

# FLUX

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RELATIONS  
REVIEW



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# FOREWORD

In this second issue of volume 9, the team of editors, authors, and reviewers at Flux: International Relations Review has worked tremendously hard. This issue spans all the continents and breaches issues from peacekeeping to political economy. Each team of editors and authors worked tirelessly during midterm season to prepare polished, clear, and thorough academic pieces. Even before editing began, our team of peer reviewers highlighted the strengths and weaknesses of papers helping determine the final selection and guide the editing process later. Every individual in the process has helped contribute to the fantastic papers in the coming pages. I would especially like to thank the members of the team who have been with us for the whole year for dedicating these past two semesters to the journal and wish all our graduating staff and authors the best in their future endeavors.

In this issue, the journal revisits Canadian immigration policies in “Neoliberalism’s Effect on Asian Immigration: A Gender Based Analysis of Systemic Inequality in Canadian Immigration Policy” and also broaches safe third country agreements again in “Courting Asylum: How Asylum Claimants in Greece are Using Judicial Power to Combat neo-Refoulement and the EU-Turkey Safe Third Country Agreement” which discusses refugee flows from Syria to the European Union. “Too Little, Too Late: The Constraining Effect of Traditional Peacekeeping Norms On the UN Protection Forces and its Consequences” also touches on humanitarian crises, though in a more traditional international relations sense: the peacekeeping mission in Kosovo is discussed. “A Narrative of Coercion and Repression: The Impact of the US War on Drugs and Economic Pressure on Peruvian

Society” brings readers to Latin America to see the effects of American foreign policy abroad. “Economic Freedom and Citizen Repression were Two Sides of the Same Coin in Latin America’s Neoliberal Era” also discusses the effect of American development policies in Latin America, with a focus on Argentina and Chile. Moving to a more global perspective, “Assessing Systemic Risks in the Chinese Housing Market” reviews mispricing of housing in China and whether market failure will shake the world economy. Last, “Human Rights: A Cross-Cultural Conception” revisits the classic relativist and universalist debate over human rights.

The journal would not be possible without the help of the authors, editors, and reviewers. I would like to thank our authors and editors for sticking out the process, which can be very grueling and often includes unexpected hurdles, your effort and meticulousness shows in the pages of this journal. I would also like to thank Alexandra Kohn, Jennifer Lynne Innes, and Jessica Lange at the McGill Library for their help with developing our licensing policy and work on helping us move to the Online Journal System. Thank you also to our faculty advisor Vincent Pouliot for bearing with the journal and supporting our work for the past years. Last, I would like to thank IRSAM and the Board of Directors and our sister publication, the McGill International Review (Online), for their continued support.

I hope you find the papers as insightful as I did and that they inspire you to seek out more international relations literature.

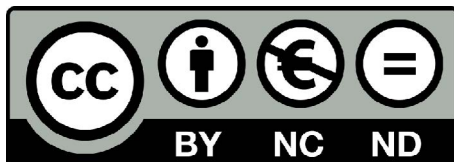
Marie Fester

Editor-in-Chief

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# TABLE OF CONTENTS

## editor-in-chief

Marie Fester

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Leah Finlay  
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Emre Benoit-Savci

Neoliberalism's Effects on Asian Immigration: A Gender Based Analysis of Systemic Inequality in Canadian Immigration Policy 7

**Esli Chan**

Too Little, Too Late: The Constraining Effect of Traditional Peacekeeping Norms On the UN Protection Forces and its Consequences 35

**Avery Franken**

A Narrative of Coercion and Repression: The Impact of the US War on Drugs & Economic Pressure on Peruvian Society 45

**Sara Gangbar**

Economic Freedom and Citizen Repression: Two Sides of the Same Coin in Latin America's Neoliberal Era 57

**Elisabeth Hedström**

Courting Asylum: How Asylum Claimants in Greece are Using Judicial Power to Combat neo-Refolement and the EU-Turkey Safe Third Country Agreement 69

**Ender McDuff**

Assessing Systemic Risks in the Chinese Housing Market 83

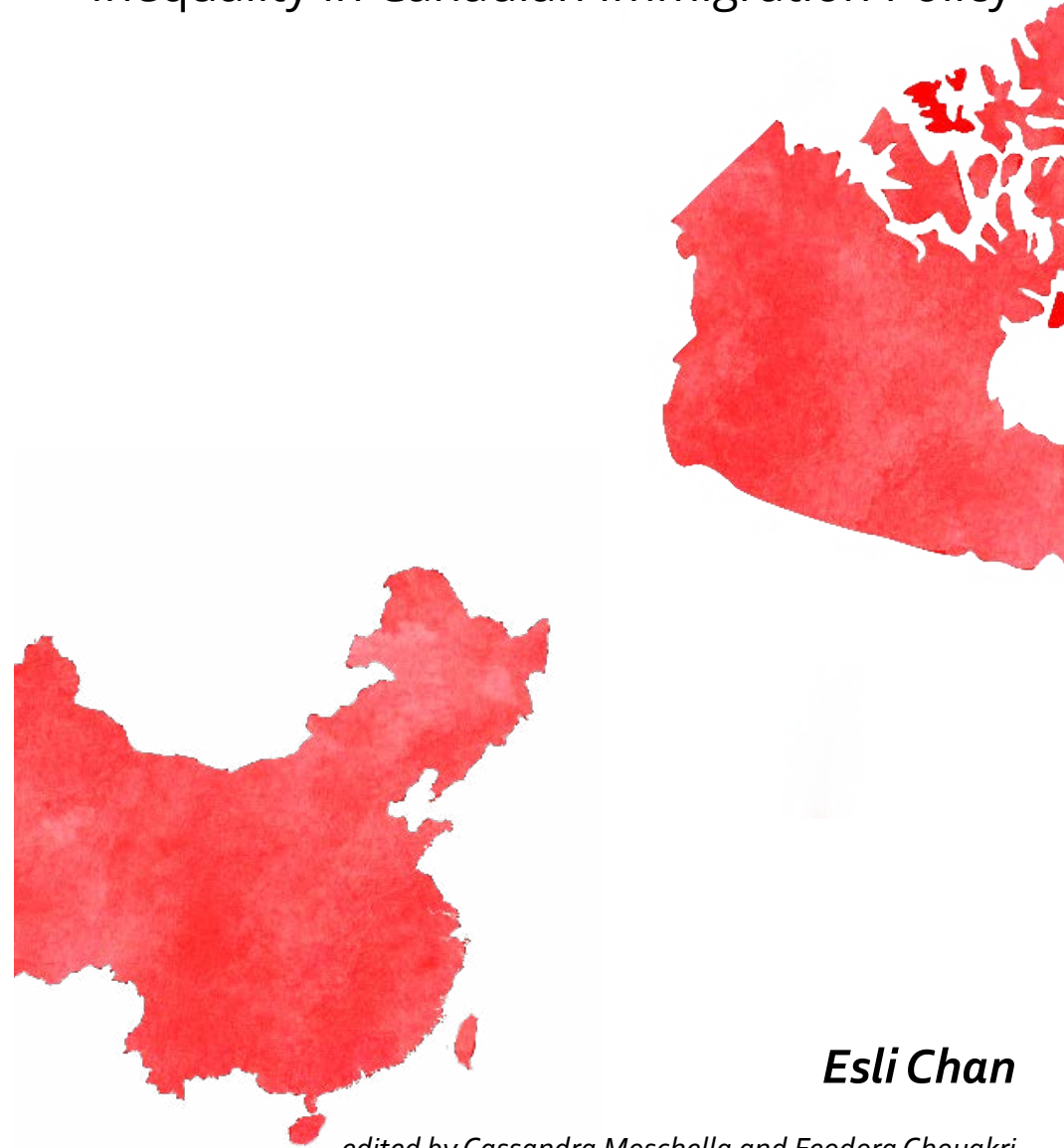
**Gordon Milne**

Human Rights: A Cross-Cultural Conception 95

**Lily Jemima Redpath**

# Neoliberalism's Effects on Asian Immigration

A Gender Based Analysis of Systemic  
Inequality in Canadian Immigration Policy



***Esli Chan***

*edited by Cassandra Moschella and Feodora Chouakri  
POLI 499 Honours Essay*

## Abstract

Canada's immigration policy was historically checkered with discriminative regulations, namely posing restrictions on potential Asian migrants and their potential path towards citizenship through The 1885 Chinese Immigration Act. In 1967, The Immigration Refugee Protection Regulation ("IRPR") was introduced, claiming to eradicate all explicitly discriminative provisions and provide a new pragmatic point-based system to objectively assess all potential migrants. Despite this shift towards multiculturalism and equality, Canada's immigration regime still continues to reinforce racial and gendered inequalities. This paper argues that the rise of neoliberalism presented immigration as an economic transaction, reproducing and reinforcing historical forms of inequality as subterfuge for inclusivity. A focus on market structures and individualistic points-based assessment exacerbated global oppressions of women in labour, privatizing migrant women into domesticity. IRPR further reinforced heteronormative and traditional family unit, perpetuating the notion that women are predominantly dependents and subordinate to the man. As a result, the influence of neoliberalism on immigrant policy resultantly left immigrant women invisible in the Canadian public sphere.

## Introduction

The *Immigration and Refugee Protection Regulation* ("IRPR") of 1967 claims to provide equitable immigration policies, eliminating all forms of racial and gender-based discrimination (Dobrowolsky 2008, 467). However, Canada's immigration policy was once checkered with explicitly restrictive regulations against prospective migrants from Asia, and specifically China. The *1885 Chinese Immigration Act* was once one of many restrictive policies, imposing a "head tax" on Chinese migrants that harshened economic burdens (Strong-Boag 2018, 9). Between 1885 and 1950, Canadian policy limited immigration from China, and imposed especially strict conditions on the entry of immigrant women (Strong-Boag 2018, 71). In 1967, Canada revealed its landmark immigration policy; *IRPR*, which is still in place today, allegedly removed all discriminative and racist provisions, in replacement of a new pragmatic point system used to assess potential immigrants in an objective manner (Dobrowolsky 2008, 467). Despite this change in immigration policy, highly gendered and racialized immigration outcomes still persist. Given the explicit notions of equality codified in *IRPR*, this paper seeks to determine how Canada's contemporary immigration regime reinforces

racial and gendered forms of inequality.

In this paper, I argue that the rise of neoliberalism provided new logics around immigration, by presenting it as an economic transaction which reproduced historical forms of racial and gender inequality that were imposed onto Asian immigrants. In my analysis, I will focus on immigration from China and the Philippines. Firstly, neoliberalism manifested itself within the Comprehensive Ranking System in a subterfuge manner, capitalizing on its individualistic approach to exacerbate global inequalities that disadvantage women in the path of economic immigration. A neoliberalist focus on market structures within immigration policy allowed the state to discretionarily privatize aspects of women's life, to the advantage of the state. Within family-based immigration, neoliberalism appealed to the globalization of masculinized perceptions that worked against immigrant women. This reinforced a perception that immigrant women lack economic capacity, perpetuating the notion that women are predominantly dependents and subordinate to the role of the man within the family unit. While the evaluation of women seemed to function on objective standards through assessing them on what they do rather than based on whom they are, Canadian immigration policy resultantly invisibilized immigrant women by restraining them within domestic work, often left unseen.

## Introduction and Background: Canada's Shift towards an Equitable Immigration Policy

While Canada prides itself on a non-discriminative and equitable immigration policy through the 1967 *Immigration and Refugee Protection Regulation*, Canada's immigration regulations were once marred with racist and exclusionary provisions, especially towards those of Asian descent, notably those from China. The restrictiveness of Chinese migration policy fluctuated over the early nineteenth century until the 1960s. In this, I argue that Chinese immigration restrictions only relaxed in circumstances where Canada required increased labour supply. An allowance in Asian migration was highly racialized; the entry of migrants was not due to their assimilability and acceptance into the polity, but because they were temporary hands to reduce Canadian laborious burdens. The selectivity of Chinese migrants, as argued by King, was kept "in preserving the character of the population" (Strong-Boag 2018, 72).

Chinese immigration grew in the nineteenth century, as additional cheap labourers were needed for the construction of the Canadian Pacific Railway (Strong-Boag 2018, 71). However, the increase of Chinese

immigration was heavily racialized and “were recruited to work the most dangerous jobs... as a class accustomed to ‘roughing it’” (Strong-Boag 2018, 71). At the completion of the Railway, the *Chinese Migration Act of 1885* and “infamous head tax system” was implemented to deter further Chinese migrants by imposing heavy payments upon entry into Canada (Strong-Boag 2018, 71). In this period of time, very few Chinese women entered Canada as they were labeled as prostitutes; wives of labourers were often denied as they were seen as dependent. Following this matter, the 1923 *Chinese Exclusion Act* further denied entry of all Chinese into Canada (Strong-Boag 2018, 71). However, this Act was lifted during World War II, due to a need for additional labourers in rebuilding the economy (Strong-Boag 2018, 72). The post-World War II period also served as a turning point for Canada, where democratic and deracialized immigration policies became the new Western standard (Poy 2013, 13).

A “non-discriminatory” immigration policy and points system was then introduced in 1967, framing Canada as a progressive leader in the liberal Western world. The *Immigration and Refugee Protection Regulation* introduced the Comprehensive Ranking System, an economic points-based system that sought to assess all potential economic migrants on the basis of meeting a common acceptable threshold, assessed against select requirements (Canada 2002). Prospective migrants would be rewarded with a certain number of points based on their level of achievements within education, language ability, occupational experience, age, arranged employment, and adaptability (Canada 2002). For example, an individual could achieve five points on the completion of high school education, with a maximum of twenty-five points within the educational criteria if a master’s degree or Ph.D. was earned (Canada 2002). Regardless of a highly reformed and seemingly equitable policy change, Man states that this shift in policy was a “strategy to bolster Canada’s competitiveness in the market place...with fluid, skilled, flexible labour forces that would provide Canada with a comparative advantage” (Man 2004, 136). Furthermore, Poy argues that “issues of race and ethnicity influenced Canadian agenda” (Poy 2013, 12) beyond just the economic advantage. While the largest immigrant population consists of those from Chinese descent, I argue that immigration regulations still discriminated against Chinese migrants in subterfuge through a neoliberalist agenda of marketization and securitization.

## The Logics of Neoliberalism in Economic Immigration Policy

The rise of neoliberalism in the 1980s shifted immigration policy towards marketization and securitization (Dobrowolsky 2008, 465). Neoliberalism marketized migratory flows in Canada, and assessed migrants as units of economic transaction in ways that subordinated migrant women. Neoliberalism manifests itself in Canadian economic migration regulations and changed the discourse around immigration to focus on economic responsibility, market competition, and “duties and obligations of citizenship” (468).

## Neoliberalism’s Effect on Immigration: Marketization

Since 2006, neoliberalism emphasized a “global war for talent,” (Tannock 2011, 1345) concentrating on the individualization of market potential. Focus grew increasingly towards one’s obligation and ability to conduct productive and paid work (Dobrowolsky 2008, 468), rather than equitable opportunities. In a shift towards temporary economic immigration, immigration flows were seen as transactions for short term labour contracts (Tariq 2013, 19). The new logic around economic migration within the Canadian immigration regime “actively [recruited] the highly educated and skilled, but [kept] the access of less skilled foreign-born individuals to permanent residency and citizenship status to a carefully controlled and restricted minimum” (Tannock 2011, 1335). This capitalized on mechanisms such as the *Temporary Foreign Worker Program* and *Seasonal Agricultural Worker Program* that employed foreigners to temporarily fill labour shortages in Canada without providing a pathway to citizenship (Tariq 2013, 22). In highlighting the importance of an individualized market, an “ideal immigrant is a self-sufficient one, who will not make demands on the programs of the welfare state” (Dobrowolsky 2008, 468).

However, this shift towards short term economic migration did not reflect the reality that women were more likely to enter Canada through the family-based immigration stream (Tannock 2011, 1336). Increased marketization brought with it decreased social rights and welfare, which often benefited immigrant women (Dobrowolsky 2008, 468). Within the marketized global competition, migrant women were also less likely to capitalize on a shift towards marketization due to “clear gender inequalities in the skilled worker immigration stream to Canada, of which most of 75% of primary applications are male” (Tannock 2011, 1336). This was exacerbated by the globalization of gender inequalities in formal occupational and educational institutions, where women are less likely to meet the individualized requirements of economic

migration or be recognized for domestic work (Kofman 2004, 651). The marketization of migration, however, did not fully disregard women. The Canadian government introduced the *Live-In Caregiver Program*, which predominantly employs Filipino women in providing domestic and household labour (Tannock 2011, 1336). This program notably subordinates women, often leading to harsh and prolonged working periods, minimal income, and abusive environments (Hodge 2006, 62). As neoliberalism manifests itself within economic migratory regulations, women became increasingly vulnerable and marginalized.

### **Neoliberalism's Effect on Immigration: Securitization**

Neoliberalism capitalized on the individualist criteria and structure of the Comprehensive Ranking System, exacerbating globalized inequalities that disadvantaged women within economic migration. Neoliberalism, as manifested within immigration policy, emboldened discourse around racialized securitization. Rhetoric on being “tough on crime” was emphasized, creating “racialized markers” that framed “culturally dissimilar” immigrants as threats to the quality of the Canadian labour force, cohesion of cultural identity, and westernized community (Dobrowolsky 2008, 466; 474). Through the social distance theory “immigrants from countries more socially distant from host countries tend to do more poorly in labour market relative to persons from socially similar societies” (Phythian, Walters, Anisef 2011, 133). As a result, these were often discriminated against in the assessment of their ability to assimilate into Canada.

In the context of economic migrants, “those from non-traditional source countries of Asia” were seen as socially and ethnically dissimilar to other European migrants (134). Securitization intersected both ethno-cultural and economic dimensions, where prospective immigrants were presented as threats to both the “ethno-cultural composition of society” and to the overall steadiness of the state. (Watson 2007, 99).

In the post-9/11 era, migrants who held different religious beliefs or were ethnically dissimilar to white European citizens and migrants, such as women wearing hijabs, were increasingly racialized (99). During this time, Chinese immigration to Canada was restrictive as they were seen as dissimilar and culturally threatening as non-Europeans (98). As a result, they were often discriminated against in hiring practices and competitive wages as having lesser “market value” (Phythian, Walters, Anisef 2011, 132). Asian immigrant women were faced with intersectional barriers, challenged by a points-based system that discounted globalized gender

inequalities while also labelled as socially and ethnically distant migrants that did not fit into a Westernized cultural identity. As a result, the logics of neoliberalism had significant implications on their prospects of migration - “Chinese immigrant women in the paid labour market [did] not fare well in the context of a new political and economic environment” (Man 2004, 136).

### **Methods of Assessment: Economic Points-Based System**

I argue that neoliberalism manifested itself within the individualistic and quantitative approach of the economic points-based system, operating under gender neutral terms that exacerbate workplace inequalities. As a result, this restrained qualified migrant women into subordinate positions. The introduction of a points-based system presumed to deracialize and de-gender all previous discriminatory processes, creating equal opportunity for all potential migrants. However, the eradication of discriminatory clauses and imposing gender-neutral objectives does not equate to gender equal policies. The creation of an objective points-based system blindly assumes that migrants’ “entire worth as potential Canadians are mathematically measurable” (Strong-Boag 2018, 75). A gendered approach requires intentional consideration of the experiences of women, often not easily quantitatively measured but rather qualitatively deliberated through the investigation of inherent privileges and patriarchal tendencies. A seemingly objective requirement such as adaptability was presumed to assess a spouse’s occupational or educational achievement and familial contributions to Canada; however, a nuanced understanding of asymmetrical societal privileges and inherent patriarchal advantage would see that this assessment is a judgement of one’s privileges in attaining a social status and educational standards within a Western perception of an ideal migrant.

The points-based system was inherently structured in ways that subordinate immigrant women and their access to the labour market. In its ability to define and categorize what is “valuable work” and “valuable experience”, the points-based system perpetuates patriarchal standards (Strong-Boag 2018, 76; Walton-Roberts 2004, 268). For example, childcare and domestic labour is increasingly racialized and discounted as invaluable work that is ordinarily performed by mothers within the home (Strong-Boag 2018, 77). This patriarchal notion upholds that the “the point system reinforces the socially constructed dichotomy between ([women’s]) less valuable private household work and ([men’s]) more valuable public work” (Strong-Boag 2018, 77). As a result, women are

increasingly bound to undesirable manual labour positions. Domestic and manual work are often employed outside of the points-based system, perpetuating the notion that “the kinds of work women do often defined prime facie as less skilled” and are outside the sphere of formal and recognized labour (Strong-Boag 2018, 77; Tannock 2011, 1336).

Immigrant women are also racially de-skilled in what is known as the “brain drain” through discounting their economic potential (Tannock 2011, 1348). While white immigrant women from Europe are comparatively more highly regarded due to their westernized standards of higher education and formal occupation and cultural similarly, qualified non-white women are minimized for their economic potential (Mojab 1999, 123). The immigrant women’s experience and intellect were dismissed upon arrival in Canada (126); immigrant women of non-White descent, possessed skills that were seen as non-transferable into Canadian society. In particular, “earnings disadvantage persists among racial minorities in Canada despite relatively high levels of education suggests that race carries with it a “market value,” whereby immigrants and non-immigrants are penalized for their non-white status” (Phythian, Walters, Anisef 2011, 132). A neoliberalist shift towards a market-oriented migration process deemed non-white immigrant women and their experiences as incompatible with “the Canadian experience” (Mojab 1999, 127). As a result, women with credible professional experience abroad were placed into exploitative and degraded positions in the workplace, such as housekeepers and caretakers, and struggled to gain recognition as a qualified economic migrant (Tannock 2011, 1348).

