t want to be? Call Jane” with a number attached. Jane was formed by a 19 year old college student Heather Booth who had found a doctor that would perform underground abortions, but due to high demand, non medical members began performing the procedure themselves. Not every member was a young college student, as the network grew healthcare providers, mothers, and housewives joined in. Jane charged 100 dollars for the procedure, 5 times less than most other clinics, their aim was to create accessibility and would take patients even if they couldn’t pay. Providing an average of ten abortions per day, Jane would perform a dilation and curettage procedure, which was surgical. Due to the fact that non medically trained individuals were performing a surgical procedure, some clients ended up in the hospital, but none ever died. In the seven years that Jane was active they performed an estimated 11,000 abortions.

While Jane attempted to stay under the radar, their large network made it impossible for them to go unnoticed by the state. In 1972 Jane was reported to the police by two women who heard a relative was planning on having an abortion. On that date police showed up to the apartment and arrested all of the women present, charging them with eleven accounts of abortion and conspiracy to commit abortion. When the police arrived they asked to see the doctor performing the abortions and were shocked to find it was just these women. Fortunately, these arrests were made six
months before the Roe decision and the charges on all women were soon dropped (Gilles, 2018).

**China Case:**

**Background:**

When Mao Zedong rose to power as both the leader of the CCP and the People’s Republic of China in 1949, he stressed power to the people and power of the people. This included strength in numbers and Mao encouraged families to have as many children as possible saying “Of all things in the world, people are the most precious” (Spence, 1999). There was also a need for a large population at the time as there was a high demand for manual labor and bodies were seen as a valuable economic resource. As a result, birth control and contraceptives were banned throughout China. In 1958, during Mao’s Great Leap Forward, Hu Yaobang, secretary of the Communist Youth League, stated “A larger population means greater manpower, the force of 600 million liberated people is tens of thousands of times stronger than a nuclear explosion”. This number grew from 600 million at the time of this statement to nearly one billion in the 1970’s. It was not only heightened birth rates that cause such a dramatic spike in population, as standard of living increased, so did the life expectancy of citizens. While there were a number of factors that could have hindered China’s population growth in that time, China’s population continued to climb at record rates. Mass starvation and violence post great leap in the early 1960’s is estimated to have caused close to 45 million deaths, but did not have a substantial impact on birthrates or population growth. The CCP also made several attempts to encourage the small family pre one-child policy. The party encouraged a greater waiting period between having each child hoping that would result in fewer births. While this made some difference, it was not as effective as the party had hoped, partially due to the fact that none of their policies were enforced but rather relied on persuasion which is not nearly as effective as coercion and threat of punishment (Spence, 1988). This growth sparked worry that the rising population would be putting strain on the country’s resources and may cause famine or inability to provide adequate healthcare, potentially leading to mass death. A landmark moment in the implementation of the one child policy occurred in 1978, when the Third Plenary Session of the CPC’s Eleventh Central Committee was held in Beijing. This committee session marks the key point at which China moved away from focus on Maoist class struggle and into Deng’s economic reforms. As a result, in 1979 President Deng Xiaoping addressed the problem of a ballooning population by implementing China’s one child policy where ethnically Han Chinese couples, who make up around 92% of China’s population, could only have one son or daughter. Exceptions were made to the policy for families living in rural areas and ethnic minorities, who were allowed two children. In fact, according to China Daily, so many exceptions were given that only 40% of China’s population was actually ever subject to the one child policy. To supplement the policy, the legal age of marriage was pushed back to 20 for women and 22 for men in hopes that later marriage would mean less children. In the 1950’s and 60’s China’s population had been rising approximately 2% per year, by 2007 that number had dropped to .7% (Meisner, 2007).

