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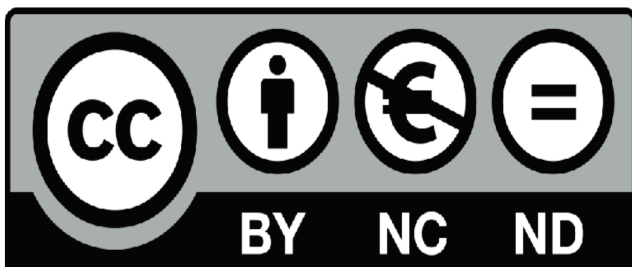
Flux operates out of Montreal, located on the traditional territory of the Kanien'keha:ka, a place which has long served as a site of meeting and exchange amongst nations. The Kanien'keha:ka are the keepers of the Eastern Door of the Haudenosaunee Confederacy. In writing about political science and international relations we strive to incorporate diverse voices and bear in mind the forces, including (neo) colonialism, which have shaped the way we understand international relations. We encourage all readers to inform themselves on and actively resist, in the diverse forms that resistance can take, (neo) colonialism in Canada and abroad.

FOREWORD

I am honoured to have overseen the team that made the twelfth edition, issue two of *Flux: International Relations Review* possible. In this issue, our team of writers, editors, designers, and reviewers have worked incredibly hard to produce an exceptional journal.

Flux: Volume XII, Issue II, consists of eight original articles showcasing some of the best international relations research produced by McGill's undergraduate students. This volume proudly celebrates one of Flux's most diverse editions yet, covering a breadth of international relations topics. First, Charlotte Blouin explores the racialized military and security response of surveillance to the Black Lives Matter Movement in North America. Moving to Hong Kong, Naomi Shi traces the evolution of Hongkongers' understanding of their identity in film. Elis Nascimento Lima's piece, "Mercosur: A Common Market or an Incomplete Customs Union?" considers a Latin American initiative aiming to improve trade liberalization. In "Rawabi: A City of Resistance and Unity or Defeat and Disjuncture?" Ava Klein delves into a rising project of Palestinian nation-building. Margo Xue's "Gender Equality as Smart Economics" foregrounds the issues of gender dividend assumptions. In "Determination Met with Marginalization: A Case Study on The Nigerian Civil War," Gabriel Klein examines the history of Nigeria and the British Empire. Margo Xue then pivots us to probe corporate responsibility through the UN guiding principles on business and human rights. Finally, Kareem Faraj takes us beyond the global perspective in "Do look up: Current Challenges and Needed Reform in International Space Governance." These topics illuminate some of the most relevant and emerging developments in international relations research in the twenty-first century.

This journal would not be possible without the help of our incredible directorial team and all of the dedicated reviewers and designers who contributed to its development, as well as the teams of editors and authors who worked tirelessly amid an ongoing pandemic to prepare, polish, and elevate these academic pieces.

I would especially like to thank our managing editor, Shira Garbis, for her continued support, vision, and dedication throughout this process. Additionally, Flux's efforts in expanding the inclusivity and diversity of our journal would not have been possible without Isha Shahane, our Director of Team and Reader Engagement. I would also like to thank Jennifer Innes, our library liaison, for providing resources and advice throughout this cycle. Lastly, I would like to thank IRSAM, its members, and the Board of Directors for their continued support.

As my time leading Flux comes to an end, I am excited to see this journal continue to flourish and inspire many more in the field of international relations. I hope you find this issue as insightful as I did.
Thank you for reading.

Best,
Madelyn Evans
Editor-in-Chief of *Flux: International Relations Review* 2021-2022

TABLE OF CONTENTS

Racialized Surveillance – A Militarized and Securitized Response to the Black Lives Matter Movement in the United States and Canada

Charlotte Blouin
Edited by Lavinia Auhoma and Rory Daly

AUTHOR'S NOTE

In this paper, I hope to call attention to the hidden nature of modern forms of state power and coercion, which act as systems of control for Black communities. By focusing on the strength of "self-surveillance", computer mediation and social networks, as well as the racialization of crime, it is my attempt to emphasize how American and Canadian surveillance strategies and technologies interact and coexist with racial capitalism. I would like to thank Professor Douek, who's storytelling, caring teaching and inspirational perspectives have had a key impact from my first to final year of study at McGill, and who's insights have made this piece possible. My partner Thien Van has been amazingly supportive and involved, and our conversations have energized me into writing this article. I am eternally grateful to my friends and family, especially my late grandmother, who's proud example has kept me going. I hope you enjoy reading.

Abstract

The multiple instances of state violence towards Black communities in recent years in the United States and Canada spark the following question: why does Canada and the United States engage in securitizing and militarized strategies as a response to the Black Lives Matter movement? This paper first argues that the United States and Canada have incentives to engage in the production and protection of a racialized hierarchical order. In doing so, it becomes apparent that race and class go hand in hand in caring for the survival of capitalist interests. The paper then focuses on the surveillance mechanisms and strategies that the American and Canadian states use to protect this White supremacy that is so necessary for capitalism to thrive, and studies the ways in which the American and Canadian states generate and promote a context of perpetual self-surveillance on the BLM movement and on Blackness in general. This transitions into an examination of the strategies of the two states in engaging in surveillance capitalism, or computer mediation, as a way to deter and restrict Black association in the context of the fight for justice. Lastly, this paper analyzes the rhetorical characterization of BLM as a racist discourse that seeks to weaken the fight for Black freedom's popular support.

Introduction

In July 2013, George Zimmerman, a "neighborhood watch volunteer" was acquitted for the fatal shooting of seventeen-year-old unarmed African-American Trayvon Martin in Sanford, Florida. As anger rose within Black communities in reaction to the event, three women organized collective frustrations about ongoing institutional racism, gun violence and discriminatory policing practices around a grassroots movement building project called #BlackLivesMatter (BlackLivesMatter. com 2021). With the deaths of Eric Garner and Michael Brown at the hands of the Ferguson police in 2014, the movement then grew to be more than a social media hashtag – peaceful protests and riots came about, sparking a vigorous debate about the relationship between law enforcement officers and African Americans. Facing the establishment of curfews and the deployment of riot squads to maintain order, this debate expanded to the militarization of police. For example, during protests in Baltimore in 2015, the state of Maryland called in the National Guard, and, in 2020, the George Floyd protests across the United States, including in the nation's capital, were met with tear gas, violence

and arrests (Chavez 2021). The 2016 BLM Toronto protests, following the clearing of the police officer who fatally shot Andrew Loku, were revealed to have been monitored through social media, while its most prominent organizers had been surveilled by the police (Davis 2018). Likewise, throughout Canada, the protests following the deaths of George Floyd in Minnesota and Regis Korchinski-Paquet in Toronto were monitored by Canadian military intelligence. Moreover, a section of their report on BLM was titled "Hostile Foreign Actors" (Pugliese 2021)— clear evidence that the Canadian state felt the need to engage in securitization as a response to the events.

These instances of violent reactions by the state spark the following question: why does Canada and the United States engage in securitizing and militarized strategies as a response to the Black Lives Matter (BLM) movement? This paper argues that the surveillance of the BLM movement specifically, and the surveillance of Blackness in general, act as a system of control which works to protect racial capitalism in the United States and Canada. Thus, racialized surveillance strategies, which encompass securitized and militarized tactics, carry themselves as guardians of American and Canadian capitalist

power. They rely on racial exploitation as they work to monitor, control and restrict the movements and rights of Black Americans and Canadians. To illustrate these concepts, it is necessary to revisit the historical origins and processes of racialized forms of surveillance and covert violence in the United States and Canada that have come about in order to be able to draw conclusions about the present and future. Then, to demonstrate how the surveillance of BLM protects ongoing forms of state power, one must look at the state interests that demand for Black movements and rights to be controlled, thus providing an analysis of how the two states incentivize engaging in securitizing and militarized strategies when facing popular social movements like BLM. The paper then attempts to make legible the layers of surveillance that shield American and Canadian capitalist and anti-Black power from challenges to the status quo. It does this through revealing how self-surveillance works to preserve and perpetuate Black subjugation. It then continues its study by offering an overview of computer mediation and social media networks surveillance as deterrents of the freedom to associate. Finally, the criminalization of BLM and of Blackness as a tool of White supremacy and capitalism is discussed.

State interests in controlling Blackness

Before gaining an understanding of the strategies used by the United States and Canada to surveil the BLM movement and Black lives in general, one must recognize the stakes held by the two countries in controlling Blackness and in limiting their Black citizens' pursuit of freedom and justice.

Racializing capitalist exploitation

To do so, we must first racialize capitalist exploitation: as Robinson (2020) theorized, the devaluation of Black and other non-white bodies is a central feature of how classed identities are imagined. Indeed, culturally and socially constructed differences such as race, gender, region, nationality create more ways in which capitalists can accumulate more power

and profit than otherwise would be possible. Thus, for the United States and Canada, racialized surveillance techniques act as guardians of the capitalist status quo that benefits Whiteness, since Black activist organizations (like BLM) pose a serious threat to both the international influence as well as to the economic prosperity of Whiteness. For Western nations, the white supremacist state they created and promoted through the devaluation and demonizing of Black and brown bodies in the context of colonization and in the Transatlantic slave trade is the apparatus that built their wealth and power then and now. Thus, with the anticolonial liberation movements of the Global South emerging in the years following the Second World War as well as through the civil rights and Black liberation movements overturning Jim Crow style racism in the United States and Canada, the legitimacy of this hierarchical racial order started to be seriously threatened (Maynard 2017, 125).

Threatening economic supremacy

However, with the loss of popular support for the eugenicist justifications protecting racial discrimination from sanctions also came a dangerous threat to the very global economic system that has kept European and North American nations so rich and powerful - that is, capitalism. In fact, the use of race and racial hierarchies to justify unequal power relationships and to make them appear natural pinpoints exactly where and why the concepts of race and class converge, thus defining the concept of racial capitalism (Robinson 2020, 17). To illustrate this, one can look at the adoption of the *Multiculturalism Act* as Canadian immigration policy in 1971, an ideology for celebration of cultural diversity has now become a symbol that the Canadian state internationally prides itself upon. In this context of multiculturalism, although "difference" is said to be celebrated, preservation of "culture" acts as an excuse not to enact meaningful policies that would otherwise work to explicitly combat racism and discrimination. White supremacy and devaluation of racialized groups thus

reminds Blackness of its second class position in American and Canadian societies while surveillance strategies let Black people know to what extent they can aspire to go. In other words, surveillance traces the line they cannot cross.

Post-Panopticism

Although the panopticon is a helpful analytical tool for the study of how Blackness is self-surveilled, it must be restructured to reflect the contemporary condition of BLM in the era of surveillance. Indeed, in the case of the BLM movement, observation is not the only element at play: instead, there is pre-visualization where simulation, profiling, and prevention occurs. We understand this in the context of BLM as the pre-emptive suppression of dissent by privatized and militarized police agencies, which we'll discuss in more depth in the section on computer mediation and social networks. In today's information economy, one must consider the panopticon's polarity, where the few are monitored by the masses. As personal data gets increasingly mined online and offline, society becomes progressively afraid that others aren't paying attention and thus we divulge mindlessly and overshare (Browne 2015, 39). As a result, racialized surveillance gets both facilitated and more specific for the American and Canadian states trying to protect racial capitalism.

Finally, we adapt the panopticon to our current societies that are shaped by consumption and enjoyment imperatives. Where individuals in the West generally consider mobility within society as an oxymoronically required luxury; the vanishing point of the panopticon is not in the middle, but at the margins (Boyne 2000, 287). In other words, a sort of border control that evaluates who is entitled to enter the sociocultural centre generates a self-surveillance of Blackness that impacts what the BLM movement feels it can aspire to change and do. This is best illustrated by W.E.B. Du Bois' concept of "double consciousness" as well as Frantz Fanon's work in *Black Skin, White Masks (2018)*. For Du Bois, the African American (and Canadian) experience is marked by both "always looking at one's self through the eyes" of the racist White society and by "measuring oneself by the means of a nation that looked back in contempt" (Du Bois 2015, 17). Similarly, Fanon discusses how the violence of the colonizer, through the elimination of the colonized person's identity and culture as well as through the delimitation of spaces occupied by the two groups, automatically facilitates the violence of the colonized. Indeed, as an attempt to retrieve dignity and a sense of self and history, the subjugated engages in the anti-colonial struggle. This internal conflict experienced by a subordinated group in an oppressive society, such as the BLM movement, makes the fight for freedom and justice extremely complex and difficult to navigate.

Surveillance also corrupts the psyche of the Black individual, leading to internalized shame that restricts Black participation in freedom movements. An example of this is explored by Freeden Oeur, who argues that hyper-surveillance dehumanizes Black youth, leading them to strive for anonymity (Oeur 2016, 10) and preventing them from engaging with very public-facing movements like BLM.

Computer mediation and social media networks

Similarly, post-panopticism extends to contemporary online environments. The preemptive suppression of dissent goes much further than by only creating a "White space" that promotes Black Americans and Canadians to self-surveil – both nations also actively deter Black dissent through computer mediation and social media networks, which itself is made possible by state cooperation with privatized and militarized police agencies. To understand how this works, one must unravel another layer of the multitude of surveillance strategies that the United States and Canada employ.

Identifying Black bodies

There is a long history of branding Blackness through biometric technology in the United States

and Canada. Biometrics is defined as the means of body measurement put to use to allow the body to function as identification. In the transatlantic slave trade, biometrics were the measure that defined slavery: marking and marketing Black bodies commodified the Black subject (Browne 2015, 26). Later, census and passes acted as "state stocktaking" as it rendered a population codifiable in racializing and gendering ways (Browne 2015, 56). Moreover, the modern information economy forces Black youth into anonymity, as discussed in the section on self-surveillance, which then deprives them of identity. In an attempt at recovering a sense of individuality, the need to overshare online is stimulated, which offers the US and Canada important and large amounts of scientific and mathematical data that they can turn into equations and algorithms to satisfy their surveillance needs. In the context of BLM, facial recognition and social media publications have become the biometric tools of choice for these oppressive states.

Several facial imaging systems, such as Amazon's Rekognition, are deployed by law enforcement despite reinforcing oppressive social relationships and enacting new models of racial profiling. During a demonstration in 2018, Amazon's technology falsely matched 28 congresspeople to images in mugshot databases, which are disproportionately populated with Black and brown individuals as a result of the over-policing and criminalization of Black and brown communities (Williams 2020, 576). Furthermore, these same systems are not coded neutrally and are thus shown to be worse at identifying Black faces. The technology that is most likely to be used on Black populations is less likely to be able to distinguish between Black individuals (Williams 2020, 577), enabling racial profiling.

Similarly, the use of third party software that targets specific social media posts' locations and hashtags makes it easier for the two states to identify and target participants and sympathizers of BLM. An instance of this racialized surveillance of BLM was reported by the Oregon Department of Justice (DOJ)

when an investigator conducted a "threat assessment" on an African American employee of the DOJ after he found content related to #BlackLivesMatter on the employee's Twitter profile (Toor 2018, 311-12). Another example can be taken from the Ferguson demonstrations of 2014, when the US Department of Homeland Security collected information (including location data) on BLM participants' peaceful activities via public social media accounts such as Facebook, Twitter and Vine (Canella 2018, 385). These cases represent some of the many situations where surveillance technologies are being used by the state as instruments to measure the level of threat that a Black individual poses to the United States and/or Canada. Finally, biometrics are inseparable from the banopticon, a portmanteau of the words biometrics and *panopticon*, which indicates a technology that serves to determine who to place under surveillance (Browne 2015, 32). Thus, by understanding how Black bodies are digitally identified by the two states studied, how they are monitored online and offline through computer mediation can finally be considered.

Digital surveillance

Online biometric strategies facilitate the identification of the participants and sympathizers of the BLM movement, enabling Canada and the United States to put their surveillance techniques to work. Digital surveillance tools, enabled by online biometrics, instill fear in Black activists and discourage non-Black allies from joining the fight for social justice by exacerbating patterns of neoliberal policing and behaviours. The 'neoliberalization' of law enforcement refers to policies that privatize policing, corporatize public resources and commercialize physical and digital spaces in ways that criminalize dissent and pre-emptively suppress radical movements (Canella 2018, 379). In fact, public-private partnerships for the surveillance of BLM activities on public social media accounts acts as an intimidation tactic that effectively chills protest movements. The Fresno Police Department in Northern California illustrates

this. The agency/organization reportedly used third-party firms to conduct online surveillance of BLM using hashtags. The Baltimore Police Department, similarly, used geo-location on social media posts that came from local public demonstrations and marches which were specifically organized to combat police brutality and systemic racism (Canella 2018, 385). Communication technologies also have a diffusion effect on law enforcement tactics as they promote the sharing of best practices for policing protests. For the BLM movement and its supporters, this has translated into being disproportionately more surveilled than other social justice movements (Canella 2018, 380). These online and offline governmental surveillance strategies applied to BLM prevent social media networks from being platforms for creating expressive associations as they are supposed to be, and serve as a deterrent on the exercise of associational freedom.

The Criminalization of Blackness

Another powerful tool of the American and Canadian racial capitalist state is to, at best, promote an anti-Black racist discourse, and at worst, criminalize the very concept of Blackness in order to reduce or block popular support for Black justice movements like BLM. To justify this argument, an analysis of systematic mass arrests and the carceral state is necessary before exploring the racialization of crime as a method for delegitimizing BLM.

Systematic mass arrest and the carceral state

Sewell et al (2016, 288-89) relate the history of surveillance and over-patrolling of Black communities to that of the carceral state as a way of introducing the rationale behind criminalizing Blackness in order to protect White supremacy. In the United States, Nixon's war on drugs that harshly criminalized and controlled substances and incarcerated hundreds of thousands of Black men, Reagan and Bush's Anti-Drug Abuse Act that targeted low-income communities of color and gave police officers permission to "search and

destroy" Black men, as well as the popularization and moralization of "stop and frisk" practices, through the myth of the deviant black male, are some powerful examples of the prevalence of hyper-surveillance of Blackness. The current state of unjustified shootings of Black men at the hands of law enforcement as well as of the disproportionate representation of Black men in prisons is thus a logical consequence of these hyper-surveillance attitudes. With higher incarceration rates also comes a loss of social well-being for Black communities: for incarcerated individuals, access to public housing, food stamps, federal education grants and loans, employment as well as the right to vote are all in jeopardy of being lost. These penalties extend to the families of those Black individuals as well: it strips Black communities of the human and financial capital needed to combat generational poverty. It also impairs social networks that work as sources of emotional, financial and social support (Sewell et al 2016, 291). Thus, as mass incarceration and Black poverty were created in the United States and Canada, holding a discourse of racism and making the socioeconomic situation of Black communities appear "natural" was convenient for the two states.

The racialization of crime

Through upholding a racist discourse on the mass incarceration of Black men, Lowe argues that the American and Canadian states were able to develop racialized notions of criminal threat that reinforce boundaries and reproduce the perceptions of Black men as criminals (Lowe, Stroud and Nguyen 2017, 35). Indeed, Sewell et al show that that is how the "Broken Windows" theory came to be popularized. This concept, which claims that minor criminal offenses, if left unrepaired or uncorrected by the police, will later contribute to the prevalence of more serious property and personal crime, is a way of justifying common arrests of Black men for nonviolent crimes (Sewell et al 2016, 290). Worse, this criminalization of Blackness can extend to the public attempting to justify police misconduct and homicide, as was seen during the

episodes that sparked the BLM unrests throughout the United States and Canada. For the BLM movement, the racialization of crime has a significant influence on which tragedy will matter and to what extent the BLM movement will have the support of the public. Therefore, Wang (2018, 261) argues that innocence becomes a precondition for the fight for civic rights.

To illustrate this point, she points to the case of a seventeen-year-old boy named Isaiah Simmons, who died in a Baltimore juvenile facility after counselors suffocated him and failed to call for medical assistance for more than forty minutes. Wang contrasts the (lack of) public outcry towards Simmon's death, due to him being in a juvenile facility, to the one of Trayvon Martin in order to show how "innocence" is used as a necessary foundation when addressing anti-Black violence. For the BLM movement, this criminalization and guilt by association is more true than ever. BLM is often portrayed by the media, but also by the two states studied, as agitators of social unrest, with former President Barack Obama saying that "[BLM] can't just keep on yelling at [elected officials]" (Shear 2016) and former President Trump calling BLM protestors "thugs" (Samee Ali 2020). Through this false narrative, the American and Canadian states attempt to discredit and demonize the movement in order to decrease its popular support.

