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THE VIEW FROM SOUTH LAWN

World attention moves quickly from one headline to the next, often at the expense of a thorough understanding of the forces driving world events. In its twenty-second year of publication, the *Journal of Politics & Society* seeks to represent a focused analysis of pertinent issues currently facing local, national, and global communities. From the South China Sea to the streets of Tripoli, the balance is shifting toward a global community with more common ties than ever before. Nations must address domestic concerns while operating in a constantly evolving world.

The 22nd edition of the *Journal* begins with a call for adjustment in U.S. priorities. Council on Foreign Relations President Emeritus Leslie H. Gelb urges the United States to follow national security approaches similar to those of Presidents Truman and Eisenhower. Gelb recommends that Washington particularly focus on education, trade, and global competitiveness. If it is to continue to be a leader on the global stage, the United States must significantly reassess its current foreign policy priorities.

Though U.S. national security policy remains contested, the United States is highly regarded internationally for its vibrant democracy and robust legal framework. Daniel Rauch examines the legitimacy of the U.S. Supreme Court's citation of foreign law. He finds that, while international legal citation should be treated differently from its state level equivalent, if the latter practice is accepted, the former should be as well. Adding to analyses of the U.S. political system, Philip Zakahi finds that early voting should not warrant early spending by candidates, as such spending does not demonstrably help their chances of winning.

Casting a more qualitative eye toward electoral politics, Peter and Katherine Tomassi Prize Winner Mark Redmond documents the unfortunate fate of the Mexican-American population in the 14th Aldermanic Ward of Chicago. Intimidated into complacency by an aggressive political machine, many Mexican-American residents have settled for subordination as political clientele rather

than empowerment as independent voters. As the Mexican-American population in the area grows, Redmond states that now is an opportune time for this group to break ties with the machine.

Proper integration of marginalized communities must be addressed on a global scale as well. Sarah Tucker considers the present situation of the Bakola-Bagyeli, a hunter-gatherer community in Cameroon. Lacking political representation and adequate access to the market economy, this community needs equal access to societal resources while receiving assistance to maintain its distinctive culture.

The *Journal* transitions from analyzing cultural struggles at the local level to exploring global conflicts between foreign powers and regional organizations. Derek Pham explores China's recent aggression in the South China Sea, noting that it was motivated not as much by concerns of military power as by a defensive response to foreign provocation. Anna Mysliwiec delves into the evolution and current state of the Muslim Brotherhood, an organization that continues to play a pivotal role in shaping a moderate but democratic political environment in the Middle East.

As the next wave of media attention draws readers to another developing story, we must not lose sight of the trends that have arisen and the crises yet to be addressed. Whether in issues of diplomacy, domestic organization, or competitive strategy, the 22nd Editorial Board of the Helvidius Group has selected the best undergraduate scholarship that examines the varied and complex issues of our day.

Throughout the selection and editing process this year, I have been humbled by the hard work and meticulousness of the Helvidius editors. I hope that as you turn the pages of the 2011 Spring *Journal*, you enjoy the culmination of what has been an extraordinary year.

Maria Kucheryavaya
Editor in Chief

New York City
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Guest Essay

GDP NOW MATTERS MORE THAN FORCE

Leslie H. Gelb

Most nations today beat their foreign policy drums largely to economic rhythms, but less so the United States. Most nations define their interests largely in economic terms and deal mostly in economic power, but less so the United States. Washington still thinks of its security mainly in traditional military terms and responds to threats mainly with force. The principal challenge for Washington, then, is to recompose its foreign policy with an economic theme, while countering threats in new and creative ways. The goal is to redefine “security” to harmonize with twenty-first-century realities.

Economics is now the principal coin of the international realm, and gross domestic product now matters more than military might. Any doubts about that should be erased by one simple and overwhelming fact: China is the first global power in world history that is not a global military power. China’s military punch will be restricted to its border areas for years. Most nations worry not about Chinese arms, but about its trade and investment decisions. And though China’s GDP is just a little more than half of America’s, Beijing’s power rivals Washington’s. World leaders see China’s economy going up and America’s going down, largely because of Washington’s political incapacity to make hard decisions about its domestic economy.

Emerging powers today are seen as emerging precisely because of their growing economies, not their muscled up armies. Brazil, India, Turkey, and Indonesia are prime examples. Their key preoccupations are not military attacks on their soil, but loss of domestic support due to deteriorating economies. What they care

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most about is attracting investments, expanding trade, improving education, and managing other internal matters that affect global competitiveness. The White House pays attention to these issues, to be sure, but mostly worries about wars and threats.

The world is not safe, and because of terrorists and WMD, arguably less safe than ever. But in one critical respect, it is safer—the prospect of wars among major powers. Today, the likelihood of armed conflict between great powers is far less than at any point in modern history. It is hard to imagine an arena in which their vital interests seriously clash. To be sure, great powers such as China and Russia will tussle with America and others for advantages, but they will stop well short of direct confrontation. They need one another to grow their economies. Given the receding threat of great-power wars, most world leaders have elevated economic priorities as never before. To be sure, leaders throughout history pursued economic strength as the foundation of state power, but power itself was equated with military might. Today, the prevailing idea is that economic strength should be applied primarily toward achieving economic—not military—ends.

Yet, for all these novel characteristics of the present era, there is one stunning constant: the national security strategy of the United States. Whereas other countries have adjusted to the new economics-based order, Washington has been tardy, even obtuse.

It's not as if Americans have to go out and invent a basic strategy for this new era; Washington has one staring it in the face—the approach taken by Presidents Truman and Eisenhower during the early Cold War. Its underlying principles were to make the American economy the top priority by holding back on military spending and military interventions; to strengthen the economies of key allies, especially in Western Europe and Japan, to lessen their vulnerability to Soviet pressure and increase common allied power; and to fend off threats by means of containment, deterrence, and military and economic aid plus military training. The key was to help others fight for themselves.

Their strategy today would almost certainly revolutionize basic policy. For example, it would elevate Mexico far above Afghani-

stan as a national priority. The fact is that Mexico could damage or help the United States profoundly and inescapably—just consider illegal immigration, drugs, crime, as well as the trade and investment potential. By contrast, even victory in Afghanistan would leave terrorists threats rampant elsewhere.

Today, Truman and Eisenhower would focus on building situations of strength with key allies and forming ad-hoc coalitions with emerging powers. It is worth remembering that Truman did not intervene with U.S. troops in Greece and Turkey to implement his new containment doctrine; he gave them military and economic aid along with rhetorically strong but not open-ended promises. It is worth noting that Eisenhower quickly stopped the bloodshed in Korea with a truce.

Without doubt, U.S. presidents need to preserve America's core role as the world's military and diplomatic balancer and protector—for its own sake and also because it adds to U.S. power in economic transactions. But economics has to be the main driver for current policy. Washington can gain much more political bang for its still considerable economic buck if American leaders put economics at the center of U.S. foreign policy. But that is not enough.

To truly restore and advance U.S. international power, America's economy has to be revitalized. That will take hard and risky political decisions and time. American leaders forever swear their allegiance to making these tough choices, but they never deliver. Meanwhile, Americans of nearly every political stripe wait and wonder whether their leaders will let the nation that saved the world in the twentieth century sink into history in the twenty-first.

The Peter and Katherine Tomassi Essay
“A LOT OF SOLDIERS, BUT NOT A LOT OF
GENERALS”: MEXICAN AMERICANS AND THE
MACHINE IN CHICAGO’S 14TH ALDERMANIC
WARD

Mark J. Redmond

When Linda Coronado picked up the phone, she was met by the sound of her grandfather’s voice: “I need for you to vote a particular way.”¹ Coronado was upset. “Who’s gonna [sic] know? How’re they gonna [sic] know?” she replied. “You just have to do what I tell you to do. Not ask you, but what I tell you to do,” her grandfather responded. “Because if you don’t, it could be my job.”

For Coronado, a life-long resident of Chicago’s 14th Aldermanic Ward, this was a formative political experience. It was the 1960s, she had just turned twenty-one, and she was finally eligible to vote. Eager to express her opinions, the last thing she wanted was to be told how to vote. “I was livid, I was absolutely livid,” says Coronado. But Coronado also knew that she needed to obey her grandfather’s wishes. “I didn’t know it for any particular reason, or even theoretically. ... But intuitively what I knew was that they would know how I voted. And the fact that my grandfather could lose his job as a result of me not voting the way he needed me to vote was going to be ... significant.”

Coronado’s story is a classic example of patronage politics. Her grandfather needed her to vote a certain way because he was politically indebted to the ward alderman, the elected official who administers municipal services at the most local level in the City of

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Chicago. Several years prior, Coronado's grandfather had been laid off from his job at the Chicago Union Stock Yards. Left with no work and a family to feed, he needed employment fast. "So, where did he go? He went to the alderman," recalls Coronado. Though the practice is officially illegal, Chicago's aldermen have historically relied on the granting of small favors in exchange for sustained political support. As expected, the alderman was able to help. Coronado's grandfather was given a position with the city's Department of Streets and Sanitation and was tasked with garbage collection—a grueling but well-paid assignment. But as was also expected, employment came with a price. Political loyalty to the alderman was of paramount importance; without it, the quid pro quo would not stand.

* * *

Chicago's 14th Aldermanic Ward has undergone significant change since the 1960s. The stockyards have closed and heavy industry has left. The demographics have also shifted. While Coronado and her family once constituted a small minority of Mexicans in the 14th Ward, Latinos—the majority of whom have Mexican roots—now dominate the area. In 2000, the census registered that 75 percent of the ward's residents identify as Hispanic.² As of 2001, Hispanics in the ward outnumbered whites 58,000 to 14,000.³ This trend has only intensified in recent years.

In spite of these shifts, however, the politics of the 14th Ward has changed little. Ed Burke, an Irish-American politician who first came to power in 1969, remains in office. Moreover, Coronado's anecdote is still highly relevant. The tactics of political patronage that defined ward politics in the 1960s persist today. Burke continues to dole out minor municipal benefits in order to maintain electoral support and political hegemony. As a result, he remains as potent a political broker as he was at the beginning of his tenure. Given the demographic history of the ward, however, Burke's hold on power is a conundrum. He has always been a minority within his own electoral district. While he now presides over a predominately Latino district, history shows that Burke came to power and held it throughout the 1960s, 1970s, and 1980s as an Irishman amid a

virtual sea of Poles.

Burke has been able to maintain control through the strategic use of political patronage. This point is well established and will be demonstrated in full by my primary research. What is not as clear is why these tactics are salient among communities that, according to the numbers, have the ability to oust him from power. Though historians have offered definitive conclusions about the Polish experience in Chicago politics, contemporary Mexican and Mexican-American experiences remain unstudied. In order to fill this void, I ask the following question: how and why do Mexicans occupy the subordinate role of “political clients” in Chicago’s 14th Aldermanic Ward, an electoral district where they now constitute a dominant demographic majority? The remainder of this paper answers this question by investigating the external and internal forces that produce these conditions.

In the first two sections, I show how my case study relates to Mexican political participation in the context of Illinois and Chicago politics and introduce my hypotheses. I then provide an explanation of my methodological approach to research in the 14th Ward, followed by the results of my primary research. The following section analyzes how and why Mexicans have been relegated to the role of “political clients” in the ward. Finally, I conclude by restating and summarizing my research results.

FRAMING THE ARGUMENT

Clarification of Terms

I center my research on Mexicans rather than Latinos or Hispanics in order to remain consistent with existing investigations of ethnic political mobilization. While “Mexican” can be considered the practical equivalent of “Italian,” “Polish,” or “Irish” for the purposes of comparative political analysis, the categories “Latino” and “Hispanic” cannot. Latino and Hispanic are categories that encompass and aggregate several distinct national ethnic categories. As a distinct national ethnic group, Mexicans constitute the bulk of the

category that is encompassed by the term “Latino.” For this reason, I focus on Mexicans and not other groups such as Puerto Ricans, Cubans, and Central Americans. Considering these limitations, “Mexican” and “Mexican American” will be used interchangeably in this report to describe the population of U.S. citizens, documented immigrants, and undocumented immigrants who live in Chicago’s 14th Ward and who self-identify as individuals of Mexican heritage.

I do not seek to essentialize Mexican identity or culture. Instead, I focus on Mexican ethnicity as it has been constructed through social and psychological processes of categorization.”⁴ In this regard, Mexican denotes a category of “racialized and spatialized difference” in the United States.⁵ Further, I argue that the use of the term “Mexican” as an ethnic marker is an emergent phenomenon that can be amplified in the urban environment where a “critical mass” of population forms “a variety of specialized institutions and services which structure, envelop, protect and foster [ethnic] subcultures.”⁶ As a result, ethnicity can also be consciously accentuated or deemphasized by individuals or groups. By this definition, ethnicity is not fixed or permanent. Rather, it is a category that is constantly produced and reproduced; it is a historically contingent construction.

My use of the terms “political client” and “political clientele” is inspired by the paradigm of patronage democracy theorized by Kanchan Chandra. According to this model, “patronage democracy” is a system in which “the state has a relative monopoly on jobs and services, and in which elected officials enjoy significant discretion in the implementation of laws allocating the jobs and services at the disposal of the state.”⁷ In this system, “obtaining control of the state is the principal means of obtaining both a better livelihood and higher status.”⁸

Patronage democracy is distinct from rent-seeking and corruption in that “the returns to politicians take the form of votes rather than bribes.”⁹ Furthermore, it is not pork-barrel politics, which functions by means of “promising some group of voters favorable legislation.”¹⁰ Instead, patronage democracy is a system in which promises of “favorable implementation” are exchanged for

votes. Rather than writing laws that accommodate one group over another, a successful politician in a patronage democracy selectively implements laws, policies, and services that already exist. Additionally, he will target favors “to group members rather than free-floating individuals” in order to “multiply the value of his investment” by means of purchasing “a large number of votes with a small number of favors.”¹¹

I use the term “political clientele” to refer to the group of individuals in a patronage democracy whom the political elite successfully courts by means of selective policy implementation. The position of the political clientele is a subordinate one; political clients do not manage or maintain control over the dominant political operation. In the context of my research, “political clientele” is used to refer to Mexicans in the 14th Ward. As an addendum, I use the term “machine” to refer to the political operation that controls and confers patronage benefits. The “machine” includes both the political elites and the means they employ. Here, the term refers to Alderman Burke and his financial and institutional resource base. Though “machine” may seem to carry a negative connotation, the term is ostensibly accepted by those who run it. In the words of Illinois State Representative and brother of Ed Burke, Daniel J. Burke: “Yeah, there is a machine. A machine is created to do a job more efficiently.”¹²

Putting these definitions into a cohesive statement, Mexicans in Chicago’s 14th Ward embody the role of “political clients” in that a portion of their community has been successfully co-opted into Alderman Burke’s political “machine.” Hitherto Mexican-Americans, as the “political clientele,” have been unable to usurp the existing “machine.” While Mexican demographic dominance in the 14th Ward may confer some bargaining power, it does not bestow enough to ensure that an ethnically Mexican representative will control the ward itself.

Mexican Political Underrepresentation

Mexican politics in Chicago’s 14th Ward is a paradox but not

an anomaly. In Illinois, where Latinos comprise 14 percent of the population (and Mexicans comprise 80 percent of the Latino population), Latino representatives make up a mere 5 to 6 percent of the state legislature.¹³ Areas of high Latino concentration like the City of Chicago exhibit this phenomenon particularly strongly. Alderman Ed Burke's 14th Ward is just one example. The 23rd Ward, represented by Polish-American Alderman Michael R. Zelewski Jr., is another predominately Latino district governed by a white ethnic official. Other instances include Illinois' 23rd State Representative District, served by Dan Burke, and Illinois' 3rd Congressional District, served by Dan Lipinski Jr.

According to the definition of descriptive political representation, politicians who "look like, have common interests with, or share certain experiences with" the Mexican community are scarce relative to the group's overall demography.¹⁴ This characteristic is significant because descriptive representation is inextricably linked to other forms of political representation—namely, formalistic representation, symbolic representation, and substantive representation. All four categories work in tandem to ensure that constituents are "being made present in some sense."¹⁵ It follows, then, that substantive representation—the advancement of "the policy preferences that serve the interests of the represented"—may be enhanced by means of more proportional descriptive representation.¹⁶ According to political scientist Jane Mansbridge, this quality is true because "disadvantaged groups"—a classification that is reserved in the United States for minorities such as Mexicans—derive deliberative benefits from being represented by "one of their own."¹⁷

Descriptive representation may confer "adequate communication in contexts of mistrust" as well as "innovative thinking in contexts of uncrystallized, not fully articulated interests."¹⁸ Moreover, greater descriptive representation may aid a group's acceptance into the dominant political milieu by increasing a "polity's de facto legitimacy in contexts of past discrimination" and by advancing a group's perceived "ability to rule" in "historical contexts where that ability has been seriously questioned."¹⁹ Thus, the election of an ethnically Mexican alderman in Chicago's 14th Ward would be a

symbolic break with the past. An individual who is descriptively representative of a majority of the ward's population would finally be in power. This symbolic victory would then translate into empirical results. By breaking the chain of political underachievement, Mexicans would gain greater political legitimacy and would be able to better organize and petition for their specific political needs and desires. But why are Mexicans political clients in the first place? Why have Mexicans, who now constitute a demographic majority in the 14th Ward, failed to gain control?

Hypotheses

I propose that Mexicans in the 14th Ward are forced to and simultaneously choose to exist as political clients because some members of the community see cooperation with the existing machine as the only way to exercise true political agency. I do not suggest that all Mexicans or even a majority of the ethnically Mexican community in the ward supports, accepts, or even condones this state of affairs. Nonetheless, Mexicans who vote in Chicago's 14th Aldermanic Ward overwhelmingly opt to exist as members of Burke's power coalition, rather than organizing an independent political organization outside of it.

External as well as internal factors undergird this perspective. From the outside, Mexicans contend with societal forces that counter an independent rise to political power. Such a reality is primarily a result of their socialization as racial and legal minorities in the United States. These factors force Mexicans into the role of political clients. Meanwhile, divisions within the Mexican population motivate some Mexicans to cooperate with the machine. Fault lines form around differences of class and conflicting perspectives on assimilation. Combined with a relative lack of political legacy, these internal divisions prevent the group-wide solidarity that is necessary to mount an independent challenge to the machine.

Whether motivated by external influences, internal influences, or a combination of both, individuals who cooperate with the machine subsequently reinforce it by dividing the Mexican

community. This action in turn renders the sheer numbers of the community powerless, making the subordinate role of the political client a reality in an area where demographics would indicate otherwise. In this way, a segment of the community defines the politics of the area for the entire Mexican ethnic cohort. This characteristic is a historically and contextually specific phenomenon. While the political fate of Mexicans in Chicago's 14th Aldermanic Ward is, in part, the result of the existing political order, it is also a product of the Mexican ethnic experience as it has been constructed and has developed in the United States. In order to substantiate these claims, the remainder of this essay will be devoted to a case study of the 14th Ward.

CASE STUDY

Chicago's 14th Ward is home to nearly 75,000 individuals. It is located on the southwest side of the city and roughly encompasses the neighborhoods of Archer Heights, Brighton Park, Gage Park, and West Elsdon. According to the 2000 census, 75 percent of the ward's residents identify as Hispanic.²⁰ As of 2001, Hispanics in the ward outnumbered whites 58,000 to 14,000.²¹ The ward's Latino population began to expand in the 1990s and continues to grow today.

Spill-over from adjacent neighborhoods to the south fuels this growth. For instance, Little Village and Pilsen, Chicago's dominant Mexican communities, serve as so-called ports of entry for Mexican migrants coming to the city. Individuals seeking work and a stable living in the United States come to these communities upon first arrival. The communities of the 14th Ward constitute the next step in the process of Mexican migration and assimilation. In this sense, Southwest Side serves as "the classic example of a second settlement area, neighborhoods to which established ethnic groups migrated after a period of residence in Chicago."²²

Mexicans who reside in the 14th Ward most often inhabit single-family homes—typically brick bungalows—and have lived in the United States for an average of more than five years. Though

a far cry from the affluent “bedroom suburbs” located to the north and west of the city, the 14th Ward maintains a suburban feel in the midst of the city. Still, it is a community that, at its heart, remains working class. The 14th Ward has experienced one of the highest rates of home foreclosure in the City of Chicago with nearly 228 reported during the period from January 1, 2009 to February 14, 2010.²³

Irish-American Alderman Edward M. Burke is responsible for the city-level administration of the 14th Ward. The city’s longest serving alderman, Burke first came to power in 1969.²⁴ He has served under “seven Chicago mayors and alongside 224 aldermanic colleagues” over his four decades in power.²⁵ Chicago Sun-Times reporter Fran Spielman branded Burke “the J. Edgar Hoover of City Hall, with a memory like an elephant and dossier on almost everybody.”²⁶

Burke has created a legacy with which it is difficult for Mexicans, or any cohort for that matter, to contend. Since 1983, excluding a two-year hiatus in the mid-1980s, Burke has chaired the City Council’s influential Committee on Finance. The city council’s website notes matter-of-factly: “Alderman Burke holds the city’s purse strings and is responsible for all legislative matters pertaining to the city’s finances, including municipal bonds, taxes and revenue matters.” Due to the fact that he serves as alderman on a part-time basis, Burke is also able to maintain a lucrative real estate tax assessment law firm, which has represented big-name clients such as AT&T, American Airlines, Bank of America, Northern Trust, Harris Bank, and T-Mobile in their disputes with the city.²⁷ Critics of this work say Burke has an obvious conflict of interest in representing companies that may concurrently have claims before the city’s Committee on Finance in regards to city bond offerings, tax levies, or redevelopment agreements. A source who formerly worked for the Burke operation estimates his total personal wealth at upwards of twenty-five million dollars.²⁸

Burke’s legislative legacy is equally impressive and contentious. His clout has successfully persuaded some Mexicans to work with, rather than against, his machine. In the 1980s, he was known as an

oppositional figure who employed obstructionism in city council to block then-Mayor Harold Washington's budgets and political agenda. Leaving the period of the 1980s known as the "Council Wars" behind him, Burke later emerged as Mayor Daley's closest ally and as the "institutional memory" of the city's legislative body.²⁹

But what is Burke's record of electoral success? Aldermen in the City of Chicago serve four-year terms and are not subject to term limits. If political power is defined by elections, what are Burke's margins of victory, and who have been his political challengers? Data from the Chicago Board of Elections from Chicago's February 2003 and February 2007 municipal elections confirm the opinion of Crain's Chicago Business that Burke is "[u]nassailable in his Southwest Side ward."³⁰ From 1971 to 2007, Burke did not face a single electoral challenger.³¹ Burke's political success remained steady when a challenger met him in 2007. In his first contested election in over three and a half decades, Burke claimed 5,027 votes—89.72 percent of all ballots cast.³² His opponent—Paloma M. Andrade, a Mexican-American mother of four and a bilingual special education teacher garnered a mere 576 votes.³³

Andrade, who ran as an Independent and is affiliated with the Cook County Green Party, states that she sought the seat in order to "give voice to the ward's Latino residents."³⁴ Yet up against Burke, Andrade failed to secure more than 25 percent of the vote in any of the ward's precincts. As Tribune reporter Oscar Avila explains: "The fellowship halls are now taquerias, the Catholic masses are in Spanish. But as Murphy gave way to Martinez, an electoral changing of the guard hasn't followed."

PRIMARY RESEARCH

Methodology

In order to learn how Burke has maintained power in the 14th Ward, and subsequently why Mexicans exist as political clients, it was necessary to observe what exactly was occurring on the ward level. I accomplished this task by conducting a discourse-based

political ethnography of the area. Political scientist Robert Dahl's work guided my methodology. In his treatise *Who Governs?*, Dahl conducts a political analysis of New Haven, Connecticut. He states, "In New Haven, as in all other political systems," there exists a "political stratum."³⁵ Members of this stratum are "much more highly involved in political thought, discussion, and action than the rest of the population."³⁶ As a result, these few persons "have great direct influence on the choices that are made."³⁷ While for most people "politics lies at the 'outer periphery of attention,'" for members of the political stratum, politics is the center of concern; it is a "vocation."³⁸

My ethnographic approach is inspired by Dahl's observations. Over the course of January, February, and March 2010, I registered the opinions and assessments of community leaders, organizers, and other members of the political stratum associated with the 14th Ward and its surrounding neighborhoods. These accounts were obtained through individual, open-ended interviews. Each subject was asked a series of impromptu questions pertaining to the ward, Mexican-American political participation, and Alderman Burke's consolidation of political power. The opinions expressed in each interview provide context to the electoral data and elucidate the 14th Ward's internal political dynamic. Most importantly, they elaborate on the ward's system of patronage politics and begin to explain how it has been sustained among the ward's expanding Mexican community.

