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We are pleased to present to you the inaugural issue of the Washington University International Review. This journal is a compilation of undergraduate research articles focusing on topics that we find to be of international importance.

Editorial Board

Megan Cook    Aaron Lesser
Allison Hay    Lian States
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Acknowledgements

We would like to acknowledge the people who made this publication possible. First, we express the deepest appreciation to Professor Timothy Parsons, who not only established the journal, but also was indispensable in his role as our mentor and advisor. The success of this journal can be attributed in large part to his direction and constant guidance. We would also like to thank Robin Meyer and Rajbir Purewal Hazelwood. Their assistance proved to be essential in the publication of this journal. Professor Jean Allman also deserves significant thanks for offering us her wisdom on the editorial process. She helped to better prepare us for the obstacles we would face while editing and publishing a journal. Last, we would like to thank the writers themselves for all of their hard work and dedication.
While the articles in this inaugural issue of the Washington University International Review are varied in subject, they all reflect the globalized world in which we live today. They speak to the diffusion of peoples, knowledge, ideas, goods and services, as well as processes accelerated by new forms of technology and communication. Increasing exchange between countries has significantly enhanced interconnectedness and interaction amongst various communities and cultures. The expansion and intensification of global networks blurs the lines between local, national and international and inevitably leads to the reconstruction of new identities.

Hilary Black’s piece entitled, “Freedom, Norms and the ban of the Muslim veil in France: 1830-present” offers a comprehensive study of immigration today. Her study focuses on immigration in France, a process that has led to the volatile intersection of French and Muslim culture. The paper investigates the 2004 headscarf ban in French schools and the 2011 veil ban in French public spaces in order to illustrate the conflicts which arise when disparate systems of norms and beliefs come into such close proximity. While often times such controversy implies that disparate cultures cannot coexist, Black shows that France is undergoing an unavoidable blending and hybridization of cultures, thereby transforming French national identity.

With national identities heavily influenced by global population shifts, many countries have opted to create and reinforce immigration policies. Jordan Wagner’s chapter, entitled, “A Changing Immigration System,” examines policy changes, specifically the developments that took place under Tony Blair’s three successive governments (1997-2007) and under the government of Gordon Brown (2007-2010). Both administrations sought to revamp the immigration system to make it more efficient and organized. Similarly, Jonah Newman, in his work entitled, “Whose Home? The Role of Jewish Identity in Israel’s Policy Towards the Children of Foreign Workers,” studies recent Israeli policy on immigration. Through an analysis of various status proposals created by the government in the past five years, the paper examines the political, social and religious motivations for Israel’s policy toward the children of migrant workers. Newman argues that the Israel is motivated primarily by its concern for maintaining the demographic majority of the state’s Jewish citizens. Thus, with an increase of foreign workers crossing Israel’s borders, the government has begun to take steps to limit such flow.

This restriction on the mobility of persons is contrary to the financial and trade flows, which have been exceedingly liberalized with greater global integration, as well as the ascendancy of neoliberal economics promoting free trade and investment. Oftentimes-forced liberalization of trade flows inevitably lead to tension between the local and the global as profits are unevenly distributed between actors at the collection and the production end of processes. This friction, driven in part by globalization, develops mostly from the uneven distribution of wealth that inherently arises in processes of production and commodification. Thus, the growth of economic inequality and stratification within and amongst countries is another characteristic and consequence of the contemporary globalized world. Alieza Durana, in her article entitled, “Addressing Inequality in Latin America,” investigates this economic disparity and focuses on how issues of income inequality are addressed through public policy. Bolivia provides a case study for her examination of the policy changes that have occurred during the Morales administration. These include conditional cash transfer programs (CCTs) as a means of addressing socio-economic stratification in Bolivia. Her article offers insight into larger economic paradigms, including the neoliberal, developmentalist, and social policy literature on ways to reduce income inequality and encourage economic development in Latin America. Durana concludes that the economic value of the CCTs program is in fact negligible within Bolivia. Thus, by surveying these relevant economic models, Durana addresses the problems with economic development both at domestic and international dimensions and the consequences of the relative openness of the global economic market.

Just as economic flows across national frontiers have become both more open and more rapid, the flow of ideas, belief systems, and information has also greatly expanded. We see this in Maya Bhardwaj’s article
entitled, “Development of Conflict in Arab Spring Libya and Syria: From Revolution to Civil War,” which discusses various forms of advanced communication and the cross-national interconnectedness they promote. She studies the “Arab Spring” uprisings of 2011, which triggered a cascade of social movements to spur regime changes across the Middle East and North Africa. Analyzing how these corresponding and linked uprisings took disparate forms in each nation, she argues that in the wake of the Arab Spring the countries that framed their internal conflict as civil war were more successful in containing conflict and garnering international intervention and support in suppressing uprisings.

Ben Gottesdiener’s article entitled, “International Policy Responses to Digital Intellectual Property Infringement: An Analysis of Recent Policy Responses in Sweden and France and How the United States is Following Suit,” shows the ways in which the spread of knowledge within an increasingly inter-connected world allows for greater transnational legislative visibility. He undertakes a transnational study of the legal landscape protecting digital intellectual property by using recently enacted policy responses in France and Sweden to inform U.S. policy-making. By analyzing the details of French and Swedish policies on digital intellectual property and their impact on respective digital music industries, Gottesdiener shows the true efficacy of anti-piracy legislation in these countries and assesses the worth of attempting to pass such laws in the United States. In this way, Gottesdiener argues that policy creation in one country may be effectively informed and positively influenced by legislation in other countries.

Finally, what arises within the contexts of globalization, as the world is more tightly and intimately integrated, are ever-fluctuating forms of identity. Issues arising from global integration perpetually challenge established ethnic, national, and even gender identities. Allison Bischoff, in her article entitled “The Transgender Self,” offers insight into the emergent identities of transgender people, exploring the complex relationships between transgender women and their bodies, their intimate relationships, their identities, and the pressure to pass. Focusing primarily on the transgender issues that arise in the Netherlands through analysis of various self-conducted interviews, she makes an argument that transgender women assert their identity by taking control of their selfhood and transforming their bodies as to redefine current ideals of womanhood and femininity.

Through these various articles, this inaugural issue of the Washington University International Review shows that globalization has powerful economic, political, cultural and social dimensions. The global links that intimately bind our world today transform discrete identities and norms, thus begging the question of whether our world is one in which homogenization prevails, or whether globalization is instead solidifying uniquely differentiated structures. The collection of articles presented here provides us with a look into what undergraduate scholars have postulated in regards to this question, offering us insight into the realities of our increasingly globalized world.

The WUIR Editorial Board
Alieza Durana is a senior International and Area Studies major with minors in Spanish and German. Alieza’s research interests focus on the intersection between public policy and human rights discourses. Next year, Alieza will travel to Berlin with a Fulbright Research Grant to study human rights and international law.

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Freedom, Norms, and the Ban of the Muslim Veil in France: 1830-Present

By Hilary Black

Abstract: This paper investigates the 2004 headscarf ban in French schools and the 2011 veil ban in French public spaces in order to understand them from both a historical and a human-rights perspective. It seeks to answer two questions. First, how do the French policy of secularism and the bans on the headscarf and veil limit the rights of Muslim women? Second, how did assumptions about gender and religion shape the formulation of the bans? Research methods include an examination of both secondary and primary sources, with primary sources drawing from news articles and reactions of Muslim women. My research shows that with perceptions of the veil tracing back to colonial Algeria, the French state perceives an incompatibility between Islam and the nation. I conclude that the bans impose normative gender roles and constructs of personal identity on Muslim women based on a French assumption that the veil negatively impacts women’s rights. Furthermore, with these bans, the French state places Islam in opposition to French national identity and implies that the two cannot co-exist. My conclusions elucidate the ways in which conflicting systems of norms can lead to legislation that limits rights based on false assumptions.
Introduction

On April 11, 2011, Kenza Drider stood outside Notre Dame in her niqab—her Muslim veil that revealed only her eyes. In front of this symbol of Paris, she became a symbol of defiance in defense of what she referred to as her “civil liberties as a French citizen.” Drider wore her niqab in protest of a law that went into effect that same day: a ban that prevented Muslim women from publicly wearing face veils in France.

Public displays of religion in France have consistently proven problematic. The French state abides by the policy of laïcité, or secularism. This policy traces back to the Enlightenment, when revered minds such as Voltaire, Diderot, and Montesquieu deemed religion “divisive, benighted and intolerant.” In 1905, the Third Republic declared a separation of church and state and prohibited proselytizing in public, specifically in schools. The French republic recognizes individuals over groups; French citizens owe allegiance to the nation, and the nation does not have an officially sanctioned religious affiliation. As early as 1937, the French education minister ordered head teachers to keep religious signs out of schools.

Secularism and Islam clashed in three distinct conflicts, which occurred in 1989, 1994, and 2003. These three waves of controversy concerned the hijab, or the headscarf that covers the hair and neck. In 1989, three Muslim girls refused to remove their headscarves in school, and the school’s principal Eugène Chenière expelled them. The Conseil d’État, or Council of State, ruled that wearing a headscarf alone did not constitute grounds for expulsion; however, the ruling allowed individual school administrators to determine which religious signs were “ostentations or polemical” enough to warrant expelling children from school. In 1994, Minister of Education, François Bayrou, issued a declaration that prohibited “ostentations” signs of religion in schools, but the Council of State overturned Bayrou’s decree and reaffirmed its 1989 ruling.

President Jacques Chirac appointed a commission to investigate the problem of religious signs in schools in 2003; former government minister and deputy Bernard Stasi served as its leader. The Stasi commission acknowledged religious diversity in France, but it also recommended a law that would prohibit children from going to school wearing “les signes ostensibles,” or conspicuous signs of

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2 Ibid.
3 Ibid.
6 Ibid.
10 Ibid., 24-5.
11 Ibid., 27, 28.
Religion. In March 2004, that law passed, thereby banning headscarves, Yarmulkes, and Sikh turbans in schools. In practice, the law primarily applied to headscarves.

As of April 11, 2011, anyone who wears a niqab or burqa in public faces a fine of 150 Euros and may be forced to take “lessons on French citizenship.” Amnesty International condemned the ban as a violation of freedom of expression and religion. While the ban of the headscarf in schools and the ban of the niqab and burqa in all public spaces constitute two separate events in France, I will discuss both bans as indicative of similar larger trends. Because the term “veil” can encompass the headscarf, niqab, and burqa, I will use this more general term in my discussion of these trends. Furthermore, while the terms “niqab” and “burqa” appear frequently in the Western literature on this subject, “headscarf” seems to be more common than “hijab,” so I will use the former term when discussing this form of the veil in particular.

This paper seeks to answer two questions. First, how do the French policy of secularism and the bans on the veil limit the rights of Muslim women? Second, how did assumptions about gender and religion shape the formulation of the bans? I argue that the bans impose normative gender roles and constructs of personal identity on French women who wear the veil. The bans assume that the veil oppresses women, but simultaneously force normative French gender identities on them, thereby denying them the autonomy and self-realization that free expression of their religion actually awards them. Furthermore, with these bans, the French state places Islam in opposition to French national identity and implies that the two cannot co-exist.

Roots in Colonialism

The normative gender roles underlying the bans trace back to French colonialism in Algeria (1830-1962), where the veil threatened colonial male fantasies of sexual dominance. As Joan Wallach Scott notes, early French “fantasies of conquest—the lure of wealth and exploration—were figured as sexual conquests.” French colonists substituted the image of the female body for the larger image of imperial conquest. Often, prostitutes dominated female imagery in the desires of French male colonists, but the veil blocked the visibility of women. Scott’s analysis of sexual desire and frustration in colonial Algeria elucidates French impressions of the veil. To colonists, the veil led to sexual frustration and, ultimately, a denial of their imperial goal of sexual conquest. While a French gender assumption considered Algerian women sites of domination for colonizers, veiling practices interfered with this assumption. The French perception of the veil in colonial Algeria establishes the

13 Ibid., 68. Translation is mine.
17 According to Winter, “Secularism aboard the Titanic,” 280, the term “veil” technically only denotes a niqab or burqa; however, in the West it has become synonymous with the hijab as well.
19 Ibid., 55.
20 Ibid., 56, 58.
historical context for current biases against the veil in France.

The presence of the veil in Algeria also violated a broader French norm—that of cultural assimilation. During the French Revolution, the Jacobins hailed cultural assimilation by envisioning a nation-state that would promote the equal rights of all citizens to such an extent that it would do away with the need for smaller group identities. According to Ellen Wiles, “since the time of the Revolution, all hyphenated or localized identities have been associated with subversion and disloyalty to the Republic.” In fact, the Declaration of the Rights of Man of 1789 allows for the expression of religious views “provided their manifestation does not disturb the public order established by law.”

In other words, French law takes precedence over identification with a religious group.

The French brought this belief with them to Algeria. In colonizing, the French sought to turn Algerians “into model French citizens,” a goal that they implemented by infusing Algerian towns with French architecture and language. Forced veil removal became a tool for imposing French identity on Algerians. The French believed that if women removed their veils to cast off their culture, men would loosen their ties to Algerian tradition as well. Since, for the French, loyalty to cultural identity embodies the antithesis of loyalty to the Republic, Algerian Islam violated a key component of an ideal French society. As long as Islamic identity persisted in Algeria, Algerian loyalty to the French Republic remained unstable and incomplete. In order to rectify this problem, French colonizers targeted the veil as their gateway to assimilating Algerian Muslims into a larger French identity. An incompatibility between Islam and French national ideals emerged in colonial Algeria.

French perceptions of the veil in colonial Algeria culminated in the war for Algerian independence (1954–1962). During this war, the French saw the veil as what Scott calls “a sign of backwardness.” In her study of the work of Algerian novelist and filmmaker Assia Djebar, Mary Ellen Wolf finds that women during the war served as icons of an emerging Algerian national identity, which resisted Western intrusion. In response, French colonists “targeted the veil as a symbol to be dismantled.” The veil had symbolic undertones of backwardness, but it also posed a practical threat: it allowed for the smuggling of arms. Biases associated with the veil did not disappear at the end of the war. According to Scott, the French maintained a fear that Muslim immigrants would “colonize” France, and the veil became “an ominous sign of a threatened takeover of France by Islamists.”

From French colonization through to the war for independence and Algerian migration to France, the veil symbolized an identity contrary and alarming to the French. By denying sexual access, highlighting differences, and signaling backwardness and Islamism, the veil in the time of colonialism laid the foundation for assumptions about the veil in France today.

The danger of the veil during the Algerian war for independence clarifies current perceptions

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22 Ibid.
25 Ibid.
28 Ibid., 69, 71.
of the veil in France. The practical threat of the veil as a means to smuggle arms was perhaps pre-
scient of post-9/11 national security concerns related to the veil’s ability to hide weapons or identi-
ty.\textsuperscript{30} The French perception of the veil as backward also persists today. President Sarkozy alluded to 
Africa’s failure to modernize since colonialism in a 2007 speech that sparked outrage in Senegal.\textsuperscript{31} 
A president who still associates France’s former colonies with backwardness might be inclined to 
include the veil in this association. During the Algerian war and post-war migrations to France, the 
veil represented a threat. The French state broadened its interpretation of the veil to include Islamism 
and the infusion of foreign ideals. The perception of the veil as harmful to “French-ness” informs the 
bans today, as it creates an opposition between French and Muslim identities.

**Oppression and the Veil**

Sarkozy expressed his support for the 2011 ban in terms of women’s rights. “The burqa is not welcome in France,” he said, “because it is contrary to our values and contrary to the ideals we have of a woman’s dignity.”\textsuperscript{32} The vision of the veil as detrimental to women’s rights imposes French gender norms on Muslim women. According to Scott, the headscarf in schools marks “girls’ refusal to engage in what were taken to be the ‘normal’ protocols of interaction with members of the op-
posite sex.”\textsuperscript{33} Essentially, the veil deprives men of visual sexual pleasure.\textsuperscript{34} The veil, however, does not actually prevent Muslim women from expressing their sexuality; rather, it restricts that expression to the private space of the home.\textsuperscript{35} According to Naomi Wolf in *The Sydney Morning Herald*, veiling limits sexuality to marriage, strengthens the bonds of family life, and protects women from the “sexualizing Western gaze.”\textsuperscript{36} This discrepancy between the French definition of femininity—as dependent on visibility to men—and Islamic interpretations of sexuality clash in the bans. Scott notes that banning the headscarf “was to bring Muslim women up to the standard of their French sisters…free to display their bodies and experience the joys of sex—as French society (women and men) understood them.”\textsuperscript{37} The bans, then, consider French norms of gender difference and identity and impose them on women who wear the veil.

Embedded in the bans of the veil and their roots in French gender norms is an assumption that 
the veil oppresses Muslim women. This assumption also has roots in colonialism, as French coloniz-
ers believed that if women lacked visibility by wearing veils, they were “imprisoned” and “confined

\textsuperscript{30} Ariel Zirulnick, “France’s burqa ban: 5 ways Europe is targeting Islam,” *The Christian Science Moni-

\textsuperscript{31} Diadie Ba, “Africans still seething over Sarkozy speech,” Reuters, September 5, 2007, U.K. edition, 

\textsuperscript{32} Steven Erlanger, “Parliament Moves France Closer to a Ban on Face Veils,” *New York Times*, July 14, 
40&hl=t&hns=t&hnsd=f&perma=true&lni=7YXW-XJC0-Y8TC-S37S&hv=t&csi=6742&hgn=t&secondRedirectIndicator=true.


\textsuperscript{34} Ibid., 159.

\textsuperscript{35} Naomi Wolf, “Behind the veil lives a thriving Muslim sexuality,” *The Sydney Morning Herald*, 
ity/2008/08/29/1219516734637.html.

\textsuperscript{36} Ibid.

by tyrannical men.”38 In the current French republic, that belief still exists. Rather than referring to the official French policy of laïcité, Cécile Laborde discusses laïcisme as “anti-religious, anti-traditionalist,” and “perfectionist.”39 According to Laborde, French laïcistes endorse a feminist interpretation of fundamentalism “as a patriarchal movement” that re-asserts traditionalism.40 Laïcistes interpret the headscarf as a symbol “both of female and religious oppression,” from which they believe the state “should emancipate Muslim girls.”41 The specific components of the 2011 bill that proposed the ban reflect the assumption that the veil represents patriarchal oppression: while a woman who wears a niqab or burqa in public faces a fine of 150 Euros, a man who forces a woman to veil must pay 30,000 Euros.42

In discussions of the veil as oppressive, the term “feminism” becomes important. Cultural differences surround definitions of feminism, as Nancy J. Hirschmann notes. Western nations value free agency, and Westerners’ evaluations of non-Western practices—specifically with reference to women—becomes complicated by their generalized interpretation of feminism.43 Determining whether the veil oppresses women from a Western feminist perspective proves difficult because even when women choose to wear the veil, they may do so in a framework that men have established.44 The veil itself may not indicate freedom or lack of freedom for women: “it is the patriarchal use of the veil to control women that indicates women’s freedom and agency or lack thereof.”45 Westerners must evaluate both the practice of veiling and the societal systems in which women wear the veil.

According to Hirschmann’s interpretation of feminism, banning the veil may itself be oppressive because an authority—the French state—uses the veil to dictate women’s conduct. Indeed, 36-year-old French-born Muslim convert Chrystelle Khedrouche believes “a woman should be able to dress as she likes.”46 She proceeds to state, “I have made the choice not to be unveiled, so to force me to unveil—that’s not freedom.”47 Hirschmann emphasizes the role of the distinctly Western perspective in forming assumptions about oppression and, as a result, denying freedom by imposing an oppressive ban. Bronwyn Winter echoes this concept by noting the importance of context when evaluating the headscarf. Winter argues that “those who wear the ‘Islamic bandana’ in France, along with Western jeans, are arguably as Westernized as those women of Muslim background who are vocally opposed to the hijab as a symbol of women’s subjugation.”48 While the visibility of a headscarf can incite Western assumptions about oppression, Muslim women who wear the headscarf in France may be as Westernized as Muslim women who do not wear the headscarf. The veiled women, however, become sites of debate and assumed victims of traditional, non-Western oppression. Western norms of freedom determine the ways in which the French state perceives the Muslim veil, and by banning the veil, the state

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38 Ibid., 58.
40 Ibid., 114.
41 Ibid., 116-17, 125.
44 Ibid., 351.
47 Ibid.
imposes these norms on Muslim women.

Western norms regarding provocative clothing also come into play in the veil debates. In 2003, a government official proposed a return to school uniforms when girls wore promiscuous clothes that exposed “le string,” or a thong, but no law passed. While people worried about the visibility of le string in schools—one mother of four complained that the fashion trend reduced adolescent girls to nothing more than their bodies—this anxiety did not turn into legislation. The outcome of this controversy demonstrates that the French system of norms permits promiscuous clothing, but prohibits the veil. This limitation suggests that the state perceives the veil as an element of a foreign, non-French system of norms in its decision to ban it.

Although contrary to French standards of self-presentation, the veil may allow those who wear it to achieve personal satisfaction. John Bowen notes, “wearing a headscarf rarely is a mark of continuity in family dress but a mark of discovery and self-identification as an individual.” The decision to wear a headscarf can mark a “moment of personal growth,” when young Muslim women graduate from school or start working, thereby defying the norms of their families. The submission to God’s religious authority that the veil signifies also denotes a commitment to self-realization. Under this interpretation, banning the veil denies Muslim women the achievement of personal identity and autonomy from the family. On a more concrete level, a prohibition on wearing the veil in public spaces limits women’s access to necessary services. As one Muslim woman in Burgundy stated, “I’ve got a pregnancy scan on Friday. My doctor supports me wearing the niqab, but I’m not sure I’ll be allowed into the hospital.”

Taking into consideration the multiple positive functions of the veil, American philosopher and feminist Judith Butler summarizes the veil as signifying belief, participation in a group, and the ability to move between public and private spaces. A ban on the veil prevents women from fully realizing these aspects of their faith.

Certainly, support exists for the oppressive nature of the veil. Writing shortly after the ban of the veil went into effect in April 2011, Qanta Ahmed provides insight into the origins of the veil in the Islamic faith. She finds a “vacuum” in theological scholarship regarding the intended function of the veil in Islam: the Koran instructs women to cover their bosoms, and Muhammed’s wives spoke with curtains in front of their faces, but “no record exists as to how exactly [veils] were worn” be-

50 Paul Webster, “‘Le string’ faces school ban as French fear sex abuse of girls,” The Observer, October 5, 2003, http://www.guardian.co.uk/world/2003/oct/05/schools.france discusses this mother’s concerns.
52 Ibid., 46-7.
yond these functions. According to Ahmed, the veil reduces Islam to a symbol, and societies may use it for “gender segregation.” As a Muslim woman, Ahmed embraces the ban.

Ahmed’s position complicates any discussion of the merits of the bans. Others have echoed her concern about the veil. Speaking as the president of the feminist group “Ni Putes, Ni Soumises,” (“Neither Whores nor Submissives”) Fadela Amara supports the headscarf ban in schools as a means of breaking free from a patriarchal system. These positions, however, do not address the limitation on freedom that denial of choice enacts. Ahmed does not account for the legitimacy of veiling practices as they exist outside the Koran. Perhaps the Koran is vague on the true function of the veil, but long-standing veiling traditions in Islamic civilizations surely indicate that the veil plays a role in the Islamic faith. Furthermore, Ahmed partially bases her argument on her experience in Saudi Arabia, where legislation requires women to wear veils. While mandated veiling might be oppressive, so too is banned veiling. The decision to wear the veil may occur within a patriarchal system, as Amara claims, but the bans emerge from the French state, a source of authority removed from the intentions and goals of Muslim women. The veil might reduce Islam to a symbol of oppression, but the state’s ban reduces it to a point of contention and hostility, and imposes limitations on free choice.

A Threat To National Identity

In a broader sense, discrepancies in French and Islamic norms demonstrate the state’s perception that the two cultures are incompatible. Bowen differentiates between two visions of Islam in the French state—Islam en France (“Islam in France”) and Islam de France (“Islam of France”). Most Muslims in France, Bowen argues, feel obligated to abide by Islam de France—a concept that, for the French government, “means an Islam regulated by the state and bounded by the state’s borders, with French Islamic institutions and French-trained imams.” In order to foster Islam de France, Muslims living in France may place Islam in a European context, while preserving Islamic practices and norms; however, non-Muslims in France may see a need for “assimilation.”

Anthropologist Ruth Mandel cites the French emphasis on assimilation as the core of the ban. The veil, she says, becomes the symbol of “more substantial debates on whether and how those still seen as outsiders fit into mainstream European society.” This preference for Muslim assimilation in modern-day France fits with Jacobin principles of preventing subversion through difference and

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56 Qanta A. Ahmed, “France’s burqa ban: A brave step that we Muslims should welcome;


57 Ibid.


59 Ahmed, “France’s burqa ban.”

60 Bowen, “Does French Islam Have Borders?” 44.

61 Ibid.

62 Ibid.

reflects the goal of discouraging cultural variance within the dominant French culture.54 The Haut Conseil à l’Intégration, or High Council for Integration, echoed this Jacobin principle in 1995. The Conseil identifies Islam as the most frequently cited obstacle to integration in France.55 It proceeds to discuss laïcité as indifferent to cultural and ethnic traits, which should remain in the private sphere.56 As Jean Baubérot, a leading specialist on laïcité, claims, the French tend to believe the state knows what is best for its citizens.57 A French version of Islam poses problems of interpretation rooted in differing opinions of what it means to be a Muslim in France.

Bowen addresses these problems by examining Muslim immigration to France in the 1970s. The children of these immigrants demanded the rights of citizenship, including the right to build mosques and wear Islamic clothing.58 Assimilation involved reduced piety, and pratiquants, or practicing Muslims, gained labels as fanatics.59 As of the 1990s, the term “integration” implies that it is the responsibility of immigrants to adapt to French culture, rather than of the French to re-evaluate their prejudices, and laïcité requires these immigrants to “become complete political individuals” by socializing in public institutions as citizens and not as Muslims.60 Bowen’s points speak to a lack of harmony between Islam and French citizenship. The concept of an Islam en France conveys an image of isolation. Muslims may physically reside in France, but they belong to an entirely different sphere. Attempting to develop an Islam de France raises issues of assimilation and its demands. According to Bowen, assimilation requires a reduction in piety, which suggests that true commitment to Islam cannot exist within the French state. The association of practicing Muslims with terrorism also indicates an incompatibility between French and Islamic societies. In fact, there exists a tendency in France to confuse a locally increased visibility of Islam with surges of political Islam elsewhere in the world.61 French Muslims remain connected to other Muslims across national borders.62 While in reality these connections foster what Jocelyne Cesari calls “a collective narrative that celebrates the triumph of a tradition throughout the ages,” in France, the general perception is that transnational connections between Islamic communities are politically risky.63 By deeming pratiquants terrorists, French society brands them as threatening.

Bowen identifies communalism and Islamism as two specific threats to French society related to the headscarf ban in schools. Communalism, or “the closing in of ethnically defined communities

66 Ibid., 32. Original text reads, “liée à la conception de la citoyenneté française, la laïcité comme système d’incorporation politique se veut indifférente aux traits culturels et ethniques tant que ceux-ci sont limités à la sphère privée.” Translation and paraphrase are mine.
69 Ibid.
70 Ibid., 46.
72 Ibid., 49.
73 Ibid.
on themselves,” threatens French society by valuing ties to communities over ties to the nation.\textsuperscript{74} A physical separation of Muslim communities within France echoes this concept. Even though as of the 1980s France has the largest Muslim population in Western Europe, many Muslim immigrants in France suffered economically during that decade and found themselves pushed out into suburban areas.\textsuperscript{75} While communalism places Islamic communities at odds with the French nation in their separation from one another, fears of Islamism represent the perceived threat of Islam itself. Islamism “may refer to movements that advocate creating Islamic states as well as to those that merely promote public manifestations of Islam.”\textsuperscript{76} Associated with both definitions of Islamism are “fears of totalitarian Islamist regimes abroad.”\textsuperscript{77} That is, the threat of “a public presence for Islam in France” raises concerns about Islamist nations.\textsuperscript{78} The headscarf came to symbolize tension that grew between Muslims and non-Muslims due to their spatially separated communities and the socioeconomic gap between them, as well as fears of Islamism.\textsuperscript{79} Both communalism and Islamism present definable dangers to the French nation.

Bowen’s definitions of communalism and Islamism convey the importance of the nation to France. Because the nation holds such significance, any suggestion of non-national influence poses a threat. Muslim communities and their perceived ties to Islamist states abroad, suggest loci of power removed from the French nation. While this perceived riskiness associated with Islam in France explains the motivation for the bans of the veil, it is a relatively unfounded perception. Christian Joppke notes that 42 percent of Muslims in France identify themselves as “French first, Muslim second.”\textsuperscript{80} This number stands out in comparison to the mere seven percent of Muslims in Great Britain who attach greater significance to their national identity than to their religious identity.\textsuperscript{81} Furthermore, 70 percent of Muslims in France—compared to 63 percent of Protestants and 58 percent of Catholics—“think that democracy in France works well.”\textsuperscript{82} Although Joppke published these statistics in 2009—after the headscarf ban in schools, but before the veil ban in all public spaces—the numbers suggest that the reality of Islam in France is less problematic than the French state assumes.

The perceived lack of compatibility between the French state and Islam emerges in the under-representation of Muslims in the National Assembly and the response of Muslims in the banlieues—the areas on the outskirts of cities.\textsuperscript{83} In May 2007, reporter Daniel Strieff called the Paris banlieue of Clichy-sous-Bois “a tinderbox of crime,” as this underrepresentation, among other issues, caused unrest to grow among young Muslims.\textsuperscript{84} In response to larger riots the prior autumn, the \textit{Union des

\textsuperscript{76} Bowen, \textit{Why The French Don’t Like Headscarves}, 156.
\textsuperscript{77} \textit{Ibid}.
\textsuperscript{78} \textit{Ibid}.
\textsuperscript{79} Wiles, “Headscarves, Human Rights,” 701.
\textsuperscript{81} \textit{Ibid}.
\textsuperscript{82} \textit{Ibid}.
Organisations Islamiques de France (“Union of the Islamic Organizations of France,” or UOIF) had deemed rioting “incompatible with Islam.” The media, however, criticized the UOIF for not also calling the riots incompatible with French law. Conflicting public messages about Islam in France further separate the religious community from the state. These Muslims resorted to rioting as a means of expressing discontent. Beyond this discontent, Islamic and French institutions each maintained that the riots violated its principles. The clash between Islamic and French interests in the field of public relations suggests that the two cannot co-exist without controversy.

Within the context of conflict between French Muslims and the French state, the 2011 ban emerges as a response, perhaps preemptive, of what is currently no more than a minimal threat. Only 2,000 or fewer women living in France wear niqabs or burqas. Many of these women are young. Furthermore, nearly a quarter of them are converts to Islam. The veiling trend, however, is becoming more popular. An increase in the number of veiled women in France could serve as an even greater symbolic threat to the French nation. Moreover, the French Muslim youth, in particular, fall subject to alienation in the banlieues, a phenomenon that might encourage a turn to violent Islamism as a form of rebellion. By banning the veil today, the French state seeks to prevent both symbolic and practical threats to the nation in the future.

Conclusion

Shortly after the 2011 ban went into effect, Kenza Drider announced her candidacy for President of the French republic. Drider seeks to prove a point with her campaign: the ban violates rights, and women who wear the veil represent freedom rather than submission. Certainly, Drider’s position does not represent that of all Muslim women in France. For example, Ahmed and Amara stand out as two women who consider the veil oppressive. While the 2004 and 2011 bans remain a subject of debate among men and women, Muslims and non-Muslims, their historical roots speak to a broader problem surrounding Islam in France.

At the center of this problem is a discrepancy in norms, particularly those involving gender roles. French Muslim women live in a nation where society expects them to dress in a Western style—that is, not to cover themselves. The “le string” controversy of 2003, when contrasted with adverse reactions to public veiling, demonstrates this expectation to the extreme. Assumptions about the veil’s function and its impact on women pervade the bans. While these assumptions may be true in some regions of the world, they do not necessarily hold in France. What the West perceives as oppressive, French Muslims may perceive as liberating. This contradiction clarifies the peculiar position that France occupies as a Western nation: while it identifies the veil as a site of oppression given its ties to oppressive regimes, its own limitation on public attire may also appear to be oppressive to some communities.

France’s standpoint on the veil also fits within the framework of its commitment to laïcité. The roots of secularism extend far back into French history, and laïcité helps define the state’s attitude toward multiculturalism within its borders. Secularism turns the veil into a symbol of identifica-

85 Ibid. Translation is mine.
86 Ibid.
88 Cesari, “Islam in France,” 40.
tion with a foreign group, and deems it incompatible with the French nation. Against the backdrop of a state that considers loyalty to its national identity more important than individual cultural ties, the bans impose a French way of life on Muslim women and become problematic in their implications for the veiling practice.