## **Exacerbating Global Inequalities of Access to Education**

Neoliberalism manifested itself within economic migration policy by shifting the discourse around the Canadian economy and market interest towards focusing on remaining competitive and capitalizing on the most suitable candidates (1345). As a result, I argue that this increasingly competitive and economic interest failed to consider gendered implications of globalization, in which globalization encourages the movement of gendered inequalities, such as unequal access to education (1331). In the context of Canada, the process of gendered globalization is veiled by a subjective and asymmetrical “winner-takes-all” system which seen as equitable and meritocratic (1339).

The points-based system and its assessments based on educational and occupational requirements, language, arranged employment, and adaptability, is ultimately governed by access to education (1338).

Education serves as a foundation for one’s language fluency and expertise, chances for basic employability, and the possibility of promotion (1338); this affects one’s perceived adaptability to certain societies and stance within class structures. However, access to education must also be problematized within an intersectional context, considering opportunities for education due to dynamics of class, race, and sex. As Phythian states, “home country characters generate disparities in human and social capital across immigrant groups and evoke differences in the way in which they are received by the resident population” (Phythian, Walters, Anisef 2011, 132). While the point system may assume that it creates equal consideration in assessing levels of education, it fails to account for the gendered ways in which women, especially in less-developed countries, are marginalized in attaining a westernized perception of education. Between the host and originating state, there is a highly prevalent disparity of women in education (Strong-Boag 2018, 76). For example, women within developing countries may be challenged to a lack of access to educational institutions due to structural barriers. Within certain societies, women may also be assumed as child-carers and home-keepers according to traditional gender roles, ultimately subordinating women into the home. As a result of these factors, “not only do women in many countries not have equal access to education and skilled employment, but the very notion of skill itself is a gendered notion” (Tannock 2011, 1336).

Neoliberalism increasingly marketized and individualized applications of potential economic migrants, generating increased competition that worked against the prospects of immigrant women. As Canada grew as an attractive host state, exponentially increasing immigrant applications raised the relative competition of experience and formal occupational achievement amongst its applicants. Increased competition intersected multiple axes of barriers for immigrant women and discouraged women in application as economic migrants; women had less access to education and lacked recognition of domestic work and common forms of their manual labour as formal work. As a result, there were “clear gender inequalities in the skilled worker immigration stream to Canada, of which almost 75% of primary applicants [were] male” (Tannock 2011, 1336). While the points-based system seemed to set out impartial assessment criteria, the effects of neoliberalism capitalized on inherently gendered disadvantages that set men ahead in the competition of migration through the privilege of access to education. Tannock states that “in such a ‘winner takes all’ situations, education ceases to be a public good that benefits everybody and instead becomes



privatized and socially divisive ‘ticket’ for some individuals to get ahead and escape fate of the others they have left behind” (1340).

The points-based system fails to challenge how globalized gender and ethnic inequalities commodify and stratify educational and occupational opportunity, in which meritocracy does not create equality but upholds the foundation for inequality (1341). The opportunity for formal recognition of achievement is more accessible to those seen as able-bodied, commonly placing the prospects of economic migration into the hands of Westernized white men. The accreditation of foreign credentials are held to the standard of Westernized perceptions of acceptable and formal experience (Hodge 2006, 63), minimizing the experiences of many potential Asian immigrants that do not conform to the cultural expectations of work in the public sphere. In this, the objectivity of educational and occupation attainment becomes increasingly subjective to the perceptions and standards of the Western state, “creating a second-class tier of immigrants” who are discredited for their non-Western skills and education. (Tannock 2011, 1331).

### **The Power of the State: The Paradox of Discretionary Privatization**

Neoliberalism’s focus on market structures capitalized on programs introduced within the *Immigration and Refugee Protection Act*, such as the *Live-In-Caregiver Program*, by selectively exploiting the privatization of women while domesticating them into the sphere of the private household. Household politics within the private sphere in contrast to state affairs were seen as two independent and separate silos, where former Prime Minister Pierre Trudeau states that “there is no place for the state in the bedrooms of the nation” (Gaucher 2018, 4). However, with the rise of neoliberalism, new hierarchies were produced within the dynamics gender preferences within immigration politics – “drawing up new lines of selective inclusion and exclusion and resulting in complex systems of stratification” (Kofman 2004, 64).

I argue that the gendered dynamics between the public and private sphere is crucial in understanding how the state exercises its authority in shaping the Asian migrant women’s in both spheres. In analyzing how the state exercises its authority over the public and private sphere, Walton-Roberts argues that it will unveil the “understanding of [how] household scale relations are linked to global system of inequality” (Walton-Roberts 2004, 267). In this, neoliberalism manifests itself within traditional gender roles through encouraging the state to perpetuate the notion that immigrant women are economically invaluable. This is done through

the subjugation of immigrant women into the private sphere while also discretionally exploiting women for their domestic labour through programs such as the *Live-In Caregiver Program*.

### **Domestication and Construct of the Private Life**

Neoliberalism shifted perceptions of economic competitiveness within Canadian immigration policy, prioritizing potential migrants who are perceived to have greater socioeconomic potential. A seemingly pragmatic approach which assessed migrant women on what they do instead of who they are reproduced traditional gender roles.

Traditional characterizations of women and men were constructed and transposed within the divisions of labour, fortifying a new logic within immigration that perceived women as less valuable candidates within economic migration. A neoliberalist focus on market competition reinforced a masculinized migration agenda, intentionally creating a “feminized sector” seen as secondary in the labour market (Kofman 2004, 648). Potential economic migrants who performed managerial and technical roles in leadership were seen as dominant, intelligent, and masculine, and were subsequently awarded greater points in the points-based system. In contrast, work that required less specialization or were household tasks were seen as subservient and feminine; they were subsequently removed from the priorities of the labour market, and marked as a wife and mother’s role in the private realm. This reinforced the notion that “women are exclusively occupied with domestic labour, care, and sex work, while men occupy the commanding heights of the knowledge economy and society” (650). This new logic characterized migrant women as incompatible in the Canadian labour market in which “gendered migrations allocates women lowly occupations as exotic, subservient or victimised, or relegated to applying supporting roles as homemakers. Men, on the other hand, are the breadwinners and... pursue careers in the financial, scientific, and technological spheres” (645).

The state reproduces a divide in the perception of household and formal workplace, reinforcing a public and private separation that domesticates women. Seldom do public processes and the realm of household work intersect (Walton-Roberts 2004, 267). The state views household dynamic as a private and non-political matter, kept to the intimacy of its citizens’ own home (Gaucher 2018, 4). The privatization of the role of the women into the household is further reinforced by the notion of Rubin’s sex negativity, where “good sex” and a healthy private sphere are “private, and procreative” (Gaucher 2018, 86). As a result,

this is used as a justification for the state to selectively engage within the private sphere and domestic, which “allows the state to bypass certain responsibilities... state determination of what is private is partial, selective, inconsistent” (Gaucher 2018, 28). The domestication of women is used to uphold a masculinized public sphere while “traditionally [furnishing] the unpaid labour of women” in the private sphere (Gaucher 2018, 28).

The private-public divide reinforced the power of the household and immigrant life into the authority of the man; states reproduce this preference for the masculinized independent and sponsor migrant through immigration policies (Gaucher 2018, 645). While migration through the neoliberalist lens has shifted towards a focus on individualization and economic migration, the privatization of women into the domestic sphere leaves the agency of immigrant women into the hands of the male migrant who is assumed to hold economic prowess as the breadwinner in the public sphere (Dobrowolsky 2008, 467).

As a result, there is a prevalence of exploitation of Asian migrant women in Canada, where there are “[issues] of martial violence among South Asian immigrants, and...growing mail-order [brides]...structured by traditional assumptions regarding the ‘proper’ role of the wife within the home” (Walton-Roberts 2004, 268). The intentional domestication of women through the neo-liberalization and marketization of migration policy not only marginalized but exploited immigrant women, leaving them susceptible to abuse. Migrant women become a process of a “global chain of care” that capitalizes on what is deemed as informal labour; “globalized domesticity” perpetuates the movement of migrant women who partake in unpaid domestic labour (Kofman 2004, 651). As a result, women are made to be invisible, and are often unaccounted for in potential economic benefit, where the “majority of migrants in Asia fall into the unskilled labour category, from domestic work, entertainment, and prostitution” (650). The intentional domestication of women into the private sphere, without the problematizing of reproductions of hierarchy and masculinity in the domestic home, increased the susceptibility of migrant women to exploitation.

### **Capitalization of Domestic Labour: Live-In-Caregiver Program**

While the state removes immigrant women from the economic public sphere through functions of domestication and privatization, neoliberalism also presents itself within immigration policy through highlighting aspects of household labour as economic potential. In this,

the Canadian government discretionarily capitalizes on the aspects domestic labour associated with immigrant women through the *Live-In-Caregiver Program*; this reproduces racial hierarchies and gender discrimination in the employment of immigrant women from Asia. The Program demonstrates Canada’s perception of Asian immigrant woman, exploiting traditional norms of gender roles and highlighting the labour market potential of immigrant women when it was believed to benefit the Canadian economy. As a result, I argue that neoliberalism framed immigrant women and the determination of their economic viability as a cost-benefit analysis. The state capitalized on its ability to discretionarily frame immigrant women in different perspectives, rendering immigrant women invisible in the private sphere and out of the formal workplace when they were deemed unfit in the labour market; additionally, the state capitalized on aspects of household labour to the benefit of the Canadian economy. In both these venues, immigrant women remained marginalized and underqualified in their abilities.

The *Live-In-Caregiver Program* stemmed from an influx in need for non-European domestic workers in Canada during the Cold War, where many typically “preferred” European immigrants found it difficult to make the journey Canada (Hodge 2006, 62). As a response, Canada first created the Foreign Domestic Movement Program between 1981 and 1992, which gave residency status to immigrants who had lived and worked within the home of their employers for at least two years (62). Canada modified its program by creating the *Live-In-Caregiver Program* from 1992 to 2014, to capitalize on the domestic labour of immigrant women (62). In reforming the program, immigrant domestic workers had “to not only...live in their employers’ houses, but also possess the equivalent of a Canadian Grade 12 education supplemented with domestic training, effectively barring many women from economically marginalized nations from migrating due to a lack of access to Western education” (62). The Program intended to provide immigrant women with an opportunity to gain permanent residency after working for at least two years as a temporary foreign worker within an employer’s home (64). The domestic employee was to provide domestic work and care for private homes; in return, the employer must be able to “provide the foreign national with adequate furnished and private accommodations in the household” and sufficient wages (Canada 2002). As a result, more than five thousand women have arrived in Canada per year under the *Live-In-Caregiver Program* (Hodge 2006, 62).

The creation of a *Live-In-Caregiver Program* may have seemed to be a program that provided immigrant women a pathway into the public

and economic sphere de jure. In the public eye, the Program seemed to empower more immigrant women in applying their domestic workplace skills in the formal Canadian labour market. In reality, the Program not only monetized the private sphere, but drew upon globalized inequalities de facto, exploiting and capitalizing on the racialized circumstances of Asian immigrant women. Imposing educational and training requirements for the Program inherently furthered “systemic racism by implicitly preferring white, Western-educated women” (Hodge 2006, 62). However, this program still employed many Asian immigrant women, predominantly Filipino women. Due to the racial stratification between immigrant women, many European immigrant women were deemed to possess more acceptable qualifications that gave them more access to distinguished occupational roles within the formal public sphere beyond employment through the *Live-In-Caregiver-Program*. In contrast, many women of colour migrants were inclined to stay as domestic workers “even after the end of their initial contracts, largely because employment discrimination left them little other choice” (Hodge 2006, 62). The *Live-In-Caregiver Program* capitalized on the intersections of racialized and gender inequalities, by creating a system of economic dependency, disguised as economic opportunity for Asian immigrant women. As a result, the Program employed “largely women of colour from economically marginalized nations such as the Philippines, which rely on foreign remittances to stimulate their economy” (Hodge 2006, 61).

### **Implications of the Live-In Caregiver Program for Asian Immigrant Women**

I argue that the neo-liberalization of immigration policy monetized global inequalities and traditional gender roles. The *Live-In-Caregiver Program* devalued Asian immigrant women, notably Filipino women, and exacerbated gender-based vulnerabilities. Globalized inequalities, push many immigrant women into the *Live-In-Caregiver Program* as their only option. Many Asian immigrant women relied on the Program as a method to provide remittances to their families back home, not able to meet the requirements of the economic points-based system (Hodge 2006, 61). Aware of this economic dependency, the Canadian state and many employers framed domestic caregivers as temporary and dispensable workers rather than reputable professional migrants. For examples, the BC Philippine Women Centre “outlined how Immigration Canada’s treatment of these workers as temporary workers rather than landed immigrants... framing women who demand their worker’s rights

are greedy” (63). Caregivers were also not afforded the same benefits of “foreign professionals” who were often able to immediately extend and sponsor immigration status to their family members (63). Under the *Live-In-Caregiver Program*, caregivers were only able to sponsor immediate family members, spouses and children, as defined by “a Eurocentric heterosexist definition of ‘family’” after the completion of two years of labour (64). As a result, immigrant women within Program were not afforded the same rights as any other economic migrant (62).

The subordination and economic dependency of immigrant women in the *Live-In-Caregiver Program* also gave way to increased vulnerabilities. In addition to extended working hours and working in unfavourable conditions within the home, the “problem with recognition of credentials...is exacerbated in this program due to work conditions that often mean that the caregiver is unable to afford time or money to upgrade their education or skills to enter other professions” (63). This created a viral iteration of dependency and marginalization of the domestic work of the women. As a result of the live-in requirements and overlooked unduly workplace conditions, many migrant caregivers were “susceptible to isolation, powerlessness, invisibility, and loneliness,” and were vulnerable to abuse (62). Many immigrant caregivers, who were dependent on this Program, often did not speak out against abusive or exploitative employment relations, out of a fear of revocation of immigration status of “fear of deportation.” (63)

Furthermore, neoliberalism capitalizes on the feminization of household labour, operating on the monetization of gendered norms to the benefit of the Canadian labour market (61). Immigrant women are characterized by their feminine sensitivity and gravitation towards motherhood, that makes them suitable “to be responsible for ‘emotional labour’” required within the Caregiver Program (64). Traditional perceptions of women as mothers and wives are intersected with racialized divides that suppress and maintain Asian immigrant women within the *Live-In-Caregiver Program*. In addition to this static gendered assumption, many Filipino women within the program are expected to have a level of collegiate education in “midwifery, nursing, or teaching,” professions that are often feminized, undermined, and racially stratified as secondary (Kofman 204, 651). The Canadian government reinforces racialized gender roles, promoting this Program as an opportunity for Asian immigrant women to monetize their feminized labour in their ability as home-keepers and child-carers.

### **Neoliberalist Agenda behind the Live-In-Caregiver**

## Program

The manifestation of neoliberalism in immigration policy changed logics around the economic potential of Asian immigrant women. I argue that a neoliberalist agenda capitalized on existing perceptions of immigrant women as unprofitable within the private sphere, where women are household workers and caregivers in a feminized labour market. The “marginalization of migrant women in Canada is less to do with low educational standards than with their ability to overcome barriers to entry into labour workforce” (652). *The Live-In-Caregiver Program* functioned as a system that not only filled a labour market need for secondary migrants that did not meet a Westernized standard, but created a viral dependency of many Asian immigrant female care-workers. Many Asian workers, mainly Filipino, were faced with racialized labour market competition, maintaining their participation in the *Live-In-Caregiver Program* as they faced no other greater income alternative. Hodge states that this program allows the Canadian government “to benefit from the economic inequalities of globalization while marginalizing migrant women, especially visible minority women, and contribution to the marginalization of all women through the continued devaluation of domestic labour” (Hodge 2006, 61). Through this racialized containment of Asian immigration women in the Program rendered them inferior as economic labourers, and allowed for a neoliberalist state to continually marketize domestic labour.

The exploitation of women as caregivers was fundamentally overlooked as it was still considered as labour within the private sphere and out of the concern of Canadian government. The work conducted under the *Live-In-Caregiver Program* was still labeled as private due to its practice within the home, while reaping the economic benefits of the caregivers economic labour market benefit. In doing so, this allowed for the state to bypass exploitative activities within the Program. Furthering this point, Hodge argues that “the *Live-In-Caregiver Program* makes childcare a private issue to be dealt with by mothers, not a public issue to be dealt with by the government,” while also allowing the state to redirect the attentions of shortcomings in the social welfare and childcare system towards this providing this Program as an alternative (65). The Caregiver Program served as a function to rectify insufficient labour, as this program “[enables] the government to avoid taking responsibility for shortage of childcare programs and instead place the burden on women” (65).

## Immigrant Women: Marketized and Invisibilization

## of Domesticity

In this process, immigrant women were rendered invisible as private individuals within the home or of lesser economic value within the *Live-In-Caregiver Program*. The state enacted discretionary authority in shaping the discourse of the economic viability of immigrant women, either by drawing on traditional gender roles which diminished migrant women into the private sphere or through capitalizing on their domestic labour within the Caregiver Program. In both cases, Asian immigrant women became subject to a skewed perception of their economic potential. Immigrant women were assessed based on a focused cost-benefit analysis of their labour market potential, rather than a holistic assessment of the individual’s potential sociocultural and political contribution to Canadian society.

## Neoliberalism within Family-Based Immigration

The rise of neoliberalism presented new logics around the family – globalized patriarchal perceptions of immigrant women shaped family-based immigration. Neoliberalism drew upon reproductions of culturally hegemonic norms and heteronormativity to construct feminized perceptions of women. Through a subterfuge reinforcement of heteronormative and patriarchal standards, the Canadian immigration system disadvantaged women as dependents of male breadwinners, who were subordinated to the role of the man within the family environment.

Without the intersections of racial stratifications, family-based immigration was already undesirable relative to economic immigration. Neoliberalism created new rhetoric around immigrant families with the guise of securitization and marketization (Dobrowolsky 2008, 465). Under the lens of securitization, family-based immigration could provide a source of stability or pose as a threat to the polity of its nation: “the prominence of family migration is a simultaneous force of stability and instability for the Canadian state; reunification allows the state to reproduce the nuclear family unit while subjecting the ‘Canadian family’ to perceived threats of otherness” (Gaucher 2018, 9). Canadian family-based immigration system worked to reproduce stable and heteronormative immigrant family units to preserve its polity, while marketization also increasingly subjugated family-based immigration. Gaucher, who analyzes the gendered relationship between the family unit and Canadian citizenship, best explains a neoliberal and marketized influence on family-based immigration:

*Immigration and citizenship reforms highlighted a*

*commitment to global neoliberal discourse of economic competitiveness, privatization, and cost recovery...[it was about getting] the 'best' migrants, and by extension prospective citizens, are those whose labour-market skills would enhance Canada's competitive position in a world economy. As such, the family class reclaimed its position as an undesirable group considering its very composition was that of dependents. (62)*

This created a new rhetoric that family sponsored immigrants were dependent and held little to no economic potential; as such, family-based immigration became secondary to a dominant economic migrant class.

## History of Chinese Family-Based Immigration to Canada

An analysis of the historical changes in Canadian family-based immigration policy displays how barriers were erected for potential immigrants not only by race but by gender. Due to increased migration flows between the 1960s and 1980s and discourse surrounding multiculturalism and equitable migration regulations, there appeared to be an opportunity for potential Asian immigrant women to independently arrive in Canada. (Poy 2013, 93). However, neoliberalism exacerbated racialized and gendered inequalities that continued to disadvantage Asian immigrant women.

Up until the 1960s, immigration of Chinese women to Canada was extremely rare (191). While Chinese men were able to immigrate to Canada independently to find work, many women stayed home to care for both their own and their husband's parents, as well as children, relying on the remittances of their male counterparts to maintain their livelihoods (191). As a result, "prolonged marital separation and deprivation of a family life had adverse social, psychological, and economic consequences," increasing isolationism for the Chinese male migrant (37). In 1955, the Canadian government administered an Order-In Council, which opened a pathway for Chinese women to reunite with their male spouses in Canada through family sponsorship (36). While many immigrant families took this opportunity to reunite in Canada, racial stratification still permeated the immigrant experience. "Upon their arrival in Canada, many such women were shocked to find a poor, ill, aging, and dependent husband," often separated in ethnic enclaves such as Chinatown without much economic and cultural integration or communication with a more urban Canada (37). The 1955 Order-In Council, which allowed for increased Chinese migration, also created a demand for Chinese wives, where "Chinese middlemen

in Hong Kong and Canada [made] a small fortune by arranging blind marriages" (44). During the 1960s, immigration policy shifted towards a more open stance with a multiculturalist rhetoric introduced by Pierre Trudeau (72). Family sponsorship, as a proxy of dependency of the male migrant, extended until 1962 (49); thereafter, Chinese women were able to independently immigrate to Canada. The introduction of the *IRPR*, which gave rise to the economic points-based system, also gave new hope to many Chinese immigrant women, who saw this as an opportunity to gain agency and economic independence. At the end of the 1960s, education participation of women in Hong Kong also rose; many Chinese immigrant women could potentially hold the acceptable requirements within economic immigration (167). Despite these changes in policy and an increased demand for immigration, many Chinese women still did not migrate within the economic stream (193). In contrast, they often arrived as sponsored dependents of their husbands, bound to traditional Chinese gender roles (196). In this, gendered notions of immigration continued to marginalize women from gaining economic agency and equal access to opportunity (196).