In setting up my interviews, I contacted members of the machine, members of the independent opposition, as well as individuals who fall into non-allied categories such as community or civic organizations. By reaching out to suggested contacts and through a snowball effect of following leads, I was able to gather a diversity of perspectives—nine to be exact. Admittedly and unintentionally, I received more face-time with individuals who view themselves in opposition to the machine. This was due, in part, to the persistent unwillingness of Alderman Burke and members of his operation to participate in my research. Nonetheless, I was able to speak with several third, non-aligned parties as well as an individual who

formerly played a prominent role in Burke's 14th Ward operation. Thus, as a collective body, my research subjects were able to provide a cogent portrayal of the ward's unique political processes.

Initial Observations

For decades, Ed Burke has relied on patronage politics to maintain electoral support. Linda Coronado's anecdote at the beginning of this essay is a clear demonstration of this point. A former member of the Chicago Public School Board and an active participant in the Cook County League of Women Voters, Coronado continues, "I never got a sense that there was a significant way that somebody through hard work could really get a good job in the city." Though many applicants "may have been qualified... it was beside the point," she says. Jobs and resources were directly linked to the alderman.

Furthermore, Burke's political operation has always been strategic and highly deliberate. Consider the comments made by Jack Lesniewski, a community organizer and a graduate student at the University of Chicago who served most recently as a precinct captain, speechwriter, and member of the steering committee for Rudy Lozano Jr.'s unsuccessful bid to unseat Illinois 23rd State District Representative, and brother of Ed Burke, Dan Burke. In his opinion, Ed Burke has developed an organization that is "really effective at, sort of the retail politics and ... direct door-to-door democracy."³⁹ "You move to this neighborhood and really the first person you meet, outside of direct neighbors, is a precinct captain," says Lesniewski. The captain is a member of the Regular Democratic Organization, the overtly political wing of Burke's aldermanic dominion. He or she is sent to establish a quick but lasting relation with each new resident. Coronado adds that the precinct captain was a "familiar neighborhood character," whom "you relied on ... to know everybody." In the eyes of the machine, she continues, "it is so much more beneficial to not have your neighbors know each other and for the old neighbors to be afraid of the new neighbors."

Another longtime resident of the Southwest Side and a for-

mer officer of Little Village's 22nd Ward Independent Political Organization, Carl Rosen, describes Burke and his operatives as "very scientific."⁴⁰ He explains their behavior as follows: "They find big families, you know, places where there might be eight or ten voters in a building because the family lives with the extended family. And hopefully they've got relatives in the ward, too—so, maybe you're impacting twenty or thirty votes—and [they] give a job to one of those people. Then, everybody understands that in order to keep that job you've got to be supporting the alderman with votes. So, it's patronage."

But while patronage politics and machine political organization may not be new, the active incorporation of Mexicans into the 14th Ward machine is a strategy that has been pursued most aggressively by Burke over the course of the past decade. Prior to this period, Burke and his allies were able to maintain power by other means. Most pointedly, they continually shifted the area that constitutes the 14th Ward. After each new census or population survey, states Rosen, "the 14th Ward would be moved farther west, so that it would maintain an area that was still proportionally white enough that the Burkes felt that they could maintain control." This tactic permitted Burke to maintain a hold on political power while changing little of the internal political dynamic of the district.

However, within the last ten years, the demographics have shifted so dramatically that a mere re-mapping of the ward did not suffice. As Lesniewski argues: "People like Burke, people like Daley, realized they were never going to get the vast majority of African-American votes" while at the same time their stalwart base of white voters was "slowly, but surely, disappearing—moving out of the city." Burke "very smartly realized," Lesniewski continues, "that Latinos, Mexicans especially, were going to be at some point the largest group in the city and that you had to deal with them that way."

Burke has since worked to integrate existing Mexican community organizations into his political organization. Most notable among these cooperative elements is the United Neighborhood Organization, or UNO. As stated on its official website, UNO strives to "build grass-roots leadership within Chicago's Hispanic

neighborhoods to organize for power and address local issues such as prevalent street violence, the Hispanic dropout rate, and overcrowding in schools." In January 2010, UNO made headlines for its endorsement of State Representative Dan Burke over Rudy Lozano Jr. for 23rd State Representative District. It stands as the institutional representation of the sector of the community—both groups and individuals—that have decided to work with the machine. In the words of Mike Rodriguez, a life-long resident of the Southwest Side and former employee of 22nd Ward Alderman Rick Muñoz: "Many Mexicans on the Southwest Side and the 14th Ward ... are loyal to the Burkes."⁴¹ But why? What has contributed to this state of affairs?

Explaining the Status Quo

Mexican loyalty to the Burke operation is partly a function of a citywide political dynamic. As Chicago has become the "second largest urban concentration of Mexican residence" in the United States, politicians in the city have come to realize they must treat the Mexican community as a viable political force if they are to maintain the political status quo.⁴² Hence, political elites have targeted Mexicans and attempted to incorporate them into the existing political apparatus. In some cases, they have been successful. In others, Mexicans have resisted and developed an alternative path of political involvement. Such a process has explicitly divided the political niche of Mexicans in Chicago.

Dick Simpson, former 44th Ward alderman and head of the Department of Political Science at the University of Illinois at Chicago, describes this divide as a "struggle ... in the Latino community between what might be called the reform elements and the machine elements."⁴³ While reform-minded politicians exist outside of the dominant political machinery and pride themselves on independent political organization, machine candidates work within the bounds of the existing political status quo. Self-declared members of the reform faction include Alderman Ricardo Muñoz of the 22nd Ward, Cook County Commissioner-elect Jesus "Chuy" Garcia,

and candidates such as Rudy Lozano Jr. The machine faction, on the other hand, has been historically represented by the Hispanic Democratic Organization (HDO), a branch of the Cook County Democratic Party created by Mayor Daley in 1993. Though the HDO has since dissolved under the weight of ethics investigations, it has been amply replaced. Current Mexican representatives of the machine include 12th Ward Alderman George Cardenas, Illinois State Senator Martin Sandoval, and former chief of staff to Mayor Daley, Gery Chico.

As Mexicans have grown in number, this “power struggle within the Latino community” has grown more and more contentious.⁴⁴ Reform candidates are independent but are scarce and generally newer to the political scene. In contrast, members of the machine are more numerous and well-established but are complicit with the power of Chicago’s current political elite. So, while the most prominent of machine candidates may openly profess their loyalty to individuals like Mayor Daley and Alderman Burke, most other Mexican members of the machine are relegated to the background where they play, in Simpson’s words, “junior” roles. As junior partners, Mexican members of the machine reinforce the political status quo. This self-reinforcing nature of machine politics contributes to keeping Mexicans trapped in the role of political clientele in places like the 14th Ward.

ANALYSIS

The Benefits of Incumbency

Simply put, Burke’s political operation is well established. As a consequence, it is able to reap the electorally stabilizing benefits of incumbency. These advantages include the ability to selectively grant and revoke municipal benefits, the maintenance of an established base of electoral support, control over a massive campaign chest, and the persistence of a mentality that dictates against challenging a powerful and moneyed incumbent such as Burke. In these ways, Burke’s long tenure in office partially explains the dy-

namic of the 14th Ward. As we shall see, this is not the whole story. Yet, the benefits of incumbency must be acknowledged before we can continue.

The Burke machine holds near absolute power over the distribution of municipal benefits. "You know, getting somebody a job, fixing someone's sewer," notes Rodriguez. "Something as simple as regularly giving someone a garbage can when they ask for it." Burke's patronage politics works because Burke has consolidated enough clout over time to be able to provide real benefits to his constituents. Linda Coronado recalls conditions in the 14th Ward under Burke during the late 1980s. "When I would compare myself ... with those who lived in the 22nd Ward," where at the time the alderman held little clout, "my services...were like the Cadillac of services." "You could notice the difference," says Coronado, "I mean truly, truly notice the difference ... I always had my garbage picked up. We never had any trouble with rats. We always had garbage cans with lids on them."

The machine can also take benefits away. Jorge Mujica, a former journalist for *La Raza*, *Telemundo*, and *Univision*, as well as a union organizer in the United States and Mexico, confirms this opinion. Mujica most recently ran an unsuccessful campaign in the February 2010 Democratic primary to unseat U.S. House Representative Dan Lipinski in Illinois' 3rd Congressional District, an area which encompasses Chicago's 14th Ward.

"Whether your back alley has light or not...whether your garbage is picked up or not," states Mujica, "it depends on the machine."⁴⁵ "If you don't play machine politics," Mujica concludes, "your street, your block, is going to look like hell." He attributes this potential for repressive action to the unique nature of aldermanic positions. Aldermen are "at the same time legislator and executive ... You are the executive within your ward, so whatever you say gets done."⁴⁶ Even to begin to organize against Burke may elicit a backlash. "We're talking about a very powerful alderman who will use every possible institution ... to not make this happen," says Coronado. She witnessed a similar effect when residents of the 22nd Ward attempted to elect a Latino alderman in the mid-1980s.

“Every external and internal force that they could bring to bear on every organization, every individual was brought to bear...inspectors, housing code violations ... parking tickets, everything you that you could imagine,” relates Coronado, “Power is not given up. It usually has to be taken away.”⁴⁷

In addition, Burke has accumulated a solid base of non-Mexican electoral support. According to Rosen, “Burke is going to get 90 percent plus of the white vote because of the history” and because “old white ethnic voters” are ingratiated with the ways of the machine. They are used to the notion that “the only way you got anything done was through your alderman.”⁴⁸ In a ward where 80 percent of the population is Latino, this may seem insignificant. But, as a former employee of the Burke operation who wished to remain anonymous states: “the breakdown among individuals who vote is more 60/40” (60 percent being Latino).⁴⁹ Rosen cites the same statistic. He infers that “if you have 40 percent of voters, you only have to satiate a portion of the Mexican community.” Consequently, Burke can rely on old white ethnic voters while he strategically courts select elements of the Mexican electorate.

The part-time nature of aldermanic positions further reinforces Burke’s electoral continuity. In short, more time is available for fundraising, enabling Burke to amass large sums of money to fuel future campaigns. In 2008, bloggers for the Chicago Sun-Times described Burke and his wife, Illinois Supreme Court Justice Ann Burke, as Illinois’ “richest political family.”⁵⁰ Collectively, the Burke’s political committees held \$8.3 million in campaign capital.⁵¹ This figure is nearly triple that of infamous Chicago Mayor Richard M. Daley, who in 2010 reported a comparatively lower sum of \$3.1 million in cash on hand.⁵²

Burke’s campaign cash creates an atmosphere of electoral security that, in the words of Lesniewski, functions as “a self-fulfilling prophecy.” A mentality of “you can never defeat Burke” precludes viable political challenges to his operation.⁵³ Mujica fell into this trap during our conversation as he repeatedly entreated that “[Burke] is the second most powerful guy in the City of Chicago.” Similarly, Rodriguez asserted, “If you’re smart enough to know that this guy’s

so powerful, you're not going to run against him." Burke's accumulated clout has become a "deterrent for credible opposition."⁵⁴

Still, the advantages of incumbency are not wholly explanatory. Our puzzle is not only that Burke has been able to maintain power, but also that part of his electoral support comes from Mexican voters who have been subsumed into his political operation. The breakdown of voters in the ward is approximately 60 percent Latino and 40 percent white ethnic. These demographics indicates that a majority of the 5,000 votes Burke received in 2007 were still cast by Latinos and therefore, predominately Mexican voters. This fact remains true even though a Mexican challenger, Paloma Andrade, was on the ballot. Descriptive political representation is evidently not the primary goal of a certain sector of the Mexican community. Instead, these individuals have chosen to work with or within the Burke political operation. I argue that this involvement is a result of the unique aspects of the Mexican ethnic experience in the United States. In other words, while the institutional aspects of Burke's power are important, they are not necessarily defining.

Race, Space, and Mexican Identity

Externally, conventional notions of race and citizenship in American society—those defined and employed by the dominant white ethnic majority—have prevented the Mexican-American community from mounting a successful political challenge to white ethnic politicians. These are the factors that force Mexicans into the role of political patrons. As Neil Foley notes in his essay, "Becoming Hispanic: Mexican Americans and the Faustian Pact with Whiteness," the Mexican-American community has been racialized as semi-white. Mexicans in the United States exist within a "parallel universe of whiteness" in which they are regarded as racial minorities in relation to the "true" white majority.⁵⁵ The racialization of Mexican identity has resulted in the view of Mexicans as qualitatively different from other groups of ethnic classification such as "Irish" and "Polish." The consequences of this development have profound implications.

In terms of politics, Mexican minority status conflicts with the production of independent political leadership. Father Larry Dowling, current pastor of St. Agatha's Catholic parish on Chicago's near west side, describes such a trend in the Church. "Most churches, including the Catholic Church... tend to treat African-American and Hispanic people as people that we will help, but not empower...so, we'll gladly give them a hand-out, but we won't necessarily bring them into the system to empower them."⁵⁶ Dowling believes that this pattern is motivated by racial, economic, and political undertones and is therefore transferrable to ward politics. Where integration of Mexicans into the political machinery may be tolerable and even preferred, Mexican control over the highest positions of political power is an aberration of the accepted order.

The Mexican-American community's unique history of immigration also limits its ability to obtain and control positions of political authority. As many migrants have sought and obtained entrance to the United States outside the parameters delineated by American law, the dominant discourse has come to incorporate illegality as a part of the Mexican-American identity. Historian Mae Ngai asserts that many ethnically Mexican U.S. citizens have been codified as "illegal" or undocumented individuals. This conundrum, what Ngai refers to as the "alien citizen" quandary, has become an integral part of Mexican identity in the United States.⁵⁷ As anthropologist Nicolas De Genova observes, "Mexican" has become "synonymous with illegal alien."⁵⁸

Just as racial minority status clashes with the notion of Mexican political leadership, so does a perception of illegality. Even if individuals are properly documented or are citizens of the United States, the perception of undocumented status renders the production of political leadership non-permissible. The origins of this concept are also similar to that of racialization of Mexicans. Perceptions of illegality were first developed outside of the Mexican-American community by the dominant, primarily white majority. They then became a constitutive element of Mexican ethnic identity. Thus, the discourse surrounding Mexican Americans fosters an atmosphere in which the citizenship of every member of the

community becomes an object for debate and reconsideration, in spite of legal reality. This atmosphere, in turn, has a negative effect on Mexican political participation.

Mike Rodriguez echoes these sentiments. "In general, if a group does not feel like they are accepted into society," says Rodriguez, "they are less likely to vote." To summarize, society deems that Mexicans are racial and legal minorities, so they remain minorities in sectors such as the political sphere even when they constitute a demographic majority. Rodriguez concludes, "When that happens you are repressing their engagement in the democratic process."

Jack Lesniewski's account of Election Day, February 2, 2010 further unravels the effect of these social influences. That morning, the Burke campaign hired fifteen Mexicans from the near-western suburbs of Berwyn and Cicero. Each individual was paid one hundred dollars for the day, placed in front of voting locations, and told to hand out placards for the Burke campaign. On the one hand, this tactic was meant to show Mexicans in the area that Latinos supported Burke. On the other hand, precinct captains for the Burke campaign would "disavow [the hired Mexicans] as their own precinct workers."⁵⁹ This is evidence, Lesniewski concludes, of the "really interesting racial tightrope" that Burke and his associates walk. While they permit Mexicans to participate in their operation, this involvement is either created artificially or treated antiseptically from afar. In this context, the Mexican identity clearly represents and functions as a "subordinate racialized category situated uneasily between whiteness and Blackness and increasingly treated not only as 'not-assimilable but also not-American and alien.'"⁶⁰

The fact that Mexican identity resides in between the racial poles of white and black has enabled white politicians to play minority groups off of one another. As Carl Rosen relates, an "unhealthy dose of racism" is directed at African Americans in an effort to win over Mexican voters. He argues that a section of the Latino community is susceptible to the argument that "look, however bad off you have it, at least you're better off than the blacks, so stick with the white power establishment." While Mexicans and African Americans may live in close physical proximity in Chicago, an-

thropologist Nicolas De Genova notes that “racial segregation has ensured rather extreme social distance between the two groups.” De Genova, who has conducted extensive ethnographic research among Chicago’s Mexicans, adds that Mexicans “commonly understand their nemesis to be African Americans and [are] actively complicit with larger social forces pressing Blacks to the lowest level of the racial hierarchy.” Dowling confirms this opinion. He states, “in a lot of ways the Mexican community is still being played off of the African-American community in terms of fighting for the same things.” “Everybody’s after a piece of the pie,” states Dowling, “and the impression of the people in power is that: we’ll give you a piece of the pie, but you’ve got to fight it out.”

Some argue that the Burke operation reinforces the subordinate racial and legal status of Mexicans. Though Burke is, “at face value,” perceived to be an advocate for the Mexican community, argues Mike Rodriguez, “when you dig down deeper, I would think not.” “They’re not necessarily helping our community,” Rodriguez continues, “but a subset of the community that then becomes part of their machine.” Patronage politics facilitates “the upward mobility of a relatively few number of Latinos at the expense of the larger community, higher taxes, less resources, and less challenging of the system.”⁶¹ Burke is sending the message, says Lesniewski, that you are “worthy of patronage, you are worthy of being bought off. But in terms of larger issues like arresting the decline of working class jobs, arresting the decline of the living wage economy...no, not at all.” “At the “bread and circuses level,” adds Rosen, the Burke machine “is giving some crumbs back, but at the bigger level is enabling this power structure that is funneling so much money into downtown interests, corporate interests—the very same people who are ruthlessly exploiting these people as workers.”

As a particularly revealing example, Lesniewski describes how Representative Dan Burke, brother of Ed Burke, went door-to-door with turkeys and pies around Thanksgiving in order to win over voters. The gesture of a free pie was thought to be enough to win over voters. Rosen cites the same turkey and pie example. He adds that Pete’s Fresh Foods, a burgeoning grocery store chain on

Chicago's Southwest Side, donated the turkeys and pies that Burke distributed to his campaign. In addition to its notoriety as a rapidly expanding business, Pete's Fresh Foods has also earned a reputation for cracking down on Latino workers by preventing unionization and threatening undocumented immigrants with deportation. Rosen summarizes this predicament well: "Get a free pie, but you're not going to have enough money to buy a pie. That's what's happening."

Fault Lines in Mexican Political Organization

But if Rosen's statements are valid, why do some Mexicans choose to cooperate with and support the Burke operation? If the machine really is, as Rodriguez describes, "built on maintaining the status quo and disempowerment of the masses," why do the tactics of political patronage—both the *quid pro quos* and the repressive actions—push some Mexicans toward, rather than away from the machine? Here, it is useful to look at the internal intricacies that work to divide the Mexican community. Class and assimilationism serve as two particularly relevant and interrelated fault lines that have divided Mexican voters.

A large working class portion of the Mexican community chooses to support the Burke machine out of economic necessity. This is an argument related to the ability of the machine to confer municipal benefits, but it is more specific to the Mexican experience. It is a relevant factor only because Mexicans, as an ethnic cohort, fall overwhelmingly into a lower economic bracket. In Rodriguez's words: "The fact is that if you're working class [and] someone has given you something tangible, you're going to react to that." For these individuals, city services are perceived as particularly valuable. Moreover, cooperation with the dominant political organization is viewed as a surefire way to improve one's chances of securing such benefits. In other words, given the choice of "politics as redistribution and social change versus politics as bringing home the bacon," many Mexicans in the 14th Ward seem to choose to the bacon.⁶² In reference to the turkey-pie ploy mentioned earlier, Rodriguez

opined: "When you get a pie, or you get a garbage can, that says something. That's very valuable." In this way, simple services and low-level benefits can overshadow the importance of larger conceptual issues.

Economic considerations also amplify the potential for retributive action and the threat of losing of municipal favors. The concern, articulates Coronado, is "if [Burke] loses, what's gonna [*sic*] happen to me? I probably got my city job or my county job because of him ... What will happen to me if he loses?" As a former employee of Burke related, "Fear is being perpetuated by the Burke organization." "Hispanics are voting for the Burke organization because they are scared."⁶³ They are worried about losing jobs and benefits or having services taken away. As a result, these individuals have "traded ... ethnic solidarity [and] progressive politics for the ability to maintain stability in [their] home."⁶⁴ Many Mexicans simply cannot afford, literally and figuratively, not to cooperate with the Burke organization.

On the flip side, some Mexicans are drawn towards the machine for the status that it represents. These individuals cooperate with the dominant political apparatus as a way to distinguish themselves from the working-class elements of the Mexican community and, as Dick Simpson notes, as "a way to power." Simpson claims that this part of the Mexican community "believes they have a better deal by allying with the whites and moving up as junior partners until their numbers become sufficient for them to elect one of their own." Rodriguez describes these individuals as "a certain subset of Latinos that ... see themselves assimilating into the American fabric." This process represents a "divide among Mexicans," claims Father Larry Dowling, "between those immigrants who have recently arrived and those who have been in an area for a longer period of time."

Rodriguez finds that these upward-bound individuals follow a "typical immigration pattern" in which "recent immigrants come to Little Village to live and work ... and once they've reached some level of success—maybe they were renters, now they're homebuyers—they might move to a place like the 14th Ward." "Because indi-

viduals who control the state are in a position of power over the lives of others," says Kanchan Chandra, "working in government brings with it higher status."⁶⁵ Thus, to these more established members of the Mexican community, cooperation with the machine is rooted in what Rosen refers to as a "go along to get along" mentality of assimilation. There is a culture of "we've made it a bit" that accompanies the move from an "immigrant enclave," in the words of Le-sniewksi, "to something where you have a lawn, you have a garage, you have a house." This outlook pits more established members of the Mexican community who desire a higher social status against lower class, more immigrant-inclined portions of the population. Coronado cites a useful example. When she visited her old elementary school in search of a fulltime kindergarten for her son, she was so shocked by her encounter that she decided that she could not enroll her child in the school. The principal's "attitude towards Mexicans," remembers Coronado, "was ... they're lazy; they don't want to pay..." Most surprising, the principal was Mexican herself. Internal divisions such as these mean that Mexican voters in the 14th Ward, in spite of their overwhelming numbers, do not constitute a monolithic bloc and neither do their political loyalties.

Ethnic solidarity, in other words, has its limits. Mexicans cannot be expected to behave monolithically in the political realm. This statement does not contradict the concept of descriptive political leadership. As outlined previously, descriptive representation can in some contexts allow an ethnic group to achieve more substantive political representation. Nevertheless, descriptive representation does not always lead to substantive representation. Mexicans in the 14th Ward recognize this reality and speak freely about it.

"The fact that you are a Latino candidate in a heavily populated Latino neighborhood doesn't mean that people are going to vote for you. At all," says Mujica. "You have to be a very good candidate. People have to trust you. People have to know you." "Just because you are Gomez, or Perez, or Aguilar, or Gonzalez, that doesn't mean all the other Perezes and Aguilares and Gonzalezes are going to vote for you just because you're Mexican." "If they are not known

to the community, then people don't care, people don't vote, people abstain, people go just for the name recognition, the incumbent." Rodriguez concurs: "Latinos aren't gonna [*sic*] take the simplistic, 'I'm gonna [*sic*] vote for Latinos because they're Latino candidates.'" "They really want to see what the difference is," says Coronado. "What is the real difference? Don't just tell me I should vote for him because he's Latino," she continues. "While that may have been a good reason twenty years ago, it's not a good reason today."

Though individuals like Mujica, Rodriguez, and Coronado insist that a successful candidate must offer more than just Mexican ethnicity, candidates with strong platforms are rare in the Mexican community. In fact, their statements shed light on yet another reason Mexicans exist as political patrons in the 14th Ward—a relative lack of political organization. While Mexicans have, arguably, been living in the United States longer than any other ethnic group, their profile has grown to grand proportions only recently. As a result, they hold little political legacy from which an efficient and independent political organization can arise. Strong political candidates with coherent policy platforms and an established base in the community are rare. I mention this factor alongside internal divisions of the Mexican community because it is another way in which the Mexican electorate has been split. Still, the reasons that have contributed to this split are not entirely internal to the Mexican community.

The machine has perpetuated a lack of Mexican political organization. As Lesniewski states, "Machine politics breeds machine leadership." Within the Mexican community, he argues, "They do have precinct captains, they do have block captains who are Latino, but the top remains [in the hands of Burke]." This reality exists in patronage politics because "there is no reason to develop young leaders," says Lesniewski, "you just need someone who is affable enough to knock on doors and talk to people." Mujica agrees: "Any Latinos developed under Ed Burke's wing are not heavy enough, good enough, prepared enough as to take over." In his opinion, "the politics implies not to develop people who can defeat you ... in any given election." Rosen adds that "the machine has been very good

at steering community-based organization in their direction.” In this way, existing neighborhood organizations such as UNO are used to incorporate any potential Mexican leaders into the machine rather than allowing them to develop to their full potential independently. In order to mount a successful challenge, “you have to have some sort of political organization that can actually work the precincts, particularly in aldermanic elections. You have to have enough money to be able to direct mail, phone preferable, maybe even some media ads...,” says Dick Simpson. Mexicans simply do not have this level of organization in the 14th Ward.