**Bibliography**

Ahmed, Qanta A. France’s burqa ban: A brave step that we Muslims should welcome; France’s ban on wearing the niqab in public defends secular society – and the rights of Muslim women like me. Liberals bemoan the ban’s infringement on personal freedoms. But Islamists who mandate that women wear the veil are incorrectly interpreting the true message of the Quran.” *The Christian Science Monitor*, April 20, 2011. http://www.lexisnexis.com/lnacui2api/api/version1/getDocCui?lni=52NS-DJN1-DYRK-B225&csi=7945&hl=t&hv=t&hnid=f&hns=t&hgn=t&oc=00240&perma=true.


Freedom, Norms, and the Ban of the Muslim Veil in France: 1830-Present


Abstract: This dissertation examines the immigration changes that took place under Tony Blair’s three successive governments (1997-2007) and the government of Gordon Brown (2007-2010) to see if the governments emulated the immigration policies of the previous governments of the New Labour political party. The New Labour governments of Tony Blair and Gordon Brown revamped the immigration system to be more efficient and organized. The immigration policies of Tony Blair and Gordon Brown are expected to closely mirror each other because both prime ministers belonged to the same political party. In order to understand the policies of these governments, I review various Acts of Parliament passed during their tenure, analyze speeches given by Tony Blair and Gordon Brown, examine and scrutinize newspaper articles, evaluate party manifestos, and read an assortment of books on the topic. I assumed that Tony Blair and Gordon Brown would follow similar policies on immigration because they are both part of the New Labour party. However, as noted in my analysis of each leader, their policies on immigration, asylum, and migration deviated from each other due to the political and economic issues occurring during their tenure. These issues influenced their policies more than their party affiliation.
Context

I frequently use the terms illegal immigrant, legal immigrant, highly skilled immigrant, and asylum seeker. It is important to understand the difference between these terms. An illegal immigrant refers to an individual who comes to the United Kingdom without a visa or other form of documentation from the United Kingdom. This individual has not been authorized to live or stay in the United Kingdom. A legal immigrant is an individual who has obtained the proper documentation from the government of the United Kingdom and is allowed to reside in the country. A highly skilled immigrant is an individual who has come to the United Kingdom with a certain skill to offer, such as a medical degree, law degree, or other type of higher-education degree. Highly skilled immigrants are seen as beneficial to the United Kingdom because they are able to offer a service to the people of the country. An asylum seeker is an individual who has come to the United Kingdom after fleeing his or her home country due to war, political unrest, etc. However, it becomes difficult to identify individuals who need protection from their home country and individuals who just want to leave their home country.

Introduction and Historical Background

Immigration has always been an issue of concern for the United Kingdom due to its proximity to mainland Europe. Being an island country, it is nearly impossible for the United Kingdom to secure and guard its entire coastline. The English Channel, which separates mainland Europe from the island of Great Britain, is an area of great concern for immigration. Illegal immigrants and asylum seekers frequently use the English Channel to travel from mainland Europe to the United Kingdom. The shortest crossing route is at the Strait of Dover, part of the English Channel, where the distance between Calais, France and Dover, England is twenty-one miles. The city of Calais has become a makeshift campground for asylum seekers and illegal immigrants attempting to reach the United Kingdom.¹ The British government is constantly pressuring the French government to tighten the regulation of their borders in order to ensure immigrants and asylum seekers do not illegally immigrate to the United Kingdom. As the number of immigrants trying to enter the United Kingdom continues to rise exponentially, the governments of the United Kingdom are under pressure to ensure fairness and efficiency in the immigration process for all people trying to enter the country. During the thirteen-year span of the New Labour governments, the governments passed eight Acts of Parliament pertaining to immigration. As more people attempt to immigrate into the United Kingdom, the government will continue to deal with issues of efficiency, legitimacy, and fairness.

Prior to New Labour taking control of the government in 1997, the immigration system in the United Kingdom was in complete disarray. Following the end of World War II, the United Kingdom accepted a large influx of immigrants, primarily from the Commonwealth, into the country to help rebuild the UK’s economy post-World War II. However, in the 1970s, the United Kingdom’s immigration flow suddenly came to a halt. Only immigrants that had obtained a work visa or individuals with parents or grandparents that were born in the United Kingdom were allowed to immigrate.² In effect, this prevented most citizens of the Commonwealth from immigrating to the United Kingdom. The different bills enacted during this time period are listed below.

² Triandafyllidou, European Immigration: A Sourcebook, 347.
The Conservative Party, the political party in opposition to the Labour Party in the United Kingdom, controlled the government from 1979 – 1997. During this period, Parliament enacted various policies to discourage and limit immigration to the United Kingdom including the British Nationality Act 1981, Immigration Act 1988, Asylum and Immigration Appeals Act 1993, and Asylum and Immigration Act 1996. Most of these Acts dealt specifically with asylum issues, especially the later Acts, because the United Kingdom experienced a large influx of asylum seekers in the early 1990s from other parts of Europe and Northern Africa. Between 1990 and 1991, the amount of asylum seekers attempting to gain entry into the United Kingdom increased two-fold. Unfortunately, these Acts failed to organize the immigration system and by the time Tony Blair took control of the

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3 Chart 1 created by Jordan Wagner, 3 April 2012.

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### Chart 1

<table>
<thead>
<tr>
<th>LEGISLATION</th>
<th>EFFECT/IMPLICATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonwealth Immigrants Bill 1963</td>
<td>• Made a distinction between citizens of the United Kingdom and citizens of the Commonwealth</td>
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<tr>
<td></td>
<td>• Commonwealth citizens had to obtain an employment visa before they moved to the United Kingdom</td>
</tr>
<tr>
<td>Commonwealth Immigrants Bill 1968</td>
<td>• In order for citizens of the Commonwealth to immigrate to the United Kingdom, they needed to have at least one parent and/or grandparent born in the United Kingdom (and thus be a British citizen)</td>
</tr>
<tr>
<td>Commonwealth Immigrants Bill 1971</td>
<td>• Replaced the previous two bills</td>
</tr>
<tr>
<td></td>
<td>• Defined citizens of the United Kingdom and citizens of the United Kingdom Commonwealth countries as distinctive from each other (created separate immigration policies)</td>
</tr>
<tr>
<td>British Nationality Act 1981</td>
<td>• Made a distinction between full British citizenship (citizens of the United Kingdom), British Dependent Territories citizenship, and British Overseas citizenship</td>
</tr>
<tr>
<td></td>
<td>• Encouraged British Overseas citizens to gain citizenship in the country of residence</td>
</tr>
</tbody>
</table>

2 Kavanagh, British Politics, 586.
government in 1997, there was a backlog of almost 52,000 asylum cases.\textsuperscript{5} Furthermore, the asylum application process took up to twenty months.\textsuperscript{6} By 1997, the immigration and asylum system in the United Kingdom needed reform.

**Tony Blair (1997-2007)**

Tony Blair took control of the government at a point when immigration was not an important issue in the United Kingdom. The previous Conservative government had enacted two Acts of Parliament that pertained to immigration and asylum, but these Acts were not well implemented and the entire system lacked organization. During the General Election of 1997 the Labour Party hardly mentioned the issue of immigration because immigration was not a major issue for the citizens of the United Kingdom.\textsuperscript{7} By the 2005 General Election though, immigration was the second-most important issue for citizens.\textsuperscript{8} During the terms of Tony Blair (1997 – 2007), over a third of the total immigrant population currently living in the United Kingdom arrived.\textsuperscript{9}

Blair’s main goal during his ten-year tenure was to make the United Kingdom more accessible to highly skilled immigrants, economic migrants, and international students while attempting to discourage asylum seekers from entering the United Kingdom.\textsuperscript{10} The number of work visas granted during his first term increased from 62,795 in 1997 to 108,825 in 2001.\textsuperscript{11} Furthermore, the number of international students increased from 70,600 in 1997 to 117,200 in 2004.\textsuperscript{12} By 2002, the number of asylum seekers in the United Kingdom had reached an all-time high of 110,000 people.\textsuperscript{13} Along with the increase in asylum seekers, the number of illegal immigrants in the United Kingdom rose to roughly 310,000-570,000 in 2005.\textsuperscript{14}

Tony Blair faced the challenge of making the United Kingdom’s asylum laws compatible with the 1951 United Nations Convention Relating to the Status of Refugees.\textsuperscript{15} Under the 1951 Refugee Convention, the United Nations attempted to define the criteria one must meet in order to be considered a refugee. A refugee (also known as an asylum seeker) is someone who:

“...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country; or who, not having a national and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it.”\textsuperscript{16}

Signatories of the 1951 Refugee Convention promised to not return refugees to their homeland when their lives were in danger, assured that protection would be provided, and guaranteed equal rights for all refugees including "freedom of religion and movement, the right to work, access

\textsuperscript{9} Triandafyllidou, *European Immigration: A Sourcebook*, 351.
\textsuperscript{10} Kavanagh, *British Politics*, 587.
\textsuperscript{15} Kavanagh, *British Politics*, 587.
\textsuperscript{16} ‘1951 Refugee Convention,’ *The British Refugee Council (BRC): Information Service Online.*
to education and travel documents.”

The United Kingdom is also a signatory to the European Convention on Human Rights, which reiterates the rights of a refugee and the guarantees made by signatories. By signing this agreement, the United Kingdom is prevented from sending a refugee, whether approved of or not, back to their home country if there is a real risk of being persecuted. Throughout Blair’s tenure, with the exponential influx of asylum seekers, he was criticized for supporting legislation that conflicted with both the 1951 Refugee Convention and the European Convention on Human Rights. However, Blair faced the dilemma of distinguishing between legitimate and illegitimate asylum claims. Citizens of third-world countries claimed to come to the United Kingdom for legitimate asylum reasons but actually wanted to immigrate to the United Kingdom for economic purposes. Unfortunately, it was difficult for policies to differentiate between the legitimate and illegitimate cases – something that Blair struggled with his entire tenure.

During Blair’s ten years as Prime Minister, he enacted four immigration-related Acts of Parliament and was in the process of passing another Act of Parliament (subsequently passed under Gordon Brown’s government). Blair successfully cleared the backlog of asylum seekers by 2006. Before leaving office in 2007, Blair established the new Border and Immigration Agency as an additional way of streamlining the immigration process for the United Kingdom. By the time Tony Blair left office, the immigration system was revised, organized, and more efficient.


When Tony Blair took over as Prime Minister in 1997, his main concern was not the number of asylum seekers entering the country, but rather the backlog of asylum seekers that remained due to the “inefficiency” of the previous Conservative governments. A two-paragraph section in the Labour Party Manifesto of 1997 highlighted the main goals of immigration reform. First and foremost, the Labour party wanted to ensure that all immigrant applications were processed “speedily and fairly.” This stemmed from the inadequacy of the previous Conservative governments to manage immigration applications in a timely manner. The Labour party emphasized dealing with asylum seeker applications “immediately and efficiently” in order to begin to clear the backlog of 50,000 applications left over from the previous Conservative government. Secondly, the Labour party vowed to remove the “primary purpose” rule. Lastly, the Labour party wanted UKvisas, the official visa agency of the United Kingdom, to formulate “[a] streamlined system of appeals for visitors denied a visa.”

In July 1998, the New Labour government made its first attempt at addressing issues pertaining “to immigration and asylum by having the Secretary of State for the Home Department (Jack Snow) publish the White Paper entitled ‘Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum.’” It built upon the goals outlined in the Labour Manifesto of 1997. The White Paper discussed the struggles facing the asylum system due to the increase in asylum seekers: 32,000 in 1997, up from 4,000 in 1988. The White Paper sought to “set out a long-term strategy” that “tackles the failings of the current system and addresses the challenges which face our immigration control in
The Home Office outlined nine main proposals and reaffirmed the Labour Party’s goal of creating a “fair and efficient” immigration system by distinguishing between “legitimate travelers” and illegal immigrants. It also proposed an agenda to modernize and streamline the entire immigration system by:

“Establish[ing] a single management structure in the UK…to provide more effective links with…controls.”

Modernizing the immigration system by utilizing new technology.

Allowing “greater openness” on application decisions

Establishing a “fairer, faster and firmer” approach to immigration issues pertaining to asylum seekers, appeals, border control, citizenship, detention and enforcement.

These goals were formally outlined in the Immigration and Asylum Act of 1999. The Immigration and Asylum Act 1999 not only streamlined the asylum process by making it faster and more efficient, but also took a harsher stance towards asylum seekers entering the United Kingdom for unethical reasons. Ironically, this Act just extended the policies of the previous Conservative government’s 1993 Asylum and Immigration Appeals Act, but in a more organized fashion. However, the rules for immigration and asylum were still as stringent, if not more stringent, than the previous Conservative government. The table below outlines the most important parts of this Act.

<table>
<thead>
<tr>
<th>IMMIGRATION AND ASYLUM ACT 1999</th>
<th>EFFECT/IMPLICATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part I&lt;sup&gt;1&lt;/sup&gt;</td>
<td>• Attempted to fulfill all asylum applications with 6 months</td>
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<tr>
<td>Part II&lt;sup&gt;2&lt;/sup&gt;</td>
<td>• Fined an individual per clandestine entrant</td>
</tr>
<tr>
<td></td>
<td>• Only one appeal allowed from asylum applicants rejected&lt;sup&gt;3&lt;/sup&gt;</td>
</tr>
<tr>
<td>Part VI&lt;sup&gt;4&lt;/sup&gt;</td>
<td>• Asylum seekers provided weekly with £35 food vouchers instead of cash benefits&lt;sup&gt;5&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>• Established the National Asylum Support Service (NASS), which provided food vouchers and accommodations to asylum seekers&lt;sup&gt;6&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>• Not permitted to work until after a year of living in the United Kingdom&lt;sup&gt;7&lt;/sup&gt;</td>
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</tbody>
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31 Chart 2 created by Jordan Wagner, 3 April 2012.
Overall, the Immigration and Asylum Act 1999 took a much harsher stance towards immigrants, especially asylum seekers. By reducing the welfare benefits granted to asylum seekers, Tony Blair and his government hoped to deter asylum seekers entering the country for economic reasons. However, refugee advocates and other human rights organizations were quick to criticize the harsh crackdown on asylum seekers, stating that this Act “perceived to stigmatize and impose additional hardships on asylum seekers.”

The White Paper “Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum,” and the Immigration and Asylum Act 1999 were the only documents that addressed issues of immigration during Tony Blair’s first government. Subsequent Acts of Parliament passed in the later governments of Tony Blair attempted to modify and revise the harsh stance taken towards asylum seekers in these two documents.

Paradoxically, Tony Blair attempted to encourage highly skilled migration because it would benefit the economy of the United Kingdom. The Immigration Minister, Barbara Roche, stated in 2000 when talking about the benefits of migrations:

“We are in competition for the brightest and the best talents, the entrepreneurs, the scientists, the high technology specialists who make the global economy tick…the evidence shows that economically driven migration can bring substantial overall benefits both for growth and the economy.”

The amount of work permits granted during Tony Blair’s first government more than doubled from the previous Conservative government. During Tony Blair’s second and third governments, he continued to encourage economic and highly skilled migration while attempting to curb asylum seekers and illegal immigrants.

2nd government: 2001 – 2005

During the second government of Tony Blair, immigration and issues of asylum became a focal point of governmental policy as the amount of asylum cases began to rise exponentially.
2002, the number of asylum seekers trying to immigrate into the United Kingdom reached an all-
time high of almost 90,000 asylum seekers.\textsuperscript{36} Once this statistic was released by the Office of Na-
tional Statistics, Tony Blair promised to halve the number of asylum seekers by 2003. Between 2002
and 2003, the number of asylum seekers attempting to enter the country decreased from 90,000 to
50,000.\textsuperscript{37} Furthermore, the total net migration hit an all-time high in 2004, with almost 250,000 more
people entering the United Kingdom than leaving.\textsuperscript{38} This is most likely due to the May 1, 2004 addi-
tions to the European Union. On that day, ten Eastern European countries simultaneously joined
the European Union and automatically were a part of the European Union labor market.\textsuperscript{39} Under Tony
Blair’s second government, two major Acts of Parliament were passed along with the opening of the
United Kingdom’s borders to Eastern Europeans.

The first major piece of legislation pertaining to immigration was the Nationality, Immigration
and Asylum Act 2002. In a broader context, the Nationality, Immigration and Asylum Act 2002
was the fourth major overhaul of the asylum system in a decade.\textsuperscript{40} This Act focused on asylum seek-
ers entering the United Kingdom, specifically on the “control and removal of refused asylum seekers”
along with the living situation for newly arrived asylum seekers.\textsuperscript{41} Below outlines the different
parts of this Act.

<table>
<thead>
<tr>
<th>NATIONALITY, IMMIGRATION, AND ASYLUM ACT 2002</th>
<th>EFFECTS/IMPLICATIONS</th>
</tr>
</thead>
</table>
| **Part I**                                    | • Applicants must pass an English test and have “sufficient knowledge about life in the United Kingdom”\textsuperscript{1}
|                                               | • Made 35,000 British overseas citizens born between February 7, 1961 – January 1, 1983 eligible for British citizenship\textsuperscript{2} |
| **Part II**                                   | • Provided self-contained accommodation centers for asylum seekers (overturned in 2005)\textsuperscript{3}
|                                               | • Provided food, money, and transportation\textsuperscript{4}
|                                               | • Asylum seekers allowed to stay in these centers for up to six months\textsuperscript{5}
|                                               | • Provided education for children of asylum seekers |

\textsuperscript{36} Kavanagh, *British Politics*, 581.
\textsuperscript{38} ‘Migration: Net Migration remains high,’ *Office for National Statistics*.
\textsuperscript{40} Ludlam, *Governing As New Labour: Policy and Politics under Blair*, 190.
\textsuperscript{42} Chart 3 created by Jordan Wagner, 3 April 2012
This Act took a tougher stance towards asylum seekers coming to the United Kingdom and built upon the precedents outlined in the Immigration and Asylum Act 1999.

Tony Blair’s first major speech on migration took place on April 27, 2004 in which he acknowledged that migration was a growing issue within the United Kingdom due to globalization and increased travel. Tony Blair proposed a set of goals/ideas that were intended “to ensure migration works for Britain today and in the future.” These goals included continuing to support economic/highly skilled migration, “tack[ling] abuses in the asylum system,” curbing illegal immigration through ID cards and by strengthening the borders, celebrating the migrants and cultural diversity, and accepting the globalization of the world. He stated that migrants are an important feature of the economy of the United Kingdom. The speech continued by emphasizing the positive progress that had taken place in immigration and asylum since 1997, including decreasing the number of asylum applications from October 2002 to December 2003, clearing the backlog of asylum cases, and granting asylum applicants decisions within two months. Tony Blair ended the speech by emphasizing the importance of “controlled migration as good and beneficial for Britain,” while promising to “root out the abuses that disfigure the debate and bring the [immigration] system into disrepute.” He stated that it is through migration that the United Kingdom has become a “stronger and richer” country.43

The European Union undertook its biggest, single expansion in 2004. On May 1, 2004, celebrations broke out all across Eastern Europe as the European Union officially welcomed ten new member states: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.44 Tony Blair faced the dilemma as to whether he should open the borders of the United Kingdom to these ten countries for economic migration or not. Ultimately, he decided to open up the United Kingdom’s labor marker to all the new European Union member states, a deci-

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1 Nationality, Immigration and Asylum Act 2002, United Kingdom Parliament, s 1.
3 ‘Nationality, Immigration and Asylum Act 2002,’ The British Refugee Council (BRC): Information Service Online.
4 Nationality, Immigration and Asylum Act 2002, United Kingdom Parliament, s 29.
5 Nationality, Immigration and Asylum Act 2002, United Kingdom Parliament, s 25.
6 Nationality, Immigration and Asylum Act 2002, United Kingdom Parliament, s 55.
7 ‘Nationality, Immigration and Asylum Act 2002,’ The British Refugee Council (BRC): Information Service Online.
sion that would be greatly questioned under the future government of Gordon Brown.\textsuperscript{45} Tony Blair believed that by opening up the United Kingdom’s labor market to the Eastern European citizens of the European Union, he could fill low-skilled jobs with migrants from these countries.\textsuperscript{46} It is estimated that between May 2004 and September 2009, over 1.5 million citizens from Eastern Europe immigrated into the United Kingdom for economic reasons.\textsuperscript{47} However, with the United Kingdom opening their borders to the migrants from these ten countries, issues about illegal immigrants from Eastern Europe living in the United Kingdom prior to May 1, 2004 arose. According to the European Union, “for those who had been working in the United Kingdom illegally before 1 May 2004, the decision to allow free movement was in effect an amnesty, transforming them overnight into European Union citizens with a right to live and work in the United Kingdom.”\textsuperscript{48} Essentially, the United Kingdom rewarded the illegal immigrants from Eastern Europe with economic migration status, setting a bad precedent for future expansions of the European Union. However, critics are hesitant to criticize Tony Blair’s decision, stating “Blair showed a courage in opening up the United Kingdom’s labour market that was lacking in most of his European counterparts. He leaves Britain on the map as a country which is firmly open to labour migration in a way that seemed inconceivable only a decade ago.”\textsuperscript{49} Tony Blair’s policy towards economic migration during his second government extended to his policies towards highly skilled economic migration and international students.

During Blair’s second government, he focused primarily on economic migration and attracting highly skilled workers to the United Kingdom, a policy coined “managed migration.” Because the United Kingdom wanted to attract more English-speaking workers from abroad, he relaxed the visa restrictions.\textsuperscript{50} Furthermore, he made it easier for these English-speaking, university students to work while studying in the United Kingdom. Another added benefit of increasing the number of international students studying in the United Kingdom was the revenue that they produced for the country. Due to varying tuition fees, European Union students were required to pay a higher tuition fee than students from the United Kingdom. Additionally, students from non-European Union countries (such as the United States) were required to pay the highest tuition fee, generating revenue for these universities.\textsuperscript{51} It is estimated that foreign students contributed over £5 billion to the United Kingdom economy.\textsuperscript{52}

Much like other immigration, asylum, and migration legislation that passed during Tony Blair’s tenure, the Asylum and Immigration Act 2004 built upon prior legislation (most notably the Immigration and Asylum Act 1999 and Nationality, Immigration and Asylum Act 2002).\textsuperscript{53} Specifically this Act progressed and modified the Nationality, Immigration and Asylum Act 2002, which was the most recent piece of legislation passed prior to this Act. A point of controversy within the Act occurred in Section 2. Under this section, it was “an offense if...he [asylum seeker] does not have with him an immigration [e.g. passport, visa, etc]” or if he presented false documents, both which carried a maximum sentence of two years in prison.\textsuperscript{54} This section was meant to discourage people from purposely damaging/destroying their travel documents in order to make it harder for

\begin{itemize}
\item Somerville, W., ‘The Immigration Legacy of Tony Blair,’ \textit{Migration Information Source}.
\item ‘Migration: Net Migration remains high,’ \textit{Office for National Statistics}.
\item Blair, T. (27 April 2004). \textit{Migration Speech}.
\end{itemize}
United Kingdom immigration officials to remove asylum seekers from the country. However, this section directly contradicted Article 31 of the Refugee Convention 1951, which stated that “asylum seekers should not be penalized for seeking entry using false documents in order to pursue an asylum claim.” Nevertheless, hundreds of immigrants have been convicted under this section of the Act. Section 8 of the Asylum and Immigration Act 2004 also dealt with issues of false travel documents and the destruction of these travel documents without a probable explanation. As with the previous immigration legislation passed under Tony Blair’s governments, the Asylum and Immigration Act 2004 limited the support (specifically welfare support) granted to asylum seekers. Section 26 made one of the biggest changes to the current asylum appeals process by making a single, streamlined appeals system instead of having a two-tier system. In response to the changing technology, Section 36 allowed the electronic monitoring of asylum seekers, including “tagging” and voice recognition, even though these practices were considered quite intrusive and stigmatized asylum seekers as criminals. The Asylum and Immigration Act 2004 presented some controversial pieces of legislation which were in conflict with international law/agreements.


The third, and final, government of Tony Blair built upon the changes made and implemented to immigration, asylum, and migration policies under Tony Blair’s first two governments. Tony Blair’s third term focused on modernizing the system by introducing a reformed visa system along with trying to implement biometrics exams. By 2006, the number of asylum seekers entering the United Kingdom hit a thirteen year low. Tony Blair accomplished his goal proposed in 1997 of significantly reducing the number of asylum seekers entering the country. The Labour Party Manifesto 2005 focused heavily on issues of immigration and asylum. Unlike the previous two Labour manifestos that touched briefly upon or completely ignored anything related to immigration, migration, or asylum, the Labour Party Manifesto 2005 dedicated three full pages to the issue, indicating the importance of the issue. By 2005, the asylum application process had been reduced from twenty months in 1997 to two months. Now that the asylum application process time had been decreased to a manageable level, the Labour party wanted to remove all the rejected asylum seekers from the United Kingdom. The rest of the migration section focused on introducing a points-based visa system for immigrants wishing to enter the United Kingdom. Staying consistent with Tony Blair’s approval of highly skilled, economic migration, the points-based system would award points based upon skill level. According to the manifesto, “more skills mean more points and more chance of being allowed to come here [United Kingdom].” Additionally, by 2008, anyone applying for a visa under the new points-based system would be required to be fingerprinted and carry an ID card when in the United Kingdom (if staying longer than three months). Lastly, in an effort to crackdown on illegal immigration, penalties of up to £2,000 would be fined to people caught employing illegal immigrants. The Labour Party Manifesto 2005 outlined a revised immigration system that would be carried over to Gordon Brown’s government.

56 ‘Asylum and Immigration Act 2004,’ The British Refugee Council (BRC): Information Service Online.
57 Asylum and Immigration Act 2004, United Kingdom Parliament, s 8.
58 ‘Asylum and Immigration Act 2004,’ The British Refugee Council (BRC): Information Service Online.
60 Asylum and Immigration Act 2004, United Kingdom Parliament, s 36.
61 ‘Migration: Net Migration remains high,’ Office for National Statistics.
Tony Blair’s April 22, 2005 campaign speech re-emphasized the goals presented in the Labour Party Manifesto 2005. He promised that if the Labour party were re-elected as the government, a points-based system for immigration would be established. Tony Blair highlighted the successes of his past governments, stating that they had achieved the goals he set forth in 1997. He revealed that as Prime Minister, he went to the front lines of immigration, making sure that all legislation was properly implemented and observed. This speech reiterated facts stated in his April 27, 2004 speech on immigration and asylum, making references to notable achievements in immigration, migration, and asylum under New Labour. He vowed that if re-elected, he would continue similar policies on immigration. This included encouraging economic migration while continuing to discourage and crackdown on asylum seekers.65

Following the Labour Party’s re-election, the Immigration, Asylum and Nationality Act 2006 was a major piece of legislation passed in Parliament. Much like other immigration legislation passed under Tony Blair’s first and second governments, this Act built on previous Acts and precedents, in particular the Government proposal entitled “Controlling our borders: Making migration work for Britain,” which, published in 2005, outlined a five-year immigration and asylum strategy for the United Kingdom.66 Between the years of 2004 and 2006, the number of asylum applicants had decreased by almost two-thirds.67 In a sense, asylum seekers were actually granted more rights than under previous Acts. This piece of legislation made the following changes.

Asylum seekers were now allowed full appeal rights unless connected to terrorist organizations and/or plots68

Immigration officers now had the power to confiscate and/or detain travel documents for a maximum of seven days without probable cause.69 Furthermore, Section 28 allowed the fingerprinting of asylum seekers for biometric reasons.70

The Secretary of State now had the power to remove British citizenship from people with dual citizenship if it was “conducive to the public good.”71

Biometric exams were introduced

The Home Office published the report entitled “A Points-Based System: Making Migration Work for Britain” in 2006 in response to Tony Blair’s promise of a points-based visa system. The proposed system was meant to “better attract migrants who have [the] most to contribute to the UK.”72 This point-based visa system was intended to more fairly distinguish between immigrants that would most likely benefit society (highly skilled workers) versus immigrants that would be more beneficial to fill-in working gaps when needed (low-skilled workers). Below outlines how the points-based, five tiered system worked.73

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68 Immigration, Asylum and Nationality Act 2006, United Kingdom Parliament, s 54(1)(a-b).
69 Immigration, Asylum and Nationality Act 2006, United Kingdom Parliament, s 27(4)(a-b).
70 Immigration, Asylum and Nationality Act 2006, United Kingdom Parliament, s 28(1-4).
71 Immigration, Asylum and Nationality Act 2006, United Kingdom Parliament, s 56(1).
73 The Home Office (2005), A Points-Based System: Making Migration Work for Britain, 15.
On June 27, 2007, Tony Blair officially stepped down as Prime Minister of the United Kingdom and Gordon Brown assumed the position. However, The UK Borders Act 2007 was in the process of being approved by Parliament. Although this Act received Royal Assent under Gordon Brown’s government, it was formulated under the leadership of Tony Blair. Thus, the UK Borders Act 2007 was the last piece of immigration legislation enacted under Tony Blair’s leadership. The UK Borders Act 2007 significantly reorganized the immigration system within the United Kingdom by requiring all immigrants to undergo a biometric exam before they entered the United Kingdom. If an asylum seeker was sent to prison for at least twelve months, they could be automatically deported. This section was in response to the number of crimes being committed by foreigners. Once again, the rights reserved to immigration officers were widened. Sections 40 – 47 also dealt with the powers of immigration officers, specifically when being supplied and/or supplying information. The last major overhaul of the immigration system of the United Kingdom was presented in Section 48, which established the Border and Immigration Agency. On April 1, 2008, the Border and Immigration Agency merged with UKvisas and parts of the HM Revenue and Customs to form

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**Chart 4**

<table>
<thead>
<tr>
<th>TIERS</th>
<th>POINT RANGE</th>
<th>CATEGORIES EVALUATED</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1 (Professional, Highly skilled workers)</td>
<td>75+ points</td>
<td>Degree, Previous Earnings, Age, Other</td>
<td>“Highly skilled individuals to contribute to growth and productivity.”</td>
</tr>
<tr>
<td>Tier 2 (Skilled workers, employment opportunities)</td>
<td>50 – 74 points</td>
<td>Degree, Prospective Earnings, Other</td>
<td>“Skilled workers with a job offer to fill gaps in UK labour force.”</td>
</tr>
<tr>
<td>Tier 3 (Temporary low-skilled workers)</td>
<td>N/A (Sponsorship only)</td>
<td>N/A (this system has never actually been employed by the government)</td>
<td>“Limited numbers of low skilled workers needed to fill specific temporary labour shortages.”</td>
</tr>
<tr>
<td>Tier 4 (Students)</td>
<td>N/A (Sponsorship only)</td>
<td>Educational Institution (must be legitimate)</td>
<td>Students</td>
</tr>
<tr>
<td>Tier 5 (Youth mobility and temporary workers)</td>
<td>N/A</td>
<td>Short-term work, ages 18 – 20 years-old</td>
<td>“Youth mobility and temporary workers: people allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives”</td>
</tr>
</tbody>
</table>

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1 Chart 4 created by Jordan Wagner, 27 July 2011.

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74 UK Borders Act 2007, United Kingdom Parliament, s 5(1)(a-c).
77 UK Borders Act 2007, United Kingdom Parliament, s 2(4).
78 UK Borders Act 2007, United Kingdom Parliament, s 40-47.
79 UK Borders Act 2007, United Kingdom Parliament, s 48(1).
the UK Border Agency.\textsuperscript{80} The guidelines outlined in the UK Borders Act 2007 are still utilized by the British government today, most notably the use of biometric exams for all foreigners. This Act ushered in a new era of asylum and immigration policies still applied by the United Kingdom in 2011.

\section*{Legacy}

Tony Blair’s immigration policies radically restructured and updated the system. Furthermore, he was consistent with the Labour Party’s goals outlined in various manifestos, following the viewpoints of his party. He promised certain objectives and achieved them. Additionally, he never changed his viewpoints towards immigration and asylum throughout his three governments. The main goals guiding immigration reform were always the same:\textsuperscript{81}

- Economic migration benefited the United Kingdom.
- The positive aspects between migration and development within the United Kingdom needed to be highlighted for the public.
- The United Kingdom needed to combat and prevent illegal immigrants.
- Asylum migration needed to be greatly reduced.

When Tony Blair took over as Prime Minister in 1997, the entire immigration system was in shambles. In a mere ten years, he managed to reduce the number of asylum seekers attempting to enter the United Kingdom by over two-thirds. He also cleared the entire backlog of asylum seekers awaiting immigration. The introduction of biometric exams, the points-based visa system, and the consolidation of the various branches pertaining to immigration and asylum in his final government helped to streamline and modernize the system with new technology. Tony Blair made substantial contributions to the immigration and asylum system of the United Kingdom that will continue to affect future generations. As Tony Blair stated, “A simple way to take measure of a country is to look at how many want in…And how many want out.”\textsuperscript{82} Tony Blair effectively promoted economic migration throughout his three governments while trying to discourage asylum seekers from entering the country.