## Reinforcement of Patriarchal Norms: Sponsorship Standards and Paper Sons

Increased market competition and demand for economic migrants reinforced Chinese patriarchal norms by drawing on functions of inequality implicit within the structure of the *Immigration and Refugee Protection Act*. As stipulated within the Act, sponsorship within family-based immigration required the presence of permanent resident or citizen that, at minimum, had a stable income and was not reliant on social welfare assistance (196). These requirements are clearly reproduced through the understanding of a neoliberalist shift in family-based immigration, where an "ideal" immigrant is also a self-sufficient one, one who will not make demands on the social programs of the welfare state. As Chinese women were unable to immigrate independently until the 1960s, they were more reliant on social welfare support; as such, these stipulations inherently privileged men as the heads of the household, as the initial economic migrant (473). As a result, this reinforced the patriarchal norm that men held authority over family and household decisions as they are the primary sponsor and provider to the family (Gay 1992, 20). Immigrant men were prioritized within a patriarchal structure of strengthening workplace skills, where "job and language training [was] often available only to the independent heads of households, who are usually men" (Poy 2013, 93). As such, women

were maintained in a continuation of dependency in submission of their household and husbands.

Many patriarchal practices reverberated throughout immigrant homes stemmed from longstanding Chinese traditional norms, globalized through the migration process. Within Chinese tradition, the birth of sons was often preferred over daughters, as they were seen as the bearer of the family name and were able-bodied to perform paid work and provide for the household. Furthering this “patriarchal tradition of importance of sons,” the official One Child Policy, enacted from 1979 to 2015, limited each household to only one child per home for Chinese citizens (Poy 2013, 47; Denyer & Gowen 2018). As a result, many family households would not report the birth, or would abandon female newborns, hoping to have a son as their firstborn child.

Many landed Chinese immigrants also forged sponsorship migration papers in prioritizing the arrival of their immigrant sons, known as a paper son. A paper son was “a Chinese Canadian man’s son who did not qualify as a dependant to enter Canada and had assumed the identity of another man’s son who did qualify” (Poy 2013, 65). Potential immigrant sons who did not meet the qualifications to be sponsored to Canada, mostly due to an age requirement, would trade and buy birth certificates worth up to five thousand dollars from other Chinese citizens and sons who were eligible (65). Furthermore, “some men reported the birth of a son when none actually existed,” and many daughters at birth were reported as male instead of females (65). Vivienne Poy recounts a story where a Chinese daughter was reported as a male at birth to allow for the eldest son of the family, who had surpassed the Canadian age requirement for sponsorship, to immigrate to Canada in her place (66-67). As a result, “like many of the women, [she] was a victim of patriarchy, in that her birth was reported as the birth of a son...she was again a victim, this time of the Canadian immigration laws that made illegal immigration a necessity for Chinese families wishing to reunite” (69). Her identity was stolen by a system that reproduced and reinforced patriarchal traditions, both at home and abroad. The prioritization of the son within the family unit within the patriarchal norm of Chinese culture were reproduced through immigration to Canada.

The Canadian family-based immigration system indirectly reinforced the ways in which men were perceived to be more valued than women. In the same ways that traditional Chinese patriarchal norms value sons over daughters, neoliberalism’s individualization prioritized immigrants who held more productive capacity in stimulating the Canadian economy through paid labour (Dobrowolsky 2008, 468). Immigration

was not only viewed as an economic transaction of productive labour, but as a gendered transaction of sons at the cost of daughters. Within the sponsorship process of family-based immigration, patriarchal norms were exacerbated by a neoliberalist shift towards a “global war on talent” (Tannock 2011, 1345).

## Reproduction of Cultural Hegemony, and Feminization: Paper Brides

Reproductions of Chinese culture forcibly feminized women as brides and wives, who were obligated to obey their husbands (Poy 2013, 105); this reinforced the subordination of Asian immigrant women within family-based immigration. Chinese immigrant women were mainly dependents of male counterparts, often “as wives, daughters, and servants, though some women brought to Canada were forced to work as prostitutes” (4). For settled Chinese-Canadian men who were looking for wives, “picture brides” were commonly sent overseas between the 1950s and 1960s through the family-based immigration process (48). Poy, who recalls the lived experiences of various Asian migrants to Canada, further elaborates on one immigrant women’s experience:

*In the case of a picture bride, a deposit had to be given for me before I was allowed to come to Canada, as a guarantee that when I met my husband, if either of us should decide not to marry, there would be enough money for me to return to China (48).*

Many of these arranged marriages resulted in abusive relationships between the husband and wife. However, many immigrant women and mothers resolved to remain in Canada in hopes for a better life for themselves and their children (63). Women entered into marital agreements, anticipating a more economically stable and prosperous future, as “[marriage] was ‘women’s only hope at a decent life’” (Gaucher 2018, 34). As a result, immigrant women were victimized by the process of their own marriage through the globalized migration process, where they believed that immigrating would have greater returns for the family unit at the cost of their own safety. Migration through marriage became a gamble for many immigrant women; it held the power to create relative gains of a new life, yet ran the risk of subjugation and abuse. Female migrants from South Asia are prone to marital abuse, as “women who migrate through marriage are subject to increased vulnerability because of their tenuous legal status, something immigration policies often unintentionally amplify by increasing controls of immigrant procedures to resident spouse” (Walton-Roberts 2004, 268).

The feminization of potential female immigrants as brides reinforced the notion that their roles as immigrants were maintained within the home, defining their immigrant identity in relation to their male breadwinner counterparts. This notion of domestication was replicated in the China-Canada migration relationship through cultural hegemony. In following the Chinese tradition in which wives would take care of all residing extended family members, immigrant women who arrived in Canada were also subject to domestication and the dominance of patriarchy, where they were subordinate to their husbands and in-laws (Poy 2013, 191).

I argue that the role of cultural hegemony and hegemonic masculinity were fueled by neoliberalist thought that focused on economic capacity. Stemming from neoliberalist rhetoric, “economic needs and skilled workers trump other considerations like family reunification” (Dobrowolsky 2008, 472). While migrant men and husbands arrived in Canada mainly as independent economic migrants, women seemed to receive family sponsorship as a generous gift rather than on the grounds of their own qualifications. As a result, women who were more likely to enter through family sponsorship were seen as non-profitable and were met with a reactionary masculinized dominance of men who had earned their spot in immigrating to Canada. This created reactions of hegemonic masculinity, which can be defined as the reasserting of one’s dominance and prevalence in the household where women were resultantly subject to obeying the authority of men in risk of abuse.

## **Globalized Masculine Hegemonic Perceptions of the Family**

Though immigrant policy seemingly shifted towards more equitable processes that promoted economic independency, Chinese immigrant women continued to be dependents within family-based immigration. Neoliberalism reproduced itself as a form of globalized masculine hegemony, prioritizing those who were independent, non-reliant on the welfare state, and able to produce paid work (Dobrowolsky 2008, 468). Through a gendered analysis, this reproduced masculinized perceptions where preferable immigrants needed to be strong and self-sufficient. While the Canadian state adopted a masculinized attitude in prioritizing immigrants that were able to be dominant in a competitive labour market, this same rhetoric was reproduced abroad in the globalization of immigration. Pre-existing gendered stratifications in Chinese culture were replicated and transferred into the processes of migration. A preference for immigrant men was no surprise to Chinese women,

and immigrating to Canada further reinforced existing subordinate relationship. I argue that a neoliberalist construct of immigration that focused on individualization and masculinity reproduced global cultural and patriarchal hegemonies (468).

## **An Ideal Family: Heteronormativity as a Measurement of the Family Unit**

Within family-based immigration, Immigration, Refugees, and Citizenship Canada (IRCC) constructed a legal definition of a family that would assess potential migrants on the basis of an idealized and westernized heteronormative family unit, where “family reunification enables state to create hetero-patriarchal relations for the recruitment and socialization of labour” (Gaucher 2018, 31). In this, marriage and conjugality were used as a method to create an “ideal family type” to privatize women’s dependency within the family unit (28). Clear divisions in assessments between family and economic migration streams also discount potential economic contributions of migrants within the family class, casting family-based migrants as economically undesirable and secondary to those qualified within the points-based system.

The creation of a family-based immigration process assisted in the reinforcement of heteronormative norms on conjugality, which would not only shape the immigrant women’s experience but would serve the best interest of the Canadian state (5). The Canadian immigration system’s creation of an “ideal family” is in many ways determinative of ‘the ideal citizen’” (19). In the perspective of the state, an ideal family would align with sexual stereotypes, where “good sex is heterosexual, married, monogamous, private and procreative” and would uphold the “institution of marriage” (86, 72).

In this construction of an ideal family, a productive immigrant family would reinforce social and political roles and the “patriarchal division of labour” through the imposition of traditional gender roles within a conjugal relationship (72). A heteronormative family unit as assessed within family-based immigration would concur that “the principal applicant is assumed to be male, placing spouses in a state of dependence in relation to rights of residence and employment” (Kofman 2004, 647). Heteronormativity then prescribes a “[dichotomy] based on the constellation of the economic, male and workplace in opposition to socio-cultural, female and family frame the way migration is traditionally explained,” noting a gender-binary approach where public labour is exclusively held in the authority of the male husband while social family matters are privately relegated to female wives (647). In this, family-

based immigration processes reproduce certain values held about heteronormativity and an ideal marriage. This rhetoric predisposes the immigrant women's experience upon their arrival in Canada, influencing a perception that views them as dependent and domestic.

## **Securitization and Marketization of the Family Unit**

Through the creation of an idealized immigrant family, the state was able to preserve its neoliberalist agenda that prioritized the securitization of immigration. An increasingly securitized state imposed high restrictions on immigration to Canada due to the fear of a contestation in the identity of 'Canadian family'. With the rise of securitization, single immigrant men without the presence of family, ironically, were seen as potential security threats (Gaucher 2018, 6). The feminization of the family unit would resultantly provide the stable nature and conditions ideal for immigration (Strong-Boag 2015). The Canadian family-based immigration system would to admit potential immigrant families on the basis of westernized perceptions of a heteronormative family unit. Many immigrant women conceded themselves within domesticated and privatized roles to submit to this standard of the family.

Though the state has claimed that private life and family matters are to be kept out of public and political engagement, it capitalizes on the ability to construct a heteronormative family institution to its economic benefit. The ability to define an ideal family and the role that each actor within the family plays is intertwined with access to citizenship and to "certain benefits and privileges reserved for those in relationships deemed as legitimate by the state" (Gaucher 2018, 6). This relationship between family and state power is affected by "the way in which family reunification is structured influences who can immigrate and ultimately become a citizen; the state is not creating only citizens but families as well" (28). Family-based immigration seeks to regulate the relationship between a "market citizen," in the form of an economically able-bodied husband, balanced with the domestication of women (31). As a result, women wishing to immigrate to Canada must abide by the standards of a patriarchal and heteronormative family structure, formed by the economic interest of the state.

An innate dichotomy within the Canadian immigration system is created by two distinct streams of either economic or family immigration. The Canadian immigration system frames economic viability and family upkeep as two mutually exclusive concepts. Though many immigrant women are qualified to meet the standards of the economic-point based

system, immigrant women are often contained by heteronormative family structures within family-based immigration. Women, who may hold economic potential through the necessary educational or occupational requirements, remain discounted in their ability due to their exclusive label as wives and mothers within the sphere of family-based immigration. The Canadian immigration system inherently and pre-emptively shapes the discourse around immigrant women who arrive through family sponsorship; the system fails to consider other various areas of strength that immigrant women may hold. Instead, the immigration system preserves heteronormative standards and predispositions. As a result, migrant women who predominantly enter through family sponsorship are assumed to not hold practical and public labour expertise, while men who often arrive through economic immigration have no obligation with domestic work.

## **A Gendered Analysis and Critique of the Paradoxes within Neoliberalist Logic**

Neoliberalism manifested itself within Canadian immigration, shaping rhetoric around economic and family-based immigration to marginalize immigrant women. Neoliberalism provided two main logics around immigration: securitization and marketization (Dobrowolsky 2008, 465). With the rise of securitization, single male migrants were seen as security threats to Canada in contesting the authority and identity of the state (Strong-Boag 2015). However, increased securitization also shaped the discourse around family-based immigration, creating assumptions that heteronormative immigrant families who met the westernized standards of an ideal family would not disrupt the Canadian polity. The feminization of immigrant women into marriages provided stability in rising conditions of securitization. While immigrant men were seen as risks, immigrant women became proxies of the preservation of the state.

In juxtaposition, marketization favoured the economic ability of immigrant men, yet viewed women as dependent within family-based immigration. This idea was strengthened through the point-based economic system, which reinforced global inequalities to the disadvantage of immigrant women. As a result, neoliberalism's two main proponents, securitization and marketization, come into paradoxical conflict in their goals within Canadian immigration processes. While marketization and securitization are not mutually exclusive, marketization clearly dominates. This is reflected in the ways that immigrant women continue to be subjugated within all realms of immigration processes, under



the guise of economic ability and public performance. The prevalence of economic priority within Canada is highly telling of its gendered interpretations and implications of immigration policies.

In likeness, neoliberalist perspectives have shifted immigration to value economic migrants, “[trumping] other conditions like family reunification” (Dobrowolsky 2008, 472). However, neoliberalist immigration policy still requires the foundation and support of family-based immigration to support its marketization objectives. I suggest that, for marketization to take its force within the Canadian immigrant labour market, it requires the acknowledgement of contributions made by immigrant women who are domesticated and privatized. Within the arguably traditional gender roles manifested in globalized Asian immigrant homes, women serve as a force of socialization and private labour, creating the backbone of the family by taking care of in-laws, husbands, and children. Much of women’s domestic work, often dismissed within the public sphere or lessened through the *Live-In-Caregiver Program*, become the foundation of the home, which enables men to engage in economic activities. In this, domestic work, unseen in the public eye, serves as an engine for formal marketization that is prized within the public labour market. I suggest that neoliberalism does not necessarily prevail over the importance of the family unit, but capitalizes on it, in ways that the state, and often immigrants, may not realize. Though the logic of neoliberalism innately creates barriers to gendered outcomes in immigration, it requires the support and engagement of immigrant women to succeed in its marketization objective.

## Conclusion

This paper has explored the effects of the rise of neoliberalism within Canadian immigration policy and how it produces racial and gendered stratifications that work against Asian immigrants. While much of this discussion has focused on experience of Chinese and Filipino female immigrants to Canada, the discourse around Asian immigrant women fails to fully integrate and intersect both gender and race simultaneously in its analysis, often only looking at one or the other. Understandings of Asian immigrant experiences to Canada have often failed to acknowledge the fluidity of sexuality, often taking a binary analysis in gender. In this, the study of Asian immigration to Canada must question the ways that knowledge and experiences are reproduced and analyzed, moving to consider how race, gender, and sexual orientation constantly intersect in various ways at different times of history.

The manifestation of neoliberalism within Canadian immigration

policy presented inequitable gendered and racialized outcomes in Asian immigration through viewing migration as process of economic exchange. Within economic migration, the points-based system capitalized on global inequalities that draw on access to educational and occupational opportunity, disadvantaging Asian immigrant women in subjugation to the private sphere. The domestication of immigrant women was capitalized to the benefit of the state. The *Live-In-Caregiver Program* monetized domestic labour, but dismissed participating immigrant women from recognition of formal labour. Family-based immigration reproduced gendered and racialized hierarchies, drawing on heteronormative assumptions of the family and traditional roles of dependency within the migration of marriage (Poy 2013, 47). Family-based immigration was ruled secondary to economic migration, where the domesticated home had no place in the marketized public sphere. As a result, while Canada seemingly engrained its non-discriminative and equitable immigration policies through the *Immigration and Refugee Protection Regulation*, the force of neoliberalism marginalized Asian immigrant women in Canada.

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# Too Little, Too Late

## The Constraining Effect of Traditional Peacekeeping Norms On the UN Protection Forces and its Consequences



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POLI 360 War and Peace

## Abstract

During the Bosnian War (1992-1995), despite the efforts of the United Nations Protection Force (UNPROFOR), thousands of lives were lost in heinous attacks on Bosnian Muslims, perpetrated mostly by Bosnian Serbs. Using a constructivist approach, this paper investigates why the United Nations (UN) failed in their mandate to protect the Bosnian people. To do so, it examines the deeply entrenched norms that have traditionally guided UN peacekeeping – namely, impartiality and non-use of force. By tracing the key events that defined the UN's involvement in this conflict in relation to existing theoretical models of norm emergence and evolution, the paper finds that the UN's strict adherence to these principles significantly contributed to their failure to achieve their objectives. This is evidenced by the limited capacity of the UN peacekeepers during the conflict, the swift improvement of conditions following the replacement of UNPROFOR with the NATO-led Implementation Force, and the developments within the UN that ensued in the following years. The paper concludes with potential implications of these findings and suggestions for further research.

## Introduction

Between 11-22 July 1995, more than 7000 Bosnian citizens were murdered—and thousands more attacked, tortured and sexually assaulted—under the so-called protection of the United Nations (UN) in Srebrenica, Bosnia (Daalder 2016). The Srebrenica Massacre, also known as the Srebrenica Genocide, was perpetrated by the Bosnian Serbs against Bosnian Muslims as part of a brutal campaign of ethnic cleansing during the Bosnian War. The UN's ongoing failure to protect the Bosnian civilians as mandated became shockingly clear in this attack, both to the major state actors involved and to the world at large, and so triggered a quick change of course that ended the Serb violence and accelerated peace talks within the year (Kaufman 1999, 1).

Using a constructivist approach, I will seek to address why the UN's peacekeeping efforts in Bosnia failed by tracking the institutional norms that shaped its mandate, and by analyzing how the institution reckoned with its failure in the time following the conflict. More precisely, I propose that the UN's attempts at peacekeeping in Bosnia from 1992 to 1995 via the UN Protection Force (UNPROFOR) failed due to their rigid adherence to the traditional peacekeeping norms of impartiality and non-use of force. The discrepancy between the UN's mandate and the needs

on the ground resulted in gravely inadequate peacekeeping operations, the removal of the UN from Bosnia, and a consequent reckoning within the institution. To illustrate this argument, I start with a brief historical overview of the Bosnian war and a review of the existing literature on constructivist approaches to peacekeeping and the role of international norms therein. I will also highlight key alternative explanations for the inadequacy of the UN's efforts in Bosnia. Next, I apply the theoretical framework of norm change developed in the first section to the series of events in the Bosnian War: the ill-fated UN mission, the removal of the UN and the conclusion of the conflict, and finally, the normative restructuring within the UN in the years that followed. I conclude with a review of the argument, potential implications for contemporary peacekeeping efforts, and suggestions for further research.

## The Bosnian War: An Overview

It is generally understood that the main factors leading to the dissolution of Yugoslavia in the 1990s were the death of Josip Broz Tito in 1980, the ensuing economic depression, and the instability that followed the end of the Cold War in 1991 (Kaufman 1999, 1). Following Tito's death and in response to threats posed by economic uncertainty and the shifting global order, nationalist leaders rose to power in Croatia, Serbia, and Bosnia and Herzegovina. Kaufman states in her review of the conflict that, “rather than loyalty to the country of Yugoslavia, growing nationalist feelings led to ethnic loyalties instead” (1). In Bosnia, the result of this division was the emergence of armed conflict between Bosnian Muslims and Bosnian Serbs when, closely following the model seen in the Croatian War (1991-1995), the Serbs declared their autonomy in January 1992 and stationed armed forces throughout the country (2).

The Bosnian War had started. What followed was a period of inaction on the part of the international community. As the great powers hesitated to intervene, the Serbs became increasingly brutal in their attacks on non-Serbs, and in particular on the Muslim community. Eventually, the acts of genocide engendered international condemnation that was too strong for the great powers to ignore. By late 1992, the UN Protection Force (UNPROFOR) was deployed in Bosnia, with limited military support from the North Atlantic Treaty Organization (NATO). These forces proved to be wholly ineffective in stopping the violence and, after three years of increasingly severe humanitarian crises, which will be further detailed below, they were decommissioned and replaced by NATO's Implementation Force (IFOR) under the Dayton Agreement in January 1995 (3-4).

## A Normative Approach to Peacekeeping

A strong body of research exists concerning the role that norms play in shaping the actions of international institutions, which will be used to inform and structure the proceeding analysis. Most importantly, Marion Laurence's definition of norms — "collective expectations for the proper behaviour of actors with a given identity" — is succinct, and will be referenced throughout (Laurence 2018, 2). Laurence details the UN's deep-seated commitment to the principles of impartiality and non-use of military force, identifying these principles' preeminence in the UN's given identity as a non-partisan supporter of peace as its cause (2). Similarly, Emily Rhoads identifies these two norms as interrelated principles that form the "bedrock of peacekeeping" (Rhoads 2016, 47). She summarizes impartiality by simply stating "that peacekeepers should be informed and unbiased when making decisions and taking action" and notes that the use of force in any capacity other than self-defense risks undermining said neutrality (25). Peacekeeping, in this traditional sense, is generally summarized as efforts taken after a ceasefire but before an official settlement to ensure that relations on the ground remain conducive to a resolution (Bellamy & Williams 2004, 3).