Lesniewski relates a campaign story that summarizes the effects of these internal divisions well. As one of his precinct captains was walking a neighborhood in the 14th Ward during November of 2009, he ran into a pair of Mexican women canvassing for the Dan Burke campaign. When asked why they were supporting the Burkes and not the Lozano camp, they explained, in Lesniewski’s words, “we need someone like Dan Burke, we need someone like Mike Zeliewski, someone like Ed Burke, to advocate for us to pull us forward ... because there’s no one in our community who can do that.” Mujica portrays this dynamic as follows: “machine politics consists of having a lot of soldiers ... but not a lot of generals.”

CONCLUSIONS

In the preceding paper, I set out to better understand Mexican politics in Chicago’s 14th Aldermanic Ward. More specifically, I endeavored to answer the following question: how and why do Mexicans embody the role of “political clients” in Chicago’s 14th Aldermanic Ward, an electoral district where they now constitute a dominant demographic majority?

What I have discovered is that the politics of the 14th Ward is extremely nuanced. Many of the processes I have observed are historically contingent and particular to the context of the ward, the city, and the actors that constitute the dominant political elite. In spite of these intricacies, much can still be said about the role of Mexicans in this equation. In Chicago’s 14th Ward, Mexicans con-

stitute a demographic majority. Despite their large numbers, Mexicans continue to be represented by Ed Burke, an ethnically white alderman who has been in power since 1969. Even more confoundingly, Mexicans constitute a substantial portion of electoral support for Alderman Burke. As a group, Mexicans are the political clientele of the 14th Ward—they have been incorporated into the Burke machine as subordinate junior partners. My research has permitted me to pinpoint some of the reasons that explain how this state of affairs has come about and why it has been allowed to persist.

Mexicans have been forced into the role of political client by their racial and legal minority status. A discourse has emerged that dictates against their assuming the uppermost positions of political power. Consequently, a certain cohort of Mexicans has come to view integration into the existing status quo as an alternative source of political power. Some Mexicans, therefore, choose to participate in Burke's political coalition. While larger conceptual concerns may exist, economic reality pushes many working-class Mexicans into accepting low level patronage benefits and the accompanying quid pro quos. This state of affairs is fueled in one part by the potential benefits of cooperation and in another part by the fear of retribution. Other factions of the Mexican community ally themselves with the Burke operation in an effort to "get ahead" in American society. Assimilation into the political status quo is seen as favorable to personal advancement and therefore plays a role in providing support for candidates who are not descriptively representative of the Mexican community. A lack of political legacy and a fracturing of electoral interests have worked to reinforce these trends. Because Mexicans are relatively new to U.S. politics as an electorally viable ethnic cohort, they are at an inherent disadvantage relative to more established operations such as Burke's in the 14th Ward. Burke's machine has been able to capitalize on these faults, ensuring that, in spite of their numbers, Mexicans remain relegated to the role of political clients in Chicago's 14th Aldermanic Ward.

These hypotheses indicate that the current moment in time is of crucial importance to the future of Mexican, and therefore Latino, politics. As Mexicans become the most numerous demographic

bloc in the United States, the Mexican ethnic experience—a major reason patronage has worked in the Mexican community—has great potential for change. Before mid-century, Latinos will surpass the non-Hispanic white population nationwide, changing the paradigm of minority-majority status forever. Whether or not this change will override the existing categorization and racialization of Mexicans in the United States remains to be seen. Nonetheless, the path taken will be a defining one. What occurs in the next several decades will delineate the future of Mexican politics in the 14th Ward in Chicago and perhaps beyond.

Notes

1 All statements attributed to Ms. Linda Coronado in this report were obtained in a freely structured, open-ended interview conducted on March 3, 2010. The interview consisted of three parts, each lasting forty-seven minutes, nine minutes, and twenty-seven minutes, respectively.

2 Mickey Ciokajlo and Dan Mihalopoulos, "Few election worries for some; Uncontested races and long-shot challengers mean several aldermen aren't losing sleep," *Chicago Tribune*, February 14, 2007, <http://www.proquest.com.proxy.uchicago.edu/> (accessed November 4, 2009).

3 Gary Washburn and Evan Osnos, "Latinos Seek Clout in Council in Tune with Their Numbers," *Chicago Tribune*, March 16, 2001, <http://www.proquest.com.proxy.uchicago.edu/> (accessed November 4, 2009).

4 Henry E. Brady and Cynthia S. Kaplan, "Conceptualizing and Measuring Ethnic Identity," in *Measuring Identity: A Guide for Social Scientists*, ed. Rawi Abdedel et al. (New York: Cambridge University Press, 2009), 33.

5 Nicolas De Genova, *Working the Boundaries: Race, Space, and Illegality in Mexican Chicago* (Durham: Duke University Press, 2005), 6.

6 Felix M. Padilla, *Latino Ethnic Consciousness: The Case of Mexican Americans and Puerto Ricans in Chicago* (Notre Dame: The University of Notre Dame Press, 1985), 150.

7 Kanchan Chandra, "Counting heads: a theory of voter and elite behavior in patronage politics," in *Patrons, Clients, and Policies*, ed. Herbert Kitschelt and Steven I. Wilkinson (New York: Cambridge University Press, 2007), 86.

8 Chandra, "Counting heads," 87.

9 Chandra, "Counting heads," 87.

10 Chandra, "Counting heads," 87.

11 Chandra, "Counting heads," 93.

12 Oscar Avila, "Lozano battling Burke in state race," *Chicago Tribune*, January 3, 2010, <http://www.chicago.tribune.com/news/chi-lozano-burke-challenge-03-jan03,0,6412399.story> (accessed March 22, 2010).

13 Douglas Doetsch, et al., *A Shared Future: The Economic Engagement of Greater Chicago and Its Mexican Community* (Chicago: The Chicago Council on Global Affairs, 2006), 77.

14 Suzanne Dovi, "Political Representation," in *Stanford Encyclopedia of Philosophy*, January 2, 2006, <http://plato.stanford.edu/entries/political-representation/> (accessed March

SAME DIFFERENCE: INTER-STATE LEGAL CITATION AND THE SUPREME COURT'S USE OF FOREIGN LAW

Daniel E. Rauch

"**W**e must never forget that it is a Constitution for the United States of America that we are expounding."¹ With these words, Justice Antonin Scalia registered his disapproval for an increasingly prominent practice: the Supreme Court's citation of non-American law. He is not alone; over the past decade, the Court's use of foreign and international materials has proven deeply controversial,² attracting both ardent support and scathing criticism. Yet, although the Court's glimpses abroad have proven polarizing, America has seen a similar practice flourish without controversy for centuries. Since the Founding, America's state court systems—each with its own judicial system and constitutional law—have cited each other when interpreting their state constitutions.³ That two seemingly comparable techniques have drawn such dramatically different reactions logically suggests the question: if one practice is so widely accepted, what justifies rejecting the other? Addressing this question, in this analysis I argue that there is, in fact, justification for treating these practices differently, but that such justification is limited to concerns drawn from the practical difficulties each method presents.

Over the past decade, the Supreme Court's use of foreign materials has drawn comment from a panoply of scholars. Some, including Harold Koh,⁴ Anne-Marie Slaughter,⁵ and Paola Carozza, have touted this practice as a way to improve America's law and its global image.⁶ Others, such as Roger Alford,⁷ John O. McGinnis,⁸

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and Richard Posner have opposed the use of such materials on a variety of practical and theoretical grounds.⁹ In comparison to this extensive academic exchange, state court use of material from other states has received limited attention, though scholars like Patrick Baude and Peter Harris have worked to document the scope and pattern of this practice.¹⁰ Though I draw from each of these perspectives, my analysis ultimately departs from their scholarship as it focuses on examining the relationship between these practices.

Before proceeding, it is important to clarify which specific uses of non-jurisdictional law are at issue in this essay. In this analysis, my primary focus is on two judicial behaviors: the Supreme Court's use of foreign legal sources as persuasive authority when interpreting domestic law, and state supreme court use of out-of-state sources as persuasive authority when interpreting state law. Note that this excludes instances in which such non-jurisdictional sources are used to interpret laws that are not domestic,¹¹ such as international treaties or the few constitutional provisions explicitly requiring reference to non-American law. Instead, this analysis focuses on the practice of citing such authorities to interpret primarily domestic laws, such as a polity's due process guarantees. Additionally, this analysis is limited to instances in which non-jurisdictional sources are viewed as persuasive not merely due to the strength of their argumentation but also by virtue of the kind of sources they are, an attribute this essay refers to as "precedential persuasive authority." Though foreign and non-state sources have had other uses, it is this specific practice which will be shown to be the most fiercely contested and, as a result, most worthy of study.

With this in mind, the structure of my central argument is as follows: in the first part of my analysis, I outline the practices described above and observe that while they intuitively seem similar to each other, state court use of non-state materials is far more widely accepted than Supreme Court use of foreign sources.¹² Having established this, the main argument of the essay focuses on determining if there is a coherent rationale for accepting state supreme court use of non-state sources while rejecting the Supreme Court's use of foreign sources. To do so, I consider the leading objections against

the citation of non-American materials and consider whether each such argument, if valid, would also apply to state court citation of non-state law. Turning first to objections stemming from the practical difficulties of citing non-jurisdictional legal sources, I contend that such arguments furnish a plausible justification for accepting state citation of non-state law while rejecting the Supreme Court's use of non-American sources. When I consider arguments independent of such pragmatic concerns, however, I reach a different conclusion. Assessing objections to the Court's use of foreign law drawn from concerns over national sovereignty, the counter-majoritarian difficulty, legal particularism, judicial arbitrariness, constitutional genealogy, and text and original intentions, I argue that all apply equally to both practices in question. As such, I conclude that if the pragmatic difficulty of citing law from other nations were no greater than that of citing law from other states, then there would be no coherent justification for accepting one practice while rejecting the other.

In advancing my argument, Part I of this essay sketches the controversy surrounding recent Supreme Court references to foreign sources before identifying which specific usage of such materials is at issue in the current debate. In Part II, it is noted that this controversial usage seems similar to the widely accepted practice of state supreme courts citing each other's opinions when interpreting their own constitutions. Logically, this leads to the central question of this analysis: what can justify accepting one practice while rejecting the other? Taking up this inquiry, Part III considers objections to the use of foreign law drawn from the legal pragmatist perspective, arguing that the Supreme Court's use of foreign sources imposes greater practical difficulties than state court use of non-state sources. From this, it is concluded that objections drawn from questions of practical difficulty provide a coherent justification for embracing one practice but not the other. With this in mind, Part IV considers whether perspectives independent of these pragmatic concerns offer additional, independent grounds for treating these techniques differently. Here, six possibilities are examined, namely arguments stemming from: (1) sovereignty (2) the

counter-majoritarian difficulty (3) legal particularism (4) judicial arbitrariness (5) constitutional genealogy and (6) text and original intentions. Evaluating each in turn, I find that none provides a persuasive rationale for rejecting the Supreme Court's use of foreign law while embracing state court use of non-state sources. As such, I conclude that if the pragmatic costs of these practices were comparable, there would be no meaningful reason to accept one while rejecting the other.

I. SHIPS IN THE DARK?

Though controversy over America's use of foreign law is nothing new,¹³ current debate over this practice stems largely from three recent Supreme Court cases: *Atkins v. Virginia*, *Lawrence v. Texas*, and *Roper v. Simmons*.¹⁴ In each of these cases, foreign sources—ranging from the United Nations Declaration of the Rights of the Child to the domestic law of the United Kingdom—served as a highly visible feature of the Court's opinion.

In *Roper v. Simmons* in particular, the majority implicitly addressed these growing concerns, going to great lengths to clarify that foreign materials were not controlling on the outcomes reached.¹⁵ In spite of its avowedly limited scope, however, this use of foreign law still proved sufficient to touch off a firestorm of criticism from within the Court itself, academia, and Congress. Not content to rely on legislative action, some disgruntled citizens even issued death threats against Justices who dared to defend the citation of non-American materials as legitimate.¹⁶ Clearly, the Court's turn to foreign law had touched a nerve.

Yet while widespread criticism reflects the existence of an intense and rancorous debate, it overshadows the fact that many Court citations of non-American sources are almost universally seen as legitimate. An obvious example is the interpretation of international treaties, a situation in which even ostensible opponents of judicial cosmopolitanism like Justice Scalia believe that the Court should "give considerable respect to the interpretation of the same treaty by the courts of other signatories."¹⁷ Likewise, it

is broadly considered appropriate for the Court to cite foreign law to illustrate the empirical effects of legal rules, as when William Rehnquist cited the impact of European euthanasia laws in *Washington v. Glucksberg*.¹⁸ As a result, claims that the current debate turns on whether or not foreign law should be used are inaccurate; instead, the crucial question is which specific uses of foreign law are acceptable and which are not.

With this in mind, one must identify the precise use of non-American materials that is actually at issue in the present controversy. One possibility is the prospect of foreign law being treated as a binding authority, one the Supreme Court would be obligated to obey.¹⁹ Yet although this position has drawn scathing critiques, it is one few serious advocates of judicial cosmopolitanism actually hold.²⁰ Instead, those who support the use of foreign materials overwhelmingly claim that they should be used as non-binding, "persuasive authority."²¹ The consensus regarding the question of whether foreign law should serve as binding authority in Supreme Court decisions, then, seems to be clear: it should not.

Yet if proponents of the use of foreign sources do not support treating such authorities as binding, what do they defend? The key lies in the term "persuasive authorities,"²² which suggests that judges might look abroad not to receive marching orders, but rather to seek out insights and ideas from foreign experience. Given that innovative judges already cite inspiration found in anything from academic treatises to pop songs,²³ this use of foreign materials is generally viewed as unobjectionable, such that even hardened opponents of judicial cosmopolitanism have expressed some degree of acceptance for this practice.²⁴

Taken together, the points of general agreement outlined above suggest a beguiling possibility: if the use of foreign law most fiercely opposed is one few advocate, and if the practice most often advocated is one few oppose, then perhaps nothing meaningful is actually at stake in the present debate. Recently, some scholars have concluded exactly this, characterizing the controversy as "two ships passing each other at night."²⁵ Yet although recent discussion has been couched in rhetoric, the current debate is no mere "storm in

a teacup,”²⁶ but instead a substantive disagreement over the role of foreign law in American jurisprudence. To understand why, one must carefully re-consider exactly what it means for a source to enjoy “persuasive authority.”

Because a “persuasive authority” is, by definition, one not binding on a court’s decision, citing foreign materials from this perspective initially seems to mollify many of the most scathing criticisms of judicial cosmopolitanism. Upon closer inspection, however, the claim that non-American materials should be used as “persuasive authority” is less informative than it might appear. The reason for this is simple: in American jurisprudence, almost no authority is binding on the Supreme Court’s decisions. Because of this, the category of persuasive authority is one that includes everything from the decisions of Federal Circuit courts to comic books.²⁷ As a result, it is necessary to ask not whether the Supreme Court should view foreign laws as a persuasive authority, but rather, what type of persuasive authority they will be accorded.

With this in mind, one must consider an important distinction within the category of persuasive authority.²⁸ On the one hand, some persuasive authorities, such as academic articles, are treated as persuasive only insofar as they contain effective or persuasive arguments.²⁹ There is a separate category of materials seen as persuasive not necessarily due to the strength of their reasoning but by virtue of their being produced by a specific entity.³⁰ The value judges have accorded the opinions of co-equal courts from other jurisdictions, for example, may be thought of as “precedential persuasive authority.” The result is a sort of “hierarchy” of authorities, in which some types of “persuasive authority,” such as co-equal courts, enjoy a qualitatively greater influence than others.³¹ As a result of this “hierarchy,” even if consensus exists that foreign materials may serve as some form of persuasive authority, there is vast scope for disagreement over precisely where this authority lies. As a result, the controversy over the Supreme Court’s use of foreign law may best be understood not as “two ships passing in the night,” but instead as a substantive debate over the persuasive value non-American sources should receive.³² Specifically the contested

practice at issue in the current controversy is the Supreme Court's use of non-American sources as a form of precedential persuasive authority.

II. SAME DIFFERENCE?

Having identified the practice at the heart of the present debate, however, one may be struck by its apparent similarity to another feature of America's legal system: state supreme court use of out-of-state sources as persuasive authority. Commonalities between the practices abound: first, within the American federal system, each state is viewed as an "entirely separate jurisdiction" with its own laws and constitution, over which no other state has formal control.³³ Because of this, when state courts cite one another they are, in a meaningful sense, citing "foreign" law. Additionally, when using non-state materials, state high courts treat one another as "precedential" authorities, viewing "sister court" opinions as valuable precisely because they come from a certain type of respected legal institution.³⁴ Finally, and perhaps most importantly, states cite such non-state sources when interpreting "domestic" provisions of their laws, such as constitutional guarantees of privacy and due process.³⁵ Taken together, these shared features suggest that while the Supreme Court's use of foreign law is uniquely controversial, it may not be all that unique.

To further illustrate the apparent similarity between these practices, it is useful to examine opinions that employ the techniques in question. The case of *Roper v. Simmons* may provide insight into the Supreme Court's use of foreign law. In holding that the execution of minors represented an unconstitutionally cruel punishment, the majority observed that:

The United States is the only country in the world that continues to give official sanction to the juvenile death penalty... Article 37 of the United Nations Convention on the Rights of the Child, which every country in the world has ratified save for the United States and Somalia, contains an express prohibition on capital punishment for crimes committed by juveniles It is

proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty.³⁶

In this passage, several important features bear mentioning. First, and most obviously, the authorities cited in this passage are foreign sources, such as the laws of other nations or the stipulations of global conventions that the United States did not ratify. Second, the issue at stake in this opinion is a “domestic” constitutional question, namely the nature of cruel and unusual punishment in the American polity. Finally, and perhaps most importantly, the sources cited in this opinion seem to have been chosen not because of the merits of their argumentation but instead because they represent the decisions of respected authorities. Indeed, as at least one commentator has observed, the use of non-American sources in this decision seems largely devoid of “real analysis” as to why such materials matter beyond the “force provided by their very existence,”³⁷ a fact that suggests such materials are meant to serve as a form of precedential persuasive authority.

Turning to state supreme court use of sister-state opinions, one may examine *New Jersey Coalition Against War in the Middle East v. J.M.B. Realty Corp.*³⁸ In this case, the New Jersey Supreme Court held that the state constitution protected free speech rights in private shopping malls. In doing so, the Court argued that:

Every state that has found certain of its constitutional free-speech-related provisions effective regardless of “state action” has ruled that shopping center owners cannot prohibit free speech. There have been four such rulings: California (general free speech provisions), Massachusetts (free and equal election provision), Oregon (initiative and referendum provision), and Washington (initiative provision).

In this opinion, one finds many similarities to the Supreme Court’s use of foreign law outlined above. First, just as the sources cited by *Roper* were drawn from foreign polities, similarly, the precedents employed in this opinion were taken from courts outside of New Jersey’s jurisdiction. The “foreignness” of such sources is particularly salient in light of the divergent constitutional bases on which each cited decision seems to have been based. Second, as

was the case in *Roper*, the issues at stake in this case are primarily “domestic,” focused specifically on what speech rights New Jersey’s constitution guarantees to New Jersey citizens. Finally, the non-state materials cited by this opinion seem to have been used not as sources of novel legal thinking but instead as precedential authorities, valuable precisely because of their status as the decisions of sister courts. As a result, on an intuitive level the Supreme Court’s citation of foreign sources in *Roper* seems comparable to the New Jersey Court’s decision in *New Jersey Coalition*.

As a whole, it would appear that decisions like that of *New Jersey Coalition* are fairly representative. Among America’s state supreme courts, non-state precedent is employed in over 40 percent of decisions that substantively expand or re-define the state-constitutional rights of citizens.³⁹

Despite their apparent similarities, however, there is at least one critical difference between the practices outlined above: while the Supreme Court’s use of foreign sources is deeply contentious and widely condemned, state citation of other states is almost universally accepted as appropriate. America’s state courts have cited one another for centuries,⁴⁰ and today non-state citations are found in almost 35 percent of state supreme court constitutional decisions.⁴¹ Thus, even as the use of foreign law is viewed as deeply troubling and controversial, state court use of non-state sources is deemed to be emphatically “unremarkable.”⁴²

Taken together, the apparent similarities of the practices in question combined with the widely divergent receptions they have received naturally lead to a simple question: what, if anything, justifies accepting one of these practices while rejecting the other? Unless such a rationale can be found, one would be left to conclude that if one practice is acceptable, the other should also be permitted. Were such an outcome established, it would provide a compelling argument for changing the way in which one or both of these practices should be viewed and employed. As such, the balance of this essay will focus on assessing whether there is, in fact, a coherent justification for embracing one of these practices while rejecting the other. To do so, one must look to the leading objections against

the Supreme Court's citation of foreign sources before considering whether each also applies to state court use of non-state law.

III. PRAGMATIC CONCERNS

Many of the best-known arguments against the Supreme Court's use of foreign law stem from the framework of judicial pragmatism. According to the pragmatist perspective, the goal of legal decision-making is to craft decisions that reach the best practical outcomes.⁴³ From this viewpoint, the value of an interpretive practice is to be assessed by weighing its pragmatic "error costs" and "decision costs" against the consequentialist benefits it offers.⁴⁴ Many have objected to the practice of citing foreign law sources on the grounds that the pragmatic costs of doing so exceed the benefits.⁴⁵

Having presented the general form of the pragmatist argument against citing foreign law, one must assess whether such objections apply equally to state court use of non-state precedent. One pragmatic argument against the use of foreign law is that it could lead to costly, rights-restricting decisions.⁴⁶ According to this argument, because America is more protective of individual rights than many other countries, the Supreme Court's use of foreign law may lead to decisions that limit the scope of such rights, an outcome assumed to be costly.⁴⁷ Of course, on its merits, the claim that such decisions are inherently costly is a dubious one, given that individual rights are generally protected only at the expense of other key interests.⁴⁸ More important, for the purposes of this analysis, is the fact that this objection is equally applicable to state court use of non-state sources. Among the states, there is significant variety in the rights protections afforded.⁴⁹ As a result, whenever a state with "above average" rights protections cites sister state courts, it would seem subject to the same "rights costs" that the Supreme Court's use of foreign law ostensibly entails. As such, it is unclear that objections drawn from such concerns apply with greater force to the use of foreign law than the use of non-state law.

A second, and potentially more significant, set of pragmatist

objections to using foreign law is one stemming from the problems of “legal transplantation.”⁵⁰ According to proponents of this argument, jurisdictional differences in “constitutional system, structure, culture” and “history” make it difficult to effectively cite outside legal materials.⁵¹ As a result, the use of materials from foreign courts is said to lead to poor outcomes and, as a result, is to be avoided. In examining this argument, one finds that by almost any metric it appears to apply with greater force to the Supreme Court’s use of foreign law than to state court use of non-state material. The first area in which this is clear stems from the problems caused by cultural and historical differences.

Culture and history wield enormous influences over the legal institutions and meanings a polity adopts.⁵² Significant cultural and historical differences between societies make transplanting law costly, complex, and less likely to succeed.⁵³ Even ostensibly similar countries like Britain and the United States retain significant and “indelible” cultural and historical differences that deeply influence their legal development, thus leading to the danger of legal mistranslation.⁵⁴ When America’s state courts cite one another, by contrast, they are drawing from cultural and historical contexts that are, by the standards of international differences, almost identical to their own. Although some minor differences do exist across the United States, the seamless mobility, communication and integration across America’s states mean that any such distinctions remain limited. As a result, the problem of “transplanting” the law of other American states is significantly less formidable than that of employing the laws of other nations.

International differences in governmental structure also present problems. If a concept is to be “transplanted” effectively, it is crucial that judges understand the framework of the executive, legislature, judiciary, and constitutional system that produced it.⁵⁵ Within the world community, the wide variety of constitutional and governmental institutions makes such a task incredibly daunting. Profound structural differences are apparent even among the democracies most similar to the United States; Britain, for example, has no formal written constitution,⁵⁶ while in Germany courts

have far deeper involvement in the legislative process than their American counterparts.⁵⁷ As a result, the use of foreign laws requires a complex and nuanced understanding of radically different political arrangements, a fact that greatly increases the chances that such sources will be incorrectly applied. Among America's states, by contrast, there is a common set of structural features. Though the states vary somewhat in their precise governmental structures, each is modeled after the same federal government and, as a result, shares many commonalities with the others, including three branch governments of executive, legislative and judiciary, formal written constitutions, and, with one exception, bicameral legislatures.⁵⁸ As a result, when states cite non-state materials, the possibility that differences in structure will lead to error is not very significant.

Beyond these challenges, there are also serious questions as to American judge's proficiency in applying foreign sources. American legal education offers little formal training in foreign law.⁵⁹ Moreover, many foreign courts do not conduct business in English, meaning their decisions must be accessed through potentially unreliable translations.⁶⁰ For the foreseeable future, these logistical challenges will make any but the most superficial use of foreign legal principles a serious practical challenge, one not present when America's states cite each other's law.