**Enforcement/ maintenance:**

Beginning in 1983, in an attempt to prevent unauthorized births, the CCP began sterilizing women who had already had a child and insisting on abortions for women carrying children illegitimately. This differed from previous reproductive policies as they had been mostly by suggestion, this time it was enforced. For women who had unauthorized children, penalties could be imposed, monetary penalties at the least and forced abortion at the most. In terms of policy enforcement, a study was done in Zhongshan Village based on fertility data from the residents from 1970-2000. It was found that couples married in the early 1970’s experienced some ‘tightening up’ on a previously moderate birth policy. Couples married in the late 70’s and early 80’s underwent the strictest birth control measures, while couples married in the
1990’s experienced the policies as simply functions of the state. For many couples married later in this time period, the one child policy was the only reproductive regime they knew, they did not have to experience the sudden change or shift in mindset from expecting to have multiple children to having one (Zhang, 2007). These shifts within the three decades are shown by the changes in family structures of Zhongshan Village. In the early 1970’s, when the policy was more moderate, a two to three child household was still the norm, but by the late 70’s a three-child family was nearly nonexistent. Couples married in the late 80’s and 90’s had the most dramatic shift toward the adherence to the one child family. Even in rural areas the allowance of two children tightened at this time into the allowance of a second child only if the first was a girl.

Twenty years into the policy, in the mid 90’s when one child families were the norm and the policy had its greatest level of acceptance, many men and women stopped doubting the policy. Dongmei Qin, a woman living in a rural village in the the 1990’s gave birth to a first child, a girl. As her first child was female and she was living in rural China, she was allowed a second child. She chose not to, responding to the question of why by saying “With one child I can do my best to make sure she eats the best, wears the best, and gets the best education. Why not just have one child?” Tens of thousands of other families that had been issued certificates for a second child also chose not to use them (Zhang, 2007).

**Resistance:**

While many families embraced and conformed to the policy, some even giving up their two child certificates for one, others intentionally and unintentionally resisted. The largest resistance initially came from the peasant class and measures were taken by the government to appease this unrest. Some peasant families and people living in rural areas were given allowance to have a second child to relieve the financial burden that having only one child would have on agrarian communities. These peasant classes were also upset by the prospect that half of families would not have a son which has both traditional and practical importance to rural families. In reaction to this complaint, the party, even after retracting the two child policy for rural families and replacing it with a one child policy, allowed rural families to have a second child if the first is a girl (Wasserstrom, 1984). This also helped prevent the infanticide or sex selective abortions of baby girls if parents knew they would be able to try again for a boy.

While resistance is often imagined as active protest or voiced grievances, one of the greatest forms of resistance to the one child policy in China, similar to the US case, was simply not abiding. In anticipation to resistance and families not abiding, the government added incentives for families who agreed to have one child and took action like having an IUD inserted or voluntary sterilization. Cash stipends and priority land space were given to these families, along with preferential treatment in education and healthcare to only children (Wasserstrom, 1984). Rewards for compliance were not the only motivators to abide by the policy, those who had more than one child in urban areas or more than two in rural were subject to fines, forced sterilization, or abortion. In 1980 the Qin family of Hubei Village found themselves in a similar position as many other Chinese families. They were planning on having a second child, but their plans were hindered by the implementation of the policy. The Qin family decided to ignore the policy and go ahead with a second child, their first child was a girl and they had been hoping for a boy. After having a second daughter in 1980, the state punished the Qin’s by confiscating a shrine from their home and took away 700 work points from the father. The family was then given an ultimatum, the mother must be sterilized or the furniture and workpoints would not be restored. The Qin family complied, the mother was sterilized and the goods were given back to the family.