To analyze the reshaping of these norms after UNPROFOR, I will employ elements of the following models. First, Widmaier and Glanville argue that a certain level of ambiguity in international norms—one that is sufficient to allow the norm to be interpreted in multiple ways and applied to novel circumstances—extends the lifecycle of the norm, while allowing gradual reform (Widmaier & Glanville 2015, 379). Furthermore, they argue that adhering to established norms too rigidly "may be seen as an inefficient use of information which may lead to strategically irrational choices" (379). This leads directly to a second model proposed by Martha Finnemore and Kathryn Sikkink, in which norm entrepreneurs—prominent individuals with access to influential platforms—identify existing issues and construct new standards of appropriateness to shift the norms in favour of their conceptions (Finnemore & Sikkink 1998, 896-897).

In an amalgamation of the elements outlined above, I seek to delineate the process by which the UN, strictly adhering to its core principles of traditional peacekeeping, was too rigid in its application of its peacekeeping doctrine, and therefore failed to match the complexity of the situation with a similar level of nuance in its own approach. While I argue that the norms of the institution are the driving force of this inadequacy, a widely held view is that it was the inability of the great powers to converge on a more robust common strategy that led to the

ill-fated mandate of UNPROFOR. Barry H. Steiner argues that the major states involved (mainly the United States, Britain, France, Germany, and Russia) had varying interests in the conflict, and thus held contradictory beliefs as to whom to support and the extent to which they should involve themselves (Steiner 2004, 82-83). He asserts that the deadlock borne from these divides was the reason for the UN's impotence, insofar as it "undercut the chances of punitive action ... and it permitted the primary antagonists to persist in aiming at a one-sided solution" (Date, 83). I do not deny that these differences contributed to the inefficacy of the UN's mandate in Bosnia. However, I posit that the contradictory state interests are not sufficient in and of themselves to fully explain it. The deficiency of the established norms in the face of the complexity of post-Cold War era civil conflict exacerbated the damage caused by diverging state interests. It served as a 'lowest common denominator' default which, when so strictly interpreted by the UN, was not only insufficient, but detrimental to the safety of the Bosnian people. As will be discussed below, the efforts at reform made by the UN following the conflict serve as evidence for the UN's own responsibility in this matter.

## Case Study: Peacekeeping Norms and UNPROFOR

The proceeding case study of the Bosnian war will be divided into two main sections: firstly, the implementation of the UNPROFOR mandate, the Srebrenica Crisis, and the removal of the UN from Bosnia; and secondly, the evidence of intentional norm change within the UN following the conflict.

## The Application of Peacekeeping Norms Under UNPROFOR

In late 1992, when UNPROFOR was deployed, war had been proceeding in Bosnia for almost a year, and the capital city, Sarajevo, was under ongoing siege from the Bosnian Serbs (Kaufman 1999, 3-4). This war was exemplary of a well-documented shift in the nature of conflict occurring at the time. With the end of the Cold War, intra-state conflicts rose between non-state actors who were prone to non-conventional military strategies of guerrilla warfare and civilian targeting, and who, in their illegitimacy, were not opposed to exploiting agreements made by larger institutions (Holsti 1996). The UNPROFOR mandate primarily protected aid convoys and other humanitarian work being carried out by the UN High Commission for Refugees (UNHCR) (Kaufman 1999, 3-4). However, the tangible implementation of these agreements was so heavily constrained by the norms of impartiality and non-use of force

that this overall goal of protection was virtually impossible to achieve following the shift to more insidious warfare.

Firstly, the norm of impartiality guided the UN to impose a weapons embargo equally on both the Bosnian government and the Yugoslav-backed Bosnian Serbs (Fetherston, Ramsbotham, & Woodhouse 1994, 194). This embargo obstructed the Bosnian government's ability to protect itself from the more violent Serbs and made securing the safety of Bosnian civilians much more challenging. It also contributed to the discordance between the major states, as the US strongly opposed the blanket application of the weapons embargo, and so unilaterally provided arms to the Bosnian government (Steiner 2004, 82-83).

Secondly, the norm of non-use of force restrained the UN troops from using force in any case other than self-defense, which made their presence essentially inconsequential in the conflict. The Serbs knew that the UN could not use force against them, and that any attempt at deterrence was thus not credible. Thus, they regularly ignored proposed truces and assaulted UN troops, even using them as human shields and kidnapping them (Steiner 2004, 82). The most acute display of this inimical discrepancy between the needs of the situation and what UNPROFOR offered was the UN's formation of eight "safe zones" for Bosnian Muslims throughout the state, in which, supposedly, Muslims would be able to gather safely. Unsurprisingly, the UN troops were only allowed to protect themselves, and so these "safe zones" were attacked and invaded multiple times. The ethnic cleansing in Srebrenica occurred because the Bosnian Serbs understood the limitations of the UN response, and therefore perceived the costs of attacking to be much lower than the benefits (Steiner 2004, 82-83). These failures show that the UN adhered to institutional norms of impartiality and non-use of force in an era where the nature of conflict was changing in such a way that these principles bore no workable strategies of peacekeeping. As predicted by Widmaier and Glanville's theory on the benefits of norm ambiguity, the UN's inability to adapt such thoroughly indoctrinated norms of practice to novel circumstances is what ultimately led to its irrational—or at least, thoroughly unproductive—decisions in Bosnia and, furthermore, its removal from the situation following the Srebrenica Massacre (Widmaier & Glanville 2015, 379).

Counter to the Bosnian Serbs' expectations, the brutal attack on Srebrenica was indeed enough to force the Western international players into action: NATO was almost immediately given previously-denied authority to lead an air campaign over the main Serb-controlled areas (Kaufman 1999, 4). According to Kaufman, this use of military force

sufficiently raised the costs of continuing for both parties, and finally created circumstances in which negotiations were somewhat likely to take place and be adhered to. By this point, the responsibility of handling the conflict was passed over from the UN to NATO, as there was a widespread consensus that direct and credible threat of force would be necessary for any future peace proposal to succeed.

To that end, the Dayton Agreement, developed in the fall of 1995 by American, European, Bosnian, and Serb representatives, was fairly similar in content to previous agreements, except for two key differences: first, its directives targeted the Bosnian Serbs specifically and favoured the legitimate Bosnian government by giving it 51 percent of the post-war landscape; and second, it would be militarily enforced by the NATO-led Implementation Force (IFOR). The transition from the now decommissioned UNPROFOR to IFOR was smooth, and the implementation of Dayton was widely seen as a success (Kaufman 1999, 4). Ivo H. Daalder notes that, "the problem that had stymied NATO decision-makers for so long—the vulnerability of UNPROFOR troops—was resolved with relative ease. In December 1995, when implementation of Dayton began, most of the UNPROFOR troops changed helmets and were instantly transformed into IFOR [Implementation Force] soldiers" (Daalder 2016). In this way, another international organization, largely composed of the same decision-making actors with similarly incongruous interests, but whose identity was not so closely tied to notions of neutrality, was able to manage the exact issues that had plagued the UN. This serves as evidence that it was the normative limitations on the UN's abilities, not its constituent state actors, that impeded its success in Bosnia.

## **Changes in UN Peacekeeping Norms Post-UNPROFOR**

Similarly, one could claim that the peacekeeping failure in Bosnia was the result of insufficient inter-institutional delegation, not factors internal to the UN itself. The under-involvement of NATO, which had already institutionalized the use of force as a viable strategy in peace operations, could be cited as a broader cause of the failure, rather than the UN's normative limitations. While NATO resources were certainly underused in this situation, this argument (and the state-centric view that Steiner proposes, detailed above) can be countered by the second section of this case study, which details the internal developments made by the UN following its ineffective efforts. The UN reconciled with its failure by making a variety of efforts to change its norms of impartiality

and the use of force, which indicates that there were indeed decisive flaws within the institution that key individuals felt needed to be resolved for the future. This is evidenced by three closely related actions taken by the UN in the late 1990s and early 2000s, all of which embody the theories of evolving international norms mentioned previously. These are: its formal apology for the failure of its efforts in Bosnia, its increasingly broad scope of interpretation of traditional peacekeeping norms, and its rhetorical shift to new framing devices to justify the new rights of UN troops.

Firstly, it is abundantly clear that the UN itself took issue with its own reliance on norms of neutrality in the Secretary General's Report issued on November 16, 1999. An introduction by a high-ranking UN official plainly states that, "... we failed to do our part to save the people of Srebrenica from the Serb campaign of mass murder [...] these failings were in part rooted in a philosophy of neutrality and nonviolence wholly unsuited to the conflict in Bosnia" (Crossette 1999). This is a fitting example of what Finnemore and Sikkink identify as part of the first phase in the evolution of a norm: "norm emergence," when norm entrepreneurs, who have the societal power and platforms necessary to advocate for particular reforms, identify problems within the existing system (Finnemore & Sikkink 1998, 896-897). Aptly following this model, the Secretary General of the UN, Kofi Annan, directly cited traditional UN norms as a key issue with past peacekeeping efforts and set the tone for upcoming adjustments.

Secondly, since the emergence of intra-state conflict as a main arena for peacekeeping efforts in the 1990s, the UN has expanded the interpretive flexibility of its core tenets (Laurence 2018, 2). These principles are integral to the UN's identity, and so it has not abandoned the rhetoric of neutrality in its statements and missions; however, according to Laurence, "references to impartiality persist but ways of being 'impartial' have proliferated" (Laurence 2018, 7). In its new form, impartiality permits the use of force and disparate treatment of warring sides if it is in pursuit of "ostensibly universal goals, such as human rights" (9). This increased flexibility of interpretation of traditional terms is evidence that the UN expanded its ideas of appropriateness and attempted to diffuse this shift via its actions internationally. This is another emblematic practice in the pursuit of norm change, according to Finnemore and Sikkink, and works in tandem with the third and final redirection seen in UN norms and practices following the Bosnian war (Finnemore & Sikkink 1998, 897).

Perhaps in what seems to be a contradiction to the preceding point,

the UN and its member states have also promoted new names to account for these ideational shifts. I would argue that one pattern does not in fact preclude the other, and what can be seen here is simply two methods being employed in pursuit of the same end. That said, to justify the expanded repertoire of acceptable peacekeeping operations, the UN introduced new terms and systems of ideas—what Finnemore and Sikkink refer to as "frames" (1998, 897)—including broadly applicable concepts of human security and the responsibility to protect (Lawrence 2018, 7). Both frames seek to place the goal of protecting human life at the top of the institution's hierarchy of priorities: an "ostensibly universal goal," as cited above (7). It implies that it is justifiable to pursue this goal with whatever means necessary, or at least with an increasingly larger set of means that includes expanded use of force and incongruent treatment of opposing parties.

To conclude this section, the norms of impartiality and non-use of force in their traditional senses proved largely insufficient in Bosnia. In response, the UN made an explicit effort, starting in the years following the war, to adjust its normative structures in such a way that UN forces would have more rights and competencies with which to face similarly challenging situations in the future. These actions are well-documented in the literature as methods of intentional norm changes, and so very strongly support the argument that the pre-existing peacekeeping norms of the UN forces were responsible for the failure of UNPROFOR's mandate in Bosnia.

## Conclusion

In review, the norms of impartiality and non-use of force are deeply entrenched in the UN's identity as a peacekeeper in conflict scenarios. However, in the face of the non-conventional military tactics during the Bosnian war, they proved ineffective, constricting the efforts of UNPROFOR and resulting in the tragic massacre of unprotected Bosnian Muslims and other non-Serbs, a stalemate in the peace process until its replacement by NATO, and a period of crafted norm evolution within the UN, which was intended to adapt the original norms to the modern realities of war and increase the efficacy of UN peacekeeping forces. I suggest further research into the success with which the UN has applied its newly expanded norms in peacekeeping missions since making its normative changes. I believe a critical review of measurable variables such as deaths prevented and refugees resettled would further illustrate the importance of adapting practices to circumstances. Above all, I encourage both scholars and policy-makers to rigorously evaluate



the institutionalized patterns of behaviour that are being employed in peacekeeping efforts, whether by international institutions or individual states, and to assess their efficacy against possible alternatives. Let each of the thousands of lives lost in Bosnia and beyond serve as motivation to hold powerful institutions accountable to nothing short of the needs of the present moment.

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# A Narrative of Coercion and Repression

The Impact of the US War on Drugs & Economic Pressure on Peruvian Society



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## Abstract

In 1971, US President Richard Nixon declared an official War on Drugs at the international level. This complex campaign sought to shift blame for the proliferation of drug abuse in the US onto coca-leaf producing Latin American countries, like Peru. This paper analyses the way in which the US government applied intense economic pressure to Peru through threatening to retract vital aid, to interfere with the country's internal politics. It emphasizes the anti-communist Cold War climate which resulted in the aggressive targeting of Peruvian campesinos due to the perception that they were part of the leftists, guerilla group, Sendero Luminoso. The article analyzes the detrimental outcomes of this financial coercion, seen through the uprooting of livelihoods in the eradication of coca crops, mass human rights abuses inflicted onto citizens, and the subsequent sense of distrust in modern Peruvian political institutions.

## Introduction

United States (US) intervention in Latin American affairs during the latter half of the twentieth century is rooted in a domestic goal of strengthening the nation's post-war superpower status through the use of clandestine, postmodern, and imperialist tactics. This highly interventionist approach in Latin America formed part of a larger global initiative to secure the US's status internationally. As part of a campaign to contain the expansion of communism, the US launched an official war on drugs in the competitive, international Cold War climate, and engaged in what has commonly been described as a "chemical Cold War" (Reiss 2014, 216). In Latin America, this effort was heavily concentrated in Peru, as the US targeted Peruvian-based guerilla leftist insurgency groups, most notably that of Sendero Luminoso. The US perceived this organisation, located in Peru's Upper Huallaga Valley, as becoming particularly entrenched in the drug trading that originated from coca-growing regions and fed into other markets, most notably that of the US. Susanna Reiss, author of *We Sell Drugs: The Alchemy of US Empire*, explains that "a new vision of the hazards of uncontrolled drug production and consumption became a critical weapon in the US Cold War arsenal as it sought to secure its hegemony on a global scale" (216).

The fight against drugs can be perceived as a veil for the historically rooted, complex fear of communist expansion. This essay will argue that the intense economic pressure that the United States placed on Peru throughout the War on Drugs had a large-scale, detrimental impact

on the country, most notably in the form of upending the nation's subsistence-based local economies, spurring highly repressive and abusive state policies, and fostering a perpetual distrust in government institutions among civilians.

## The United States' War on Drugs

The War on Drugs, specifically the period spanning from 1980 to 1999, developed under a prohibitionist formula, enabled the US to brand narcotics as a universal enemy and divide the world into rival groups of producers versus consumers (Labate 2016, 126). This pitted modernised, economically powerful countries against their supposed underdeveloped and corrupt counterparts. The catalyst to this conflict was the 1961 Single Convention on Narcotic Drugs signed by 73 nations, which declared heroin, cocaine, and marijuana, among various other drugs, to be illegal (126). In 1971, the United Nations (UN) enacted the Convention on Psychotropic Substances to strengthen the previous legislation, and later declared an official war on drugs (126). In a proclamation from the same year that sought to formally shift blame for the proliferation of narcotics away from the US, President Nixon stated that "foreign groups introduced 'poisons' of body and soul to corrupt US society" (23). This announcement set the precedent for the US' stance on the international drug trade in the decades that followed.

The US intensely monitored Peru's commitment to the drug war. Any sign that Peru was avoiding its responsibilities, at least from a strict American perspective, would result in economic pressure through monetary incentives and threats of retracting aid. The American government offered military and financial support as well as new sources of agricultural revenue in exchange for Peruvian cooperation in demolishing the coca leaf industry. Furthermore, the US set standards for aid by creating a policy of certification, demanding that any country receiving financial benefits must maintain this certification status; if decertified, sanctions would be imposed. Certification status thus had serious implications on Latin American countries, as it determined whether a country was regarded as an ally or an enemy to one of the most powerful nations in the world.

Achieving and maintaining certification status placed certain demands on the Peruvian government, including eradicating coca crops, the main ingredient in cocaine, seizing a predetermined quota of cocaine, and taking steps to limit illegal shipments (129). This system created a proxy government under US control and left Peru with no other option than to comply due to its dependence on US aid. Once



Peruvian politicians proved their willingness to eradicate the peasant-dominated coca sector, the US subsequently passed the Andean Trade Preference Act in 1991, which removed protectionist policies on Peruvian exports to the US (127). These various measures of coercion created an unavoidable cycle of dependence, which is embodied in the language of a 1992 congressional document that noted that US aid would “depend heavily on signs of continued or greater progress than we [Congress] have seen in the past” (Committee on Foreign Affairs 1992, 11). This document simultaneously diminished Peru’s firm commitment to the War and directly threatened to suspend a vital source of aid. By declaring an international war on drugs, the US positioned itself as a victim to supposedly ‘contaminated’ Latin American countries that were responsible for high rates of drug use on US soil (Labate 2016, 127). However, if anything, it is these countries who became victims of the US.

### **Destruction of a Coca Leaf Economy**

The coca leaf is deeply entrenched in Peru’s history, with evidence of coca usage as early as 1800 BCE (Hutchison 2009, 3). Due to its high impact on the labour force, it has always been a crucial component of the economy, serving as both a source of foreign trade and as a steady source of income. Coca leaves have always played an integral role in the lives of Andean peasants in the Upper Huallaga Valley, where anywhere from 60,000 to 300,000 families depended on farming coca in the 1980s (McClintock 1988, 128). This region has an ideal climate for coca cultivation, and as of 1989, produced half of the world’s coca leaves. Upon harvesting, the leaves were converted into coca paste and sent elsewhere, primarily Colombia, for processing (Americas Watch 1992, 123). Prior to 1971, the Peruvian government regulated coca production through the National Coco Enterprise, which required domestic producers to register their businesses (Keefer 2010, 229). The commodity created anywhere from twenty-five to 75 percent of annual export earnings and generated approximately \$700 million in profits per year. In the mid-1980s, most peasant families had incomes ranging from \$8,000 to \$50,000 annually, depending on crop output (McClintock 1988, 129). Coca was Peru’s informal life support system and the foundation of its economy (Americas Watch 1992, 123).

When the War on Drugs commenced, coca eradication efforts took effect immediately. While the US government played an important role, these efforts were primarily led by the Peruvian-based Special Project for the Control and Eradication of Coca in the Upper Huallaga (CORAH) (McClintock 1988, 13). CORAH engaged in various operations in

prominent coca-growing regions, such as Operation Verde Mar in Tingo Maria, where they would apply aggressive measures such as setting fire to crops. This left the soil infertile, leaving many farmers unable to plant crops for the next ten years (Hutchison 2009, 8). Farmers were rarely warned before CORAH destroyed their crops, and no aid was provided for losses sustained (7). While the US had promised that farmers would be reimbursed for crops that were demolished, they were only offered \$300 per hectare, an amount that covered a tiny percentage of their losses (McClintock 1988, 130).

Under President Reagan in 1981, the US drafted a plan to transfer money to Peru in an effort to reduce the country’s dependency on coca and begin producing alternative crops (Hutchison 2009, 11). With this system, farmers were forced to take out loans with two per cent interest rates over ten years, a measure that only further deepened the economic strife of coca workers (12). The alternative crops plan was underfunded, highly unsuccessful, and left peasants with uprooted crops and livelihoods. In addition, a US-organised mission, Operation CONDOR, inflicted terror onto leftist-leaning governments to unite Latin American countries under one central organisation with shared goals. CONDOR officials directly collaborated in eradication efforts, and by 1988, forty-four coca-processing laboratories were destroyed under their control (McClintock 1988, 131). Using high-tech American equipment, CONDOR-led agents were able to venture into remote jungle areas in the Andes (Hutchison 2009, 13). The eradication missions were successful in the short term because they destroyed many coca crops; however, they ultimately failed because the demand for cocaine remained high and a “balloon effect” followed, wherein eradication in one region simply led new plantations to appear in others. Overall, this contributed to more economic pressure on Peru and increasing internal tensions (28).

In 1990, Peruvian President Alberto Fujimori adopted a neoliberal economic model to lower inflation, reduce deficits, and reintegrate Peru into the international system that would meet US demands, but tactics only further oppressed peasants and widened the inequality gap. Despite its domestic failure, the reforms legitimised Fujimori in the eyes of the US (Ochoa 2012, 66). Eradication efforts, which resulted in alternative development programs and the adoption of neoliberal policies, were more concerned with appeasing US demands to continue receiving aid. Meanwhile, such policies only worsened the domestic situation in Peru. Despite receiving foreign aid, which was a guise to intimidate Peru and assert US will in the region, eradication and development efforts failed to produce sufficient relief plans, ultimately leaving campesinos with no

source of income. The US-recommended neoliberal and individuated policies, pursued by President Fujimori, failed to provide a safety net for peasants to fall back on, and inevitably led to economic turmoil. To keep the annual \$100 million in US aid and remain certified, Peru upended the country's subsistence-based economy and enacted eradication programs to prove that it was committed to the War on Drugs (Hutchison 2009, 25).

## **Militarised Civilian Repression and Human Rights Violations**

The period between 1980 and 1999 can be characterised by extreme terror. This is demonstrated by a series of human rights violations that were inflicted onto civilians by the Peruvian government under Presidents Alan Garcia and Albert Fujimori. US economic aid was dependent on Peru's acceptance of military intervention, whether this was through training Peruvian armed forces or bringing in the American army (Americas Watch 1992, 125). Peasants were concurrently targeted by four groups: drug traffickers, Sendero Luminoso, the police, and the military (130). In the mid-1980s, Sendero Luminoso, a subversive and revolutionary communist group led by Abimael Guzmán, undertook a strategic effort to gain control of Andean territory (Labate 2016, 126). Guerillas linked themselves to peasants so the army would suspect campesinos of ties to leftist insurgencies (126). Consequently, the army and police began to violently repress campesinos and Sendero Luminoso was able to mobilise campesinos by offering them protection (130). This not only spurred violence, but also created the illusion that coca growers and Sendero Luminoso were connected. The US government declared a war on both "Drugs and National Security" that included growers and Sendero (24). Following this connection, the US became increasingly concerned about the status of Peru, which prompted the Peruvian government to introduce restrictive policies to appease US concerns. Such a move once again placed US ambitions above upholding citizens' human rights.