An additional objection against the use of non-American legal materials stems from costs to court legitimacy. As the *Federalist Papers* famously observed, American courts have neither "sword" nor "purse,"⁶¹ and so are effective only if other actors view their decisions as legitimate. Because of this, if the court reaches decisions on grounds that the public views as dubious, such decisions impose harms to the court in the form of increased non-compliance and reduced institutional respect.⁶² The practice of using foreign law, as noted earlier, is one that a large segment of America views as deeply troubling. As a result, the use of foreign legal materials may be seen as pernicious as it reduces the court's perceived legitimacy and thus its effectiveness. Such an argument is at least partially supported by recent empirical surveys, in which the Court's use of foreign law in cases like *Atkins*, *Lawrence* and *Roper* has been shown to

have caused a loss of “institutional support generally” and a backlash against these decisions in particular.⁶³ When states cite other states, by contrast, their actions are almost universally accepted or unnoticed by the public. As a result, insofar as there are legitimacy costs to citing non-jurisdictional sources, they seem unique to the use of foreign law.

Some might argue that the use of foreign materials could have practical benefits, such as improving America’s worldwide image or promoting human rights.⁶⁴ Yet even if one were convinced that the Court’s use of foreign law could sometimes benefit America’s foreign policy, however, such a practice could also undermine vital national interests. The constitutional structure of the American government is such that the executive and legislative branches are generally in a better position than the judiciary to determine what America’s foreign policy interests are and how they can best be pursued.⁶⁵ Additionally, even if citation to foreign law provided some degree of foreign policy benefit, it is unclear why such advantage could not be accessed equally well by using such sources without assigning them “precedential” persuasive value, treating them as one would law review articles.⁶⁶ As a result, the policy benefits of assigning non-American legal sources precedential persuasive authority seem, at best, quite limited.

Taken together, the arguments outlined above lead to an important conclusion: the Supreme Court’s citation of foreign law imposes greater pragmatic costs than state court use of non-state sources. When citing non-American source, the Supreme Court faces a host of uniquely severe practical problems, ranging from the dangers of cultural misunderstanding to the difficulties of translating law from a foreign language to the loss of institutional legitimacy. Against such costs, there appear to be few practical benefits unique to this practice. As a result, it may be concluded that from a legal pragmatist perspective, one can justify supporting state citation of other states while rejecting Supreme Court citation of other nations.

IV. ALTERNATIVE FRAMEWORKS?

At this point, it has been shown that the framework of judicial pragmatism furnishes a coherent rationale for accepting state citation of non-state law while rejecting Supreme Court use of non-American materials. Having reached this conclusion, it is important to question whether any framework independent of such concerns might provide additional, independent justification for treating these practices differently. This inquiry is important for at least two reasons: first, for purposes of theoretical completeness, it is inherently important to determine if there are multiple justifications for treating these practices differently. Second, and perhaps more relevant, the pragmatic rationale for treating these practices differently is one that may not always be applicable. As time passes, it is conceivable that the pragmatic challenges of citing foreign law will eventually be greatly reduced, rendering practical objections largely obsolete. As such, it is crucial to consider whether there are additional frameworks under which the Court's use of foreign law can coherently be treated differently than state court citation of non-state law.

Sovereignty

Many argue that the citation of foreign law undermines American sovereignty. As typically presented, this "sovereignist" argument begins from the premise that to be considered sovereignty, a polity's constitution and laws must be determined by its own people. If foreign sources were assigned legal weight, however, the rights of Americans would be subject to "laws made elsewhere,"⁶⁷ since Court rulings might hinge on courts outside of national borders. Thus, the use of non-American materials is said to undermine American sovereignty.

When compared to national governments, some might claim that American states are not meaningfully sovereign. America's states lack the ability to make many decisions about the rules of their polity, such as whether or not to permit free speech. More

specifically, state courts are expected to base many rulings on sources outside of the state polity, such as the Federal Constitution.

Ultimately, however, this line of argument belies a deep misunderstanding of America's federal system. Under American federalism, each state is an independent political entity whose people fully control their state "constitution, laws, and judiciary."⁶⁸ This authority is clearly at work when courts must interpret state-constitutional provisions that have no federal analogue, such as Nevada's right to a public education.⁶⁹ Moreover, even in areas where the Federal Constitution establishes a national rights "floor," such as protection from slavery, this does not mean that states lack sovereign authority over their own constitutional law; such national "floors" are instead the function of the Fourteenth Amendment of the U.S. Constitution.⁷⁰ In all cases, states retain complete sovereignty over their own constitution. Accordingly, if the Supreme Court's use of foreign law problematically undermines national sovereignty, state courts' use of non-state law would be equally troubling.

The Counter-Majoritarian Difficulty⁷¹

A second objection to the Supreme Court's use of foreign law stems from the "counter-majoritarian difficulty."⁷² The "counter-majoritarian difficulty" begins from the intuition that when the majority of a democratic polity expresses its preferences, this preference should be enacted. From this perspective, judicial review is problematic as it allows judges to strike down policies that enjoy majority support, hence the "difficulty."

In applying this argument against the use foreign sources, some argue that looking abroad poses an especially pernicious "international counter-majoritarian difficulty."⁷³ In a basic formulation, the term "international countermajoritarian difficulty" might mean that when courts cite foreign law to strike down domestic laws, they contradict the people's will. In this formulation, the "international" difficulty seems no different from the problems posed by any method of constitutional interpretation; the majority's will

is no more thwarted by foreign law than if it were struck down based on any other interpretive modality. More pertinently, this sort of “international counter-majoritarian difficulty” seems indistinguishable from an “interstate counter-majoritarian difficulty”; in both cases, majority will is equally frustrated.

In a more nuanced formulation, perhaps the “international counter-majoritarian difficulty” is that foreign legal sources are *uniquely* counter-majoritarian since they stem wholly from “outside the structure of American government.”⁷⁴ Once again, however, it is unclear why this objection does not apply equally to state court use of non-state law. As noted previously, the citizens of each American state have “no control over one another’s decisions.”⁷⁵ Simply put, the laws of other states are as far “outside the structure” of state control as the laws of a foreign nation. As a result, any uniquely counter-majoritarian difficulty raised by the citation of foreign law does not seem different from that imposed by states citing other states.

Legal Particularism

A third set of objections to the Supreme Court’s use of foreign sources is drawn from the “legal particularist” paradigm. Proponents of this framework argue that each polity has an irreducibly unique culture and history.⁷⁶ Thus, the use of foreign law is inherently unacceptable, since such law is, by definition, foreign to the national socio-cultural consciousness.⁷⁷ Broadly speaking, the legal particularist argument takes two forms. One possibility is that national constitutional law is so bound to a specific culture and history that polities can never cite other legal systems. This “strong” legal particularism would clearly militate against the use of foreign law. However, it would also forbid state courts from using non-state law; each American state has a unique historical and cultural narrative,⁷⁸ and a unique philosophy toward democratic government, suggesting that a “strong” particularist would oppose the use of non-state sources.⁷⁹

As a second possibility, a “weak” legal particularist might ar-

gue that when the cultural and political narratives of two polities differ *significantly*, then they should not use one another's laws. If such narratives are relatively similar, however, then polities could permissibly cite each other's laws. Such an approach could explain why America's states, which share common commerce, information, ideas, art, and histories, may cite each other, while foreign nations may not.⁸⁰ However, in its "weak" form, the legal particularist argument is indistinguishable from the pragmatic "transplant problem" noted earlier in this essay. Simply put, the force of the "weak particularist" perspective hinges wholly on the practical question of precisely how different two cultures are. Accordingly, legal particularism does not offer a unique justification for treating these practices differently from each other.⁸¹

Arbitrariness

When opposing the use of foreign sources, many cite the danger of increased judicial arbitrariness. Proponents of this view fear that capricious judges will be able to justify any outcome they desire by "cherry picking" laws they agree with from the vast array of foreign legal systems.⁸² Regardless of the analytical merits of this claim, it, too, seems equally applicable to state court citation of other states' law. When a state court judge looks to other states, he is presented with forty-nine complete legal systems that vary tremendously in their precedent, case law, and constitutional structures. The result is an abundance of sources for any state court to "cherry pick," especially when facing questions controversial enough to reach a state's highest tribunal. Against this backdrop, it is unclear that potential for arbitrariness is qualitatively greater when looking abroad than when looking beyond state borders.

Constitutional Genealogy

A fifth objection to the Supreme Court's use of foreign law stems from the framework of constitutional genealogy. Often, a polity's constitution is largely taken from pre-existing charters,⁸³

as when Oregon's founders largely adopted the Indiana State Constitution.⁸⁴ Because of these "relationships of descent and history," some argue that polities are justified in citing the laws of "foreign" polities when there is a "genealogical" relationship between them.⁸⁵

Within this genealogical framework, some might argue that the use of foreign law is only permissible when a "daughter" polity cites the constitutional courts of its "parent," and not the other way around. From this perspective, since the American Constitution predates most other national constitutions, the Supreme Court may not use foreign laws, while the America's states, whose constitutions often descended from one another, may cite across state borders.⁸⁶ Yet under such logic, many states, such as the original thirteen colonies, would be barred from citing the law of other states. Moreover, if "descendant" polities may cite the contemporary law of their "parents" then the Supreme Court would be justified in citing the law of the modern United Kingdom. Accordingly, even the highly specific genealogical perspective offered above cannot explain why states may cite one another's constitutions while nations may not.

Text and Original Intentions

A further objection to the use of foreign law is the claim that a court may only cite foreign law if its constitution provides an unambiguous "constitutional license" for doing so.⁸⁷ Internationally, several constitutions, such as South Africa's, include such explicit license provisions.⁸⁸ America's constitution offers no such explicit textual warrant.⁸⁹ However, neither do any of America's state constitutions. Across fifty state constitutions, one finds no "South Africa"-style calls to cite sister state courts, suggesting that if America cannot look abroad, states may not look to one another.

A more nuanced set of objections to foreign legal sources stems from the framework of original intentions. On the whole, supporters of original intent methodologies argue that the intentions of a constitution's drafters should hold priority as an interpretive tool.⁹⁰ Two broad categories of originalist perspectives must

be considered: “absolute,” or rigid originalists, and “soft,” or flexible originalists. For an absolute originalist, discerning the original intentions of a constitution’s founders is the only valid interpretive path. Such a viewpoint clearly forecloses the citation of contemporary foreign law, since such materials seldom explain what a constitution’s original drafters intended when they adopted a given clause.^{91*} However, for similar reasons, an absolute originalist would be unable to accept state court citation of non-state sources, since the state’s founders would have had no knowledge of modern non-state legal rulings.

In contrast to absolute originalism, a soft originalist might argue that while the intentions of a constitution’s ratifiers are the *best* interpretive tool, if evidence of intent is lacking, other interpretive methods can be used. Given the centuries of sustained scholarship surrounding the American Constitution’s founding period, one could plausibly argue that in many cases, evidence of the Founders’ intentions offers sufficient guidance to interpret the document. Looking to state constitutions, however, one may face a steeper challenge. Often, there is a relative dearth of scholarship on the founding period of state governments,⁹² resulting in a “lack of adequate and available historical materials.”⁹³ Because of this, discerning the original intentions behind state constitutions might sometimes pose a “nearly impossible task of questionable legitimacy.”⁹⁴ In light of such challenges, a soft originalist might argue that when interpreting state constitutions, it is permissible to look to other states, since original intentions of state founders are often obscure.⁹⁵ Accordingly, a soft originalist might conclude that state courts may cite one another, while the Supreme Court may not cite foreign law.

Ultimately, however, even a soft originalist cannot clearly differentiate between state use of non-state law and Supreme Court use of foreign law. Even if the intentions of the national founders are often clearer than those of state founders, this is not always

* Unless it can be argued that the original intent of the founders was for contemporary foreign law to be used to determine a standard, as would be true in an originalist reading of the South African Constitution.

so.⁹⁶ Many states, such as New Jersey, Hawaii, and Alaska, have charters that were ratified in the past seventy-five years, documents that are the subject of extensive and readily accessible public records. Intuitively, the “original intentions” of the authors of these documents seem far more accessible than those of America’s centuries-dead Founders. Accordingly, if a soft originalist opposes the Supreme Court’s use of foreign law, he must also oppose a great deal of state court use of non-state law.

CONCLUSION: SAME DIFFERENCE

Having considered the leading objections to the use of foreign legal citations, one may thus conclude that none justifies permitting states to apply the laws of other states while not allowing the Supreme Court to cite foreign law. Of course, this analysis cannot consider each and every possible difference between these practices, and so there remains the possibility that a framework not explored here might coherently justify treating these practices differently. Given the scope and breadth of arguments considered by this analysis, however, such an outcome is decidedly unlikely.

In this essay, I argued that concerns drawn from the pragmatist legal framework may coherently justify accepting state court use of non-state law while rejecting the Supreme Court’s use of foreign law, but frameworks independent of such concerns do not. Because of the magnitude of such practical challenges, it is possible that such obstacles will not ever be fully overcome and, as a result, that there will always be at least some reason for rejecting the use of foreign law. That said, the conclusion reached in this analysis is still an important one. By indicating the similarity between these practices, this argument challenges the assumptions undergirding two well-known judicial behaviors. On one hand, the result reached suggests that the use of non-state law is vulnerable to a host of objections it is not normally associated with and, as such, may be more suspect than currently thought. The more plausible implication of this argument, however, is that the Supreme Court’s use of foreign law as persuasive authority is less problematic than gener-

ally imagined. In suggesting the commonality between this fiercely controversial practice and a widely accepted one, this essay suggests that current attempts to demonize the use of foreign law may be inappropriate and ought to be reconsidered. Ultimately, though the divergence between nations may seem greater than the divergence between states, they are, in a meaningful sense, the same difference.

Notes

- 1 Atkins V. Virginia, U.S. 304 (2002), quoting Thompson V. Oklahoma, 487 U.S. 815 (1988), no. 4 at 869.
- 2 Austen L. Parrish, "Storm in a Teacup: The U.S. Supreme Court's Use of Foreign Law," *University of Illinois Law Review* (2007): 638.
- 3 Eric A. Posner and Cass R. Sunstein, "The Law of Other States," *Stanford Law Review* 59 (2006): 133-134.
- 4 Harold Hongju Koh, "The United States Constitution and International Law," *The American Journal of International Law* 98 (2004): 45-46.
- 5 Anne-Marie Slaughter, "A Global Community of Courts," *Harvard International Law Journal* 44 (2003): 191-220.
- 6 Paolo G. Carozza, "My Friend Is a Stranger": The Death Penalty and the Global Ius Commune of Human Rights," *Texas Law Review* 81 (2003).
- 7 Roger P. Alford, "In Search of a Theory for Constitutional Comparativism," *UCLA Law Review* 52 (2005): 639-715.
- 8 John O. McGinnis, "Foreign to Our Constitution," *Northwestern University Law Review* 100 (2006): 303-330.
- 9 Richard Posner, *How Judges Think* (Cambridge: Harvard University Press, 2008).
- 10 Patrick Baude, "Interstate Dialogue in State Constitutional Law," *Rutgers Law Journal* 28 (1997); Peter Harris, "Ecology and Culture in the Communication of Precedent among State Supreme Courts, 1870-1970," *Law and Society Review* 19 (1985).
- 11 Ernesto Sanchez, "A Case against Judicial Internationalism," *Connecticut Law Review* 38 (2005): 190.
- 12 For clarity's sake, in the remainder of this essay, phrases like "Supreme Court citation of foreign sources" or "Supreme Court citation of foreign laws" will often serve as shorthand for the practice of Supreme Court citation and usage of foreign or international legal sources as "precedential persuasive authorities", while phrases like "state citation of other states" or "state court use of non-state sources" will often serve as shorthand for the practice of state supreme court citation and usage of the opinions of other state supreme courts as precedential persuasive authorities.
- 13 Steven G. Calabresi and Stephanie Doston Zimdahl, "The Supreme Court and Foreign Sources of Law: Two Hundred Years of Practice and the Juvenile Death Penalty Decision," *William and Mary Law Review* 47 (2005): 754.
- 14 David Zaring, "The Use of Foreign Decisions by Federal Courts: An Empirical Analysis," *Journal of Empirical Legal Studies* 3, no. 2 (2006): 299.
- 15 Ronald A. Brand, "Judicial Review and the United States Supreme Court Citations to Foreign and International Law," *Duquesne Law Review* 45 (2007): 435.
- 16 Holly Jones Magnes, "Ginsburg, O' Connor Received Death Threats after Republican Criticisms," *The Jurist*, March 3, 2006.
- 17 Antonin Scalia, "Keynote Address: Foreign Legal Authority in the Federal Courts,"

American Society of International Legal Proceedings 98 (2004): 305.

18 Matthew Raalf, "A Sheep in Wolf's Clothing: Why the Debate Surrounding Comparative Constitutional Law Is Spectacularly Ordinary," *Fordham Law Review* 73 (2004): 1253.

19 Youngjae Lee, "International Consensus as Persuasive Authority in the Eighth Amendment," *University of Pennsylvania Law Review* 152 (2007): 105.

20 Posner, *How Judges Think*, 349.

21 Ernest A. Young, "Foreign Law and the Denominator Problem," *Harvard Law Review* 119 (2005): 150.

22 Cindy G. Buys, "Burying Our Constitution in the Sand? Evaluating the Ostrich Response to the Use of International and Foreign Law in U.S. Constitutional Interpretation," *Brigham Young University Journal of Public Law* 21 (2007): 45.

23 Chad Flanders, "Toward a Theory of Persuasive Authority," (SSRN, 2008): 11.

24 Delahunty and Yoo, "Against Foreign Law," 295; John O. McGinnis, "Foreign to Our Constitution," *Northwestern University Law Review* 100 (2006): 295-310.

25 Lee, "International Consensus as Persuasive Authority in the Eighth Amendment," 105.

26 Parrish, "Storm in a Teacup: The U.S. Supreme Court's Use of Foreign Law," 637.

27 Flanders, "Toward a Theory of Persuasive Authority," 11.

28 Flanders, "Toward a Theory of Persuasive Authority," 4-5.

29 Mark Tushnet, "A Decent Respect to the Opinions of Mankind': Referring to Foreign Law to Express American Nationhood," *Albany Law Review* 69 (2006): 809.

30 Posner, *How Judges Think*, 349.

31 Flanders, "Toward a Theory of Persuasive Authority," 4-5.

32 See Parrish, "Storm in a Teacup: The U.S. Supreme Court's Use of Foreign Law," 641; Richard Posner, "No, Thanks, We Already Have Our Own Laws," *Legal Affairs* July/August 2004.

33 Harris, "Ecology and Culture in the Communication of Precedent among State Supreme Courts, 1870-1970," 449

34 Posner, *How Judges Think*, 349.

35 *Sterling V. Cupp*, 625 P.2d. 123 (1981); *State V. Geisler*, 222 Conn. 672 (1992).

36 *Roper V. Simmons*, U.S. 551 (2005), 575-79; Richard S. Kaye, "Adherence to the Original Intentions in Constitutional Adjudication: Three Objections and Responses," *Northwestern University Law Review* 82 (1988).

37 Sanford Levinson, "Looking Abroad When Interpreting the U.S. Constitution: Some Reflections," *Texas International Law Journal* 39 (2004): 363.

38 *New Jersey Coalition against War in the Middle East V. J.M.B. Realty Corp.*, 138 N.J. 327 (1994).

39 James N. G. Cauthen, "Horizontal Federalism in the New Judicial Federalism: A Preliminary Look at Citations," *Albany Law Review* 66 (2003): 791.

40 Harris, "Ecology and Culture in the Communication of Precedent among State Supreme Courts, 1870-1970," 449.

41 Posner and Sunstein, "The Law of Other States," 134.

42 Gregory A. Caldeira, "The Transmission of Legal Precedent: A Study of State Supreme Courts," *The American Political Science Review* 79, no. 1 (1985): 178.

43 Roger P. Alford, "In Search of a Theory for Constitutional Comparativism," *UCLA Law Review* 52 (2005): 692.

44 Posner and Sunstein, "The Law of Other States," 168.

45 See generally Posner, "No, Thanks, We Already Have Our Own Laws."

46 Kenneth Anderson, "Foreign Law and the U.S. Constitution," *Policy Review*, June 2005, 34.

- 47 Anderson, "Foreign Law, 34.
- 48 Mark Tushnet, "When Is Knowing Less Better Than Knowing More? Unpacking the Controversy over Supreme Court References to Non-U.S. Law," *Minnesota Law Review* 90 (2006): 1282.
- 49 Thomas Van-Flein, "The Baker Doctrine and the New Federalism: Developing Independent Constitutional Principles under the Alaska Constitution," *Alaska Law Review* 21 (2004): 228.
- 50 Alan Watson, *Legal Transplants* (Athens: University of Georgia Press, 1993), 10-16.
- 51 Ganesh Sitaraman, "The Use and Abuse of Foreign Law in Constitutional Interpretation," (2008), 9.
- 52 Michael Wells, "International Norms in Constitutional Law," *Georgia Journal of International and Comparative Law* 32 (2004): 435.
- 53 Sujit Choudry, "Globalization in Search of a Justification: Toward a Theory of Comparative Constitutional Interpretation," *Indiana Law Journal* 4 (1999): 830.
- 54 Diarmuid F. O'Scannlain, "What Role Should Foreign Practice and Precedent Play in the Interpretation of Domestic Law?," *Notre Dame Law Review* 80 (2005): 1906.
- 55 Posner, "No, Thanks, We Already Have Our Own Laws."
- 56 James Allan and Grant Huscroft, "Constitutional Rights Coming Home to Roost? Rights Internationalism in American Courts," *San Diego Law Review* 43 (2006): 23.
- 57 See generally Thomas Gawron and Ralf Rogowski, *Constitutional Courts in Comparison* (New York: Berghahn Books, 2002).
- 58 The exception being Nebraska.
- 59 Sanchez, "A Case against Judicial Internationalism," 189.
- 60 Watson, *Legal Transplants*, 11.
- 61 Alexander Hamilton, James Madison, and John Jay, *The Federalist: A Collection of Essays* (New York: The Colonial Press, 1901), 428.
- 62 Valerie J. Hoekstra, *Public Reaction to Supreme Court Decisions* (New York: Cambridge University Press, 2003), 5.
- 63 Brett Curry, "Looking for Law in All the Wrong Places: Foreign Law and Support for the U.S. Supreme Court," *Politics and Policy* 36, no. 6 (2008): 1107.
- 64 Buys, "Burying Our Constitution in the Sand? Evaluating the Ostrich Response to the Use of International and Foreign Law in U.S. Constitutional Interpretation," 50.
- 65 J. Harvie Wilkinson, "The Use of International Law in Judicial Decisions," *Harvard Journal of Law and Public Policy* 27 (2003): 425.
- 66 Tim Wu, "Foreign Exchange," *Slate Magazine*, April 9, 2004.
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- 72 Bickel, *The Least Dangerous Branch*, 15-17.
- 73 Roger P. Alford, "Misusing International Sources to Interpret the Constitution," *The American Journal of International Law* 98 (2004): 59.
- 74 Delahunty and Yoo, "Against Foreign Law, 302.
- 75 Harris, "Ecology and Culture in the Communication of Precedent among State Supreme Courts, 1870-1970," 449.
- 76 Robert Cover, "Foreword: Nomos and Narrative," *Harvard Law Review* 97 (1983): 4-5.

- 77 Choudry, "Globalization in Search of a Justification: Toward a Theory of Comparative Constitutional Interpretation," 830
- 78 Baude, "Interstate Dialogue in State Constitutional Law," 837.
- 79 Alan G. Tarr, *Interpreting State Constitutions* (Chicago: University of Chicago Press, 2003), 357.
- 80 Randall T. Shepard, "The Maturing Nature of State Constitutional Jurisprudence," *Valparaiso University Law Review* 30 (1996): 431; Tarr, *Interpreting State Constitutions*, 49.
- 81 See *infra*, 14-15.
- 82 Sanchez, "A Case against Judicial Internationalism," 215.
- 83 Choudry, "Globalization in Search of a Justification: Toward a Theory of Comparative Constitutional Interpretation," 825.
- 84 Baude, "Interstate Dialogue in State Constitutional Law," 838.
- 85 Choudry, "Globalization in Search of a Justification: Toward a Theory of Comparative Constitutional Interpretation," 825.
- 86 Gardner, *Interpreting State Constitutions*, 6.
- 87 Raalf, "A Sheep in Wolf's Clothing: Why the Debate Surrounding Comparative Constitutional Law Is Spectacularly Ordinary," 1250-1251.
- 88 South African Constitution Chapter 2, § 38.
- 89 Raalf, "A Sheep in Wolf's Clothing: Why the Debate Surrounding Comparative Constitutional Law Is Spectacularly Ordinary," 1254.
- 90 See generally Kaye, "Adherence to the Original Intentions in Constitutional Adjudication: Three Objections and Responses."
- 91 Sitaraman, "The Use and Abuse of Foreign Law in Constitutional Interpretation," 5.
- 92 Peter R. Teachout, "Against the Stream: An Introduction to the Vermont Law Review Symposium on the Revolution in State Constitutional Law," *Vermont Law Review* 13 (1998): 26.
- 93 Teachout, "Against the Stream," 26.
- 94 Paul W. Kahn, "Interpretation and Authority in State Constitutionalism," *Harvard Law Review* 106 (1993): 1162.
- 95 Baude, "Interstate Dialogue in State Constitutional Law," 845.
- 96 Raalf, "A Sheep in Wolf's Clothing: Why the Debate Surrounding Comparative Constitutional Law Is Spectacularly Ordinary," 1270-1271.