**Baby Girls and Widows:**

Every March the United Nations Commission on the Status of Women holds a series of events and seminars on the status and welfare of women internationally. This year WUNRN, Women’s UN
Report Network, held a seminar on the welfare of
of baby girls and widows in China, who they con-
sider the two most subordinate classes of individ-
uals in the country. Speaker Reggie Littlejohn, a
graduate of Yale law school and founder and pres-
ident of Women’s Rights Without Frontiers, attri-
butes the persecution and neglect of both classes
to China’s one child policy. Women’s Rights With-
out Frontiers was an organization founded in 2001
originally with the sole purpose preventing forced
abortions in China, then later expanded to the pro-
tection of widows and baby girls. Women’s Rights
Without Frontiers provides monetary incentives to
families who keep female fetuses in pregnancy and
also maintains a program that gives elderly widows
a monthly stipend for living expenses. Littlejohn,
a self-proclaimed expert on the one child policy,
spoke about how in her visits to China in the 1990’s
she worked with women who had undergone forced
abortions and sterilizations at the hand of the Chi-
inese Communist Party and legally represented
these women as they sought asylum in the United
States. She began by describing a concept she calls
gendercide, the selective abortion of female fetuses
or infanticide of female newborns. As boys are fa-
vored in Chinese culture, gendercide in China has
resulted in a heavy gender imbalance with there be-
ing nearly 37 million more men than women in the
country today turning the gender ratio from 1.06
women to every man to 1.17 women to each man.
This imbalance is currently affecting males in their
20’s and 30’s as many remain unmarried simply due
to the fact that there are not enough women in the
country. Within the age range of 35-39 year olds
in Guizhou China, for every one unmarried wom-
en there are 75 unmarried men (Hecketh, 2006).

Not only has the one child policy affected
the population size of China as it was originally in-
tended to, but it has completely disrupted and re-
shaped the family structure. This is where elderly
women and widows enter the picture. Traditionally
in the Chinese family structure children take care
of their aging parents or will take their mother in
if they are widowed, but with the implementation
of the one child policy, less children means there is
simply less support. Elderly and widowed women
are often left to fend for themselves in rural areas
if their families have migrated to cities and it is not
uncommon for widows to be left with debt from af-
fairs pertaining to their deceased husband. When
thinking of an elderly person we picture someone
in their 70’s or 80’s, but in rural parts of China life
expectancy drops nearly 10 years so a woman of 60
could be considered elderly. Since the implementa-
tion of the one child policy, rates of suicide in older
women and widows in rural areas have also risen.
People in rural areas in China are already two to
five times more likely to commit suicide than those
in urban settings and, according to the American
Journal for Aging and Disease, the suicide rate for
seniors over 65 is four or five times higher than the
rest of the population in China (Yip, Liu, 2005).
Along with this, Chinese women account for more
deaths by suicide than men. Littlejohn also makes
the claim that suicide rates have increased by 500% in
China over the past 20 years, in correlation to the
effects of the one child policy being felt. These
statistics compounding on each other puts these el-
derly women in rural areas who have felt the ef-
effect of the one child policy at particularly high risk.
Considering this future is another reason why par-
ents in China may favor having a boy over a girl.
While both sons and daughters play a role in caring
for their aging parents, it is typically the son who
will provide for them financially or provides them
with a place to live. China is a patrilineal society,
family membership is derived from the fathers lin-
eage and wives marry into and become part of
their husband’s family. If parents can only have one
child, it is understandable that they may choose the
option that gives them greater security later in life.

The movement away from children caring
for their parents into old age is not only a result of
the one child policy, but a cultural shift away from
the traditional values of filial piety, the Confucian
and Buddhist principles of having supreme respect
for their elders and ancestors. One contributor to
this was the lift of the urban rural migration ban
from the Mao era. In the 1950’s, residency regis-
tration systems controlled who could move from
urban to rural spaces. Due to the lift of this policy
of registration, more and more young people are
moving from rural to urban areas to pursue indus-
try jobs, abandoning being filial to their parents.
But it is not only sons and daughters breaking down the filial system in rural areas, many parents are embracing self-sufficiency or hoping for money to be sent home from children who have moved away rather than having those children work for them on their farm. The patrilineal system is also key to the filial piety. It is imperative to have a son to carry on your family name and family legacy (Wasserstrom, 1984). Carrying on the family name is a large part of filial piety as it shows respect and acknowledgement of your ancestors. When a family has only a daughter, the family line and ancestors name is not carried down to the next generation. With a large number of Chinese families having only a daughter and no sons, this has become normalized and led to the further break down of filial piety (Yi, 1986).