Conclusion

In this paper, the incentives within the United States and Canada to engage in the production and protection of a racialized hierarchical order have been analyzed. In doing so, it emerges that race and class went hand in hand in caring for the survival of capitalist interests. Focusing on the strategies that the US and Canada use to protect. White supremacy that is so necessary for capitalism to thrive, how the American and Canadian states generate and promote a context of perpetual self-surveillance on the BLM movement and on Blackness in general was then studied. The paper then examined the strategies of the two states in engaging in surveillance capitalism,

or computer mediation, as a way to deter and restrict Black association in the context of the fight for justice as well as how the criminalization of BLM as a racist discourse has been utilized to weaken popular support for the fight for Black freedom. With this knowledge, understanding why the United States and Canada engage in securitizing and militarized strategies in response to the BLM movement becomes clear – it is to defend their capitalist state power. To sum up, surveillance strategies like arranging self-surveillance, computer mediation and the racialization of crime are developed to control Blackness, to deter dissent and to demonize the BLM movement so that forms of state power that rely on racism (i.e. capitalism) would be protected.

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Return Catalyzing Departure: Analyzing Hong Kong Identity in Film Before and After 1997

Naomi Shi
Edited by Jasmine Lam and Juliana Blayney

AUTHOR'S NOTE

I am Chinese-Canadian, but I was born and raised in Hong Kong. Watching the rapid erosion of the one-country, two systems principle – a principle that has so thoroughly defined Hong Kong as a region – over the past three years invoked within me new grievances and anxieties regarding my homeland. With Hong Kong's political autonomy shrinking by the day, I wondered whether its distinct cultural identity would similarly be subject to gradual disappearance. Hence, I wished to re-visit how an autonomous 'Hongkonger' cultural identity formed and trace its development over the critical years before and after the 1997 handover. In my research paper for a class on the Borderlands of Modern China, I chose to track and analyze these changes to Hong Kong's cultural identity through the medium of film.

Abstract

From being ceded by the Qing Empire and becoming a British crown colony in 1842, to formally returning under Chinese rule after the 1997 handover, the past two centuries have witnessed Hong Kong undergo immense socio-political changes that have critically shaped the trajectory of its inhabitants' cultural identity. Though the majority of Hongkongers are ethnically Chinese, with Han Chinese comprising ninety-two percent of the population, many consider the Hongkonger identity to be defined by the distinctions existing between its residents and mainland Chinese residents. Although prior to colonization Hongkongers never pondered the question of their 'Chineseness,' 156 years of rule as a British colony has created physical, cultural, and political segregation between mainland China and Hong Kong. Hence, many Hongkongers today continue to assert individuality — largely defined by their deviation away from 'pure Chineseness' — despite the island's official return to China in 1997.

Considering the factors that have led to the creation of a unique post-colonial Hongkonger identity, this paper will trace the evolution of Hongkongers' understanding of their own identity via the medium of film. Comparing a series of Hong Kong films before and after 1997, this paper suggests that the handover represents a critical turning point in which Hongkongers began to identify themselves with attributes beyond their inherent 'Chinese-ness'.

Introduction

From being ceded by the Qing empire and becoming a British crown colony in 1842 to formally returning under Chinese rule after the 1997 handover, the past two centuries have witnessed Hong Kong undergo immense socio-political changes that have critically shaped the trajectory of its inhabitants' cultural identity. Amidst the current political unrest and escalation of tensions between Hong Kong and China, the 'Hongkonger' identity has been a critical subject of discussion. Although the majority of Hongkongers are ethnically Chinese, with Han Chinese comprising ninety-two percent of the population, many consider the Hongkonger identity to be defined by the distinctions existing between its residents and mainland Chinese residents. Prior to colonization, Hongkongers never pondered the question of their 'Chineseness,' 156 years of rule as a separate British colony has created physical, cultural, and political segregation between mainland China and Hong Kong. Hence, many Hongkongers today continue to assert individuality — largely defined by their deviation away from 'pure Chineseness' — despite the island's official return to China in 1997.

Considering the significant political, economic, and cultural factors that have led to the creation of a unique post-colonial Hongkonger identity, this paper will trace the evolution of Hongkongers' understanding of their own identity through the medium of film. By comparing a series of Hong Kong films before and after 1997, this paper argues that the handover represents a critical turning point in which Hongkongers began to identify themselves with attributes beyond their inherent 'Chinese-ness.' Using film analysis, this paper suggests that although an independent Hong Kong identity had begun developing in the decades prior to 1997, ideological differences in the 1960s had led its inhabitants to differentiate themselves from the mainland Chinese. However, it was the anticipation of the handover (and later the handover itself) that catalyzed Hongkongers' conscious recognition of their own cultural identity as autonomous.

Pre-Handover: Hong Kong After 1967

Self-Censorship After the 1967 Riots: Mainland China as the Ideological 'Other'

Many consider the 1967 Riot, in which mass

protests were organized against the British Hong Kong government by Chinese Communist Party (CCP) supporters, a watershed moment wherein a separate 'Hongkonger' identity began to form. Countless experienced an awakening of political consciousness, ideologically distinct from the mainland Chinese. In response to the ongoing Cultural Revolution in the mainland, in which Mao Zedong's call on young people to purge society of capitalism and the Four Olds (i.e. old ideas, old culture, old habits, and old customs) amounted to extensive upheaval in the social order, CCP sympathizers in Hong Kong similarly engaged in violent protest against the British colonial government in 1967 (Tsang, 188). What were initially labour-dispute demonstrations escalated into large-scale riots, leading to massive bloodshed and chaos, which engendered widespread political division amongst Hong Kong society. The riot participants' espousal of violence significantly hindered the support that Hong Kong's leftist establishment had previously enjoyed, with the constant strikes, riots, and threats of a military takeover by CCP sympathizers serving to unify Hong Kong society against what Chinese communism represented (Tong, 42).

In cinema, local film studios stopped the production of all content relating to communism; such self-censorship reflects the construction of an independent Hong Kong identity — one formed against the presentation of mainland China as the ideological 'Other.' With many of the island's inhabitants developing strong anti-communist sentiments in the aftermath of the riots, film studios ordered an abrupt halt in the production of movies with overtly political themes, knowing local audiences to be generally "scared of anything that even faintly hinted of communism (Foronoff, 305)." Consequently, much of the 1970s saw the proliferation of 'shallow' romances and films that lacked intellectual merit but found tremendous success within the market (306). The popularity of films like *The Adventurous Air Steward* (1974), a romantic comedy following the travels of a bumbling, inexperienced flight attendant in Southeast Asia, highlights the refusal of many Hongkongers to identify with the ongoings in mainland China under the CCP regime. The consumption of escapist entertainment showcases an affinity for films that transported them away from political realities of that era; it reflects an active desire to remain far away from the communist Cultural Revolution occurring across the border.

Bruce Lee and Kung Fu: Chinese Nationalism as Defense Against Colonialism

Although a unique Hong Kong identity had begun developing after 1967 — mainly in negation to what mainland China represented ideologically — Hongkongers remained culturally attached to their motherland. In spite of negative reactions to the 1967 riots, Hong Kong's film industry was significantly influenced by anti-imperialist and anti-colonial sentiments expressed during the demonstrations. The success of nationalistic kung fu movies in the decades following the riots underscored Hongkongers' defensive assertion of their 'Chinese-ness' (either explicitly or implicitly) as a response to their status as British colonial subjects.

Kung fu films re-emerged with immense popularity in the 1970s, featuring repeated storylines primarily characterized by the triumph of the Chinese over foreign foes. Mostly set in the late Qing Dynasty and early-Republic of China era, these films depicted kung fu masters as national heroes who would restore honour and dignity for the Chinese by defeating foreign imperialists (Zhouxiang, 322). Bruce Lee, a Hong Kong martial artist who came to prominence during the 'Kung Fu Craze,' starred in several films with explicit anti-colonial and anti-Western themes. In *Fist of Fury* (1972), Lee stars as a member of the Jingwu School of martial arts in 1910. Confronted by the Japanese taunting the Jingwu School by calling them "weaklings" and presenting them with a sign bearing the words: "Sick Man of East Asia," Lee ultimately breaks the sign and retaliates against the foreigners, symbolizing Chinese resistance against

colonial powers who seek to invade their nation and conquer their territories. The destruction of the sign has significant cultural relevance: as Hong Kong was ceded to the British due to the Qing dynasty's inability to defend against foreign aggression, Lee breaking the sign represents 'Hongkongers' reclamation of their 'Chineseness' despite China's status as 'the sick man of Asia', a term coined to refer to the state of the country after it was taken advantage of by great powers. *Way of the Dragon* (1972), a film in which Lee wrote, co-produced, and directed, is explicit in its expression of anti-Western xenophobia. Starring as a Hong Kong man who travels to Rome to rescue his relative's restaurant from being attacked by Italian gangs; Lee's character uses his *kung fu* skills to defeat mafia opponents. The movie's most famous scene features Lee defeating Chuck Norris, the mafia-recruited karate champion — an embodiment of the might of foreign powers — in their fight at the Colosseum of Rome — an emblem of Western civilization. This scene alone offers a powerful visual symbolization of the Chinese redeeming themselves from their history of subjugation by Western powers.

The recurring theme of anti-foreigner nativism in Bruce Lee's films reflects the discontent of Hongkongers towards British rule and their desire to reclaim an identity beyond that of colonial subjects. Whether that be its extensive depictions of hatred of foreigners or its

protagonists' steadfast assertions of their 'Chineseness,' his films can be interpreted as defensive in nature, often invoking Chinese nationalism to mitigate Hongkongers' reality as dominated and controlled by foreign powers.

Pre-Handover: Hong Kong Between 1984 and 1997

With the signing of the Sino-British Joint Declaration in 1984 heralding the official transfer of the island to Chinese rule in 1997, Hong Kong entered a period of immense socio-political transition. Under this declaration, Hong Kong would cease to be a British colony and, instead, become a special administrative region under the People's Republic of China. However, it would maintain its own governing and economic systems independent from the mainland under the principle of 'one country, two systems' for the following fifty years (Tsang, 226). An analysis of the films produced during this era reflects an early crisis of identity that Hongkongers felt in anticipation of this transition, as movies produced after 1984 deviated from the staunchly anti-foreign themes in the past and featured more ambivalent characterizations of Western presence in Hong Kong.

Jackie Chan and Foreigners: Shifting Depictions of Western Influence

The career of Jackie Chan serves as a prism to view the changing trajectory of Hongkongers' perception of their own cultural identity, given his breakthrough in the late 1970s and his peak in the late 1990s and into the 2000s. Not only did Jackie Chan become the face of Hong Kong cinema domestically, but his performances also captured audiences abroad; many accredit his films with projecting the culture of Hong Kong and its values across the world (Ding, 7).

Re-visiting his films before and after 1984, the significant shift in depictions of Westerners conveys Hongkongers' conflicted understanding of their cultural allegiances as a result of the forthcoming 1997 handover. First emerging into the film industry in the late 1970s, Jackie Chan reached the height of his stardom in the 1990s when he became a household name for his leading roles in funny action films (7). In his breakout film *Drunken Master* (1978), Chan plays a mischievous kung fu kid who humorously and valiantly defeats gangster villains colluding with foreign officials. Re-using the familiar trope of Chinese patriots defeating Western imperialists through traditional martial arts, Chan's early films, including *Drunken Master,* reflected Hongkongers' understanding of their inherent 'Chinese-ness' reigning superior to Western colonialism. However, *Drunken Master II* (1994) presents a narrative that contradicts that of its predecessor. Although featuring a similar plotline of Freddie Wong

defeating foreign rivals, the film portrays the Western world with increased ambiguity. Though the primary antagonists of the movie are corrupt British consulate officials, the film highlights the superiority of the Western world over that of the Chinese. One scene depicts Chan's character entering the train carriage for British consulate staff, but he is taken aback by the quiet, clean, and luxuriously spacious carriage and its posh, elegantly-dressed passengers. In stark contrast, the Chinese carriage he returns to is dirty, loud, and crowded with rude passengers. In another scene, Chan accidentally drinks a different liquor than the traditional Chinese alcohol he uses to prepare for his kung fu performance. After the performance, when he finds out he consumed a French Brandy, Wong is impressed and praises the alcohol. These scenes emphasize Hongkongers' perceived superiority of the Western over the Chinese world — a significant deviation from previous comparisons between the two cultures.

Though the British remain the villains of the storyline, representing a rejection of the subjugation of Hongkongers by their colonizers, the rosier illustration of the Western world in *Drunken Master II* implies a sense of nostalgia towards British Hong Kong amidst its looming end — a period in which the island flourished into a cosmopolitan metropolis under Western laissez-faire capitalism. Altogether, the growing complexity in which Jackie Chan's films illustrated Westerners communicates the beginning of a perception shift in Hong Kong's understanding of their 'Chinese-ness' in anticipation of its return to mainland China. Departing from the nationalistic assertions displayed in *kung fu* movies, greater ambivalence towards Western influence and doubts regarding Chinese cultural superiority was now observed in Hongkongers' projection of their own identity.

Post-Handover: Hong Kong After 1997

Whereas many pre-1997 Hong Kong films (such as those of Bruce Lee and Jackie Chan) featured relatively light-hearted and straightforward tropes of "good prevails over evil" and "justice prevails over injustice" (Ding, 136), seminal works of Hong Kong cinema after 1997 present significantly more serious and complicated storylines that often involve protagonists facing uncertainty regarding their values, social status, and identity. This complexification of narratives in Hong Kong films reflects how the handover intensified Hongkongers' anxieties regarding re-integration with China and catalyzed the internalization of Hong Kong identity as a distinct persona.

First colonized by the British, the island evolved from a fishing village to the affluent financial capital of East Asia. Accompanying a wholesale economic transformation was a gradual cultural transformation: British influence embedded within Hong Kong civil society, whether that be its espousal of Western political ideals (such as the rule of law and human rights), its high regard for capitalism and the freedom it brings, or its thorough consolidation of English language into all facets of society, including incorporating English into the Cantonese vernacular or naming streets after British aristocrats (Mathews, 9). Upon the transfer of Hong Kong's sovereignty by the British back to China and what many consider as 'recolonization' by China, Hongkongers then faced the issue of becoming 'Chinese' again.

Infernal Affairs: Post-Colonial Identity Crisis

Infernal Affairs (2002), directed by Andrew Lau, follows a gang member mole infiltrating the Hong Kong police force and his counterpart, an undercover policeman planted in his triad. When tasked with uncovering their respective perpetrator, the two characters simultaneously experience an identity crisis: the gang member mole desires to become a real police officer, and the undercover policeman desires to reclaim his real identity. The film's intricate narrative is explicitly symbolic of the struggle in national identity faced by Hong Kong's inhabitants after the 1997 handover (Choy, 56).

Hence, the identity crisis illustrated in *Infernal Affairs* expands beyond the binary of 'good and evil'

used to symbolize the duality of Chinese and Western culture in Hong Kong in films past. Instead, the film highlights the impossibility of clearly extricating 'Chinese-ness' or 'British-ness' out of Hong Kong's cultural identity. Lau showcases this through the two characters' internal monologues. While the mafia mole battles his inner thoughts of wanting to become "a good guy," the undercover policeman struggles in his quest for "[his] identity as a normal man" — neither fulfill their pursuit at the film's conclusion (Choy, 56).

While scholar Howard Y.F. Choy surmises the failure of both protagonists in resolving their identity crises to represent Hong Kong's schizophrenic struggle in "resuming a single, clear-cut identity" after 1997 (Choy, 56), the ending of *Infernal Affairs* can alternatively be interpreted to show how Hong Kong's cultural identity is rather defined by its state of flux. Though officially 'returned' to China, Hong Kong's identity did not return unchanged. Therefore, upon national reintegration, one can instead view the confusion and anxiety felt by Hongkongers as a robust indicator of the autonomous nature of their cultural identity (inevitably clashing with external pressures to conform) rather than a symptom of an identity disorder.

Dumplings: The Horror of Losing the Hongkonger Identity

Similar to *Infernal Affairs*, the 2004 horror-thriller *Dumplings* directed by Fruit Chan also features a protagonist who suffers from an identity crisis to illustrate the post-1997 anxiety experienced by Hongkongers (Wu, 44). However, it differs from the former in that it demonstrates post-handover anxiety as somewhat correlated to Hongkongers' sense of grief, rather than confusion, over its cultural identity.

In the film, former actress Mrs. Lee attempts to regain her fading beauty and prevent her wealthy husband from leaving her for younger lovers by eating magical dumplings prepared by an underground mainland Chinese obstetrician. When she finds out

that the dumplings are made of human fetuses, she is initially horrified; however, upon observing their age-rewinding efficacy, she consciously continues to seek Mei and pressure her to procure even more potent fetuses. Mrs. Lee's yearning to restore her former youth is a metaphor for Hong Kong's nostalgic longing for its golden colonial past. Her tycoon husband Mr. Lee is a winner of the market economy, embodying the economic might of Hong Kong during its heyday as the most free capitalist market in Asia. Thus, Mrs. Lee's drastic resort to cannibalism to retain her husband's affections can be understood to demonstrate the desperation that many felt upon impending reunification with communist China. In this light, Chan's painting of the loss of Hong Kong's capitalist appeal as a loss of identity reflects capitalism's centrality (and inseparability) in Hong Kong's own cultural identity. More precisely, the horror genre of the film highlights the fear and trepidation associated with the prospect of Hong Kong's loss of its economic status because it will, by extension, generate a crisis of identity.

Dumplings highlights that the root of the Hong Kong identity crisis is not simply uncertainty, but also loss. Unlike *Infernal Affairs*, Chan's film does not emphasize the confusions between 'Chinese-ness' and 'Britishness' within Hong Kong identity, but rather the fear that arises out of a loss of identity in its postcolonial future. *Dumplings'* prophecy of loss implies with certainty the loss of an autonomous cultural identity after the 1997 handover — one that can broadly be defined by its economic success under a capitalist system. Chan's film has even greater relevance in retrospect; the CCP's blatant disregard for the 'one country, two systems' is a manifestation of the metaphorical fears exhibited by Mrs. Lee. Not only has the decreasing political and economic autonomy in Hong Kong caused a massive exodus of foreign firms whose presence generated immense prosperity for the city, but increasing crackdowns by the CCP have already led many Hongkongers to lose their freedom of expression and conform to the

regime's demands.

Conclusion

Positioned between the two empires throughout its history, Hong Kong cinema has become a site where different projections of its identity have been cast. Between its pre-colonial past and postcolonial present, a unique Hong Kong identity had begun developing both in conjunction with and separately from Chinese and Western influences. As reflected in the analysis of Hong Kong films over time, the trajectory of this cultural identity formation came to a critical junction in the immediate years leading up to and following its official return to China in 1997. With inevitable re-integration with the mainland confronting Hongkongers with a new reality — one in which their identity could become homogenized, and thus, extinct — the handover accelerated within Hong Kong the recognition of their own cultural identity as defined by more than 'Chinese-ness.' Just as Michel Foucault proselytizes, "one should totally and absolutely suspect anything that claims to be a return. . . . there is in fact no such thing as a return" (Choy, 53). In the case of Hong Kong, its return as *a part of* China catalyzed Hongkongers' recognition of their cultural identity as one that is *apart* from China.

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Mercosur: A Common Market or an Incomplete Customs Union?

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AUTHOR'S NOTE

Abstract

Globalization and, more broadly, trade liberalization have accumulated into a complicated network of bilateral and multilateral international agreements aiming to decrease traditional and non-traditional barriers to trade. One of the most successful models of economic integration is the European Union (EU), which is known as a common market. A common market is the deepest form of economic integration: the free movement of goods, capital, and labour. The EU served as a significant source of inspiration for Mercosur, the Southern Common Market, a Latin American initiative which aims to increase the region's bargaining power abroad while further increasing its regional integration. Despite its ambitions, Mercosur faces several persistent challenges which prevent meaningful reduction in trade barriers and damage its credibility. This paper analyzes the systematic challenges inhibiting successful trade liberalization in Latin America.

In 1991, the Brazilian, Argentine, Paraguayan and Uruguayan governments signed the Treaty of Asunción, which established the Southern Common Market: also known as Mercosur. According to the founding parties, this trade agreement was created to promote regional trade integration in Latin America and increase bargaining power at the global level (Mercosur Nd). To accomplish this, Mercosur aims for the free movement of goods, services, and factors of production through the elimination of tariffs, the coordination of macroeconomic policies, the implementation of a common external tariff (CET), and the harmonization of legislation (Treaty of Asunción 1991, article 1). In other words, the member states aim to accelerate economic development by minimizing taxes on imports, setting joint fiscal, monetary and exchange rates policies, and by providing cohesive legislation in relevant areas such as the agricultural or forestry sectors, all while setting uniform import duties against non-Mercosur members. However, despite the push for regional integration, several issues surrounding the common market have been present ever since its creation, especially around negotiation. This paper argues that the lack of strong, independent supranational bodies, conflicting national interests, as well as the pressure exerted by political and economic elites, are responsible for Mercosur's inability to produce meaningful results.