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BROTHERS WITHOUT BORDERS? : INVESTIGATING PROCESSES OF NORM EVOLUTION IN THE INTERNATIONAL MUSLIM BROTHERHOOD

Anna Mysliwec

The international Muslim Brotherhood is occasionally characterized by American commentators, especially those with right-wing leanings, as a radical Islamist movement on par with al-Qaeda: transnational, ambitious, and therefore inherently threatening to U.S. interests. Following the Gaza flotilla crisis in June 2010, Thomas Joscelyn commented in the *Weekly Standard*: “The more one looks into the details of the flotilla the more it becomes clear that the Brotherhood used the humanitarian mission for its own purpose, namely, to assist its Palestinian branch— Hamas.”¹ Joscelyn paints a picture of a tight-knit, well-organized movement, a many-headed hydra that could pop up anywhere to accomplish its own nefarious ends.

The reality is quite different. Although branches of the Muslim Brotherhood are active in over seventy countries, coordination among them is loose and each national branch focuses on domestic issues rather than transnational ones. In fact it is the loose nature of the network structure and the focus on domestic politics that accounts for much of the Brotherhood’s success. Nathan Brown has debunked the notion that the Brotherhood is tightly organized internationally, instead describing it as “a tame framework for a group of loosely linked, ideologically similar movements that recognize each other, swap stories and experiences in occasional meetings, and happily subscribe to a formally international ideology without giving it much priority.”² He notes, however, that many members do refer to the Brotherhood “way of doing things.”

Brown’s account does not, however, examine the landscape of Brotherhood ideology. For example, has evolution in the philo-

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sophical approach of one Brotherhood caused new norms to develop in the others? In recent years, the Brotherhoods in Egypt, Jordan, and Syria have all given increasing attention to matters of liberal reform, human rights, and democracy in their platforms. In this analysis, I ask two related questions: (a) to what extent have Muslim Brotherhood branches adopted the language and practice of civil and political rights and (b) have such norms “cascaded” within the movement, or are they the result of strategic calculations based on local political context? While it has been established that the Brotherhood’s various national branches are sometimes at odds with each other despite their common ideology, little has been written on how that ideology varies and evolves within the international movement. Because the normative model advanced by the Brotherhood forms a significant part of its international impact, the human rights framework allows us to consider how the Muslim Brotherhood has interacted with another major transnational trend: the rise of human rights norms and the networks that have succeeded in institutionalizing them. In this analysis, I will examine the stances of the Brotherhoods in Egypt, Jordan, and Syria toward human rights and liberalism, and in doing so will examine the extent to which these result from domestic opportunities and constraints as opposed to normative changes within the international network.

The fact that many of the Brotherhood’s national branches have fought to remain intact despite immense repression—as in the case of Syria—suggests that there may be something uniquely compelling about the Brotherhood “way of doing things.” Nevertheless, the literature on political Islam suggests that the strategy of a given organization depends on political opportunity structures, particularly the extent that the group is able to participate in politics. While international linkages may inform the choices of national Brotherhoods, strategic choices shaped by fluctuations in the domestic political landscape play a larger role. The ability of Islamist networks to embed themselves in the structures and concerns of a society largely determines their success, and the Brotherhood has proven itself to be uniquely capable of that task.

THE BROTHERHOOD IN CONTEXTUAL PERSPECTIVE

It is not immediately obvious where the international Muslim Brotherhood fits on the spectrum of global non-state actors. While some commentators insist that it maintains ties to terrorism, it is not a terrorist network. Nor is there a Muslim institutional equivalent to the Catholic Church in world politics, as Islam has historically had no single power center. It is perhaps more similar to transnational advocacy networks, as theorized by Margaret Keck and Kathryn Sikkink. Like networks organized around liberal democratic values, moderate Islamist discourses embodied in the Muslim Brotherhood provide individuals with a language through which they can make claims about their rights—one that resonates with common religious, philosophical, and cultural ideas—and provides a means of resistance against the prevailing, often abusive political order. While the literature on normative change tends to focus on actors and networks promoting liberal—and predominantly Western—norms, “liberalism is only one possible ideological framework that can be used for framing political action.”³ Political Islam provides a competing normative framework, offering both “ideational resources and material support” that individuals can access to make political claims. In all of its manifestations, the Muslim Brotherhood has offered a powerful source of opposition to the secular state. In the Egyptian context, in terms of “both political power and ‘civil society’ ... the Islamists seem to be the most robust possible alternative to the present regime.”⁴ Members of the Egyptian Muslim Brotherhood are on the front lines in the struggle for civil and political rights and are often imprisoned for their attempts to participate in politics. For example, the Egyptian Brotherhood provided important organizational resources to sustain the recent revolution that forced former President Hosni Mubarak from power. Despite the strength of their normative claim, Muslim Brotherhood-associated groups challenge states through participation in political life.

Islamism is a “movement of movements”: “its overarching

common goal is the establishment or reinforcement of Islamic laws and norms as the solution to economic, political, and cultural crises.”⁵ With fifty-three member states, the Organization of the Islamic Conference (OIC) is one of the more visible transnational Islamic actors, but it is deeply divided, reflecting regional conflict among its members. State-centric “conservative contenders” like the OIC have failed to provide meaningful transnational leadership. The real transnational Muslim community exists at the level of civil society, with movements creating change at the domestic level.⁶ As the oldest Islamist organization in the world, the Muslim Brotherhood represents one of the most important strains of transnational Islamic activity—one that differs significantly from the terrorist networks that receive more attention in the American media. As part of the constellation of transnational Muslim civil society, it represents a

global network of religious activists . . . who communicate with each other, feed off each other’s ideas, collectively develop religious ideologies with political significance, perhaps aid each other with funds, and . . . form transnational groups whose main intellectual referent derives from religious dogma.⁷

Many of the most significant transnational linkages have been “transnational popular movements whose struggles were primarily against their own rulers rather than the West per se,” and the Muslim Brotherhood is foremost among these organizations.⁸ If we put the far-fetched goal of a caliphate to the side, the existence of transnational Islam seems to not pose a threat to the state system.⁹

THE INTERNATIONAL MUSLIM BROTHERHOOD

The Muslim Brotherhood has established chapters in over seventy countries.¹⁰ After the organization had become firmly established in Egypt, Egyptian activists traveled outward to establish branches across the Middle East and international students studying at Al-Azhar University in Cairo brought the ideas of Hassan al-Banna, the Brotherhood’s founder, back to their native countries. Chapters consequently sprung up in Djibouti in 1933 and in Syria,

Palestine, and Jordan in 1946.¹¹ Early in the organization's history, the various national branches collaborated on international projects, as when the Brotherhoods in Jerusalem, Egypt, Syria, and Jordan participated alongside the regular forces of Arab armies during the 1948 war.¹²

The International Organization is headed by a "general guide" who also serves as the head of the Egyptian organization. Most national chapters, headed by a "general supervisor," belong to this international body, though some are no longer officially affiliated.¹³ The Egypt chapter attempted to tighten coordination in the 1980s but met stiff resistance from other chapters. The Egyptians soon accepted, as Sudanese Brother Hasan al-Turabi warned, that "you cannot run the world from Cairo."¹⁴ When national Brotherhoods have sought the intervention of the International Organization in internal debates, its slow and confusing responses have sometimes rendered its leadership irrelevant.¹⁵ The national chapters are thus "parallel and fraternal movements," and when they do influence each other, it is often in a bilateral fashion.¹⁶ It is thus more useful to think of the Brotherhood as a network rather than a tightly coordinated organization. The branches of the Muslim Brotherhood occasionally come into direct conflict with each other, as when the majority of national chapters supported Saddam Hussein's invasion of Kuwait,¹⁷ provoking the incensed departure of the Kuwaiti Brothers. Likewise, during the occupation of Iraq, the Jordanian Muslim Brotherhood refused to deal with American officials, while members of its Iraqi counterpart participated in (and won) American-sponsored elections for Parliament.¹⁸ Clearly, the Brotherhood's flexibility in adapting to various national contexts has contributed to its success.¹⁹ It is important to note however, that despite the fact the various Brotherhood organizations disagree about some particular tactics, all abstain from "global jihad" and work through democratic processes when possible.²⁰

In an interview with the newspaper *Asharq Alawsat*, Dr. Kamal al Helbawi, a spokesman for the Brotherhood in the West, noted that the Brotherhood works primarily through "meetings, continuous consultations, exchange of experience, networking and

joint efforts.” The Brothers also meet at weddings, funerals, and other social occasions. Delineating exactly where the Brotherhood starts and ends proves difficult, as the Egyptian chapter inspired a variety of movements that maintain varying degrees of intimacy with the flagship organization. While it can be difficult to say precisely when the Brotherhood in one country influenced the actions of Brothers in another, whether to reinforce Brotherhood ideology or to encourage a certain course of action, it is nevertheless clear that communication does occur. One such example is the Danish cartoon controversy: “[the Brotherhood’s] transnational networks helped spread the word about the cartoons, [and] all branches officially called for peaceful protest.”²¹ Brotherhood organizations called for dialogue between Muslims and non-Muslims, whereas jihadi groups chose more confrontational forms of protest.²² While national Brotherhoods may occasionally diverge from the peaceful norm, this example suggests that the Brotherhood is indeed bound together by certain values. The transnational mobility of individuals in the era of globalization has undoubtedly influenced the Brotherhood’s stances as well. Jordanian Brother Ishaq al-Farhan rejected the *dar al-islam/dar al-harb* dichotomy that once divided the Muslim and non-Muslim worlds: “This distinction is historical because in the past Muslims inhabited in one place and non-Muslims in another... But now it does not make much sense to divide the world in terms of this duality. There are many Muslims who . . . are American citizens.”²³ Furthermore, Brothers who have migrated may influence the politics of their countries of origin:

In order to understand how agenda setting and the evolution of political strategy work in Middle Eastern-based Islamist movements such as the Muslim Brotherhood, for example, one needs today to pay as much (if not more) attention to Brotherhood supporters within Europe’s Muslim population as one does to the group’s formal leadership in Egypt.²⁴

Globalization and immigration are thus among the factors that shape normative evolution within the Muslim Brotherhood. Thus, while I will argue that changes in domestic opportunity structures drive Brotherhood adoption of new strategies and norms, the role

of the international network in shaping the ideological choices of the Brotherhoods cannot be discounted.

THE FLAGSHIP ORGANIZATION: THE EGYPTIAN MUSLIM BROTHERHOOD

Founded by schoolteacher Hassan al-Banna in 1928, the Muslim Brotherhood during its apolitical early years focused on building membership and providing humanitarian aid, eventually fielding candidates in Egypt's 1941 parliamentary elections. However, an attempt on Nasser's life by the Brotherhood's paramilitary apparatus led to severe imprisonment and torture for the Brothers.²⁵ In response to this repression, Brotherhood philosopher Sayyid Qutb argued that the Egyptian state was a legitimate target of jihad. Hasan al-Hudaybi, who succeeded al-Banna as the head of the Egypt chapter, disagreed, and his more moderate view prevailed. The Egyptian Muslim Brotherhood renounced the use of violence in the 1970s and has embraced the democratic process. Although the Brotherhood was illegal under Egypt's Emergency Law, its candidates ran for office as independents and in 2005 won 20 percent of parliamentary seats,²⁶ although they were blocked from repeating this success by unfair elections in November 2010.

In the 1980s, the Brotherhood began to ally with the Wafd, Liberal, and Labor parties, indicating a willingness to compromise on ideology in order to forge coalitions with secular groups. However, the Brotherhood continued to be reluctant to state its political goals, citing the political climate but probably also out of a desire to avoid internal ideological splits.²⁷ In the 1980s and 1990s, the Brotherhood became prominent in student elections and its younger reform-minded members won majorities on the governing boards of most major professional syndicates.²⁸ Due partly to pressure from the United States, the Egyptian government held relatively free elections in 2005, in which President Mubarak ran for reelection. In the run-up to elections, the Brotherhood published a "Reform Initiative" and ultimately won 88 out of 444 seats. The heavy media coverage during and since the elections served to en-

courage the Brotherhood to articulate its stance more clearly.²⁹ This movement toward moderation resulted both from new opportunities in the political system and from an evolution in the Brotherhood's leadership as younger, reformist members have increasingly made their voices heard. Imprisonment, torture, and death sentences during the Nasserite era soured the old guard of the Brotherhood toward formal politics, causing them to prioritize religious work and eschew coalition building. The political experience of the new guard, on the other hand, was their leadership of student groups in the Sadat era, when they gained experience in forging coalitions with secular student groups.³⁰ Over the course of a few short weeks following the January 15, 2011 "day of rage" a popular uprising led to Mubarak's resignation from office on February 11, which ended decades of authoritarian leadership in Egypt. While secular opposition groups started the Tahrir Square protests without the initial participation of the Brotherhood, younger Brothers ultimately prompted the organization to play a key role in sustaining the protests. The Brotherhood organized emergency medical clinics and established checkpoints to prevent Mubarak supporters from fomenting unrest.³¹ It called for protests to remain peaceful, eschewed the use of controversial religious slogans, and announced its support for secular activist Muhammad ElBaradei as spokesman for the opposition.³² Its actions suggest a willingness to work in close partnership with secular groups and to subordinate its own goals to those of the broader struggle for democracy.³³

However, many question the Brotherhood's commitment to democracy. The phrase "one man, one vote, one time" has come to embody the concerns of many that an election that brings the Brotherhood to power will be the last election. Clifford May of the *National Review* wondered: "Do the Egyptians demonstrating in Tahrir Square appreciate how threatening the Muslim Brotherhood is to the freedom they hope to win?"³⁴ Several authors, however, point to signs that the commitment is genuine. The fact that the Brotherhood's political vision does not perfectly coincide with a liberal democratic one—and their openness about this fact—suggests that they are committed to democracy, but one centered

around the community rather than the individual.³⁵ Likewise, following the relatively free 2005 elections, the Mubarak regime cracked down hard on the movement—this was especially evident in the November 2010 elections, in which no Brotherhood-affiliated candidates were seated. Despite these challenges the Brotherhood has maintained its commitment to democracy, an action that “speaks more clearly than would similar talk of democracy at a time when electoral victory seemed within reach.”³⁶ Despite calls within the movement to abandon political participation in favor of charitable work, it continued to participate in democratic politics, running candidates in the June 2007 Shura Council elections despite government interference.³⁷ Essam al-Erian, chief of the Muslim Brotherhood’s political bureau, defended the decision on the grounds that it served to delegitimize the regime. Thus, while there is evidence to suggest that the Brotherhood’s commitment to democracy is genuine, comments like al-Erian’s suggest that the Brotherhood might only be committed to democracy when it serves their interests. Given the level of secrecy surrounding Brotherhood operations, it is nearly impossible to ascertain which is the case. Following Mubarak’s resignation, the Brotherhood did state its intention to form a political party once a democracy has been established.³⁸

Egyptian Islamists, including prominent Brotherhood leaders, have produced a rich philosophy of governance.³⁹ For these thinkers, the state is instituted in order to create the Muslim community through the implementation of sharia law, which has historically served as a constraint on state power. Ultimate power resides with the community, which chooses a leader and has a contract with him.⁴⁰ Moderate Islamists call for an independent judiciary, civil society organizations, and a multi-party system “in which each party offers a different view regarding the best strategy for . . . implementing sharia.”⁴¹ Islamist thinkers derive a wide range of civil and political rights from the Islamic principle of justice, including life, dignity, property, security, freedom, equality, and the accountability of the ruler.⁴² While arguing that a woman or a Coptic Christian cannot become head of state, they emphasize

that minority rights would be protected in an Islamic state, as religious diversity comes from God.⁴³ Unlike liberal democrats, however, the Brothers see the state as a transformative—rather than a threatening—institution, responsible for creating good Muslim citizens and a moral community, and they therefore authorize it to interfere quite robustly in citizens' private lives.

In addition to its apparent commitment to democracy, the Brotherhood has increasingly focused on human rights. Under Mubarak, the Egyptian government committed serious human rights violations in the name of its Emergency Law, closing down mosques, limiting the right of association, and making arbitrary detentions. While a human rights movement with transnational linkages developed, spearheaded by the Egyptian Organization for Human Rights, the Mubarak regime largely succeeded in discrediting secular activists as inauthentic and cutting off their access to external networks.⁴⁴ Some Islamists share Mubarak's view, criticizing "human rights dependency" on Western organizations.⁴⁵

In the 1980s, the syndicates were beset by a lack of transparency, the absence of a clear decision-making process, and financial mismanagement, problems that leading Brothers of the new guard, building on their experiences as student activists, tackled after winning majorities on the syndicate boards.⁴⁶ In the 1990s, Brothers formed human rights committees in professional associations and began to advocate on behalf of members suffering persecution, as well as campaign against the Emergency Law.⁴⁷ Critics sometimes suggest that "Islamists are only interested in human rights when it is their supporters who . . . are suffering persecution."⁴⁸ However, the case of the professional associations suggests that institutional changes created by Islamists may also benefit non-Islamists. Thanks to Islamist participation, the Egyptian Bar Association's already impressive "involvement with Islamist human rights concerns became more visible."⁴⁹ Many Islamists even served on the executive board of the secular Egyptian Organization for Human Rights. This activism was not lost on the Mubarak regime, however, and Islamist human rights activism was cut short following the arrest of many of its leaders in 1995 and 1996. The regime had

a vested interest in cutting off the nascent ties between Islamist and secular human rights activists, just as it did when it shut down the centrist Hizb al-Wasat, a party formed by younger Brothers that developed ties with non-Islamist actors. In 2004, likely in response to increased political openness in the run-up to the 2005 elections, the Brotherhood formed its own human rights committee, led by lawyer Abdul Monem Abdul Maqsoud, to monitor violations against prisoners and detainees, student rights, and acts of discrimination.⁵⁰ Of thirty committee members, only two belong to the Brotherhood, suggesting a commitment to defending the rights of all Egyptians, regardless of membership in the Brotherhood.

Transnational linkages have played some role in shaping the Brotherhood's philosophy. Concerns about dependence on Western organizations notwithstanding, the Muslim Brotherhood's official English website illustrates its increasing focus on human rights and its attempt to link to international advocacy organizations. At the time of this writing, the articles included on the "Human Rights" page link to reports from Amnesty International, Human Rights Watch, and Reporters Without Borders.⁵¹ Nor do liberal organizations provide the only option for transnational linkages. The London-based Islamic Human Rights Commission called upon its members to demand that the November 2010 elections be free and fair.⁵² Despite its shortcomings, the human rights movement "can take credit for having changed the way governments talk about their citizens and the expectations that citizens have of the way they should be treated by their government" and even the illiberal governments of the Middle East speak of upholding the rights of their citizens.⁵³ That principle extends to the Muslim Brotherhood as well. Pressure from the United States under the Bush administration spurred the Egyptian state to greater political openness that created space for Brotherhood participation, and attention to international opinion in this environment undoubtedly served to reinforce the Brotherhood's commitment to democratic norms. The transnational mobility of individual Brothers and the norms they encountered in the process have likely played a role as well. However, it would be unfair to attribute liberal democratic

thinking within the Brotherhood solely to the ascension of international norms. Islamic thought has a rich democratic tradition, as Bruce Rutherford and others have demonstrated. Furthermore, greater attention to democracy would not have been possible without internal changes in the Brotherhood, especially the rise of the new guard of politically minded reformers. The Brotherhood's adherence to democracy despite repression reflects the strength of its normative commitments. Because of its historical suppression, it is impossible to know how much support the Muslim Brotherhood will mobilize in the freer system that is still taking shape in Egypt.⁵⁴ It is possible that it will no longer attract the numbers it did prior to the surge in organized secular opposition. Yet, just as greater political openness prompted the Brotherhood to clarify its views in 2005, the formation of a political party will undoubtedly require the Brotherhood to further clarify its views, including positions on human rights and liberal norms.⁵⁵

SYRIA

The Syrian Muslim Brotherhood has had substantially less freedom to operate than its sister organizations in Jordan and Egypt. Founded when Egyptian Muslim Brothers took a promotional tour through Syria in the 1930s, it initially participated in parliamentary politics after Syria gained independence.⁵⁶ In 1963, the Ba'ath party, dominated by the Shi'a-identified 'Alawis, seized power and dissolved the parliamentary system. Scholars of political Islam often argue that political exclusion radicalizes Islamist groups, while inclusion can foster moderation. Prevented from participating in the political system, the Syrian Brothers turned to violence. After a Brotherhood revolt in Hama in 1964, relations further deteriorated throughout the 1970s as the movement assassinated senior military and Ba'ath figures.⁵⁷ The Syrian regime consequently detained and tortured thousands of Brothers,⁵⁸ and the severe repression isolated the organization internationally.⁵⁹ Law No. 49 of 1980 made mere membership in the Brotherhood punishable by death.⁶⁰ After the massacre at Hama in February

1982,⁶¹ most of the movement's main leaders moved outside of Syria and headquarters were set up in London.⁶² The Syrian Brothers initially supported the Iranian revolution, but with the alliance between Khomeini's Iran and the Shi'a-leaning Asad's Syria, the Brotherhood came to condemn Iran.⁶³ "The support [the Brotherhood receives] from some Arab countries, such as Saudi Arabia and Jordan, depends upon the relations between these countries and Syria," and for that reason donors are more likely to give the Brothers leeway in their dealings with the regime when relations are bad.⁶⁴ Because the boundaries of political Islam are shaped by state interactions, interstate relations serve to open and close the gateways to international support for the Muslim Brotherhood.

When Ali Al-Bayanouni became general guide of the Syrian Muslim Brotherhood in 1996, he "shifted the Brotherhood from armed struggle to political and media efforts against the regime" and expressed willingness to engage its leadership.⁶⁵ This change in the Brotherhood's stance preceded the accession of Hafez's son Bashar in 2000, indicating that al-Bayanouni's leadership was just as critical as the following changes in the political environment. With his promises of a new era of public freedoms and human rights, Bashar al-Asad's accession to power seemed to provide a further opportunity for the Brotherhood.⁶⁶ In its "Gentlemen's Statement for Political Action," it finally renounced violence—decades after the Egyptian Brotherhood—and emphasized that the modern state must be built on a contract between ruler and ruled.⁶⁷ Starting in 2006, the Muslim Brotherhood participated in the National Salvation Front (NSF), an alliance with secular opposition groups in an "all-embracing movement for reform," controversially led by former Vice President 'Abd al-Halim Khaddam, who had been responsible for violence against the Brotherhood.⁶⁸ As a result, the United States became willing to engage with the Brotherhood and the NSF on election monitoring and civil society promotion. The NSF's priority in its relationship with the United States was to exert pressure on al-Asad's regime to improve its human rights record.⁶⁹

Israel's invasion of Gaza in 2008 was a watershed event that

put the Syrian Brotherhood in a difficult position: it was their Shi'ite adversaries who were supporting the Palestinians who in the Brotherhood's mind ought to have been the Brotherhood's cause célèbre.⁷⁰ The Brotherhood consequently suspended its actions against the government and stated its desire to return to Syria to work with the regime. It has since withdrawn from the NSF in favor of a more accommodationist stance toward the regime, recognizing that its outsider status had made it irrelevant in Syrian society.⁷¹ The Brotherhood may have also acted in response to the United States, whose relations with the Asad regime have thawed.

Ali Sadreddin al-Bayanouni, who now lives in London, serves as an important leader of the Syrian Brotherhood. He has stated that "the Brotherhood has a very moderate understanding of Islam" and advocates for the rights of women and minorities, as well as for pluralist politics.⁷² Accordingly, for the Brotherhood, it appears that the moderation of recent years has been caused by changes in internal leadership (Bayanouni's election), shifting political opportunity (Asad's ascension and changing U.S. policy), and a simple exhaustion of the prior course of violent opposition. The translation of ideology into practice is not consistent across the transnational Muslim Brotherhood: the Syrian Muslim Brotherhood continued to use violence against the regime into the 1980s, while the Egyptian branch had renounced violence and was enjoying the fruits of Sadat's relaxation of restraints. The Brotherhood's preference for moderation was evidently not strong enough to override domestic constraints. Rather than accepting their inability to participate, as they might have done if a peaceful approach was their primary concern, the Syrian Brothers continued to pursue power through decidedly less-than-moderate means. On the other hand, it is remarkable that despite a history of repression and exclusion from politics, the Syrian chapter has returned to the moderate philosophy with which it began its historical trajectory.