\section*{Gordon Brown (2007-2010)}

Gordon Brown was Prime Minister from June 2007 through May 2010, during which time he passed two Acts of Parliament pertaining to immigration and asylum, while approving an additional Act of Parliament (UK Borders Act 2007), which was initially conceived under Tony Blair’s third government. Unfortunately, Gordon Brown never took a definite stance on immigration. Initially, in 2008, he rejected placing a cap on the number of economic migrants that could enter the United Kingdom in a given year. However, only a year later in 2009, he was campaigning for tougher immigration rules.\textsuperscript{83} Due to his short-term as Prime Minister, the majority of Gordon Brown’s policies towards immigration and asylum derive from speeches and statements made by him. Regardless of the contradictory statements and actions taken by Gordon Brown, the points-based visa system was fully implemented along with biometric exams for foreigners visiting the country by the time his

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{80} ‘UK Borders Act 2007,’ The British Refugee Council (BRC): Information Service Online.
\item \textsuperscript{81} Triandafyllidou, \textit{European Immigration: A Sourcebook}, 349.
\item \textsuperscript{82} Triandafyllidou, \textit{European Immigration: A Sourcebook}, 349.
\item \textsuperscript{83} Brown, G., (31 March 2010). \textit{Controlling Immigration for a Fairer Britain Speech}. Speech presented in East London.
\end{itemize}
\end{footnotesize}
term ended.

**1st government: 2007 – 2010**

In Gordon Brown’s first speech to the Labour Party as the party leader on September 24, 2007, he reiterated most of the policies already implemented including “a stronger uniformed presence at ports, customs officers targeting illegal immigration, stronger security checks at passport control.” All of these provisions were first stated in legislation passed under Tony Blair’s governments. This speech did not introduce any new ideas or provisions for issues pertaining to immigration and asylum. However, the UK Borders Act 2007, which was initially proposed under Tony Blair’s third government (and dealt with issues of biometric exams, additional powers for immigration officers, and revised the organization of the immigration agencies), received Royal Assent on October 30, 2007.

Gordon Brown’s next speech on immigration, given February 20, 2008, focused on issues of managed migration and earned citizenship. He stated that the reason “why citizenship matters so much in the modern world” was because it is no longer an abstract concept. Instead, citizenship was “founded on shared values that define the character of our country [the United Kingdom].” In order to adapt to the increasing mobility of people in the 21st century, Gordon Brown proposed a new, three stage framework for gaining citizenship.

1. Temporary resident
2. Probationary citizen
3. British citizen or permanent resident

Obligations for those wishing to seek British citizenship would be required during each stage and a timeframe would be imposed. In order to enter the country, an individual must have a working knowledge of English. Furthermore, it takes between six and ten years for an individual to gain British citizenship, depending upon his or her skill-level, level of English, etc. Those individuals who are only temporary residents or probationary citizens will not gain full benefits (including parts of welfare, social housing, etc). Finally, Gordon Brown stated that the United Kingdom would not tolerate illegal immigrants. Gordon Brown, like Tony Blair, believed that Britain must appeal to the highly skilled workers. He again reiterated the points-based visa system that was first proposed under Tony Blair’s third government, stating that the United Kingdom planned to implement the system as soon as possible. Gordon Brown’s speech on managed migration and citizenship introduced new ideas on the citizenship process while continuing to encourage the ideas of Tony Blair’s governments.

Gordon Brown’s first major Act of Parliament having to do with immigration was the Criminal Justice and Immigration Act 2008. This extremely long document barely touched upon immigration, instead focusing on criminal justice reform. However, this Act did define a “foreign criminal” and stated that “a designated person [foreign criminal] does not have leave to enter or remain in the United Kingdom.” Nevertheless, a Special Immigration Status for foreign criminals was introduced for those individuals who “the Government cannot remove from the country because to do so would

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breach their human rights.\textsuperscript{87} This provision was included in response to a group of Afghans who hijacked a place in order to escape Taliban rule (hijacking a plane, regardless of these situation, is a criminal offense).\textsuperscript{88} However, if the United Kingdom sent them back to Afghanistan, their lives would be in danger (and the United Kingdom would have violated the Human Rights Act 1998).\textsuperscript{89} This Act outlined certain provisions and steps to be taken if this situation or a similar situation arose again.

On November 12, 2009, Gordon Brown presented a milestone speech on immigration in the context of the worldwide economic recession. Once again, the main focus of this speech was issues of managed migration, in which Gordon Brown stated “the case for managed and controlled migration where it is in the national [United Kingdom’s] interest – economically, socially and culturally – is a case that I have constantly made.” Although the system of the United Kingdom promotes highly skilled migration, Gordon Brown acknowledged that highly skilled migrants sometimes steal jobs away from British citizens. Gordon Brown outlined policies that would “give British people looking for jobs the best chance of filling vacancies that arise” by advertising jobs to British citizens for a minimum of four weeks before they are advertised outside the country. Also, Brown promised to tighten the points-based visa system to serve the best interests of the citizens of the United Kingdom and to grant the British citizens with “low skills and poor job prospects” a better chance at securing a job. He also promised to review the requirements of student visas in an effort to curtail abuse in the system. Furthermore, it expanded upon the citizenship requirements outlined in his February 20, 2008 speech. Besides being an economic benefit to the United Kingdom, individuals wanting British citizenship must also “respect our [the United Kingdom’s] values and our language.” This includes “progress in English,” “knowledge of life in Britain,” and showing a clean criminal record.\textsuperscript{90} Unlike previous speeches that built upon the ideas presented during the Blair governments, Gordon Brown used this speech to react to the changing economic state of the United Kingdom, most notably the economic recession. In an effort to combat the amount of British citizens out of work, he tightened the ability for foreigners to obtain jobs within the United Kingdom.

The Borders, Citizenship and Immigration Act 2009 was the last Act of Parliament pertaining to immigration passed under Gordon Brown’s government. This Act attempted to simplify and revise the immigration process. For the first time, immigration officers now had the power to deal with customs issues relating to revenue.\textsuperscript{91} This Act stated that custom and immigration offices had the power to share information pertaining to immigrants.\textsuperscript{92} Under Gordon Brown’s leadership, the government focused more on issues of citizenship instead of matters pertaining to asylum seekers and managed-migration. In order to qualify for British citizenship, immigrants must adhere to the requirements outlined in Section 39, including the amount of time a person must have resided in the United Kingdom.\textsuperscript{93} Section 41 summarized the time frame for a migrant to become a naturalized British citizen. It also set out the pre-conditions for children to gain British citizenship, including:

- Children born in the United Kingdom to members of the armed forces.\textsuperscript{94}
- British nationals overseas without other citizenship.\textsuperscript{95}


\textsuperscript{88} ‘Criminal Justice and Immigration Act 2008,’ The British Refugee Council (BRC): Information Service Online.

\textsuperscript{89} ‘Criminal Justice and Immigration Act 2008,’ The British Refugee Council (BRC): Information Service Online.


\textsuperscript{91} Borders, Citizenship and Immigration Act 2009, United Kingdom Parliament, s 3 and 11(1a and 2a).

\textsuperscript{92} Borders, Citizenship and Immigration Act 2009, United Kingdom Parliament, s 14(1-2)(a-f).

\textsuperscript{93} Borders, Citizenship and Immigration Act 2009, United Kingdom Parliament, s 39(2)(a-f).

\textsuperscript{94} Borders, Citizenship and Immigration Act 2009, United Kingdom Parliament, s 42(2 and 4).

\textsuperscript{95} Borders, Citizenship and Immigration Act 2009, United Kingdom Parliament, s 44(1-4).
Furthermore, the Borders, Citizenship and Immigration Act 2009 rectified past injustices in issues pertaining to citizenship by granting British citizenship to individuals born before January 1, 1983 in Commonwealth countries who would have gained citizenship through his or her mother. Issues concerning foreign criminals were also addressed in this Act. The Borders, Citizenship and Immigration Act 2009 allowed fingerprints to be taken of foreign criminals. The provisions detailed in the Borders, Citizenship and Immigration Act 2009 dealt mainly with issues of citizenship, something not extensively touched upon by Tony Blair’s governments.

On March 31, 2010, Gordon Brown gave what would be his last speech on immigration during a campaign address. Once again, the main topic of this speech dealt with controlling immigration to the United Kingdom. Gordon Brown realized that “the question of who comes to Britain, and what they have to do to earn that privilege, is something that should be the subject of open and responsible debate.” He stated that the people of Britain needed to present a “united front” against people who don’t value the benefits of immigration. Due to the economic recession that faced the United Kingdom, only highly skilled workers who filled in “critical skills gaps” would be allowed in the country. Furthermore, he revised his previous stance on migration, stating that the United Kingdom needed to adopt a policy of “a more controlled migration system.” Also, Gordon Brown firmly declared that “we [the United Kingdom] do not need more unskilled workers brought in…”

Due to his inconsistencies on immigration, in particular issues of setting a “cap” or a “pre-determined quota,” both the Labour and Conservative Parties heavily criticized Gordon Brown.

Legacy

Gordon Brown left the role of Prime Minister in May 2010 after being defeated by the Conservative party. While he was Prime Minister of the United Kingdom, his main concerns relating to immigration, migration, and asylum were citizenship and the points-based visa system. Most of the legislation passed under Gordon Brown’s leadership attempted to rectify wrongdoings in past policies on citizenship and to update the current system. Furthermore, he spent the majority of his speeches commenting on the point-based visa system. He initially supported having no cap on immigration. However, once the economic recession struck the United Kingdom, he was forced to revise his stance on immigration. Unfortunately, the citizens of the United Kingdom viewed highly skilled migration in a negative light due to these immigrants taking jobs from British citizens. After Gordon Brown amended his stance on immigration caps, or what he called “pre-determined quotas,” he was heavily criticized by both the Labour and Conservative parties along with the media and general public for not taking a clear position. When he left the role of Prime Minister in 2010, he was not well respected by the citizens due to his inconsistent policies.

Conclusion

This dissertation analyzed the immigration, migration, and asylum policies of Tony Blair
and Gordon Brown based upon the Acts of Parliament, governmental papers, party manifestos, and speeches made during their terms as Prime Minister. One would assume that because Tony Blair and Gordon Brown are both members of the New Labour party, their policies would be similar. However, this hypothesis is disproven. Their policies on immigration, asylum, and migration deviate from each other due to the political and economic issues occurring during their tenure. These issues influenced their policies more than their party affiliation. Tony Blair’s governments were much more concerned with issues pertaining to asylum seekers, and adopted the idea of deterring asylum seekers, while simultaneously encouraging economic migration into the United Kingdom. Under Gordon Brown’s government, he dealt with issues concerning the new points-based visa system and questions revolving around past and present issues of British citizenship. Despite the influx of immigrants in the United Kingdom under both Tony Blair’s and Gordon Brown’s terms, Tony Blair never wavered on his immigration policies while Gordon Brown made major changes to his policies during his single term, adding legitimacy to Tony Blair. Both leaders were, however, committed to modernizing the immigration system. For example, various immigration agencies were established, combined, and/or shutdown during the terms of both leaders in order to improve the system.

A possible explanation for the differences between the policies of Tony Blair and Gordon Brown could stem from the general public’s tone towards issues concerning political and economic matters. Upon assuming the role of Prime Minister, Tony Blair inherited an asylum system in complete disarray. Furthermore, during his first and second governments, the number of asylum seekers attempting to enter the United Kingdom only increased. By the time Gordon Brown assumed the role of Prime Minister, the asylum system was under control. Unfortunately the economic view around the world was quite pessimistic. The entire globe was in an economic recession. Gordon Brown came under fire for allowing more economic migration into the United Kingdom while British citizens continued to lose their jobs. For this reason, more focus was spent on the points-based visa system to make sure that only individuals that would make substantial contributions to the United Kingdom would be allowed to immigrate. This also appeased the British citizens who were concerned about potential job loss in the United Kingdom. Although Tony Blair and Gordon Brown both modified the immigration system of the United Kingdom during their reigns as Prime Minister of the New Labour era, their immigration policies varied due to the political and economic issues occurring during their governments.

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Whose Home? The Role of Jewish Identity in Israel’s Policy Toward the Children of Foreign Workers

By Jonah Newman

Abstract: On August 1, 2010, Israel’s cabinet passed a proposal that allowed two-thirds of the estimated 2,000 children of foreign workers living illegally in Israel to receive permanent resident status. It was the third such “status proposal” in five years, each one creating new criteria to determine who could stay and who must go. This paper seeks to understand the political, social and religious motivations for Israel’s policy toward the children of migrant workers. Israel’s attitude toward these children provides a window for understanding the country’s policy toward their parents, the 200,000 foreign workers living in Israel, nearly half of whom are there illegally. While a handful of scholars have explored this issue, little research has included the most recent chapter in this saga, which began with a series of popular demonstrations in summer 2009. This paper analyzes dozens of articles, opinion pieces, and quotes from government officials in Israeli news sources, to show that Israel’s policy is motivated primarily by its concern for maintaining the demographic majority of the state’s Jewish citizens. The paper argues that the result has been a lack of a comprehensive policy, leaving in its place short-term stopgaps that fail to provide a solution to the problem of Israel’s illegal foreign workers.
Introduction

Israel’s Declaration of Independence, which was signed on May 14, 1948 and remains the closest thing Israel has to a constitution, states: “The State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles; it will foster the development of the country for the benefit of all its inhabitants…” For the past sixty-three years, Israel has struggled to simultaneously carry out the mandates of the first two clauses of this sentence: to be a state that is specifically for Jews, while also being a democratic state that works for the benefit of all of its inhabitants, including those who are not Jewish. The challenge hinges on how different people understand the terms Jewish and democratic. For some, a Jewish state is one that maintains a Jewish majority and Judaism as the official religion. For others, it is a state built on Jewish values, which include welcoming the stranger. In the past decade, the debate about what it means for Israel to be both a Jewish and democratic state has come to a head in the dispute over the status of Israel’s large number of non-Jewish foreign workers and their children.

It should come as no surprise that when creating the country’s citizenship and immigration laws, Israel’s founders failed to foresee the influx of migrant workers from Thailand, the Philippines and the former Soviet Union, who would arrive in Israel starting in the mid-1990s. Even less surprising is that David Ben-Gurion and his contemporaries never imagined that these non-Jewish immigrants would raise Hebrew-speaking children. However, what may be surprising, is that despite statistics showing more than 200,000 foreign workers were living in Israel at the end of 2010, nearly half of whom were there illegally, the country has yet to establish a comprehensive policy providing a path to citizenship for non-Jews.

Zooming in on the debate over the state’s policy toward the children of foreign workers provides a helpful window through which to understand the complexities of Israeli policy toward foreign workers in general. The government’s approach to this uniquely situated population, particularly in the past couple of years, shows that for the Israeli government, the state’s Jewish demographics continue to be the strongest influence on its foreign worker policy (or, more accurately, non-policy). The goal of maintaining Israel’s Jewish majority has resulted in governmental policy that has been piecemeal and shortsighted, focusing primarily on short-term stopgaps without providing a solution to the problem of illegal migrant workers. A more comprehensive and humane policy based on the democratic principles laid out in Israel’s Declaration of Independence and secured in an understanding of a Jewish state based on Jewish values is necessary to secure Israel’s future as a developed, democratic and—veritably—Jewish state.

Historical Background

Foreign workers first arrived in Israel in large numbers in the early 1990s. During the preceding decades, the agriculture and construction sectors relied heavily on low-wage labor from Palestinian workers living in the Occupied Territories (the West Bank and Gaza Strip) who commuted into Israel daily. But after the first Palestinian Intifada, or uprising, broke out in 1987, security concerns caused the Israeli government to stop issuing work permits to Palestinians. The ensuing labor shortage prompted the government to look for other sources of cheap labor. Thereafter, the

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number of foreign workers rose dramatically. Between the early 1990s and 2000, the percentage of Palestinian laborers in the Israeli labor force dropped from 8 percent to 1 percent, while the share of foreign workers rose from less than 1 percent to 12 percent in the same period. By 2001 there were an estimated 243,000 foreign workers in Israel. The government considered these workers to be a “temporary, low-cost solution to a temporary problem,” and no system was put into place for their integration into society, nor was a path created for them to gain citizenship.

Israeli citizenship and immigration law remains largely unchanged from when it was created in the early years of statehood. The Law of Return, passed in 1950, provides for the nearly uninhibited right of all Jews to immigrate to Israel and the law remains the country’s primary method of granting citizenship. This law, along with the Law of Nationality (1952), built Israel’s citizenship code on the basis of *jus sanguinis* (Latin: right of blood), meaning that a person’s citizenship status derives from the status of their parents. In other words, a non-Jew who is born in Israel does not automatically become a citizen. Rather, the primary paths to becoming a citizen are either to be born to an Israeli citizen, whether you live in Israel or not, or to immigrate (“make *aliyah,*” in the Hebrew terminology) as a Jew under the Law of Return. There are a couple of caveats. The 1952 Nationality Law allows for the naturalization of people who were not born to Israeli citizen parents and are not eligible for citizenship under the Law of Return. However, the law dictates that they must “be entitled to live in Israel permanently.” While Israel has a method for granting permanent residency, it is entirely at the discretion of the Minister of Interior, and it is rarely extended. Therefore, under Israeli law, foreign workers and their children, even those born in Israel who have lived their entire lives there, have no right to citizenship.

**Literature Review**

Scholars from a variety of disciplines study how public policy toward foreign workers is formed, both generally and specifically in Israel. This is a topic of study for which an interdisciplinary approach is the norm. Economics, political science, sociology and anthropology all add valuable perspectives to an analysis of labor migration policy. This paper builds upon the prior research of scholars in these disciplines to assess which considerations carry the most weight in Israeli policy and to suggest a new direction for Israel’s policy toward foreign workers and their children.

David Bartram, who approaches the study of migrant workers through the lens of political economy, poses a different question than most other scholars. Instead of asking why migration happens, he asks why it happens on a larger scale in some countries than in others. In his 2005 book, *International Labor Migration*, he compares Japan and Israel, using the latter as a case study for a country where large-scale labor migration has taken place. He introduces the widely accepted economic explanation for the influx of migrant labor to Israel in the early 1990s: that the first Palestinian *Intifada* in 1987 led the government to stop issuing work permits to Palestinians living in the Oc-

4 Ibid., 53.
5 Adriana Kemp and Rebeca Raijman, “‘Tel Aviv is not Foreign to You’: Urban Incorporation Policy on Labor Migrants in Israel,” *International Migration Review*, 38 (Spring 2004), 32.
7 Ibid., 670.
9 Drori, *Foreign Workers in Israel*, 150.
occupied Territories, which subsequently led to a shortage of low-wage labor, particularly in the agricultural, construction and domestic care sectors. While this labor shortage was the first step, Bartram argues that the policy decisions of the Israeli government in response to that labor shortage were a crucial second step that ultimately led to the influx of labor migrants. This forms the backbone to his thesis, in short, that “we must take politics seriously” when considering the reasons for public policy. He argues that government policy regarding migrant workers is influenced primarily by political actors and interested local parties—in the case of Israel, mainly employers in the low-wage sectors. The pressure employers in low-wage sectors put on Israeli politicians, and the fractured state of Israel’s political system, which gives disproportionate influence to private interests, dictated Israel’s decision to allow the entrance of foreign workers. This occurred even though allowing the entrance of foreign workers ran against the ethno-national interests of the state, and many of those same players continue to influence Israel’s policies vis-à-vis foreign workers today.

In his comprehensive 2009 book, *Foreign Workers in Israel*, Israel Drori, a professor of management who is also trained in ethnography, takes a decidedly interdisciplinary approach to the study of migrant workers in Israel, which he dubs an “ethnographic study of policy.” Using interviews and observations to capture the experience of foreign workers in Israel and the perceptions that policymakers and the public have of those workers, Drori evaluates the government’s policies toward migrant workers. In contrast to the argument of Bartram, Drori writes that the policies are “the outcomes of Israel’s citizenship regime, social and ethnic structure, political checks and balances, and economic ideology.” However, from among all of these factors, Drori claims that Israel’s Jewish nature has been a primary driving force behind its immigration policy. He writes that migrant workers fundamentally challenge Israel’s assumptions about its national identity, which explains why the government has failed to implement any long-lasting policy that would normalize the status of foreign workers, either by expanding naturalization or by instituting a systematic path to permanent residency. He writes, “since its inception, the immigration issue in Israeli society was characterized as having deeply ideological dimensions connected to the political interests of maintaining a Jewish majority and ensuring the security of the nation as a truly ‘safe haven’ for Jews.”

Adriana Kemp and Rebeca Raijman complicate Drori’s vision of an Israeli government that makes its decisions primarily on the basis of maintaining its Jewish nature. In their 2004 article, “Tel Aviv is not Foreign to You,” Kemp and Raijman focus on the conflict between state policy and localized urban policy toward foreign workers. Kemp and Raijman argue that there is a paradox inherent in migration policy because “states are sovereign in controlling and sanctioning migration without necessarily bearing responsibility for settling migrants, while cities bear the responsibility for their inhabitants without having sovereignty over migration policy.” Tel Aviv-Jaffa, the major urban center where the majority of Israel’s foreign workers settle, has adopted an inclusionary policy toward labor migrants that contrasts with the state’s exclusionary stance. The city works to address the needs of foreign workers, legal and illegal, by creating official bodies to assist those workers to organize and become empowered, despite the fact that the state doesn’t recognize those same workers’ rights. Like Drori, Kemp and Raijman attribute the state’s policy toward foreign workers in large part to the ethno-national character of Israel’s democracy. But in their focus on the role of the city as a political player, they uncover forces that are pushing back against the ethno-national interests of the state and

11 Ibid., 12.
13 Drori, *Foreign Workers in Israel*, xi.
14 Ibid., 182.
15 Ibid., 189.
16 Kemp and Raijman, “Tel Aviv is not Foreign to You,” 30.
possibly forcing a change in the national policy.

In another 2004 paper by Raijman, co-authored with Moshe Semyonov, the pair analyzes the results of a survey of the Israeli populace about attitudes toward granting rights to foreign workers. This sociological approach further complicates Drori’s picture of the Israeli policy on foreign workers as the result of a desire to maintain the state’s Jewish character and Bartram’s thesis that it is motivated by the interests of a select group of politically connected individuals. Raijman and Semyonov found that “a substantial number of Israelis, whether Jews or Arabs, are resistant to granting social rights to foreign workers.” While they attributed much of this to a perception of threat, either economic (that foreign workers take jobs from Israeli citizens) or ethnic (that they might change the Jewish character of the state), they also found discriminatory attitudes that were not linked to these perceptions of threat, especially among people of lower education and those with right-wing views. Additionally, when perception of threat was controlled for, Arab citizens of Israel were found to be more likely to deny social rights to foreign workers than Jewish citizens. In other words, there are factors aside from ethno-national considerations that influence popular Israeli sentiment—and, perhaps, public policy—toward foreign workers.

A piece by Kemp from 2007, one of the few articles in the literature that focuses specifically on children of foreign workers in Israel, notes the steps that have been taken in recent years to normalize the residency status of this group, which previously existed in a condition of statelessness. She argues that these reforms, limited though they were, prove that more is at play in Israeli policymaking than just the question of Israel’s ethnic demographics. Rather, she writes, “both liberal and ethnic norms exist side by side as part of policymakers’ tool-kit, allowing states to manage the structural contradictions that they must contend with (and often create themselves) in their simultaneous, albeit somewhat incongruent, pursuit of liberalized markets and cultural homogeneity.” Put into layman’s terms, Kemp argues that Israeli policy is simultaneously influenced by a liberal force pushing for a citizenship policy divorced entirely from ethnic belonging and an ethno-national one pushing for an exclusive policy that maintains Jewishness as the primary factor in Israeli nationality. In other words, Israel continues to struggle in its attempt to live up to its definition, as described in the declaration of independence, as both a majority Jewish state and a democratic state for all its inhabitants.

My research takes Kemp’s 2007 article as a jumping-off point and attempts to bring it up to date, testing her argument in the face of the public debate and policy changes that have taken place since summer 2009. However, I also incorporate the previous research in my effort answer the following questions: What factors have influenced Israel’s recent policies toward the children of foreign workers? How do Israelis utilize the rhetoric of economics, politics, sociology and religion in their support for or opposition to the presence of foreign workers? And how can the Israeli government more effectively deal with the perceived “problem” of foreign workers in a way that maintains the state’s goals of being both a Jewish and a democratic state? Kemp writes in her conclusion, “Recent policies regarding the naturalization of children of labor migrants are evidence that the debate over citizenship has been set in motion, even though its resolution is still far-off.” Ultimately, my goal is to show what it will take to bring its resolution closer.

18 Ibid., 796.
20 Kemp, “Managing Migration,” 690.

The June 2005 decision around which Kemp centers her article was neither the first nor the last government proposal for legalizing the status of the children of foreign workers. In fact, between June 2005 and July 2010 three different policies (under three different prime ministers and three different interior ministers) were approved by the Israeli cabinet for granting permanent status to children of foreign workers. In each case, the government’s policy was based around making distinctions between who should be allowed to stay and who should be forced to go. In every case, the policies applied only to children of foreign workers who fulfilled certain requirements at the time the policy was enacted. In other words, each policy was not a comprehensive policy, but rather a one-time grant of amnesty to children who, due precisely to a lack of formal policy, had been living illegally in Israel. A brief summary of the circumstances of each of these “status proposals” helps to elucidate the government’s agenda in regards to the children of migrant workers.

The 2005 proposal

In June 2005, Interior Minister Ophir Paz-Pines pushed a policy through the cabinet that allowed all children of foreign workers who were “at least 10 years old, were born in Israel, have parents who entered the country legally – either as tourists or workers – and who would face ‘cultural exile’ if sent out of the country” to apply for permanent residency and, eventually, citizenship. The proposal was a revised—and highly limited—version of a plan presented in November 2004 by Paz-Pines’ predecessor, Avraham Poraz. The plan proposed by Poraz fell through after a political crisis caused the government coalition to crumble and led Poraz to lose his post. While Poraz’s proposal would have provided a path to citizenship even for children born elsewhere and those whose parents entered the country illegally, the Paz-Pines proposal covered a much smaller population of children. For this reason, the Association for Civil Rights in Israel (ACRI) and the Hotline for Migrant Workers, two liberal NGOs, filed a petition in the Supreme Court against the proposal. They argued that the stipulations that children had to have been born in Israel and that their parents had to have arrived legally for them to qualify for permanent residency unfairly discriminated against certain foreign workers’ children. The groups argued that these criteria had nothing to do with the children’s connection to Israel, which was ostensibly the government’s main concern. But the government’s lawyer claimed that the NGOs were undermining the state’s right to limit the number of non-Jews allowed to settle there, effectively “changing Israel’s Citizenship Law into an Immigration law.” The court sided with the liberal groups, granting an injunction against the deportation of any children, whether or not they fit the criteria for permanent residency, until March 2006, thus rendering the new policy meaningless. But the government’s agenda remained clear: to provide so-called humanitarian relief to the children of foreign workers living in Israel lacking status or rights without setting a precedent that would allow “too many” non-Jews into the state, disrupting the demographic balance and changing the Jewish character of the state.

The 2006 proposal

In June 2006, determined to “solve” the issue of foreign workers’ children, Ronnie Bar-On, the new interior minister, passed a bill through the cabinet that replaced the emasculated policy from the previous year and brought relief to the many foreign workers and their children who faced deportation after the March deadline. Bar-On’s policy significantly lowered the threshold for amnesty,
eliminating the requirement that children be Israeli-born and allowing anyone who entered the country before they were 14, lived in Israel for at least six years, and spoke Hebrew fluently to be eligible for permanent status. The requirement that the children’s parents had entered the country legally still stood, but the interior ministry had the authority to extend permanent status to children of foreign workers who entered Israel illegally, albeit with stricter guidelines. While the policy passed in the cabinet by a wide 18-5 margin, opponents in the government spoke loudly in disapproval. Eli Yishai, then-chairman of the ultra-Orthodox Shas Party, called the law “the beginning of the end for the Jewish state,” adding, “We are on a slippery slope with the loss of our identity at the bottom.” The bill’s supporters, however, spoke in terms of “compassion” and “humanitarian” concerns. It took more than a year for the interior ministry to sort through all of the applications, but by June 2007 more than 1,200 children of foreign workers were given permanent residency along with their parents. The problem of the stateless children of foreign workers seemed to be solved. But prescient observers knew better than that. One such observer, Amotz Asa-El, wrote in a July 2006 Op-Ed that extending permanent residency to the children of foreign workers, “while admirably humanistic, is clearly not part of any systematic policymaking process.” As such, the problem of policy toward the children of foreign workers was certain to return.

Foreign workers’ children revisited: 2009

It didn’t take long for Asa-El to be vindicated. While 1,200 children were granted permanent status in June 2007, there were still hundreds of children whose applications were rejected or who failed to meet the requirements in the first place, and thus, the government intended to deport them. Many of them remained in Israel illegally. In a December 2007 interview, Effi Mor, the lieutenant commander of the state immigration police, said, “As a rule we do not detain children and we will not arrest the parents of these children either.” The consequence of this unwritten rule became clear less than two years later when a new arm of the immigration police began targeting foreign workers and their children, leading to widespread public outcry and, ultimately, another government measure to temporarily legalize foreign workers. The ordeal that began in 2009 provides an ideal lens through which to understand the gap between the policies and ideals of the Israeli government and the rhetoric of the Israeli populace.

The Oz Unit

In the summer of 2009, the Israeli government redoubled its efforts to deport foreign workers living in Israel illegally. According to media reports, the Interior Ministry estimated that there were 280,000 foreigners living in Israel illegally at the time. This group included various types of foreign workers: those who had overstayed their work permits, those who entered on tourist visas and never left, as well as asylum seekers. Many people from the Sudan and elsewhere in East Africa illegally crossed the border from Egypt and were never granted asylum, and ended up instead as low-wage laborers. Further there were still nearly 2,000 children of foreign workers, mostly those who hadn’t met the requirements of the Bar-On proposal, who were born or entered the country in the interven-

25 Ibid.
28 Eglash, “Bar-On issues permanent-residency visas to 1,200 children of foreign workers.”
The government responded to what was perceived as a growing threat of these illegal immigrants by creating the Oz Unit, a new enforcement arm of the Interior Ministry’s National Immigration Authority roughly equivalent to the U.S. Immigration and Customs Enforcement. But the Oz Unit’s zealously in arresting and deporting illegal workers, particularly their breach of the unwritten rule against deporting children, led to widespread protests across the country. In July 2009, responding to the backlash, Prime Minister Benjamin Netanyahu directed the Oz Unit to postpone the deportation of children, first until November, and then, at the beginning of November, through the end of the school year, while an inter-ministerial committee considered policy options. I will first explore the parameters of the public debate that erupted in summer 2009 surrounding this issue, both those in favor of deporting the children and those against it, and then address the factors that the government took into consideration when forming their most recent policy on the children of foreign workers.

**The public debate: liberal vs. conservative**

Counter to what might be expected based on the information presented until this point, the fierce debates on the streets of Israel during the summer and fall of 2009 did not center on the Jewish character of the state. Instead, social and economic arguments were at the forefront of the debate on whether or not to deport undocumented foreign workers and their children. In fact, the arguments on both sides sounded very similar to the arguments of immigration supporters and opponents in the United States.

Supporters of the Oz Unit’s plan to deport illegal foreign workers emphasized the economic toll those workers had on the communities where they resided and the social problems, including crime and overcrowded schools, that they claimed the foreign workers brought to their communities. At a demonstration in favor of the deportations in October 2009, one resident of southern Tel Aviv, where many foreign workers live, told the *Jerusalem Post*: “It’s time to clean up the neighborhood from all the foreign workers. I have to send my son to a different school because there is no room left in ours. All the students are black, Filipino, Thai, Chinese or Turkish. People think we’re stupid or mentally ill because we are silent in the face of what’s going on.” Another resident and chairman of the neighborhood action committee that organized the rally said, “We’ve decided to put an end to all the suffering that has been caused by presence of illegal migrants who are here in our neighborhood. They take up jobs and residences, but most of all it’s because of the fear. People, especially young women, are afraid to walk around at night. The feeling of personal safety has really diminished.” If protecting the Jewishness of the state, both the Jewish demographic majority and the state’s religious and cultural identity, was mentioned at all in public debates, it was in vague and distant terms. One letter to the editor written in November 2009 by a concerned citizen stated, “What our centuries of suffering in the Diaspora and in our own country should teach us is to stop letting others take advantage of us. This means we must stop making concessions to our enemies and literally erect a wall to prevent us from being swamped.” But the vast majority of those arguing in favor of deporting illegal foreign workers and their children did so based on the same conservative values espoused by immigration opponents in many countries in the Global North, focusing on the

31 “Oz” means strength in Hebrew and is also an acronym for Ovdim Zarim, the Hebrew term for foreign workers.
33 Ron Friedman, “Angry demonstrators confront Knesset Foreign Workers Committee as it visits south Tel Aviv,” *The Jerusalem Post*, June 7, 2010.
34 Ron Friedman, “Hatkiva residents call on government to deport all illegal foreign workers,” *The Jerusalem Post*, October 20, 2009.
35 Ibid.
perceived economic and social threat of foreign workers, not the demographic threat often referred to by Israeli government ministers.

On the other side of the debate, those in Israel who opposed the deportation of foreign workers and their children, the ones who first took to the streets in summer and fall 2009 to demonstrate against the Oz Unit, did so primarily based on liberal democratic values and morals. A participant in one of the demonstrations in November told a reporter, “This is just an opening to a solid immigration policy – these are humans and humans deserve rights.” Signs at another rally read: “Every child in Israel is entitled to citizenship.”