One of the reasons for the lack of ratification of agreements stems from an unwillingness to pay for cooperation costs, which has largely been caused by a lack of independent governing bodies. Abbott and Snidal argue that for an international organization (IO) to be efficient, it must be centralized and independent from its members (Abbott and Snidal 1998, 9). However, Mercosur has been criticized for lacking both independence and centrality due to the lack of supranational institutions. While a supranational Mercosur-level parliament exists, its authority is limited (Mukhametdinov 2007, 215). Furthermore, according to Mukhametdinov, Mercosur also lacks a central judicial system to enforce the agreement. Although there is a Dispute Settlement Mechanic (DSM), its decisions can always be appealed, resulting in the inconsistent practice of Mercosur's norms (Mukhametdinov 2007, 215). Hence, despite several institutional bodies, none remain entirely impartial. In addition, all institutions and procedures are directly overseen by the President chairing the bloc (Arnold 2016, 652). The President, who is elected for a six-month period, chairs the executive organ of the bloc: the Council of the Common Market (CMC). As such, because these presidents are ultimately accountable to their respective national parliaments, the Bloc lacks true executive independence.

The president and high-ranking officials also control the negotiation process and determine what policies are implemented, ultimately revealing the existence of asymmetries within the bloc (Caichiolo 2017, 123). This is because Presidents tend to

implement policies that often benefit Brazil and sometimes Argentina at the expense of other smaller members. As a result, the bloc is often unable to cooperate and coordinate on macroeconomic issues. For instance, according to the authors Schiff and Alan, the structure of the CET was primarily determined by Brazil's preferences since it represents "at least 70% of Mercosur production in each of the 27 sectors considered" (Schiff and Alan 2003, 74). Additionally, it is argued that Brazil exploits Mercosur to consolidate its position as a regional and international power (Mukhametdinov 2007, 214). Given that Brazil and Argentina possess stronger economies and higher capabilities, they can sustain more prolonged periods of negotiation because of greater capabilities and usually reap higher economic benefits than Paraguay and Uruguay. In fact, relative market size can become a source of bargaining power. Due to its market size, Brazil can rely on its economy to exercise pressure on its trading partners and to pursue bilateral trade agreements with outsiders, which demonstrates its more independent relationship to Mercosur. As such, Brazil has the capacity to sustain longer periods of negotiations as it does not depend on the Bloc for trade.

Because Mercosur and its institutions are not independent, issues of distribution, information, opportunism and transaction costs occur, leaving states having difficulties solving them through official channels (Abbott and Snidal 1998, 7). One example of opportunism is how states find it more appealing to directly negotiate outside of the bloc, given that the cost-benefit ratio of pursuing unilateral agreements sometimes exceeds the benefits conferred by the agreement. Consequently, many members have been pursuing bilateral agreements with other countries without repercussions (Mander 2021). Furthermore, given that the DSM falls under the influence of the President, it gives it little legitimacy in the eyes of other members. Tensions have escalated to the point where Argentina's president, Alberto Fernandez, has told Uruguay's president to "take another boat [if we are

burden]" (Gillespie and Parks 2021). Therefore, given the inability of enforcement mechanisms to constrain the behaviour of members, there is no incentive to pursue serious negotiations. Lastly, another result of weak institutions is that countries believe that their future interactions in the context of Mercosur are limited due to its nature as an "irrelevant or unprofitable [agreement]"'—a short "shadow of the future," as Fearon describes it in game theory terms (Fearon 1998, 26). A short shadow of the future implies a lack of cooperation because countries who do not expect to reap the benefits from cooperating in the long term will shorten the length and depth of bilateral and multilateral agreements. Thus, the result is a lack of long-term planning which prevents the bloc from clustering issues together in the pursuit of "mutually beneficial bargains" (Fearon 1998, 9). Since neither Brazil nor Argentina is willing to distribute significant gains from these agreements to other member-states, this undermines the long-term prospects of integration (Mattli 1999, 64).

To demonstrate the weakness of Mercosur's institutions, this paper looks at the Presidents' power over the DSM. Caichiolo argues that the President often replaces the DSM of the bloc while controlling the negotiations; indeed, he argues that: "they set the agenda, structure negotiations, administer voting, and summarize results" (Caichiolo 2017, 258). Given their increased power relative to other state leaders, this authority means an increase in information and power asymmetries within Mercosur. The President thus has direct and indirect control over the agreement and its institutions, which demonstrates the lack of impartiality of the bloc and reduces its legitimacy in the eyes of other states. While more efficient institutions such as forums, committees, and commissions would increase transparency, reduce the incentives to defect, and ensure Mercosur's future, its member-states have traditionally resisted further institutionalization (Caichiolo 2017, 124). Institutions thus tend to remain weak and under the direct control of the current President. Given that no institution is

capable of systematically constraining the members, they are stuck with a situation that further feeds mistrust due to the continuous abuse of power. The lack of independent supranational bodies and the domination of national interests over Mercosur thus explains the lack of continuous regional integration. Therefore, members directly negotiate between heads of States with little regard to institutions.

The aforementioned distribution problems also highlight the important differences in preferences for each bloc member, further eroding its unity and cohesion. While Brazil and Argentina mostly see Mercosur as a tool to increase their bargaining power abroad, the smaller countries of Uruguay and Paraguay are much more dependent on it and, as an effect, have to support the interests of the bigger states. Evidence shows that weak institutions promote larger countries' preferences and allow them to determine Mercosur's policies. However, the country chairing Mercosur typically dictates the bloc's direction regardless of other members' preferences. For example, given Brazil's GDP size relative to the other members, it ends up implementing its preferences onto other members who have little power to resist even if they wanted to (Manzetti 1994, 123). This can be seen in Brazil's trade behaviours. Brazilian exporters' pressure on the government has also resulted in an increased influx of products into the other members' markets. Conversely, Brazil lags in lowering tariffs whereas other members have lowered their tariffs to between 7 percent and 11 percent, Brazil still has higher levels of tariffs at 14 percent (Manzetti 1994, 125). As a result, Brazil fails to import as much as it exports to the bloc, which creates important trade deficits that undermine the coherence of Mercosur and prompts tension amongst members.

This distribution and cooperation problems have led smaller countries to engage in "balancing strategies'" through seeking bilateral trade agreements with other powerful states, such as the US and China (Gomez Mera 2016, 303). One can argue that this attempt at balancing regional power is partly motivated by the domestic interests in the smaller countries. For example, weaker Mercosur members might seek to partner with other powerful actors to appease a displeased exporting sector. Indeed, the pressure from exporting sectors has forced smaller countries to seek larger external markets to increase profits. This explains Uruguay's attempt to pursue other Preferential Trade Agreements (PTAs) where trading conditions are more favourable given lower trade barriers. They have also been pushing for the Bloc to allow bilateral trade agreements outside of it: a proposition that has sparked tensions between members (Fernandez 2021). On the other hand, other members increasingly implement unilateral protectionist measures against stronger economies to appease an overwhelmed import sector. For instance, Argentina has consistently blocked Uruguay's and Brazil's demands to decrease the CET as an attempt to protect its domestic companies (Binetti 2021). Despite the latter's attempt to lower the tariff set with non-members, Argentina opts for a more protectionist approach where the CET remains higher to ensure foreign products do not overtake domestic industries. As such, divergent social and business interests, coupled with inconsistent political preferences, have diminished the prospects for further regional economic integration and cooperation. In fact, while Uruguay and Brazil actively advocate for greater trade liberalization – at least to the extent that it benefits them – Argentina struggles with important domestic macroeconomic issues, which pushes the latter towards protectionism. Thus, these factors reduce the prospect of greater economic integration.

Finally, the influence of the elite on economic policymaking impedes the general population from participating, which effectively excludes them from decision-making and underlines the unequal character of Mercosur. Doctor highlights what he coins the "state-centric nature'' of Mercosur, where elites have input as opposed to the general public, creating a democratic and social deficit (Doctor 2012, 529). The business elites are also the primary factor in the aforementioned divergent preferences, illustrating the

presence of what McGillivray and Smith call a small winning coalition in each country. McGillivray and Smith define the winning coalition as the number of people whose support is needed to retain power (2004, 569).

The role of the elites is also evident when examining Milner and Kubota's theory that democracies tend to favour trade liberalization, which at face value seems to be supported by Mercosur. After all, the Mercosur trade agreement was created following a wave of democratization in Brazil, Argentina, Bolivia, Chile, Nicaragua, Paraguay and Peru. More broadly speaking, Mercosur was created during the rise of globalization with the creation of several FTAs, such as NAFTA in 1992 and the addition of Eastern Europe to the EU in 2004. However, in contrast to the EU, which is a deeply integrated common market or ASEAN, a customs union, Mercosur is characterized by shallow integration.

This shallow integration conflicts with the winning coalition theory, which argues that democracies – which have a larger winning coalition and a bigger selectorate – typically pursue deeper cooperation (McGillivray and Smith 2004, 569). Here, the authors define the selectorate as the individuals that form the coalition. According to the winning coalition rationale, if a country possesses a large winning coalition, the leader must provide public goods to maintain power, whereas an autocratic leader must only satisfy a small winning coalition. As such, given that trade is assumed to increase welfare, a leader typically pursues free trade as a form of public goods. However, although Presidents attempt to appeal to the large selectorate, one can argue that the real power is vested in the elites, which prevents real trade liberalization and lowers cooperation. In fact, Doctor argues that "state preferences for integration are mainly shaped by political elites" (Doctor 2012, 528), which might explain the presence of suboptimal outcomes in negotiations. While the business elite may encourage regional integration, it is motivated by their own interests, rather than a concern for increased

welfare. Research has shown that leaders in liberal democracies attempt to mobilize the population for electoral support. Indeed, presidents in each country seek re-election and require financial contributions for their electoral campaign, which can be obtained through protecting the interests of fellow political elites, as well as business elites (Fernandes de Oliveira 2003, 121). Given that their interests partially align to civil society's interests, Mercosur was able to engage in negotiations and ratify treaties that partially benefited the selectorate. However, in reality, "the active participation of Brazilian society – and the societies of other member states – has been very limited" (Caichiolo 2017, 123). One can argue that negotiations have been distorted given that members prioritize the interests of the winning coalition's members, rather than trying to improve social welfare with greater liberalization. Thus, total liberalization is constrained.

Lastly, in addition to the many negotiation issues, Mercosur's shallow integration is worsened by its unwillingness to ratify costly legal packages. Leaders use their signatures on treaties and agreements as an attempt to appeal to the electorate. In addition, they often glorify and refer to Mercosur as "the most transcendental political decision in our history'" or as their "destiny" (Gomez-Mera 2016, 303). In reality, the ratification of many treaties and agreements are subordinated to the state's political and economic preferences, which prevents the successful enforcement of Mercosur and, by extension, negatively impacts negotiations. Indeed, leaders heavily rely on empty promises. Despite their display of public commitment to the regional agreement, politicians do not intend on necessarily complying (Arnold 2017, 659). This strategy can be politically rewarding, given the lack of ongoing interest in negotiations by the general population. Presidents want to reinforce their image to the selectorate without paying for the many transaction costs involved. If they expect cooperation and the implementation of an agreement to be costly, they seek to avoid ratification and even veto these agreements (Arnold 2016, 644). As a result, many

promises remain unkept whenever policy adaptation, and thus, deeper cooperation is too costly. Hence, respective members are not ratifying various legal packages, which makes them non-legally binding. Doctor contends that "only about half of Mercosur agreements had been incorporated into national legislation," which demonstrates the chronic absence of ratification in Mercosur. The lack of costly legally binding agreements explains many issues that Mercosur faces in terms of enforcement, negatively affecting the bargaining stage and weakening the bloc's legitimacy.

In conclusion, despite important progress since its implementation in 1991, Mercosur still faces significant challenges in terms of negotiations and ratification. The lack of independent institutions contributes to significant power asymmetry between members, which ultimately results in the abuse of power, distribution problems, the negligence of other preferences and the interest of the elite being the primary object of negotiations. In addition to these generated tensions, the lack of civil society's input and the overabundance of empty promises negatively impact the ratification of agreements, which decreases Mercosur's legitimacy and its commitment to free trade. These various issues have led many scholars to characterize Mercosur as an "incomplete customs union" or a free trade agreement rather than a common market (Bouzas, da Motta Veiga and Torrent 2002, 129). Thus, this paper sought to identify Mercosur's core weaknesses as an attempt to redirect attention to the issues that must be overcome to improve the Bloc's efficiency. With Mario Abdo Benítez getting elected as the new Mercosur's President, there are renewed negotiations and new expectations for the future. In an increasingly globalized world, Mercosur must overcome these shortcomings if it expects Latin America's economies to compete on a global stage.

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Rawabi: A City of Resistance and Unity or Defeat and Disjuncture?

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AUTHOR'S NOTE

Abstract

Rawabi is a new master-planned, privately-funded city in the West Bank of Palestine, touted as an example of economic success and an important tool for Palestinian nation-building and resistance against the Israeli occupation. Bashar Masri, a Palestinian entrepreneur and the founder of Rawabi, claims that the new Palestinian city acts as an emblem of national pride and asserts Palestinians' permanence on their land. This paper questions the effectiveness of Rawabi to assert these two goals. Drawing on both academic and grey literature, this paper concludes that many of the goals and promises Rawabi makes tend to fragment Palestinian national unity, while benefiting their colonial counterpart.

Introduction

Rawabi is Palestine's first master-planned city in more than 1,000 years (Whitaker 2019). Located nine km north of Ramallah, Palestine's de facto capital city, and twenty-five km north of Jerusalem, the city is composed of about 6,000 housing units, twenty-two neighbourhoods, and with the aspiration to house 40,000 residents ("Rawabi - Home" n.d.). It was founded by Bashar Masri, a Palestinian entrepreneur and the head of Bayti Real Estate Investment Company, who envisioned the idea of the new Palestinian city in 2008 and claims that this city is a "big step in building [their] nation" and "defying the occupation" (Whitaker 2019). Masri frames these goals as symbiotic: the act of building the Palestinian nation *is* an act of colonial defiance. According to Masri, as Rawabi prospers and grows, Palestinian nationhood develops in this land, pushing back against the colonial-oriental narrative that Palestinians are unable to modernize and succeed. Indeed, Western and Israeli media and fiction have for ages built an orientalist-colonial narrative in which Palestinians are a backwards people, against the portrayal of Israel as civilised and its expansionary project as a bringer of progress (Gerber 2003, 23). Therefore, Rawabi is regarded as a counter-narrative by demonstrating the capacity of Palestinians for material progress and success. However, much of the academic literature critiques the economic, social, and ideological approaches as reproducing the same issues it seeks to defy, in stark contrast to the huge advertisement

machinery that celebrates these very features. This paper takes these two contrasting perspectives of Rawabi, using the academic literature to respond to and point out gaps in the claims Masri makes about Rawabi being a nation-building and anti-colonial project (Sherwood 2013; Startup Societies Foundation 2019). The first perspective is Masri's argument that Rawabi contests the colonial-oriental characterization of Palestinians by showing the success and prosperity that Palestine truly holds; the second is that Rawabi is a symbol of hope for a better Palestinian future which shows Palestinians' permanence on their land, in reaction to expanding Israeli occupations since the Six Day War in 1967. This paper scrutinizes these two claims and argues that many of the goals and promises Rawabi makes are either not true or not helpful for Palestinian national unity. In many ways, these goals not only hurt many Palestinians, but benefit their tenuous counterparts.

Literature Review

Despite Rawabi being a relatively new project, there is a sizable amount of literature that discusses this development, including academic journal articles, news articles, podcasts, websites, and YouTube videos. Some highly cited academic researchers on Rawabi include Tina Grandinetti, Shira Wilkof, Khalidi and Samour, and Arpan Roy (Grandinetti 2015; Khalidi and Samour 2011, 6–25; Roy 2016; Wilkof 2014). All of these individuals have a fairly critical stance on Rawabi, highlighting the dangers

of incorporating the private sector into city-building and of neoliberal urbanisation. Academic scholars on the broader themes of the middle class include John V. Ferreira, Sankaran Krishna, Jalal al-Husseini, and John Quigley (Ferreira 1952; Krishna 2015; al-Husseini 2011; Quigley 1998) who explore the history of Palestinian national ideologies, another important theme in Rawabi (Quigley 1998, 171–230; al-Husseini 2000, 51–64).

Compared to academic literature, grey literature and non-academic literature generally paint Rawabi as a vehicle of Palestinian resistance and a hopeful future. News publications tend to focus less on themes of neoliberalism, and few articles seem to mention worries of social and financial exclusion. Many sources, however, such as Business Insider, BBC News, and the New York Times have touched on clashes between the Israeli government and Rawabi (BBC News 2015; Schwartz 2016; Jacobs 2018; Kershner 2014), such as the water restrictions Israel has imposed on Rawabi. Regarding primary sources Rawabi puts out many promotional videos (مدينة راوبي Rawabi City 2012), has a website ("Rawabi - Home" n.d.), and Masri has been interviewed several times in news, ads, and podcasts (e.g., Startup Societies Foundation 2019).

This paper builds off of many of the themes of Tina Grandinetti's work which critiques the use of the middle class in Rawabi as a tool to depoliticize the occupations through normalising relations and cooperation with Israel (Grandinetti 2015, 63–78). Additionally, Rashid Khalidi and Sabhi Samour's work critiques Rawabi's ability for economic independence under neoliberal policies (Khalidi and Samour 2011). In both, the scholars assert that a neoliberal urbanisation standpoint in Palestine ignores the larger political struggles of the occupation, making this approach ultimately incapable of achieving genuine governance. This paper places these academic texts in conversation with the optimistic advertising of Rawabi, mainly sourcing Rawabi's city website, Sherwood's 2013 BBC article, and Bill Whitaker's 2019 CBS 60 Minutes interview (Sherwood 2013;

Whitaker 2019). Taking claims that Masri makes and using arguments explored in the academic literature, this paper responds to and assesses the validity of his claims.

*"We are not what they are led to believe, a bunch of terrorists. We are ready to build our state. Here is the proof." –***Masri**

Against the Negative Stereotypes of Palestinians

Every standard advertisement of Rawabi features the city's high-tech, young, and modern infrastructure and population. The Rawabi website has a modernised design with tabs for 'Rawabi Tech Hub', 'Day-to-Day Life in Rawabi', and a myriad of pictures of happy families in a modern city ("Rawabi - Home" n.d.). This vision of Rawabi, described on their website as an "innovative approach to urban development" ("Rawabi - Home" n.d.), counters many of the stereotypes Western media has depicted of Palestine. The media tends to display Palestine as backwards, undemocratic, and weak (Gerber 2003, 23-24). As Masri describes in an interview with The Guardian: "Rawabi… sends a message to the international community. We are not what they are led to believe, a bunch of terrorists. We are ready to build our state. Here is the proof" (Sherwood 2013). However, while Masri claims that Rawabi reflects the true nature of Palestine, a nation that is educated, sophisticated, and ready for investment, the new city tends to economically and socially exclude certain segments of the population. Furthermore, they tend to distance their city image from other Palestinian cities, which does not promote the progressive and educated Rawabi as a reflection of Palestinian society, but as an exception.

The advertisements of Rawabi show young, English-speaking, middle-class Palestinian families who are looking to start a better life with their children in a city separated from the "chaotic and overcrowded West Bank cities" (Sherwood 2013). Indeed, Rawabi is trying to attract and advertise its city as a place for the

aspirational middle class of Palestine to move, stating in its first line on the 'day-to-day life in Rawabi' tab on the city's website, that "Rawabi's neighbourhoods are clean, green and perfect for raising a family" ("Rawabi - Home" n.d.). This method of using the rising middle class as a tool to promote state projects is not a new concept, as Krishna explains (Krishna 2015, 5–7). In fact, the middle class is often seen as the promoter of democracy, science, rationality, and the driver towards industrialisation, and economic prosperity, all traits that Rawabi planners aspire to showcase (Krishna 2015, 4). While the promotion of the middle class is seen as a contestation of the less educated, lower-income, "primitive" vision of Palestinians, Krishna explores how this depiction of the middle class is often a device to place people in a hierarchy and can often unmake nations (Krishna 2015, 3). Khalidi and Samour explain further that neoliberal policies, such as wide-scale private sector growth, often result in increased rates of poverty and unemployment (Khalidi and Samour 2011, 11). As the new elite is formed, the poor majority tends not only to be excluded from this social group but also suffers from increased housing prices. We have seen the consequences of this rising social hierarchy born out of neoliberal policy in Ramallah. The elite tends to buy up land, creating real estate bubbles (Grandinetti 2015, 67). As a result, the cost of living increases and, those who cannot afford to live in the city are segregated to the outskirts of the city, creating a deeper spatial separation between different Palestinian socioeconomic classes. This ultimately leads to a fragmentation of unity in society. This is important because while Palestine has been adopting neoliberal policies for decades and had a thriving middle class in cities such as Haifa and Jaffa before the occupation, creating a city from scratch which specifically caters towards a middle class creates a spatial division that literally separates the 'ideal' middle class, who are benefitting from these neoliberal policies, from the poor, who are suffering even more (Grandinetti 2015, 66–67). In fact, despite advertisements from Rawabi

claiming to have housing options for "Palestinians of all walks of life" (مدينة روابي Rawabi City 2012), Masri says that he is actively excluding low-income housing options in an effort to make Rawabi look more exclusive and high-end (Hattem 2015).