While Littlejohn expresses that the selective abortions of baby girls has deemed women in China worthless, others express that the emergence of the one daughter, no sons family has stressed the importance of women in the family structure. Without a son, daughters assume a greater role in the family, they are no longer dispensable. It has privileged more girls to work and study because they now have greater economic value and responsibility to earn for their family. With only one child to put through school, sending children to college is less of a financial burden and has been occurring at a greater frequency even among daughters. Sex selective abortion and female infanticide also may not be primarily a sign of misogyny in China, but a sign of poverty. With patrilineal family structure, having a son could be crucial for survival of an impoverished family. Female infanticide might not always be an act of cruelty, but is sometimes an act of desperation (Yi, 1986).

Though Littlejohn is an expert in her field and she states that Women Without Frontiers is neither a pro choice nor pro life organization, her perspective, as with any source, must be examined for biases and taken with a grain of salt. Littlejohn received the National Pro-Life Recognition Award in 2013 and has been a keynote speaker at both the March for Life and National Right to Life Convention. She is also a white American woman who has not been personally affected by the one child policy and has involved herself by choice, not necessity. Along with this Littlejohn is religious and worked extensively with Mother Teresa during her life (Women Without Frontiers).

End of China’s Policy

Beginning on January 1st 2016, China’s one child policy was officially lifted. The process had begun in March of 2013 but did not go into full implementation until three years later. In those three years, a three step process was carried out, the first, to create the National Health and Family Planning Commission. The second was to relax the policy nearly a year later to allow women who were only children themselves to have a second child. This gave nearly 11 million woman the option to apply to have a second child, but out of this 11 million only 1.7 million applied, or close to 15%. The third and final step was to fully implement the two child policy in place of the standing one child policy. Another key change to China’s reproductive regime in 2016 was couples were no longer required to apply to have a child or seek approval from the government before birth and only had to register the child after birth. This is an incredibly significant move by the Chinese government as it as a huge step back from the direct control that they exerted previously. By not requiring families to ask permission to have a child, the power of the government within the reproductive regime is greatly reduced. This rollback in power poses the question, was this the last step of the changes in China’s reproductive regime or are we moving towards a China with no restriction on births? (Wang, 2016)

It is no surprise that after 35 years China’s one child policy was lifted as it was never meant to be permanent. The restriction was originally placed to reduce China’s population and alleviate stresses on the economy, resources, and environment. From 1980 to 2016 China’s population grew from 969 million to 1.379 billion in 2016. While this may seem like still an extreme amount of growth, though the population itself grew, the rate at which it was growing slowed dramatically from 2.97 children per woman in the 1970’s, to 1.77 children per woman in the 1990’s and according to the Chinese govern-
ment, the policy prevented 400 million births. This claim implies that there would have been nearly twice as many births within the 35 year period than there were had the policy not been put in place.

The policy ended for the same reasons it started, it was putting economic strain on the country. While vast numbers of Chinese people are currently heading towards retirement, a much smaller number is entering the workforce. It is estimated that by 2030 25% of China's population will be over 60 years old. This is in contrast to the United States 15.2% over the age of 60. The growing number of elders is not only a demographic, but economic problem for China. Retired elderly people require government pensions and support as well as heightened medical care. If 25% of China's population is requiring this care, there will be serious strain on resources. Within the demographics issue in China was the growing gender imbalance. An increase in unmarried men hurt the social structure and traditions. While demographics and social issues did come into consideration when ending the policy, the beginning, implementation, and ending were mainly for practical reasons (Hecketh, 2015).

Conclusion:

Though there is great variation between them, every government implements a form of reproductive regime. Whether out of necessity or perceived morality, reproductive regimes have the ability to shape the lives of those subject to them. In the case of China's one child policy, the family structure and demographics within the country took a sharp change and citizens were forced to adapt. The fight for abortion rights in the United States has not only determined to what extent we allow women autonomy over their own bodies, but has put into question how involved the government should be in civilian life. While reproductive regimes may seem absolute, they are always subject to resistance and non-compliance which can determine the direction and effectiveness of the regime. In the end, reproduction will always remain an aspect of human life and society under governmental influence, but reaction, resistance, and results will ultimately determine if a regime is a success or failure.

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Cory Anderson

Julia Arce

Emily Contreras

Cameron Cory

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