An atmosphere of violence subsequently emerged in 1991. An average of seven Peruvians died per day from political brutalities; in June alone, 1,584 civilians were killed while 230 were reported as unsolved disappearances (Americas Watch 1992, 12). Half of the respective numbers were peasants (17). In one case, which emphasises the ad hoc nature of the abuses, police heard faint snipers from a base near Nueva Union and subsequently imprisoned twelve young campesinos who were nearby without a just judicial process. The police involved were neither

charged nor reprimanded for these blatant human rights violations (93).

Most of this violence was administered by Peruvian armed forces who faced pressing orders from the US to repress coca farmers and leftist insurgencies; such pressure was directly related to the pending ratification of a free-trade agreement. In response to Fujimori's suspension of democratic rights, Secretary Aronson explained in a 1992 congressional statement: "I intended at that time to tell President Fujimori that Peru would soon be eligible for trade benefits ... when President Fujimori took the actions he did, he made it impossible to pursue that agenda" (Committee on Foreign Affairs 1992, 9). Though this breach of democratic rights was corrupt in itself, it was precipitated by the US demand for Fujimori to enact a neoliberal political rationality in Peru and take a more aggressive approach with coca growers and guerillas. The US, as the leader of the free world, had no choice but to criticize this decision despite simultaneously undertaking similar initiatives with wider-ranging physical abuses in Peru, including the use of herbicides.

In a particularly brutal form of eradication, the US resorted to herbicides as a more efficient means to destroy coca crops. In a covert, unreported field test in the mid-1980s, it sprayed pesticides from a plane. The trial killed both animals and crops, while introducing a fungal infestation known as *Fusarium oxysporum* (Hutchison 2009, 16). Following this operation, these fields became unviable, which ultimately undermined the alternative crop initiative. Aside from food production, the fungal infestation has also been linked to illness in the region, most notably producing a variety of skin infections (17).

The Peruvian government was divided on the use of herbicides; however, after debate, President Alan Garcia accepted an official eradication program just weeks before US aid to Peru was to be renegotiated in Congress (McClintock 1988, 136). Garcia knew that to continue receiving aid, he had to be wholly committed to the War on Drugs and appease any US requests. The danger of herbicide usage in Peru was verified when a production company, Ely Lilly, refused to sell it in the US on a larger scale because it feared damage to civilians and the environment (133). The Peruvian government's consent to the herbicide plan and the strategic timing of its acceptance reflects the powerful pressure that the US placed on Peru, as any deviance from such demands would have risked decertification. The intensity of this economic threat is telling, as President Garcia risked the health of Peruvians and thus created grounds for potential human rights investigations, all of which would have garnered international media attention.

## A Perpetual State of Distrust

The undermining of livelihoods and large-scale human rights violations linked to the War on Drugs ultimately isolated and alienated Peruvian peasants. Such tactics fostered a consensus that the government was untrustworthy. Despite externally promoting democracy in the region, the US and its tactics ironically forced Peru into a suspension of democratic rights, which caused the 1980 democratic transition to fail. In a 1998 survey of Peruvian citizens—conducted after a decade of terror—the following data was recorded: forty-nine percent of citizens said that they did not support Peru’s political institutions; 67 percent of voters believed that there was electoral fraud; and Peruvian trust rates in armed forces, the Judicial Branch, Congress, and political parties were significantly lower than in any other Latin American country (Carrion 1999, 43, 59, 60). In addition, there was a belief that the government did not provide sufficient security: one third of respondents reported that they were victims of assault in the twelve months preceding the survey (138). Lastly, most Indigenous peoples reported that they did not see value in politics because of repression and social unrest (Parades 2008, 25).

Part of this distrust stemmed from a series of government-inflicted attacks around 1990 that produced extremely high death rates in the Huallaga. In one instance, 686 civilians in Ayacucho were killed by the Peruvian army in a helicopter attack (Americas Watch 1992, 98). Campesinos tried to protest these abuses, but the suspension of democratic rights, most notably the right to protest, seriously limited their capabilities. Not only were government attacks frequently blamed on Sendero Luminoso and other leftist insurgencies, but it later became apparent that the army was “camouflaging” dead bodies in rivers, and thus the number of deaths was considerably higher than recorded (98). At this point, the CIA was providing the Peruvian army with training on both counterinsurgency strategies as well as how to destroy coca leaves to meet US requirements for both financial aid and incorporation into the international sphere. The monumental distrust among civilians arose from a series of lies and covert operations, which utilised significant amounts of US intelligence and were geared towards advancing the American War on Drugs.

After being pushed to the fringes of society by repressive policies and inattentive governments that were more concerned with international demands than domestic realities, many campesinos were driven to support the leftist insurgency group, Sendero Luminoso. Joint efforts by the Peruvian government and US forces targeted peasants associated

with leftist guerilla insurgencies, further isolating these already desperate groups and thus magnifying government distrust. Ultimately, it was the War on Drugs and Peru’s compliance with US eradication efforts that created this regional uprising. An alliance of convenience was created, which perpetuated the cycle of militarised attack on peasants, and in turn, created low confidence in government institutions.

On April 5 of 1992, President Fujimori declared a state of emergency in Peru (Youngers 2000, 7). He dissolved Congress, suspended constitutional guarantees, increased the power of the military, and dismissed the Supreme Court to rule based on presidential decrees (Wise 1994, 75). He inhibited democracy in an attempt to gain control over the coca industry and guerilla organisations, with the aim of integrating Peru into the global economy (116). The US publicly criticised this and threatened to renounce aid, despite that Fujimori’s decision was arguably done in an effort to meet the demands of the US in the War on Drugs and demolish the coca leaf industry to US standards. Citizens lost their legal rights, including the right to due process and legal defense, and civilian courts were enacted to try the accused of terrorism and treason (Youngers 2000, 7). The policy of impunity, which had been used under President Garcia, was resurrected through an amnesty law, which granted legal exemptions to any member of the armed forces who had committed human rights abuses (7). This pardoned many abusers without any penalty, including members of the police force who killed approximately thirty peasants in Huallaga Valley in a singular altercation in May of 1988 (Americas Watch 1992, 17). The consistent repression of Peruvians in accordance with economic pressures from the War on Drugs created a disorderly society with no confidence in political institutions, thereby inhibiting Peru’s democratic transition.

## Aftermath (Post-1999)

The United States framed their time in Peru as a period of economic growth. The 1992 Congressional Report claimed that “with our help and the help of Japan, Peru has begun to normalise its relations with the multilateral development banks” (Committee on Foreign Affairs 1992, 8). Though US financial pressure strengthened sectors of the Peruvian economy and led to certain indisputable empirical benefits, such as the 2006 United States-Peru Free Trade Agreement, this restrictive, mainly upper-class growth also brought long-term government distrust (Labate 2016). The latest data available, indicated in the 2009 Latinobarómetro report, demonstrates the long-term outcomes of this repression: 65 percent of Peruvians are dissatisfied with Peruvian democracy, 55

percent feel unsafe in their neighborhoods; and only seven percent say that public institutions function efficiently (Carrion 2009, 38). Indigenous peoples in the Andean highlands were left with the highest levels of poverty (37). Alternatively, the US government viewed their endeavours as successful, adhering to the neoliberal thought that if the general economy prospered, society was improved. This markedly Westernized approach is riddled with modernisation theory ideals, which insinuate that if a developing country follows the same path of a developed one, they too can gain prosperity. This ultimately alienated a large class of society and did not account for the distinct experience of Peru as a subsistence-based coca society. The economic growth observed due to relentless US intimidation and manipulation in the War on Drugs is heavily outweighed by the countless negative outcomes for the Peruvian masses.

## Conclusion

The US War on Drugs placed a devastating economic pressure on Peru that resulted in the destruction of coca crops, horrific human rights abuses justified on anti-drug grounds, and a confidence gap between the government and society. Peru had no choice but to abide by US demands to guarantee the continuation of necessary financial backing and support. Through economic coercion, the US influenced domestic policy, resulting in significant domestic abuses and mass suffering that most notably affected Andean coca farmers.

The Peruvian experience falls within a larger pattern of US intervention in Latin American countries. At the root of this conflict was the notion that an increased circulation of narcotics on US soil could be traced back to coca leaf farmers of the Upper Huallaga Valley region. In the wider context of the Cold War and the fight against communism, specifically the perceived threat from the leftist Sendero Luminoso, the US inflicted terror across Peru that targeted peasants believed to be aligned with leftist insurgencies. In specifically targeting these leftist insurgents, the US War on Drugs became less a question of drug circulation, but rather a larger political and ideological concern. In an official update on the War on Drugs, Congress proclaimed: "We want to see a democratic solution to this problem, and we want to see a restoration of democracy" (Committee on Foreign Affairs 1992, 10). Using mass force and arbitrary killings of civilians, this aggressive effort to suppress communism and leftist insurgencies in Peru manifested in the name of propagating a system of Western democracy, ultimately begging the question: How far will a supposedly democratic country go to impose its own beliefs and

values on another country? Such a forceful spread of democracy appears to be undemocratic in nature, especially considering how the imposition of these beliefs and values resulted in massive amounts of suffering and destruction for the majority of Peruvians.

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# Economic Freedom and Citizen Repression

## Two Sides of the Same Coin in Latin America's Neoliberal Era



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## Abstract

As the Latin American political landscape shifted in the 1970s to include several right-wing and authoritarian juntas, social and economic factors caused these regimes to turn to neoliberalism to stimulate their economies and solidify their power. Over the next three decades, neoliberalism impacted most of the region with differing degrees of penetration and longevity. It will be argued that various actors contributed to the rise of neoliberalism in Chile and Argentina, including each nation's military, key political figures and the University of Chicago's Economics Department. The way in which power was distributed following the coups of Chile and Argentina decisively determined the entrenchment of neoliberal policies in each nation. It was not until the 1980s debt crisis the stark divergences in neoliberalism's effectiveness would come to light as each nation fought to recover. Finally, the region's pattern of economic growth following the crisis will be explored to understand how the legacy of neoliberalism remains intact.

## Introduction

In the 1970s, right-wing and authoritarian *juntas* in Latin America faced a series of challenges that weakened their grasp on power. Populations were mobilizing, threatening the traditional structures that granted regimes authority. Moreover, economic prospects looked bleak, as nations like Argentina were forced to deal with failing import substitution industrialization schemes that emptied government coffers and isolated economies (Rodríguez 2011, 6). A 1973 coup established a military regime in Chile, which facilitated an opportunity for Latin America to dabble with neoliberal policies, promoted by the United States.

Over the next three decades, neoliberalism impacted most nations in Latin America with differing degrees of penetration and longevity. The debt crisis the region experienced in the early 1980s revealed stark divergences in nations' experiences with neoliberal policies. Chile's pragmatic response to the crisis was successful, demonstrated by its ability to establish a stable export-oriented system. In contrast, Argentina struggled, instituting fiscal and monetary policies prematurely to address severe hyperinflation. What characterizes Latin American neoliberalism and how did the two seemingly-similar nations of Chile and Argentina end up in such different positions?

This paper will begin with an overview of the evolution of governing strategies in Latin America, imperative in understanding the rise

of neoliberalism in the region. Next, a comprehensive definition of neoliberalism as it was experienced in Latin America will be provided. Subsequently, an examination of the socio-economic and political factors that contributed to Chile and Argentina's differing experiences with neoliberal policies will be discussed. Therefore, how power was distributed following the coups of the 1970s will be explored. Moreover, the responsibility of American economists in implementing neoliberal policies will be addressed. Finally, how each nation fared after the 1982 economic collapse will be evaluated.

## The Evolution of Decision-Making in Latin America

From the offset of colonization, Latin American populations were forced into class-driven political and economic systems. These systems remained even after the Spanish and Portuguese withdrew in the nineteenth century. Fierce political conflict was evident at every level of society, demonstrated by the installation of the *encomienda* – a system whereby colonists were entrusted with the evangelization of local populations, as well given authoritarian control over native labour (Rodríguez 2011, 4). Latin America adopted a production structure based on plantation agriculture. This soon proved to be unsustainable and necessitated the importation of African slave labour to meet demand as the native population dwindled. The output-driven, labour-intensive process produced unequal income distribution that left lasting class legacies in many Latin American nations to this day.

By the mid-nineteenth century, most nations had attained *de jure* independence from their colonizers, but class power structures remained (Guerra 1994, 6). Landed elites needed not to occupy themselves with maintaining loyalties to the metropole and could focus on building political systems that maintained class relations to their benefit. Thus, elites managed to block reforms that would have established a high tax base and well-defined property rights, foundational assets in constructing liberal democracies. Blocked by elites, governments were unable to accumulate capital the necessary to fund investment in infrastructure, public goods and human capital (Ochoa 1987, 975).

During the 1930s, Chile was “controlled by families who inhabited four square blocks in central Santiago” (Bakewell 1997, 424). Although technological advancement and immigration led to urbanization throughout the region, landed elites maintained the power balance necessary to prevent political mobilization of the lower and working classes. Argentina had the only urban-based party to achieve power pre-World War One, but even it failed to challenge elites in areas of labour rights

and economic development (Rodríguez 2011, 5). The Great Depression caused a fall in world demand that pushed Latin American nations away from manufacturing goods for export markets and instead shifted production to satisfy domestic demand for previously imported goods, in a process known as import-substitution industrialization (Thorp 1984, 34). A sharp increase in the size of the workforce and continued urbanization also changed the political power structure of the working class, as urban workers employed in the manufacturing sectors began to demand protectionist policies. The political power of urban workers could no longer be suppressed.

Thus, charismatic, middle-class politicians recognized an opening in their journey to power: all it would take was the support of a newly-established, politically empowered urban class. The success of these leaders depended on their ability to navigate an interlocking system of clientelism and political patronage (Malloy 1977, 129). Militaries grew in importance as they were called upon to protect fragile power structures that populist leaders had carefully constructed. One such leader, Juan Perón, was able to successfully exploit shared interests with the Argentine army, necessary to maintain control over a population growing tired of the failures of import substitution industrialization. By the 1950s, one thing was clear to politicians seeking power in Latin American nations: military support was key to regime survival.

## Defining Neoliberalism and its Emergence in Chile and Argentina

Neoliberalism is the term utilized to describe the twentieth century resurgence of *laissez-faire* economic liberalism developed in nineteenth-century Europe. In the latter half of the twentieth century, the neoliberal project was identified with a set of prescriptive development policies issued by the so-called “Washington Consensus” institutions including the World Bank and the International Monetary Fund (Harvey 2005, 15). These policies sought to retrench the state’s role, privatise assets and cut government expenditures. Neoliberal theorists believed society was best served by maximum market freedom and limited state intervention. According to neoliberal thinkers, the government should maintain macroeconomic stability, provide public infrastructure, enforce contracts and contribute to the development of institutions designed to improve market conditions (Wade 1990).

Key sectors of national militaries identified the state as the cause for market failures that led to civil unrest, and stunted growth. The State was accused of clientelism, inefficient public spending, high inflation

and unsustainable macroeconomic conditions. With the influence of American propaganda and promise of military support, these key sectors of the military became empowered to topple what they believed to be ineffective state apparatuses. The coups Chile and Argentina experienced during the 1970s and the military regimes established possessed the same aim: end social unrest and economic stagnation by imposing market relationships as the predominant form of social organization and governance (Taylor 2006, 22). Both regimes sought to carry out an ‘ideological cleansing’ of existing political movements, especially Argentina, where populism and the political mobilization of the masses had become deeply entrenched (20).

The US supported both coups in conjunction with ruling elites who saw dictatorial regimes as a way to re-establish class power structures and protect their personal privileges. Both coups occurred in contexts of class conflict, including revenge-driven violence, left-wing guerrillas as well as labour union mobilization (Taylor 1998, 81). Once in power, the military dictatorships in Chile and Argentina opened their economies to foreign markets, dissolved key institutions of governance, and banned political parties. Neoliberal policies and the dissolution of political institutions they entailed offered to military regimes an effective way to ‘govern from a distance,’ providing them the ability to disarm social forces and establish order without appearing to compromise individual autonomy, another key tenet of neoliberalism (Fridman 2010, 271).

## Status of the Junta: Post-Coup State and Society Dynamics

Following the 1973 coup, the Chilean military established a tripartite, corporatist power-sharing arrangement in which government was distributed evenly across military branches. Renovation of the bombed La Moneda Palace had not even commenced before General Augusto Pinochet imposed his authority over the military, arguing short-term political stability required a firm hand. Pinochet won the nickname ‘sultan,’ due to his capacity to concentrate power and ensure a pyramidal form of allegiance (Cavallo 1988, 242). Pinochet designed an environment where all sectors of the military were guided by common objectives: repress opposition, eliminate political participation of civil society, and restructure political institutions. Military units moved to ‘clean-up’ neighbourhoods identified as strongholds of ‘the left,’ labour unions and political parties were offered the choice to voluntarily dissolve or forcibly ‘recess’ and in 1980 a new constitution was drafted which legitimized military authority in all aspects of governance (Rodríguez

2011, 30).

Argentina's military had a more difficult time reorganizing following their 1976 coup due to factional divisions between the *Colorados* and the *Azules*, two military factions which who differed in their beliefs about the role Peronist policies should play in the new governance structure (Canello 2004, 239). Fragmentation within the establishment limited its ability to suppress violence between sectors of the population still loyal to Peronist Argentina. *El Proceso de Reorganización Nacional*, the official name of the Argentine dictatorship, was described as 'feudal' due to the internal disputes regarding all decisions made regarding political and economic policy (Cavallo 1988, 241). Because each armed force had the ability to veto ministerial decisions, few of the structural policies necessary to centralize power passed (Boisard 2010, 112).

### **The Impact of the Chicago Boys on Neoliberal Penetration**

In the mid-1970s, the University of Chicago's Economics Department signed exchange agreements with several universities in Latin America where students received training in US neoclassical economics. The most notable of these universities were The School of Economics of Pontificia Universidad Catolica (PUC) in Chile and the University of Cuyo in Mendoza, Argentina (Undurraga 2015, 17). The University of Chicago economists involved in the entrenchment of neoliberal capitalism in Latin America were known as the 'Chicago Boys'.

The Chicago Boys had a pre-established relationship with Jaime Guzman, one of Pinochet's closest advisors, gaining the technocrat's direct access to Chile's dictatorship (Gárate 2017). The Chicago Boys' takeover of Chilean economic policy hit hard and fast in 1975, convinced implementing their policies by force would prevent further unrest (Clark 2017, 1353). Policies were designed to reconstruct a powerful capitalist elite capable of 'exercising its hegemony over the state and civil society' (1355). The Chicago Boys were instrumental in drafting the 1980 constitution, which placed limits on the power of domestic institutions and transferred economic policymaking authority to the military (L. Clark 1988, 81). Pinochet's ministers were given resources to experiment with creating markets in housing, health, pensions, and education. A 'cleansing operation' was carried out in public universities, replacing traditional economic scholars with Chicago-style neoliberal economists (Möckeberg 2005, 154). In a 2007 interview, Chilean economist Ricardo Ffrench-Davis, who studied under the Chicago Boys in the 1960s, described Chile's neoliberalism as 'much more intense

than in Argentina, Mexico or Brazil. Seventeen years of Pinochet, the takeover of public universities and the purge of economic faculties were crucial for the conversion of the business associations to neoliberalism' (Ffrench-Davis 2007, 48).

In Argentina, the University of Cuyo and other institutions that embraced Chicago economics were not as intellectually or politically relevant as the PUC, leaving them less attractive to US economists (Fridman 2010, 278). Additionally, neoliberal policies were not embraced until Minister of the Economy José Alfredo Martínez de Hoz settled into office in the late 1970s (Undurraga 2015, 17). Persistent differences across the private sector and fragmentation within the *Junta* prevented the full implementation of his plans. While Martínez de Hoz sought to slash government spending and remove power from political institutions, the *Junta* borrowed money from abroad to fund public works and social welfare spending. Martínez de Hoz recognized his policy objectives were overly ambitious for the decentralized political system in which he was operating. Thus, he scaled back and concentrated on trade, exchange rate manipulation and financial policies (Novaro 2006, 94). Meanwhile, he let go of the structural conditions necessary for the Chicago Boys to operate in. The *Junta*'s failure to provide de Hoz the resources and authority he required to effectively implement neoliberal policies directly contributed to its decline in the early 1980s.

### **Post-Economic Collapse: Chile Persevered**

Decades of uncontrolled borrowing from international creditors for industrialisation led many Latin American countries to reach a point where foreign debts exceeded earning power in what is known as *La Década Perdida*, or "The Lost Decade" of the 1980s. Economic growth stagnated, unemployment rose to unimaginable levels, and inflation reduced the buying power of the middle class. Most nations, including Argentina, were forced to adopt export-oriented industrialization strategies in-line with neoliberal policies advocated by international institutions in the 1970s. Chile, who had most embraced neoliberalism and represented the quintessential Chicago Boys experiment, was one of two nations to adopt reformist policies following the 1982 crisis, leading it out of the recession badly beaten, but able to fight another day.