Greer Fay Cashman, a columnist in the typically right-leaning Jerusalem Post, wrote: “If this government goes ahead with child deportation, it will taint me forever. As a citizen of Israel, I am no less guilty of a moral crime than if I myself were to sign the deportation order. It makes me ashamed to be Israeli.”

The letters written in response to Cashman’s column were overwhelmingly positive. One wrote, “If we allow ourselves to ignore injustice and insensitivity, we can no longer define ourselves as a democratic state, much less a Jewish state based on a moral code.”

The use of the state’s Jewish nature in this argument is an indication of a specific understanding of what that means; a Jewish state in this case is not about the country’s demographics, but about its morals.

Those, like the writer of the previous letter, who did mention the Jewish nature of the state, spoke not in terms of Jewish people, but rather of Jewish morals and Jewish values. Amnon Rubinstein, a prominent liberal lawyer, politician and academic in Israel, wrote in an Op-Ed: “The elementary moral rule is plain and simple: In a Jewish state, Jews don’t expel children. This is our true Jewish heritage. This is the message of a people who have suffered from persecution for ages. And anyone who acts differently, acts in a non-Jewish way.”

Another letter to the editor asked of the proposed deportations, “As Jews, who have suffered so long and so much, do we dare to commit such a dastardly act?” Ze’ev Factor, a representative of a major Holocaust survivors organization, called the decision to not deport the children of foreign workers “a moral obligation.” He wrote: “Children must not be allowed to experience expulsion from their country of birth, just because of their ethnic origin. It is a lesson that is carved in our flesh.” All of these responses to the proposed deportation used the state’s Jewish character to mean its Jewish values, which, at least to these activists, lined up with liberal democratic ones. However, despite the fact that those in favor of deporting foreign workers used economic and social arguments and those opposed understood the Jewish character to mean adherence to Jewish values, the Israeli government continued to frame its policy primarily in terms of maintaining Israel’s Jewish demographics.

**The August decision: Another temporary solution to a permanent problem**

On August 1, 2010, more than a year after he initially called for the deportation of foreign workers’ children to be suspended, Prime Minister Benjamin Netanyahu announced that the cabinet had agreed to a new proposal for legalizing the status of certain children of foreign workers. His statement to the press reveals the factors that influenced the Netanyahu government’s decision. He said: “On the one hand, this problem is a humanitarian problem. We all feel and understand the hearts of children. But on the other hand, there are Zionist considerations and [considerations of] en-

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43 Ron Friedman, “Yishai: We are not an asylum state,” The Jerusalem Post, Oct. 16, 2009.
suring the Jewish character of the state of Israel. The 2010 policy created yet another set of conditions for determining which children could stay in Israel and which would be deported. The criteria were remarkably similar to those set out in 2006. Those who were eligible for permanent residency were children who were either born in Israel or arrived before the age of 13, had lived in Israel for at least five consecutive years, spoke Hebrew, and were enrolled in Israeli schools. As with the previous decisions, the government made it clear that this policy was a one-time deal that covered only those children who fit the criteria on the date it was enacted.

That the “Zionist considerations” took precedence over the humanitarian ones for the Netanyahu government is clear. Netanyahu’s interior minister at the time was none other than Eli Yishai, the ultra-Orthodox Knesset member who called the 2006 proposal “the beginning of the end for the Jewish state.” His anti-immigrant sentiment, based almost entirely on the perceived threat to the Jewish majority of the state, is by now well known. In November 2010, Yishai said that asylum seekers who cross the border illegally from Egypt “pose an existential threat to Israel.” He continued: “Whoever thinks I’m extreme and have horns – I’ll send him some Sudanese to his neighborhood, and then we’ll see what he says. Everyone wants to say that they are nice people as opposed to ‘extreme Eli Yishai,’ but in 15 years people will understand the serious implications.” But Yishai isn’t the only politician who was worried about the demographic implications of legalizing foreign workers’ children. In October 2009, Minority Affairs Minister Avishay Braverman, who is a member of the liberal Labor Party, said that while he supported a one-time status proposal, “The problem is the precedent. I believe that by employing bright and resourceful lawyers we will find a way to allow them to stay without it being binding for the future.”

Braverman’s comment elucidates the government’s main concerns. By passing another stopgap measure to legalize a finite number of foreign workers’ children, the Israeli government showed indisputably that they understand protecting the Jewish character of the state as a demographic issue rather than a moral one, and that they continue to base their policy toward foreign workers’ children with that concern at the fore.

**Conclusions**

The August 2010 decision regarding the children of foreign workers, Israel’s most recent “policy” on the issue, was a failure on two fronts, both resulting from the fact that its primary consideration was maintaining Israel’s Jewish demographic majority. The first is that the government failed to acknowledge that the Israeli public no longer thinks of maintaining Israeli’s Jewish character in demographic terms. Like the immigration debate in other Western countries, the debate among the Israeli public has shifted focus to the state’s democratic character. Even those who supported the deportation of foreign workers and their children based their position on the perceived “democratic threat” of foreign workers, that is, the threat to their personal livelihood and safety, not on the demographic threat. And those who opposed the deportations made clear that their understanding of the Jewishness of the state is entirely different from the government’s. While the Israeli government continues to limit the state’s democratic principles in favor of protecting its Jewish demographics, the Israeli people maintain that it is possible for Israel to be both Jewish and democratic. It only requires understanding the Jewish character of the state to be based on its Jewish principles rather than its Jewish people.

The second failure is that the August decision set the stage for this issue to return again in the future. The deportations of children who didn’t meet the requirements of the August decision began in March 2011, but they are moving slowly. In February 2012, 375 of the 700 children who applied for permanent residency were children who were either born in Israel or arrived before the age of 13, had lived in Israel for at least five consecutive years, spoke Hebrew, and were enrolled in Israeli schools. As with the previous decisions, the government made it clear that this policy was a one-time deal that covered only those children who fit the criteria on the date it was enacted.

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for permanent residency were told of the government’s decision; of those, only 257 were accepted.\footnote{Talila Nesher, “Israel to announce names of foreign workers’ children set for deportation,” \textit{Ha’aretz}, Feb. 15, 2012.}
The government planned to deport the other 118, but there have already been a handful of cases in which court injunctions have stopped the deportations of those who were supposed to leave. In August 2011, the NGO, Israeli Children, stepped in on behalf of a Filipino worker and her four-year-old child, who was too young to receive citizenship based on the August 2010 policy, and a court decision stopped their deportation just as their plane was sitting on the runway.\footnote{Omri Ephraim, “PM’s wife appeals to Yishai over child’s deportation,” \textit{Yedioth Achronot}, Aug. 16, 2011.} Nevertheless, even if the government succeeds in deporting the estimated 400 children, plus their families, who didn’t meet the requirements of the August decision, the country’s continued reliance on foreign workers will ensure that status-less children will continue to be a problem in Israel. Just two months after the August decision, the Industry, Trade and Labor Ministry granted permits for 700 new foreign workers to enter the country.\footnote{Orli Vilnai, “State gives permits to 700 migrant workers for jobs ‘Israelis won’t do,’” \textit{Ha’aretz}, Oct. 26, 2010.} A Supreme Court decision in August 2011 that overturned the Interior Ministry’s longstanding policy of revoking the work visa of any foreign worker who became pregnant while in Israel, opens the door to many more foreign children being born on Israeli soil.\footnote{Ben Hartman, “NGOs praise appeal of ruling on pregnant foreign workers,” \textit{The Jerusalem Post}, April 14, 2011.} Without a comprehensive policy that provides a path to citizenship for these children, there will be no end to the number of stopgap “status proposals” that only provide temporary solutions to an ongoing problem.

Israel must change course. The government has failed time and again to create a permanent policy that provides a path to citizenship for the children of foreign workers, children for whom Hebrew is their primary language and Israel is their only home. It must do so now if it is to maintain its status as a developed, democratic country. The legal imperative is written into the Declaration of Independence: Israel is to “foster the development of the country for the benefit of all its inhabitants.” And the moral imperative comes from understanding the state’s Jewishness as a consequence of its values, not simply as a product of its demographics.
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Morales’ Bolivia: A New Paradigm in Egalitarian Governance?

By Alieza Durana

Abstract: Through my research I am seeking to understand how issues of income inequality can be addressed through public policy. I am furthermore interested in Bolivia as a case study, given the policy changes that have occurred during the Morales administration. Since taking office in 2006, President Morales has enacted two conditional cash transfer programs (CCTs) as a means of addressing socio-economic stratification in Bolivia. This research examines the subsequent Juancito Pinto and Renta Dignidad CCTs passed under the MAS-IPSP\textsuperscript{1} administration to evaluate whether Morales’ policies are indicative of a larger paradigm shift in Latin American governance.

To begin, I examine CCTs as they fit into larger economic paradigms; I review relevant neoliberal, developmentalist, and social policy literature concerning how to generally decrease income inequality and encourage economic development in Latin America. I then review arguments about how cash transfer programs should be structured and evaluate how the Juancito Pinto and Renta Dignidad Programs fit into CCT discourse. Finally, I find that these policies are only indicative of a shift within the neoliberal rhetoric. To conclude, I argue that while populist (or left-of-center) rhetoric dominates Bolivian political discourse today, the free market is still the focus of Bolivian public policy.

\textsuperscript{1} The acronym MAS-IPSP stands for the Movimiento al Socialismo-Instrumento Político por la Soberanía de los Pueblos, or the Movement for Socialism’ party, which currently holds power.
Introduction

Through my research I seek to understand how issues of income inequality can be addressed through public policy and how these policies relate to models of political authority and the state. Over the last decade, many Latin American states have developed new strategies of governance, such as the developmentalist and social policy approaches, to address the issue of socioeconomic stratification. I am interested in Bolivia as a case study, given the policy changes that have occurred during the Morales administration. Since taking office in 2006, President Morales has enacted both universal and targeted social policies to address socioeconomic disparities in Bolivia, mainly through the nationalization of hydrocarbons, and the allocation of the subsequent resource revenue to various social policies. This research examines the Juancito Pinto cash transfer program passed under the MAS-IPSP\(^1\) administration to evaluate whether Morales’ policies are indicative of a larger paradigm shift in Latin American governance – a shift in how authority is claimed politically, how political authority legitimizes itself thereafter, and what poverty-reduction measures are both materially and politically feasible in the Bolivian institutional context. I propose that Morales has assumed a hybrid form of moral and legal charismatic authority through which he legislates equality-minded social policies.

Competing Theoretical Frameworks

Since 1985, shifts in government regimes in Bolivia have provided two competing frameworks for how to address income inequality and development – the neoliberal framework and the interventionist framework. Neoliberal policy characterized the period from 1985-2006, and interventionist policy, with components of developmentalist and social policy has characterized President Morales’ administration since 2006. Both strategies claim to have policies that address the issue of income inequality, but the two inherently differ in the importance they give to it, and the tools they use to approach it.

After a period of great hyperinflation and instability during the 1980s, Bolivia adopted a neoliberal approach to governance in 1985 upon the election of President Victor Paz Estenssoro. Under the guidance of Harvard economist Jeffry Sachs, the new neoliberal reformers took possession of the Bolivian government, claiming to possess knowledge of the pure, indisputable scientific truth of good governance – that of the Chicago-style, Friedmanian school of economics.\(^2\) The neoliberal reformers used this rhetoric of scientific, economic truth to legitimize their proposals that the state be made a mere gatekeeper of the market, a watchman to protect the market and the rights of the individual. So from 1985-2006, poverty and income inequality were seen as functions of economic under-development, fiscal instability, hyperinflation, and over-regulation. In other words, income inequality was a function of an inefficient market system.\(^3\) For that reason, the neoliberal solution to income inequality emphasized the importance of market driven policies, liberalized trade, less state investment in production, and instituting monetarism.\(^4\) In his book *New Languages of the State*,

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1. The acronym MAS-IPSP stands for the Movimiento al Socialismo-Instrumento Político por la Soberanía de los Pueblos, or the Movement for Socialism party, which currently holds power.
3. Neoliberal Economists such as Milton Friedman accredit shifts from poverty to prosperity to the development of free market practices, using such examples as Chile under Pinochet and Hong Kong in post-World War II China (Friedman). Conversely then, poverty was seen as the direct result of market inefficiencies, be it from tax and subsidy structures, tariffs, or other government policies.
Bret Gustafson writes that the new neoliberal regime “introduced a new language of authority in which … the message that poverty reduction would come from the free markets, individualist striving, efficiency, decentralization, and competition was in.” The role of the government therefore was to deregulate the economic sector and diminish social policies to better foster competitive business practices and maximize profits. Income inequality was thus addressed through the trickle-down effects of macroeconomic growth.

Under the neoliberal mindset, what little social policy existed was viewed as a way of mitigating the social ramifications of deregulation, and of preventing social unrest. After the privatization of mining and natural gas industries, and of the government pension system in 1995, President Gonzalo Sanchez de Lozada instituted Bono Solidario (or Bonosol), a temporary pension payout safety-net measure, to stave off social conflict. Social scientist Katharina Müller writes: “these controversial moves were made politically palatable by a major conceptual and semantic effort, which included linking both projects through a new universal pension scheme: the Bonosol.” In that sense, although he had initially legitimized himself through a discourse of the science of economics, by the mid-1990s, even neoliberal President Lozada was forced to rethink his rhetorical strategy, and how he claimed authority in order to gain support for his policies. Privatization, however scientific it claimed to be, had become so unpopular that against the backdrop of his reelection campaign, Lozada proposed Bonosol, and even adopted a moral claim to power to promote his political agenda. Even the most “neoliberal” of presidents, such as President Gonzalo Sanchez de Lozada, was forced to fuse neoliberalism with very limited Keynesianism to further his economic agenda.

Since the election of President Evo Morales in 2006, Bolivia has looked beyond the neoliberal approach to interventionist state policy models. I will call the developmentalist models those models that propose state-intervention in industrial development, and the social policy models those that propose public improvements in education, healthcare, and infrastructure. My ultimate aim is not to label the Morales regime, but rather to consider the form, meaning, and potential effects of his policies. For that reason, this study examines the effectiveness of one significant interventionist policy aimed at improving equality of opportunity and decreasing the income gap: Bono Juancito Pinto.

**Literature Review: General Trends in State-Driven Development Policies**

Since the shift away from Lozada’s orthodox approach to market liberalization, a range of literature on Latin American policy has emerged to address the general trajectory of Latin American development. As opposed to the more traditional, “purist” free-market viewpoint, the general argument shared by the developmentalist literature views income inequality as a byproduct of dependence on commodities and an underdeveloped industrial system. Given that, developmentalists seek a new economic policy that addresses economic growth, stability, and social equity. Instead of claiming to possess a privileged truth, the developmentalists lay a moral claim to authority – that there can be no economic development without the inclusion of all members of society.

According to such developmentalists as Ha-Joon Chang, Anil Hira, James K. Galbraith, Ronald H. Chilcote, Mark Weisbrot, Dietrich Rueschemeyer, Gerald Epstein, and Adam Przeworski...
ski, free-market economic models are especially inappropriate for developing countries because the process of industrialization has always depended heavily on state-intervention.\textsuperscript{11,12} From the birth of industrialization in the 19\textsuperscript{th} century, even such bastions of the free market as the United States and Great Britain depended on active state intervention policies to allow them to compete globally. The argument is, therefore, that in order for Bolivia to be able to compete in the global market, Bolivia must first industrialize with the help of its government.

Developmentalists argue that development is a structural process in which the goal of states is to create full employment by using national resources to create a sustainable rate of capital accumulation. According to the developmentalists, while “markets are the major locus of this process,” the state must provide financial structures and institutions to channel resources for further innovation, overcome structural imbalances, and encourage competitiveness.\textsuperscript{13} These policy approaches prescribed by the developmentalists as a remedy to liberalization’s failures can be divided broadly into “industrial” policies and “institutional” or “social” policies.

On the one hand, under the “industrial” mindset the state must create an institutional framework to foster the aforementioned structural process and integrate into the global market. To that end, industrialists advocate for the creation of a “national development strategy” to better take advantage of, and intervene in, the global economy.\textsuperscript{14} Such a strategy could include, but would not be limited to, the legislation of anti-trust and labor and environmental codes (or improvements on current laws); the creation of State-Owned Enterprises (SOEs); the enactment of domestic protections from competition; the promotion of state-sectoral measures (including subsidies to assist growing industry); the implementation of regulatory policy as a mechanism for industrialization; state-investment in factors of production and ways to reduce transaction costs;\textsuperscript{15} a legal guarantee providing livable wages by way of a minimum wage; and conditional cash transfers to the poor.

On the other hand, social policy works ensure human development by meeting basic needs in education, healthcare, housing, and social security.\textsuperscript{16} Within the social policy framework, McGuire identifies three categorical distinctions:

- contributory social insurance (against the “four basic risks” of old age, disability, illness, and unemployment);
- social assistance (general revenue-funded cash or other types of transfers to needy individuals, households, or communities); and the public provision of general revenue-funded basic social services (such as health care, nutrition, education, family planning, water, and sanitation).\textsuperscript{17}

In sum, the key institutional mechanism for overcoming such structural imbalances (as income inequality) is the expansion of investments in education, healthcare, pensions, and infrastructure. Because the bulk of Bolivía’s policies have concentrated on the institutionalization of more equitable social assistance policies, this research focuses on Morales’ main social policy manifestation, that of the direct cash transfer.

Since the late 1990s, direct cash transfer programs have become the center-most tenet of social policy throughout Latin America. I attribute this policy shift to demands by Latin American

\begin{itemize}
\item \textsuperscript{11} Ibid.
\item \textsuperscript{12} Anil Hira, \textit{An East Asian Model for Latin American Success: The New Path} (Burlington VT: Ashgate, 2007), xviii.
\item \textsuperscript{13} “10 Theses on New Developmentalism,” last modified September 29, 2010. http://www.tenthesesonnewdevelopmentalism.org/.
\item \textsuperscript{14} Ibid.
\item \textsuperscript{15} Anil Hira, \textit{An East Asian Model for Latin American Success: The New Path} (Burlington VT: Ashgate, 2007), 40-43.
\item \textsuperscript{17} McGuire, \textit{Social Policies in Latin America: Causes, Characteristics, and Consequences}, 1.
\end{itemize}
citizens in neoliberal states for pro-poor policies, how their conservative governments set out to meet those demands, and how those same constituents learned to demand those policies over time. For example, in Bolivia, as the neoliberal reforms took effect in the 1990s, Bolivians realized that the privatization orthodoxy of the extreme neoliberal right was no longer a viable solution to social inequality; growth was perceived as “necessary but insufficient to reduce poverty.” Therefore, facing increasing pressure from its constituency, the neoliberal Lozada administration found a solution that did not interfere with market equilibrium – the direct cash transfer. A low-cost compromise between neoliberal privatization efforts and alternative public social policy strategies (such as welfare, public health care, and social security), direct cash transfers were perceived as a way of providing social support for vulnerable populations while still maintaining market equilibriums and avoiding the inefficiencies of government bureaucracy. As a result, direct cash transfers flourished from the Lozada administration onward as a conservative, cheap, easy, and popular way to address poverty and income inequality without increasing the size of the state bureaucracy. The program acted as a neopopulist solution to a neoliberal problem.

Now active in 17 Latin American countries, direct cash transfers programs are seen as responsible for alleviating present conditions of poverty, as well as breaking inter-generational poverty by creating access to education, healthcare, and pensions. In the 2009 Policy Report on Conditional Cash Transfers, the World Bank concluded, “CCTs generally have been successful in reducing poverty and encouraging parents to invest in the health and education of their children.” This was also one of economist Nora Lustig’s main findings, which she associates with the initial reduction of income inequality in Brazil and Mexico over the last ten years.

Given the overwhelming influence of these programs, I am interested in studying cash transfers and evaluating their role in Bolivia.

The Nature of Cash Transfer Programs and the Ideological Divide

The social policy literature on direct cash transfer programs reflects a spectrum of opinions ranging from those that promote universal and unconditional cash transfers to those that promote targeted, conditional cash transfers (CCTs). This distinction illustrates the differing ideological approaches of social policy proponents with respect to the normative implications of specific transfer programs. Simply put, different understandings of cash transfer programs come down to whether policymakers promote redistribution of wealth as a direct cash transfer to its citizens, or whether the redistribution of wealth should be spearheaded by the government (vis-à-vis the creation of national infrastructure). This difference in opinion furthermore extends to the how direct cash transfers are funded.

Direct cash transfers are “non-contributory payments of money provided by government or non-governmental organizations to individuals or households, with the objective of decreasing chronic or shock-induced poverty, addressing social risk and reducing economic vulnerability.” Transfers are either classified as conditional or unconditional based on whether households are required to fulfill “human development responsibilities (education, health, nutrition, etc.)” or to complete some sort of work requirement. The transfers can furthermore be classified as universal or

21 Michael Samson, Social Cash Transfers and Pro-Poor Growth, 44.
22 Ibid.
explicitly targeted, based on whether the transfer applies to an entire population, or explicitly focuses on one segment of the population.

A wide range of funding options is also at play in the direct cash transfer debate. Policymakers have an array of financial schemes from which to choose, based on sources of national revenue, relationships with international financial institutions (IFIs), and the extent of their institutional development. Historically, IFIs such as the World Bank and the International Monetary Fund, private investment funds, tax revenue, and resource rent revenue have financed direct cash transfers. Resource rents can be defined as the revenue gained from taxes and/or royalties on natural resource extraction. In the case of Bolivia, the final option is the most relevant given the 2006 nationalization of hydrocarbons, and their use towards public policy financing. None of these financing options are uncontroversial within themselves. Involving IFIs implies the natural conditionalities that accompany funds; successful use of tax revenue depends on a sophisticated tax and banking structures; and resource rent revenue implicates moral questions of what is “owed” to the people, and practical issues of how not to avoid creating more corruption in the government system. Given the political mandate for the public dispersal of resource rent revenue in Bolivia since the 2000s, the final questions of how to effectively use resource rent revenue are the most relevant to this policy discussion.

On both sides of the ideological divide, proponents of social policy argue that the state has the right to reinvest the resource rents it accrues to address inequality on a national level. The more laissez-faire approach to social policy argues that the state should transfer a portion of the rents directly to all citizens. Under this framework, the state assumes that the individual knows how to best reinvest the money, and it avoids the increase of more state bureaucracy. By contrast, proponents of a more interventionist social policy seek to explicitly target marginalized populations to address poverty and income inequality. According to de la Brière and Rawlings, conditional cash transfer programs “hold promise for addressing the inter-generational transmission of poverty and fostering social inclusion by explicitly targeting the poor, focusing on children, delivering transfers to women, and changing social accountability relationships between beneficiaries, service providers and governments.”

Paul Segel of the Oxford Institute for Energy Studies argues for the first approach. He claims non-conditional transfer policies are an apolitical, non-discriminatory, and non-bureaucratic way of reducing poverty, and supports them because such policies avoid the two common errors of targeted programs: “errors of exclusion, the failure to reach intended beneficiaries,” and “errors of inclusion, unintended individuals receive the benefit.”

Roberto Laserna of Fundación Milenio takes this argument one step further and argues that the use of targeted rents can also weaken an already weak institutional system by creating an economy that depends too much on government spending, by politicizing resource revenues, by fostering corruption, and by heightening expectations in government behavior. Laserna also argues that the targeted nature of cash transfers in Bolivia exemplifies these dangers, as seen in President Morales’ use of them as a corrupt campaign tool.

More interventionist arguments, however, propose that targeted, conditional policies are more effective because they avoid rent distribution to the rich and promote long-term investments in infrastructure, such as towards schools, roads and healthcare. For that reason, members of the more interventionist end of the social policy spectrum argue that inequity can be more efficiently addressed through effective conditional cash transfer programs (CCTs). The goal of CCTs, then, is not just to address “short-term consumption needs” but also “long-term poverty by fostering human capital

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23 de la Briere and Rawlings, Examining Conditional Cash Transfer Programs, 4.
25 The economy is weakened because the government maintains a monopoly on the economy.
26 Roberto Laserna, La democracia en el ch’enko, (La Paz, Bolivia: EDOBOL, 2004), 1.
investments in the complementary areas of nutrition, health and education.\textsuperscript{27} In other words, CCTs seek to “reduce vulnerability in the short-run and contribute to breaking inter-generational poverty in the long run by helping today’s children … become full citizens of society tomorrow.”\textsuperscript{28}

In \textit{Redistributing Income to the Poor and the Rich: Public Transfers in Latin America and the Caribbean}, Kathy Lindert et al. evaluate the effectiveness of this spectrum of public transfers as a redistributive mechanism in Latin America. Given that investments in infrastructure – in education, land reform, etc. – take time to improve equity, Lindert questions whether transfers can act as an efficient short-term solution to inequity. Lindert et al. find that “the redistributive impacts of [conditionless] social insurance transfers are limited – and even regressive in most instances.”\textsuperscript{29} The term \textit{regressive}, in this case, describes policies, which decrease equality rather than increasing it. Non-means tested cash transfers increase inequality by favoring students who do not necessarily need the subsidy. Regressive policies, therefore, move away from the policy goal of assisting needy recipients.

For that reason, Lindert et al. recommend the use of conditional cash transfers as targeted social assistance measures instead. Lindert et al. write:

> High progressivity of CCTs is likely driven by a clear definition of the poor as the target group and the explicit use of targeting mechanisms to determine eligibility… Such design mechanisms could be built into other social assistance programs, for example using a combination of geographic targeting and individual assessment mechanisms to target needs-based scholarships.\textsuperscript{30}

In sum, Lindert recommends reforming public subsidies through the creation of more nuanced, targeted social assistance transfers.

A 2007 study from the International Poverty Centre of the United Nations Development Program reemphasized Lindert’s arguments and argued that CCTs such as Bolsa Familia have had a clear positive impact on school attendance. The study finds that “Bolsa Familia and other major CCT programmes in Latin America, such as those in Chile and Mexico, have had an impressive targeting performance, even though they have adopted different targeting methods.”\textsuperscript{31} In the case of Mexico, Soares argues that the CCT Program \textit{Oportunidades} had similar effects and increased re-entry rates among older dropouts. Given these figures, the report highlights the current policy trade-off between extending coverage and improving efficiency in targeted programs. To conclude, Soares emphasizes the importance of constant monitoring and evaluation to decrease the margin of poor excluded from the program.

\textbf{Conclusion}

Given the disparate arguments surrounding the structure and funding of direct cash transfers, and the particularly widespread use of direct cash transfers in Latin America, in the following sections I will examine the forms and public meanings of the two main direct cash transfers in Bolivia –\textit{Bono Juancito Pinto} and \textit{Renta Dignidad}. I will examine the logistics of the programs, their target audiences, the source of their funding, and the rhetoric surrounding their implementation. I will also compare the programs to the original Bonosol in Bolivia and the \textit{Bolsa Familia} in Brazil.
I will then consider the two direct cash transfers in relation to the greater debates on cash transfers – when they work, when they do not work and what the risks and benefits are. I will also examine arguments about how to design the direct cash transfers, how to define the target populations, and how to monitor the programs. I will reflect on how each direct cash transfer fits into understandings of social policy within the larger neoliberal and developmentalist paradigms. Finally, I will consider how direct cash transfers have evolved as a policy tool to both claim and legitimize political authority, through the lens of Max Weber’s theories of “Charismatic Authority” and “Politics as a Vocation.”

Taking Power With School Supplies – Bono Juancito Pinto

Introduction

It is 2008 and President Evo Morales Ayma stands surrounded by palms on a wooden platform in Trinidad, the provincial capital of Beni, Bolivia. A group of schoolchildren in crisp white uniforms fills the Spanish-style plaza and watch eagerly as Evo takes the stage. Today is the day they will celebrate the anniversary of President Morales’ foundational education program – Bono Juancito Pinto – and its expansion to even more children.32

As Evo takes the stage, he speaks of his people, his presidency, and how far the Plurinational State of Bolivia has come since 2006. President Morales speaks of the mandate of the people, and how he, with their help, has re-taken Bolivian politics from the neoliberal era. He speaks of the nationalization of hydrocarbons and “la vindicación de los bolivianos,” or the vindication of his people.33 Finally, he speaks of the national minimum wage, how few are recipients, and how few actually have enough money to be able to go to school. This program, Bono Juancito Pinto, Morales explains, is just the beginning of a new social policy order in Bolivia, one that will allow people to finally access education, healthcare, and a living wage.

This money, he underscores, is not a presidential handout. No, this money is the due right of the Bolivian pueblo, the product of a long fight for social justice. He emphasizes:

No es que Evo Morales, o el gobierno nacional, está regalando plata. La plata que reciben los niños y las niñas, el Bono Juancito Pinto... es la plata del pueblo boliviano... Es gracias a la lucha de nuestros padres, de nuestras fuerzas sociales. Si no hubiera sido esa lucha de los movimientos sociales por la recuperación de los hidrocarburos, la nacionalización, seguramente no hubiera habido el bono Juancito Pinto. Lo único que hace Evo Morales como presidente es devolver la plata del pueblo al pueblo boliviano desde el Bono Juancito Pinto.

It is not that Evo Morales, or the national government, is giving away money. The money that boys and girls receive from Juancito Pinto is the money of the Bolivian people, thanks to the fight of our forefathers, of our social movements. If it had not been for the fight of our social movements to reclaim the hydrocarbons, and their nationalization, then Bono Juancito Pinto surely would not exist. The only thing Evo Morales has done as president is to return the money of the people, back to the people, through Bono Juancito Pinto.34

President Morales reiterates that as he redistributes funds from natural resources extraction,
he is only returning money that already belongs to the people. This is the beginning of a long road to social inclusion – starting with the young. President Morales emphasizes the fact that only with the help of the army has he been able to distribute this in time. Facing a rush of cheering schoolchildren chanting *Evo*, President Morales concludes his speech.

This speech is representative of Morales’ past discourses. First, it demarcates past neoliberal administrations from the current administration through the emphasis on its social movement roots; Morales stresses the legitimacy of his policy based on the popular momentum behind his government, and the moral implications of the Juancito Pinto policy for his audience. In addition, Morales mixes tenses – he refers to himself both in the first and third person – but it both cases he speaks of himself in the plural form, as the representative of a greater movement for social justice. Finally, the policy creates an institutional link between every aspect of the government – from the local mayors, to the army, to the president. All of those who represent the Bolivian state have a legal and moral obligation to protect and promote the right to Juancito Pinto. As president, Morales takes owes such duty above all others.

I am interested in examining this point of policy confluence through an analysis of the socio-historical roots of the Juancito Pinto program. In the following sections I address the material and symbolic importance of the Juancito Pinto example; what importance it carries in terms of decreasing income inequality and in terms of economic theory. I examine the nature of this policy, analyze the motivation behind it, and finally question whether it is as transformative as it appears. Finally, drawing upon Max Weber, I hypothesize that Juancito Pinto was initially implemented as a mechanism for simultaneously stabilizing and changing the Bolivian political order. It stabilizes politics by successfully claiming authority based on the people’s movement and then legitimizing that with social policy. It then changes politics by normalizing such revolutionary ideas through their formal institutionalization, ultimately changing the discourse surrounding public policy. Juancito Pinto seems to function as both a point of continuity and disjuncture between the neoliberal and developmentalist public policy paradigms.

The Logistics of Juancito Pinto

In 2006, President Morales initiated Bono Juancito Pinto, a conditional cash transfer (CCT) program targeting public schoolchildren up to sixth grade. The stated objective of the program was to eradicate extreme poverty and social exclusion through both immediate and structural measures. By creating financial incentives for children to attend school, and by ensuring improved levels of educational achievement and literacy, the Morales administration hopes to address both short-term and long-term barriers to educational equality. According to its founders, previous poverty reducing mechanisms had not been effective, so the initiation of the Bono Juancito Pinto was viewed as a means of decreasing poverty and finally achieving the Millennium Development Goals.

As with the other CCTs passed by the Morales administration, the Bono Juancito Pinto funds are mainly derived from resource rents, which the government has accrued through the nationalization of hydrocarbons since 2006. Since 2009, the Inter-American Development Bank and the World

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35 The Bono Juancito Pinto was enacted upon the passing of Presidential Decree No. 28899, and initially only covered grades 1-5. In 2007 it was expanded to the 6th grade (through the enactment of Presidential Decree No.29321) and in 2008 it was extended to the 7th and 8th grades (through Presidential Decree No.29652). The executive branch (mainly the president and his ministers) approves all Presidential Decrees. The tradition of presidential decrees started in the dictatorship and is not uncommon throughout Latin America.

36 “Decreto Supremo Nº 28899”

37 President Morales has often tied his policies to the United Nations human rights and development agenda, as delineated by the Millennium Development Goals, whose aim was to make strides in protecting and promoting social, political, and economic rights worldwide (HAI qtd. in Müller 169).
Bank have also coordinated efforts with the Bolivian government to provide extra funding and capacity building for the Bolivian CCTs.\(^{38}\) In 2010 the Bono Juancito Pinto accounted for approximately 0.3 % of the Bolivian gross domestic product.\(^{39}\)

Students attending school 75% of the year are eligible for a 200 Bs. annual transfer (about 29 USD per child per year). Schools are required to present their enrollment records to the district government office annually in order to help verify the compliance of each student. The bonos are administered by the Ministry of Education and distributed to the family by the army at a school ceremony. As of 2008, the cash transfer program covered approximately 1.68 million children, or about 95.9% of the target low-income student population.\(^{40}\)

Although Juancito Pinto is a conditional, explicitly targeted cash transfer program, as one of the few non-means-tested cash transfer programs in Latin America,\(^{41}\) Bono Juancito Pinto exemplifies many of the universalist arguments for cash transfers discussed in the previous section. It is broad and efficient, expected to have reached 100% of all public school students by now; and the distribution of money functions through pre-existing institutional structures (the Ministry of Education). In other words, it has a low margin of error, is low in cost, maintains small government size, and also satisfies the demands of poor constituents.