Another critique to this claim of attempting to refute the narrative of Palestine as backwards is that Masri's description of Rawabi and its design as a place for the middle-class nuclear family frames Rawabi as the exception to the 'overcrowded', mixed-income, perhaps even 'backwards' Palestinian cities. In fact, the second line under the 'day-to-day life in Rawabi' tab on their website states that "Parents are comfortable allowing children to play outdoors and explore the city's pedestrian-friendly streets, something rarely found in other local cities" ("Rawabi - Home" n.d.). While rejecting the primitive Palestinian image, in the same breath, they are somewhat using that argument as a way to advertise Rawabi as 'different', 'new', and 'desirable,' making it the exception that proves the stereotypical rule. In fact, some scholars have paralleled the design of Rawabi to American suburban design. Grandinetti parallels Rawabi's homes to suburban middle-class homes of Los Angeles and New York (Grandinetti 2015, 70). In an interview with 60 Minutes, correspondent Bill Whitaker even equates Rawabi to "the American dream on the West Bank" (Whitaker 2019), to which Masri responded, "If the American dream is a better life, definitely we deserve a better life" (Whitaker, 2019). By portraying Rawabi as a desirable modern city in contrast to other neighbouring cities, as a figurative oasis in the midst of an "uncivilized" Palestinian desert, Rawabi's advertisement is not only not effectively subverting the oriental-colonial stereotype, but reinforcing it. Not only is Rawabi the seeming antithesis of other Palestinian cities, but its marketing seems to ironically play into the westernized style of the cities of its occupier, Israel.

The construction of Rawabi, with a lack of low-income housing and an ad campaign that passionately draws in a very specific petty-bourgeois demographic,

is actively fragmenting Palestinian society both spatially and economically, glorifying class divisions in an effort to portray a 'modernized' Palestine to the globe. While there is not an intended mimicry of colonial power, as Grandinetti posits there is a catering towards colonial suburban ideals (Grandinetti 2015, 70),. As a result, despite the argument that Rawabi is resisting old oriental notions of Palestine, they are using this narrative to justify creating a new city, and as a result plucking out those deemed 'acceptable' for the city from the 'outdated' Palestine.

"Addressing the needs of Palestine today by building the foundation of the Palestine of tomorrow" **–Rawabi Promotional Video**

The neoliberal focus of Rawabi not only divide Palestinian society by socioeconomic and social class but also wedges Palestinians along ideological lines, advertising Rawabi as a permanent space to 'build a better future for Palestine' (Grandinetti 2015, 69). However, this ideological foundation has the potential to further fragment national unity as it is antithetical to key beliefs of the Palestinian nationalist movement. Indeed, the term 'sumud', the discouragement of flaunting wealth and denouncement of an attitude of normalcy while in the occupation, is a culture of resistance that many Palestinians have adopted (Roy 2016, 369). Grandinetti touches on this concept, arguing that the neoliberal and foreign investment focus of Rawabi, one that frames Rawabi as a flourishing city under the occupation, is not a form of resistance against the occupation, as Masri claims (Grandinetti 2015, 74–75). Rather, showing a 'flourishing' economy within the occupation tends to downplay the negative effects of the occupation that affect so many Palestinians, and risks depoliticizing the real issues of the occupation. This is not to say that Palestinian urban development, in general, cannot be beneficial, but Rawabi's messaging casts Palestinians' suffering as merely a development problem rather than one that is intrinsically political.

An effective development plan must necessarily avoid undermining Palestine's position in Israeli-Palestinian negotiations. Grandinetti even goes as far as to say that neoliberal capitalism of Rawabi makes little room for alternative economic models, making "the occupation less costly, or even profitable, to Israeli and Palestinian government" (Grandinetti 2015, 64). Fostering a neoliberal, individualised culture of a city erodes the community-centred, sacrificial values foundational for resistance. Once again, it needs to be examined who is benefitting from this modernising, depoliticizing narrative of Rawabi.

For Israel, the ideal would be for Palestine to be passive about the presence of the occupation, settling into this geographic power relation as to decrease breeding grounds for discontent and violence/resistance (Grandinetti 2015, 72–73). Israel would rather invest in Palestinian infrastructure that solidified Palestinians into this geographic mode. From the British "New Villages" in Malaysia to the French "Douars" in Algeria, to the US "Strategic Hamlets" in Vietnam, a promotion of domesticity and infrastructural stability has been a common counter-revolutionary tool used by colonial powers (Weizman 2017, 229). While perhaps in the short-term it appears to show prosperity and economic success for some Palestinians, in the long-run, this process of infrastructural development and depoliticization normalises the occupation and secures it.

Many Palestinians understand the dangers of permanence in the occupation, and this is the fuel for the Palestinian national movement. At the beginning of the Israeli occupation, the United Nations Relief and Works Agency (UNRWA) became an important body for refugee relief and helped crystallise the Palestinian national identity bred from refugee communities (al-Husseini 2000, 61). This national identity was predicated on the concept of the 'right to return', essentially a concept in international law which argues that stateless persons (such as refugees) have a human right to return to their country of origin (Quigley 1998, 171–230). However, a condition to this

right to return is that any place that they are living right now is temporary. Therefore, many Palestinian refugees resist resettlement policies and embrace refugee camp status to justify their right to return to what is now the State of Israel. For many years, these refugee communities and this concept of the right to return was seen as the "backbone" of Palestinian resistance towards Israel, contingent on this concept central in international law (al-Husseini 2000, 60).

This concept of the right to return versus resettlement is a topic highly contested throughout Palestine, but the creation of a new city, on occupied territory, that depoliticizes the process and advertises the permanence of the occupation is not as popular as Masri would suggest. While some refugees are less supportive of socioeconomic rehabilitation strategies, the concept of permanent resettlement and a complete rejection of the hope for returning to their homeland is not only widely contested, but further dismantles an ideological basis that shaped national identity for many years in Palestine. Indeed, Rawabi's promotional video further proves this sort of permanence of the occupation. A main idea in the video is that Rawabi is a "model for future development in Palestine… addressing the needs of Palestine today by building the foundation of the Palestine of tomorrow" (مدينة روابي Rawabi City 2012). Past national identity was predicated on the notions of impermanence – that the State of Palestine right now is not forever, which is why the culture of the refugee camps was so important. However, Rawabi completely rejects this notion, justifying the building of a new city as a step in the direction of building the State of Palestine under occupation.

Conclusion

Rawabi, to Masri, shows pride in Palestine and is therefore an important symbolic device for Palestinian nation-building. The economic success that comes out of Rawabi and the investment and modern image of Rawabi is perceived by Masri and supporters of Rawabi as something Palestinians can point to with

national pride, as proof that Western colonial-oriental visions of Palestine are false and Israel's dominance over the West Bank is threatened. However, this paper underscored that Rawabi's financial and ideological foundation appears to be compliant towards Israeli occupations, not defiant. This paper positions the non-academic Rawabi propaganda against critical academic literature to gain a deeper understanding of the city's nation-building and colonial-defiance functions. These are only two of several claims Masri has made about national unity and Israeli resistance. Future research could benefit from an exploration of Masri's claim about 'taking back the West Bank' and how Israel's ultimate control over mobility and water supply challenges this claim. As well, Rawabi's commitment to tech similarly relates to themes of occupation normalisation discussed in this paper. Through examination of multiple scales of literature, this piece offers a starting point in revealing the gaps in Rawabi's promises, leading to doubt about Masri's optimistic nationalist and anti-colonial vision.

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Gender Equality as Smart Economics: Problems of Drawing Equivalence Between Market Production and Household Bargaining Power Under Gender Dividend Assumptions

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Edited by Abigail Brewer and Emily Rowe

AUTHOR'S NOTE

The neoliberal trade regime prioritizes market mechanisms and women's self-realization in the workplace. The new measuring system for women's social value adds economic contribution as a new criterion and expects the chain reaction that ultimately contributes to overall female empowerment. However, the biased perception of women's dual role as good mothers and workers is a moral norm issue that forcibly imposes traditional womanly duties and modern social duties on the female population.

ABSTRACT

Gender dividend is a steady benefit earned by investing in female development and integrating women into the workplace. Based on the Inter-American Development Bank's 2010 report, *Gender Dividend: Capitalizing on Women's Work*, narrowing the gender gap increases per capita income, expands the market, and improves overall social wellbeing. This paper explores female labour participation in the East Asian economic hub of Shanghai. The elite women in Shanghai are equipped to deal with complicated job tasks in the office, while they are still trapped in the social expectations of femininity at home. The neoliberal governmentality promotes a redistribution of resources in the market system, shown by an increased number of women at the senior management level and women's remarkable strides in the marketplace. Yet, the division of reproductive labour remains unaffected as the traditional East Asian perception of "good wife, wise mother" disincentivizes working women to gain household-level autonomy. Therefore, economic empowerment is an insufficient one-step solution to the social stigmatization of womanhood, as working mothers are forced to play conflicting dual roles in society.

Introduction

The declining birth and mortality rate allow emerging economies to capture the demographic dividend and accelerate economic growth. Since the 1990s, development agencies have promoted gender dividend by harnessing women's economic potential through female labour participation, to capitalize on the "other half of demographic dividend" (Desai 2010, 12). The gender dividend concept recognizes the unfavourable conditions for women in the labour market as a major obstacle to women's empowerment and autonomy in the market economy. Thus, gender dividend promoters recommend governments implement a series of childcare policies to relocate women from domestic work to economic production, hoping that increased female elites in the market will bring transformative changes to gender equality (Braunstein 2007, 14).

The theorization of gender dividend takes an interdisciplinary approach [*fig 1*]. The neoclassical economic growth model facilitates the fundamental concept that gender inequality restricts labour supply and productivity, which threatens long-run economic growth and efficient use of human capital. Moreover, the theory integrates a micro-view regarding women's roles at the household level (Pagés & Piras 2010, 15). *The Gender Dividend Report* states that women invest more

in the next generation than men do (Pagés & Piras 2010, 20). Economic participation provides women with the bargaining power to channel more resources to their children and thus improve family and social wellbeing. Gender dividend takes a more holistic lens than demographic dividend by incorporating women's role into the neoclassical framework, welfare pluralism, consumerism and familialism (Pagés & Piras 2010, 20). By removing women's employment barriers, gender dividend depicts an idealized development path with the government-designed social security system as the primary bearer of domestic work, and the women playing dual roles as docile workers and caring mothers to maximize their productive capacity.

Nevertheless, the feasibility of gender dividend as a one-step solution is questionable. Women have systematically weaker access to career development opportunities. According to The Global Gender Gap Report 2020, women occupy 36% of senior roles globally. Only 18% of firms have a female top manager, indicating that many well-educated working women are trapped in middle- and lower-level management (World Economic Forum 2020, 4). This paper discovers that the phenomenon of high female labour participation and low career opportunities is insufficient to maximize women's human capital productivity and fulfill the gender dividend. Based on

empirical evidence from low-skilled migrant labour and high-skilled elite managers in East Asia's economic hubs, the paper provides a gender-aware alternative to the neoclassical framework, and argues that gender dividend restricts female labour to productivity instruments, diminishing the self-autonomy for women to choose freely between domestic work and economic engagement. Ultimately, promoting female labour participation to produce gender dividends is a new form of gendered discipline that highlights women's economic backwardness and encourages women to work in the formal economy without addressing the unfair distribution of reproductive labour at the household level.

Gender Dividend Theorization Limitations

Gender-Blind Neoclassical Framework

The neoclassical growth model sees gender inequality as a form of market failure because a male-dominated production system fails to maximize the productivity of unemployed women. This perspective focuses on education equity and labour allocation. The basic assumption is that educating girls who start with a relatively lower education necessitates a higher marginal return than educating boys due to the diminishing marginal returns to education (Knowles, Lorgelly and Owen 2002, 126). Similarly, gender segregation in the labour market fails to match the most efficient labour with the most appropriate job when less efficient men are prioritized before the more efficient women (Esteve-Volart 2000, 159). At the household level, the neoclassical model concludes a bargaining problem showing that the productivity loss, due to the asymmetrical allocation of resources between men and women, is systematically correlated with the self-interest of the male producers. Therefore, the household is not a unitary production site that prioritizes collective interests (Braunstein 2007, 18). Gender inequality needs to be solved at the fundamental level by granting women more productive resources, property rights and credit market access to address allocative inefficiencies.

Based on the neoclassical assumption, the gender dividend concept is ideal for addressing stagnating economic growth and unequal household bargaining power in one step. However, this approach fails to engender the macroeconomics of distribution when depicting women as individual laborers and blames
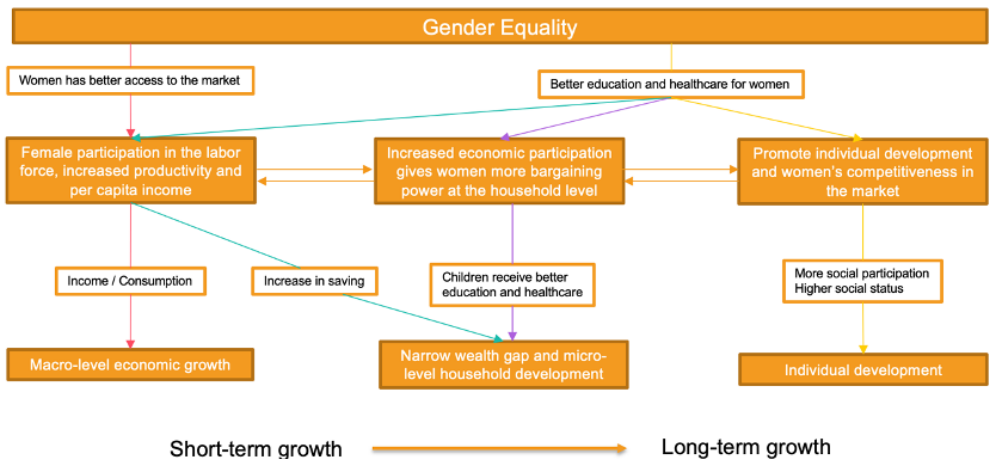
Fig.1 *Gender Dividend Theorization*

the unfair treatment and inequality on market malfunction. The

liberal feminist approach to women's participation in the contemporary social system recognizes the isolation of women in the modernization process and explores how women are disadvantaged and discriminated against in the existing system (Jaquette 1982, 270). The liberal feminist approach challenges the neoclassical assumption by focusing beyond the worker's identity and incorporating the fundamentally different interests between women and men regarding their institutional roles in the labour market and household.

The feminist view counters the neoclassical assumption that gender-based inequality perpetuates economic growth. In emerging economies, export firms capture the dividend from cheap and low-skilled female manufacturing workers to enhance competitiveness and profitability in the global market. Seguino finds in her research that the trend of gender wage differentials in Taiwan rose from 65.1% to 66.0% from 1981 to 1990, indicating that the export-intensive strategies capitalized on the subordinate position of female labour in the manufacturing industry that allowed factories to obtain a cheap labour force (2000, 447). Contrastingly, the gender wage differentials declined by 1.3% in Korea during the same period. The analysis shows that women's labour participation is not the primary driver of the narrower gap; instead, the upscale shift of industry from the manufacturing sector to high-skilled niche markets has created favourable conditions for women's wage increase (Seguino, 2000, 457). Seguino's findings are significant, as they reveal that the neoclassical framework is gender-blind because it neglects the restricted mobility of working women between female- and male-dominated industries, especially in semi-industrialized economies. Without macro-policies designed to ensure wide access to education and a gender-equal workplace, the patriarchal presence manifests gender hierarchy and traditional gender norms by keeping the female dominated industry

wage low, thus securing males' decision-making power at the household level with higher earnings.

Good Mother Hypothesis

The micro-level positive effects of gender dividend rely on the 'good mother hypothesis,' which assumes that children benefit more in households where the mother controls the greater share of economic resources (Lipman and Stewart, 2005, 134). The hypothesis challenges the traditional neoliberal framework of unitary preference and essentializes the mother's primary responsibility in childcare. Dooley, Lipman and Stewart (2005, 134) use the least square and logit model to show that mothers' share of income is statistically insignificant to their children's outcomes. A notable reason that falsifies the good mother hypothesis is the correlation between wives' earnings and husbands' unobserved characteristics. For example, an elite working woman may marry a man who deviates from the traditional perception of masculinity by handling a larger share of childcare duties. A man who encourages his wife to seek a job would have progressive views and would treat the children similarly (Lipman and Stewart, 2005, 136). Research studies find that both father's and mother's education and income levels are determinants of children's outcomes (Duflo 2012, 1066; Chou et al. 2010, 55). Therefore, one cannot isolate the impact of mothers' income share by claiming women as the primary bearer of reproductive works.

Moreover, the 'good mother hypothesis' normalizes women's dual role in society as highly-skilled workers and caring mothers, which neglects the conflicting nature between these two roles. Gender dividend reports constantly prioritize a welfare pluralist approach that the government takes a prominent role in transferring the childcare duty from women to society (Pagés & Piras 2010, 4; Pellegrino, D'Amato and Weisberg, 6). Public policy recommendations such as childcare initiatives, after-school programs and affordable education systems aim to reduce the discriminatory bias toward

married women in the labour market and incentivize working women to spend household time in career development. Although these social services can be classified as defamilializing instruments to unburden parts of women's childcaring duty, the market-driven process fails to challenge the existing perception of gender roles (Leitner 2014, 46). Garment workers in Sri Lanka are illustrative examples of the dilemma faced by girls who are stigmatized as Juki girls, meaning those who diverge from the nation's highest ideals of femininity when they leave the community. These female factory workers are pressured to play the dual role as filial daughters and docile workers to meet the social expectation for 'good girls' (Lynch 2016, 38). Emerging economies like Sri Lanka seek to follow the global trend without losing cultural distinctiveness, and women are perceived as the carrier of national tradition (Lynch 2016, 39). Therefore, the core challenge faced by women in economic modernization is the social stigmatization of women's entry into the market as acts of cultural contamination. Defamilialization plays a limited role in altering the societal concern that working women are incapable of becoming role models for future generations to learn about traditional customs. Sri Lanka's example is insightful to the gender dividend case; women in economic development are requested to handle the state's aspiration as a productive worker and the social aspiration as a qualified mother. Consequently, as the traditional social norms problematize the outsourcing of childcare, the defamilialization policies, in the hope to capture gender dividend, undoubtedly pressure women with the double burden of cultural femininity norms and economic development duties.

It is rejected that all empirical data disprove the 'good mother hypothesis' (Murti, Guio and Dreze, 1995, 760; Quisumbing 2003, 139; Ward-Batts 2008, 338). However, these macroeconomic findings fail to explore beyond the quantitative results and derive conclusive theoretical frameworks. Firstly, the positive externality of a good mother is measured by the amount spent on children in these experiments, without evidence indicating the relation between spending and children's cognitive and behavioural development. Secondly, these experiments prove the correlation between mothers' earnings and spending on children but lack insights into the causal mechanism. It is empirically insufficient to prove that children are better off if their mother plays a dual role in society. The assumption regarding the positive household-level influence of gender dividend needs to highlight the re-division of labour in domestic works instead of restricting the 'good mother' effects.

Neoliberal Imagination of Individual Development

Gender dividend shifts women's values from the reproductive capacity in the household to market production. Women's labour diversification overcomes the existing institutional inequality and reduces patriarchal constraints to promote women as a significant component of the growing economy, rather than victims of the rigid gender hierarchy. Gender dividend promoting strategy regarding women's self-empowerment includes improving workplace gender equality and flexibility to foster equal opportunities and reduce gendered occupational segregation. These strategies, however, assume that household work is a liability because women do not receive financial gains from raising children and domestic work (Braunstein 2007, 25). The neoclassical economic framework measures the increasing opportunity cost of women's time in unpaid household labour. The gender dividend assumptions follow the framework and deny women's specialization of household affairs as the most efficient outcome for individual development and the entire economy.

The undervaluation of women's domestic contributions perpetuates hegemonic neoliberal governmentality that views the market as an "arbiter to resources" and the "harbinger of social good" (Sharma 2008, 25). Similar to other neoliberal development packages, the gender dividend measures empowerment with the universal standards of the

female labour participation rate. The economy-first approach stimulates a top-down configuration of power, which stigmatizes the housewives at the grassroots level as unproductive and backward social members.

Boserup hints that wage is not a simple payment for economically productive work; women's efforts to maintain and reproduce the labour force require social assessment and valuations (1970, 68). The undervaluation of women's reproductive contributions views men as the primary wage earners and family providers, while women are reduced to complementary wage earners. Liberal feminists contend that the modernization process destroys the female economic system. Boserup's perspective on gender wage differentials diverges from this view. Her point supports a Marxist theory that the capitalist system normalizes women's unpaid household work (Jaquette 1982, 274). The Marxist feminist perspective is valuable in assessing the neoliberal imagination of women's self-empowerment in the gender dividend case. The neoliberal development package is designed to increase women's share in the market production pie through their engagement in the originally male sphere, rather than incorporating women's reproductive contribution to increase the size of the pie. Consequently, the concept of gender dividend elucidates that gain in family bargaining power is a privilege exclusive to working women because housewives' contributions are perceived as private affairs, unassociated with macro-level s ocial benefits.