JORDAN

The Jordanian Brotherhood enjoys a long history of accom-

modation with the regime—although this pattern has changed in recent years—and has consequently led a peaceful and moderate movement. Egyptian preachers founded the organization in the 1940s and 1950s. Although Egyptian leadership initially controlled the movement, the Jordanian Brothers elected their own leaders following Nasser's crackdown.⁷³ The group dominated elections in 1989 and espoused many rights associated with democratic governance during the following session of parliament. In 1993, it formed the Islamic Action Front (IAF) to act as its political wing.

Like the Egyptian chapter, the Jordanian Brotherhood argues that democracy is inherently Islamic. It has highly democratic internal operations, perhaps more so than any other party in the Middle East; party leaders are elected by the membership and experience a high degree of turnover.⁷⁴ "In earlier years, the Jordanian Islamist movement was something of a trendsetter for its Arab counterparts, since the Jordanian Muslim Brotherhood ... always placed great stress on political freedoms."⁷⁵ It is conceivable that because Jordan offered greater freedom to participate in politics, the Jordanian Brotherhood's articulation of political freedoms gave the other organizations a model to which to aspire. The IAF issued a document highlighting a new reform program in October 2005, "following the lead of their Egyptian and Syrian counterparts"⁷⁶ and capitalizing on a moment of political openness in the region.⁷⁷ While opportunity structures clearly play a role, we cannot disregard the possibility of experience sharing among the national Brotherhoods. The document was "so full of liberal and democratic ideas and language that a leader of a secular opposition party was forced to confess that it differed little from the programs of other parties."⁷⁸ Nevertheless, the Jordanian Brotherhood has paid comparatively less attention to liberal reform issues in recent years, and instead has focused on international issues such as the Israeli-Palestinian conflict, due partly to its substantial Palestinian membership. Like the Egyptian Muslim Brotherhood, the movement is internally divided over the question of whether it should opt for a cooperative relationship with the regime or adopt a more openly critical stance.⁷⁹ If network norms played a larger role, we

might expect to see more resounding support for liberal reform.

DISCUSSION AND IMPLICATIONS

The preceding cases suggest that domestic opportunities, internal leadership shifts, and international pressures combine to motivate the Brotherhood to develop and publicize positions in favor of liberal reform at particular historical moments. Relative liberalization of the political system allowed the Egyptian Brotherhood to compete, and public scrutiny of its positions encouraged the articulation of liberal, democratic values. Its organizational resources served to sustain the Egyptian revolution, in which it cooperated with the secular opposition and put the goal of Egyptian democracy above its organizational interests. The succession of Bashar al-Asad provided new opportunities for the Syrian Brothers to participate in politics, encouraging the development of a policy of moderation toward the regime. Domestic opportunity structures are critical in influencing the Brotherhood's commitments to democratic participation, but exclusion need not always preclude moderation. The Egyptian Muslim Brotherhood continued to articulate its faith in democracy despite hardship after 2005, while political exclusion induced the Syrian branch to decades of violence. This experience points to the "stickiness" of normative commitments: having published a reform platform in 2005, the Egyptian Brotherhood could hardly renege on its written belief in democracy. Conversely, the 1970s-era Syrian Muslim Brotherhood was not limited by any prior commitments to non-violence. Now that the Syrian Muslim Brotherhood has formally renounced violence, it seems likely that it will not defect. Organizational choices, even if adopted for instrumental reasons, may end up carrying normative weight. The ascendancy of reform-minded elements of an organization's leadership can dictate its priorities, as with the increasing influence of the new guard within the Egyptian Brotherhood and the election of al-Bayanouni in Syria. In Jordan, conversely, the Brotherhood's growing constituency of young Palestinians is shifting its emphasis from domestic to international issues.

It also appears likely that connections among the Brotherhood have helped create a trend toward moderation and liberal norms. International linkages are based largely on personal relationships, however, and it is therefore difficult to determine the role played by transnational communication among the Brothers. It also seems probable that the Egyptian and Syrian Brotherhood's publication of reform platforms induced Jordan to do so as well, and that Brothers living in the West have further encouraged moderation. But while the international Muslim Brotherhood may strive for an ideal of peaceful political participation, changes in domestic opportunities and constraints will influence how—and whether—the national chapters enact that norm at a particular historical moment. The Brotherhood's international organization cannot explain the branches' changes in attitudes toward reform over time.

Increasing support within the Brotherhood for liberal reform has come in part from external networks that support those values. The decision of the Egyptian Brotherhood to initiate a human rights discourse and form committees modeled on committees in secular civil society complicates Adamson's portrayal of the two distinct, closed ideological systems of global liberalism and political Islam. While material and institutional bases support both political Islam and global liberalism, it is a reality of the international system that certain institutions are stronger than others, and that therefore one network may eventually obtain dominance. Ideologies may gravitate toward the stronger underlying material structure, articulating the norms that are essential to gaining access to its resources. The Egyptian Muslim Brotherhood has therefore emphasized human rights partly to convince the West of its good intentions and to take advantage of greater political openness which, not coincidentally, was created through Western pressure. This analysis thus suggests an opportunity for further research into how competing ideological frameworks can serve to influence one another.

The domestic orientation of the Muslim Brotherhood has been critical to its success. Islam, unlike the Catholic Church, has always been decentralized: it has "adjusted to a territorially demarcated international system" within the broader Islamic com-

munity.⁸⁰ Higher organizational integration among the national chapters might have impeded their efforts to build a broad social base in each country. Thus, the most successful transnational Islamist movements are those that subordinate their international orientation to local political concerns, gaining legitimacy among a country's population. Contrary to Joscelyn's belief, the claim that an organization has ties to the Brotherhood means little without an understanding of how it has developed in that particular context.

The importance of attention to domestic context is not unique to the work of Islamist organizations; it is also critical for transnational advocacy networks whose campaigns may fail if they do not take local realities into account.⁸² The preeminence of domestic politics is therefore not unique to transnational Islam. Despite globalization, Monshipouri argues, "human identity has remained national."⁸³ Repression has further reinforced the primacy of domestic politics in the Middle East and North Africa, and the Brotherhood has been shaped by the adverse political context in which it operates, more so in Egypt and Syria than in the comparatively friendly Jordan. Egyptian Brothers have often been prevented from leaving the country, limiting their opportunities for transnational work.⁸⁴ Indeed, despite greater integration into the international system from the ratification of human rights treaties, Middle Eastern and North African states have increasingly violated human rights and repressed the civil society actors that defend them, often in the process severing the ties of activists to the international community. As a result, national leaders seem to insist that "state power must remain central to our analyses of social movement transnationalism."⁸⁵ The reality is that in Arab countries where the oldest and best-established Islamist groups operate, the regimes are not conducive to transnational civil society.

CONCLUSION

This paper has sought to contribute to an understanding of the Muslim Brotherhood as a global non-state actor. The Brotherhood has shown significantly "more staying power and better or-

ganizational skills” on the domestic level than other international Islamist movements.⁸⁶ While there has been a movement within the network toward a greater acceptance of human rights and liberal norms, these trends have not developed as a result of entrepreneurship by one organization that has worked to “sell” the idea to its counterparts. Instead, political opportunities and leadership shifts have created conditions that allow the Muslim Brotherhood branches in Egypt, Syria, and Jordan to enact these moderate values, which in turn may become “sticky.” Nevertheless, the informal communication and idea sharing that occurs between Brothers likely plays a role as well. This recent convergence toward a relatively liberal, democratic model is due both to communication and political learning among the Brotherhoods and to international pressure for liberalization throughout the region.

The experience of the Muslim Brotherhood suggests that in order to be successful in transforming the political order, Islamist organizations must adapt to domestic contexts at the expense of their transnational ties. Ironically, the most effective transnational political Muslim organization is one that has entrenched itself in domestic matters. Ultimately, the Muslim Brotherhood—and the slew of moderate Islamist organizations that follow its model across the Arab and Muslim worlds—will have greater influence on international politics than smaller, more tightly-organized groups like al-Qaeda. While al-Qaeda may succeed in making states reorganize their security strategies, it is unlikely to create meaningful political change without embedding itself in the domestic context. The Muslim Brotherhood may have great impact on individuals whose loyalties to their governments are already compromised due to repression, and on the future of state power in the Muslim world. In addition to exerting pressure for reform, the Muslim Brotherhood has increasingly adopted the language of human rights. The Egyptian branch has recently demonstrated the vital—and peaceful—role the Brotherhood can play in democratization. Despite the staying power of Arab regimes, the opposition and growing normative commitments of the Brotherhood are indeed powerful forces for liberal change in the region.

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INTEGRATION BY EDUCATION: A STUDY OF CAMEROON'S BAKOLA-BAGYELI

Sarah Tucker

The process of Bakola-Bagyeli integration into the public school system of Kribi, Cameroon entails a delicate balance between modernization, preserving tradition, and protecting human rights. In the case of the Bakola-Bagyeli, education has the potential to foster empowerment, but also to erode culture. Increased integration into the education system decreases time spent learning traditional knowledge and skills, increases sedentarization, and creates a need for money to buy necessities such as books and school uniforms. Seeking money obliges Bakola-Bagyeli families to join the market economy through working and shopping, further detracting from their culture of self-sufficiency. The alternative to education is a continuing rural subsistence of their life in the forest, isolated from—and thus left vulnerable to—the processes that impact the forest and their way of life. The lack of Bakola-Bagyeli presence in the broader community in and around Kribi has meant that their voice has been largely missing from decision-making processes, despite the efforts of organizations and individuals to speak on their behalf. I focused my research on the challenges faced by the Bakola-Bagyeli, the potential of education as a tool to address these challenges, and the utility of education as perceived by the Bakola-Bagyeli themselves, school officials, and members of Kribi civil society.*

* I would like to thank Mr Félix Devalois Ombwa Ndi, who was kind enough to serve as my project advisor and supervisor, and the staff at RAPID for their constant advice and support. Mr. Ndi and Francis Ndi Owona were exceptional resources throughout my research, accompanying me on the ground in the encampments, sharing information, and serving as translators. I would also like to thank Christiane Magnido of SIT for helping me with every sort of challenge.

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METHODOLOGY AND LOGISTICS

My main sources of information were formal interviews and focus groups with Bakola-Bagyeli parents and children, school officials, and civil society members, with some observations at schools and meetings of civil society bodies.* Target group language barriers, literacy levels, and time availability ruled out the use of surveys. Among the Bakola-Bagyeli, focus groups were ideal because encampment structures were more conducive to group dialogue than individual dialogue, and focus groups reduced shyness around me and encouraged talkativeness, yielding more complete responses. Interviews with children helped me better shape the questions I asked teachers and parents; their responses are not included in my data or report.

Figure 1

Target Group	Interviews	Focus Groups	Total individuals reached
Civil Society Members	5	1	8
School Officials	4	1	7
Bakola-Bagyeli	10	7	29*
Total	19	9	43

* 8 children, 17 parents, 10 encampments

Anticipating negative impressions of the education system amongst the Bakola-Bagyeli, I originally structured my questions to discover the origins and nuances of this negativity, and how it influenced community behavior. My research, however, revealed both overwhelmingly positive perceptions and lingering frustration among parents and communities who are unable to assure their children's attendance or performance. As certain topics arose consistently in interviews with the Bakola-Bagyeli, I altered my interview questions slightly to ensure that every interviewee would give their opinion on these topics. This modification proved useful for identifying possible steps for improving access to

* Please see <http://www.helvidius.org/content/> for the list of questions asked in each interview.

education and perceptions of the utility of education in their lives.

Mr. Felix Devalois Ombwa Ndi, my research advisor, served as translator for the majority of my interviews with the Bakola-Bagyeli, including those partially conversant in French. Language versatility allowed freer and more detailed responses, but the translation process may have diluted or altered responses. I was forewarned about general Bakola-Bagyeli distrust of outsiders due to harm inflicted on their way of life by extractive industries and development projects. Though it is impossible to determine to what degree interviewees may have modified their true opinions in order to give agreeable responses, this could have contributed to the expression of highly positive perceptions of school and modernization among Bakola-Bagyeli parents. The encampments where I conducted interviews rest along a 105-kilometer dirt road through the forest, making research possible only through daylong motorcycle expeditions, and making frequent visits difficult. The encampments I visited, though quite isolated, were not the most isolated; each one had parents who sent their children to school. If I were able to see the most remote sites, I could have had a more diverse respondent pool.

The project was facilitated through an association with Réseau des Actions Participatives des Initiatives pour le Développement (RAPID), a small NGO started by the Cameroon Oil Transportation Company (COTCO) as part of their environmental impact mitigation requirements after building the Chad-Cameroon Pipeline. RAPID is currently the only organization providing services and advocacy for the Bakola-Bagyeli. First, integration of the Bakola-Bagyeli is very pertinent in Kribi; finding people willing to discuss the issue was easy. Second, associating with Mr. Ndi and RAPID at the encampments gave me a degree of credibility with the Bakola-Bagyeli that was vital to successful visits. It also allowed me to make relevant contacts, and exposed me to a wealth of research-oriented information. Arriving at an encampment or school, the adults already knew Mr. Ndi and as a result were very open with me and willing to answer my questions. Being at the RAPID

office and attending meetings in town with Mr. Ndi gave me the opportunity to make contacts with leaders of other organizations in Kribi. Finally, speaking with Mr. Ndi and other RAPID employees allowed me to learn about the situation of the Bakola-Bagyeli.

BACKGROUND

Education

Education is critical to sustainable development worldwide. With appropriate education comes empowerment, social mobility, communication, and other benefits that are vital to the success of individuals and of communities. The United Nations Education, Science, and Culture Organization (UNESCO) states that education is “central to giving children, youth and adults the knowledge and skills to make informed decisions and acquire better health, better living standards and safer, more sustainable environments.”¹ President Paul Biya of Cameroon cited education’s importance in his National Youth Day speech in Yaoundé in February, 2010, and matched this statement by devoting over 17 percent of the national budget to education.² Local perceptions mirror international fervor; education is a top priority among Cameroonian families. However, Cameroon’s primary school completion rate is 62 percent, and illiteracy among those over 15 years old is over 25 percent.³ While passion for education is pervasive throughout the country, data reveal the gap between what the government and international organizations envision, and what is currently being achieved.

One of Cameroon’s greatest obstacles to achieving Universal Primary Education (UPE) is reconciling its vast diversity with its centralized and uniform education system. Certain groups are particularly excluded, and require special attention to be successfully incorporated. UNESCO defines disfavored or marginalized groups as “youth without qualifications, who have never had access to instruction or who were prematurely excluded from instruction.”^{*4}

* Translation: “des jeunes sans qualification, qui n’ont jamais eu accès à l’enseignement ou qui en ont été exclus prématurément.”

This definition extends itself to “the poor, street children and children who work, populations in rural or isolated zones, and ethnic, racial, and linguistic minorities,”* due to their physical and social isolation from the formal education system.⁵ The Bakola-Bagyeli of Cameroon are an ethnic, racial, and linguistic minority living in isolated rural areas among the Bantu regional majority; they are not equitably incorporated into Cameroon’s broader development scheme, including education.

To integrate marginalized groups, UNESCO suggests three methods to governments and NGOs. First, it recommends that minority schools be given the materials and staff they need to improve performance, including teachers, books, and school infrastructure such as classrooms and desks.⁶ Second, it calls for the adaptation of teaching methods and curricula to meet the specific needs of the marginalized population. Third, UNESCO encourages the creation of an education system that is completely new in its structure and methods in zones that have never before had access to education. Successful approaches require extra resources and effort to ensure sufficient materials and cultural compatibility. Schools must also be flexible to accommodating student needs, rather than vice versa. This approach allows diverse groups to access education, and can permit cultural preservation by incorporating culture, customs, and traditions into the modified program. However, these methods are controversial because they contradict the notion that education should be uniform for all students in order to promote complete equality of opportunity. UNESCO’s recommendations reflect the opposite position: that reaching out to marginalized groups requires innovation in order to preserve culture and overcome structural obstacles to education.

Despite UNESCO’s recommendations, the reality is that in many countries, including Cameroon, education is organized at the national level, without the capacity to adapt to local needs. The perception is that Cameroonian education “cannot be bound down for

* Translation : “les pauvres, les enfants des rues et les enfants qui travaillent, les populations des zones rurales ou reculées, [et] les minorités ethniques, raciales et linguistique.”

specific people, for Bakola-Bagyeli students,”* because of the highly centralized decision-making involved in education.⁷ The nature of the education structure in Cameroon does not permit local-specific changes to incorporate groups like the Bakola-Bagyeli, and thus the education system remains a broadly standardized institution that does not meet the special needs of this marginalized population.

The Bakola-Bagyeli

The Bakola-Bagyeli are a subgroup of the population, pejoratively referred to as “Pygmies,” that live in Southern Cameroon, Gabon, Equatorial Guinea, and the Congo. Around the small cities of Kribi and Lolodorf where I spent my research period, the Bakola-Bagyeli live in varying degrees of isolation from cities and neighboring villages. Some encampments are found deep within the forest with barely a footpath for access, while others are situated next to the main road that connects the aforementioned cities. A few Bakola-Bagyeli have moved out of the encampments into Kribi and Lolodorf. For the most part, the Bakola-Bagyeli continue to live as they have traditionally, through hunting, gathering, and fishing. Historically, before new roads and modernization led to increased sedentarization, the Bakola-Bagyeli were a semi-nomadic people that moved after a death in the community.⁸ Their food, housing materials, and medicines were all prepared by hand, exclusively with materials from the forest. Their diet consisted of honey and fruits, and meat from wild animals, obtained through hunting, gathering, and fishing. The Bakola-Bagyeli supported a friendly relationship with their Bantu neighbors, agricultural communities living in villages and cities, mostly through trading forest commodities for agricultural goods.

The traditional lifestyle of the Bakola-Bagyeli has encountered significant changes in recent years, many of which they have embraced. Among the benefits listed in interviews include improved attire, agriculture, and better sanitation practices. The Bakola-Bagyeli are now semi-sedentary; their houses are often built

* Translation: “ne peut pas être arrimé pour certains gens, pour les élèves Bakola-Bagyeli.”

with more durable man-made materials like tin and fabric clothing is now standard.⁹ They continue to live through hunting, fishing, and gathering, going on hunting expeditions that can last up to several months. This diet now includes purchased items such as rice and dried fish. Cultivation of food is increasingly used to supplement traditional food supplies that are diminishing as a result of deforestation; encampments usually had chickens as well as fields of macabo and corn. Despite favorable aspects of modernization, the majority of the Bakola-Bagyeli interviewed said they do not want their lifestyle and close relationship with the forest to change. This sentiment was often accompanied by a sense of defeat; 13 out of 22 Bakola-Bagyeli adults interviewed identified diminishing forest resources as a major threat to their way of life, rendering hunting and gathering either difficult or impossible. For this reason, several respondents asked for help in adapting to the new lifestyles that sedentary life require, though they preferred their traditional existence. When asked which type of lifestyle is preferable, one woman responded, with enthusiastic agreement from four fellow focus group subjects, that “we don’t want to change, but we don’t want to stay like the Bagyeli of the past. We want to develop. But living like the Bantu does not interest us.”¹⁰ Many changes have come to the Bakola-Bagyeli, and there is increasing pressure to continue changing and become more modernized. Certain improvements in quality of life are welcomed by the Bakola-Bagyeli, but the majority of Bakola-Bagyeli were not interested in leaving their traditions behind in favor of a modern lifestyle.

While the Bantu have been integrated into the modern economy and civil society, the Bakola-Bagyeli are increasingly excluded. As sedentary farmers, the Bantu lifestyle has made them more compatible with modernization than the Bakola-Bagyeli, and the relationship between these groups has changed to one of distinct subjugation with increasing modernization and urbanization in Cameroon. Bakola-Bagyeli unfamiliarity with the social, legal, and political system has left them vulnerable to exploitation. For

* Translation: “nous ne voulons pas changer, mais nous ne voulons pas rester comme les Bagyeli du passé. Nous voulons développer. Mais vivre comme les Bantou ne nous intéresse pas.”

example, the Bantu have sold land traditionally inhabited by the Bakola-Bagyeli to the government and extractive industries, capitalizing on Bakola-Bagyeli under-representation in the land title system and their lack of legal and valid ownership of the land on which they live.¹¹ The Bakola-Bagyeli are also semi-dependent on the Bantu for information about changes and events in Kribi and the region at large, as educational integration has enabled the Bantu both to speak French and English and to be more informed about current events and issues in the community.¹² In addition, there is a general stigmatization of the Bakola-Bagyeli as subordinate and primitive compared to the Bantu.¹³ Tensions between these groups sometimes escalate into conflict, such as a recent violent incident in Ngoyang that led to the closing of a Ngoyang-area boarding school for Bakola-Bagyeli students.

CHALLENGES FACED BY THE BAKOLA-BAGYELI

The Bakola-Bagyeli around Kribi and Lolodorf face a multitude of complex and interrelated challenges. Among these are poverty, limited access to social services, and lack of representation, all stemming from the underlying lack of integration.

The Bakola-Bagyeli exist in a unique state of poverty. Their way of life excludes them from the channels that enable them to earn cash income. Though the forest has historically provided the Bakola-Bagyeli with everything they need, deforestation has rendered traditional resources scarce, while modernization and outside contact have led to a need and desire for manufactured products that require money. Sturdier construction materials, shoes, and schoolbooks are among the items that the Bakola-Bagyeli now require, necessitating money which subsequently requires employment. Yet, with forest isolation, stigmatization by the Bantu, and lack of education, the Bakola-Bagyeli have trouble finding employment. In addition, economic and social globalization, activated by new means of communication that have allowed cities and villages to develop, "do not make a favorable environment for reducing

inequalities.”^{*14} As the Bantu become more integrated and familiar with processes introduced by globalization, the gap between them and the Bakola-Bagyeli widens, making it harder for the Bakola-Bagyeli to insert themselves into the economy.

Isolated from networks of cities and villages, the Bakola-Bagyeli are removed from access to basic social services and amenities. Unfamiliarity with delivery systems for these services, language barriers, and physical distance from services combine to restrict their access to basic necessities, including clean water and health facilities. Angoh Albert, a father at the Bandevouri encampment, elaborates that “our health bothers us. There was one month when the clinic open ... was closed. ... All the children were sick with diarrhea.”^{†15} The problem of health is two-fold: poor water and sanitation at the encampments and inconsistent access to quality health services. Poverty makes amenities that could improve health conditions unaffordable. False perceptions create an additional challenge: “Many people confuse this poverty with their culture.”^{‡16} Because the Bakola-Bagyeli live off of the forest and use traditional medicine, many outsiders believe that introducing modern medicine and sanitation practices would be contrary to their culture. In reality, Albert retorts, “Their poverty manifests itself by the disappearing health situation: many are sick.”^{§17}

The presence of natural resources in their homeland creates challenges for the Bakola-Bagyeli. The forest is full of resources that the Cameroonian government and international companies seek to exploit. There is already a thriving timber industry, both legal and illegal. The impending construction of a deep-sea port in Kribi will facilitate the arrival and development of other industries such as mining. The Chad-Cameroon Pipeline, an oil pipeline extending from Chad through Cameroon, ends in Kribi. The pipeline itself,

* Translation: “ne constitue pas un environnement favorable à la réduction des inégalités.”

† Translation: “la santé nous dérange. Il y avait un mois ou l’infirmière, ça n’est pas. C’était fermé. Tous les enfants étaient malades avec la diarrhée.”

‡ Translation: “beaucoup des gens confondent cette pauvreté avec leur culture.”

§ Translation: “Mais en réalité, ...” cette pauvreté se manifeste par la situation de la santé qui est disparaissant; beaucoup sont malades.”

and its accompanying access road, cut through the forest just meters from several encampments. Certain food-bearing species are becoming more rare, while noise and activity drives animals away. Encroachment of development on the forest poses unique threats to the Bakola-Bagyeli culture, as “[they] cannot be Bagyeli without the forest.”^{*18} The Bakola-Bagyeli are cognizant of these threats. When asked what changes she expects in the future, Namende Nicole claimed, “We will not hunt anymore. The trees where we have found fruit and honey will be destroyed. The fruits will disappear. The forest is on its way to disappearing.”^{†19}

Companies seeking to do business in the forest must submit environmental impact mitigation plans to Cameroon’s Ministry of the Environment, and seek to limit their adverse effects on the habitats and people they touch. RAPID often represents the Bakola-Bagyeli before development bodies, and Bantus frequently volunteer to speak on behalf of the Bakola-Bagyeli, but the Bantu often “want to exploit this position for personal gains.”^{‡20} Unlike the Bantu, the Bakola-Bagyeli lack prominent spokespeople of their own, making their voice weak or misrepresented. Their limited representation exacerbates their marginalization, as “They don’t have the strength or the power to limit impositions, or say that ‘this is our territory.’”^{§21} Unable to directly defend their interests at the local, national, and international level, the Bakola-Bagyeli have had their land and their rights encroached upon by actors at each of these levels.

The common thread between the issues of poverty, lack of access to resources, and lack of direct representation is marginalization. The Bakola-Bagyeli are physically, linguistically, culturally, and physically isolated. Their isolation leaves them open to exploitation by opportunistic actors, including their Bantu neighbors and ex-

* Translation: “il ne peut pas être Bagyeli sans la forêt.”