The 1982 banking crisis in Chile produced major social costs, including a 13.6% decline in GDP and a 25% rise in unemployment (Kurtz 2001, 13). Popular protests were easily suppressed by the Pinochet regime. The regime promoted a series of state interventions that deviated from Chicago policies, including tariff increases and selective export



incentives, the regulation of financial markets and the state takeover of collapsed private banks. Policymakers from the regime experienced ‘institutional learning’ during the 1980s, allowing for the loosening of ideological commitments to neoliberalism in favour of pragmatic approaches that would allow Chile to recover (Montero 1993, 38). Chile placed copper mining, the key national industry, into state hands (Undurraga 2015, 22). It provided state subsidies to non-traditional export industries such as fishing and forestry, which contributed to a significant increase in exports that devalued the exchange rate. By the 1990s, the average yearly growth rate centred 7 percent (Morley 1999, 24). Under Pinochet, Chile’s macroeconomic policy remained far more stable than that of any other country in the region.

Military rule ended in 1990 and two decades under the *Concertación*, a coalition of centre-left parties, began. A practical approach to neoliberalism dictated economic policy during this period, while the policy was tempered to promote greater social equality. The *Concertación* aimed to counterbalance governmental unpopularity accumulated during the dictatorship by introducing social policies like labour and tax reforms (Han 2012, 45). Despite persisting structural inequalities, improved material conditions brought by capitalist modernization helped the government maintain popular support for the neoliberal model. The quality of housing, infrastructure and education improved dramatically under the *Concertación*. By the turn of the century, Chile’s expansion of its credit market effectively democratized consumption across new sectors, creating a new class of consumers. While Chile’s reformist response to the 1980s crisis developed the economy and improved standard of living well into the turn of the century, Argentina faced a different reality (Olavarria-Gambi 2010, 118).

The social reaction to the economic crisis as well as Argentina’s demoralizing defeat in the 1982 Falklands War was massive, leading to the discrediting of the *Junta*, and doubts as to its ability to bring Argentina out of crippling debt and poverty. Raul Alfonsín was democratically elected in 1983 by a fed-up population in search of prosecution of the *Junta* and the restoration of justice (Undurraga 2015, 20). Alfonsín increased government spending and raised wages in an attempt to stimulate consumption, despite a chronic inflation rate that exceeded more than 1000% annually (King 2010, 10). Between 1983 and 1987, Argentina was placed under three separate austerity programmes supervised by the IMF and by 1988 the IMF refused to continue lending (De Beaufort Wijnfolds 2003, 101). The collapse of public enterprises during the late 1980s led to privatization throughout the nation.

In 1989, Peronist Carlos Menem was elected to power and proposed drastic reforms to deal with the hyperinflation crisis, decimating all aspects of Argentine state and society. The threat of losing control of his government led Menem to embrace the Washington Consensus. In 1991, Argentina adopted the Convertibility Plan, which required every peso issued by the Central Bank to be backed by an equal amount of US dollars in its coffers (King 2010, 10). The Menem Administration hoped to establish both domestic and international credibility and limit the amount of local control over monetary and fiscal policy. The Convertibility Plan succeeded in raising output and achieving a rapid reduction in inflation and interest rates. However, in the late 1980s, Argentina opened its financial markets to short-term investments, making it vulnerable to the volatility of the international financial market. National industries previously accustomed to tariff barriers and protection could no longer compete. Unemployment soared, poverty became increasingly visible, and in 2001 Argentina defaulted on 132\$ billion USD (Levy 2007, 23). In 2002, 57.5% of Argentineans were living under the poverty line (Fernández Valdovinos 2005, 2). Argentina’s experience with seemingly-forced globalization became representative of the ‘black holes’ down which nations would disappear if they could not survive under the new rules of the international marketplace (Munck 2003, 501).

## Final Remarks

Pinochet’s ability to concentrate power and organize his military through the use of common goals enabled him to implement neoliberal policies in Chile. The political and institutional conditions of the time welcomed American neoliberal economists into the nation, who privatized firms and developed a class of capitalist elites who would maintain the system. Comparatively, Argentina’s post-coup experience was less streamlined; the disorganized military in conflict with itself was unable to focus on anything beyond attempting to curb unrest. The Chicago Boys weren’t as attracted to Argentina, leaving Finance Minister Martínez de Hoz to transition the unstable nation to neoliberalism alone. The fragmented *Junta* prevented him from implementing structural changes necessary to reap the benefits of neoliberal policies. Instead, he contributed to economic conditions that made Argentina far worse off as the debt crisis hit (Fridman 2010, 285).

The 1980s crisis impacted Argentina and Chile in the short-run quite similarly, however, what differentiated the two nations was their ability to recover. Chile faced high unemployment and sharp decreases

in GDP, so it instituted pragmatic reformist policies. The nationalization of key industries and protection offered to several non-traditional export industries allowed Chilean growth to soar heading into the 1990s. The *Concertación* worked to pay off the costs of dictatorship through social reforms and the development of public goods. Argentina fared differently following the crisis. A democratic government quickly came into rule but was not ready to pay the transitional costs Chile eventually did due to their experiences under the dictatorship. Neoliberal policies of austerity forced by the IMF throughout the 1980s led to uncontrollable inflation, which Menem was able to reduce with the introduction of the Convertibility Plan. Unfortunately, this was too little too late. Argentina's decision to open its economy prematurely resulted in its defaulting in 2001.

While Chile's economy experienced dramatic growth following the crisis and leading into the twenty-first century, grave inequalities endure as a result of the class structures which continue to dominate Chilean politics (Nef 2003, 19). Latin America possesses some of the world's highest inflation rates and remains the most unequal region in the world (Munoz 2013). There exists extreme inequality in the distribution of political and economic power, which fuels policy instability and biases policies in favour of economically elite groups, further entrenching this inequality. Rent-seeking practices persist, contributing to the poor institutional decision-making structure inherited from colonial times. Meanwhile, the region's abundance of natural resources continues to be allocated inefficiently, due to poorly defined property rights (Rodríguez 2011, 13). Chilean economist Orlando Letelier, who was brutally murdered under the Pinochet regime, wrote near his death, 'repression for the majorities and economic freedom for small privileged groups are in Chile two sides of the same coin' (Letelier 2016). Significant growth in Chile associated with neoliberalism has come at the cost of the oppression of many. Neoliberalism sowed seeds of inequality and uneven growth into Latin America, leaving a lasting legacy that nations will need to commit energy to overcome.

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# Courting Asylum

How Asylum Claimants in Greece are Using Judicial Power to Combat neo-Refolement and the EU-Turkey Safe Third Country Agreement



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POLI 353 Politics of the International Refugee Regime*

## Abstract

The international refugee regime is marked by a widening gap between the constitutional democratic values of countries in the global north and the practices employed by their state executives. While states have committed to the rights of refugees by joining the 1951 Refugee Convention, they have simultaneously subverted the rule of law in the name of security by instituting practices that externalize asylum: neo-refoulement. The purpose of this article is to examine the extent to which judicial power can be used to combat executive practices of neo-refoulement. This article considers asylum claims heard in the Greek appellate court system pertaining to the safe third country agreement between the European Union and Turkey. The article concludes that, under a system of coequal institutions, judicial power and case law harbour the potential for necessitating the consideration of all individual asylum cases effectively disarming practices of neo-refoulement.

## Introduction

A seismic shift in state practices surrounding the international refugee regime has taken place since the end of the Cold War. The refugee regime has progressed from its third iteration, the Effective Internationalization regime, where states acknowledged the need to provide refugees with protection through international law, to a regime of Non-Entrée due to a growing preference for securitization policies (Orchard 2014, 14). This regime is marked by “increased border... [and] extraterritorial restrictions,” practices that constitute a new dominant framework: neo-refoulement (Orchard 2014, 14). As a result, “a fundamental change in how liberal democracies conceive [of] their obligations to foreigners within their territory [has] occurred” (Gibney 2003, 35), as a gap has widened between constitutional democratic values and the practices employed by state executives. This divergence in practice “contradict[s] the values by which western societies claim to define themselves,” and, as a result, states have quietly instituted practices of neo-refoulement to maintain the liberal democratic image through which they are legitimized while “neutraliz[ing] the rule of law in the name of security” (Gibney 2003, 23; Hyndman & Mountz 2008, 250). But, despite executives trying to circumvent judicial power, certain refugees—most particularly asylum applicants in Greece, as is relevant to this paper—have been able to combat non-entrée through legal proceedings. How then have these actors been able to oppose the intentions of states? And, to what extent might these legal proceedings

shape the future of the refugee regime and the application of neo-refoulement?

In examining the 2016 safe third country agreement between the European Union (EU) and Turkey, this paper sets forth to argue that, while refugees and their legal counsel have been unable to thoroughly disarm neo-refoulement practices in the courts, the potential for the use of judicial power to combat executive non-entrée preferences exists, as case law may prove capable of dictating the necessity and personalization of judicial hearings for all asylum seekers. This will be illustrated by first establishing which international laws and norms constrain states in their actions towards refugees and how neo-refoulement circumvents many of these obligations. Next, an understanding of the relationship between executives seeking non-entrance measures and judiciaries maintaining the rule of law will be put forth. With these elements understood, specific attention will be given to the case of the 2016 EU-Turkey safe third country agreement, which will be contextualized as a measure of neo-refoulement. Lastly, the legal opposition mounted against this agreement by refugee plaintiffs in the Greek Asylum Appeals Committees will be analyzed. In so doing, this paper finds that in liberal democracies with a judiciary coequal to the executive branch, there exists potential for asylum seekers to utilize precedent and judicial power to necessitate case by case asylum hearings for the consideration of individual context as a means to combat the securitized policies of neo-refoulement and preferences of state executives.

## Norms and Laws Governing the International Refugee Regime

To understand how state practices have changed in bringing about the fourth regime, two cardinal rules that govern state practices in relation to refugees must first be understood: the right to seek asylum and non-refoulement.

The right to seek asylum comes from a long lineage of intellectual thought on liberty, as the classical Greek philosopher Epictetus—a former slave—defined freedom as simply meaning “I go wherever I wish; I come from whence I wish.” In contemporary times, this notion of personal liberty has been translated into international law, most notably in the Universal Declaration of Human Rights, which was a direct response to the Nazi regime’s restrictions on free movement (McAdam 2011). The right to seek asylum broadly dictates that everyone has the right to seek and enjoy asylum in countries other than one’s indigenous state, free from persecution (McAdam 2011). This principle is intended

to incur upon state sovereignty in a limited manner to ensure that where individuals have the right to flee, states have corresponding obligations to provide refuge within their borders.

Non-refoulement operationalized the right of an individual to seek asylum by ensuring that no refugee would be returned to any country where he or she is likely to face persecution, torture, or other ill-treatment (Goodwin-Gill 2014, 5). These foundational principles began as norms but have since been codified in the seminal 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, which serves as the dominant guiding law in international relations on refugee treatment. While the right to seek asylum was mandated previously by Article 14 of the Universal Declaration of Human Rights, the 1951 Convention operationalized this principle (UNHCR 2010). The convention stipulates in Article 33-1 that “states shall not expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened,” so explicating the principle of non-refoulement (UNHCR 1951). Pjorla notes that even from its inception, in the wake of the atrocities committed in World War II, the concept of non-refoulement was largely open-ended due to unspecific wording, which gave state executives greater authority in choosing how to implement non-refoulement (2008, 1). Nevertheless, the codified nature of non-refoulement did indeed begin to constrain state executives in the global north. During the Cold War, non-refoulement was aligned with state interests, as refugees fleeing one economic system for another was perceived to be a mark of weakness for one block and strength for the other. However, with the end of the Cold War, state executives’ preferences transformed, and new policies were abruptly sought to bypass the restrictive, legally binding obligations of non-refoulement: what would become known as neo-refoulement (Orchard 2014, 2).

### Neo-Refoulement and the Non-Entrée Regime

Hyndman and Mountz trace the inception of neo-refoulement to 1993, with the introduction of the concept of preventative protection (Hyndman and Mountz 2008, 262). This practice stressed the right to remain in one’s home country as opposed to the prior focus on the right to leave. Preventative protection also shifted protection from the legal basis of the 1951 Convention to the domain of political actors; the asylum and refugee regime are now, in practice, governed by domestic politics and executive action rather than by international standards. As securitization practices have evolved since the end of the Cold War, and particularly post-9/11, neo-refoulement was adopted. Under this system, asylum

was re-spatialized to “transit countries or regions of origin, from where [refugees could] ‘properly’ apply for asylum consideration” (Hyndman & Mountz 2008, 253). This marked a “shift from a paradigm of refugee protection to prioritizing the protection of national security interests,” driven by heightened domestic fears of immigrants and their perceived association with crime, terrorism, and social unrest (Hyndman & Mountz 2008, 253; Mattsson 2016, 14).

Neo-refoulement refers itself “to a geographically based strategy preventing the possibility of asylum through a new form of forced return different from non-refoulement” (Hyndman & Mountz 2008, 250). As asylum has increasingly become the domain of security interests rather than of refugee protection, a parallel shift has occurred “from the legal domain where international instruments to protect refugees are still [...] intact to the political domain where migrant flows are managed [...] in regions of origin” (Hyndman & Mountz 2008, 251). Under this regime, the protection of refugees is not by law, but through an *ad hoc* decision process of state executives and agencies. Neo-refoulement measures include readmission agreements, visa regimes, detention and interdiction practices, and, most relevant to this paper, safe third country agreements. This extensive group of policies and spatial practices is that which constitutes neo-refoulement: a broad “neutraliz[ation] of the rule of law in the name of security”—a resolution to the tension between executive preferences and the legal obligations of the Refugee Convention (250).

### A Safe Third Country

A disruptive element of neo-refoulement that has increasingly been accepted since 1999 is the safe third country agreement (Matthew 2003, 142). A safe third country itself is one in which “an asylum seeker either has received or may receive protection consistent with the 1951 Convention to the Status of Refugees” (136). Due to such perceived equality in treatment, the ‘first country of asylum principle’ has been adopted: any irregular migrants may be returned to the first safe country they stepped foot in (Yenidogan 2017, 3). This principle is predicated upon the fact that “an applicant for international protection could have obtained [protection] in another country and therefore [a] receiving state is entitled to reject responsibility for” protecting the individual without violating either non-refoulement or the right to seek asylum (ECRE 2017, 1). Safe third country agreements are considered lawful, therefore, “on the grounds that protection has already been found or can be found elsewhere,” while also, the practice has been legitimized as a

form of international cooperation and burden sharing between states, as a means to simplify the processing of asylum claims (Gil-Bazo 2015, 43).

However, many dissident scholars and human rights groups view the implementation of safe third country agreements as a particularly aggressive form of neo-refoulement. In establishing such agreements, legal rights and entrenched norms have been disregarded in the name of security, as, most notably, the right to seek asylum has been limited to a specific geographic domain, causing there to be “fewer and fewer spaces through which to pass to make a refugee claim” (Hyndman & Mountz 2008, 268). Additionally, according to Liz Curran and Susan Kneebone, the concept of a safe third country subverts the notion of burden sharing as opposed to such agreements’ stated purpose (2003, 7). Instead, safe third country agreements force the responsibility for refugees on to developing countries located near the source of the refugee flow, which places refugees in greater danger and “can potentially infringe [upon] the non-refoulement obligation... of the [Refugee] Convention” (Matthew 2003, 136; Curran & Kneebone 2003, 12).

### Judicial Power in the Refugee Regime

Since the end of World War II, a global phenomenon has taken place as government power has shifted increasingly from the legislative to the judicial branch—a process known as judicialization (Ferejohn 2002, 41). Judicialization connotes three new roles courts have taken on: a willingness to limit the exercise of legislative authority, a willingness to regulate political activity, and serving as a place where substantive policy is made (Ferejohn 2002, 41). Through these three capacities, judiciaries have “increasingly limited the capacities of national political institutions to make and implement domestic and international policy” (Ferejohn 2002, 42). Additionally, supranational legal institutions such as the Court of Justice of the European Union (CJEU) have also been formed in this era of judicialization, which have also served to limit the capacities of national political actors and institutions (Ferejohn 2002, 42). These same institutions have also taken part in the advancement of individual rights through the development of human rights discourse and law, which has further shifted emphasis away from national actors and towards the individual (Parlett 2012).

In the international refugee regime, judicialization has played out as a power struggle between judicial and executive powers, “fuelled by tensions of securitization, border control and human rights over the issue of irregular migration” (Marmo & Giannacopoulos 2017). Matthew Gibney illustrates further that while democratically elected

state executives in the global north operate with the intent of preserving the liberal democratic image upon which their power and legitimacy are founded, the judiciary is said to have, in opposition, continued practicing its properly liberal democratic mandate (2003, 44). Marmo and Giannacopoulos note that while the executive has attempted to create buffers in the form of neo-refoulement in order to “minimize migrants’ protections and [possibility] for judicial review, such manoeuvring is countered by [state judiciaries]” who continue to prioritize the rule of law and established a precedent (2017). In large part, this very relationship necessitated the creation of neo-refoulement as executives have been forced to find strategies to circumvent the judiciaries that continue to hold the state to account in accordance with the standards of protection implemented in the 1951 Convention. In such a system, however, exceptions to successful executive domination of power must and do exist, and it is in seeking this anomaly that this paper now turns to examine the safe third country agreement between the EU and Turkey and the legal ramifications thereupon.

### European Refugee Crisis and the EU-Turkey Safe Third Country Agreement

Beginning in 2015, Europe has experienced the largest influx of forced migrants since the second world war, as asylum seekers have fled protracted conflict zones in Iraq, Afghanistan, Pakistan, Nigeria, and most prominently, Syria (Henley 2018; BBC 2018). The United Nations High Commissioner for Refugees has noted that “the scale and fluidity of refugee movements in Europe have posed significant challenges for asylum systems... in many countries,” while declining domestic opinions of refugees in Europe have caused additional obstacles (UNHCR 2018). Furthermore, the path of flight to Europe is geographically constrained, resulting in large groups of migrants moving either through Turkey into Greece or by ship across the Mediterranean to Italy (Henley 2018). This has tragic consequences for human security, as asylum seekers fleeing conflict are compelled to choose between a country in which their rights may be repressed and the perilous voyage—often in unseaworthy and overcrowded vessels—across the Mediterranean, the world’s deadliest maritime route which caused more than 2,200 deaths in 2018 (Belliveau 2018). In 2015, because of this geography, the majority of refugees reaching the EU—nearly 900 000 total arrivals—arrived in Greece (BBC 2018). This is problematic as, under EU law, asylum claimants must make their application in the first EU country they enter, which forced much of the initial strain on the Greek system (Henley 2018).

Due to this large-scale influx and growing internal pressures, on 18 March 2016, the European Council of the EU — which is comprised of the member countries' heads of state — and Turkey arrived at an agreement, as enunciated in the EU-Turkey Statement, that designated Turkey to be a safe third country. As a result, all irregular migrants crossing from Turkey into Greece are to be returned to Turkey, where they will then have their asylum claims processed (Yenidogan 2017, 19). Empirically, the agreement has been greatly successful, as the number of irregular migrants arriving in Greece has fallen dramatically as a result (BBC 2018). Notably, however, the CJEU ruled that the agreement was not in fact an EU Act, as the deal was made by heads of state acting in what was determined to be their capacity as heads of state. Despite acting in a framework provided by the EU (the European Council), the agreement was considered to have a limited scope of impact, namely on Greece and Italy (CJEU 2017, 44). As such, the CJEU determined that, rather than the agreement being invalid as was requested by the applicant (asylum claimants), the CJEU simply had no jurisdiction on the matter, as the statement was adopted by national authorities. Accordingly, the determination of the EU-Turkey Statement's lawfulness was to be left in the hands of state entities, namely the courts of Greece.

### **Turkey as a Safe Third Country?**

Grave issues exist concerning whether Turkey truly constitutes a safe third country for refugees and irregular migrants. While Turkey is a signatory to the 1951 Convention, Turkey has maintained geographical limitations, having never adopted the 1967 Protocol which expanded the mandate of the Convention to not only include forcibly displaced migrants from Europe, but also from around the globe (Goodwin-Gill 2014, 3). As such, Turkey does not recognize any non-European migrants as refugees in terms of the 1951 Convention. Instead, Turkey has bound itself to alternate legal obligations surrounding refugees and forced migrants, most notably, the EU-inspired Laws on Foreigners and International Protection (LFIP) (Tsiliou 2018). Under LFIP, non-European refugees are granted conditional refugee status; refugees are known as “guests” (Kirişci 2014, 7). As guests, these migrants are afforded a lesser set of rights than those protected under the 1951 Convention or those of Turkish citizens, leading human rights groups to accuse Turkey of “detaining refugees arbitrarily, sending refugees back to dangerous countries, including Syria, and obstructing their access to the job market” (Kingsley & Rankin 2016). Furthermore, concerns persist surrounding Turkey's asylum process, as “it has been reported that

Turkish migration officers often act against the legislation [that provides for status determination] ... denying applications without proper examination and [then] executing illegal deportations” (Yenidogan 2017, 22). This, in essence, means that refugees are not being afforded due process as stipulated by the 1951 Convention and the norm of non-refoulement, and as such, Turkey is a non-compliant non-signatory to the Convention. Turkey itself has several readmission agreements with countries like Nigeria and Pakistan, two countries not considered safe by all but two European countries (European Commission). Through the EU-Turkey Statement, asylum claimants are now returned to possible harm—in direct violation of the principle of non-refoulement as enshrined in the 1951 Convention to which these same European states are signatories.