The economy-driven individual development in the gender dividend concepts provides limited practical values in contemporary East Asian economic hubs. Kan and Hertog (2017, 565) conclude that in China, Japan, South Korea, and Taiwan, having an additional child is associated with more household work for women, shown by a coefficient of 0.26 [*fig 2*], but not for men. The research indicates that household work is "women's work" in all four countries regardless of female labour participation. Meanwhile, a positive

correlation between women's fertility preferences and husbands' share of domestic work illustrates that women are overburdened with multiple social roles under the social pressure of "good wife, wise mother." Female migrant caregiver literature by Lan (2006, 47) and Constable (2014, 16) often highlights the contrasting image of elite working women in high-income countries and the marginalized, racialized female migrants from underdeveloped regions. Such a depiction provides limited insights into the dilemma faced by female employers and the growing lucrative caregiving industry. Female migrant workers dominate the caregiving industry to fill in nonmarket labour, showing that household work is still stratified by gender and that male employers are unwilling to take a greater share of household responsibilities. One must recognize that increasing female workforce participation is of marginal importance to eliminating social expectation for the femininity featured by reproductive capacity and household responsibility.

Gender Dividend Application –Elite Women in Shanghai (Extracted from Interviews)

Economic Reform Generation (Born in the 1970s)

Yan worked as a senior marketing manager for over 25 years in a large retail company across multiple Chinese cities. She chose to return home and spend time with her teenage daughter in her late 40s, and she is operating her own international trading business after sending her daughter abroad in recent years. Yan says that she feels empowered with the higher socioeconomic status gained from the constant engagement in economic production. "My husband left me because I was busy working, but I am proud that my financial capacity creates a privileged life for my daughter after our divorce." China's era of economic reform opens potential for additional employment, especially entrepreneurial activities for women. The financial aspiration and ambition to become valuable societal members trigger women to leave their household roles and seek class mobility independently. A 1988 newspaper survey already

showed that the majority of Chinese urban women refused to return to household work (Summerfield 1994, 722).

Although there was no comprehensive theoretical framework for gender dividend, the Chinese government recognized the importance of capitalizing on women's productivity with state-owned childcare facilities. Yan's experience demonstrates the rising entitlements and capabilities for Chinese women despite the existence of a double burden (Summerfield 1994, 729). The paid employment opportunities allow women to have alternative sources of income through social engagements, translating to more bargaining power in the household. Most importantly, Yan highlights that creating a better life for one's children is the primary driving force for her and her colleagues to pursue their career goals. This child-first phenomenon illustrates that most childcare duties are still imposed on women, but they have options to fulfill the responsibilities from economic or reproductive contributions.

Smart Economics Generation (Born in the 1980s)

Helen is a partner in one of the largest consulting companies. She obtained a number of professional certificates and language skills throughout her career journey, and she frequently works overtime after becoming a partner. Helen thinks she is lucky to have a husband with progressive views about being DINK (dual income, no kids) couples. Nevertheless, Helen describes herself as, "a modern woman from outsider's views but actually a conservative woman" to justify her desire to bear children. She believes that she is lucky that her family could afford boarding kindergartens and live-in babysitters. In contrast, her colleagues with less supportive families were pressured to leave their work positions. Helen's case shows that women's specialization in childcare was further transferred to professional caregivers and private schooling programs. However, the transfer of domestic work provides limited empirical evidence to the re-division of reproductive labour. Helen believes that it is rare for typical Chinese fathers, whether successful or not, to take time on such "trivial matters."

Helen is confident, from her recruiting experiences, that female candidates tend to be more qualified than their male counterparts. Deloitte's gender dividend report shows that women's educational attainments are rapidly catching up in emerging economies (Pellegrino et al. 2011, 4). Still, women's labour participation lags behind men's, and they have a relatively higher turnover rate due to family affairs. Helen emphasizes that women with high educational attainment constitute a valuable talent pool, while family duties drag potential female leaders behind. Based on Helen's opinions, an efficient gender equality policy should focus primarily on women's workplace

Table 5: **OLS regression models of housework participation[a]**

	Husbands		Wives	
VARIABLES	Model 1	Model 2	Model 3	Model 4
China	1.075***	0.883	1.478***	0.509
	(0.227)	(0.787)	(0.143)	(0.794)
Japan	−1.392***	−2.816	1.414***	0.864
	(0.277)	(2.986)	(0.165)	(1.092)
Korea	−0.233	2.964	1.215***	0.872
	(0.244)	(2.152)	(0.147)	(1.238)
Has a job	−0.114	−0.101	−0.820***	−0.808***
	(0.456)	(0.470)	(0.110)	(0.111)
Spouse has a job	0.880***	0.865***	0.290	0.297
	(0.166)	(0.168)	(0.216)	(0.216)
Age	0.040**	0.039**	0.021*	0.020*
	(0.012)	(0.013)	(0.009)	(0.009)
Number of children <16	−0.078	−0.075	0.264***	0.250***
	(0.117)	(0.118)	(0.066)	(0.066)
Household income 2nd qrt	−0.005	−0.006	−0.185	−0.175
	(0.216)	(0.218)	(0.125)	(0.125)
Household income 3rd qrt	0.102	0.105	−0.186	−0.173
	(0.229)	(0.231)	(0.130)	(0.130)
Household income 4th qrt	−0.218	−0.235	−0.489***	−0.472***
	(0.237)	(0.240)	(0.141)	(0.142)
Secondary level	0.051	−0.480	0.039	0.292
	(0.295)	(0.627)	(0.155)	(0.499)
Postsecondary level	0.061	−0.428	−0.326	−0.717
	(0.351)	(0.705)	(0.200)	(0.554)
Spouse: secondary	0.146	0.572	0.047	−0.933
	(0.251)	(0.613)	(0.180)	(0.805)
Spouse: postsecondary	0.401	0.818	0.062	−0.857
	(0.339)	(0.724)	(0.217)	(0.835)
China*secondary		0.685		−0.289
		(0.717)		(0.523)
China*postsecondary		0.877		0.473
		(0.852)		(0.617)

Fig.2 *Extracted from Domestic division of labour and fertility preference in China, Japan, South Korea, and Taiwan by Kan and Hertog (2017)*

opportunities to ensure that women can outsource the domestic duties to professionals and advance their career journey, making them the decision-makers of their life plans.

Gender Dividend Generation (Born in the 1990s)

Peiyao has worked as a project manager in various high-skilled industries, with particular expertise in robotic process automation. Peiyao claims that her extraordinary competence at work has helped her counter the social stigmatization of being a single, working woman. Her parents have never pressured her to become a wife or a mother. Unlike Yan and Helen, who expose the apparent workplace gender discrimination faced in their journey, Peiyao believes that the workplace creates a "gender-neutral" space for all workers to showcase their advantages. "I deny the stereotypical view that women have to act like a man in the workplace to get promoted. I think women have distinct advantages in team building by demonstrating enthusiasm and compassion." Peiyao's experiences bring a nuanced scope into the gender dividend case that focuses on the unique value of female labour participants, compared to the group analytics approach that encourages the elimination of gender differentiation.

Peiyao expresses her opinions on the two extremely diverging views regarding China's recent three-child policy. She firstly points out that Shanghai's over-congested housing structure constitutes significant reasons for the strong public resistance against the policy, meaning that the opposition offers insufficient implications to Shanghai-featured feminism. She also depicts a harsh reality that women who withdraw from work to bear children view reproductive labour as a more valuable option when facing a career bottleneck. Peiyao's idea uncovers the fact that the contemporary market offers a lack of room for the promotion of married women beyond the intermediate management level. Compared to the gender dividend's idealization for the double female roles, most working women are compelled to make trade-offs between working and childbearing under the disadvantageous labour market circumstances.

Findings from Stories of Elite Women in Shanghai

The three stories are not representative of all working women in the given generation, since their privileged birth circumstances have allowed them better access to education. Nevertheless, Yan, Helen and Peiyao's career stories demonstrate a progressing pattern in workplace gender equality with the increasing job availability, promotion opportunities, and importantly, chances for social mobility. Yan, Helen and Peiyao all mention a feeling of empowerment from their earned property rights and socioeconomic status. Meanwhile, when discussing their family roles, the difficulties of achieving a work-life balance construct a new dilemma within a system interlocking economic liberation and social differentiation of gender. Their stories imply that women's career advancement is tied closely to their family relations. Yan asserts that her daughter's future motivates her work and that divorce is a necessary step to freedom. Helen thinks that her release from the mother role is relevant to the support from her enlightened husband and the private schooling program, which constitute critical factors in her success. Young elite women like Peiyao accomplish impressive achievements in the workplace to escape from the character of the traditional woman. Consequently, one can conclude that a more gender-equal work environment provides negligible improvements to the social perception and requirement for femininity. The gender dividend's economy-centred perception of women's value fails to address the systemic invisibilization of domestic work and contradiction of women's dual roles, thus incentivizing social critics of housewives and workplace double standards for pregnant female workers, to limit women's capacity in exercising agency.

The increasing female labour participation offers women financial autonomy and household-level bargaining power. Nevertheless, the gender dividend concept considers solely a woman's worker role to

claim that the future generations are beneficiaries from the changing household spending pattern (Esteve-Volart 2000, 45). Women's roles as mothers are also time-consuming and irreplaceable; these invisible contributions should not be seen as backlashes in the gender dividend paradigm that forcibly pull women out from the liberated workplace. Sen's capability approach stresses freedom from servitude, indicating that economic growth and social reforms must focus beyond wealth to generate a broader range of women's choices (1999, 360). Yan, Helen and Peiyao stress the necessity of policy actions to reduce the adverse impact of women's childcare duties on career development. Yan provides an illustrative example of the policy expected, "the fathers should also have one-year delay for promotions after taking the paternity leave." Although Yan's policy suggestion incurs unavoidable social costs, it represents the voices of the elite working mothers who lose control in their career journeys due to childbearing. Future improvements on the gender dividend concept should assess the effectiveness of defamiliarization instruments in social perception change and then legitimize women's household work in cash values to dissociate traditional housewives with backwardness. Lastly, future scholars are recommended to make policy suggestions regarding the government's interventions to create a genderless workplace.

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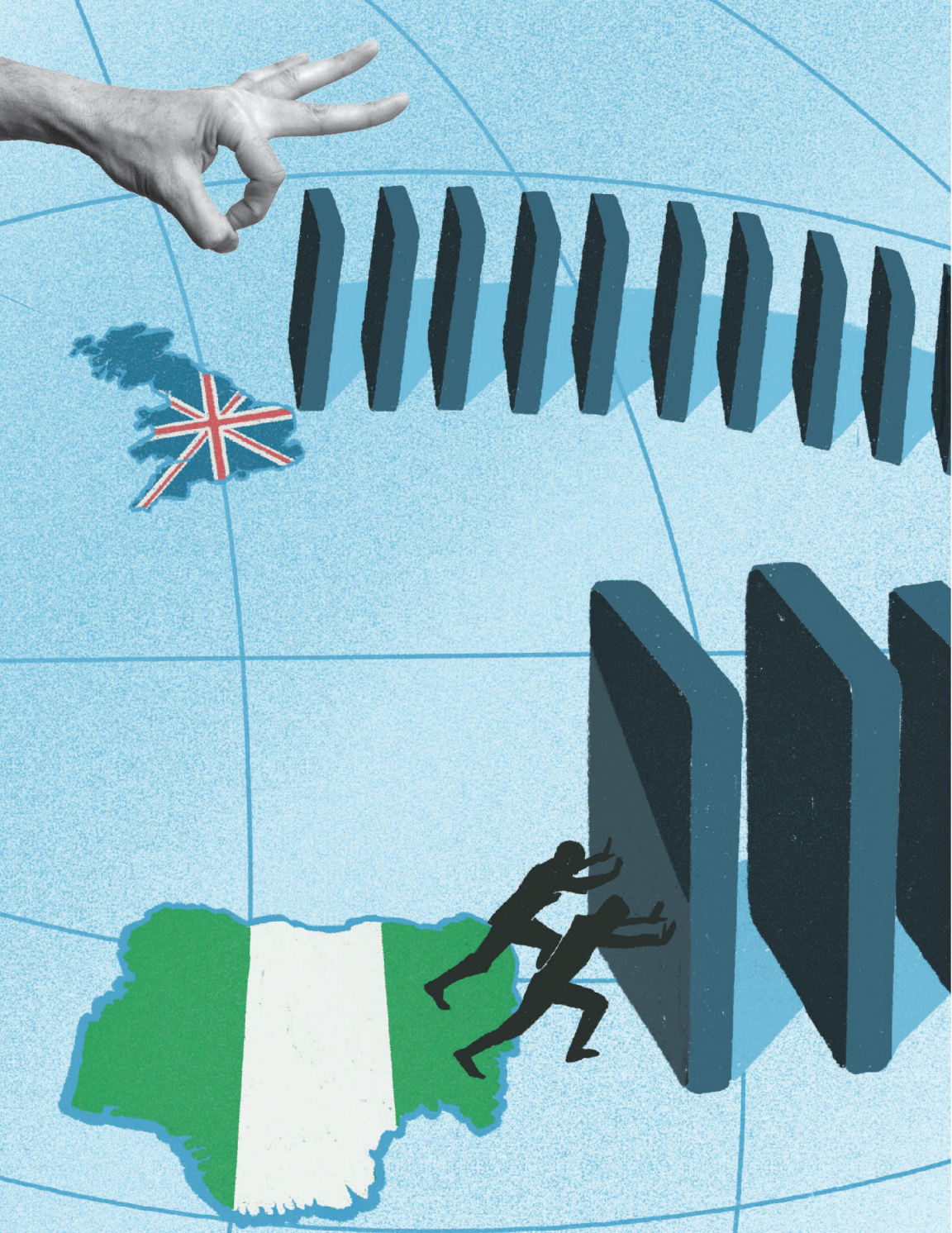
Determination Met with Marginalization: A Case Study on The Nigerian Civil War

Gabriel Klein
Edited by Isha Shahane and Justin Weir

AUTHOR'S NOTE

"History will one day have its say: it will noy be the history taught in the United Nations, Washington, Paris or Brussels, however, but the history taught in the countries that have rid themselves of colonialism and its puppets. Africa will write its own history, and both North and South of the Sahara, it will be a history fill of glory and dignity"

- Patrice Lumumba (First Prime Minister of the Democratic Republic of the Congo, assassinated in Belgian led coup d'etat, c. 1925-1961)

I would like to thank the whole team at Flux for allowing me to publish my essay on the history of the Nigerian Civil War. Once I began learning about the Igbo and Biafran people, as well as the atrocities committed by the British and French, I simply had to write about it and spread awareness on the topic as it's one of the most incredible stories I have ever come across. Lastly, for anyone interested I would like to recommend the writings of Chibuike Uche and Christopher Griffin (which I cite in my paper) as their findings are exceptionally eye opening and inspired me to continue researching into the history of Nigeria.

ABSTRACT

The Nigerian Civil War of 1967-1970 caused the deaths of over two million people and produced mass starvation in the region known as Biafra. This article seeks to explain how such a terrible tragedy could have occurred after Nigeria had been granted independence from the British. The evidence shows that the British and other Western states were both indirectly and directly responsible for the occurrence of the war. In the mid-twentieth century, Nigeria was a leading exporter of rubber and oil — essential resources for Western economies. The British were keen on retaining their grasp on these strategic products and used divide-and-conquer techniques to separate the Yoruba, Hausa-Fulani, and Igbo ethnic groups of Nigeria. This kept them in a position of control over the country and caused intense ethnic conflicts between the three groups. The escalation of these ethnic tensions led to mass-scale racial violence and the secession of the region of Biafra — the final straw that led to complete civil war. The paper itself addresses the history of both Nigeria as well as the British Empire, and it ultimately questions Britain's culpability with regard to the conflict.

Introduction

For centuries, European empires have been fixated on controlling Western Africa due to its abundance of strategic natural resources, and the area known today as 'Nigeria' has fallen victim to this pattern. Since the 1700s, the British Empire sought control of the region to fuel its economic and political desires, and these activities still continue. Fueled by their desire to dominate the continent, the British used their colonial administration to establish long-term control. This began with the Royal Niger Company, eventually transforming into the Protectorate of (Northern and Southern) Nigeria, and finally becoming the state of Nigeria. Its colonial state was "the largest of England's African holdings, as well as the most profitable, and its 'moderate' transition, under England's 'enlightened' tutelage, was the pride of the Colonial Office" (Diamond 1970, 345).

In order to unify the country to generate greater profits, the British devised a plan — the strategic enforcement of dividing and conquering. Throughout the twentieth century, the British orchestrated a socio-economic fracturing of Nigeria's three main ethnic groups — the Yoruba in the Western part of the country, the Igbo in the East, and the Hausa-Fulani in the North — all of whom continue to harbour contempt for one another. The colonial administration achieved this through suppression of local resistance

and the development of regional states designed to isolate ethnic groups (Garba and Garba 2005, 92).

The Igbo people of Nigeria were the main victims of the country's fragmentation, facing constant discrimination due to the country's asymmetrical economic and political structure. Though the British were keen to reform certain legal structures to better appease certain groups, their efforts truly only served the aims of the Empire. The result of these British failures culminated in the Igbo secession from Nigeria, and on May 30th, 1967, the Republic of Biafra was born. Shortly after, the Nigerian state declared war, starting the Nigerian Civil War, which lasted from 1967 to 1970, costing the lives of approximately two million people (Aremu and Buhari 2017, 68).

This paper demonstrates how the British and French were complicit in the emergence and prolongation of the civil war through constant meddling in domestic politics, with the aim of gaining political and economic power in the region. This paper argues in three parts that the amalgamation of Nigeria, the creation of the Native Authority System, the Clifford, Richards, and MacPherson Constitutions, and the international profiteering of oil generated a dangerous political asymmetry within the country, ultimately leading to the mass systematic victimization of the Igbo people, and the outbreak of the Nigerian Civil War.

British Rule: Divide and Conquer

As noted earlier, in the beginning of the twentieth century the region of Nigeria had three main ethnic groups located around the different parts of the territory: the Igbo of the Southeast, the Yoruba of the Southwest, and the Hausa-Fulani of the North. The Hausa mainly practiced Islam, while the Igbo and Yoruba were majority Christian. It is important to note that "except for occasional wars of conquest, the interethnic competition had previously been minimal" but "the processes of political and administrative modernization radically changed this" (Stremlau 1977, 32). As the British gained dominance over Nigeria through colonial conquest, they instituted several legal and political arrangements that caused unprecedented socio-economic asymmetry within the country, and created a disturbing political power imbalance between the Hausa and the Igbo. As well, the Igbo occupied the region of Nigeria that was the most well-endowed with valuable resources in comparison with the rest of the country, and the extraction of materials from this area became the main agenda for British interests. Since the Igbo were more democratic and less centralized in the past while having a collective urge towards entrepreneurship, the exploitation of their resources and labour was not well received (Ohadike 1998, 190).

The first political arrangement of significance which contributed to the civil war was the Amalgamation of Northern and Southern Nigeria in 1914. This unification of the country fully combined the Hausa, Yoruba, and Igbo populations all into one state, but its purpose was not rooted toward an ideal of secure state-building. Instead, the Amalgamation "would allow the central administration to divert resources as it saw fit – allocating southern revenue to the north as necessary" (Falola et al. 2008, 117). This redirection of revenue from the South to the North gave the Hausa a lot of power and wealth, and this specific distribution of colonial affection and revenue created conflict between the three governments of the North, East, and West (Lawal 1998).

Furthering Hausa empowerment, the British created the Native Authority System (NAS) in 1914 to institutionalize Britain's indirect rule over the country by appointing officials to local government who best served the interests of the Crown. In the Northern Hausa-Fulani regions, "the Native Authority system under the indirect rule found a very congenial environment to thrive," as their pre-colonial society was based on a centralized government founded on Sharia law, and they already had a form of taxation installed within their system (Egbe 2014, 115). The opposite was true in the Eastern Province where pre-colonial Igbo society lacked centralization and taxation, and the integration of the NAS became an extreme failure which continued to cause tensions between the Igbo and the British. Additionally, colonial rulers would provide and grant certain favours to rulers to achieve their goals, which further fueled regional and ethnic division. All in all, "the aggregation of hitherto independent people to meet the demands of colonial administration, with no regard to their pre-colonial context, created ethnic asymmetry" and " the majority–minority divide, the major manifestation of ethnic asymmetry, came to be defined by struggles for identity and autonomy, rendering ideas of nationhood, citizenship, and patriotism problematic" (Garba and Garba 2005, 93).