† Translation: “nous n’allions plus faire la chasse. Les arbres où nous avons trouvé des fruits et du miel seront abattu. Les fruits vont disparaître. La forêt est en train de disparaître.”

‡ Translation: “veulent exploiter cette position-là pour des effets personnelles.”

§ Translation: “Ils n’ont pas le force ou le pouvoir de limiter les impositions, ou dire que ‘ça c’est notre territoire.’”

tractive industries. Forty-three percent of civil society members, 71 percent of Bakola-Bagyeli parents, and 100 percent of school officials identified integration and achieving familiarity with the society in which they live as the primary goal of education for the Bakola-Bagyeli. This is why Rodrigue Kebeh says that, despite all other challenges faced by the Bakola-Bagyeli today, "The main menace is the lack of education."²² The exclusion of the Bakola-Bagyeli begins early, as the Bantu children begin going to school and the Bakola-Bagyeli children remain at home with their parents.

My research has shown that this exclusion slowly erodes Bakola-Bagyeli society as it is known today. Integration can be a solution, starting with participation in the formal education system. However, integration must be carefully defined, and its goals delineated, in order to ensure that it is not synonymous with assimilation and absorption.

ROLE OF EDUCATION FOR THE BAKOLA-BAGYELI

While the majority of interviewees agreed that integration is the main benefit of education and that it is vital to the Bakola-Bagyeli, there was a wide range of interpretations of its proper connotation. Each revealed a different attitude towards the Bakola-Bagyeli, the future of their way of life, and the value of incorporation into schools. The three main categories of responses were social integration, political integration, and economic integration.

Social integration was the most popular reason given for the Bakola-Bagyeli to participate in the public education system. This type of integration comes from both the school curriculum and the interaction of children from different backgrounds. Children learn basic lessons in school about societal functions, communication, and important issues affecting their lives. Cameroonian primary education includes civic education, wherein students learn about their "rights and responsibilities"[†] as citizens.²³ Consciousness of

* Translation: "le principale menace est le manque de l'éducation."

† Translation: "droits et devoirs"

their rights from an early age would allow the Bakola-Bagyeli to protect themselves from the previously described infringements that capitalize on the ignorance of their rights. Addressing these problems requires that the Bakola-Bagyeli have an equal opportunity to understand their rights as Cameroonian citizens, starting with lessons in school.

Social integration also includes language and literacy. At school, children learn to speak and read French and English in the classroom and Bantu languages through social interaction. Learning Bantu languages allows the Bakola-Bagyeli to communicate with their immediate neighbors, a skill necessary for maintaining cordial relations. The vast majority of Bakola-Bagyeli interviewees identified being able to speak and read these languages as a benefit of education. Without speaking French or English, one mother explains, "We must call a Bantu to translate,"* when confronted with a French speaker or a document in French, furthering the relationship of dependency and inequality between these two groups.²⁴ With language skills the Bakola-Bagyeli "can listen and be listened to,"† improving their access to information and opportunities.²⁵ Dr. Ahanda Sosthène of the World Wildlife Foundation cites the environmental impact of mitigation efforts used by extractive industries as an example: "Imagine that they don't know A or Z, and the only details [of the projects] are written, the negative aspects. They will have to consume them to the utmost."²⁶ Thirteen out of twenty Bakola-Bagyeli interviewees mentioned the disappearing forests as a threat to their way of life, and there are more potentially hazardous projects yet to come. If the Bakola-Bagyeli are unable to read the details of these proposals for such projects themselves and understand their potential impact, they cannot voice their opinions to defend their interests and will suffer from that which they do not possess the means to prevent. "And that," he added, "fulfills the

* Translation: "nous sommes obligés d'appeler un Bantou pour traduire."

† Translation: "peuvent écouter et être écouté."

‡ Translation: "Imagine qu'ils ne savent ni de A ni de Z, et les seuls détails [des projets] sont écrits, les aspects négatifs. Ils vont les consommer de plan fort."

extinction of a people.”*²⁷ It is for this reason that Veronique Follack states, “You cannot develop yourself if you do not know how to read, if you do not know how to write.”†²⁸ In order to be informed and involved in pertinent events impacting their lives, the Bakola-Bagyeli must have access to language and civic education.

Social integration also includes learning about diseases such as HIV/AIDS and sanitation. There have already been several cases of HIV/AIDS reported among the Bakola-Bagyeli, and without knowing how it is spread or treated, their very existence as a people could be threatened. Furthermore, knowledge about these issues is constantly updating, and schools are an appropriate means of transmitting these updates to the population.

The second theme in the importance of education was Bakola-Bagyeli political integration. The Bakola-Bagyeli currently have no direct representatives at the international, national, or local level. Extractive industries’ environmental impact mitigation plans consult the local people; take into account the negative effects that projects will have on them, the animals, and their habitat; and seek to compensate for damage. However, many projects’ details can only be found in writing, excluding illiterate populations. In other cases, participation in hearings about the mitigation plans is opt-in only, requiring previous knowledge of the hearings in order to participate. The impacts of certain projects could be deadly, and exclusion from the impact mitigation process limits the Bakola-Bagyeli’s ability to protect themselves and preserve their way of life.²⁹ While RAPID promotes their interests, they can only convey messages indirectly. Furthermore, as previously mentioned, other Bantu who volunteer to represent them often take advantage of this position.³⁰ Full awareness of these dangers and ability to defend their interests before the companies in question requires the Bakola-Bagyeli to represent themselves, explain where they live and hunt, identify the resources they use, and convey other relevant vital information. Direct representation would allow them to advocate for culturally

* Translation: “et ça...” “peut remplir d’une extinction d’un peuple.”

† Translation: “tu ne peux pas te développer si tu sais pas lire, si tu ne sais pas écrire.”

compatible compensation and mitigation efforts. As the situation now stands, companies that cut down areas of forest and diminish vital animals and plants often compensate damage with money.³¹ While this may suffice for certain populations, the real damage to the Bakola-Bagyeli is that nourishing themselves through hunting and gathering becomes more difficult. Replacing the plants and animals on which they depend with money imposes a cultural shift on the Bakola-Bagyeli from hunting towards purchasable food items. The only people who should decide if this is a welcome change are the Bakola-Bagyeli themselves.

On a broader scale, the Bakola-Bagyeli are unrepresented in Cameroon's government at the national and local level. The Bakola-Bagyeli need an individual in a position of power who understands the laws and political systems as well as the reality of Bakola-Bagyeli life. Without self-representation, the Bakola-Bagyeli voice will continue to go unheard. This problem is indicative of the structure of democracy itself: "The democratic system is such that, if one does not insert oneself, they can also disappear."³² Democracy is driven by self-advocacy, and if the Bakola-Bagyeli do not partake, they will more easily fall victim to other groups who are better equipped to promote their own interests. There are numerous actors with strong lobbies in their favor that pose a threat to their traditional lifestyle, and there is no substantial counter-lobby on the part of the Bakola-Bagyeli. Politics is a process of balancing conflicting interests: "the world is constructed in a way that...everyone seeks to exploit everyone."³³ Without the ability to actively defend themselves, the Bakola-Bagyeli are left vulnerable to this exploitation that threatens their current way of life.

To achieve a presence in the Cameroonian political and civil society system, the Bakola-Bagyeli must be incorporated into the formal education system, which enables them to gain vital tools such as literacy, language skills, and familiarity with the legal sys-

‡ Translation: "le system démocratique est tel que si on ne s'insert pas, ils peuvent aussi disparaitre."

§ Translation: "le monde est constitué tel que... tout le monde cherche à exploiter toute le monde."

tem that can permit them to insert themselves in the government. Angoh Albert highlighted empowerment as the driving force behind his decision to send his children to school. With sufficient education, he claims, “We can arrive at important positions. I had friends who are priests, who are prefects—I went to school with them, these Bantu friends. I must, I am obligated to educate my children so that they can find these important jobs tomorrow.”^{*34} With representation at the government and civil society level, the Bakola-Bagyeli would have the opportunity to voice their concerns and advocate for their interests that can argue on behalf of their traditions, ties to the forest, and way of life. To prevent demolition of their habitat and culture, they must integrate in order to advocate for themselves.

The final reason given by interviewees for the importance of education was to integrate into the economy, find jobs, and modernize their means of consumption. Twelve out of seventeen Bakola-Bagyeli parents interviewed stated that having a chance at employment was a major motivating factor for sending their children to school. Namende Nicole and Angoh Albert argued that employment is instrumental in preparing for a future without the forest. Other Bakola-Bagyeli interviewees mentioned that modernization has touched their lives in ways that require money, and finding jobs is the only way to afford purchasable items. “Before, our parents fed us nothing but meat,” but due to changing forest conditions and a growing population, “we are obligated to buy frozen fish to feed ourselves. And the money to buy it, we do not have.”^{†35} The ability to buy other basic necessities such as clothing, soap, medicine, and toothbrushes improves their health, raises their standard of living, and garners greater respect from the Bantu. According to one mother, community members with jobs “can help us—not only [their own families], but also the entire community,”[‡] to af-

* Translation: “on peut arriver aux postes importantes. J’ai des camarades qui sont prêtres, qui sont préfets – j’ai fréquenté avec eux, les camarades Bantou. Je dois, je suis obligé d’éduquer mes enfants pour qu’ils puissent trouver des postes demain.”

† Translation: “Avant, nos parents ne se nourrissaient que de la viande”... “on est obligé d’acheter du poisson congelé pour nous nourrir. Et de l’argent pour l’en acheter, nous n’en avons pas.”

‡ Translation: “pourront nous aider – pas seulement [leurs propres familles], mais aussi toute

ford amenities.³⁶ While parents acknowledged the importance of maintaining cultural practices such as hunting and gathering, employment opens avenues for improving living standards through purchasable goods.

Individuals in and outside of the Bakola-Bagyeli community expressed a compulsion to change their means of subsistence. Veronique Folack and Antoine Bouedjila suggested that leaving behind hunting and gathering would help them modernize, and that education is an important means of learning about modern practices. Bouedjila noted that “they must learn to work to earn money”^{*} in order to achieve the same level of development as the Bantu.³⁷ Nsim, a parent at the Bilolo encampment, compared hunting and gathering to living “like animals.”^{†38} This perception of integration implies that their traditional way of life must change and that education should facilitate these changes. School becomes dangerous for the Bakola-Bagyeli when it becomes a transition mechanism away from their traditional lifestyle, perpetuating ideas of Bakola-Bagyeli cultural inferiority with respect to the Bantu. School can provide children equal opportunity, but should not be seen as a cultural equalizer as well. School must allow children to grow and flourish while simultaneously learning to appreciate their own culture, heritage, and identity. Education must also allow equal opportunity for children to pursue the lifestyle of their choice. In this respect, the education system in Cameroon faces several challenges to accommodating Bakola-Bagyeli students.

PROBLEMS WITH THE EDUCATION SYSTEM

Before delving into educational problems it is helpful to elaborate Bakola-Bagyeli perceptions of the education system. My research revealed an overwhelmingly positive impression of school amongst interviewees. Eight out of seventeen parents interviewed cited better health and hygiene habits as benefits of school, and

la communauté.”

* Translation: “il faut qu'ils apprennent travailler pour gagner de l'argent.”

† Translation: “comme des animaux.”

eleven out of seventeen said that children were better behaved as a result of schooling. After starting school, "they are better organized, they do their work and the cleaning themselves. They take initiative for themselves,"* says Angoh Albert.³⁹ Parents generally appeared proud to say their children were enrolled, and described their life after beginning school as much better than before. However, they emphasized the difficulty in doing so. Because of the challenges they face, children often perform poorly, are frequently late or absent, or are unable to finish the school year. There are three major types of challenges: material, structural, and cultural.

The most visible problem is the lack of financial means and subsequent lack of materials, stemming from their economic exclusion and the fact that school costs add up quickly. Primary education in Cameroon is theoretically free, but, "There are always financial costs that one has to pay, and we do not have the money."⁴⁰ Without incomes from jobs, Bakola-Bagyeli children can be easily identified in class because they are usually dirty, wearing torn clothing, and barefoot. Their tattered state invites harassment from Bantu children; Ngally Lucien laments that, "When children go to school, they are always poorly dressed, [and] that means that the Bantu children ... make fun of them."⁴¹ Their relative poverty makes them feel ashamed and isolated; they can be found leaning against walls or sitting quietly by themselves during recess.

Poverty also affects the students' ability to learn at home as well as at school. Their homes are not as weatherproof as Bantu homes. Mr. Biyogmam Emile, Director of Bissou-I School, claims, "As soon as we give them a book, before the end of a trimester, the book is already torn because they do not have the discipline to keep their things well."⁴² Even when given materials, these are frequently lost or destroyed in the children's inhospitable home environ-

* Translation: "Ils sont mieux organisés, ils font les travaux, le ménage eux même. Ils prennent les initiatives pour eux même."

† Translation: "il y a surtout les frais financier qu'il faut payer, et nous n'avons pas des moyennes."

‡ Translation: "quand les enfants vont à l'école, ils sont mal habillés, [et] ça fait que les enfants Bantou... se moquent d'eux."

§ Translation: "dès qu'on les donne un livre, avant le fin d'un trimestre, le livre est déjà déchiré parce qu'ils n'ont pas le maitrise de garder les choses."

ment. Finally, the parents' attempts to cope with poverty can also hinder their children's studies. Parents often take their children hunting instead of sending them to school because, "They know that in hunting they can trap many animals, and by selling them, they will have money right away."^{*43} Children help their parents to earn money for the family, but must miss school in order to do so. For these reasons, six of seven school officials and the majority of Bakola-Bagyeli parents interviewed agreed that poverty is the biggest challenge in the education of Bakola-Bagyeli children.

The second major challenge of sending Bakola-Bagyeli children to school is Bakola-Bagyeli culture and the role of children within that culture. According to Dr. Ahanda Sosthène, "The Bagyeli child has a place in Bagyeli society. ... If there is an interference between education and the place of the child in the Bagyeli community, it is the education system that will lose out."^{†44}

The role of children in Bakola-Bagyeli society is clearly defined and focused on preparing the child for his or her adult life.⁴⁵ This process entails learning about the various plants, animals, and properties of the forest and how to gather and utilize them. With this education also comes training in "group values," and how "to be responsible to the family."^{‡46} Children learn from their parents how to hunt, gather, prepare food, find and process medicines, perform traditional dances, tell stories, learn cultural values, and maintain spiritual harmony. In this training, the family is the "primary agent of children's socialization."^{§47} For this reason, I asked all subjects whether school impeded the acquisition of cultural knowledge. Ten Bakola-Bagyeli said that education does not infringe because children can learn these things when they are home during weekends and vacations. Only two interviewees felt that school attendance threatened their culture.

* Translation: "ils savent que en allant à la chasse ils vont attraper beaucoup des gibiers, et en les vendant ils auront de l'argent tout de suit."

† Translation: "L'enfant Bagyeli a un place dans la société Bagyeli....S'il y a interférence entre l'éducation et la place de l'enfant dans les peuples Bagyeli, c'est la système éducatif modern que va perdre."

‡ Translation: "les valeurs du groupe"... "être responsable d'une famille."

§ Translation: "première responsable de la socialisation de l'enfant."

Throughout the traditional training they receive, children contribute to the family by hunting, gathering, preparing food, and performing other tasks. Families needing extra help from their children will often pull them out of school.⁴⁸ The responsibility to help feed the family prevents children from attending school consistently, making keeping up in class difficult. When asked, most parents said that hunting is just as easy without children as it is with them, but elaborated that in order to trap large animals, “the presence of children is necessary,”* while smaller animals such as rats are simple to catch hunting in groups of two or three.⁴⁹ To bring in large kills, they must pull children from school in order to hunt as a group.

Teachers expressed frustration at absenteeism due to hunting. Across primary schools serving the Bakola-Bagyeli in January and March, reported Bakola-Bagyeli tardies and absences were significantly elevated: there were sixty-seven late arrivals and 102 absences in January, and forty-seven late arrivals and 102 absences in March, out of 209 students.⁵⁰ Of these absences, forty-eight in January and seventy-one in March were due to hunting and gathering—far more than in the other months. Simultaneous with the increase in hunting and gathering was absenteeism due to illness; forty-five in January and thirty-seven in March. During these times of the year, animals are more abundant. Children brought hunting often fall sick during the outings, leading to increased absences and tardiness. While most parents agreed that their ability to learn cultural practices is not inhibited by attending school, their obligations to hunt keep children in the forest and out of school.

The final conflict between the education system and the Bakola-Bagyeli is structural: schools are incongruent with their traditional education models. The Cameroonian education system is organized at the national level and does not accommodate for local needs. For marginalized groups like the Bakola-Bagyeli without historical access to education, this standardized system does not make the necessary efforts as defined by UNESCO to incorporate them.⁵¹ Instruction methods differ from those used traditionally among the Bakola-Bagyeli. Bakola-Bagyeli traditional education

* Translation: “le présence des enfants est nécessaire.”

“gives itself directly in the forest environment and does not obey a single constraint that makes one think of schedules, methods, time, and evaluations.”*⁵² Bakola-Bagyeli education also traditionally consists of activities directly related to daily life. “Education among the Pygmies is purely functional in the measure that it is tied to productive activities.”†⁵³ Furthermore, “it is attached much more to results than to processes.”‡⁵⁴ By contrast, Cameroon’s mainstream education system emphasizes processes, such as mathematics and sentence construction as well as results. Subjects may not directly relate to daily life, and can thus be frustrating and uninteresting for students who are used to being outdoors and occupied with activities that have immediate gratification. Teachers expressed difficulty in engaging the Bakola-Bagyeli students in class. “It’s the program that does not interest them... sometimes it’s like I’m bringing someone to war,”§ explains one teacher.⁵⁵ Lack of engagement in lessons, combined with the family role that children often play, makes staying in school much less appealing for Bakola-Bagyeli students. Even when not required to hunt, the lifestyle of movement and interaction that daily food gathering engenders is part of their culture. In coming to school, “They will be obligated to change their way of life,”¶ becoming more stationary than before.⁵⁶ Bantu parents are more acclimated to this type of system and can explain and encourage their children to continue, having been through school themselves. Many Bakola-Bagyeli parents have not adapted as it is often in their immediate interest for their children to discontinue school so that they can help with the hunt.

RECOMMENDATIONS FOR IMPROVEMENTS

* Translation: “se donne directement dans le milieu forestier et n’obéit à aucune contrainte qui ferait penser aux programmes, méthodes, horaires et évaluations.”

† Translation: “L’éducation chez les pygmées est purement fonctionnelle dans la mesure où elle est liée aux activités productives.”

‡ Translation: “Elle s’attache beaucoup plus aux résultats qu’au processus.”

§ Translation: “C’est le programme qui ne les intéresse pas..., quelquefois c’est comme on a amené quelqu’un en guerre.”

¶ Translation: “ils seraient obligés de changer leurs mode de vie.”

Based on responses from parents, teachers, school officials, and civil society members, the conclusions on how to improve schools to meet Bakola-Bagyeli needs were, in order of popularity: place children in boarding schools; give materials to parents, teachers, schools, and students themselves; and incorporate Bakola-Bagyeli culture and reality of life into the schools. These responses align with UNESCO's recommendations for incorporating marginalized populations: giving students and educators the tools they need to teach; devoting special attention to the children in question; and developing entirely new approaches to and methods of educating this population.

Putting children in boarding schools was the most widely agreed-upon method of improving schools. Out of all of the Bakola-Bagyeli and teacher interviewees, none spoke negatively about boarding schools. In the Dakar Framework on Education for All, UNESCO stated that in order to make education as inclusive as possible, it is necessary to "assure basic rights to food, shelter, security and health to enable African children to participate fully in education."⁵⁷ Boarding schools provide children with adequate food and shelter, keeping them focused on school, and ensuring that they arrive to class healthy and on time every day. Their physical living situations disadvantage Bakola-Bagyeli children with respect to their school performance, and many of the challenges that they face at home can be eliminated by putting them in boarding schools.⁵⁸ Boarding schools, however, also present certain problems. There are only two Bakola-Bagyeli boarding schools that are currently functional: one in Bipindi, and one in Lolodorf. Boarding schools also suffer from chronic underfunding, a common problem among public institutions in Cameroon.⁵⁹ Because of the boarding school's responsibility to provide for all of the students' needs, costs add up quickly. Lack of financial means limits the number of students that can be accepted into each boarding school and the quality of services provided within them.⁶⁰ The final problem is the limited family time and subsequent reduction in cultural transmission that living apart from one's family engenders. Though most

parents said there was no conflict, the extended separation from the family that boarding schools require significantly restricts cultural absorption and may threaten cultural continuity.

The second most popular recommendation for improving schools was to give schools, families, and students the materials they need. Twelve out of seventeen Bakola-Bagyeli parents interviewed said that in order for their children to succeed in school, they need to be given materials. Six out of seven school officials interviewed agreed. The materials requested include school uniforms, shoes, notebooks, pens, and food. UNESCO cites providing adequate materials as a basic means for promoting education equity.⁶¹ Having the necessary materials allows each child to have an improved chance to learn and places less of a burden on families and schools to provide them.

Schools require structural changes to incorporate the Bakola-Bagyeli. Veronique Folack summarizes the three necessary steps: "We must adapt education to their reality. It is necessary to try to take their culture into consideration. It is necessary to sensitize teachers."⁶² The public school system was created outside of Bakola-Bagyeli influence and founded on values, traditions, and organizational structures that are largely culturally incompatible. My research and UNESCO's recommendations concur that successful incorporation requires schools to integrate their values and realities as well.⁶³ Teaching Bakola-Bagyeli children requires special methods, skills, and attention. Curricula must be more flexible. Decentralization of education decision-making would support this flexibility, creating "a localized political system, allowing for better incorporation of the needs expressed by populations, and by local initiatives."⁶⁴ To compliment this political shift, parents must be given channels to be involved, express their concerns, and voice their opinions. Through these alterations, education can be adapted to meet needs as expressed by the population themselves. Finally,

* Translation: "on doit adapter l'éducation à leur milieu. Il faut essayer de les tenir compte de leur culture. Il faut sensibiliser les enseignants."

† Translation: "une politique de proximité, permettant de mieux prendre en compte les besoins exprimés par les populations, et les initiatives locales."

teachers must be given the training necessary to meet the needs of Bakola-Bagyeli.⁶⁵ Because they are not accustomed to the structure of school, have largely illiterate parents, and are more timid compared to other students, the Bakola-Bagyeli can get lost in the midst of other students and thus fall behind at school. Teachers must make special efforts to ensure that they remain engaged and keep pace with the other students in class.

RECOMMENDATIONS FOR RAPID

In order to better integrate Bakola-Bagyeli students into Cameroonian schools, RAPID and the Cameroonian government must focus on constructing additional boarding schools, increasing provision of school supplies, and conducting teacher training programs, as explained above. Additionally, I recommend that RAPID expand existing programs of cultural transmission and pilot a hunting dog incentive program.

RAPID should seek to expand existing programs that encourage students to learn and appreciate Bakola-Bagyeli culture. Less time at home means less time to learn traditional activities done at home.⁶⁶ At the Bipindi boarding school, children are taken on weekend group hunting trips, and given the opportunity to learn traditional dance and storytelling together. These programs are crucial to the survival of customs and practices that may be threatened as Bakola-Bagyeli children transition into the school system. Integration into the education system is a large step toward modernization and away from the traditional lifestyle led by the Bakola-Bagyeli. Education should not be a step in the absorption of the Bakola-Bagyeli into modern Cameroonian society, but rather for them to integrate, for their culture and way of life to become a part of this society without diluting its elemental components. Programs such as these can also promote cultural understanding between the Bantu and the Bakola-Bagyeli and reduce societal tensions.

The final program I recommend is a pilot program whereby

RAPID gives a hunting dog to every family that demonstrates a commitment to sending their children to school. In order to merit the dog, the family must have each child of school age complete one year of school, with a limited number of absences, and graduate to the next level. Children are thus encouraged, by their parents and RAPID, to both attend and succeed in school. The dogs serve as incentives for families to educate their children, and also to continue hunting. Hunting dogs are an already commonly used method of increasing hunting effectiveness; several encampments that I visited had them. If families could hunt with dogs instead of children, enrollment may increase and absenteeism may reduce without threatening the family's ability to sustain itself through hunting. The dogs would have to be trained before being given to the families to ensure that they are quality hunters and will be useful to the family. I propose that RAPID pilot this program in the area around Grand Zambé where there are many more absences than the other schools. During the 2007-2008 school year, Grand Zambé contributed 102 of the 195 absences among all of the schools combined, with most of them attributed to hunting.⁶⁷ If parents in this region can be incentivized to keep their children consistently in school while simultaneously continuing to hunt, this would help to solve the problem of absenteeism in Grand Zambé, and, if successful, could potentially be applied to address the same problem in other encampments.