### **Judicial Response to the EU-Turkey Safe Third Country Agreement**

In response to the EU-Turkey Statement, refugees and their legal counsel have begun to utilize the justice system to negate the non-entrée regime's attempted dissolution of judicial power. Due to the CJEU ruling, within the first four months of the agreement, 393 asylum cases were brought before the Greek Asylum Appeals Committees (Committees) (Gkliati 2017, 213). In 390 out of 393 decisions, the Committees ruled that Turkey did not constitute a safe third country, due to such conditions as the country's systematic violations of non-refoulement, the inability of asylum seekers to obtain refugee status as per the standards of the 1951 Convention, and the “clash between law and practice” on the ground, as various NGOs have documented how asylum seekers are often subjected to arbitrary detention, immense poverty (as refugees are not allowed to work), and other ill-treatment (Gkliati 2017, 213; Amnesty International 2017). As a result, the EU-Turkey deal was effectively impeded in application, as 390 claimants were prevented from being refouled to Turkey (Gkliati 2017, 213).

Analysis of the Committees' rulings is limited in scope to these few months as due to their flagrant disregard for the politically expedient EU-Turkey Statement, the Committees were reorganized in June 2016 to prevent further unwanted rulings (Gkliati 2017, 214). Such restructuring illustrates the extent to which an executive focused on promoting non-entrance was forced to go to in order to ensure a neo-refoulement measure was upheld, so allowing for the statistical decrease in asylum seekers reaching Europe previously mentioned. Additionally, on 22 September 2017, the Supreme Administrative Court of Greece ruled that

two Syrians should be returned to Turkey after declaring their asylum claims inadmissible, establishing an entirely new stream of precedent, contradictory to that established by the appellate courts (Tsiliou 2018; Amnesty International 2017)—a legal quagmire that may be seen as negating any conclusions drawn upon the 393 cases surveyed, but may alternatively be seen as the result of executive overreach (Gkliati 2016). As such, the following analysis will necessarily be limited in scope to the context of the Committees pre-restructuring in order to fully capture the context of a coequal and independent judiciary; this analysis is only generalizable so far as other countries with independent court systems.

### **Analysis: The Legal Implications of Fighting Neo-Refolement**

Understanding the implications of the Committees' rulings and the case law thereby set, as well as outlining the legal ability of refugees to combat neo-refoulement, is nuanced and requires the examination of the individual cases heard before the appellate courts, as examined by Mariana Gkilati. Based upon these individual cases, Gkilati determined that the most important basis for rejecting Turkey as a safe third country centered around the inability of asylum claimants to obtain refugee status as provided by the 1951 Convention, as in all overturned decisions, the Committees agreed that this requirement had not been fulfilled (213). Additionally, in several cases, the Committees held that the principle of non-refoulement is systematically violated in Turkey given their history of dangerous returns (218). Also notable is that in most of the overturned cases, the Committee, based on the EU-Turkey deal, assumed that Turkey was a safe third country, and in its rulings, poses whether Turkey is safe for the applicant whose case is being considered, illustrating that the Committees did not consider the agreement as establishing safe third country status without exception for Turkey (221). For instance, in the first case heard, *Case 05/133782*, the court's ruling found that even if the EU established the presumption of a safe third country, this would then shift the burden of proof on to the asylum claimant. This would therefore require individual cases to be heard in court so that this assumption could be challenged (220). Meaning any claimant able to prove Turkey to be an unsafe third country for them would be able to claim asylum.

Despite these references to the generalized conditions in Turkey and their causing of unsafe conditions for refugees, Gkilati notes that the Committees focused on the personal situation of each application and then upon how the individual applicant applied to the general situation

in Turkey (2017, 218). In two of the three decisions that were upheld, the ruling was based upon the fact that the applicant had a personal link with Turkey, while little attention was paid to other criteria (Gkliati 2017, 217). In upholding these three rulings, the Committees determined that the unsafe situation in Turkey is not generalized to the extent that every return to Turkey would be prohibited *a priori*, as instead, individual circumstance remains the deciding factor.

While no universal precedent has thus been set in determining whether Turkey constitutes a safe third country, this analysis of both the central positions in the overruled cases and the cause of sustainment in those decisions upheld leads to a conclusion nonetheless: asylum claims in the Committees have been determined in all cases by the examination of individual circumstance. This itself may, had the Committees not been reformed by the executive branch, have created a precedent under which individual cases must be heard by the courts and considered based upon individual context, despite the preferences of the executive. Such a precedent would itself directly counteract the very purpose of neo-refoulement as circumventing the justice system, for such precedent might have demanded judicial consideration on all asylum cases, yet, such potential is difficult to speculate upon. For certain, however, the response of the Committees to asylum claims in contest with the EU-Turkey Statement illustrates the power judiciaries still maintain in relation to the refugee regime and the application of personal context asylum applicants can employ to overrule general agreements on conditions of safety.

### **Conclusion**

There is little doubt that refugees seeking asylum will, for the present, continue to be faced with restrictive neo-refoulement practices that limit their ability to successfully seek and claim asylum in the global north. Anti-refugee opinions continue to build in the increasingly protectionist global north, and with them, the implementation of re-spatializing neo-refoulement policies by state executive branches likewise increases. The challenge for asylum seekers is not only limited to Europe, but exists also along the securitized American southern border, in Canada where another safe third country agreement exists, and perhaps most profoundly in Australia with their assortment of offshore detention facilities.

The case in Greece, however, amply demonstrates the potential power of legal precedent and individual context in serving to help avail refugees of their 1951 Convention rights. Because the Committees' rulings each



consider individual context, it would follow that individual cases must be heard for determination, and so policies such as safe third country determination could not be resolved a priori. This could potentially effectively mitigate and disarm several neo-refoulement practices, as the re-spatializing elements that seek to keep asylum claimants outside of country's borders would be overruled, so allowing the due process and full protection of the 1951 Convention to again prevail. Such usefulness can, however, only be derived so long as the judiciary remains equal and independent from the executive, as shown by the actions of the Greek executive to ensure the implementation of the EU-Turkey agreement.

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# Assessing Systemic Risks in the Chinese Housing Market



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## Abstract

As prices and vacancy rates skyrocket, the Chinese housing market inspires speculation that a market correction would ripple into a global economic slowdown. This paper draws on available market data and studies the unique aspects of the Chinese housing market to determine whether Chinese home prices are overpriced, and if such a mispricing poses any threat to the global economy. This paper concludes that the social, legal and economic values suggests that prices should be driven down rather than up, pointing to a mispricing in the market. However, this incongruence does not necessarily predict an impending market crash; over time, there is potential for a market correction with appropriate adjustments in the short-, medium- and long-term time scales.

## Introduction

The Chinese housing market has been the object of global scrutiny since the United States housing market crashed in 2008 and catalysed a global financial crisis. Coverage of the phenomenon of Chinese “ghost cities” has captured the fascination of people around the world and worried many who have investment exposure to China. Meanwhile, the ratio of house prices to income levels for Shanghai and Beijing outstrip those of some of the most expensive cities in the world, including New York, London, and Dublin. (Shen 2012) As such, we must consider: is the Chinese housing market working efficiently? Are homes in China appropriately priced? Can the current prices and vacancy rates be justified? The answers to these questions have profound implications for the global economy. A crash in the Chinese housing market would undoubtedly slow Chinese construction and serve as a damper on the world’s second-largest economy. (World Bank Group 2017) This could in turn have unpredictable destabilising consequences on the balance of power and economic prosperity in the current global status quo.

In the first part of this paper, I argue that several features of the Chinese market suggest that price-to-income ratios in China should be much *lower* than those of Western cities, and as a result the data accumulated in the academic literature, which finds that price-to-income ratios are comparable to Western cities, suggest that the Chinese housing market is overvalued. However, the consensus of academic literature seems to be that these conditions do not predict a market crash. My interpretation of the evidence does not run counter to the prevailing literature on the topic. Rather it argues against the possibility of a 2008-type housing crash but does not deny a mispricing in the

market. A market mispricing can exist without implying an impending violent market correction.

The outlook of the market is left to the second portion of this paper, where I will discuss the implications of a housing market mispricing. These are significantly different from what one might expect in the case of a housing bubble in a more liberal Western economy, due to the unique aspects of investment capital management in the Chinese economy. China’s mountain of foreign exchange reserves (valued at over three trillion USD) suggests that any mispricing in the housing market could be sustained in the medium term (Neely 2017). In the long term, appropriate policy measures can be taken to stabilise home prices and prevent a violent market correction.

## Is There a Mispricing?

The first goal of my research was to discover whether the prices observed in the Chinese housing market are justified by underlying economic fundamentals. Much of the literature on the Chinese housing market is focused on identifying whether a crash can be predicted. As I will discuss later, most papers, especially that of Glaeser et al. (2017) and Shen (2012), conclude that no such violent market correction lies in store. However, this does not necessarily mean that homes are priced properly. In finance, an asset is considered “mispriced” when the market consistently values it differently from some sort of underlying “fundamental value”.<sup>1</sup> The most important factor to consider in housing markets’ affordability. As noted above, price to income rates based on current income levels in China greatly outstrip those observed in even the most expensive Western cities. However, Shen (2012) argues that, once incomes are adjusted to recognise high predicted growth rates, the ratio of price to so-called “permanent income” is in line with other major urban areas. That said, the rest of the academic literature suggests that the price-to-income rate in Chinese cities should be significantly lower than that of Western cities. In particular, vacancy rates, home longevity, and monetary policy factors all suggest that prices in China may exceed fundamental values.

## Vacancy

Vacancy rates in China are one of the most obvious justifications for

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<sup>1</sup> It is important to note that, in almost all cases, “fundamental value” is a subjective matter. Fundamental value calculations are often based on assumptions with respect to market and economic conditions. However, a large departure from model predictions is often considered to represent a mispricing.

an expected housing market bubble in China. At roughly 20 percent, vacancy rates in China's most populated cities give serious cause for concern (Glaeser, Huang, et al. 2017). For comparison, the average vacancy rate across the largest metropolitan areas in the United States are roughly 8.5 percent (United States Census Bureau 2018). For a nation with a population over 1.3 billion people who are restricted in their economic movement by a "hukou" permit system, such vacancy suggests a clear market inefficiency (Central Intelligence Agency 2018) (Li, et al. 2017), Part of the vacancy problem may be driven by the type of homes being built. The majority of homes being constructed are high-quality developments, aimed at the wealthier end of Chinese society. Meanwhile, one of the major demand drivers in the Chinese housing market is the process of relocating low-income rural village-dwellers into urban environments. China's Gini Coefficient of roughly 4.5 reveals that a vast share of the wealth in the Chinese economy is concentrated in the hands of very few people and families. This further emphasizes the fact that these poor rural-to-urban migrants are ill-suited to purchase the luxury homes that define the construction trends in Chinese cities. (Chen, Pu and Hou 2018) Coupling a low-income population with high-priced homes which they cannot afford is a recipe for a mispricing, or at the very least a misallocation of resources to housing projects.

Much has been said about China's so-called "ghost cities". Characterised by wide streets, towering skyscrapers, and cavernous shopping malls, these cities are also entirely devoid of life. The striking image of these seemingly abandoned urban developments is one of the main pieces of evidence cited to support the theory of a Chinese housing bubble. However, academics and journalists who have studied the ghost cities argue that they are anything but forgotten. Shepard (2015) profiles the Chinese ghost cities as nascent urban centres that are still under construction. He argues that often these cities will feature impressive high-rises, but that the trimmings that make such a development habitable have not yet been installed. Examples of such necessities include public transportation and schools. Interestingly, he notes that one of the early social hubs of these communities is often the local Starbucks. Once these are installed, he argues, the ghost cities are quickly inhabited. This process causes some cognitive dissonance for Westerners, who are not accustomed to cities being "built".

Finally, it is important to note, as Glaeser et al (2017) did, that vacancy should not be taken as an indicator that the homes are not in demand. Many of these homes are owned, but were purchased only as an investment, and not for occupation. That said, the value of a home is

ultimately driven by its offering shelter to inhabitants. Even speculative movements in the market are aimed toward predicting the future price that people are willing to pay for a roof over their head. If prices outpace the demand for purely speculative reasons, this represents a divergence between the fundamental value of the home and the market price. This is the essence of a mispricing.

## Longevity of Housing Projects

One factor which suggests that Chinese residential real estate should be valued at a lower rate of income than that of Western cities is that Chinese homes are not intended to stand for as long as those of the West. In fact, Deputy Minister of Housing and Urban-Rural Development, Qiu Baoxing, commented that the average Chinese building was intended to stand for just twenty-five to thirty years, far lower than the average expectancy of seventy-four years in the United States. (S. Li 2014) This implies that, *ceteris paribus*, a home in Shanghai should be valued at a steep discount from the price of a comparable home in a New York. In other terms, its affordability should be much higher.

The assumptions that go into this argument are too broad to directly compute an affordability index that defines the appropriate price level in China. However, the broad implication is that housing prices should reflect the incredibly short longevity for which it is intended. This should hold true for people who buy for speculative reasons and for people who purchase a home with intent to reside. In both cases, the value derived from the home is based on its potential to provide shelter for an inhabitant, whether or not that person is the owner, and regardless of whether the home is actually occupied at that time. Put simply, the value of a home should be based on its practical utility. As such, a home which stands for less time provides fewer months of rent for a speculative buyer, or months of shelter for a resident. Regardless of how the home is used, a shorter lifespan corresponds to a lower fundamental value and a smaller price tag in a well-functioning market.

The legal environment surrounding real estate in China also plays a significant role in the market. Most salient is the fact that all land in China is owned by the government. When a developer undertakes to build a residential building, they first obtain land-use rights from the local government for a certain fee. In the case of residential land-use, the rights can last up to 70 years. (Shepard 2015) The economic implications of such a legal framework are profound.

One large impact is that the value of the real estate that a person "owns" is not guaranteed to rise, even in a stable market. In most Western

countries, real estate is considered an “investment” on the part of the owner, since it is a large purchase that is reasonably expected to either retain or increase its value. However, in the case of China, as a land-use permit matures, the clock counts down on the rights it affords the owner. In this way, it is much like a typical real estate lease in Canada. The value of such a lease declines over time, as the commitment of the lessee to the lessor dwindles. However, the value of a land-use permit is not guaranteed to decline over time, provided that the increase in the underlying value of the property rises to offset the amortisation of the permit over time.

As such, the eventual expiration of the land-use permit must play into the value of a home, and as a result, the affordability (price-to-income ratio) of a house or apartment in, say, Beijing should be higher than that of a comparable house or apartment in, say, New York, all else being equal.

## Monetary Policy Factors

A striking feature of the Chinese economy in recent years has been a sustained credit boom (Chen and Kang 2018). In fact, in the past 10 years the average discount rate for China has been 3.14 percent. (Federal Reserve Bank of St. Louis 2018) While this may appear relatively high in light of the near-zero benchmark rates of the US and Canada, this rate still represents a markedly expansionary policy compared to the prior decade which featured much higher rates, up to the 8.55 percent mark. Such expansionary monetary policies can easily have an impact on the investment behaviours and prices of large long-term investments (like housing) in the country.

In fact, Qi and Cao (2007) found a causal link between Chinese monetary policy moves and home prices in the country. Therefore, a low prevailing interest rate in China has several impacts that result in a drive to invest in housing. The first result is that mortgages are relatively cheap, and therefore Chinese people see an opportunity to make investments in homes, regardless of whether they intend to live in the home or if it is simply a financial asset to them. This in turn can lead to a market that involves relatively unsophisticated investors, who do not recognize that the current interest rate environment is transient, are not equipped to explore the implications of vacancy rates on their market power, and are not in a position to determine the impact of the home’s longevity on its fundamental value. Shepard (2015) provides ample anecdotal evidence that describes Chinese teachers, workers, and young professionals purchasing homes in other cities and regions from where they live, and

homes which they have never seen despite owning that home for years. Such evidence suggests that these consumers are making investments about which they are clearly not very knowledgeable.

Shepard argues that this is simply a feature of Chinese society, and that consistently rising house prices are justification for such investments. However, such anecdotes when, consistently uncovered, are evidence that points toward what Galbraith famously dubbed “financial euphoria”, a condition in which belief that prices will lead to ever-growing investment in an asset resulting in an upward spiral of that draws asset prices well beyond their underlying values (Galbraith 1994).

## Determination on Mispricing

Despite Shen’s (2012) insistence that the Chinese ratio of home prices to permanent income is in line with China’s Western counterparts, one simply cannot be confident that the Chinese housing market is priced efficiently. Scholarship has often argued that the Chinese housing market’s idiosyncrasies mean that high price-to-income ratios could be justified. However, upon exploring those idiosyncrasies, as I have done above, one arrives at the conclusion that such features suggest that Chinese housing market should be more affordable than those of Western economies, not less. This paper does not attempt to quantify the impact that such factors have on the market, and therefore will not attempt to estimate the appropriate price levels or the degree to which homes are mispriced in China. Moreover, this evidence does not allow us to predict a market correction in the near term, which will be explained in the second part of the paper.

## Can We Expect a Crash?

Upon conclusion that the Chinese housing market is mispriced, we must determine what the implications are of this mispricing. The academic literature surrounding the Chinese housing market argues that there is no impending market “crash”. Such arguments are made in light of the recent housing crash in the United States. We cannot expect a violent market correction, in the model of 2008, to deflate home prices suddenly and drastically in China. This is because of several factors explored below, all of which reflect the considerable control that the Chinese government exerts over the flow of capital in the country and the investment projects that are undertaken.

## The Formal Financial Services Sector

The Chinese financial services sector is held up by five major state-owned banks. These are the Bank of China (BOC), the Industrial and Commercial Bank of China (ICBC), the Agricultural Bank of China (ABC), the China Construction Bank (CCB), and the Bank of Communications (BCOM). Together, these five banks account for over 50 percent of assets and deposits in the Chinese banking system (Turner, Tan and Sadeghian 2012). Such a concentration in the financial services industry may at first glance seem to expose the economy to more risk. After all, one of the key drivers of the global financial crisis was the United States allowing a few immense banks to control a disproportionate share of the financial markets (Johnson and Kwak 2011). However, the example of Canada in the same crisis suggests that in the case that a few dominant financial institutions are well-regulated and highly diversified, their size can actually help to prop up the market and weather the crisis (Thériault and Burt 2010). The five major state-owned banks in China certainly fit this description, but perhaps not in the way that Canadian banks did in 2007. First, they are heavily influenced by senior members of the Chinese central government through pressures exerted by the Ministry of Finance, the China Banking Regulatory Commission, and the People's Bank of China. Moreover, lending regulations are often crafted to support the Communist party's agenda. For example, the regulators, especially the Ministry of Finance, discourage lending to coal miners, ship builders, real estate developers, and other industries that the government would like to slow down (Turner, Tan and Sadeghian 2012). Conversely, the central government often exerts both formal and informal pressure to invest in industries that it has identified as strategically important, like renewable energy and high-tech. These criteria can be based on patronage or other factors that do not necessarily reflect the expected return on making such investments, which somewhat erodes the argument that the banks are "well-diversified".

This tight control by Beijing also manifests in very high restrictions on lending behaviours by these banks. China's loan-to-deposit ratio of 75 percent is completely unmatched by that of any Western country (Chen and Kang 2018). Moreover, because reserve requirements are monitored daily, banks find it necessary to retain excess reserves representing an average of 1.5 percent of assets (Turner, Tan and Sadeghian 2012). These strict controls have cascading effects. Clearly, bank balance sheets in China are incredibly robust. However, the result of these severe limitations is that banks often look outside of the "traditional" banking sector and pursue riskier off-balance-sheet projects that offer higher returns (Chen and Kang 2018). It also leads to a funneling of funds from

the "formal" banking sector into the "informal", or shadow banking sector.

## Shadow Banking

Shadow banking is loosely defined by the Financial Stability Board as "credit intermediation involving entities and activities outside the regular banking system" (Financial Stability Board 2011). In some spheres, shadow banking is understood to be any financing activities outside of standard lending products like mortgages and corporate loans. Elliott et al. identify Chinese shadow banking as encompassing products like microfinance, pawn shops, and wealth management products (like money market mutual funds) (Elliott, Kroeber and Qiao 2015). The shadow banking sector in China draws considerable attention, if for no other reason than that Western economists are mystified by the stranglehold that the Chinese politburo exerts on the financial services sector in the country.

Shadow banking has broad implications for economic stability. Since it operates 'in the shadows' with relatively less regulatory oversight, the informal financial services industry is often speculated to be the source of financial crashes. In the case of the global financial crisis, mortgage-backed securities, credit default obligations, and credit default swaps, all products traded as over-the-counter financial products in the US 'shadow banking' sector, fuelled the exploding real estate market, then transmitted the shock of the subsequent crash across the entire US financial market. (Johnson and Kwak 2011) As such, it is clear to see that unregulated financial markets can pose a real risk to the stability of a country's financial markets. This might lend some legitimacy to fears that a price correction in the housing market could lead to a subsequent market crash.

However, does the Chinese shadow banking sector pose such a risk? Elliott et al. argue that it does not. They point out that while the Chinese shadow banking sector is certainly notable, it is positively tame among developed financial sectors, and that Chinese non-bank financial institutions only control assets amounting to 43 percent of GDP. That figure for the US, UK, and the Netherlands was 120 percent, 348 percent, and 760 percent of GDP, respectively (Elliott, Kroeber and Qiao 2015). When put alongside the highly regulated, even regimented, banking sector described by Turner et al., it seems that the Chinese shadow banking sector, with only 24 percent of all financial assets, could suffer a significant market correction without turning the economy on its head.