Three sets of constitutions were enacted between 1922 and 1951: the Clifford Constitution, the Richards Constitution, and the Macpherson Constitution, which all continued to negatively impact the ethnic and regional cleavages within Nigeria. The main reason that these constitutions left behind a political fracturing is that they were economically beneficial to the British, who were finally able to secure the Hausa as the dominant ruler of the state and could therefore continue their export business. The Clifford Constitution was enacted in 1922 and established the Northern province (Hausa dominated) as the leader of the Western and Eastern provinces, which developed even deeper administrative segregation. The "segregation was so entrenched that when the

central administration in the 1930s sought to narrow the gaps between the North and the South through integration, British officials in the north resisted successfully", and "the division of the Southern region into East and West regions created a three-region administrative structure that created further antithetical forces, struggles and conflicts" (Garba and Garba 2005, 94). The British attempt to link ethnicity and regional politics together was slowly working, and the Richards Constitution of 1946 only solidified the drive for ethno-regionalization.

The ethnic-based structural change that occurred continued to make the North the dominant political region, which was doomed to be unstable, as the country lacked significant political players from its other populous regions (Garba and Garba 2005, 96). By the 1950s, more reforms and constitutional conferences were being arranged; however, the stage was set for internal failure. The power of the North prevailed when reaching conclusions for the MacPherson Constitution, but the original conference outlining it in 1950 was dominated by ethno-regional rivalries, and the 1950s saw reforms being overshadowed by squabbling that was "so intense that often agreement on even minor issues was impossible" (Egbe 2014, 116).

These constitutions and arrangements "countered the development of a national consciousness, the development of national institutions, common citizenship, a cohesive approach to decolonization, and, ultimately, the building of a modern state" and were all the product of a strategy devoted to maximising colonial exporting efficiency (Garba and Garba 2005, 96). All of these arrangements and institutional asymmetries were key in causing the crises of the 1960s in Nigeria, as respectful political debate and Nigerian diplomacy faded. What is striking is that the British seemed unaware of how self-determined the Igbo would become over the course of the twentieth century due to the Empire's decision-making, and how the Igbo fight for liberty would soon lead to civil war.

The Catalysts for Secession and The Collective Trauma of the Igbo People

An analysis of the historical and political build-up leading to the Nigerian Civil War demonstrates that "the Igbo elite have historically responded to the perceived victimization of the group in two principal ways: by advocating for either more inclusion or for more separation" (Ibeanu et al. 2016, iii). The government's reforms and institutions that created ethno-regionalism also culminated into brewing hatred among the Igbo people towards the Hausa, and vice versa.

During the formulation of these agreements, riots and protests such as the Aba Women's riot in 1929, and the October 1945 riots in Jos were common. In Jos, many were injured and killed, and this riot constituted the "first major inter-ethnic violence involving the Igbo" (Ibeanu et al. 2016, 12). These riots were a direct reaction to what were aptly described as laws that promoted 'taxation without representation,' and the asymmetry of political power in the hands of the Hausa and the colonial government. Directly after the 1950 Constitutional Conference, the western Action Group (AG) and the Northern People's Congress (NPC) were formed based on ethnic lines, and "in the 1951 regional and 1952 federal elections, AG won in the West and the NPC won in the North, while the National Council for Nigeria and the Cameroons (NCNC) won in the East" (Garba and Garba 2005, 96). Soon, political activists and leaders emerged around the country, including Nnamdi Azikiwe, who "accused the British colonialists of masterminding acts of systematic discrimination against the Igbo and stated that: 'it would appear that God has specially created the Ibo people to suffer persecution and be victimized because of their resolute will to live" (Ibeanu et al. 2016, 11). As the British were preparing to grant Nigerian independence, the federal election of 1959 showed the public that nothing was going to change post-independence. Each party in the federal election was still basing their objectives on winning the support of their ethnically based platforms and consolidating

power in their respective regions (Stremlau 1977, 33). By October 1st, 1960, Nigeria gained its independence from Britain, but this was a mute victory as the general perception of the new government was negative, and rumours of corruption worsened the state of affairs.

A breaking point came in January of 1966 when an Igbo military officer, Major Nzeogwu, staged a coup d'état to depose the government (Uche 2008, 115). The coup failed, allowing Army Chief Johnson Aguiyi-Ironsi to take power, only to be overthrown by Lieutenant Colonel Yakubu Gowon of the North. After the coup and counter-coup, the anti-Igbo sentiment erupted into full-blown violence towards the group. These attacks are known as the 1966 Igbo Pogrom — many believed that the Igbo coup d'état was part of a conspiracy to establish Igbo hegemony in the country. In parts of the North, thousands were killed during the months after the first coup, and between September and November of 1966 over 50,000 Igbo were killed (Ibeanu et al. 2016, 13). In addition to this, Northern troops massacred over 240 Southern officers and men on July 29th, 1966 (Nixon 1972, 475). These actions culminated in the mass exodus of thousands of Igbo from the Northern region back to their homelands as sentiments towards them worsened.

As a result of this, Chukwuemeka "Emeka" Odumegwu-Ojukwu, who served as the military governor of the Eastern region, was determined to stop the massacre of his people and finally bring institutional change to Nigeria. By now the idea of the East as a separate republic had formed in the minds of many, and Ojukwu's political interests lay in acquiring freedom for the Igbo people and the Eastern region known as Biafra. Ojukwu, Gowon, and other stakeholders eventually met from late 1966 to early 1967 to bargain for an agreement known as the Aburi Accord, which would bring an end to the hostilities. Ojukwu did not hesitate to ask for greater political autonomy, the restructuring of the army, and a greater share of the oil revenues that came from the Eastern deposits. At first, the Accord seemed successful, and both sides agreed on respectful terms. However, "on 27 May, 1967, Lt. Col. Yakubu Gowon announced the creation of twelve states in Nigeria and thereby abrogated the regional political structure," and "the Northern Region was divided into six states, the Eastern Region into three states, the Western Region into two states while the Mid-Western Region became the Mid-Western State" (Aremu and Buhari 2017, 65). This decision from the North was made without the consent of Ojukwu, and he saw this as a conspiracy against the Igbo and a declaration of war. On May 30th 1967, Ojukwu declared independence for the Republic of Biafra and shortly after, the Nigerian Civil War began. The collective trauma of the Igbo had culminated into the state of Biafra, and Ojukwu was the honorary captain who represented the region's long-forgotten interests.

The Role of International Interests During the Conflict

For Ojukwu and the Biafran people, this war was a turn in the direction they had always hoped for. However, for the British it served as a huge obstacle in its centuries-old conquest for domination over Western Africa. It is important to note that the economy of Nigeria had changed drastically since oil was discovered in 1958. The country was becoming a powerhouse in regards to its exporting of oil during the 1960s, and "aside from the fact that a British company was the major producer of oil in Nigeria, Britain was also the major recipient of Nigerian oil. About forty percent of the total oil production in Nigeria ended up in Britain at the time" (Uche 2008, 122). Prior to the civil war in 1967, Nigeria was producing around 580,000 barrels of oil a day, which ultimately garnered the interest of other Western powers to increase their investments into the resource's extraction. Especially for the British and French, this interest in oil led them to covertly interfere with the Civil War's trajectory by employing propaganda, bribery, and secret arms dealings to secure the victory they wanted.

The British were initially ambivalent about which side they supported, considering that

the Biafran's response to the war seemed promising at the beginning. However, this middle ground position would not last, as "the British government calculated that supporting Nigeria was its safest option if it were to preserve its oil interests in the country, largely because the Cold War and the rivalry among some Western European states made it likely that other foreign powers would wade into the conflict," and "although the British government may have believed that Biafra had strong grounds for secession, it was not in a position to guarantee its success even if it supported the rebels" (Uche 2008, 125). Additionally, the British Crown was motivated to act fast, as the Six-Day War in the Middle East had a significant impact on the oil imports into Britain. For the British and Shell-BP, they made blunders trying to cover up their royalty payments to both sides of the war but were ultimately forgiven by the Nigerian army as they paid a requested £5.5 million in advance, in order for the army to purchase arms from Britain (Uche 2008, 132). Britain's final strategy was to unify Nigeria by backing Gowon, and along the way they would continue to supply covert assistance and recommendations for his army.

The French took an interest in Nigeria for two reasons: firstly, they wanted to see if their support of the Biafrans could result in a take over of a portion of its oil revenues, and secondly, it was important for De Gaulle to, as he stated, "destroy these enormous machines created by the English, such as Nigeria, which cannot support themselves" (Griffin 2014, 119). Similarly, De Gaulle's right-hand man Foccart was also keen on expanding his *Françafrique* agenda in Africa and saw a potential for Nigeria to build on his portfolio of vassal states. French officials and Foccart strategically manoeuvred funds owed from the Elf-Aquitaine into the hands of Ojukwu so he could use this money to buy weapons from Portugal and continue the war (Griffin 2014, 120). Additionally, the SDECE, (the external French Intelligence agency), was able to make sure the media reported the war throughout the West as a genocide committed by the

Nigerian Government, to pull greater public support for the Biafrans (Griffin 2014). Ultimately, France could no longer maintain its position in Biafra, as it was experiencing a monetary crisis domestically, as well as in its colony Chad, which made De Gaulle and Foccart weary about the war and its profitability. In the end, with over two million of its people starved to death, "Operation Tail-Wind" led by Olusegun Obasanjo would decisively lead to a Biafran surrender to Nigeria on January 14th, 1970.

Conclusion

Based on the evidence provided above, "the Nigerian civil war is best understood as a historical event, the consequence of historical forces (colonization) and its ramifications" (Garba and Garba 2005, 97). Beginning with Britain's conquering of Nigeria by force and its amalgamation of the Southern and Northern regions, it started a domino effect of hatred and ethnic-regionalism which dominated the country's politics. By creating the Native Authority System, Clifford Constitution, Richards Constitution, and MacPherson Constitution, the indirect rulers of the country solidified the country's future catastrophe and eventual breakdown. The international role of the French and British during the 1960s add to the insurmountable evidence that the West was not only responsible for creating the Civil War, but also prolonging it for their own gains. Though reformations and deals were made, there was nothing that could stop the eventual victimization of millions of Igbo. Today, the fight for Biafra continues, and will carry on indefinitely until action takes place to reconcile with its people.

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The UN Guiding Principles on Business and Human Rights: Implementation Challenges at the Corporate Level in Newly Industrialised Countries

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AUTHOR'S NOTE

"A functioning is an achievement, whereas a capability is the ability to achieve. Functionings are, in a sense, more directly related to living conditions since they are different aspects of living conditions. Capabilities, in contrast, are notions of freedom, in the positive sense: what real opportunities you have regarding the life you may lead." – Amartya Sen (The Standard of Living, 1987: 36)

ABSTRACT

In 2011, the United Nations (UN) Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights (UNGP) as a global standard for preventing business-related human rights abuses. The UNGP provides guidance for implementing the "Protect, Respect and Remedy" framework and offers advice to governments, businesses, and civic organisations to prevent and remedy business-related human rights violations. For businesses, the term "responsibility to respect" portrays corporate responsibility as a moral commitment rather than a political and legal obligation. This paper will assess how the private sector has imposed challenges in the UNGP implementation process based on four dynamics: lack of state incentives, managerial difficulties, victim marginalisation and an underdeveloped public sphere. It will also provide a case study on Chinese manufacturing firms, which will be used to establish that the "respect for human rights" often remains absent in newly industrialised countries, particularly where profitability and productivity are prioritised.

Introduction

In 2011, the United Nations (UN) Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights (UNGP) as a global standard for preventing business-related human rights abuses. The UNGP was designed to provide an internationally recognized framework to engage governments, private firms, civil society, and the general public to address corporate social responsibility in respecting human rights (OHCHR 2011, 4). The UNGP provides guidance for implementing the "protect, respect and remedy" framework and offers advice to governments, businesses, and civic organisations to prevent and remedy business-related human rights violations (see fig. 1). The practical applicability of UN guiding principles are frequently brought into question, particularly as human rights abuses frequently persist in corporate activities worldwide, especially in low-income countries.

The first part of this topical paper will assess how the private sector has imposed challenges in the UNGP implementation process from four dynamics — lack of state incentives, managerial difficulties, victim marginalisation and the underdeveloped public sphere. State inaction and victim marginalisation are argued to have an outsized impact on the excessive bargaining power leveraged by the private sector in neoliberal economies. Managerial difficulties focus

on the analysis of a business's internal operations. The involvement of civil society groups in human rights protection also significantly impacts business activity monitoring. The paper will also touch on a number of examples to illustrate the managerial challenges in the UNGP implementation process.

The second part of the paper will introduce the case of Chinese manufacturing factories. This part will depict workers' lives in two differently sized Chinese factories and the role of Chinese civil society in the UNGP implementations. Overall, this paper argues that businesses' respect for human rights remains absent in newly industrialised countries when corporate entities prioritise profitability and productivity over their obligations to rights adherence. Thus, victim empowerment and public engagement are essential elements to make the UNGP's soft-law expression more effective in practice.

Literature Review

The UNGP establishes a conceptual framework to address business-related human rights issues. The terms used in the UNGP reflect the division in the role of state actors and non-state actors in relation to human rights protection. Whereas states have a legal "duty" to protect, corporate actors have a social "responsibility" to respect. The term "duty" evokes a notion of legal obligation (Fasterling and

Demuijnck 2013, 807). It is used specifically to highlight that the state must comply with international law and implement litigation processes to protect against human rights violations. Meanwhile, the term "responsibility" portrays the responsibility of a corporate actor as a moral commitment rather than a political and legal obligation (Arnold 2010, 383). The UNGP is crafted as a series of normative statements to raise the overall awareness for human rights abuses. The principles listed are instrumental in standardising corporate-level administrative policies that provide workers access to grievance mechanisms and remedial processes. However, according to Arnold, the UNGP's soft-law expressions cannot enforce their principles without local governments introducing legislation and procedures regarding the three pillars (2011, 384).

The Special Representative of the UN Secretary-General, Professor John Ruggie, states that the UNGP should be understood as a comprehensive and overarching international legal agreement (2007, 830). He argues that there is standard convergence between states regarding human rights protection. Still, the causes of human rights violations range from various issues regarding the local legal and institutional systems. The UNGP human rights framework developer, Ruggie, has repeatedly emphasised the notion of "social expectation" for the state to regulate corporate conduct (2009, 285). The UNGP framework is primarily based on a top-down power structure. The state takes the primary legal duties to build an accountability mechanism that enumerates norms for human rights protection in business contexts. However, scholars observe that Ruggie's framework had political constraints which shaped its definitions of corporate responsibilities (Dowell-Jones 2012, 273; Knox 2012, 36; Harper 2020, 73). Dowell-Jones highlights that the non-compliance at the corporate level due to the fear of losing competitiveness de-specify the corporate responsibilities in human rights protection, especially when corporations possess the power to lobby for policy changes (2012, 530). Therefore, the industry's resistance to corporate

conduct regulations imposes a key challenge to human rights "due diligence", as corporations who invest heavily into investigating human rights violations find themselves at a disadvantage compared to their unscrupulous counterparts (Sullivan and Hachez 2012, 478). Specifically, human rights due diligence in this context refers to a risk-management method that corporations proactively use to identify, intercept, and diminish prospective and existent human rights impacts (OHCHR 2011, 3). Empirical evidence finds that the private sector perpetuates a bottom-up mechanism where resistance from profit-based firms restricts the state policymaking in the business-related area because corporate human rights regulations are seen as a costly liability which impede profitable returns.

State Level: Lack of State Incentives in Neoliberal Economies

The variances in states' international trade positions are essential factors of consideration when policymakers draft laws and human rights treaties to accommodate the UNGP. Instead of strengthening the global consensus in human rights norms, the UNGP is mostly enforced in regional or international legally binding treaty forms. At the national level, a number of states implemented the National Action Plan based on local contexts to achieve greater coherence between states and business-related public policy areas. At the international level, inter-governmental organisations such as the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights, the Inter-American Commission on Human Rights and the Council of Europe engaged in establishing regional norms to carry out the transnational implementation of the UNGP. However, the regulatory development responding to the UNGP's endorsement remains insufficient with numerous challenges raised in the private sector to prevent states from prioritising human rights protection on their business regulation agenda.

The first challenge that impedes states' engagement

"Protect, Respect and Remedy" three pillars framework				
	In relation to human rights	Actions need to be done	Operational principles	Obligation type
State	Primary duty bearer	Protect against human rights abuse within their territory and/or jurisdiction	Enforce laws Provide effective guidance to business Encourage business to address their human rights impacts	Legal
Business	Responsibility to respect	Avoid infringing on the human rights of others Address adverse human rights impacts with which they are involved.	Commit through a statement of policy	Moral
Victim	Access to remedy	business-related human rights victims have the access to remedy.	State-based judicial mechanisms State-based non-judicial grievance mechanisms Non-state-based grievance mechanisms	State implements laws to enforce business to take legal responsibilities

Figure 1. *Three Pillars Framework (OHCHR, 2011).*

with UNGP implementation is the fear of deterring foreign investment in the neoliberal economy. Developing countries attract foreign investments as a means for economic and social progress. Free trade and capital flows form a more favourable political economy environment which strengthens global value chains (Seric and Tong 2019, 2). Referring to the flying geese pattern of development by Akamatsu, developed countries' comparative advantage in technological innovations causes them to shift further away from labour-intensive production to more capital-intensive activities (Korhonen 1994, 105). In this model, the higher-tier country transfers its labour-intensive production to the countries in lower tiers down in the hierarchy. Although today's modernization pattern does not follow the exact path, the flying geese pattern has accurately depicted the subsequent relocation process of labour-intensive industries from developed to developing countries in a variety of global value chains. Low-income countries gain comparative advantages in the global market with large groups of cheap labour and thus a more cost-effective working environment. Unfortunately, these cheaper forms of labour often include illegal and child labour.

Establishing grievance mechanisms and official remedial processes for business-related human rights violation victims are often misunderstood as protectionism in the global market (European Parliament 2017, 25). By capitalising on their lower domestic labour costs, countries that pursue economic growth from raw material and manufacturing goods exports are often unwilling to undertake legislative measures responding to the UNGP. Kenya's representative presented the conflictual issue between labour standards and financial losses at the 2016 UN Forum on Business and Human Rights. He proposed that governments request neighbouring countries to raise labour standards simultaneously to ensure that the whole region could implement human rights protection acts without losing their competitive edge (European Parliament 2017, 7). The proposed solution would seek to elevate the overall labour standards

across the playfield to achieve indiscrimination when facing investors. Yet it would not ameliorate the central issue: that there is a lack of awareness of the potential economic losses caused by violating human rights. The Business & Human Rights Resource Centre (BHRRC) survey indicates that businesses prefer a robust governance framework and enforcement on human rights issues, partly because they need to be socially responsible in public eyes to avoid the profit loss caused by criticism (European Parliament, 2017, 13). Local governments can overcome the awareness obstacle with greater coordination within and across governments and businesses.

At the international level, Ruggie mentions that avenues of remedy for non-state abuses remain unclear (2009, 281). In keeping with basic principles of international law, UNGP cannot require states to exercise extraterritorial jurisdiction on corporate violations outside of their national borders (OHCHR 2011, 6). Governments often meet the basic international obligation to provide the remedial framework to state abuses with civil laws, but barriers persist when victims seek access to effective judicial remedies overseas. International institutions need to have more capacity-building work to coordinate states in addressing transnational corporate-related disputes.

One major structural challenge is the lack of agreements in regional governance due to varying social contexts. For example, the ASEAN Economic Community is reluctant to build accountability mechanisms for business-related human rights issues because fragmented governance failed to interlink distinct countries in the community (Harper 2020, 136). Countries like Brunei, Cambodia, Laos, and Vietnam lack the political commitment to the UNGP. In contrast, countries like Thailand and Malaysia made continuous progress in implementing the national action plans. The regional disintegration reflects a silo mentality in which different countries with diverse perceptions and accountabilities of human rights are reluctant to connect and communicate. Similarly, it also reflects a lack of consensus between member states. Although norm diffusion at the national level is challenging, it must occur before integrating business and human rights into regional and international systems.

All the above-mentioned challenges are linked to a bottom-up approach to policy-making. At each level, private sector interests intersect or even dominate government legal recognition. Under an ideal circumstance proposed by Sen, the government's business and human rights agendas should motivate moral, social, and economic rationales to shape corporate behaviours (2004, 330). Sen's argument provides a top-down configuration in implementing business-related human rights regulations. In reality, outcomes are quite the reverse; businesses' economic and political power grant corporate speech rights in public discourse, which incentivises the government to prioritise corporate interests in production efficiency and profit-making. Hafner-Burton and McNamara find from the logistic regression that controlling for other predictors, firms who have investments or capital in human-rights abusing countries are more likely to lobby for human rights related legislations and shape the US business-related policy landscape (2019, 132).

The bargaining power of the private sector can not only affect national-level lawmaking, but can also potentially incentivise the low-income countries to attract large transnational corporations with underage and underpaid workers. The fragmented attitude on human rights norm diffusion in ASEAN is an illustrative example that shows countries' diverging interests on the UNGP based on their production models and levels of economic development. Consequently, the private sector's involvement in the political sphere and the formation of global value chains have impacted the level of government duty bearing in terms of business-related human rights violations. This bottom-up approach has made the enforceability of government regulations less authoritative and more ambiguous in actual implementations.