Yet given the political rhetoric framing this policy as a social revolution, there seems to be a fundamental disconnect between the politics and practice of Juancito Pinto. On the one hand, President Morales calls a new world order into being; on the other hand, he uses old, conservative social policy mechanisms to that end. Why did President Morales not choose a more interventionist measure? I propose that President Morales is only doing what is politically viable – in this case a marriage between leftist rhetoric and conservative politics – in order to legitimize himself as the President of Bolivia and carry out a reformist rather than a rebuilding platform.

### The Material Implications of Universal Transfers

Two factors must be considered in an understanding of Juancito Pinto; the degree of the stipend (in other words, its monetary implications) and the context in which the measure was passed. On the scale between Brazil’s more generous Bolsa Familia and Bolivia’s less generous Bonosol, Juancito Pinto stands in the middle. Although Juancito Pinto creates the illusion of a revolutionary social policy, in fact, Juancito Pinto maintains Bonosol’s less generous stipend structure.

The example of the Bolsa Familia in Brazil provides the rhetorical framework for its Bolivian cousin. Bolsa Familia seeks to do the following:

- reduce current poverty and inequality by providing a minimum level of income for extremely poor families;
- break the intergenerational transmission of poverty by conditioning these transfers on beneficiary compliance with human capital requirements (school attendance, vaccines, pre-natal visits).\(^{42}\)

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\(^{38}\) Herbert Klein, *A Concise History of Bolivia* (Cambridge: Cambridge University, 2003), 294.

\(^{39}\) Using the exchange rate on February 25, 2012 (1 USD = 6.8900 Bolivianos) and the GDP measurement for 2010 from WDI World Development Indicators accessed February 25, 2012, I estimated the cost of Bono Juancito Pinto by dividing the program cost in 2009 in bolivianos (350 million bolivianos) by the exchange rate (6.8900) to get the program cost in USD: 50,798,260 USD. The cost as a percentage of GDP (.29%) is found by dividing the total program cost (50,798,260 USD) by Bolivia’s GDP in 2010 ($19,649,724,656 USD).


\(^{41}\) Bono Juancito Pinto can be classified as a conditional, targeted cash transfer program; conditional in that students must maintain a satisfactory attendance record in order to become beneficiaries of the program, and targeted in that only students enrolled in the public school system are eligible.

\(^{42}\) Kathy Lindert, Emmanuel Skoufias, and Joseph Shapiro, *Redistributing Income to the Poor and the Rich*, 2.
In other words, by instituting Bolsa Família in 2003, President Luiz Ignácio Lula da Silva (Lula) began providing the poor with money, basic goods, and services. Bolsa Família is the quintessential example of a conditional cash transfer program. In Brazil, families with children between the ages of 6 and 15 are eligible for a monthly cash transfer if their children attend school 85% of the year, and if they receive a monthly income of less than R$140 per capita. Those eligible families can receive up to R$242 per month depending on the age and number of children in the household. Approximately 12 million Brazilians participate in the Bolsa Família program today.

Although Juancito Pinto was framed for the public as a poverty reducing measure like the Bolsa Família, it also seems to be an extension of the conservative Bonosol structure, applied to children’s education. Implemented by President Morales’ neoliberal predecessor in 1995, the Bono Solidario (or Bonosol) was a “non-contributory pension scheme payable to all elderly Bolivians” at the “strikingly modest” price of US$248 per year. Bonosol was an explicitly targeted social assistance project aimed at providing a pension payout for the elderly. Yet according to Katarina Müller, “the introduction of the universal Bonosol pension scheme was not motivated by social policy considerations, but by the desire to privatize state-owned enterprises and pensions.” Therefore, although the program was framed as a way of reducing old-age poverty it was more a face-saving measure, and not particularly impactful.

As seen through the Bolsa Família and Bonosol examples, prior to Morales’ presidency cash transfers were not an entirely foreign concept to leaders of both the developmentalist and neoliberal mindsets, however different their approaches. I propose that economists from across the political spectrum now support transfer programs for inherently conservative reasons; mainly because cash transfer programs do not interfere with the market, but rather seek to shape individual behavior and ensure better social outcomes. For that reason, the most notable difference between the two predecessor cash transfer programs is not the rhetorical distinction between the conditional and non-conditional arguments, but rather the amount of money given. While both programs aim to reduce both the immediate and long-term effects of income inequality (such as poverty, lack of access to education, healthcare, etc.), the Bolsa Família is the only transfer large enough to actually assist in reducing poverty and barriers to education.

Keeping that in mind, Bono Juancito Pinto seems to have two paradoxical goals. On the one hand, as part of the Social Protection and Integral Community Development Policy, Juancito Pinto’s first explicit goal is to eradicate extreme poverty and social exclusion. The introduction of the Juancito Pinto subsidy delineates the following goals: “erradicar la pobreza extrema y la exclusión de las personas, familias y comunidades, con medidas tanto estructurales como de acción inmediata.”

On the other hand, Article 2 of the subsidy describes how Juancito Pinto is meant to act as an incentive for school matriculation and good attendance “como incentivo a la matriculación, permanencia y culminación del año escolar.” Still, small even by Bolivian standards, the US$30 Juancito Pinto transfer covers school supplies costs, at best. If ending malnutrition were indeed the goal of this program, it would make more sense for the subsidy to occur monthly or increase in amount, as with Bolsa Familia. As Bolivia is one of the most unequal Latin American countries, with one of the highest levels of poverty, it is revealing that President Morales has not adopted a more intensive, means-based monthly transfer scheme more similar to the Bolsa Familia.

Despite these limitations, cash transfer programs such as Juancito Pinto have been hailed as

44 Müller, Contested Universalism, 163.
45 Ibid.
46 According to Müller, in Bolivia, only 1/5 of the population participates in contributory pension schemes.
47 “Decreto Supremo N°28899”
48 Ibid.
a key reason for recent declines in inequality in Bolivia. In 2010, the *Panorama social de América Latina* of the U.N. Economic Commission for Latin America and the Caribbean released new data marking a shift in income inequality in Bolivia. Furthermore, based on information from the Bolivian National Institute of Statistics and United Nations Development Program, Vice President Álvaro García Linera has claimed that these decreases are the product of aggressive economic and social policy under the Morales administration, which has allowed for the propagation of an expansive redistributive policy through the use of cash transfers, among other ways. In claiming an overall decrease in income inequality (as defined by the GINI coefficient), Linera cites a decrease in overall poverty under the Morales administration, and furthermore assumes decreases in poverty were not offset by an increase in the share of higher incomes. García Linera references the following poverty statistics from the Bolivian Dossier of Social and Economic Statistics (*Unidad de Análisis de Políticas Sociales y Económicas*) in Table 1 below.

### Table 1: Bolivia Poverty Statistics

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2005</th>
<th>2010 (Estimates)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Poverty Rate</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>National</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage (%)</td>
<td>66.4</td>
<td>60.6</td>
<td>49.6</td>
</tr>
<tr>
<td>Thousands of People</td>
<td>5,638</td>
<td>5,708</td>
<td>5,166</td>
</tr>
<tr>
<td>Urban</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage (%)</td>
<td>54.5</td>
<td>51.5</td>
<td>41.7</td>
</tr>
<tr>
<td>Thousands of People</td>
<td>2,837</td>
<td>3,091</td>
<td>2,886</td>
</tr>
<tr>
<td>Rural</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage (%)</td>
<td>87</td>
<td>77.6</td>
<td>65.1</td>
</tr>
<tr>
<td>Thousands of People</td>
<td>2,801</td>
<td>2,616</td>
<td>2,280</td>
</tr>
<tr>
<td><strong>Extreme Poverty</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>National</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage (%)</td>
<td>45.2</td>
<td>38.2</td>
<td>25.4</td>
</tr>
<tr>
<td>Thousands of People</td>
<td>3,869</td>
<td>3,592</td>
<td>2,637</td>
</tr>
<tr>
<td>Urban</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage (%)</td>
<td>27.9</td>
<td>24.3</td>
<td>15.5</td>
</tr>
<tr>
<td>Thousands of People</td>
<td>1,455</td>
<td>1,471</td>
<td>1,071</td>
</tr>
<tr>
<td>Rural</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage (%)</td>
<td>75</td>
<td>62.9</td>
<td>44.7</td>
</tr>
<tr>
<td>Thousands of People</td>
<td>2,415</td>
<td>2,121</td>
<td>1,566</td>
</tr>
</tbody>
</table>

In examining these statistics, it should be noted that the Bolivian National Institute of Statistics (INE) might have a vested interest in reporting figures favorable to the MAS administration. Regardless, experts from the Center for Economic and Policy Research, the United Nations Development Fund, and many other think tanks and international organization have also cited the INE in the past.
Linera claims: En 5 años (del 2005 al 2010), el Gobierno del Presidente Evo redujo la pobreza moderada del 60.6% al 49.6%, y la pobreza extrema del 38% al 25% de la población boliviana, lo que significa que alrededor de 1 millón de personas han superado esa condición. Más aún, la tasa de reducción de la pobreza en esos años de nuestro Gobierno supera en casi el triple a lo que se venia haciendo hasta acá. Y esta reducción acelerada es aún mayor en el caso de la población indígena-campesina, pues la pobreza extrema en el área rural cae del 63% al 44.7% en los últimos 5 años.

In 5 years (from 2005-2010), the Morales administration has reduced poverty from 60.6% to 49.6%, and extreme poverty from 38.2% to 25.4%, which means that around 1 million people have escaped poverty. Furthermore, the level of poverty reduction under this administration has more than tripled the rate of past administrations. This decrease has been most apparent in the case of the (rural) indigenous population, where the level of extreme rural poverty has fallen from 63% to 44.7% over the last five years.50

While these statistics are dramatic, it is difficult to assess whether the Bono programs were in fact the cause of decreases in inequality, or whether some other factor affected this change. Since the project has almost perfectly universal participation, there is no way to control for the effect of other factors, such as changes in monetary or fiscal policy or changes in economic growth rates. Although it is exciting to witness decreases in inequality, statistics only tell one part of the story. Instead, we should consider other practical and theoretical implications of this project.

**Why Social Assistance? A LAPOP Survey**

Public opinion and voting patterns offer an alternative explanation for the implications of the Juancito Pinto program, particularly for how leaders claim authority, how Bolivians perceive that authority, and what claims they in turn lay to that authority. In 2011, the Latin American Public Opinion Project examined the effects of social assistance mechanisms on presidential election outcomes. In the survey, Bolivian participants were asked two questions: first, whether they are a recipient of a Bono (this would include the Juancito Pinto, Juana Azurduy, or Renta Dignidad programs); and second, if the presidential elections were being held this week, what they would do? Respondents could answer vote, not vote, vote for the incumbent, or leave the ballot blank. In the consequent analysis of the survey, LAPOP controlled for socio-economic status (education and income), gender (such as in projects aimed at women), and for urban/rural differences. In Bolivia, 70.5% of Bono recipients said they would vote for the incumbent, and 53.2% of non-recipients said they would vote for the incumbent51. The survey concluded that “[e]ven after taking into account many confounding factors, social assistance participants are more likely than non-participants to express a hypothetical vote for the incumbent candidate or party.”52 The survey furthermore proposed that as in the case of welfare recipients in the United States, “assistance recipients [in Latin America] have a strong self-interest in maintaining benefits, on which they heavily depend.”53

Some social scientists have taken these results as an indicator of budding clientelism in Latin America. In his study of Venezuela’s Misiones54, Michael Penfold-Becerra suggests that “social funds can and have been diverted by political interests. Under certain political circumstances, they can help either to ‘buy votes’ for re-election purposes or to build political constituencies that

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51 Matthew L. Layton and Erica Smith, Social Assistance Policies and the Presidential Vote in Latin America, 3.
52 Ibid., 6.
53 Ibid., 2-3.
54 Venezuela’s Misiones are another cash transfer program often compared with Brazil’s Bolsa Familia, and Mexico’s Oportunidades programs.
strengthen support for the government.” According to Penfold-Becerra, the Venezuelan Misiones served two purposes: the manipulation of the political context and the distribution of funds directly to the low-income population.

Yet the Bolsa Família in Brazil provides a counterargument. In 2011, Simone Bohn examined the role of the Bolsa Família in presidential voting patterns. In contrast to Becerra, Bohn concludes that while the Bolsa Família “is said to have played a key role in this shift of electoral support and to have worked as a powerful clientelistic tool for Lula,” the Bolsa Família cannot account for all of the changes in his electorate. According to Becerra, “poor voters vote differently across regions; Bolsa Família recipients were already Lula voters in 2002 and cast ballots for him during his reelection at the same rate as non-recipients.” How can we explain the differences between the Venezuelan and Brazilian case studies? The conclusions of the LAPOP survey provide two separate, but related, final caveats. First, Layton and Smith conclude “[p]rogram beneficiaries may … see government assistance as a kind of group benefit provided to others like themselves.” Then, Layton and Smith emphasize the need to understand the effects of social assistance mechanisms across the region because they argue that differences in the effects of CCTs are related to whether or not the president claims ownership of the program. The study proposes “leftist presidents may be able to reap a bigger electoral windfall from the social programs they oversee than rightist presidents.”

The case of Bolivia sits between the two examples. I propose that the success of such rights claiming is not necessarily based on the political orientation of the president, but the ability of citizens to imagine the president as a part of their local community. Given that, the meaning of Juancito Pinto lies in the manner in which Morales claims authority as a part of a developmentalist policy social movement. The success of Juancito Pinto, its popularity, and Morales’ potential reelection, lie in the credibility of Evo. As the representative of an unheard of 60% electoral mandate, the legislator of a new constitution passed with ample support, and the creator of Juancito Pinto, President Morales falls into a new category of credible Bolivian presidents.

**Theoretical Explanations**

How Morales portrays himself and the Juancito Pinto program, and why he chose this particular program, can be better understood through Max Weber’s theories of “Charismatic Authority” and “Politics as a Vocation.” I propose that Morales’ rhetorical interactions with his constituency can be understood in terms of establishing and maintaining revolutionary authority, while his sense of pragmatism as a leader allows him to make political compromises within the Bolivian institutional system. I suggest Morales’ performance surrounding Juancito Pinto illustrates a hybrid understanding of what it means to be a charismatic leader, and the policy decision itself reflects a compromise in his work as a politician.

Originally, in *The Theory of Social and Economic Organization*, Max Weber describes charisma (and thus charismatic authority) as: The term “charisma” will be applied to a certain quality of an individual personality by virtue of which he is set apart from ordinary men and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities. These are such as are not accessible to the ordinary person, but are regarded as of divine origin or as exem-

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56 Ibid.
58 Ibid.
59 Matthew L. Layton and Erica Smith, Social Assistance Policies and the Presidential Vote in Latin America, 3.
60 Ibid., 7.
plary, and on the basis of them, the individual concerned is treated as a leader.  

In other words, for Weber, *charisma* is a special personal quality that uniquely grants leaders authority over a group of followers. Charisma is particularly characterized by the relationship between a leader and his or her followers, particularly how the leader derives legitimacy from his “constituency” through extraordinary acts or talents. Be it prophetic or simply political, such charismatic authority typically challenges traditional conceptions of power, and is therefore often deemed revolutionary.  

Eventually, however, even the “revolutionary” qualities are adopted by society through the process of “routinization”.

In recent history, state figures such as Fidel Castro and Hugo Chavez have served as modern examples of Weber’s social theory of charisma. Yet as compared to his Latin American contemporaries, President Morales is hardly the stereotypical image of charismatic authority.

I propose that this paradox be explained by a hybrid understanding of charisma within the developmentalist context. Namely, that within the context of a more “equitable” system (or one that defines equity as one of its goals), charisma can be defined as the creation of extraordinary, revolutionary acts by ordinary men or women. Charismatic authority, then, is derived in several steps. First, in a system that makes claims to equity, a sense of empathy and trust in the chosen leader must be established. Then, in order to elevate the leader beyond his or her chosen profession, he or she must propagate extraordinary acts to establish themselves in charismatic terms. Finally, the leader must normalize, or “routinize” those acts through their formal institutionalization. From this perspective, one can conceptualize extraordinariness as mainly stemming from one’s actions. Thus, within the developmentalist context, charisma can be defined as a normal person moving beyond the commonplace to create something exceptional in the policy arena.

In the case of Bolivia, President Morales was elected because of his unique ordinariness as an uneducated coca-union leader who both understood the electoral demands and was also capable of delivering a different form of governance. Drawing from the LAPOP Survey, one can further understand that President Morales was elected partially because he was someone with whom the beneficiaries of these policies could empathize – he was a natural part of the “group benefit” of which supporters of such policies conceive themselves. James Dunkerley suggests that in order to first establish himself, Morales propagated small but extraordinary acts, ‘charismatic acts’. Namely, he “cut his salary, abstained from alcohol, worked absurdly long hours, and shared the presidential residence with members of his cabinet.”  

Despite his high standing as president, he continued to work with the same determination as a coca-union leader. As his presidency developed, Evo extended his charismatic acts to the policy realm. The nationalization of hydrocarbons and other industries, the propagation of a new constitution, and the legislation of the three bonos worked to continually confirm this status. Although it can be argued that Morales was just doing his job, and only claiming ownership of what is expected of the president, such measures as the nationalization of industry and social policy expansion hardly fall within the “normal” range of governmental expectations set up by previous administrations.

The symbolic value of how Morales presents himself in public reaffirms his charismatic acts. The 2009 inaugural speech for Bono Juana Azurduy illustrates Morales’ charismatic figure well. Although the nature of the bono itself goes beyond the purview of this paper, the language surrounding its propagation is relevant to an understanding of Morales’ extraordinariness in claiming, and legitimizing, his authority. In his address, Morales explains:

62 Ibid., 332.
Por que este bono? ... [es] un bono para mujeres que esperan una familia, por tanto a mujeres que dan otra vida ... [a] otro ser humano mas para esta patria... Es un bono cumpliendo con la nueva constitución política del estado boliviano... Todas mujeres deben estar bien informados para exigirnos al gobierno al pre-fecto a los alcaldes y cumplir con la nueva constitución política del estado boliviano aprobado por el voto del pueblo por la primera vez en nuestra historia de la vida republicana...

Why this transfer? ... [It is] a transfer for women who await a family, for those women who create a life... [to] another human being for this country... This transfer complies with of the new constitution of the Bolivian State... All women should be well informed so as to best demand from us, the government, the pre-fects, the mayors, to comply with the new Bolivian political constitution, approved by the vote of the people for the first time in the republic’s history.”

Four parts of this passage are particularly striking. First, President Morales begins by projecting an image of creation in which he describes how (ordinary) women perform an extraordinary act – the act of giving birth. With the phrase “dar otro ser humano más para esta patria,” Morales also extends the image of giving life to one in which women act as a point of origin for the Bolivian nation. Morales proclaims that this transfer is meant to give back to those deserving women for the patriotic act of creating life, and history. It is not a coincidence that the policy is named for Juana Azurduy, a mestiza revolutionary fighter who is seen as the heroine of early Bolivian history. Secondly, Morales references the new constitution, the first one, he claims, to be created by and for the people. Morales argues that the new constitution demands a bono so that the government can finally do right by its female citizens. Bono Juana Azurduy is only what is already owed to them. Although taking a legal argument initially seems to detract from Morales’ sense of charisma, as the father of the constitution, Morales can actually accrue authority through its popularity and further development. What the constitution demands is actually an extension of his influence and initiative as president. Finally, Morales promotes the idea of responsible citizenship and requests that women help the government help them by knowing their rights. This is interesting as well because Morales was one of the first political leaders to take ownership of the human rights discourse. Since his presidency, he has appropriated the language from various human rights treaties (for example in terms of indigenous, or environmental rights) to create a new language of the state. In that sense, while Evo makes a legal claim, it is one that might not have existed or held any validity prior to his tenure.

One key aspect in the language of all four points is how, where, and when Morales chooses to ascribe agency to himself. By mixing tenses, projecting himself onto the crowd (with the use of the 1st person plural form of “we”), as well as by referring to himself as the removed, third person leader (“Evo Morales”), he simultaneously includes and removes himself from his audience. He both takes credit for his work, but also attributes Bolivian successes to the constitution, to his constitu-ency, to others. In this sense, cash transfers are vehicles to accrue charisma, a way of building a relationship between himself and the audience. The performative aspect of using “we,” “I,” and “he” in his speeches creates a sense of mysticism in the audience – he is both Evo (as they shout to their neighborly compatriot), but also elevated above the massive gathering of mothers and their children (on Mother’s Day, incidentally) – those to whom his policies most readily apply. Ultimately, Morales mixes a rights-based political orientation with a sense of authority indirectly rooted in his personalist flavor.

Beyond the symbolic, or rhetorical claims to power, Juancito Pinto exemplifies real structural, institutional, political compromises. In this regard, Morales exemplifies the more pragmatic char-

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acteristics of Max Weber’s “Politics as a Vocation”. In this work, Weber distinguishes two political philosophies, “the ethic of responsibility” and the “ethic of ultimate ends.” He writes that a man with an ethic of responsibility reckons with exactly those average human failings … he has absolutely no right to assume human kind’s goodness or perfection. He does not feel that he is in the position to shift the consequences of his actions, where they are foreseeable, onto others. He will say ‘These are the consequences that are to be ascribed to my actions.’\(^{65}\)

In other words, a person who demonstrates an “ethic of responsibility” is willing to take whatever recourse necessary for the common good, while also being held accountable for his actions. Conversely, an ethic of ultimate ends implies a belief in “pure conviction” – an unflinching willingness to work only towards that goal.\(^{66}\) That person with an ethic of ultimate ends has an inflexible moral resolve.

Although he had framed these two moral guides as opposites, ultimately Weber concludes “an ethic of ultimate ends and an ethic of responsibility are not absolute contrasts but rather supplements, which only in unison constitute a genuine man—a man who can have the ‘calling for politics.’” Weber proposes that the best leaders are those that are willing to put aside their ego, agenda, or sense of morality or ethics for the greater political good.

However, the fundamental question about this policy remains: why was Juancito Pinto chosen instead of something more generous? This “political,” or pragmatic approach can also account for four structural reasons behind Morales’ decision on how to structure Juancito Pinto. First, it is possible that the government simply does not have the funds necessary to increase the subsidy amount. Secondly, because 70-80% of the Bolivian population is employed in the informal sector (and does not pay taxes), it is nearly impossible to determine what people’s incomes are to conduct a means test. Thirdly, even if the government did want to conduct a means test, it is possible that the government lacks the institutional structure to carry out such an endeavor. And finally, it is possible that a means test is irrelevant because most students who attend public schools are those that would qualify for this program. Thus, public school demarcation can act as a natural means test.

Ultimately, the design of Juancito Pinto reflects how Morales opened himself to compromise by weighing his vision of the future against that of his constituents. Dunkerley suggests this is reason behind Morales’ constant political flip-flopping. In his inaugural address, President Morales announced:

I want to ask you, with much respect to our indigenous authorities, our organizations, our amautas (wise ones): control me, and, if I cannot advance, you push me on, sisters and brothers. Correct me all the time; it is possible that I might make mistakes, I can make mistakes, we all make mistakes, but I will never betray the struggle of the Bolivian people.\(^{67}\)

In essence, then, Morales’ policies are a mixture of what he believes is best for Bolivia (his platform within the cocalero social movement), what he believes is achievable, and how these two factors are reflected in the voice of his constituency. In the wake of a social revolution, Morales is mixing the common person’s vision of Bolivia (nationalization of gas, social policy propagation, etc.), with what will reduce turmoil and ultimately stabilize Bolivia. Turmoil, in this case is probably best exemplified by the former ruling elite, the wealthy business class of the socially stratified Andean nation, and the limitations of the institutional system. Thus, his recipe for successful rule is to listen, amend, and stabilize Bolivian governance.

In sum, the cash transfer program serves as the quintessential example of an extraordinary,
charisma-granting act that also acts as a compromise in structural terms (within the existing institutional frameworks), and in political terms (between the radical left and right). By providing for every child’s school fees, he is, in a way, blessing each child with the gift of an education, and a future. He is also, though, compromising his vision of social revolution and limiting himself to what may be most popular and socially stabilizing. This transfer is a way of garnering the most popular support for economic policy. President Morales uses the Juancito Pinto program as a source of legitimacy for his rule and furthermore uses charismatic authority and populist rhetoric to convey that message. His policy shift does not reflect a new social order, but rather is a new way of presenting ideas about an old social order.

Conclusion

I propose that although Juancito Pinto is clearly intended as an economic program aimed at reducing both immediate and long-term barriers to education, the small amount and the infrequency of the cash transfer demonstrate that the economic value of the program is negligible. Although Juancito Pinto covers school supply costs, it still fails to cover the opportunity costs of attending school, the nutritional needs of the students, or any other economic factors affecting school attendance. The large monetary discrepancy between Juancito Pinto and Brazil’s Bolsa Família offers an alternative for what a more socially revolutionary policy would look like. Yet what is striking about the program is not its material value as an economic stimulus, but rather its symbolic value as a charisma-granting act, and as a compromise between Morales’ vision and that of his people.

Juancito Pinto reaffirms President Morales’s authority as a moral leader; the policy legitimizes him through the charismatic act of bestowing, promoting, and protecting one’s human rights. This policy furthermore acts as both a political measure to increase popularity and as an anti-poverty, educational measure. I propose that in a charismatic leader, those two facets are inherently tied – the agenda of a leader coincides with his or her popular mandate. Juancito Pinto thus acts as a marriage between charisma and pragmatism, as described by Weber’s theories of “charismatic authority” and “politics as a vocation” Through Juancito Pinto, Morales has created an innovative narrative for communicating an old policy, one that does not end with Juancito Pinto, but which will unfold further throughout his presidency.

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Estado Plurinacional de Bolivia. Presidente Constitucional de la República Evo Morales


http://www.youtube.com/watch?v=tyflclNm-vE.


Soares, Fábio Veras, and Rafael Perez Ribas, and Rafael Guerreir Osório, Evaluating the Im-
Morales’ Bolivia: A New Paradigm in Egalitarian Governance?

* pact of Brazil’s Bolsa Familia: Cash Transfer Programmes in Comparative Perspective.

Abstract: The “Arab Spring” uprisings of 2011 triggered a wide set of social movements and regime change across the Middle East and North Africa. While interconnected, uprisings in each nation took different forms and reached varied effects. This paper focuses on the development of conflict in Libya under Muammar Gaddafi and Syria under Bashar al-Assad in order to flesh out distinctions and interactions between uprisings, revolution, and civil war. My research first standardizes a conceptual definition of civil war from a long-standing scholarly debate. The presence or absence of civil war is examined in correlation to five specific independent variables drawn from the cases and past examinations of civil war: the nature of the governmental regime, territoriality of the conflict, militarization of the opposing sides, international influence, and regional players. Using Mill’s methods and qualitative analysis of field reports, media briefings, and political rhetoric, I find that the full presence of each of these independent variables accounts for civil war in the Libyan case. In the Syrian case, incomplete presence of the five independent variables has, for the moment, prevented full-fledged civil war. The research thus allows for a more complete understanding of what constitutes civil war and provides a framework for conflict analysis as Arab Spring movements develop.
Introduction

As the first flames of the 2011 “Arab Spring” swept from Tunisia through North Africa and the Middle East, authoritarian regimes thought invulnerable to protest and impossible to oust began to cede to massive protest. Attacks on governmental institutions and elite leaders ensconced from public opinion developed divergently in each nation, employing tailored strategies to mobilize the public and reap key support. This paper focuses on the nature and development of these Arab Spring uprisings in Libya and Syria, centering on civil war concerns in the two nations. I seek to identify the factors that influenced the 2011 conflict in Libya to evolve from uprising into recognition as a civil war, and the ways in which these factors were distinct from the development of conflict in Syria. I further use these distinctions to illuminate the conceptual, instrumental, and semantic nature of civil war in general.

In exploring the development of conflict in both cases and employing Mill’s methods of agreement and difference to contrast the uprisings, I find distinctions along several correlated environmental, institutional, political, and discursive factors. The conflict in Libya transformed into what was internationally recognized as civil war due to the presence of jointly necessary and sufficient variables. Harsh crackdowns, lack of civil society, and alienation of protestors by the Gaddafi regime exacerbated the grievances felt by rebel forces and smoothed over ethnic, religious, and tribal tensions. Militarization of coalition rebel forces and localization of the struggle to defined territories created the opportunity for defined rebel and loyalist troops. Finally, international intervention and training, regional rejection of Gaddafi’s regime, favorable media coverage, and recognition of the National Transitional Council as legitimate jointly pushed the conflict in Libya into civil war. Contrastingly, in Syria, instances of mild reform under Bashar al-Assad, popular concerns for security, and less territorial division prevented mass arming of the protestors under a defined rebel union, and international, media, and regional waffling on the Assad regime and the nature of the conflict has kept civil war at bay.

Conceptual Isolation of Civil War

This dependent variable of interest in the Libyan and Syrian conflicts is articulated as the presence or absence of civil war. However, the scholarly distinction between civil war and other types of conflict has been muddled, employing differing qualifications and varying thresholds. Civil war is frequently used in conjunction with or interchangeably with other forms of intrastate conflict, insurgency and counter-insurgency, uprisings, genocide or genocidal actions, and general loss of internal monopoly over the legitimate use of force. The lack of a cohesive definition of civil war confuses the framework of responses and semantically politicizes actions by regional and international players. Thus, in order to explore the causal factors in reaching civil war, the instrumental and semantic dimensions of civil war must first be isolated.

Instrumental Definition: Actors, Agendas, and Arms

The constitutive dimensions of civil war are conceptually under debate. The majority of scholarly literature derives from the Correlates of War (COW) Project, created to isolate thresholds of violence, statehood, territoriality, and other markers that define the nature of conflict. However, the COW project’s reliance on quantitative data often glosses over distinctions between conflict

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1 See Max Weber on authority and state sovereignty, Politics as a Vocation, 1919.
zones and does not tightly define civil war versus other intrastate conflict. First, civil wars must be territorially enclosed exclusively within the borders of an internationally recognized state, a definition that can be further complicated by porous borders and regional balance and influence. To move forward, UN definitions of territoriality and statehood will determine the internality of conflict, distinguishing civil war from border disputes and separatist uprisings.

Second, the actors in a civil war must be clearly defined. The government must be one of the actors, functioning as an armed entity whose motive is to continue its control over resources, force, political mobilization, and self-determination. As statehood is determined through constitutions or other codifications of power, the government’s desire for control should have clear foundations in its political documents, troop deployment, and popular appeal. However, the breakdown between government actors, security forces such as the military and police, and loosely affiliated regime players can make pro-government forces less coherent. Instrumentally, the player in power in the years leading up to civil war constitutes the government side and struggles to maintain sovereignty through military and political control.

The opposition forces must also be delineated. Delineation is contentious: some rebel forces may be more loosely tied together than others, having multiple agendas, ethnic compositions, and territorial alliances. However, the rebel group must use violence to achieve a political and ideological agenda whose end goal is state control. The clarity of these objectives, whether for broader regime change or for a narrowly defined party platform, can vary, but rebels must be politically mobilized in their bid for legitimate authority and recognition. Rebel groups must also be able to credibly defend themselves and militarily confront the government forces in defined battleground regions: thus, rebels in a civil war are distinct from terrorists, insurgents, and other more delocalized conflicts. The rebel group necessarily has some means of financing and opportunity through which it can substantively challenge the government, but rebels are unified under defined leadership and shared objectives for political control rather than just desire for resources or economic exploitation. Rebel forces must be recruited locally, to focus civil wars away from multinational conflict zones and ideological struggles like jihadism that are not limited by state sovereignty. Indicators of these dimensions include the makeup of rebel forces, codification of objectives in speeches and disseminated documents, and recognition of the rebels by international players and the government as an opposing force.

The final, and most contentious, dimension is the threshold of violence that differentiates civil war from other conflicts. The generally accepted scholarly threshold, determined by the COW project, is a minimum of 1000 deaths in the conflict’s first year and sustained violence in all following years at an average of 1000 deaths per year until the conflict’s end. Nicholas Sambanis instead posits a range of casualties between 500 to 1000 deaths per year; however, the cases at hand already meet the 1000 threshold, as have instances of insurgency, genocide, and other civilian-targeted violence. Thus, a dimension for death count on the government side is crucial. The threshold generally used is 100 deaths per year on both sides, thus necessitating active resistance on both sides and

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5 Sambanis; Fearon and Laitin.


7 See COW; Small and Singer.

8 Fearon and Laitin.
eliminating massacres, scorched earth policies, and genocide. To inflict at least 100 deaths on defined
government forces, rebels must have a level of military mobilization that conceptually narrows civil
war. This threshold need not be overly strict, but in being sensitive to government and rebel action
can facilitate speedier identification of civil war and civil war-prone conflicts so that violence can be
subdued.  