## Government Interventions

One of the defining features of Chinese society is the pervasive influence and control of the Chinese Communist Politburo, which exerts immense influence over all institutions in Chinese society. This influence extends to the economy. For example, the value of the Chinese yuan is closely watched by the Communist party and adjusted regularly through direct and indirect means. This level of management extends to even the housing markets in Chinese cities. Zhang et al. explored the record that the Communist government had for market intervention and found that the party had both an appetite and a talent for housing market policy corrections (Zhang, et al. 2016). In both 2010 and 2011, moves to deflate what were widely suspected to be systemic market mispricings in Beijing and Shanghai were effective, stabilising the housing markets in those cities. Such successes bode well for future stabilising moves made by the party.

## Conclusion

The arguments made in this paper draw together to important arguments surrounding the Chinese housing market. Firstly, there is sufficient evidence in the academic literature that the housing market in Chinese cities represents a notable mispricing. Moreover, it is clear that there are a large number of confounding social, legal, and economic variables which make the Chinese housing market entirely unique. However, this paper has highlighted the fact that while these factors do pose a barrier to predicting fundamental home values, they should drive home prices down, rather than up. This serves to validate the opinion of many financiers and economists who look on the Chinese housing market with apprehension. However, as a second consideration, this mispricing does not necessarily suggest an impending crash. This should be determined in light of the short-, medium-, and long-term implication of current market conditions in China. In the short term, market momentum and optimism appear to support existing price levels. In the medium term, high levels of savings and limited investment options mean that Chinese investors have few other places to direct their capital. In the long run, it is reasonable to predict that the Chinese government will take appropriate measures to defuse the market departure from fundamental values.

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# Human Rights

## A Cross-Cultural Conception



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## Abstract

On examining the political theories of John Rawls and Charles Beitz, this paper is a product of the perceived disparities between the idealism of human rights theory and the socio-political failures of the real-time human rights corpus. With both theorists serving as the moral and theoretical foundations of the discourse, the loci of their arguments will be presented and dissected in light of contemporary political attitudes. This paper aims to scrutinise the human rights discourse through the lens I believe to be its most damaging: cultural pluralism and a simultaneous tendency toward (neo)-imperialist attitudes. Moreover, with the current literature failing to provide adequately constructive answers, I have endeavoured to present a compelling commentary on where I believe the necessitating changes lie culturally, attitudinally, and politically. In preserving and upholding the Universal Declaration of Human Rights as a productive and morally beneficial basis on which to ground this commentary, this paper assumes 'human rights' to refer to the articles enshrined in this United Nations' document. This conception and the attitudes and actions surrounding it have nonetheless incurred significant and warranted criticism, consideration of which prompted the proposed conception that human rights be defined politically as rights to choose.

## Introduction

The competing cultural perspectives, values, and norms that are inherent worldwide inevitably undermine the project of universalising standards of human rights. Hereby understood as Articles 1 to 29 of the United Nations' Universal Declaration of Human Rights, this paper aims to scrutinise this 'contemporary' conception of human rights as a potential standard of legitimacy for all political societies. More succinctly, it will be argued that human rights should be considered a legitimate moral standard in the twenty-first century. Yet, in order to be so, their conception must metamorphose, shaking off the detrimental attitudes and self-interested actions that it has historically been associated with. These attitudes and their corresponding actions will be fully outlined with reference to the work of Kenyan-American legal professor Makau Mutua.

The single greatest castigation against the current human rights doctrine lies in its failure to acknowledge and its inability to accommodate the fact of 'cultural pluralism'. Definitions of cultural pluralism vary between the descriptive and the prescriptive; the former refers to the

distinct multiplicity of cultures the world now boasts, whereas the latter advocates for the capacity of minorities to participate fully in dominant society while at the same time preserving their cultural differences. The charge of the descriptive account against the human rights discourse will be represented by Mutua's arguments in the ensuing sections. As we reconstruct the human rights discourse, attention must be paid to the dangers of ethnocentricity: the belief in the superiority of one's own cultural heritage and its accompanying traditions. Nonetheless, Islamic legal scholar Abdullahi An-Na'im is astute in his assertion that the perceived challenge of cultural relativism should neither be underestimated, nor found to be absolute in its denial of human rights as a standard of legitimacy (An-Na'im 1995, 3). A constructive balance between cultural pluralism and the theoretical universalisation of human rights will therefore be pursued. In this way, this paper will advocate for a political conception of rights similar to that of Beitz: acknowledging the instrumental role of human rights in politics while at the same time recognising their differing value across cultures.

Firstly, this paper will present both Charles Beitz and John Rawls' political conceptions of human rights; arguing that human rights *should* be a standard of legitimacy for *all* political societies. Secondly, through exposing the controversies within the current discourse regarding culturally imperialist philosophies, Western-centric ideals, and institutionalised power differentials, this paper argues for a universally legitimate conception of human rights that is both political and cross-cultural. Although not enough weight is currently given to the negation of non-Western cultural norms in the doctrine of human rights, it will be argued that considerations of the very presence of cultural pluralism are not, in and of themselves, significantly damaging enough to the discourse that they warrant the limiting of its scope or legitimacy. The negation of these non-Western norms must nonetheless be sincerely addressed. It must be acknowledged that norms have always required a dynamic process of redefinition, and human rights must be accorded the same constant reformulation in order to gain *and* maintain legitimacy. Whilst the incompatibility of certain rights is not denied, the project of this paper is to formulate a constructive approach that will provide a cross-cultural basis of legitimacy for human rights.

## A Standard of Legitimacy for All Societies

Human rights are norms that recognise the intrinsic worth and dignity of individuals, and consequently aim at the protection of their legal, political, and social abilities (United Nations 1948). In so doing,

most human rights impose duties on their addressees, whether positive or negative. These rights coexist and are applied universally. Notably, this universality does not necessitate global *or* individual acceptance: “human rights are supposed to be universal in the sense that they apply to or may be claimed by everyone” (Beitz 2001, 274). They exist independent of law and cultural practices and have come to prevail as a standard of assessment, evaluation, and criticism of institutions both domestically and internationally (Beitz 2001, 264). Nonetheless, increasingly human rights have been abused as a tool of foreign policy, devastating their global legitimacy. We need only look to the speeches of US President George W. Bush on Iraq in the aftermath of 9/11—particularly the proclamation made on Human Rights Day, 2001—to evince the ways in which human rights have been cited to garner public support for interventionist policy motivated by a plethora of other, concealed, factors (Bush 2001). Often serving a purely instrumental political function, the guise of human rights has been employed to protect national interests, ‘justifying’ deterrent or coercive foreign policy such as economic sanctions or military intervention (Nickel 2014). This epidemic has been rife in various cases in the Middle East, for example, a region that has suffered from third party interventionism since long before the Arab Spring.

### On the Rejection of Natural Rights

The foundations of human rights are subject to debate; there are those that believe in natural rights, whether God-given or secular, those that refer to a minimal denominator of rights that are consistent in every society, and those that conceive of human rights in terms of the purely political (Nickel 2014). While the US Declaration of Independence of the eighteenth century historically enshrined the God-given rights to life, liberty, and happiness, twenty-first century proponents of Islamic schools of thought have criticised the United Nations’ human rights doctrines for failing to be adequately derived from divine authority (Currier 1841). As an inherently ethical entity, human rights transcend to the core of moral laws, making the corpus vulnerable to debate on both their content and derivation. In this way, religion is a parochial arena in which the possibility of universality is inherently hampered. The project of the human rights discourse must not be to intervene in the practices of such religions, yet it must also avoid exacerbating or creating cleavages between them. The natural or divine basis of human rights is hereby rejected.

### On the Affirmation of Political Rights

John Rawls proposed a political conception of human rights in *The Law of Peoples* and understood the nature and justification of human rights in light of their political roles in international relations. For Rawls, human rights are a special class of *urgent* rights that would be satisfied by any ‘decent’ society: freedom from slavery, freedom of conscience, and freedom from genocide (Rawls 1999, 79). These rights are defined by their roles in determining the normative obligations of the international community; their fulfilment is a necessary condition of the society’s political institutions, and it determines the justification for forceful intervention or economic sanctions (80). Moreover, Rawls conceives of these human rights as “binding on all peoples and societies, including outlaw states” (80-81). With this conception, Rawls succeeds both in creating a list that is non-parochial (and therefore attractive to countries outside of the scope of liberal democracy) and evading the justification of intervention on the grounds of weaker, or more ‘controversial’, rights (Nickel 2014).

Charles Beitz too advances a political, yet also teleological, conception of human rights. However, he disagrees with Rawls’ view that the political roles of human rights necessitate such an abbreviated list of rights themselves. Instrumentally, Beitz acknowledges that human rights are often used to determine eligibility to economic or development programs, as standards of monitoring for nongovernmental organizations, or to intervene in domestic affairs (Beitz 2001, 269). Such measures can constitute “a kind of postcolonial imperialism”, wherein persevering colonial attitudes of domination and hierarchy continue to permeate structurally in international socio-economic institutions and discriminatory systems of global governance (270). These measures thus need to be balanced normatively against an understanding of their potentially detrimental global socio-political and economic implications. Nevertheless, while Beitz recognises the pertinent ideological critique that cultural pluralism presents, he considers it to be an insufficient justification for limiting the scope of a plausible doctrine of international human rights (270). For Beitz, a legitimate doctrine of human rights should be capable of three kinds of roles: constraining domestic constitutions and international organisations, describing contemporary goals for social development, and forming grounds for political criticism and appeals to global political actors (277). Therefore, he settles on a doctrine of human rights that is ‘common’ to all reasonable persons and their corresponding conceptions of the good. In this way, he argues that the culturally and politically non-partisan nature of the human rights

doctrine does not illegitimate it—there is broader scope and utility to the doctrine in the political realm.

## A Contemporary Standard of Human Rights

The Kenyan-American legal scholar Makau Mutua identifies five salient critiques of the current human rights discourse that significantly hinder its international legitimacy. Firstly, he correctly argues that the human rights corpus is fundamentally Eurocentric; recasting states into their historically colonial positions of superiority and subordination (Mutua 2001, 204). In so doing, it overlooks both important non-Western struggles in the human rights movement, and non-Western norms themselves, an observation Mutua could make first-hand as the founder and chair of the Kenya Human Rights Commission. Secondly, his three-dimensional Savages-Victims-Saviors metaphor demonstrates the construction of a dichotomy between the Western ‘saviour’ and the ‘barbarism’ or victimisation of Third World practices and people, as well as the lack of cultural cross-contamination and the ideological project of “the transformation by Western cultures of non-Western cultures into a Eurocentric prototype”, all exhibited by the canon (Kenyan Human Rights Commission 2016, Mutua 2001, 205). The third and fourth critiques elucidate both the arrogant and biased rhetoric used by the corpus, and the global power differentials it ignores; prompting Mutua to call for a movement that not only addresses its Eurocentrism, but also acknowledges the deeply asymmetrical power relations within cultures, genders, religions, and ethnic groups (Mutua 2001, 206-207). Finally, Mutua believes that his metaphor illuminates the perpetuation of racial connotations by the human rights narrative; they serve as a self-redemption project for privileged white societies to ‘civilise’ ‘inferior’ peoples (208).

In light of Mutua’s critiques, and the political conceptions advanced by both Rawls and Beitz, this section presents a constructive, dynamic conception of human rights that is simultaneously cross-cultural and political. The above identified problems that have been exhibited by the human rights discourse are not innate in human rights themselves. As political entities, human rights are reflective of real-time politics, and thus necessitate self-criticism and the acknowledgment of the history and rhetoric that shaped them. This history should neither define the doctrine moving forward, nor be the subject of tactful cognitive erasure. Just as Beitz posits that the nuances of cultural pluralism are not sufficient to warrant the limiting of the human rights’ corpus and the scope of its powers, I will add that the lack of global legitimacy

accrued by the movement of late (since the aforementioned US foreign policies in the Middle East, for example) indicates a global requirement to accommodate and promote cultural pluralism. It is imperative that the human rights discourse reconsider its binary perspective of Western values and norms, and its corresponding Eurocentrism. I will argue that this be addressed in two critical ways: through the recognition of the dual aspects of the International Bill of Rights as equal in value, and through the incorporation of a more cross-cultural approach to universal norms.

The International Bill of Rights is simply a collective term for the Universal Declaration of Human Rights and two international covenants: The International Covenant on Economic, Social, and Cultural rights, and the International Covenant on Civil and Political Rights (Beitz, 2001, 271). The ideological distinction between *classes* of rights originated in the separation of these two covenants. Historically, whilst the West has focused on political and civil rights, or first-generation rights, non-Western nations have preferred to focus on economic and social second-generation rights – an ideological struggle that dates back to the Cold War (Nickel 2014). Yet, it is important to recognise that human rights are ideologically *indivisible*: civil and political, economic and social rights are interrelated, and therefore theoretically co-equal in importance (United Nations 1948). Post-Cold War Western hegemony has perpetrated the ideological focus on Western ideals, and the corresponding prioritisation of civil and political rights by the international community. This is exemplified starkly in the work of international non-governmental organizations, who’s campaigns primarily focus on violations of civil and political rights such as freedom of expression in authoritarian regimes, or gender-based campaigns in religious regions (Mutua 2001, 216). This scrutiny has been seemingly zero-sum in its nature: with the focal point as civil and political abuses, socio-economic violations of human rights are continuously underrepresented in the global court of public opinion. This prioritisation has prompted several of the problematic developments addressed by Mutua: both the impression that the Western human rights record is faultless relative to the perceived Third World ‘savages’, and that socioeconomic rights are inferior in importance. With this hierarchical ideological distinction persisting between classes of rights, the socioeconomic disparities that are rife in the West—such as gender pay gaps—go unexamined in the face of civil and political violations in, for example, Saudi Arabia. The monopolisation of the human rights discourse by Western states perpetuates and augments these disparities in a self-interested and protectionist manner. For as long as this monopoly is allowed to persevere, Western states will be

(self)-accredited a distorted abundance of global legitimacy regarding human rights—at the expense of both this same legitimacy for non-Western states, and for the discourse itself.

Rawls' minimal list of human rights 'proper' neglects many fundamental freedoms that we consider imperative today—taking into consideration only Articles 3 to 18 of the Universal Declaration of Human Rights. Since Articles 1 to 19 are civil and political rights and Articles 20 to 29 are socio-economic rights, Rawls' conception of human rights 'proper' perpetuates this Western prioritisation of liberal values. For Rawls, human rights are 'common' to all *decent* societies—those non-liberal societies whose basic institutions and beliefs meet his specific conditions of political rights and justice—yet, his application of these human rights extends even to outlawed states (Rawls 1999, 80). With this extended applicability of prescribed civil-political rights to non-liberal societies, it becomes evident that Rawlsian intervention to protect human rights could not always be consistent with the conventional moralities of the concerned societies (Rawls 1999, 79-81; Beitz 2001, 275). This, compounded with his prioritisation of (Western) human rights 'proper', highlights the capacity for Rawls' conception of human rights to justify political intervention on the grounds of violation of political and civil rights, but not for socio-economic rights—a disparity that encourages abusive intervention and, therefore, the illegitimacy of the discourse.

It is undeniable that civil and political rights are non-neutral, in the sense that they are not endorsed by all political moralities in the world; yet, to invalidate civil and political rights on account of their emergence from Western philosophy would be to commit a genetic fallacy (Beitz 2001, 278). Similarly, the subordination of socio-economic rights by the West does not ascertain their value (or lack thereof). That is to say, although the various perceptions of human rights are problematic for legitimacy, they are not pragmatically irreconcilable. In order for human rights to be considered a standard of legitimacy for *all* political communities, these two branches of the human rights corpus must be equally valued in international relations. The West frequently violates rights too; the shift in focus towards a more balanced analysis of international human rights abuses in this regard would therefore prevent the discourse from emphasising solely Third World abuses—a step away from the implications of Eurocentrism discussed by Mutua.

Beitz asserts that “the doctrine of human rights is a political construction intended for certain political purposes and is to be understood against the background of [...] the contemporary international

environment” (276). Yet, the current conception of human rights does not accurately reflect the contemporary international community—the most salient reason for its legitimacy deficit. Abdullahi An-Na'im emphasises the inextricable influence of culture on an individual's moral compass: “culture is a primary force in the socialisation of individuals and a major determinant of the consciousness and experience of the community” (An-Na'im 1995, 23). That is to say, the legitimacy deficit currently plaguing the human rights discourse is better understood in light of the innate value attributed to the cultural compass. Without an alignment of broader cultural values to those reflected in the discourse, the corpus cannot expect to gain traction. As such, cultural sanctioning of normative propositions is indispensable in enhancing the legitimacy of human rights standards (20). Beitz too acknowledges that “the idea of a right is itself culturally specific” (Beitz 2001, 273). Consequently, human rights standards continue to boast significantly more legitimacy in the West, by virtue of their formulation in the works of Western philosophers such as John Rawls, and specifically Eurocentric norms.

It is critical to recognise that a paradox exists in the characteristics of culture; between the necessity of cultural stability and the dynamic of continuous change (An-Na'im 1995, 27). Cultural changes are induced by both internal influences—such as movements prompted by 'norm entrepreneurs'—and external influences, accelerated by processes such as globalisation. In order for these adjustments to be 'natural', they must occur through culturally approved mechanisms, pre-existing norms, and the relevant institutions (27). The problems inherent to (neo)colonialism were that the majority of cultural changes were neither natural, nor legitimately approved and internalised—they were impositions. Furthermore, just as political societies are not homogenous, cultural norms are ambivalent and susceptible to different interpretations. Therefore, in order for human rights to be considered a legitimate standard across *all* political societies, the process of their internalisation as norms cannot be forced: a grant that intervention is directly detrimental towards.

To demonstrate the practicalities of this argument, let us take the controversial example of female genital mutilation (FGM). Western rhetoric of 'mutilation' and 'savagery' has urged the international community to condemn the cultural practice; yet it is sustained by cultural acceptance. Nevertheless, the relevance of discussing the dynamism and importance of cultural internalisation lies in the stark rejection of cultural imperialist attitudes in favour of a multilateral approach to human rights. Practically, this entails upholding cultural

values and emphasising *choice*. The right to political participation—to vote—does not necessitate that we actually participate: a right is not a requirement, but rather the protection of an individual's capacities. Correspondingly, a girl must have the right to *choose*; whether to assert her right, or participate in her cultural practice. The human rights corpus must therefore actively facilitate and empower an individual's capacity to choose, whilst not intervening in the decision itself. In *Gender Trouble* (1990), Judith Butler similarly argues that the content of various societal gender norms is always dynamically evolving (Butler 2008, 62). This culminates in the notion of norm 'resignification': the constant alteration of norms through societal acts and individual choices (63). One girl's capacity to choose to act on her human right to prevent her own genital mutilation contributes to this norm evolution, yet her choice must be allowed to take place in the absence of the scrutinising burden that the human rights doctrine and its moral prescriptions currently impose on non-Western practices.

At the same time, the political value of the different classes of rights needs to be balanced. Multilateral institutions will protect the legitimacy of the human rights doctrine through preventing its unilateral abuse by Western liberal powers. It is evident that culture and human rights are institutions that evolve dynamically over time, thus in order for these institutions to evolve simultaneously and equally, the system *must* adjust to formally represent the *contemporary* international environment. A withdrawal from the politics of humanitarian intervention and cultural imposition is required. The human rights doctrine will only reflect the contemporary cultural composition of the international sphere when it can acknowledge both its origins, and the consequent necessary prohibition on asserting moral prescriptions. A human right must be understood as one's ability to *claim* their right and be supported in doing so—through education, material and psychological support—not as a universal, enforceable *prescription* for how one *should* act.<sup>1</sup>

## Conclusion

This paper has argued that the United Nations' political conception of human rights *should* be a standard of legitimacy for all political societies in the contemporary world. Yet, on scrutinising the frustrations of the United Nations' human rights corpus through discussion of manipulation, intervention, and neo-colonial tendencies, it is evident that the contradiction between ideal theory and its practical application

has been so severely manipulated that both have now been jeopardised. A political conception avoids the parochialism of religion, recognising that by virtue of their role in public ethical life, rights are inherently political. Rawls' political conception has been rejected for its insufficiency in protecting the broad range of internationally supported rights, and for its corresponding sustenance of the Western-centric subordination of more socialist rights. Nonetheless, this paper has advocated for a political conception of rights similar to that of Charles Beitz: a conception that acknowledges the role of human rights in politics, but at the same time recognises their differing values across cultures. Yet, Beitz neglects to give a more concrete list of human rights, and to acknowledge that in conceiving rights as common to all 'persons' rather than 'peoples', his Western atomistic perspective is inherent.

Through exploring the inherent influence of culture on norms and their legitimacy, it has become apparent that for a conception of human rights to be regarded as legitimate for *all* political societies, it must be internalised naturally, not through coercive employment or diplomatic incentives. Consequently, the human rights corpus should focus on the means through which human rights claims—such as in the case of FGM—can be upheld once they are made, rather than their forced implementation. At the same time, it is imperative that the ideological monopolisation over the human rights narrative by the West be countered through effective balancing—of the International Bill of Rights and multilateral institutions—in order to more accurately represent the contemporary international environment. Human rights must be understood as the facilitation of choice, not the prescription of the outcome of an inherently socio-political or moral decision.

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<sup>1</sup> Yes, this assumes the atomistic (primarily Western) perception of human rights as individualistic—a distinction that lies outside of the scope of this paper in terms of justification.

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