Corporate level: Managerial and Data Collection Difficulties

Some have argued that the human rights responsibility framework for firms should consider their varying strengths, size and business activities that determine their capacity to affect human rights (Weissbrodt and Kruger 2003, 912). In fact, although such a framework states that a larger company should take greater responsibilities, this one-size-fits-all approach is limited as it counts the degree of influence as the only indicator of a corporation's capacity to take responsibility. This section will propose other managerial challenges that disrupt the UNGP implementation at the corporate level.

The UNGP is unable to reach a broader range of companies. Compared to large transnational corporations, small and medium manufacturers, especially those in the newly industrialised region, may not have the resources to develop and implement human rights policies. It is always challenging to translate human rights principles into understandable terms for both business owners and workers. Without help from a professional human rights consultant, most business owners are unfamiliar with international human rights law and other moral frameworks that are deemed fundamental at the international level. Human rights due diligence also requires an extensive information management system, which requires constant internal evaluation, public feedback tracking, and broader stakeholder involvement (Collins 2014, 10). Many small and medium businesses often find human rights-related measures unprofitable and costly to maintain. Therefore, as long as the company is not trapped in a major human rights violation scandal, they rarely adopt a full due diligence measure as required by the UNGP.

This does not mean that large transnational corporations are more socially responsible. Many large corporations create annual social responsibility reports to attract investors and potential clients. However, the focus of these reports typically only demonstrates the company's positive contributions to social aims, rather than information which might be used to hold them accountable in areas of violation. Businesses are unlikely to relay harmful content in their annual report, knowing that it could negatively impact investor's impression of the company (de Felice 2015, 542). Moreover, companies tend to amplify their contributions; self-reported data is hard to verify. There is no feasible way to assess self-reported data's truthfulness unless states standardise the information with legislative measures.

Lastly, it is challenging for a transnational corporation to implement a policy and ensure that it is followed globally. The case of Toyota provides an elucidating example. Most multinational companies have a comprehensive ESG (environment, social and corporate governance) framework at the corporate level. Still, the execution of the blueprint is less efficient in practice than it is planned to be. Toyota has a consolidated and accessible sustainability statement written on paper (Corporation 2021, 3). However, the company was accused of sweatshop abuses in its aluminium supply chain in Guinea (Mcneill 2013, 10). Toyota's case reflects that, in contrast to principle, not all transnational corporations are effectively moved to train a specialised team that oversees its global value chain transparency. The economic interest in labour-intensive states triggers private firms to neglect their commitment to the public and continuously practise human rights abuses.

Regardless of the company's size, corporate social responsibility must be measurable to provide comparative and progressive human rights ratings if financial investors are expected to screen controversial and abusive companies out of their portfolios. The UNGP states that "[b]usiness enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operation" (OHCHR 2011, 6). The guiding principles request human rights indicators to distinguish between essential and beyond essential indexes. Essential

indexes include labour rights abuses, freedom to associations, elimination of discrimination and other types of operation-based activities. Beyond essential indexes measure the company's involvement in philanthropic activities that contribute to human rights protection, such as diversity programs and local community programs. Most indicators lack clear distinctions between these two types of indices because most sources of information are from corporate self-reporting and third-party documentation, and the results tend to lean towards the company's benefits. Meanwhile, third-party documentation is often expressed in anecdotal form, which is insufficient for comparative purposes (de Felice 2015, 536). Overall, both sources of data mentioned above only portray a partial image of the company's performance. Company self-reporting overemphasises beyond essential indices to demonstrate their community contributions rather than adjusting the business standards to meet the UNGP framework. Third-party documentations attempt to explore within the researched company's internal operations, but lack the resources needed to present a complete picture of firm behaviour.

The methodological challenges of collecting standardised data for human rights indicators can be explained by Bollen's Levels of Human Rights Information and Reporting (1986, 581). Bollen argues that there are six layers to the apparatus of information diffusion regarding human rights violation. Business-related human rights data are more likely to be reported because of the likelihood of media attention, and publicity regarding the company's past practices. The listed problems can be solved with diversified external sources, standardised data reporting and effective falsification processes. Human Rights Information and Documentation Systems (HURIDOCS) is an example of a reporting format that seeks to establish a harmonised framework for human rights violation reporting. This type of uniform format is preferable for developing future business-related human rights indicators, but the difficulty remains as consensus must

be achieved across businesses in the private sector beforehand in order for the format to be implemented.

Victim Level: Voicelessness under Corporate Rule

The UNGP acknowledges that states are the primary duty bearers in relation to business related human rights abuses. However, even if the state has established a grievance mechanism that mandates corporate responsibility, many uneducated and marginalised human rights victims remain suppressed and voiceless for various reasons. These four types of workers include internal migrants, informal workers, external migrants and child labourers, who are often silenced when they suffer rights violations. These types of workers are often exploited by private firms because they can be paid low wages and easily manipulated.

According to the Harris-Todaro Model, when emerging economies experience structural changes, young labourers migrate from rural areas to engage in the urban job lottery in hopes of a better life (1970, 131). However, due to the inadequacies in infrastructures and unequal access to educational opportunities, these migrants receive minimal education before moving into an urban centre. Their career aspirations are limited to labour-intensive jobs, such as manufacturing, which will just barely cover basic costs of living. These educational limitations also constrain migrants' abilities to recognize human rights violations, or seek remedy when they do occur.

Large waves of urban migration also lead to unemployment in urban sectors, often creating large informal sectors in over-congested cities (Harris and Todaro 1970, 134). The informal sector describes workers who are not formally recognized as being employed. In order to avoid penalties, informal labourers work in less visible spaces and insecure environments (Miller 2007, 142). Meanwhile, the illegality of such economic activity also forces informal workers to deal with disputes privately because they are unwilling to go through court processes. Therefore, when states fulfil their duty to

build remedial frameworks for the formal workers, they typically fail to overcome the pitfalls of informal sectors. Because of the legal precariousness of their work, these informal workers are unlikely to use the formal judicial system when human rights violations occur, even though they are often the most vulnerable working population in a local economy, and urgently need access to remedies.

This phenomenon is not only common when uneducated workers move from rural to urban sectors; international migrant workers travelling from developing to developed countries are also frequent victims of human rights abuses. Japan's Technical Intern Training Program (TITP) was intended to train workers from developing countries through local internship programs. In fact, according to Takamura, foreign technical interns in Japan suffer a substantial degree of human rights violations and discrimination, particularly through legally binding effects that give private firms rights of control to their foreign employees (2021, 3). TITP's lack of accountability mechanism fails to oversee human rights violations in the private sector, enabling illegal overtime hours and the nonpayment of workers' time in Japanese recipient firms. The escalation of foreign labour migration in the neoliberal era is beneficial for both the recipient country governments and their private sectors because imported workers cover workforce shortages in recipient countries at a relatively lower cost. Both governments and private firms are expected to see expansions of such labour import programs; the convergence of their goals lead to further foreign labour exploitations. Meanwhile, foreign workers experience voicelessness and marginalisation due to minimum political participation, financial burdens, and the high costs of returning back to their home countries. The private firms in high-income countries pressure workers financially with loans, agency fees and hefty fines to force foreign workers to remain silent when they experience abuses.

Lastly, child labourers are extremely vulnerable to human rights violations. The UNGP specifically requires enterprises to set standards to prevent child labour. Nevertheless, child labour is still prevalent in places where monitoring systems are absent. Children working in hazardous and exploitative environments are frequently found in informal sectors, small manufacturing sweatshops and other small-scale business activities (Miller 2007, 140). Before the UNGP was endorsed, the Convention on the Rights of the Child (CRC) had already stated governments' responsibilities for promoting, providing, respecting, and protecting children's rights. However, child labour remains a persistent issue in economies where children work in informal or illegal economies.

Each of these vulnerable groups have made the implementation of the UNGP more difficult, even if some countries have established legal grievance mechanisms to provide access to remedy for human rights victims. The private sector plays a vital role in silencing these victims. First, these vulnerable groups are often exploited by businesses in order to operate at a lower cost and increase profitability. As a result, the private sector is likely to hide their human rights violations through unfair labour contracts and the use of government bribes. Second, large transnational corporations seek to comply with the Global Compact and oversee the global supply chain. Still, outsourcing can happen at all levels of business operation, and it is extremely difficult for actors at the corporate level to track every person involved in violations across the supply chain. Lastly, the creation of large informal economies in urban environments further undermines victims' abilities to pursue justice through existing legal frameworks.

Civil Society: Public Relations Tool

The UNGP implementation takes place in a multistakeholder environment that involves governments, businesses, and civil society. The framework expects a rich associational community to advocate for policy changes that correspond to widely held principles. The participation of civil society organisations enriches the public sphere and

grants the public with transformative capacity for business-related human rights issues. Contemporary studies overemphasise the vertical relationship between the political and public sphere as a reason for the failed consolidation of political plurality. In fact, the collaborations and frictions between the private and public sectors also hinder civil society's capacity to represent the victims and push corporate social responsibility to the top of corporate agendas. Large corporations exert influence on civil society organisations through financial funding and various forms of partnerships.

The relationship between the private sector and civil society has been described as an antagonistic one. However, this barrier has begun to diminish in recent years as business entities have begun working with non-governmental organisations towards sustainability goals in developing countries, such as clean energy and poverty alleviation (Burchell & Cook 2013, 749). The private-public partnership initiatives are largely beneficial for the UNGP implementation for the following reasons. First, enterprises can relay more information to the public sphere in order to monitor business practices, which enhances the credentials of the civic organisations involved. Second, the private sector's engagement in human rights norm diffusion helps fill in the financing gap and increases the efficient use of resources. Third, as Shamir mentioned, corporate social responsibility is shaped by the interplay between public pressure and the subsequent responses from these corporations (2004, 675). The co-optation between civil society organisations and private firms allows effective communication between the major stakeholders. Nevertheless, empirical evidence shows that the impact of private investments on sustainable development is very uneven. Most collaborations occur in profit-making sectors such as infrastructure and financial services, with little capital resources offered to social factors like education and human rights. The private sector's profit-oriented motivation often neglects many grassroots-based organisations that represent human

rights victims through traditional advocacy means, such as protests and public criticism. Therefore, private-public partnership initiatives often fail to align the public along human rights norms because the projects that receive the most funding from the private sector create more financial capital than social capital.

Another issue with the private sector's uneven involvement in sustainability projects is that civil society organisations are often instrumentalised as a public relations tool for establishing a clean image for companies, even if they carry out rights abuses. Risk public relations specialists help human rights abusers cover up their dirty history. Private investments beyond essential activities are helpful to direct public attention toward the company's philanthropic contributions; public relations firms also monitor media and help potential human rights violators cover up their abuses with good press. One famous case occurred in 2018, when female employees at Microsoft filed 238 discrimination and harassment complaints, claiming that the company had a toxic "boys' club atmosphere" (Solon 2018, 3). The gender-based case soon escalated, and a lawsuit was filed; however, the court denied the class-action status of the gender discrimination lawsuit, leaving Microsoft relatively unscathed. In order to offset the damage done to its reputation, Microsoft collaborated with multiple civil society organisations to launch gender equality initiatives. For example, Microsoft Australia launched a campaign with Male Champions of Change to redefine the role of the men in female empowerment. Without the procession of the lawsuit, the hundreds of accusations against Microsoft have been overshadowed by the company's contributions to gender-based initiatives.

The private sector acts as a resource provider for these initiates, yet can also be a perpetrator of abuses. Corporate involvement in civil society creates more negative externalities than positive ones. On the one hand, businesses engage in partnerships with civil society organisations to finance sustainability projects for meaningful change. On the other hand, their involvement in advocacy acts as a safety net

to help them reshape public perceptions when the discovery of their human rights abuses create public relations crises.

China's Case: Existing Problems in UNGP Uncovered in Practical Business Operations

The previous analysis on corporate social responsibility is largely based on the Western paradigm, which largely ignores how unique cultures create distinctive interpretations of the role businesses ought to take in human rights norm diffusion. The case of China provides a starting point to expand the Western-centric notion of corporate social responsibility for three reasons. First, according to Li, China's historical tradition of Confucianism and socialist legacy shape the unique relationship between government, corporations, and society (2016, 85). Relational responsibility is deemed more important than individual rights. Second, the government is seeking to implement corporate regulations with Chinese characteristics. The government expects corporations to act as its agents to serve the urban citizens through the social insurance system, which provides a package of life-long benefits to employees. Third, China lacks democratic tradition; thus, the representative system for victims is absent.

Two interviews were conducted by MacCuish to explore further how the UNGP is implemented at the corporate level under China's unique cultural, political, and social background (2021). The first interviewee, Jessica, is a dispatched worker at the largest Foxconn factory in Longhua. She explains the military management system and the mandatory overtime work which is employed in large factories. The second interview was conducted with Daolong, a small nanomaterial factory owner. Daolong showed little knowledge about the UNGP, but he emphasised a people-oriented management style that is culturally infused in his company.

Daolong's company represents the mainstream corporate culture in many Chinese firms. "Everyone in my factory has been working together for a long time; there is definitely attachment between us," he said, "companies in China are unable to operate if the management team do not show their human kindness." Indeed, Chinese culture is embedded with the concept of Yi Ren Wei Ben (people-orientedness) that enforces a mutual responsibility between employees and employers to sustain harmony and stability within business operations. Corporations are expected to take the social responsibility to provide care for its workers; at the same time, workers are obligated to contribute to the company's long-term development on behalf of the employers (Li 2016, 90). This people-oriented corporate culture is expressed in two ways. Companies are requested to provide social security to the employers, including the protection of worker's rights, equal employment opportunity, insurance and other social benefits. At the same time, people orientation also branches out to the employer's personal life through activities during free time and holiday warmth-giving. These observations reveal several weaknesses of the UNGP: that a western-centric standard reinforces the divergence between the West and the rest. Daolong expressed that the corporate human rights norm already exists in the culture, and a standardised framework is a Eurocentric ideology that is forced upon Chinese firms. The concept of universal human rights set the bottom-line moral standard to be complied with by corporates worldwide, but each country would articulate corporates' particular responsibilities differently based on their distinct cultures (Ruggie 2007, 835). Consequently, a globalised human rights framework must diversify its cultural values to ensure successful and effective implementations worldwide.

Jessica's unpleasant experiences at Foxconn uncover the human rights dilemmas in countries that attract foreign investments with labour-intensive productions. A major difference between Daolong's Chinese corporation and transnational corporations like Foxconn is that multinational business owners have more bargaining power in the global market. For example, according to Jessica, Foxconn signs a

mandatory private contract with employees to state that overtime working is voluntary. Many production line workers are forced to stay after work and during weekends to meet the production goals, even while China's Labour Law regulates that overtime work should not be more than 36 hours per month (Article 41). The UNGP is theoretically based on the institutional theory, which states that firms' social behaviour is significantly influenced by institutional constraints such as laws, regulations, and public monitoring (Burchell & Cook 2013, 743). Foxconn's case reveals that the applicability of institutional theory is limited in this case, largely due to the dominance of shareholders' objectives for profit maximisation. For emerging economies, financial performance is more important than corporate social performance for companies in order to sustain competitiveness in the market. Through private means such as pledges and contracts, large transnational corporations can act beyond government regulations and take limited legal responsibilities.

Referring to the multi-equilibrium model in macroeconomic modelling (fig. 2), the private sector fails to coordinate to diffuse human rights norms due to firms' self-interest in sustaining the comparative advantage emerging from the cheap labour force. Such coordination failure frequently happens in newly industrialised countries, making human rights norm diffusion at the corporate level less likely to be achieved.

In an interview with Jasmine Zhang, a human rights activist at China Labor Watch, Zhang expressed that China's totalitarian regime has made worker empowerment more challenging. The UNGP assumes the capability of labour unions, affected communities and civil society organisations to demand corporate accountability. However, China's public sphere only fulfils the function of self-organisation, and has little to

Apply Multi-Equilibrium Model to Corporate-Level Human Rights Norm Diffusion
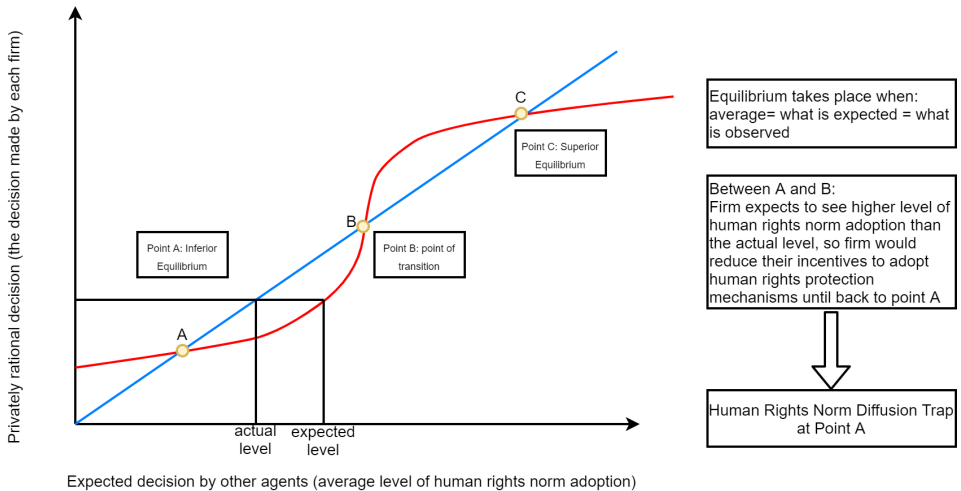
Figure 2. *Coordination Failure: each company makes independent decisions, but one company's decision depends on another company's decision. Companies' inability to coordinate their actions leads to all companies' inactions in an industry (the UNGP implementation is stuck at inferior equilibrium A). Thorough human rights norm diffusion (superior equilibrium C) requests companies in an industry to pass beyond point B (Cooper & John 1988, 44).*

FLUX: International Relations Review

no sway over its authoritarian political system. Instead of being used by civilians to advocate for rights and curtail infringements (by either corporations or the central government), civic organisations are used by the Chinese government as tools to help extend its own policy agendas (Hsu 2010, 261). For example, China's labour unions are directly influenced by the central government. These groups focus solely on service provisions like job fairs and political symposiums, and fail to act as a representative mechanism to advocate for human rights victims. Indeed, the framework suggested by the UNGP is incapable of remedying the absence of a robust public sphere in China and many other developing countries. The guiding principles assume the presence of robust civil societies where workers can unionise and defend their rights. But in countries where corporations and public spheres are largely controlled by the state, the UNGP cannot provide any means to remedy (OHCHR 2011, 2).

Conclusion: The Changing Business-Related Human Rights Landscape

Ten years have passed since the establishment of the UNGP, and challenges pertaining to the implementation of human rights norms still exist around the globe. The role of the private sector in contributing to these challenges must be studied thoroughly in order to better understand the inextricable linkages between the existing economic systems and human rights. Foreign direct investment, global value chains, and corporate social responsibility agendas all pose unique governance challenges in regards to firm behaviour and rights infringements. Local government inaction, failed consensus between countries, marginalised victims, and the instrumentalization of the public sphere are all relevant.

Despite these challenges, many forces are continuing to shape the current human rights landscape. The rise of multimedia has sped up information transmission and often engages real-time comments from both victims and the general public

to monitor and pressure human rights abusers. Some speculate that the comparative advantage of labour-intensive production in the global market will diminish as artificial intelligence flourishes in physical and virtual forms. It is suggested that future studies address some of the following questions: will these economic, social, technological, and political changes reduce the private sector's bargaining power in policy-making? Will these changes drive new challenges? To achieve a truly standardised grievance mechanism for business-related human rights violations across the globe, institutions must be created to address and remedy rights violations which are committed by corporations in other nation states. These changing landscapes require the global community to update these guiding principles to reflect voices and needs at the grassroots level.

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Do look up: Current Challenges and Needed Reform in International Space Governance

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Edited by Isha Shahane and Daniel Pines

AUTHOR'S NOTE

"The Earth is a cradle of the mind, but we cannot live forever in a cradle." - Konstantin E. Tsiolkovsky, Father of Russian Astronautics, 1896

This paper was originally written for a class on International Organisations taught by Dr. Carola Weil. As an avid science fiction reader, I was drawn to this often-overlooked part of global governance and was enthralled by the subtle complexities of space law. I would like to thank the class TA Simon Bertrand, for his input on the structure of the paper, my good friend Gabrielle Genest for her judicious criticisms, and my family for acting as an informal sounding board for my ideas. Finally, I would like to thank my editors, Isha Shahané and Daniel Pines, whose wonderful feedback and tireless work made this paper the very best it could be.

Abstract

This paper identifies the militarization of outer space and space debris as two primary challenges to the current system of global space governance and security and situates them within the existing international legal framework. Given the Cold War heritage of space law, I suggest it has become outdated and underdeveloped. However, a total abandonment of space law is unnecessary, as these issues can be addressed by modifying the current legal framework. Specifically, potential amendments to Article IV of the Outer Space Treaty and the reinforcement of the Registration Conventions and the Liability Conventions are discussed. I conclude that through targeted amendments and expansions, space law can be effectively updated to address emerging twenty-first century challenges.