Table 1: Instrumental Constitutive Dimensions of Civil War

<table>
<thead>
<tr>
<th>Constitutive Dimension</th>
<th>Indicator Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internality</td>
<td>Conflict contained borders of an internationally recognized state</td>
</tr>
<tr>
<td>Government actor</td>
<td>Government is major actor, seeks to maintain political control in support and legal codification, deploys troops against rebels</td>
</tr>
<tr>
<td>Opposition actor</td>
<td>Rebels are organized under leadership and party platform, command territory and local recruitment, bid for national control</td>
</tr>
<tr>
<td>Level of conflict</td>
<td>Around 1000 deaths/year total; at least 100 deaths per each side</td>
</tr>
</tbody>
</table>

Semantic Definition: the Politics and Rhetoric of Naming

Creating a conceptual framework of civil war is important not only in operational terms but also in semantic terms. Rhetoric in media coverage bi-directionally interacts with the instrumental dimensions of civil war: rhetoric is fed and changed by policy reports, and in turn conversely publicizes and mobilizes conflicts. In Darfur, action by Sudanese politicians, international NGOs, and individual media figures to reframe and depoliticize genocide by semantically separating it from the North-South civil war defined the government-led Janjaweed as reckless destructive forces and relocated conflict within the realm of international obligation.  

Contrastingly, characterizing Iraq as insurgency rather than civil war highlighted sectarian tensions and fragmented control, and removed the issue of breached domestic sovereignty from continued US troop involvement. The semantics of civil war thus mobilizes momentum and popular support by ethically confirming or denying the actors, and highlights or glosses over sectarian divisions, resource struggles, and conflicting political ideologies. Naming a conflict a civil war also limits justification for intervention by invoking sovereignty and domestic autonomy, often allowing self-interested players to defer to realist concerns. Dichotomies between a just side and an injust side are often reduced through the label of civil war rather than separatist movement, genocide, or insurgency, reflecting the motivations of governmental officials, policymakers, and international actors to shy away from military or diplomatic action. Thus, the politics of naming bi-directionally shapes the conceptual framework of civil war.

Research Framework for Civil War

Overall, the conceptual framing of civil war used in this research is sensitive to both instrumental and rhetorical inputs. In a civil war, the government and rebel sides must be clearly defined and consolidated within an internationally recognized state’s territorial boundaries. Both must have
articulated political and ideological agendas that inhere desire for state control and sovereignty through force, economic resources, legal authority, and popular support. The government side must represent the current political order, and must mobilize troops to counter rebel forces. The rebel forces must be locally derived, organized under a common platform, and cohesive leadership. Both sides mobilize politically and militarily, and must both suffer casualties of at least 100 individuals per year, with a sum total of around 1000 deaths in the first year. The rhetoric of civil war should thus be strong, with media coverage and international recognition sanctioning the conflict as domestic civil war.

Causality and Independent Variables

Causation of civil war is examined through the contextual environments surrounding conflict in Libya and Syria by isolating several independent variables that jointly reach the threshold of civil war. These independent variables are exhaustive of the political, social, and economic conditions so as to control for confounds and better establish causality. They are also internally enumerated to allow qualitative, rather than merely dichotomous, analysis. Five independent variables are implicated in the presence of civil war in Libya versus conflict but not civil war in Syria:

1) The nature and actions of the previous regime, including rise to power, makeup of the regime, public access to information and political dissent, and amenability to reform;

2) The territoriality of conflict, or the division of the state into government- and rebel-controlled territories with loosely or clearly defined battlegrounds, and the ability of the players to gain local support and resource access in these home bases;

3) Militarization of government and rebel forces, including the loss of monopoly of force by the government and the ability and willingness of the rebel forces to arm and train its members through either internal or external means into cohesive and united troops;

4) International influence, in the form of state, international organization, and NGO approval, aid, and/or intervention, and the nature of international media coverage influencing policymaking; and

5) Regional players, including the approval of bordering nations, regional organizations, and the flow of goods and services through borders.

These independent variables are causal rather than descriptive: they do not address the motivations or grievances that sparked protests and caused them to spread. Rather, they explain the mechanism by which civil war develops from and is differentiated from other forms of conflict. When they are jointly present in the cases explored, the conflict is instrumentally and rhetorically identified as civil war. When not jointly present, however, conflict does not reach the constitutive dimensions of civil war, indicating that these factors are individually insufficient but jointly necessary and sufficient.14

Method and Case Selection

This article tests the relative causal importance and mechanisms of the five independent variables isolated for civil war, using qualitative data from the conflicts in Libya and Syria. These cases are selected for their inclusion within the 2011 Arab Spring, and for their difference on the dependent variable: while the conflict in Libya has been recognized as civil war, conflict in Syria, though reaching high casualty rates and strong dissent against the al-Assad regime, has not yet been denoted

a civil war. The case studies employ Mill’s methods and process-tracing to identify trends concerning the influence of each independent variable in triggering civil war. Initially using Mill’s methods of agreement, the research is carried out under the assumption that an independent variable is not necessary if it is fully present in both cases, as the presence of civil war is only being examined in one case. Using Mill’s methods of difference to establish sufficiency, I examine which independent variables were present in Libya’s case of civil war but absent in Syria’s conflict distinct from civil war. While this method cannot confirm independent variables as sufficient causes, it can allow for a parsing of crucial independent variables that did differ between Libya and Syria.¹⁵

A semantic equation also aids in this process of identifying jointly sufficient independent variables: if \( A = \text{Regime History}, B = \text{Territoriality}, C = \text{Militarization}, D = \text{International influence}, \) and \( E = \text{Regional players} \), then I posit the equation:

\[
\text{Civil War} = A + B + C + D + E
\]

where + represents the logical “AND” and thus civil war is satisfied by the union of all five variables, indicating that none are independently necessary or sufficient but that in conjunction they are jointly necessary and sufficient.¹⁶

I also trace the development of conflict in Libya and Syria and the qualitative aspects of each independent variable to create a hierarchy of independent variables and to establish causal mechanisms from independent variable to civil war. The established constitutive dimensions of civil war are compared against the nature of conflicts in Libya and Syria, where each independent variable is explored not only in the dichotomous presence/absence quality employed through Mill’s methods and the posited semantic equation, but also in a qualitative sense through primary- and secondary-source historical, political, social, and economic data.¹⁷

**Case 1: Libya – Recognized Civil War**

Mass uprisings in Libya began on February 15, 2011 in the city of Benghazi, focusing on human rights abuses, social program mismanagement, and political corruption and finally demanding the end of Muammar Gaddafi’s rule.¹⁸ The National Transitional Council, a coalition body of anti-Gaddafi forces, formed on February 27th to consolidate resistance efforts nation-wide. As the NTC solidified its agenda and mobilization and Gaddafi cracked down in retaliation, the peaceful protests developed into a bloody civil war that was only officially ended with Gaddafi’s death on October 20, 2011 and the NTC’s declaration of victory.¹⁹ This conflict developed into an internationally recognized civil war that met casualty thresholds and the requirement of defined government and rebel sides due to influence of each of the five isolated independent variables. Gaddafi’s harsh and repressive regime, territorial division of Libya into NTC and loyalist strongholds, NTC armament and military training, coalition rebel forces, and the influence of the UN, NATO intervention, and the Arab League jointly propelled Libya’s conflict inexorably from peaceful protest to bloody civil war.

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¹⁶ Ragin.

¹⁷ Collier; Mahoney; Fahnestock.


1) Nature of Regime

After the 1969 coup, Muammar Gaddafi’s purportedly socialist political system of “Jama-hiriya” raze civil society and centralized the government around Gaddafi’s sultanistic rule, characterized by an underlying monopoly of processes by his cult of personality. *The Green Book* and other texts formed Gaddafi into the “Brother Leader and Guide of the Revolution,” at once title-less and the essence of a state closed to popular participation. This system of control, while bestowed with large welfare programs to buy loyalty, drove Libya into economic distress and failed to reap the benefits of oil endowments. Regardless, Gaddafi remained unrepentant throughout his 42 years in power in his domestic and foreign policy for Libya, isolating himself from Africa and the Arab League and leaving his agenda unresponsive to popular will.20

As the Arab Spring swept closer to Libya, Gaddafi condemned the protests, extending his 1973 rhetoric of dissenters as “stray dogs”21 to describe challengers in Benghazi as “rats”22 and “cockroaches”23 to be exterminated. As the NTC’s anti-regime protests expanded, Gaddafi’s response was to assume the defensive, rallying supporters and refusing to cede control at any price.24 This defensive posturing remained unchanged throughout the conflict as he rejected UN sanction of his actions, denied human rights abuses, and deployed security forces for violent scorched earth policies to rout out dissent.25 Even after Gaddafi’s death, his sons refused to accept NTC control and deplored its illegitimacy.26 Though the NTC responded in bloody fashion to loyalist troops who did rally around Gaddafi due to his legacy of favoritism, its harsh response was predetermined by Gaddafi’s defiant and violence-heavy rhetoric. Thus, Gaddafi’s repression, isolation from reality, and unwillingness to change enhanced the grievance of the Libyan people and triggered backlash of violent and unwavering attacks.27 Regime crackdowns provided the underlying grievances for uprisings and then acted as the proximate cause for NTC militarization by increasing its platform strength. Harsh responses both incited conflict and attracted larger popular support, widening protests into violent rejection of Gaddafi with no possibility of compromise. Regime extremism thus solidified the bloody nature of conflict by forcing the NTC’s hand and preventing negotiations, thereby making civil war largely inevitable.

2) Territoriality

The Libyan protests and subsequent civil war were strongly rooted in territorial divisions, paring Libya into rebel-controlled and loyalist-controlled cities. Uprisings in Libya began in Benghazi, and NTC control extended to incorporate other tribal and rural areas. This exploitation of tribal versus Tripoli allowed the NTC to mobilize forces nationwide.28 While pre-existing tribal divisions were only temporarily subdued under the NTC’s anti-Gaddafi platform, the ability to conglomerate different sects based on shared anti-elite grievance strongly expanded the NTC’s territorial scope.

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21 Eljahmi.
22 Quinn, Ben, “Gaddafi speech and Libya unrest – as it happened.” *The Guardian* News Blog (22 February 2011)
23 CNN Wire Staff. “From voice said to be Gadhafi, a defiant message to his foes.” *CNN World*, September 1, 2011.
27 Collier & Hoeffler.
Shared agenda facilitated wide NTC home bases with popular support that deeply reduced loyalist troop efficacy. Finally, areas under loyalist control were rather centralized in areas with personal significance for Gaddafi but not for loyalist troops, including Tripoli and Sirte. Poor exploitation of territory by the government meant that despite defined frontlines, loyalist dissolution was a constant problem and required harsher control for military gains, solidifying the development of protests into civil war.

3) Militarization
After the NTC’s consolidation in ideology and territorial control, arms access and training crucially sustained conflict and prevented early NTC defeat. NATO intervention under UN Security Council approval provided air strikes, weapons, and military training to rebel forces, facilitating violent development of the NTC. Arms trade and mercenaries from regional allies such as Qatar and transnational businesses created mass militarization that tipped the balance from peaceful protest to armed civil war. While rebels were initially portrayed as unproven and incapable in war, foreign training and aid reduced risks of dissolved control and enforced shared NTC identity through similar troop experience. The ensuing lack of government monopoly over violence thus crucially allowed the NTC to militarize to counter bloody loyalist crackdowns. Militia formation and exploitation of tribal arms access allowed forces united by grievances to functionally achieve violence rather than being immediately subdued by loyalist military and security troops.

4) International Influence
International influence was a key cause of Libyan civil war through multiple mechanisms. Strongly favorable media coverage of the NTC and Gaddafi’s longstanding negative image justified international action. Even in rhetoric that described Libya as a civil war as early as February, news organizations and think tanks identified governmental repression as a legitimate reason for NTC violence. Such rhetoric was echoed in policy briefs and lobbyist statements that ultimately led to UN action through Resolution 1973 to establish a no-fly zone and allow intervention under the Responsibility to Protect to prevent “widespread and systematic attacks against civilian populations.” This provided the framework for NATO intervention, which solidified both the instrumental capacity of the NTC as well as its anti-regime, pro-democracy identity. French ties to Libya as a sphere of influence, and European pushes for US involvement persuaded US government policy and rhetoric to act in favor of intervention to support the NTC due to fears of regime-led “massacres”, over-

30 Sharqieh; Al Jazeera, “Frontlines.”
32 ICG, “Libya”; Harris.
33 Al Jazeera.
34 Lynch.
36 ICG, “Libya.”
38 Spencer.
40 Zenko; UN Resolution 1973.
42 Hastings.
44 Al Jazeera.
whelming tenuous public support.\(^\text{45}\)

Such strong international involvement on the side of the NTC, with clear UN codification of NTC legitimacy and NATO military support,\(^\text{46}\) defined and separated the opposing sides, delegitimized Gaddafi’s regime, and opened space for a policy of NTC military attack.\(^\text{47}\) Thus, the underlying condition of Gaddafi’s legacy of withdrawal from the international community, combined with proximate NTC-biased rhetoric and subsequent instrumental and legal support from NATO, the UN, and individual states, provided the causal mechanism that, following harsh regime crackdowns and NTC platform development, triggered the Libyan conflict’s development from uprising into civil war.

**5) Regional Players**

Gaddafi’s isolation from reality was also highly causal in Libyan civil war by motivating regional players to cast their favor for the NTC. As Gaddafi was already a pariah in the Arab and African world due to his support of despots, bizarre foreign policy, and general disrepute, regional nations did not have to consider a delicate balance of power in supporting the NTC.\(^\text{48}\) Instead, the framework of the Arab Spring allowed regional leaders like Jordan’s King Abdullah\(^\text{49}\) and Tunisia and Egypt’s interim governments to support liberalization with little political risk. Additionally, Libya’s geographical location in the Maghreb, balanced between the Middle East and Africa, allowed more removed Gulf nations like Qatar to donate troops and arms to the NTC\(^\text{50}\), and caused regional organizations like the Arab League to unanimously condemn the regime and encourage international intervention.\(^\text{51}\) Gaddafi’s ostracism in the regional community did not only provided the causal mechanism for civil war by privileging neighboring military and political support of the NTC: it also meant that there were no alliances to be lost or harsh perceptions to incur if loyalist reprisals were especially harsh, thereby eliminating political costs of harsh backlash.\(^\text{52}\) Thus, Libyan isolation reduced fears of civil war spillover, and caused regional players to support the NTC both politically under the framework of the Arab Spring as well as militarily through arms flow and troops. The combined political and military regional influence increased violent clashes between loyalist and opposition forces and spiraled heightened conflict into defined civil war.

**Case 2: Syria – Fears of Future Civil War**

The Syrian conflict, which began with protests on January 26\(^\text{th}\) 2011 and escalated into a consolidated uprising on March 15\(^\text{th}\), has become the bloodiest conflict of the Arab Spring. Military and opposition forces have suffered over 9,000 casualties since the beginning of protests, violence, and army involvement.\(^\text{54}\) Similar to the civil war in Libya and the revolutions in Arab Spring Tunisia and Egypt, Syrian protestors have demanded an overarching campaign of regime change.\(^\text{55}\)

\(^{45}\) Harris.
\(^{46}\) “Resolution 2009.” UN Security Council, 6620th meeting, 16 September 2011.
\(^{47}\) Al Jazeera; Harris.
\(^{48}\) Harris; French.
\(^{50}\) Rafizadeh, Majid. “Is Syria Descending into Civil War?” Huffington Post, 12/4/11.
\(^{51}\) Al Jazeera.
\(^{52}\) Zenko.
\(^{53}\) Harris.
war rhetoric surrounding the Syria abounded throughout the end of 2011 and the beginning of 2012 and even earlier, and the death toll has definitively reached thresholds overall and likely for each side as well, the conflict has yet to be conclusively denoted a civil war. Despite a harsh and repressive regime under Bashar al-Assad, the existence of small concessions for regime reform, the decentralized quality of violence due to high ethnic heterogeneity, incomplete militarization and mobilization of opposition forces, and waffling and inaction by international institutions and regional players are jointly insufficient to cause the conflict in Syria to reach instrumental and semantic thresholds for civil war.

1) Nature of Regime
Syria’s sultanistic system of control, characterized by leader monopoly of governmental and political processes, is similar to that of Libya, Tunisia, and Egypt, and strongly eliminated popular engagement in the political process and transition of power. However, succession by Bashar al-Assad in 2000 reduced dissatisfaction to a degree and opened space for reform. Syria’s history of sectarian conflict and instability forced civilians to accept higher repression in exchange for security, and loyalty to the regime was further bought with side-payments in the form of social programs and welfare. Additionally, al-Assad’s government countered its reliance on Alawite minority by attempting to integrate Syria’s heterogeneous population through elite representation of both Alawite and Sunni sects.

Although the regime remained largely repressive and not amenable to dissent, political prisoners were released and popular debate was initially allowed in the beginning of al-Assad’s “Damascus Spring.” However, the regime remained fairly dysfunctional and schizophrenic, engaging in cycles of “escalating protests and repression” and eventually cracking down after small reforms failed to satisfy the public. Similarly, Al-Assad referred to the outbreak of the Arab Spring as a “foreign conspiracy” while concurrently discussing lifting Syria’s state of emergency, but denied a hand in the unrest when his forces crushed dissent. While al-Assad’s initial popularity prevented protests as vehement as those in Libya, Tunisia, and Egypt, his toothless speeches for regime reform and purported cease-fires and accompanying stifling of calls for regime change incited protests to continue and heighten. Thus, the government’s consolidation and military mobilization against civilians and opposition forces meets that dimension of civil war. However, while protestors see through al-Assad’s unaccountability and lack of commitment to non-violence, cease-fires, or true change, the regime’s higher degree of fluidity and stronger control of force meant the regime was insufficiently repressive and violent to propel opposition protests to all-out civil war.

2) Territoriality
The strongest evidence of conflict centralized around specific locations has been in Homs,

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57 Abdulrahim, Raja. “Syria unrest: a popular uprising or civil war?” LA Times, 6 December 2011.
58 Goldstone.
59 Rafizadeh.
61 Kaplan.
63 Ibid.; Kaplan.
64 Al-Assad, Bashar. “Syria Transcript: President Assad’s Speech ‘Full Transparency With the Citizens.’” Enduring America Worldview, translated Scott Lucas, 17 April 2011.
65 ICG, “Syria.” Barnard and Gladstone.
Syria’s second-largest city. Government forces attempted to regain control of Homs from majority Sunni armed rebels, as they had previously completed in Hama and other large towns. Massive resistance by the people of Homs turned the conflict into a “siege city,” where violence between government and opposition forces and shared casualties acted as a microcosm for a potential civil war. However, beyond spotlights of siege cities under disputed control, the conflict in Syria is largely more decentralized. Neither rebels nor government forces have amassed large tracts of territory to serve as home bases, and ethnic heterogeneity prevented rebels from controlling and exploiting regions for military gains. Though these siege cities provide a reference for how conflict in Syria could develop into civil war, and such harsh government action may incite wider public support of the opposition, the current lack of popular support for one defined rebel organization extends the rebels’ decentralized and heterogeneous nature. Thus, while it is possible that conflict will continue to become more territorialized, the status quo lack of divided regions prevents the rebel forces from consolidating and combating governmental forces to a degree that meets the standards of internal military mobilization and recruitment for civil war.

3) Militarization
Non-consolidation of multiple rebel groups also prevented the tactical military deployment and arms access necessary to cause civil war. Contrary to biased international media reports that indicate no armament of rebel forces, there have been instances of violence and casualties inflicted by protestors against regime forces. However, overall the Syrian rebel forces lack arms, training, and centralization. Rebels are split between the Turkey-based Syrian National Council, the Damascus-based National Council of Coordination, and the Syrian Free Army: the three disagree on the use of violence and the scope of negotiations with Assad, with none representing overarching public desires. Though the Syrian Free Army is made up of professionally trained defecting soldiers from the government army, the rebel forces lack coherence in both political and military mobilization and fail to command a wide base of troops. Of the 9,000 casualties since the conflict’s beginning, a conservative estimate indicates that a majority of deaths were inflicted by Alawite loyalist forces against Sunni protestors, as in the case of Alawite shabiha against Sunni protestors in Homs. While loyalist forces command access to heavy weaponry and tanks, rebel forces are unable to attain major access to weaponry or training and thus cannot complete wide-scale resistance against the regime. Without adequate militarization of the opposition, Syrian conflict cannot develop into civil war.

4) International Influence
Media coverage and international perception of Syrian conflict has largely been inconclusive

67 Khashan; ICG, “Syria.”
68 Rafizadeh; Barnard and Goldstone.
70 Shahid; ICG, “Syria.”
71 Rafizadeh.
72 Debieuve.
73 Abdulrahim.
74 Ibid.
75 ICG, “Syria.”
76 Krause-Jackson.
and uncertain. Media sources and scholars have alternately been favorable to government-persecuted civilians and uncertain on the nature of the conflict as civil war; Andrew Tabler of the Washington Institute indicates, simply, that it is “kind of a civil war” while additional scholars warn of the conflict’s increasing intensity. Uncertainty is heightened due to the political implications of naming the conflict: identifying Syrian conflict as sectarian civil war reduces the legitimacy of any future intervention, allowing the international community to “wash [their] hands” as accused by Arab press. The inert nature of the international community can largely be explained by overstretch in Libya. Though the UN High commission on Human Rights warned that as civil war “happened in Libya, it may happen in Syria” and Secretary of State Clinton echoed civil war fears, actors remain largely disinterested in aiding regime change or consolidating civil war sides. Generally, in conjunction with the Syrian’s Foreign Minister’s desire to prevent “internationalization” of the conflict, European disinterest and international paralysis represent insufficient international involvement to consolidate rebel capacities and cause civil war. The international community throughout the spring of 2012, however, has been increasingly spurred by mass atrocities in Syria to take action, culminating in a decision on April 1 to approve limited rebel support. The “Friends of Syria” coalition members have, in the case of Arab nations, approved $100 million in funding to the Syrian opposition, while the US has pledged non-arms based communication equipment to facilitate rebel cohesiveness and mobilization. This decision signals a shift towards international reinvigoration, a move that, while perhaps shortening the conflict, may likely move the conflict’s nature further towards definitive civil war.

5) Regional Players

The balance of power in the Gulf is more complicated than Libya’s isolation in the Maghreb. Ethnic and religious heterogeneity and sectarian ties within Syria have divided already antagonistic actors and confused regional action overall. Individual states have recently denounced Assad’s regime: King Abdullah of Jordan argued that Assad’s lack of reform will extend violence and make his regime unsustainable, Iraq’s Prime Minister al-Maliki denounced the regime and warned of Syria’s “spring” turning into a “winter” civil war, and Turkey’s Prime Minister Erdogan went as far as to call Assad “someone who has fought until the death against his own people, [like]...Hitler”. These vocal denouncements of Assad’s regime influenced the Arab League to first suspend Syria if it did not halt its violent repression and then to approve unprecedented economic and political sanctions in a 19:3 vote. Its actions overall, however, were waffling, as though the league deployed observer

77 Ibid.
78 Ibid.
81 Abdulrahim.
82 Krause-Jackson.
84 Debieuve.
87 Weymouth.
88 Tehran Times.
91 BBC News, “Syria Unrest.”
groups, it did not call for intervention,\textsuperscript{92} Iraq and Lebanon abstained from the vote due to concerns about spillover of Syrian instability, and the balance of power between Iran support and Saudi Arabian support of Sunni rebels made cohesive Gulf action impossible.\textsuperscript{93} The “Friends of Syria” cohort, however, has further pushed Arab nations towards military and non-military aid of rebels, approving $100 million for rebel support that, while it does not explicitly include armaments, will certainly improve rebel mobilization and military capacity.\textsuperscript{94} However, barring an explicit rebel strategy, it is uncertain whether salaries and other rebel payments will instrumentally shorten the conflict. Thus, while the recent approval of sanctions signal increasing Syrian isolation in the Gulf and increasing regional consolidation against Assad, and Arab states’ approval of explicit foreign aid to Syrian rebels pushes the conflict more towards the brink, the complex sectarian ties and desire for power in the Gulf have so far prevented entirely cohesive regional influence for one side.

### Comparison Summary and Implications

The difference in each independent variable for both cases is portrayed in the table below. Conceptually, both cases meet the dependent variable dimension of 1000 deaths/year, and Syria likely (though not definitively) meets the standard of 100 government casualties. Both cases are limited to the territorial boundaries of the state, and despite regional and international influence in militarization, rebels are still recruited locally. The government sides in both cases were clearly defined and militarily mobilized against both civilians and rebel fighters, though Gaddafi retaliation to protestors was more swiftly and overtly violent than Assad’s flip-flopping promises of reform. In Syria, however, contrasting from Libya, rebels lack coherence in a common struggle beyond regime change. The major opposition groups disagree on strategy and utilize separate leadership and mobilization systems, and thus do not harness public support. As such, the Syrian case did not meet the constitutional dimension of rebel consolidation and political and military mobilization, though its conflict currently meets two out of the three constitutive dimensions.

#### Table 2: Libya versus Syria, Conflict and Civil Wars

<table>
<thead>
<tr>
<th></th>
<th>Libya</th>
<th>Syria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature of Regime</td>
<td>Harsh, isolated, no reform</td>
<td>Harsh, but some reform</td>
</tr>
<tr>
<td>Territoriality</td>
<td>Divided rebel / loyalist control, tribal unification</td>
<td>Siege cities, but not defined</td>
</tr>
<tr>
<td>Militarization</td>
<td>Yes: Arms, training, casualties on both sides, coalition force</td>
<td>Weak: Death count met, but little rebel arms access</td>
</tr>
<tr>
<td>International Influence</td>
<td>Strong: UN recognition of NTC, NATO intervention, media favorable to rebels</td>
<td>Weak: international refusal to act, some diplomatic pressure / US communications $, media waffling</td>
</tr>
<tr>
<td>Regional Influence</td>
<td>Strong: Gaddafi isolation from Arab League, AU, Maghreb; Qatar forces, arms, training</td>
<td>Some: Arab League sanctions / funding, Turkey / Iraq disapproval, but regional Gulf allies</td>
</tr>
<tr>
<td>Civil War?</td>
<td>Yes</td>
<td>Not currently, but questionable</td>
</tr>
</tbody>
</table>

\textsuperscript{92} Zenko.

\textsuperscript{93} Rafizadeh.

\textsuperscript{94} Myers.
Syria’s decentralized and fragmented rebellion can thus be traced back through the mechanisms of territoruality, militarization, and international and regional influence. Harsh governments existed in both cases, and while Assad made toothless promises for reform, this was not enough either to propel or subdue conflict. Similar regime problems triggered the uprisings, and similar harsh regime reactions increased violence: the area of concern then is what prevented high militarization of Syrian rebel forces. Where Libyan uprisings began in tribal locations and expanded through tribal regional networks under the NTC coalition, Syrian uprisings began small and did not bridge gaps of extreme heterogeneity. Thus, territory under rebel control was ill-defined outside of certain siege cities, preventing adequate home base advantage and popular support to house and refurbish troops and carry out civil war.

Next, such disjointed opposition and fragmented territories made militarization near impossible. Except for defectors from the army, most troops were poorly trained and poorly armed, as arms inflow from other nations or from nation-wide militias did not exist. Dispute over military strategy and the viability of violence against the Assad regime versus negotiation again meant that mass militarization could not be carried out. Even if small victories were won in control of individual cities, violence was generally initiated by government forces due to the lack of means on the rebel side. Thus, civil war was not reached due to the low opportunity of the rebels to inflict military losses on the government in any sustainable way.

This lack of military aid can be traced even further back to the lack of international and regional support. Where Libyan rebels were given arms, training, troops, and tactical strikes by neighbors and NATO, the Syrian conflict remained largely only fought and funded by Syrians. The international community focused on rhetoric that was uncertain about the conflict, and exploited this uncertainty to assume inaction due to malaise and embroilment in Libyan intervention. While funding has recently been approved by Arab nations and the US, such funding is labeled as non-lethal and does not explicitly provide arms or training, as in the Libya conflict. Thus, waffling on civil war concerns allowed international organizations to stay removed, as there was no clearly identified coalition rebel force to support either militarily or with humanitarian aid. Instead, international organizations could use the semantic uncertainty of civil war to defer to Syrian sovereignty and their own self-interest to refuse getting involved. Similar waffling occurred on the regional front as well, due to complicated sectarian tensions and the need to maintain a balance of power in the Gulf. Syria’s ethnic makeup and ties with neighbors meant that one framework of action by bordering states would not be taken, as it was against Gaddafi in Libya. Rather, while individual states have become more vocal against Assad and while the Arab Spring has voted for sanctions against Syria, it articulates these sanctions as a way to prevent international involvement in stark contrast to the League’s call for international help to topple Gaddafi. All funding pledged by Arab nations for the Syrian rebels have been allotted discursively towards salaries and non-lethal support, again toeing the line of regional conflagration versus the explicit armament in the Libyan conflict. The prospect for Syrian instability to spill over, Assad’s history of providing security, and an uncertain balance of power means that regional players will not offer any sort of military or political aid that could favor one side or another. In the short-term, instead of attempting to nurture the Arab Spring in a way that could spark all-out civil war, the neighboring states prefer to wait to see which side’s victory can achieve the most profitable stability. However, as the Arab League increasingly turns against Syria in joint actions against Assad’s regime, it remains to be seen if this influence will remain merely political and financial, or if explicit military involvement will begin to favor rebel leaders and consolidate the opposition’s offense.
Conclusion

Two main conclusions derive from this article’s tests of causal mechanisms and independent variables for civil war. First, the Libyan case of Arab Spring uprisings clearly met the threshold of civil war, both instrumentally and semantically. The war was contained within Libya’s borders, mobilized clearly defined Gaddafi-led loyalst and NTC-led opposition forces, and spotlighted differing calls for political and military control. In the months-long war, casualties vastly exceeded 3500 and were born to large degrees on both sides. Presence of civil war can be traced to Gaddafi’s harsh regime causing grievance and forcing violent backlash, Libya’s territorial division between Tripoli-centered loyalist forces and tribally-linked, internationally supported, and regionally and internationally armed and trained rebel troops, and Gaddafi’s ostracism causing swift legitimization of the NTC and regime change.

Second, the Syrian case currently fails to meet the threshold of opposition consolidation and capacity for parallel reasons. While the conflict has been confined within the state and the government forces are mobilized, having waged reprisals against protestors that met the death count threshold, Syria’s opposition lacks cohesive rebel leadership, agenda, political strategy, or military mobilization. While Assad’s bloody crackdown on protestors continues to grow, his waiving promises of reform prevented popular grievances from yielding one rebel identity. Such fragmentation caused conflict to be decentralized and largely on the defensive in siege cities where opposition forces lacked the military aid, arms, and training to inflict substantial government losses. International paralysis post Libya and regional uncertainty due to closer geographical and sectarian ties are evidence of the delicate balance in Syria, though paralysis has been challenged by recent UN, Arab, and US decisions for limited rebel support.

As international and regional actions have been determined as lynchpins in driving conflict to civil war, it remains to be seen what will happen with increasing Arab League sentiment against Assad. While international influence, let alone intervention, is not strictly permitted by the UN Charter since it militarizes one side, such action may be shown to heighten the conflict’s intensity but reduce its costs in death and destruction. Manipulating the semantics of what qualifies count as civil war, as has been seen in Syria, can focus tensions on civilian control and allow rebels to more efficiently overthrow a bloody and repressive government. If, as seen in the Arab Spring, prospect for regaining control is slim, then motivations to shorten conflict, subdue violence, and prevent attacks on unarmed civilians, may win out when weighed against international fears of bog-down. As conflict in Syria heightens and international consensus grows, the international community has a possible decision to eschew inaction and sovereignty concerns in favor of security and stability. As the international community does move towards increased engagement, decisions supporting limited or substantial intervention may in fact tip the balance of conflict in Syria towards civil war; this throws into question the assumption that civil war is necessarily the worst outcome, and posits that perhaps, a civil war that ends quickly is more favorable from a security as well as human rights standpoint to drawn-out mass governmental violence against its citizens. Tactical intervention under the framework of Libya may then be increasingly employed as a mechanism to turn conflicts of attrition into shortened civil wars in the hopes of toppling autocracies, consolidating rebel allies, and fundamentally reshaping the political and strategic makeup of a new Middle East.
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Gaddafi-led military coup, takeover from King Idris, used military rhetoric and apparatuses.


Means leadership more likely to induce civil war – but outside forces refusing intervention – “washing hands”?


Quotes: Gadhafi family refusal to step down, demonizes NATO as occupier, unwillingness to lay down arms.


Video recording of Erdogan speech denouncing Syria; calls for Assad to step down.


Al-Maliki rejection of Assad, warns of civil war and regional spillover.


Explores Libya as civil war rather than rebellion; contrast between narrative of organic rebellion versus longer term existence of armed militias; NATO intervention formative to TNC identity and force.


Approves US intervention in Libya to prevent “massacres” and protect civilians.


“It happened in Libya, it may happen in Syria. More and more soldiers refuse to become complicit in international crimes and are changing sides. There is a serious risk of Syria descending into armed struggle.”