Introduction

The launch of Sputnik 1 on October 4th 1957 heralded the beginning of a new era for humankind. This event not only had important political consequences in the context of the Cold War rivalry between the United States and the Soviet Union, but also spurred the development of a new field of international law to regulate the peaceful usage of outer space. Over the following decades, the field of space law grew to encompass a series of international treaties, principles, methods of best practice, and new international organisations (IOs). As the usage of space has intensified since the 1950s, issues have continued to multiply over time, yet space law has remained largely static. Some scholars have begun arguing that space law is no longer relevant in the management of outer space and is "destined to fail" (Quinn 2008, 488). This raises a serious question: how effective is space law at addressing current issues in global space governance and security?

This paper identifies two primary challenges to the current system of global space governance and security: the militarisation of outer space and space debris. This paper further situates them within the current international legal framework.. Based on this analysis, I argue that space law is becoming increasingly outdated and that it needs further development. However, a total abandonment of space law is unnecessary, as steps can be made to resolve these issues within the current legal framework through targeted modifications. This paper provides an overview of the current legal regime of outer space,

as well as an outline of the issues of space militarisation and space debris, and their intersection with space law. The findings of space law's outdatedness and underdevelopment are discussed in relation to these two challenges. Finally, potential amendments to space law: the amendment of Article IV of the Outer Space Treaty and the reinforcement of the Registration Conventions and the Liability Conventions, are evaluated.

Overview of Existing Space Law Treaties and Principles

Space law is primarily composed of five international treaties and five sets of principles that govern the usage of outer space (United Nations Office for Outer Space Affairs *n.d.*a). These rules were developed through the United Nations, particularly via the Committee on the Peaceful Uses of Outer Space (COPUOS). The Outer Space Treaty is the cornerstone of international space law and "serves as a 'constitution' for international space activity and provides the framework for the present-day legal regime regulating outer space" (Ford 2017, 240). Some of its most important articles are Article II, which prevents states from claiming sovereignty over space, and Article III, which places the exploration of space under international law (United Nations Office for Outer Space Affairs 1966).

The Outer Space Treaty was further elaborated upon in subsequent international treaties. The 1968 "Rescue Agreement" specifies the steps required for the safe return of astronauts and spacecraft

should they land in another country. The 1972 Liability Convention establishes the procedures for the settlements of claims for damages made by space objects on Earth or to other space objects. The convention also defines the terms 'damage,' 'launching,' 'launching state,' and 'space object,' which are crucial for legal settlements (United Nations Office for Outer Space Affairs 1971). The 1976 Registration Convention "expanded the scope of the United Nations Register of Objects Launched into Outer Space" and clarified certain issues "relating to States Parties responsibilities concerning their space objects" (United Nations Office for Outer Space Affairs, *n.d.*b.). Finally, the Moon Agreement expands on several clauses of the Outer Space Treaty regarding natural resources in space.

In addition to the five United Nations treaties on outer space, there exist five declarations and legal principles that complement them: the "Declaration of Legal Principles", the "Broadcasting Principles", the "Remote Sensing Principles", the "Nuclear Power Sources Principles" and the "Benefits Declaration." These documents outline legal principles which are generally accepted, but are much closer to the legal status of a UN General Assembly resolution in terms of binding enforceability than that of an international treaty (United Nations Office for Outer Space Affairs *n.d.*a).

Current and Future Challenges to Space Governance and Security

Militarization of Outer Space

Currently, most military activities in space are to provide support for armed forces on the ground through "weather forecasting, communications, precision timing and navigation, reconnaissance (of various types), and early warning" (Motz 2014, 122). Access to such information is critical in modern warfare. The United States still enjoys the immense space capabilities it acquired during the Cold War and continues to dwarf all other countries' military space programs (122). While Russia also maintains

significant space capabilities, it has suffered greatly by the dissolution of the Soviet Union and is currently "further behind the US military in space than it was during the Cold War" (122).

One of the most pressing concerns in the militarization of outer space is the development and testing of anti-satellite (ASAT) weaponry (Ford 2017, 239). Since satellites are essential in the conduct of modern military activities and espionage, they constitute a prime target for rival states. Such an attack could also have an important impact on civilian wellbeing as many satellite technologies are used for both civil and military purposes. The Global Positioning System (GPS), for example, guides American missiles, but is also used by civilians across the world for localisation purposes. Although several types of ASAT weapons exist, the most common form, and the easiest to develop, is the kinetic energy type, which destroys its target through the sheer kinetic force generated by colliding with it at high speeds (Kuplic 2014, 1138). Although the United States and Soviet Union both developed a variety of ASAT weapons during the Cold War, the success of a Chinese ASAT missile test in 2007 has spurred its neighbors to further develop their own militarised space programs. Japan was quick to modify its legislation and in 2008, authorised the military use of space. India also launched its own ASAT weapons program which resulted in a successful test as recently as 2019 (Tellis 2019). Just as during the Cold War, new military competition in the space race only exacerbates existing tensions between space powers and hampers international cooperation on addressing issues of space governance. The prospects of such an arms race are clear and concerning.

Militarization in Space Law

Article IV of the Outer Space Treaty specifically deals with the militarization of space. This article strictly forbids the placement of weapons of mass destruction (WMD) in space, whether in Earth orbit or on other celestial bodies (United Nations Office for Outer Space Affairs 1966). However, it is important

to note that other types of armaments are not mentioned. This leaves the possibility for the presence of non-WMD armaments and even orbital military bases (Kuplic 2014, 1144).

These other military activities are covered by the second, more complicated, part of article IV, which states that "[t]he Moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes" (United Nations Office for Outer Space Affairs, 1966). As there is no definition in the treaty as to what constitutes "peaceful purposes," the interpretation of this term "is crucial to determining the legality of actions in outer space under the Outer Space Treaty" (Kuplic 2014, 1145). This ambiguity has led to different interpretations in different countries. For example, based on the precedent of the 1959 Antarctic Treaty, the Soviet Union traditionally argued that "peaceful purposes" meant "non military" while the United States, by contrast, interpreted the term "peaceful purposes" as "non aggressive" (1145-1146). This was because the United States already had military intelligence satellites in space at the time "and therefore hoped to secure the legality of those satellites while also protecting them by prohibiting military actions in space" (1145). Although today the interpretation of "non aggressive" is more widely accepted, this lack of clarity and consensus has resulted in confusion on the international stage.

Since ASAT weapons do not fall under the category of WMDs and because they can be launched from Earth, their development and use does not violate the Outer Space Treaty (Ford 2017, 244). This has resulted in a "glaring gap in the coverage" of the treaty as "it does not prevent the use of weapons in space that are not weapons of mass destruction and are not used on the moon or other celestial bodies" (244). At the time of the creation of the Outer Space Treaty in 1967, "the stationing of nuclear weapons in orbit was the only significant military threat that [the United States or the Soviet Union] could envision in space." (Englehart 2008, 144). The weapons of today were either in their very infancy or were pure science

fiction, and were therefore not considered
.

Space Debris

Space debris is defined by the National Aeronautics and Space Administration (NASA) as "all man-made objects in orbit about the Earth which no longer serve a useful purpose" (NASA Orbital Debris Program Office, *n.d.*). Over the years, human activity in space has produced waste from used rocket stages, defunct satellites, and even solid fuel emissions. While some debris burns up in the atmosphere, much of it remains in orbit for long periods of time. This has effectively turned Low Earth Orbit (LEO) into an "orbital space junk yard" with an approximate 6,000 tons of materials still in orbit (National Aeronautics and Space Administration, *n.d.*a). Even a very small piece of debris can cause significant damage to a spacecraft or a satellite because such objects move at speeds of up to 18,000 miles per hour in LEO (National Aeronautics and Space Administration, *n.d.*a; National Aeronautics and Space Administration *n.d.*b). Space debris is especially dangerous because of the Kessler Syndrome. This phenomenon occurs when two space objects collide at very high speed, creating a snowballing chain of collisions as the debris from the first crash destroys other satellites (Pelton 2015, 2). Such a cascade of debris would be devastating to the planet's satellite infrastructure and pose a long-term threat to the exploration and exploitation of space, as certain Earth orbits would become clogged by impassable debris (Shackelford 2014, 494).

In addition to the traditional creation of 'space junk' from the human exploration and exploitation of space, the militarization of outer space also has an impact on the creation of space debris. Indeed, kinetic ASAT weapon tests performed on defunct satellites produce large amounts of debris when the satellite is destroyed. For example, the 2019 Indian ASAT test created some 400 new pieces of orbital debris, some of which intersected the orbit of the International Space Station and increased the risk of collision by 44 percent over the course of the next ten days (Safi

and Devlin 2019). ASAT tests can be particularly dangerous because unlike old satellites or rocket parts, which are large and easy to track, debris from the destruction of a satellite is often smaller than 10 cm and thus impossible to track (Safi and Devlin 2019). If safe access to orbits in LEO is to be maintained for satellites and crewed spacecraft, the generation of space debris must be carefully mitigated.

Space Debris in Space Law

Considering the rising importance of orbital debris in the governance of outer space, space law is woefully ill-equipped to effectively address the problem. In fact, the words "space debris" are "wholly absent from international space law", meaning there is no definitive definition of what constitutes orbital space debris (Von der Dunk 2001, 2). While the Liability Convention and the Registration Convention do define the term "space object," there is no such comparable definition for the term "space debris" (Pelton 2015, 2). The Outer Space Treaty does allude to this subject in Article IX where it states that State Parties "shall conduct all their activities in outer space […] with due regard to the corresponding interests of all other State Parties to the Treaty" (United Nations Office for Outer Space Affairs 1966). Since space debris can be destructive and consequently harm the interests of other space-faring nations, this could be interpreted as requiring States Parties to limit the amount of space debris they produce. Article IX also affirms that States Parties to the Treaty should "conduct exploration of them [outer space, the moon, and other celestial objects] so as to avoid their harmful contamination […] and, where necessary, shall adopt appropriate measures for this purpose" (United Nations Office for Outer Space Affairs 1966). However, the Outer Space Treaty remains vague and does not define what constitutes either "harmful contamination" or "appropriate measures."

The international community has taken steps to reduce space debris. Indeed, the Inter-Agency Space Debris Coordination Committee (IADC),

"an international forum of government bodies for the coordination of activities related to the issues of man-made and natural debris in space," was created to address this issue (Inter-Agency Space Debris Coordination Committee 2002). This forum produced the Space Debris Mitigation guidelines in 2002, which were later refined in 2007, and focused on limiting orbital breakups during and after missions (Pelton 2015, 5). The UN COPUOS worked closely with the IADC to come up with these guidelines and succeeded in turning the framework into a UN General Assembly resolution later that year (5). These guidelines have successfully inspired some changes to state behaviour, notably those of France and China, which now place a greater emphasis on debris mitigation in their national space policies (Jakhu and Pelton 2017, 288). However, despite these new UN guidelines, the creation of space debris continues to worsen. Contrary to the five binding United Nations treaties on outer space, the guidelines of the IADC and the UN COPUOS are recommendatory in nature. They are therefore not only non-binding but have "no enforcement mechanisms nor any penalties for non-compliance" (288). Thus, though a space free of dangerous orbital congestion is in the interest of all states, few have felt pressured to take decisive action (289). In this regard, the soft law nature of these regulations hinders their effectiveness in addressing space debris because there are no consequences in the current international regime for not respecting them.

Findings

Space Law is Fast Becoming Outdated

Based on the analysis of two of the most pressing challenges facing global space governance and security, I find that space law has not been able to adapt to the important technological and environmental changes that have occurred in the fifty years since its creation. Space law was created in the context of bipolar superpower rivalry in which nuclear security was of primary concern (Blount 2011, 516). The importance of the ban on the deployment of space-based nuclear

weapons in Article IV is a prime example of this focus. However, such language has not been able to keep up with the technological advances space weaponry has made since 1967 (Englehart 2008, 144). The driver of space militarization is not space-based nuclear weapons anymore, but ASAT missiles, which are free to be deployed and proliferated because of their non-WMD character.

The environment of outer space has also changed significantly since the signing of the Outer Space Treaty. Space is much busier now than it was in 1967 and the problem of space debris has become much more pressing. The exploitation of outer space has considerably intensified since the 1960s. Although the IADC and the United Nations Office of Outer Space Affairs (UNOOSA) have provided guidelines on how to reduce the creation of space debris, these do not have the same force as international treaties. Though the Registration Convention and the Liability Convention were sufficient in the 1960s, they are now too simplistic to deal with the expected increase in space collisions and the compensation problems that ensue. Indeed, proper attribution of space debris, key to determining liability and compensation, remains a problem: "identifying the nationality of a screw traveling nearly 18,000 mph is no easy matter" (Shackleford 2014, 497).

The Outer Space Treaty is therefore largely held hostage by its Cold War heritage. Both the military technology and the intensity of outer space usage have evolved beyond what the drafters of space law originally envisioned. The provisions of space law addressing the most pressing issues of the Cold War are no longer the primary concern of today's states. Despite these changes, no major updates have been successfully made to prepare space law for the future by the Legal Subcommittee of the UN COPUOS because it takes extensive time and energy to achieve consensus between all members (Jakhu and Pelton 2017, 32). The static character of space law has resulted in the Outer Space Treaty addressing the issues of space governance from the 1960s and not those of today. As the time between the treaty's first signing and the current context increases, the Outer Space Treaty runs the risk of being reduced to purely abstract values and aspirations, as its more concrete provisions will no longer be adapted to the situation in space. As Jakhu and Pelton point out, such "nebulous principles" run the risk of confusing state activities in outer space, rather than benefiting them because determining specific international obligations becomes more difficult (2017, 130). Space law will therefore need to be "renovated" if it wishes to remain relevant in the twenty-first century (Blount 2011).

Space Law Remains Underdeveloped

Another recurring finding that arises based on the analysis of the issues of space militarization and space debris is that the lack of clear definitions and details undermines the effectiveness of space law in addressing current issues in global space governance and security. Key terms in addressing these challenges, such as "peaceful use of outer space" and "space debris" are either left to the interpretation of state parties or are wholly absent from space law. While such vague language eased over diverging superpower interests in the past, it now critically hinders the efficiency of space law to regulate the militarized usage of outer space and the sustainable management of space debris. Failure to address the issues of space militarization and space debris could have devastating consequences on humanity's ability to access space in the long term. Left unchecked by a strengthened space debris mitigation and removal regime, the IADC has predicted that LEO may be entirely unusable for satellites within 100 years due to the high risk of collision with debris (Jakhu and Pelton 2017, 289). The proliferation of ASAT weaponry is also an inherently destabilizing development for space security. At a time when countries are turning to expensive and sophisticated satellite technologies for civilian and military purposes, the weapons to destroy these prized assets are becoming more accessible. Despite the unsustainability of the current legal framework, states

have largely been unwilling to change. Attempts to expand space law have failed, as can be seen by the overly ambitious 1979 Moon Treaty, which only has 18 State Parties, none of which are independently spacefaring nations (United Nations Treaty Collection, *n.d.*).

The relative lack of detail and development in space law is further evident when compared to other areas of international law, such as international maritime law. While the Outer Space Treaty is a mere ten pages long, the UN Convention on the Law of the Sea (UNCLOS) III Treaty is over 200 pages long. (Englehart 2008, 148). Though humans have a much deeper and varied relationship with the sea than they do with outer space, the comparison is still apt because "both treaties are designed to harmonize the interactions of diverse parties in vast open areas that are owned by no one" (148). Ironically, the intense inter-state negotiations surrounding UNCLOS III drew most international energy away from further expansion of space law through the Moon Agreement, as both treaties were being drafted at the same time (Jakhu and Pelton 2017, 28). Despite the similarities between space law and maritime law, the former remains woefully underdeveloped in comparison to its counterpart despite the urgent issues it now faces. Space law will need to be further expanded if it is to address these challenges.

Discussion of Solutions

Amending Article IV of the Outer Space Treaty

One of the simplest changes that could greatly enhance space law's ability to regulate the militarization of outer space would be an amendment to Article IV of the Outer Space Treaty to expand its ban on space-based WMDs to ASAT weapons. This would bring the Outer Space Treaty up to date with the latest military and technological developments.

However, the most important obstacle to such an amendment is the United States (Kuplic 2014, 1160). Since the end of the Cold War, the US has enjoyed its position as the sole superpower of a unipolar international system. It has therefore traditionally sought to maximize its power in outer space, unrestricted from international regulations, limitations, and the "deterioration of US sovereignty" (1160). This was most visible under the Bush administration under its 2006 National Space Policy. It claimed that the United States would "resist any effort to restrict its 'freedom of action' in space" and ultimately adopted tenets of Dolman's *Astropolitik* theory, which called for the US to monopolize control of LEO through space weapons (Motz 2014, 154; Havercroft and Duvall 2009, 45).

The further development and proliferation of ASAT weapons will continue to change the distribution of power in space and alter the calculations of American policymakers. While the United States still enjoys a dominant position in space, ASATs mean that "space superiority does not necessarily equal invulnerability to an attack that could cripple military operations or even the daily life of civilian society" (Kuplic 2014, 1161). Kinetic ASAT weapons are becoming increasingly simple and affordable for states. The proliferation of ASAT technologies is also occurring at a time when the United States is becoming increasingly reliant on its space support systems to improve the efficiency of its military forces. This means that "it has a significant interest in developing a global legal framework for the development, installment and use of technologies that make those systems vulnerable" (1138).

A weakness of this proposed change is that, while it would update the Outer Space Treaty to address current and near-future issues in space security, it does not account for the creation of future weapon systems outside of these categories. A blanket ban on "all types of weapons" which was proposed in the 2008 Sino-Russian Treaty on the Prevention of the Placement of Weapons in Outer Space would effectively solve this issue, but it "is a complete non-starter to the United States because it has already invested significantly in various military support satellites that would technically fall within that language" (Englehart

2008, 155). The agreement of the great space powers is essential for such an amendment to succeed. Changes to the language of Article IV must therefore be targeted to exclude existing American military support satellites while simultaneously garnering the most possible support from other countries. Such an amendment could set a beneficial precedent to modify the Outer Space Treaty whenever new destabilizing technological developments occur. An additional advantage of this amendment is that it would circumvent the Conference on Disarmament which has been blocked by great power rivalries (Moltz 2014, 163). It would also spare the US from adopting a treaty sponsored by China and Russia (Englehart 2008, 155).

Reinforcing the Registration Convention and Liability Convention

The lack of a clear definition of what constitutes space debris is a clear issue that needs to be remediated as soon as possible. This can be done by updating the Liability Convention and by expanding the term 'space object' to include space debris. Expanding the definition would also help in incorporating space debris into the current compensation system for damage occurring in outer space. A complimentary way of addressing the issue could be through the already existing Registration Convention. Under Article IV of the Registration Convention, launching states only need to register the most basic identifiers and orbital parameters in the UN registry (United Nations Office for Outer Space Affairs, *n.d.*a). While the convention does require notifying when an object is no longer in space, "there is no requirement to report anything about the object during the time between its placement in space and its removal" (Vedda 2017, 6). Since some objects remain in orbit for long periods of time after they stop functioning, expanding the registry to include more information, such as operational status, would be useful to track the current status of space objects. This could also open the door for a future international salvage regime, where states could transfer jurisdiction and liability of

defunct satellites to a state willing to salvage it (6).

Conclusion

This paper has identified space militarization and space debris as key challenges in the current regime of global space governance and security. Though both issues are partially addressed in space law, the current language of the Outer Space Treaty is too outdated and underdeveloped to properly regulate modern space activity. Many of the provisions of space law reflect the concerns of states of the 1960s and have not been updated to reflect the changing global and technological context. The militarization of outer space through ASAT weapons or the generation of large quantities of space debris were simply not important issues at the time. Key terms of the Outer Space Treaty also remain ambiguous or lack definitions, creating confusion and easily exploitable legal loopholes. Due to these weaknesses, space law is currently not very effective at addressing the current issues in global space governance and security. The increasing reliance on space-based technologies has accentuated the dangers posed by these issues, but also presents an opportunity to motivate states to sustainably exploit outer space.

Through targeted legal revisions, amendments, and expansions, space law can be updated to address the issues of the twenty-first century while keeping the noble spirit of the time of its first signing. These processes would occur simultaneously in the UN COPUOS and through bilateral treaties between space powers. In particular, the amendment to Article IV of the Outer Space Treaty to include ASAT weapons and the reinforcement of the Registration Convention and the Liability Convention are two promising solutions to modernize space law. Though the United States has traditionally resisted attempts to impede its freedom in outer space, its increased vulnerability in space may prompt a change in policy. Similarly, all current and potential space faring nations share an increasing interest in guaranteeing the sustainable exploitation of LEO without debris.

Further comparative analysis between space law and maritime law offers an interesting path for future research, as space law has much to learn from its more mature counterpart. Should targeted amendments prove unsustainable, following the path of the UNCLOS treaties, the international community should not exclude the possibility of an "Outer Space Treaty II" to properly future-proof space law.

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