Quinn, Ben, “Gaddafi speech and Libya unrest – as it happened.” The Guardian News Blog
Transcript of Gaddafi’s speech and journalistic response in February; rhetoric of martyrdom and rebels as “rats,” rally cry to Gaddafi supporters.

Authorizes all necessary measures to protect civilians in Libya (invoking R2P), establishes no-fly-zone, enforces arms embargo, strengthens sanctions.

Commitment to sovereign integrity of Libya, condemnation of human rights violations; recognizes NTC as legitimate ruling body in Libya and authorizes UN Support Mission in Libya deployment.

Describes movement of Syrian conflict in phases, as articulated by rebels in Syria. Focuses on conflict in Homs and development of uprising versus government in civil war format.

Early use of civil war rhetoric following Gaddafi and son speech; geographic centralization of forces in Benghazi versus Tripoli and Sirte; army inaction for revolution or necessarily for loyalist forces either.

Interview with King Abdullah – open communication with Syria but sustained violence and lack of reform under Assad (rebels as “thugs”); immediate support of NTC.

Secondary Sources

Rhetoric of “degeneration” of peaceful uprising into civil war; doesn’t articulate formation of TNC leadership or true military coalition status.


Some reform by Assad in past, but regime is dysfunctional and ultimately lost credibility by brutally crushing reform; public demands regime change, not reform. Some sectarian tensions and militarization, but protest began small and national identity and popular culture are more unifying: lesser likelihood of civil war.

Arab League 19:3 voted up sanctions against Syria, after Syria refused Arab League monitors on the ground; avoiding “internationalization” of conflict; Syrian isolation.


Disunity of NTC, civil war rhetoric, need civil society and smoothed regional rivalries.


NTC regional and tribal factions remain undetermined, and require codification of internal balance of power plus institutional consolidation.


Importance of tribal factors and moderate NTC coalition.


Industry and factory production down. Defections in Syrian army. Arab press reports: hyping up conflict. Assad won’t regain control; lack of domestic and international support except for Iran, Lebanon. Violence against Sunnis means Saudi Arabia against Syria. However, disinterest from Europe. Risk of civil war, but not realized yet.


Gaddafi unwillingness to reform; strong legacy of political crackdown, total control of state under Gaddafi or family; Jamahiriya and Five Point address established absolute rule, totalitarian statehood, criminalized dissent and political organization.


Gaddafi’s desire for pan-Africanism buoyed his megalomania and motivated his support for Charles Taylor in Liberia’s civil war, and also influence in Burkina Faso.


US public opinion against Libyan intervention overwhelmed. NATO training of NTC increased regionalization and unification of troops, and defined loyalist forces who had already shed
blood. Gaddafi already a pariah so less concerned about negative perception concerning harsh treatment of rebels.


Articulation of French role and Lévy force in pushing American intervention through NATO in Libya; analyzes development of NATO operation and civil war characteristics of TNC-Gaddafi conflict.


Libya as sultanistic inclusionary regime, myth of popular participation, military coup, cult of personality and Gaddafi as state and military itself.


Degree of reform under Assad: “containment system” (10), government representation of heterogeneity through Sunni and Alawite presence, “Damascus Spring” with reform and “mutual tolerance” under Baathism but still repressive, anti-dissent regime.


Heterogeneous ethnic population, lack of national identity, minority Alawite sect supported by Al-Assad pitted against rest of population. Assad rhetoric for reform (obviously not true). “Foreign conspiracy” = rhetoric about Arab Spring by Assad regime.


Security Council veto by Russia and China against UN action in Syria – against measures for regime change. 3500 dead in Syria uprisings since March. Military forces using tanks and heavy weaponry against civilians (siege in Homs).


End of civil war post Gaddafi death; lack of monopoly over force, need to dismantle militias and smooth tribal and regional conflicts with new civil society.


Arab League voted to suspend Syria – economic and political sanctions threatened against al-Assad’s government if violent repression of demonstrators not stopped.


Libya: mass public opposition to Gaddafi, international consensus against, regional powers like Tunisia and Egypt occupied with their own revolutions and generally in favor of liberalization. Syria: more regime loyalty for security concerns, disjointed opposition with SNC, NCC, and SFA disagreeing on agenda, regional waffling because balance of power, instability spillover, international consensus increasing but inaction.

Argues for Western pressure in the UN and individually for punitive measures against Assad, and for diplomatic pressure on Russia and China. Recognition of Syrian National Council to head off conflict before civil war status.


Implications of Qaddafí’s death: end of military campaign in the North; dissolution of loyalists; possibility of insurgency in the South, and implications of Qaddafí’s sons still campaigning against NTC; psychological closure / catharsis for Libyans.


Pro-civilian UN rhetoric, UN Resolution 1970 arms embargo, no fly zone and framework for NATO intervention to protect civilians. Impartiality: military training, arms. Similar action in Syria unlikely: lack of Arab League support, Russian UN veto, international community inert. Argues for key role of international institutions in conflict in Libya, and impact on mandate.

Framework and Methodology Sources

Rejects argument for globalization changing civil wars; historical context key.


Semantics and state self-interest in naming conflicts: politicized process.


Method of tracing events and processes to establish causal mechanisms.


Economic motivation and opportunity (greed) are superior to grievance in causing civil war; financing, military advantage, cost of rebellion, and mobilization of population key.


Method to establish causal hierarchy and time-dependence.


Geography and population key to civil war, subsume grievance. Civil war: 1) fighting between “agents” (alleged or actual) of a state and organized, non-state groups who seek control or violence for regime change. 2) at least 1000 killed in conflict; at least 100 per year. 3) At least 100 killed on both sides – to rule out massacres.


Mechanisms for establishing causality, including Mill’s methods to identify necessary and / or sufficient causes.

Argues dichotomy between new and old wars, with old based on grievance and justice versus new based on greed and wanton violence, is false; politicized regard of conflict.


Similarities in death count between Iraq and Darfur, also military versus civilian groups; but insurgency versus genocide, mobilization and depoliticization (genocide) versus complex histry and politics (civil war, insurgency).


Impact of realism, rational decision-making versus ideology, state calculations and self-interest.


Argues for qualitative nature of independent and dependent variables, and use of semantic equations.


Difficult or impossible to operationalize civil war while distinguishing from other conflicts. Definition: internal to state, political and military organization, government versus local insurgency, territorial control, 500+ deaths/year, 500-100 in first year.


Overarching data on statehood, conflict, ethnic makeup, etc; quantitative analysis.


Civil war definition: “any armed conflict that involves a) military action internal to the metropole, b) active participation of the national government, c) effective resistance by both sides.” Distinction between civil and extrastate or interstate is participation of government, and internality of war based on territoriality. More than 1000 deaths.


Common scholarly definition: warring groups from same country, fighting for political control and autonomy; at least 1000 killed, at least 100 per side. Iraq: why not civil war (Fearon)? Political decision-making in naming: UN resolutions, ability of foreign intervention and withdrawal, crucial to conceptualize definition to accurately address it.
International Policy Responses to Digital Intellectual Property Infringement: An Analysis of Recent Policy Responses in Sweden and France and how the United States is Following Suit

By Ben Gottesdiener

Abstract: As the music industry continues to embrace the digital age and vice versa, and as physical music becomes something of the past, the legal landscape protecting the intellectual property of these digital creative works must also evolve to keep up with the rapidly changing industry. Up to this point in time, the legal landscape protecting digital intellectual property has been one step behind those infringing on the rights of these creative works. Piracy numbers have reached unprecedented levels and, in some countries, paying for music is a thing of the past. However, France and Sweden have recently enacted policy responses to digital intellectual property infringement, with initial results beginning to surface. The United States is also in the process of following suit, with legislation of its own. This study analyzes the details of these new policies and the impact they have had on their respective digital music industries. It will shed light on the true efficacy of anti-piracy legislation and the worth of attempting to pass such laws in the United States.
Introduction

Just as the introduction of the vinyl record and the introduction of the compact disc to the music industry marked a significant transition in how the consumer received the product of music, the entrance of digital music to the market in 2004, changed the landscape of the music industry once more. The digital music industry grew by over 1000% since its 2004 induction, and in 2010 accounted for an ever-rising 29% of the nearly sixteen billion-dollar global recorded music industry\(^1\).

However, with the introduction of the newest and easiest way to enjoy and purchase music, came the newest and easiest way to copy and steal music. As digital music rapidly gained popularity in the years following its introduction, piracy became one of the industry’s most pressing problems. Since 2004, the global recorded music industry declined by 31%, while the growth of the digital industry significantly slowed. Concurrently, estimates show that nearly 24% of all Internet traffic is infringing, and European estimates calculate that nearly 25% of active Internet users on the continent visit unlicensed sites monthly\(^2\). There is not a decline in the number of people consuming music; the decline is in the number of people legally acquiring music. As Adrian Adermon and Che-Yuan Liang established in their 2010 paper “Piracy, Music and Movies: A Natural Experiment,” digital illegal music is a strong substitute for legal music. Thus, we can attribute the limited growth of the digital industry and the steady decline of the total industry to persistent piracy problems. The piracy problem facing the industry is grave and is beginning to cripple the industry. The United States Chamber of Commerce estimates indicate that Hollywood studios, record labels and publishing houses lose $135 billion in revenues each year from piracy and counterfeiting\(^3\). Initial law enforcement and governmental policy responses to piracy were unsuccessful; piracy rates continue to rise and revenue in the music industry continues its steady decline. We are currently at a point where the recorded music industry has been severely and negatively impacted. International governments are now sensing the urgency and the severity of the problem, and are attempting to combat digital piracy through ground-breaking policy responses.

Over the course of the past three years, Sweden and France implemented new legislation aimed at attempting to combat piracy in the creative arts industries. These examples of recent legislation, which have now been in place and active for at least a full year, can now be studied to better understand their impact on the music industry and their relative domestic effectiveness. Throughout the course of this paper, the provisions of each law will be detailed, and their impact on the music industry will be analyzed.

The United States has also recently introduced legislation in hopes of effectively protecting digital intellectual property, which will be detailed and analyzed. Transnational comparisons to both Sweden and France will help determine what the United States can learn from other countries as they embark on a policy response of their own.

Sweden

On April 9, 2004, the European Union, as part of the treaty of Rome, passed IPRED (Intellectual Property Rights Enforcement Directive), aimed at combating piracy and other infringements of intellectual property rights through criminal measures\(^4\). In March 2008, the Swedish government elected to turn this widely unenforced directive into Swedish law, in order to tailor the specific provisions to combat piracy domestically. The law passed in the Swedish Parliament in February of 2009.

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1. IFPI Recording Industry in Numbers Report 2011; p.7
2. IFPI Digital Music Report 2011; p.14
The government implemented the law on April 1 of the same year. The law has three main parts regarding digital intellectual property, which are the points of focus here. (1) The law allows intellectual property owners to demand details and information from Internet Service Providers (ISP’s) regarding certain IP addresses with reasonable suspicion of infringement. (2) To obtain the information, the holder presents the evidence to the courts, and the courts can then order the ISP to access the information withheld in the IP address. (3) The court will then take action based on the evidence presented; however, the courts have indicated that they will not take action in cases of small download volume, but only with respect to larger scale infringement.

The main portion of this law that increases its efficacy is the role of the ISP in this process. ISP’s are private companies, who provide Internet access to members of the Swedish population. The ISP’s were, and still are apprehensive of this mandate, for it leads to added expenses and responsibility. This drives up their cost of doing business and, consequently, drives up the price of their service to consumers. Originally, in response to the implementation, multiple large Swedish ISP’s voiced their intention to destroy their IP logs to protect the identities of their customers and, therefore, hamper the enforcement process. Further, VPN (Virtual Private Network) services were introduced to the market to impede the effectiveness of the law, and proved to be very popular. VPN services offer a masking of a user’s IP address for a mere seven dollars a month. Without access to the users IP address, enforcement is made significantly more difficult as users become more protected. On the political front, in a highly publicized June 2009 election, the single-issue anti-IPRED Pirate Party received 7% of the Swedish vote and a seat in Parliament.

Despite the initial negative public reaction, the true effectiveness of the law is beginning to emerge. After implementation of the law, for each percentage point that piracy decreased, physical music sales increased by .72% and digital music sales increased by 1.31%. By the end of 2009, physical music sales increased by 27% and digital music sales increased by 48%. Overall, Swedish music revenue actually increased from the previous year by 11.9% for the first time in over five years. In 2010, Swedish digital music revenue reached $37.5 million, indicating a 72.8% increase from 2009 revenue numbers and a 278% increase from 2008 revenue numbers. This significant positive shift in revenue is remarkable. Although it may be difficult to attribute the substantial increase in revenue wholly to IPRED, its impact was certainly felt by the Swedish music market in terms of generating increasing revenue from legal digital music.

Much of this data may be a result of a fear-based response prompted by the legislation. Few court cases have actually been settled since its implementation, which could hamper the effectiveness of the legislation. If people realize the consequences are limited, then piracy rates could return to pre-IPRED numbers. However, a recent MediaVision report showed that this has not been the case to date. Piracy levels dropped 25% compared to pre-IPRED levels, which should be very encouraging for the industry and for advocates of IPRED.

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8 IFPI Recording Industry in Numbers Report 2011; p.58
One of the most interesting phenomenon associated with this legislation is the deterrence from piracy to new innovative legal digital music models, more specifically, the streaming model. The availability of new, legal and attractive alternatives to more conventional legal music, such as the pay-per-download model, strongly bolstered the success of the law, especially for the non-serious pirate. Sixty-one percent of Sweden’s $37.5 million digital music revenue is attributed to legal online streaming services, with Spotify being the major player under the new streaming model. In a survey done by GfK, 56% of those surveyed noted Spotify as one of many reasons for their decreased use of file-sharing sites. Only 34% attributed their drop in file sharing to IPRED\textsuperscript{10}.

Initially, Sweden’s IPRED law certainly appeared to have had a drastic impact on the Swedish internet population, the pirate population, and the digital music industry in general. The data presented indicates that the legislation was effective in increasing digital revenue, and lowering piracy. However, we must be wary in overstating the direct impact of this law on this data. The role of new digital music models, such as Spotify, which came to market at around the same time as the introduction of legislation, should not be understated. Moreover, just sixteen days after the implementation of the IPRED law, arguably the most notable file sharing verdict in history was delivered by a Swedish District Court, blocking the widely popular file sharing website, “The Pirate Bay”, and punishing the operators of the website with jail time and a $2.7 million fine\textsuperscript{11}. This case was unrelated to IPRED, but overarching media coverage of the case certainly added to Swedish fears about possible consequences for file sharing and could have had an effect on the direct correlation between the legislation and the data. Fearful responses elicited by the legislation and deterrence to new legal alternatives have been the main outcome in Sweden; but as the initial scare of the legislation wears off, it remains to be seen whether piracy rates can be maintained at the current low levels, and likewise, whether digital revenue can continue to grow.

France

On October 2, 2009 the French intellectual property infringement response law was constitutionally approved, creating the Haute Autorité pour la Diffusion des œuvres et la protection des Droits sur Internet (HADOPI), or the High Authority for the Transmission of Creative Works and Copyright Protection on the Internet. HADOPI is a gradual response, three strikes law, aimed at protecting digital intellectual property in France.

The law has three main provisions. (1) An email is sent to the infringer by the agency specifying only the time of infringement. The ISP is required to then monitor the infringer, and the infringer is offered a content filter for his or her computer to avoid mistakes. If the user infringes again within six months, step two is enacted. (2) A certified letter is sent to the infringer, quite similar to the first letter. This is the infringer’s last warning. If the user infringes again within the next twelve months, step three is enacted. (3) The ISP and the agency refer the infringer to the courts, where the court can enact consequences ranging from a fine to a suspension of Internet. The user can appeal after the verdict is received. The burden of proof for appellate cases is solely on the appellant\textsuperscript{12}.

Initially, this law was not widely accepted. The immediate response to the passage of the law was referral to the high French Constitutional Court for constitutional review by opponents of the legislation. The Court originally blocked the law, deeming it as a violation of free speech. However, after the law was amended, requiring a judge to sign off on all suspensions, the constitutional court

Finally offered their approval, which came on October 2, 2009\(^\text{13}\).

Initial data on the outcome and effectiveness of HADOPI is very interesting. There have been 18 million instances of illegal downloading as monitored by HADOPI. Considering that there are 22 million total Internet connections in France, this number is astounding. HADOPI has sent 650,000 initial warning letters, which has resulted in 44,000 second warning letters and 60 referrals to the court\(^\text{14}\). These numbers are interesting for various reasons. First, 3% of all internet users have received at least one notice, which shows both the outreach capacity of HADOPI, and the magnitude to which illegal downloading exists. Second, the three strike warning system seems to be quite effective for those who received warnings. Out of the 650,000 users who received initial warnings, only 6.8% of infringers repeated. Moreover, of the 44,000 who received second warnings, only 0.14% of users infringed a third time, requiring court referral. Lastly, HADOPI acknowledged that there were 18 million instances of infringing activity, yet, only 650,000 initial warnings were sent, indicating fairly significant limitations on HADOPI’s enforcement capabilities.

The effect of the legislation on piracy levels, however, presents an interesting shift in the success of HADOPI. Piracy levels have slightly increased according to a University of Rennes study. The reason for this deterrence is a switch to other methods of obtaining illegal content that are not made illegal by the law or enforced by HADOPI. The legislation criminalizes certain types of piracy, and enforces the letter of the law. However, the law does not cover every method of digital intellectual property infringement. Although forms of piracy that are covered under the law have decreased, the increase in forms of piracy not covered by the law has negated the success of the HADOPI. The graph below compares piracy levels before and after the implementation of HADOPI, for both piracy covered and not covered by HADOPI\(^\text{15}\).

Although enforcement has proved to be seemingly successful, overall piracy rates have not fallen. How does all this translate into digital revenue in France? Between 2009 and 2010, French digital music revenue increased by 13%, to $146 million. Compared to the United States, and the global digital market, the jump in French revenue from 2009 to 2010 is significantly greater than increases in the United States and globally. In the United States, digital revenue increased by 1.2%,

and globally, digital revenue increased by 5.3%\textsuperscript{16}.

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{Percent_Growth_Digital_Music_Revenue_2006-2010.png}
\caption{Percent Growth: Digital Music Revenue 2006-2010}
\label{fig:percent_growth}
\end{figure}

The future and ultimate success of HADOPI will be an interesting tale. Intellectual property protection is turning into a heated political debate in France. It is not popular among the public; they have very limited incentive to support these harsh measures. The citizens of France fail to see the consequences of piracy on the digital creative arts industry, which affects the overall economy. As recently as October 2011, popular French Socialist Presidential Candidate, Francois Hollande, made clear his intentions to repeal HADOPI, while keeping limited Internet surveillance. Conversely, current President Nicolas Sarkozy, at a recent G8 conference, pressed for further regulation of the Internet, or what he referred to as the “wild west”\textsuperscript{17}.

In summary, HADOPI law in France has proved to be well enforced, which is one of the most difficult parts of implementing successful digital intellectual property infringement legislation. However, the question remains whether this effective enforcement will lead to a drop in overall piracy and subsequently an increase in digital revenue; or, whether the increased prominence of other forms of piracy coupled with a lack of public support for the bill will make HADOPI seemingly irrelevant, and ultimately lead to the demise of the law.

**United States**

In 2011, the United States followed suit by introducing two similar bills in both the House of Representatives and the Senate. The Stop Online Piracy Act (H.R. 3261), which combines two prior Senate bills into one, more expansive House bill, was introduced to the House by Lamar Smith (R-TX), on October 26, 2011. H.R. 3261 takes an approach to combating digital piracy that is not seen in Sweden or France. In contrast to Sweden and France, whose respective bills target individual infringers, this bill does not target the individual, but instead seeks to attack the problem at its source and penalize the websites that host, stream, and offer copyrighted material illegally.

H.R. 3261 places enforcement obligations under the United States Department of Justice

\textsuperscript{16} IFPI Recording Industry in Numbers Report 2011; p.7, 37, 45

06 Dec. 2011.
(DOJ) and the Attorney General. If passed, the bill would allow both copyright holders and the DOJ alike to identify sites and take legal action against any foreign or domestic site they deem to have “only limited purpose or use other than infringement” and hosts intellectual property held by US companies or individuals. Once this determination is made, the DOJ or the copyright holder can seek a court order to have consequences implemented. Possible consequences include: not allowing payment network providers such as PayPal to do business with the site, not allowing search engines to link to the site, ordering domain name registrars to take down the infringing site, requiring ISP’s to block subscriber access to the infringing site and not allowing internet advertising services to advertise with the site18.

Aside from the predictable industry advocates, initial reactions to the bill have been far from supportive. Internet giants such as Google, Facebook, Ebay, and Yahoo have all voiced their strong opposition to this bill. Eric Schmidt, Google Executive Chairman, said, “The solutions are draconian. There’s a bill that would require [Internet service providers] to remove URLs from the Web, which is also known as censorship last time I checked.” However, proponents of the bill see it differently. With the creative arts industries losing out on an estimated $135 billion annually in revenues, Michael O’Leary, representative for the Motion Picture Association of America, argues, “Fundamentally, this is about jobs.”19

The two major roadblocks standing before this bill are the American public and the American constitution. After seeing extreme negative public responses in both Sweden and France, the American public condemnation of the bill is not surprising; the bill ultimately failed due to a strong lack of public support. In Sweden, ISP’s immediately voiced ways to protect their customers from enforcement of the legislation, and the public started a political campaign against the legislation and won a seat in the European parliament. The same is true in France, as a new presidential candidate is gaining support from the masses as he publicly voices his intention to repeal the bill. The condemnation of anti-piracy bills in France and Sweden, both representative democracies similar to the U.S., may offer warnings to the U.S. Congress as to the potential dangers of similarly implementing anti-piracy law. Thus, if other national models are considered in the creation and adoption of said law, the hope of effectively protecting intellectual property in America could be devastated. Second, if H.R. 3261 had become law, it would have undoubtedly been a target of constitutional challenge, as some consider the law to be Internet censorship and, inherently, a violation of free speech. This was the case in France, where the court struck down the bill as a violation of free speech, forcing it to be amended before becoming institutionalized.

The need for effective copyright protection in the United States cannot be overstressed. Not only does the United States rank as the world’s leading country in terms of music revenue and consumption, it is the leader in music production and exports, with a large portion of the world’s music originating in the United States. United States copyright industries surpass the chemical industry, the aircraft industry, the auto industry, the agricultural industry and the pharmaceutical industry in terms of exports. The effect of piracy on the economy is immense. As an Institute of Policy Innovation study indicates, the domestic economy loses $12.5 billion in total output annually as a result of sound recording piracy alone. As a result of sound recording piracy, the United States economy loses 71,060 jobs and industry workers lose $2.7 billion in earnings annually. Federal, state and local governments suffer as well, losing $422 million in tax revenue annually20. In the United States, as of 2009, the percentage of music consumed legally was 37%.

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If the United States wants to remain the largest exporter of copyrighted material in the world, the legal environment that protects the industry must be changed to effectively protect the rapidly declining copyright industry against rampant piracy. The Stop Online Piracy Act is an important first step in this process. Not only does it put this grave problem at the forefront of American policy, but also, it is a crucial first step in attempting to attack the piracy problem at its source in hopes of moving towards providing a legally sound, safe, innovative digital environment.

Conclusion

As digital piracy becomes an increasingly serious problem, and as more and more countries begin to take policy measures to protect digital intellectual property, we will be able to better analyze which policies and methods of protecting digital intellectual property are most effective. However, those who know the industry realize that effective legislation is not the one stop solution for ending piracy and monetizing digital music to its full potential. Effective legislation is an important first step in bringing about more positive results for the digital music industry; but, as Sweden and France have shown us, we must be aware that this is not the full solution.

The mindset surrounding music is evolving. As newer generations begin to consume music, digital music is no longer seen as a commodity. Consumers view music as something that is listened to, not something that is bought. New digital music platforms have surfaced, and need to continue to emerge, to adapt to the changing attitudes that persist in the digital music world. With that said, the importance of effective legislation protecting these creative works cannot be emphasized enough.

In order for these new digital models to be able to innovate and gain traction, they need to be in a market competing with other digital legal models, and not with free music. It is economically impossible to effectively compete with free music; and, indeed, that is the root of the problem facing the digital creative arts industries today. The case studies on policy in Sweden and France have taught us a great deal about governmental responses to intellectual property infringement. They have furthered our understanding of the problems that emerge in response to policy development. One of the most important lessons that can be taken from Sweden and France’s policy responses is proof that these laws are a crucial first step in changing the mindset and legal culture of digital music, but certainly not the only step. The results are not convincing enough to conclude that effective legislation will
solve the piracy problem and reverse the decline of the digital creative arts industries on its own. Digital intellectual property rights are going through an international legal revolution. Sweden and France have taken the first steps with their respective policy responses, but now is the time for other national governments to follow suit, and take the crucial first step in creating a new global standard and awareness that intellectual property must be effectively protected as the world fully enters the digital age.

**Bibliography**


Passing the Test: The Transgender Body and Identity

By Allison Bischoff

Abstract: This research explores the complex relationships between transgender women and their bodies, their intimate relationships, their identities, and the pressure to pass. I begin by defining the term transgender, as well as discussing the history of transgender issues in the Netherlands. The theories postulated by Julia Serrano, Matthew Sycamore Bernstein, Linda Nicholson and Judith Butler are critical to the analysis of personal interviews conducted by the researcher with five Dutch transgender women. Through these interviews several themes arise, including the importance of the body, womanhood and femininity, and the pressure to pass. The researcher argues that transgender women confirm their self identities through transforming their bodies, whether physiologically or superficially (i.e. clothing, mannerisms, etc.) and through conforming to the ideals of femininity. In the future, similar studies should be conducted with female-to-male transgender men and explore the intersections of gender with race, class, and generational differences.
Introduction

The transgender identity is a relatively new gender identity expression in the Netherlands. Transsexualism is the prevalent narrative of gender variance in Holland, and as early as 1959 surgeons performed sex-reassignment surgeries. Transgenderism has only recently become a visible identity in Holland, though it is still not completely understood or embraced by Dutch people, or even self-identified transsexuals.¹

The focus in the Netherlands, and especially in Amsterdam, has been on how the medical establishment can relieve the dissonance between the body and mind through hormonal treatment and sex-reassignment surgeries. The universal health care system and gender clinics that are a part of medical centers like the Vrije Universiteit make medical intervention possible. People who receive sex-reassignment surgery are recognized by the government as the other gender.

The space for transgender people is still being carved out in Dutch society. Kelterborn describes it as a “third space” that “encompasses infinite possibilities”; transgenderism is an area where gender-bending identities coexist and provide space in a society that maintains gender binaries as the norm.² More people are identifying with the identity transgender because it allows them to acknowledge both their former gender identity, as well as their new one. Passing as the opposite gender can be a part of a transgender person’s experience. Some transgender critics consider passing to be a “male-made masquerade”. Other’s like, Ines Orobio de Castro, question the assumed “artificiality of male to female transsexuals with the authenticity supposedly shared by all real women.”³ Transgender individuals are constantly reaffirming their status as women through passing and through changing their bodies, whether surgically or cosmetically. Transgender individuals experience complicated relationships between their bodies, their femininity or masculinity and society. The desire “to pass” as the gender of their choosing and be recognized by others is central issues within the transgender community.

In my research, I deviate from a narrow focus on the medicalization of gender identity and look at how transgender individuals shape their social identities. I interview five self-identified male-to-female (MTF) transgender women. I analyze their stories and explore how their bodies create and shape relationships with others, as well as how their bodies confirm their gender identities. I examine their experiences with passing and ask why they want to pass, when they want to pass and whom they pass for.

“What trans people are trying to do is find a way of presenting their gender identity in such a way that the rest of the world will understand who they are”
- Stephen Whittle

Defining Transgender

The term and identity transgender is relatively new and came about in the 1980s. Virginia

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¹ Petra, Personal Interview. November 7, 2011. Amsterdam
³ Ines Orobio de Castro, Made to Order: Sex/Gender in a Transsexual Perspective (Amsterdam: Het Spinhuis, 1993), 93.
Prince used it to identify people who fell along a spectrum between transvestite and transsexual. As time went on, a new community and identity developed. Transgender came to mean “somebody who permanently changed social gender through the public presentation of self, without recourse to genital transformation.” Later, it became an umbrella term for all people who are marginalized because they are gender variant. This new definition led to a political movement and mobilized people to fight against heteronormativity and patriarchal values.

In the Netherlands, there is no consensus on a definition of transgender. Thomas provides a definition of transgender in Holland as “a collective term for all forms of deviant gender identities” or “a term used to indicate a third category next to transvestites and transsexuals; that is, people who are not compatible with their physical gender, but who do not feel transvestite or transsexual either.”

In this paper, refer to transgender individuals as people who feel they have been identified and categorized as the wrong gender at birth, specifically at-birth identified males or men who currently identify as females or women. Some of my informants have received surgery or hormones, but do not identify as strictly transsexual. Most live full time as their desired gender in social spaces and relationships and identify their gender as woman, while some do not live as a woman all the time or only recently began living their life as a woman.

“Een goede travestiet zie je niet (a good transvestite will not be noticed)”

- Dutch expression

A Brief History of Transgender Identity and Dutch Society

Gender crossing is not a new practice in Holland. Since 1959 when the first sex-reassignment surgery took place, different forms of gender bending have been visible within Dutch society. The first discussions surrounding the change to one’s gender identity were centered on transsexual individuals, people who wanted surgery to correct their physiological body to match what their brain was telling them is their gender. In 1966, a negative report was issued by the Gezondheidsraad, or Dutch Health Council, that disapproved of sex-reassignment surgery. It was not until 1977 that the Gezondheidsraad suggested sex-reassignment surgery as a way to “treat” transsexuals. The Gender Clinic at Vrije Universiteit, de Genderstichting, was opened in 1972 where the majority of sex-reassignment procedures take place. Then in 1985, the government allowed people to change their gender on legal documents if they had completed sex-reassignment surgery. Transsexuals were required, however, to divorce their partners upon legal gender change until homosexual marriage was legalized in 2001.

It was not until 1988 that media attention surrounding transsexuals became a hot topic in the Netherlands. Louis Gooren, who was the head of the gender team at Vrije Universiteit, became the

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5 Stryker and Whittle, 4.
6 Michael Warner coined the term “heteronormativity” in his book *Fear of a Queer Planet: Queer Politics and Social Theory*. He argues that heteronormativity rests upon “het[erosexual] culture think[ing] itself as the elemental form of human association, as the very model of intergender relations, as the indivisible basis of all community, and as the means of reproduction without which society wouldn’t exist” (Warner 1993, xxi).
7 Stryker and Whittle, 4.
9 Sex-reassignment surgery only refers to the genitals and not to “top-surgery” or augmenting the breasts
12 M Bakker and K.W. Kui.
first professor of transsexuality in the world. The focus was on the medicalization of transsexuals and did not address other forms of transgendering. Since the late 80s, the focus has remained largely on transsexuals and the necessity for medical intervention, though there have been movements against the medicalization of transgender identities, especially from the late 1990s to present.

Trans-organizations have prominently been a part of the de-medicalization process. The very first transgender organization (before transgender was even a term) was established in 1970—Ten T Groep Amsterdam. In 1975, they joined forces with Landelijke Kontakt Groep Travestie en Transseksualiteit. Their organization centered on providing “a safe and private environment to share experiences.” Environments like those were especially necessary because very little support was provided for transsexuals once they finished their surgeries, and little to no support was given to people not looking for medical intervention. Self-help style peer groups became the main source of psychological and emotional support. Berdache, a group started in 1997, worked with parents of transgender children and werkgroep FACET, from 1990, worked with the spouses of transgender people.

In the 1990s, the term transgender came into use and provided a space for activists to work towards improving the standards of health care and quality of life for all transgender individuals, as well as for those trying to improve education on transgender culture. Organizations wanted to move away from the medical establishment and focus on the individual and transgender rights. Organizations like Stichting T-Image and Noodles from the early 2000s worked to set up educational and cultural events, as well as promote queer and transgender participation in the public sphere. Currently, events like Transgender Day of Remembrance and the Transgender Film Festival educate Dutch society on transgender issues and make the transgender identity a visible part of the culture.

In terms of acceptance within Dutch culture, there seems to be the ever present form of Dutch tolerance. Transgender people are allowed to legally change their gender and live as their desired gender as long as they receive sex-reassignment surgery. People who choose to live more in-between the genders or choose not to receive surgery can have more difficulty navigating social norms and gaining government support. People may live however, they choose here, but that does not necessarily mean that the majority of people support them. Vreer Sirenu, a transgender-queer activist in the Netherlands emphasizes the pathologicalization of transgenderism in Dutch culture and the dependence upon the medical community to “fix” people. Though legally transgender people have equal rights in the Netherlands and are protected from discrimination, Dutch society still very much maintains a gender binary. This binary is most evident in the “real life test” that is required preceding sex-reassignment surgery at the Vrije Universiteit Gender Clinic. The real life test is when a person lives as the other sex in all social, public spheres, such as work or in the train station. This proves to doctors that the person has made a complete transformation and is ready for permanent surgery. Such requirements only continue the process of normalization and emphasize the need pass.

Transgender people living in Dutch society are more privileged and protected than transgender people in many other countries, but that does not mean they are immune from the cultural stereotypes and normalization that pervade Dutch culture. The medical establishment is very much privileged as the solution to the transgender identity. In effect, the identity is somewhat erased, invisible, and all you see are men and women.

13 M. Bakker and K.W. Kui.
14 M. Bakker and K.W. Kui, 1.
15 M. Bakker and K.W. Kui.
16 M. Bakker and K.W. Kui.
18 Jos Megens. Lecture
Theoretical Framework

Within my research, I will primarily be focusing on the work of Julia Serrano, Mattilda a.k.a Matthew Bernstein Sycamore, Linda Nicholson, and Judith Butler. I will use their theories as guiding tools in my analyses. My analytical tools are, however, not limited to these four theorists and I will be interweaving several theories and propositions throughout my paper. Using these theories, as well as my interviews, I will argue that the confirmation of self is through transforming the body, whether physiologically or superficially and through conforming to the ideals of femininity through passing.

Julia Serrano, a Trans activist, biologist and writer discusses the complexity of issues surrounding female transsexuals. She suggests the origins of a transsexual identity and analyzes how transsexuals navigate Western culture, which she presumes to be a hostile environment for transgendered individuals.

One of her chief assertions in her book is the concept of a subconscious sex as an origin of the transsexual identity. The subconscious sex is a part of a larger framework she outlines called the “intrinsic inclination model”, which she uses to explain gender and sexual variation (I however will focus only on subconscious sex). Serrano chooses this term over gender identity, which she finds to be “misleading” because it could imply both a choice and a subconscious feeling. Subconscious sex is best described by Serrano as “on some level, my brain expects my body to be female.” She describes it as being intrinsic and “impervious to conscious thought or social influence”, in contrast to gender identity, which she says “has been very much shaped by cultural norms and [her] own personal beliefs and experiences.”

Throughout the interview process, my interviewees divulged experiences that seem to demonstrate a subconscious sex, specifically wanting to be a woman. Not only does Serrano dismantle gender identity as the defining identity term, she also challenges the gender performativity model, made (in)famous by Judith Butler. Serrano favors a model that “lies in the perception and interpretations” of an individual’s gender (based primarily on physical appearance) by other people. She gives several examples of times that she merely dressed the way she wanted and behaved as herself, and in doing this she was perceived as a woman. She maintains that she was not actively performing like a woman, but simply gesturing and speaking in a way which was natural to her. It was the public who interpreted her mannerisms and outfit as feminine, which then led to their perception of her as a woman. Serrano finds problems with a performance-centric model because it implies “femaleness is not a natural state, but one that we produce when we
call ourselves women—when we act, dress, speak in what are considered feminine ways.” All of the interviewees would deny that their femaleness comes from their behaviors because they all agree that it is intrinsic to who they are as people. Serrano also argues that “if you look like a supermodel, you can act as butch as you want to, but other people will inevitably gender you as female.” Thus, it does not matter how you perform because if your general physical appearance resembles a woman then people will perceive you to be a woman. This is important to my research because all of my interviewees physically look like women and argue that they are perceived by the public as women even when their so-called masculine mannerisms or behaviors are apparent.

This brings me to Serrano’s argument that femininity finds its origins in both the social and biological. Serrano challenges both the naturalization and the artificialization of femininity because in both scenarios femininity is often assumed to be a single, unified social or biological package or program. Serrano unpacks different cases in which femininity could be socially or biologically based. For instance, women’s fashion is something that Serrano believes to be almost exclusively shaped through culture, especially because fashion norms of changed so much over time. On the other hand, she considers heightened emotional intensity and sensitivity to be biologically based; she claims “virtually all transsexuals transitioning in the MTF direction report an increased intensity in the way that they experience emotions once they begin taking estrogen.” The interaction between social norms and biology is a discussion that Serrano argues is lacking in discussions of femininity. Without acknowledging femininity is not “a monolithic entity” and that both people who are born or not born women can possess feminine traits, femininity will be trapped within the gender and sex binaries that “subsume femininity and femaleness” and restrict the ability for transgender people to be accepted as the gender identity they desire. The restrictions on who can be feminine and who cannot were noticeable in the stories of my interviewees. Almost every interviewee expressed that they did not always feel like women because they didn’t have the body, or the mannerisms, or even the same thoughts as women-born-women, even though they all want to be women and identify as women.

Western society’s obsession with gender binaries, whether it is based in a social constructionist or an essentialist paradigm, creates and perpetuates an obsession with passing. Serrano describes this obsession as passing-centrism, which “serves to privilege the transsexual’s assigned sex over their identified and lived sex, thereby reinforcing the idea that transsexual genders are illegitimate.” She argues that “cissexuals34 are the ones who create, foster, and enforce ‘passing’ by their tendency to treat transsexuals in dramatically different ways based solely on the superficial criteria of our appearance.” Thus, transgender people may feel compelled to pass as their desired gender and conceal their transgender history in order to not face discrimination or violence. She also finds passing a “highly problematic term in that it implies that the trans person is getting away with something.” Serrano wants to make it clear that transgender people are not inauthentic or trying tricking people when they go out in public, they are merely dressing and behaving as themselves. The whole concept of passing is only an issue because society has still not recognized the transgender identity. Serrano proposes the term “misgendered” and “appropriately gendered” as ways to recognize that some

27 Julia Serrano, 190.
28 Julia Serrano, 191.
29 Julia Serrano, 321.
30 Julia Serrano, 322.
31 Julia Serrano, 323.
32 Julia Serrano, 320-321.
33 Julia Serrano, 178.
34 People who are not transsexual and who have only ever experienced their subconscious and physical sexes as being aligned (Serrano, 2007: 12)
35 Julia Serrano, 179.
36 Julia Serrano, 176.
people are “assigned a gender that does not match the gender they consider themselves to be” and others are assigned a “gender that matches the way they self-identify.”

Mattilda a.k.a Matt Bernstein Sycamore’s theory on passing underscores Julia Serrano’s criticism of the practice. Mattilda, a radical queer activist, criticizes “passing as a means through which the violence of assimilation takes place.” Mattilda views passing as a system of regulatory power, in the same vein as Foucault’s “docile bodies”. She confronts all forms of passing, whether it is passing as a woman, a Christian, or a good girl, as a normalization prison that privileges authenticity and forces people to hide their true identities. Through the narratives in her book that reveal the struggles with passing, Mattilda “confront[s] the perilous intersections of identity, categorization, and community in order to challenge the very notion of belonging.” I look at passing as a tool for perpetuating violence, as well as a tool for public and private confirmation of self, asking along the way who do you pass for and why do you pass?

Linda Nicholson problematizes how the body is conceptualized cross-culturally and cross-generationally, as well as the definition of woman. Nicholson criticizes how within feminist theory, as well as others, authors tend to assume that the male and female bodies have the same meanings in all cultures and all historical periods. She contends that we must acknowledge the “culturally various understandings of the body” and the different “social variations in the male/female distinction.” She discusses how previously it was thought that the female body was simply an underdeveloped version of the male body, that there was not a real difference between the two. Recently, with the advent of industrialization and urbanization, the differences between the male and female body are much more pronounced in Western society. Through these new ways of living, the body has come to “serve as the source of information about the self and thus to serve as the source of information about one’s identity as male or female.” The idea of the body as a signifier of identity is a central theme throughout my interviews. The reason a transgender person may want to seek sex-reassignment surgery is so that her body correctly represents her identity and so that people interpret her identity as female.

Nicholson also suggests that the definition of woman has shifted across time and cultures. The shift in definitions can be based upon the change in perceptions of the female body. She comes to argue that since the meaning of woman is fluid, “those presently advocating nontraditional understandings of it, such as transsexuals, cannot be dismissed merely on the grounds that their interpretations contradict standard patterns.” This assertion validates transgender peoples’ feelings about their own womanhood and femininity. It creates the possibility for non women-born-women to be considered just as much of a woman as women-born-women. I think that all of my interviewees strive to be not just taken seriously as women, but believed to be just as real as a woman-born-woman.

Judith Butler, though a controversial figure in the transgender community, brings to light two very important concepts, recognition and gendered violence, that complicate the relationship between the self and other’s interpretations, as well as influence the desire to pass. Butler poses the idea of “a desire for recognition.” Humans are constantly seeking recognition because “it is only

37 Julia Serrano, 179.
39 Mattilda, 8.
41 Linda Nicholson.
42 Linda Nicholson.
43 Linda Nicholson, 88.
through the experience of recognition that any of us becomes constituted as socially viable beings.”

Butler suggests that “we see the ‘norm’ as that which binds us, but we also see that the ‘norm’ creates unity on through the strategy of exclusion.” Transgender individuals do not follow the norm and are thus excluded. Since transgender people defy the norms, “it is unclear whether [they] are still living, or ought to be, whether [their] lives are valuable, or can be made to be…”

Butler’s idea of gendered violence is born out of the defiance of social norms. Gendered violence occurs when people live outside the accepted cultural norms for what it means to be a man or a woman. Transgender people frequently experience gendered violence, especially through pathologization and criminalization. Butler asks “why gender violence against transgendered subjects is not recognized as violence.” She argues that it is because transgender people are not recognized as real or intelligible.

Passing, then, as Mattilda also makes clear, is a normalization process. However, in Butler’s case, normalization is not always an act of violence, but a protective force. Transgender people strive to “embody the norm” as a survival method. Butler poses that the material “body is that which can occupy the norm in myriad ways, exceed the norm, rework the norm, and expose realities to which we thought were confined as open to transformation.” It is, thus, possible for transgender people to fit within a norm, in this case through passing as one of the two accepted gender binaries, man or woman. Through passing, transgender people can achieve recognition.

One of the most significant questions we must ask ourselves though who provides recognition and what qualifies them to bestow recognition? Butler articulates that it is at the juncture between the subject who gives or withholds recognition and the subjected who seeks recognition that “recognition becomes a site of power by which the human is differentially produced.” In the case of transgender individuals, it is the other, the public, the society, that has the power to recognize them as intelligible or not, the power to give them value as human beings. It is also important, however, for transgender people to give recognition to their own self, though it is inevitably “bound up with social critique and social transformation.”

The theories which I have outlined above are just as complex as the narratives told by my interviewees. Through these theories, I have come to hold my own definitions of passing and femininity. When moving forward with my analysis I came to understand passing as the attempt to appear to be a woman in order to align one’s body with one’s subconscious sex and to be interpreted and treated by others as a woman. Passing also protects a person from violence by fitting in to the accepted cultural norms of a female. Femininity, in general, is associated with the cultural characteristics and traits primarily associated with women in Western society. These characteristics and traits could refer to anything from having reproductive organs to having long, braided hair or high-pitched voices. I would argue that through passing and feminization of their bodies and behaviors (actively and subconsciously), my interviewees are constantly working to validate their woman identity.
“For male and female alike, the bodies of the other sex are messages signaling what we must do—they are glowing signifiers of our own necessities”

–John Updike

The Body

The body as a tool to create intimate relationships:

Our bodies serve many purposes in our lives. They serve as the instrument through which we experience the world as our senses interpret interactions between our bodies and other objects. I would argue that the interaction between our bodies and the bodies of others is one of, if not the most, important part our experience as humans, as social creatures that have the ability to love and to care. Our bodies are the tools that we use to create and sustain relationships with others, especially intimate relationships with our partners.

Unlike cisgender people, the transgender interviewees did not want to form intimate relationships with the male bodies they were born with. A male body was not the right tool and they did not want their partners interacting with a male body, but rather a female body. Petra spoke a lot about the desire to have a female body in a relationship with her partner. Though she is not totally in favor sex-reassignment surgery, she views it as a necessary evil in order to attain a female body. She proposes that “you are giving something that is functional; you are getting something that is dysfunctional. You are a handicap person.” She discusses her dilemma with the medicalization of her body, but also its importance to achieving the intimate relationships she wants:

“It was in a hospital. It was like I am sick. It shouldn’t be in the hospital. I am not sick. You might want a medical intervention, but that suits a very very small part of what you want. What you want is a life as a woman. And you want someone to talk to about that, about the feasibility of it, about your genderness, about who am I really. So how do I frame this experience so that it makes sense, so that it goes somewhere, and does something good for me? So that if I go into a relationship, I know who at least I am going to be in that relationship because it has to be really me.”

Petra underscores the limits of simply receiving surgery and that living life as a woman is not achieved by simply going under the knife. She, however, acknowledges that to be in a relationship she needs to know “who at least [she is] going to be.” It seems important to her that her partner will be interpreting her in a way that she feels confirms who she is, which is a woman.

Petra, Sonja, and Demi discussed how it would not be possible for them to be in an intimate relationship unless they had female bodies. Petra talks of the stress and consequences she faced because she did not have the body she wanted:

“You want to have sex with a body that you don’t have and that’s very, it makes you very aloof from your experience because you aren’t really grounded, you aren’t a valid person. So in terms of do I date boys or girls, it was very difficult for me because I want to be a girl therefore I kinda like girls, but I like boys better, so how does that work?” (Petra Personal Interview 2011).

Petra argues that without a female body she is not valid to the men she wants to be with. This assertion resonates with Butler’s theory of recognition. Petra desires to be recognized as a woman and without a female body she does not consider herself to be valid, she does not recognize herself in that relationship, nor does she believe a man will recognize her as a woman in the relationship. Petra suggests that she likes boys better, but as long as she has a female body she feels conflicted and may even feel that she should like girls. Perhaps this could be related more to a fear of “homophobia”, but nevertheless, Petra made it extremely clear that being with a man and having a vagina are pivotal to

56 Contact the author for a complete methods section on the interviews
57 Names have been changed for confidentiality.
59 Petra, Personal Interview.
60 Petra, Personal Interview.
her sexual happiness. She said, with a Cheshire cat smirk on her face, “the idea of being impregnated by a man, and seeing a man and feeling I want to have your babies, that’s pretty strong. That’s something that I want. I want to have somebody’s body and preferably inside me.” Sonja, a twenty-nine year old transgender woman also speaks about the inability to be intimate before receiving sex-reassignment surgery. She says, “Surgery was important to go that step further to be intimate in the relationship and to have sex.” Sonja speaks about her penis in a distanced manner, never directly referring to it or only calling it a “sexual organ”. This suggested to me that she was very uncomfortable in a male body and would only be truly happy in a female body. Until surgery, she had never allowed another person to touch it. She spoke about her current relationship with her girlfriend who she had been with pre-surgery and now post-surgery. She discusses her apprehension with intimacy and the process they went through once she received sex-reassignment surgery:

“I didn’t want my sexual organs to be in the relationship, but a certain development in our relationship was not possible before surgery. And even though it brought up new issues of intimacy and arousal…most women discover their sex organs at a young age, so I had to catch up and since I was already in that relationship a normal step in that relationship is to become more intimate but as a person maybe it should have been become more intimate with my own body…but eventually things did get better and it feels more familiar.”

Though it was a struggle to simultaneously become intimate with her new body and her partner’s, she talks about it as an evolution that had to occur. Sonja also brings up an important point about the intimacy people experience with themselves and that transgender people experience almost a second adolescence in which they become familiar with their new vagina or penis.

Unlike Sonja and Petra, Demi expressed actual revulsion towards her penis. Demi is the youngest of the interviewees, eighteen, and realized that she wanted to be a woman at a very young age. She made it perfectly clear that she not only hates having a penis, but would never be able to be with a man as long as she has a penis. Demi does not hold back her distaste for her penis when she speaks about having sex:

“But it was very awkward. I can’t have sex with that thing, it’s very gross, I can’t even imagine someone touching it, it’s just gross, you know. It’s just gross. I just cringe.”

“So you don’t like your penis?”

“(Laughter) No. I don’t even like the word. Just thinking about someone touching it, that’s gross. And just gay sex is gross too.”

Demi’s dissatisfaction with possessing a penis is extremely apparent. She cannot even imagine being in an intimate relationship because she cannot even stand it, let alone imagine another man wanting to touch it.

It is important to Demi, as well as to Petra and Sonja, to interact with their partners in a female body. But this begs the question of why is the vagina equivalent to a female body? Monique Deveaux suggests that women “conceptualize [the] relationships to their bodies as both a reflection of social construction” and as “responses to (and mediation[s] of) the cultural ideals of femininity.” In order to be a woman in a relationship they feel pressure to adhere to what their culture deems feminine, which is the possession of a vagina. Especially in the case of the heterosexual interviewees, it was apparent that they feared the male’s response to the lack of vagina and that in order to be desirable and recognizable as female they must have a vagina.

From the informants’ narratives, it is evident that possessing a female body, especially a

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61 Petra, Personal Interview.
63 Sonja, Personal Interview.
64 Demi, Personal Interview, October 20, 2011. Amsterdam
vagina, is central to their ability to form intimate relationships with their sexual partners. Petra stressed to me that being able to have sex with a female body is the most important factor in living as a woman. She said that being able to live as a woman is “very physical. If you make it less physical, it gets less real. And then it becomes about you being a doll. And you aren’t, you aren’t a doll.”

Another interviewee, Elsa, who only recently began transitioning, suggests that the body is not what is most important to her relationships with others—“It is a very important thing, but not the only thing. Social things, how you respond with your mind, how people will respond to you, how you deal with it and that you are treated like a woman, so it is more than only the body.” Nevertheless, the body is a pivotal tool in building a relationship with another person. Transgender women want to be treated as women and interact as women with their partner. If their bodies are interpreted as male then the relationship between their partner and themselves changes to something that they do not desire.

**The Body as a Confirmation of Self:**

Through the interviews, I began to see how the female body is a means through which the informants confirmed their self-identity. This often became apparent when I asked the question, “so why get surgery?” Petra’s response to this question sums up generally what the other interviewees expressed as well:

“Because that thing says something about me that I am not and then you get back to the very origin of being transsexual and that it is first and foremost an irritant after a while…and what you get won’t contradict you, so that my body won’t contradict me so brutally.”

In short, the penis contradicts the individuals’ belief that they are a woman and surgery eradicates this contradiction. Linda Nicholson asserts that since the 20th century, new ways of thinking about the body and the self has led the body “to serve as the source of information about the self and thus to serve as the source of information about one’s identity as male or female.”

All of the interviewees stress the unquantifiable meaning of being able to have a female body and how it relieves the tension between their mind and body. They all want a vagina because that signifies to them that they are a woman, which is their subconscious sex. Elsa, who has yet to receive surgery, imagines how a female body will make her feel:

“I want to feel like a woman. I want to be like a woman. I do not want to feel like a transgender and I think that is an important thing. I do not want to be a third kind of sex. I want to belong to the female part.”

For Elsa, surgery will not only make her feel like a woman, but it will also make her feel not like a transgender person. She would find it difficult to remain outside the gender binaries for many reasons, first of which is because a male body does not align with her female identity. Furthermore, possessing a vagina would make her a more socially viable being that is better understood in a gender binary system.

Sonja articulates how her new body confirms her identity through an “adjustment” rather than a change:

“I never felt I was in the wrong body because you never get another body then the one you have, it’s just adjusted and I am happy with the adjustments so far. And I do feel more feminine because my body is aligned with how I feel, it hits home, but still I don’t know if that is how other
women feel, so it’s just my personal experience of femininity and my body.”

Sonja’s sex-reassignment surgery helped her to feel more like a woman, but she brings up the important point that her female body is not “wrong”, it is just not the body she had in mind. Western society forces a gender binary system upon us that categorizes the body into two distinct sexes, male and female. Tim De Jong discusses that the gender binary system is limiting and that there are people with the “experience of being in-between the sexes, half-man/half-woman, or someone to whom these categories in no way apply.” Since this categorization does take place, my informants seek to alter their bodies to fit in the category woman.

Most of the interviewees hinted at feeling a bit jealous of women-born-women who do not think about how their female body confirms their identity from birth. Demi spoke of this several times throughout her interview:

“Sometimes I am jealous of girls with their bodies. I can be in a relationship when I have a full body, but I’ll always have this body. Even if I get a vagina it will still be this body. I am never going to be a real woman. You can still have, you can still look so much like a woman but you are never gonna be a real woman, even if I have an operation.”

Demi not only discusses her jealousy, but argues that she will never be a real woman. To be a real woman implies that you have a vagina from birth. However, this belief is dependent upon a Western and historical context. Nicholson contends that the meaning of woman has evolved over time and has not always held the same connotations or the same characteristics. She does, however, acknowledge that the vagina “play[s] a dominant role within such a network [of feminine meanings] over long period of time.” This is not to say though that one cannot be a real woman if one does not possess a vagina. Demi and the other interviewees, however, currently live a society which teaches them that they are not real women. This puts pressure on them to receive sex-reassignment surgery at the very minimum in order to achieve womanhood.

Though pressure for surgery exists, not all transgender women receive sex-reassignment surgery. Even without surgery, they can still have the feeling of being a woman. Annika is fifty-seven and unable to receive surgery due to a pre-existing condition. Though she wishes she could have a vagina she remains optimistic:

“I’ll have to accept that I don’t need the surgery. I am very proud of my breasts for example. When I wear this shirt I can look at them… I love this. And my hips are a little wider and the body hair doesn’t come back.”

Annika receives hormone treatments and her breasts have grown significantly since she began treatment. For her, there are other ways in which her body can confirm her identity beyond a vagina. Wider hips, lack of body hair and breasts are all characteristics associated with a female body, but they are often cast to the side as features which add to the female body, not features that make the female body like a vagina makes a female body. This could possibly be due to the different sizes of breasts and body shapes, which can be so drastically different depending on the woman. Women, however, possess a vagina, no matter the size or shape. Annika’s story underscores the idea that there is more to the female body then a vagina, but the possession of female body characteristics is still important to one’s identity.

We carry our bodies wherever we go. They define us, they shape us, and they give us meaning and create meaning. Our bodies are a canvas upon which we can express who we are and how we want the world to interpret who we are. We cannot escape the interpretations others have of our
bodies, and we need our bodies in order to be with others. And, to my interviewees who had to adjust their body, had to change their bodies to achieve the interpretations they want, the body is exceedingly more important to their happiness. Possessing a vagina not only confirms who they are as women, but confirms who they are to their most intimate partners.

“Different though the sexes are, they intermix. In every human being a vacillation from one sex to the other takes place, and often it is only the clothes that keep the male and female likeness, while underneath the sex is the very opposite of what it is above.”

- Virginia Woolf (Orlando)

Passing

Passing for the Self:

Passing is a controversial topic in the transgender community. As Julia Serrano and others argue, passing implies that transgender people are trying to trick the public into believing they are a gender that they actually are not. Original definitions of passing follow a performative-centric model that suggests that everyone is always performing the culturally acceptable behaviors prescribed for men and women. As I conducted my interviews, the former definitions and assumptions I learned and held towards passing became painfully inadequate and reductionist. Passing is more than just an attempt to fit in. Passing is not merely a method that is actively employed by transgender people. Passing can occur subconsciously, passing can be for internal and external purposes, passing can be a safety measure, or a tool to perpetuate violence.

I asked my interviewees why they pass and if they feel external or internal pressure to pass. In this section, I will discuss the answers that explained why my informants passed for themselves. In the following section, I will examine the pressures to pass my informants faced due to external sources.

When I asked my interviewees why they passed, many first addressed the reasons they passed for their own benefit. Annika speaks about dressing as a woman with glee and enthusiasm:

“I was made up with a wig, a skirt, high heels, panties…wonderful, wonderful. I felt so happy. And when we went outside there was a man putting a sign up and he looked at my legs. This was such a wonderful feeling. And from then on I knew I wanted to be a woman…I know this is what I am going to be.”

This was Annika’s first time dressing as a woman in public. She enjoyed wearing female clothing because she was finally able to see herself as a woman. She speaks about it with this sense of freedom, as if the weight of being a male had been lifted off her shoulders. Annika also enjoyed the male confirmation. She absolutely loved when he felt he was looking at her legs as he would look at the legs of a woman. This signaled to Annika that he was giving her recognition, which she craved. Through his recognition, she was finally able to admit to herself, “I want to be a woman.” In this case, passing was important because it allowed Annika to be recognized and interpreted as the gender she desired. She did not feel a pressure to pass by anyone; however, she had to pass to receive recognition.

Mattilda takes issue with the receiving recognition only when a person fits into established gender categories. Annika had to conform to social norms of femininity in order to receive recognition as a woman. Bartky describes this as “the disciplinary power that inscribes femininity in the female body is everywhere and nowhere; the disciplinarian is everyone and yet no one in particular.” Within this frame, Annika dressed and passed as a woman in order to receive recognition because

77 Annika, Personal Interview.

she lives within a culture that subliminally pressures and requires her to do so. Though this may be
the case, it is dangerous to fully buy into this explanation because it disregards Annika’s personal
agency. Thus, it is the negotiation between cultural, disciplinary powers and Annika’s own choices
that lead her to dress as a woman. Her personal agency is even more apparent because now Annika
mainly dresses as a woman exclusively in her own home, “when I am alone I dress like a woman
and that makes me happy.”79 Serrano underscores personal agency when she argues against passing-
centrism and states, “for many of us, dressing or acting feminine is something we do for ourselves,
not for others.”80

Sonja’s experience with passing has been different compared to my other interviewees. Sonja
first discussed how she does not really need to try to pass because her body and face look feminine
without having to add any feminizing features. “It’s a privilege and I am aware of that. I do know
that I am privileged being passable and it makes it easy to not be preoccupied.”81 As we discussed
passing more, she reconsidered her stance on her lack of preoccupation:
“I feel insecure about [not wearing a bra]…I feel that it doesn’t fit my posture having small
breasts and somehow I think that if I wouldn’t use those attributes that I use now to make it seem
like I have breasts the size I have now, it would make people think is that a woman? I am so used to
having the ritual of putting on my bra and putting the things in it, it’s so normal for me I don’t have
to be occupied with that insecurity.”82

Sonja preoccupation with her breasts is no longer a preoccupation because it has become
ritualized; she no longer sees it as something she does to confirm her womanhood. Deveaux ar-
gues, “Women internalize the feminine ideal so profoundly…and to reject t is to reject one’s own
identity.”83 In the case of Sonja, she seems to have internalized the need to have large breasts in order
to confirm her identity. She also wants larger breasts so that others will not question her womanhood.
“I feel like it’s a punishment if people notice [my small breasts] because they will doubt me being a
woman.”84 Once again, this brings up Mattilda’s argument for passing as perpetuating normalization
and escaping de-recognition.

Petra’s reason for passing draws attention to both the perpetuation of violence through pass-
ing and gendered violence:
“Yeah, of course, because you want to have an affective life…if at every step in your life peo-
ple are yelling at you…if you aren’t passable you will find that at every step of the way people are
putting blocks in front of you…And that is very hurtful because for me that meant fail, fail, fail.”85

Passing is a protective force. If Petra passes then she will not be discriminated against or
have to worry about violence. Gendered violence occurs because society has not recognized trans-
gender people as valid beings, thus they must pass in order to fit in the accepted gender binary
system.

But, should passing be used as protection? As long as people pass, then it is okay for gen-
dered violence to continue because no one is questioning the norm. In this sense, passing is violence
because it enables violence. Demi’s experience echoes the need for passing:
“Yeah, well as a transgender, you feel kind of trapped sometimes, you know. I’ll walk around
all day biting my lip because my face looks feminine and so I don’t have a big jaw line. I’m afraid
someone will see me as transgender and then I walk fast and I don’t go to certain places.”86

79 Annika, Personal Interview.
80 Julia Serrano, 18.
81 Sonja, Personal Interview.
82 Sonja, Personal Interview.
83 Monique Deveaux, 226.
84 Sonja, Personal Interview.
85 Petra, Personal Interview.
86 Demi, Personal Interview.
Demi feels a constant pressure to look feminine, not just so that people believe her to be and treat her as a woman, but so that people do not enact violence against her because she is transgender. Passing, thus, becomes both the mechanism for safety and violence. Passing as a woman keeps her safe, but the social pressure to pass perpetuates the cycle of violence by delegitimizing her identity and forcing it into hiding.

The interviewees discuss passing as something that they do not always actively attempt and claim that passing is more about living their life as a woman than trying to fit into the cultural norm. However, the line between wanting to live as a woman and being pressured to live as a woman seems to blur and intersect the more I probed.

**Passing for Others:**

As was just mentioned, working out why people pass is difficult because the reasoning behind it is so intertwined with both social and internal pressures. The interviewees usually first spoke about passing as something they did for themselves, but eventually discussed other reasons. Elsa, for instance said, “I do it for myself, in the first place because I want to feel myself as a woman and I want to express that. I hope that other people will accept me as being a woman.” Her first concern was herself, yet she also mentioned she seeks acceptance. Acceptance could be important to her because it confirms her identity, but also because she wants others to be comfortable with her identity.

Petra focuses specifically on the acceptance of straight men in her narrative:

“Physical attraction for straight guys very much depends on the notion the other person is female. Whereas I can only do female and that is not enough for them.”

Since Petra is straight, she wants men to recognize her as a female. She wants to pass, physically and in appearance so that men will be attracted to her. She considers herself not to “be” female, but she can, at the very least, “do” female, as in dress, behave, and look like a woman. In this sense, she is passing in order to live up to the expectations of others that she seeks to have relationships with.

Demi speaks about passing for others more generally:

“I won’t even go to the mall without make-up. Forty-five minutes of make-up a day, foundation, contouring, everything. I won’t go anywhere without make-up on. But some girls are like that too. But, I just won’t because if I don’t do that it’s like a totally other face.”

Demi implies that she presents herself to the public as a prototypical girl and hides any feature that could betray her femininity and “give her away”. She recognizes that other girls are also compelled to spend a lot of energy applying make-up, but she must do it because if she does not she will look like a completely different person than how she wants people to perceive her. She must alter her appearance for the sake of the public’s interpretation of her gender.

The need to change one’s appearance to “look” feminine is underscored by Serrano’s idea of the public as the “primary active participant by virtue of their incessant need to gender every person they see as either female or male.” To her close friends, it probably does not matter whether she is wearing make-up or not because they understand who she is on the inside. But, the only knowledge the public has is what they see upon first glance, and the first thing they will notice is if she is a man or a woman. As humans, we tend to categorize people as an organizational method, but this method can and does restrict people to established cultural expectations. Demi fears that she will not be recognized as herself, nor as a woman if she does not pass. She also fears the gendered violence that could occur if someone recognizes her as a transgender. These two fears are constantly working together to pressure her to pass as a woman in public.

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87 Elsa, Personal Interview.
88 Petra, Personal Interview.
89 Demi, Personal Interview.
90 Julia Serrano, 177.
From these stories, we can see that people pass for various reasons. The complexity of the issue is emphasized by these varied responses and the inability to point to a simple answer to “why do you pass?” While my interviewees pass in order to live life the way they desire, they also acknowledge that external forces influence their desire to pass. The fear of violence against transgender people is still very present and the fear of not being accepted by both the public and even their closest partners is visible in their narratives. Passing is, above all, a way for them to see themselves as women in social and private situations. Through passing, they possess the identity they want.

“To be nobody but yourself in a world which is doing its best, night and day, to make you like everybody else means to fight the hardest battle which any human being can fight; and never stop fighting.”

- E.E. Cummings

Conclusion

The conclusions I have come to are based upon the narratives of my five informants. I am unable to make sweeping generalizations about transgender women, but there were identifiable trends throughout the interview process.

First, the possession of a female body allows transgender women to have intimate relationships with their partners. It is important for my interviewees to be a woman in their relationships with others and be treated as such. Without a vagina or other female physical characteristics, they are not the person they want to be in relation to another.

Secondly, a female body relieves the tension between their mind, or subconscious sex and body and confirms their self-identity woman. Living in a male body contradicts who they are and as a male they are not recognized as who they want to be.

The desire to be a woman is also a very strong feeling. They achieve womanhood through various means, either through altering their bodies with sex-reassignment surgery or changing their appearance to fit into the cultural stereotypes of femininity. However, femininity is not always an achievement, but the result of in-born traits or characteristics that our cultures have come to associate with femininity.

It also became apparent that the essentialness of having a female body is dependent upon the circumstance. In sexual relations, having a vagina is of the utmost importance, but when in public my interviewees focused more on their appearance and dress.

In terms of passing, my interviewees mainly focused on passing for themselves and its importance to defending their female identity. They also touched upon passing as a way to prevent violence against them and prevent others from not recognizing them as women.

Above all, my interviewees seek recognition and validation of their female identity. They achieve validation and recognition through negotiating cultural norms, as well as their personal feelings and unique behaviors. It is important to their happiness and quality of life that they feel like woman and that others recognize these feelings. Passing and altering their bodies and appearance allow work to create and sustain their female identities in their eyes and the eyes of others. As women they are able to lead the life they have always wanted.

Future studies should focus on the intersections between race, socio-economic status and generational differences within the transgender population. Throughout my study I could see that these were factors in my participants’ responses, but I was unable to grapple with these issues due to time constraints. A sister study with female-to-male (FTM) participants could also be conducted in order to see the similarities and differences between the experiences of MTF and FTM individuals. FTM men seem to be underrepresented in transgender issues and do not receive as much media attention as MTF.
Research on transgender issues will never be done as long as there are people out there willing to fight against normalization and discrimination and fight for equal rights and opportunities for all people—man, woman, cisgender or transgender.

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