CONCLUSION

In conclusion, my research demonstrates that Bakola-Bagyeli face many challenges today, including limited access to public services, a diminishing forest habitat upon which they depend for most of their needs, and stigma and oppression from their Bantu neighbors. The all-encompassing benefit of education that I found throughout my research was "integration," a word that took on three primary interpretations: social, political, and economic. To fulfill each of these goals, education in a formal school setting is necessary. So-

cial integration entails literacy and language skills, learning about rights as Cameroonian citizens, and about pertinent issues such as HIV/AIDS. The second goal, political integration, requires achieving advocacy and direct political representation for the Bakola-Bagyeli community and enabling them to vocalize their interests on a political level. The final goal is economic integration, whereby the Bakola-Bagyeli alter their means of consumption by finding jobs. This would enable them to buy manufactured items that improve their quality of life, but also to abandon practices such as hunting and gathering. In certain cases, respondents listed this final interpretation as a means of “civilizing” the Bakola-Bagyeli by making their mode of subsistence more similar to that of the Bantu and Cameroon in general. This definition of “integration” is what renders schooling dangerous for the Bakola-Bagyeli.

To improve the schools, my research has led me to believe that Cameroon should build more and better-quality boarding schools, give materials to teachers and students, and incorporate aspects of Bakola-Bagyeli culture into the schools. I recommend that RAPID make efforts to train teachers, give more materials to teachers and students, and work towards the construction of additional boarding schools. Additionally, I recommend that they adopt two new programs. The first program would celebrate and share Bakola-Bagyeli culture that would make school more engaging, preserve traditions, and reduce stigma. The second program would reward parents who send their children to school with trained hunting dogs to make hunting more efficient.

Notes

1 UNESCO, “Dakar Framework for Action.”

2 “Cameroon Education Statistics,” Nation Master, <http://www.nationmaster.com/country/cm-cameroon/edu-education>.

3 “Cameroon Education Statistics.”

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- 4 UNESCO, "Strategies alternatives d'éducation pour les groupes defavorises."
- 5 UNESCO, "Strategies alternatives d'éducation pour les groupes defavorises."
- 6 UNESCO, "Strategies alternatives d'éducation pour les groupes defavorises."
- 7 Francis Owona Ndi, Animateur for RAPID. Formal Interview. 14 :00 8/4/2010
- 8 Felix Zeh, Focus Group with Bouedjila Antoine, Zeh Félix, and Kebeh Rodrigue.
- 9 Jeanne Silpen, mother at Ndtoua encampment. Formal interview. Translated by Ndi Ombwa Felix Devalois. 14:00 14/4/2010
- 10 Nicole Namende, Sumimbo encampement. Formal Interview. Translated by Ndi Ombwa Félix Devalois. 11 :30 13/4/2010
- 11 Félix Devalois Ombwa Ndi, Presentation on Pygmies in Cameroon.
- 12 Silpen.
- 13 Francis Owona Ndi.
- 14 UNESCO, "Strategies alternatives d'éducation pour les groupes defavorises."
- 15 Albert Angoh, father at Bandevouri encampment. Formal Interview. Partially translated by Felix Devalois Ombwa Ndi, 15 :00 14/4/2010.
- 16 Dr. Ahanda Sosthène, Chef De L'unit Socio-Economique, World Wildlife Foundation. Formal Interview. 13 :30, 9/4/2010.
- 17 Sosthène.
- 18 Sosthène.
- 19 Namende.
- 20 Eyebe Eyebe Andre Joseph, Deuxieme Adjoint Prefectoral de Kribi. Formal interview. 13:30 25/4/2010.
- 21 Formal Interview with Rodrigue Kebeh, President of Youth Council, Kribi. 15:00 10/4/2010.
- 22 Eyebe Eyebe, Andre Joseph.
- 23 Ndi, Owona Francis.
- 24 Silpen.
- 25 Silpen.
- 26 Sosthène.
- 27 Formal interview with Dr. Ahanda Sosthène, Chef De L'unit Socio-Economique, World Wildlife Foundation. 13 :30, 9/4/2010.
- 28 Formal interview with Veronique Folack Sijou, WOPA president. 13:30 12/4/2010.
- 29 Sosthène.
- 30 Eyebe Eyebe, Andre Joseph.
- 31 Eyebe Eyebe Andre Joseph. [observations in conversation]
- 32 Sosthène.
- 33 Sosthène.
- 34 Angoh.
- 35 Lucien Ngally. Focus Group with Ngally Lucien; Gervais Biyang; and Julienne Bika.
- 36 Pauline Massila. Focus Group with Pauline Massila; and Jean-Pierre Mangwele.
- 37 Antoine Bouedjila. Focus Group with Antoine Bouedjila, Félix Zeh, and Rodrigue Kebeh.
- 38 Nsim.
- 39 Angoh.
- 40 Silpen.
- 41 Ngally.
- 42 Emile Biyogmam, Director of Bissou-I School. Formal Interview. 11 :00 13/4/2010
- 43 Ngally.

- 44 Sosthène.
- 45 A. Koulaninga, "L'Education Chez les Pygmées de Centrafrique: These Pour le Doctorat de 3ème Cycle," (Paris: Université de Paris V. René Descartes, Sciences Humaines-Sorbonne, 1987).
- 46 Koulaninga, "L'Education Chez les Pygmées de Centrafrique."
- 47 Koulaninga, "L'Education Chez les Pygmées de Centrafrique."
- 48 Christine Yvette Ndjock. Focus Group with Christine Yvette Ndjock; Jean Eman; and Felicien Nzie.
- 49 Silpen.
- 50 Félix Devalois Omgwa Ndi. Rapport de Fin d'Année Scolaire des Activités de Suivi Des Enfants Bagyeli et Bakola de la Zone PPAV.
- 51 Sosthène.
- 52 Koulaninga, "L'Education Chez les Pygmées de Centrafrique."
- 53 Koulaninga, "L'Education Chez les Pygmées de Centrafrique."
- 54 Koulaninga, "L'Education Chez les Pygmées de Centrafrique."
- 55 Simon-Pierre Ondoa, enseignant and director of Ecole Publique Ndtoua, Formal Interview. 13:00 14/4/2010
- 56 Ondoa.
- 57 UNESCO, "Dakar Framework for Action."
- 58 UNESCO, "Dakar Framework for Action."
- 59 Samuel Samba, parent and teacher at Bipindi Internat. Formal Interview. 11:00 24/4/2010
- 60 David Foue, ex-student at Kourmintoum Encampement. Formal Interview. 11:00 27/4/2010
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WHEN TIME ISN'T MONEY: AN ANALYSIS OF EARLY VOTING AND CAMPAIGN SPENDING

Philip J. Zakahi

In an October 1, 2008, *Washington Post* piece titled, “Nov. 4 Isn’t the Only Election Day; Campaigns Adjust as Early Voting Rises,” Mary Pat Flaherty outlines the tactics major party presidential campaigns use to win over “electoral gold”—the “early voters” who take advantage of laws in thirty-six states allowing them to vote before Election Day. In some states, a majority of voters now cast their ballots before Election Day, and media reports like Flaherty’s suggest campaigns have adjusted to the increasingly large number of early voters. They use specially targeted ads and get-out-the-vote operations to reach voters who might vote early. Scholars, however, have yet to adjust their work to incorporate these changes in campaign practices. While there is a large body of literature exploring the changes in turnout and electoral demographics due to early voting, there is almost no research examining the role of early voting in campaign behavior. This appears particularly important for scholars examining the role of campaign expenditures on electoral outcomes. Existing work simply does not account for a world in which a large number of voters have cast their ballots before campaigns have spent 100 percent of their funds. This study begins to fill that gap by demonstrating that candidates do spend money earlier in states with early voting and offering evidence to suggest this early spending may not necessarily give candidates an electoral advantage. The first finding helps to validate the claims made by campaign experts and news media about the impact of early voting on campaigns. The second finding can guide the spending of campaigns in states where there is early voting and candidates may be tempted to spend their funds early. Together, they challenge the

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academic literature to account for the growing role of early voters.

AN UNEXPLORED TOPIC

This study stands at an intersection between two relatively large fields of research within the study of American electoral politics. The first field is the study of early, absentee, and mail-in voting. Authors in this field broadly ask the question, “What impact does early voting have?” They tend to focus on the questions: “Who votes early?” and “Does early voting increase turnout?” These questions may consider the influences of campaigns on early voting, but they do not tend to consider how early voting influences campaigns. They focus on the voter as the major unit of analysis, rather than the candidate and campaign. The second field is the study of candidate campaign expenditures. Authors in this field focus on the question: “Do campaign expenditures matter?” They too look at the practical question of whether incumbent spending matters, focusing on individual candidate campaigns as the major unit of analysis; however, they grapple with the significant methodological challenge posed by an incumbent’s ability to match the spending of a strong challenger. This phenomenon makes standard least squares regression nearly useless for comparing spending and election outcomes. Moreover, authors fail to give any credence to the large portion of voters who vote before Election Day. The following is an examination of the weaknesses in the current literature and a description of how this study seeks to address them.

Early Voting Literature

Most of the work conducted on early voting that examines whether the widespread availability of early voting increases turnout, as exemplified by Oliver and Stein and Garcia-Money’s major studies, suggests that early voting does indeed raise overall voting numbers.¹ The other large subsection of research on early voting focuses on the demographics of early voters, such as Stein’s research comparing the demographics of early voters to Election Day voters

in Texas.² While these studies consider the role of campaigns in mobilizing people to vote early, they fail to consider the reverse of the relationship: how early voting influences the campaigns. Gronke does suggest a course of research that includes the impact of early voting on campaigns, but he focuses on voters and ballot return instead of directly exploring the impact on campaigns.³ A study by Andrew Busch, the one exception to this framework, looks at a variety of data from surveys of campaigns and county clerks along with a narrow span of finance data from Colorado, but lacks methodological rigor.⁴

Campaign Expenditure Literature

There are two major categories of work dealing with campaign expenditures. There are theoretical “economic” models, as referred to by Jacobsen, and “empirical” studies, as defined by Stratman.⁵ Economic models of campaign expenditures like Welch, Prat, and Milyo’s studies theorize about the relationships between donors, candidates, and voters and seek to understand the impact that spending has on each.⁶ Overall, these economic models tend to lack interaction with the variance of actual campaigns, where motives and behaviors vary from person to person and campaign to campaign.

Almost all of the current empirical literature on campaign expenditures traces back to a study by Gary C. Jacobsen that makes two key points that have launched the two central debates in the field.⁷ The first is whether incumbent expenditures have significantly less impact on election outcomes than challenger expenditures. The second is whether traditional Ordinary Least Squares regression models accurately measure the relationship between expenditures and election outcomes.

Authors answer the first question in three ways. Green and Krasno argue that incumbent spending does have a significant

* This study focuses on campaign expenditures, ignoring other topics of money and politics. For a thorough review of the literature, see Thomas Stratmann, “Some Talk: Money in Politics. A (Partial) Review of the Literature,” *Public Choice, Perspectives on the Post-9/11 World* (July, 2005), <http://www.jstor.org/stable/30026707>.

positive impact on vote share and election outcomes.⁸ Coates, who agrees with Jacobsen,⁹ argues that incumbent spending has no positive impact on election outcomes and may even have a negative impact. Finally, Levitt finds that both challenger and incumbent spending have only a small influence on election outcomes.¹⁰ This study builds on this research and hopes to present another case in this ongoing debate by isolating votes cast before Election Day and the spending that could have influenced those votes.

The other major distinction in the field is methodological. Studies vary in how they attempt to compensate for the effects of an incumbent's ability to spend money when faced with a strong challenger. Many studies, like Jacobsen's, Green and Krasno's, and Coates's focus on statistical means to control for these issues.¹¹ These studies tend to make little headway and, as Gerber points out, the "approaches vary widely."¹² Levitt, Gerber, and Green and Panagopoulos have tried structuring the study itself to isolate the expenditure variable.¹³ Their attempts, however, look only at a specific scenario or reference an anecdotal number of cases. Kenny and McBurnett offer another approach that uses a lagged measure of campaign income to control for the impact of time, but their study lacks any sense of actual campaign expenditure patterns.¹⁴ They assume expenditures occur when campaigns receive donations, without regard for other factors. This study offers an alternative approach for dealing with the incumbent's ability to raise and spend in reaction to a strong challenger effort, using the existence of early voting to isolate the impact of campaign spending on vote share. This extra variable allows us to return to the simple model offered by Jacobsen, instead of relying on the more complex and less realistic statistical manipulation of other studies.

TWO QUESTIONS AND HYPOTHETICALLY STRAIGHT FORWARD ANSWERS

This study focuses on campaign expenditures as they relate to early voting, asking whether early voting influences campaigns to spend their funds earlier and whether spend-

ing campaign funds before early voting begins positively impacts election outcomes. This allows us to control for challenger strength and an incumbent's tendency to spend more money when vulnerable by using the proportion of funds spent as opposed to the total amount. Thus, we can control for variables previously unaccounted for in expenditure studies without significantly limiting the number of cases to examine. This leaves two interesting avenues to explore. First, are candidates in states that allow the general population to vote early more likely to spend money earlier than candidates where there is not a significant portion of the population voting early? Secondly, are candidates who spend money early in states where early voting occurs more likely to win a large portion of the vote than candidates who do not?

There are two relatively straightforward hypotheses. First, in comparing U.S. House campaigns, candidates in states where a large portion of the population votes before Election Day will spend their funds earlier than those in states without a large proportion of early voters. Second, in comparing U.S. House campaigns in states with early voting, candidates who spend their funds earlier will win more votes than those who spend their funds later.

A New Dataset, a New Model, and an Old Model

The first half of this study focuses on the operating expenditures of the 2008 major party candidates from contested House races where there was one candidate from the Democratic Party and one candidate from the Republican Party—224 races in all.* Although only using House races limits the study's broader applicability, House races are selected to ensure a large sample size and because candidates are required to report each of their expenditures to the Federal Election Commission (FEC). Thanks to significant increases in data compiled by *Congressional Quarterly* from 2008,

* In Minnesota the Democratic Farmer Labor Party will be used. Louisiana will be excluded because of their "Jungle Primary" system.

the information from FEC electronic filings, which is necessary to build models based on a campaign's daily expenditure levels, is readily available online. Let us consider the following OLS model:

$$SD \sim \beta_0 + \beta_1E + \beta_3I + \beta_4SP + \beta_5P \quad (1)$$

where the model is calculated three times with the dependent variable, 'SD', equal to the number of days from Election Day at which a candidate has spent 50, 75, and 90 percent of his or her total expenditures as taken from candidate expenditure reports to the FEC. The predictor variable 'E' is coded as one in states with general population early voting and zero in states without general population early voting. The first date of early voting is considered the day after no-excuse, absentee, or mail-in voting ballots are available or the first date of general population early voting. For the purposes of this study, excuse-required absentee voting is not considered early voting. Three basic control variables are included in the model. 'I' assesses incumbency and is coded as zero for challengers and one for incumbents. Relative overall spending as reported to the FEC is labeled 'SP'. It is calculated as the candidate's total spending divided by the opponent's total spending and used to control for the relative amount of funds available and the relative strength of the candidates. Finally, 'P' represents the candidate's party and is coded as zero for Republicans and one for Democrats.

The second half of the study focuses on challenger vote margins and uses 2008 contested House races where there was one candidate from the Democratic Party and one candidate from the Republican Party. Borrowing from Jacobsen's 1978 study, it looks only at the challengers in these races. The study adapts Jacobsen's OLS model, adding a series of terms to account for early voting and early spending. This creates two curvilinear OLS models; the first model accounts for the timing of early voting and the second the percentage of the electorate voting early.

$$CV \sim \beta_0 + \beta_1CE + \beta_2IE + \beta_3P + \beta_4PS + \beta_5SD + \beta_6ED + \beta_7(SD*ED) \quad (2)$$

$$CV \sim \beta_0 + \beta_1CE + \beta_2IE + \beta_3P + \beta_4PS + \beta_5SD + \beta_6EV + \beta_8(SD*EV) \quad (3)$$

Variable Name	Abbrev.	Description
Spending Days	SD	The number of days from Election day at which a candidate has spent 50, 75, or 90 percent of his or her total expenditures
Early Voting	E	Whether or not a given state as no-excuse early voting
Incumbency	I	Whether the candidate is an incumbent or a challenger
Spending	SP	A candidate's total spending divided by his or her opponents total spending
Party	P	A candidates party
Challenger Vote	CV	The challenger's share of the total vote in the election
Challenger Expenditures	CE	The total expenditures made by the challenger over the course of the race
Incumbent Expenditures	IE	The total expenditures made by the incumbent over the course of the race
Party Strength	PS	A measure of party strength determined by the result of the 2004 presidential election in the district
Early Start Day	ED	The number of days from Election Day at which early voting begins
Early Voting Volume	EV	The proportion of the total electorate casting their ballots before election day

The dependent variable 'CV' is equal to challenger vote share as reported by state election officials.* The major predictor variable 'SD' is equal to the difference between the number of days from Election Day at which a challenger has spent 50, 75, and 90 percent of their total expenditures and the number of days from Election Day at which the incumbent has spent the same amount. The predictors 'ED' and 'EV' are equal to the first possible date to vote early in a given state and the proportion of the population voting early, respectively. The interaction terms are combinations of 'SD', 'ED', and 'EV'. The control variables 'CE', 'IE', 'P', and 'PS' are taken from Jacobsen's 1978 model and refer to challenger expenditures, incumbent expenditures, challenger party, and party strength. The first two are taken from the FEC, while party is taken from state election officials and coded as zero for Republican and one for Democrat. Party strength will be equal to the 2004 presidential vote share in the district as reported by Congressional Quarterly.†

* Milyo argues this measure should be dropped in favor of a binary variable indicating whether the race was won or lost. This study, however, looks at the proportion of early spending to total spending as opposed to the difference between challenger and incumbent spending. This makes winning irrelevant to the study.

† Jacobsen used previous congressional results to calculate party strength.

Data Collection

While most of the data was collected directly from the sources listed, data for the 'SD' variable had to be compiled by first downloading the individual expenditure reports from every candidate under consideration, made available through *Congressional Quarterly's* "Money Line."¹⁵ These are newly available in manageable electronic format and include a record for each expenditure made by a candidate and reported to the FEC. These records include a date that was used to find the spending for each day, which was divided by the total spending to find the percentage of total spending conducted on any given day. By adding together these days in order, the aggregated percentage of spending conducted by a given day was determined. The date at which point 50, 75, and 90 percent of expenditures were made was then subtracted from Election Day.

RESULTS

Early Voting has Clear Impact on Campaign Expenditure Timing

This section analyzes the output of the models that explore how early voting impacts the timing of campaign expenditures. Candidates running in states with early voting spend their funds significantly earlier than candidates running in states without early voting. This holds true throughout the campaign at all three points tested. The volume or timing of this early voting does not significantly change the timing of spending. The mere possibility of people voting early is what is driving campaigns to spend their funds in advance.

Model (1) was run three times, where the dependent variable 'SD' (spending days) is equal to the number of days from the election at which an observed candidate spent 50, 75, or 90 percent of his or her total operating expenditures for the campaign. These results indicate that in states where

general population early voting occurs there is a tendency for campaigns to spend their funds earlier. Furthermore, while the significance of other variables fluctuates as we shift the dependent variable from 50 to 75 to 90 percent of total spending, only the presence of early voting has a significant impact at all three points. Despite this strong relationship, however, neither of the other two measures of early voting—timing ‘ED’ and percentage of people voting early ‘EV’—has a significant impact on the model. Additionally, early voting has limited predictive power for determining the timing of expenditures. Though significant, early voting predicts only about 10 percent of variability in the dependent variable. Some other factor or simply the random influence of the sheer number of people involved accounts for the rest.

First Half of Expenditures Made Much Earlier in Early Vote States

In the first test considering the relationship between early voting and campaign spending, the dependent variable, ‘SD’, is the number of days from the election at which a candidate has spent 50 percent of his or her overall campaign operating expenditures. For most candidates, this point comes early in the campaign. The intercept places it about two months out from the election. Three of the variables, ‘E’, ‘I’, and ‘SP’, all return significant results with *p* values less than .001, .05, and .001, respectively. The strong impact of early voting here—candidates in early voting states hit this point nearly twenty-four days earlier than candidates in non-early voting states—is of particular importance to this study, and shows a strong correlation with early voting and expenditure timing. The other two significant variables here, incumbency and spending proportion, are not surprising.

Table 1. Fifty Percent of Expenditures Vs. Early Voting

Variable	Estimate	Standard Error	T Value	P Value
Intercept	60.123	7.087	8.484	<.001***
Early Voting	23.591	6.695	3.524	<.001***
Incumbency	16.577	6.450	2.570	.011*
Party	3.4073	6.2080	.549	.583
Spending	.6375	.1107	5.757	<.001***

$R^2 = .137$ $F=16.72$. 422 degrees of freedom

* $p<.05$, ** $p<.01$, *** $p<.001$

Incumbents have likely been in the race for much longer than their challengers, and candidates with an advantage in fundraising are likely to spend money to gain that advantage. Overall, this model has a relatively weak predictive value, an issue we will address at the end of this chapter.

Early Vote Candidates Also Reach Three Quarters Mark Faster

In the second test, the dependent variable, 'SD', was moved forward and calculated as the number of days from the election at which a candidate had spent 75 percent of his or her overall operating expenses for the campaign. The intercept here suggests that, holding other variables constant, this occurs for most candidates just under a month away from the campaign, or about twenty-three days from the election.

At this point, most of the big expenditures—TV ad buys, polling, and mailings—have been paid for. The relative impact of early voting on a candidate when he or she reaches this mark actually appears to increase. Candidates in early voting states reach this mark about sixteen days before candidates in states without early voting, compared to the twenty-three days out estimated overall. This is proportionally larger than the twenty-four days out of sixty overall seen in the 50 percent test. This model also shows less im-

pact from other variables. Only the spending advantage variable is significant, and challengers appear to have caught up with the spending of incumbents by this time.

Table 2. Seventy Percent of Expenditures Vs. Early Voting

Variable	Estimate	Standard Error	T Value	P Value
Intercept	22.779	3.751	6.072	<.001***
Early Voting	16.312	3.544	4.603	<.001***
Incumbency	-1.886	3.414	-.522	.581
Party	3.4076	3.286	1.037	.300
Spending	.149	.058	2.534	.012*

$R^2 = .069$ $F=7.56$ on 422 degrees of freedom

* $p<.05$, ** $p<.01$, *** $p<.001$

Early Vote Relationship Remains Strong to End of Campaign

In the final test, the dependent variable, 'SD,' is calculated as the days from Election Day at which the observed candidate has spent 90 percent of his or her operating expenses. For most campaigns, this point is reached right before, or sometimes after, Election Day. As the model shows, the intercept here is just under eleven days from Election Day. As was the case with the other two models, the presence of early voting is a significant factor in determining when candidates reach this point in their spending, with $p < .001$. Candidates in states with early voting spent 90 percent of their funds more than a week earlier than those in states without early voting. Interestingly, as candidates reach the end of their available funds, the significance of overall spending advantage seen in the previous two models falls away. Additionally, incumbents, who spent the first half of their funds much faster than challengers, slowed down their spending significantly and actually reached this point about six days after challengers.

Table 3. Ninety Percent of Expenditures Vs. Early Voting

Variable	Estimate	Standard Error	T Value	P Value
Intercept	10.779	2.356	4.574	<.001***
Early Voting	7.982	2.225	3.587	<.001***
Incumbency	-6.503	2.144	-3.033	.003**
Party	-.886	2.064	-.429	.668
Spending	.013	.037	.354	.723

$R^2 = .0494$ $F=5.481$ on 422 degrees of freedom

* $p<.05$, ** $p<.01$, *** $p<.001$

Strong Relationship Does Not Extend to Other Measures of Early Voting

The final important finding from these models is the lack of importance of variables measuring either the number of days from the election at which early voting begins or the percentage of the electorate voting early. When added to the model, neither of these variables has a significant impact on either the dependent variable or the model as a whole. This suggests that merely the possibility of voters going to the polls before Election Day forces campaigns to consider moving their spending earlier, even in places where this voting does not occur particularly early or in particularly large numbers.

Model Does Have Significant Limitations

Finally, it is important to consider the significant limitations of these models. All three iterations of the model had relatively low predictive value, explaining about 13, 7, and 5 percent of the variability in the dependent variable, respectively. There is clearly something this model does not, or sim-

ply cannot, consider. There could be an unknown variable causing this effect, but it could also be the result of relatively complex and immeasurable randomness. The large number of different people, circumstances, and situations surrounding each campaign could cause this randomness. There is an immeasurable number of variables that could cause variance in the timing of expenditures that have yet to be examined by campaign scholars. These vary from the speed at which candidates raise money, to the personal payment preferences of individual campaign consultants, to the timing of important campaign events or debates. In either case, our results hold true. The presence of early voting has a clear impact on the timing of expenditures that would be extremely different to confound with another lurking variable, and no other variable we tested has clear significance.

Despite Widespread Early Spending in Early Vote States, No Evidence to Suggest Electoral Advantage

Despite data showing that campaigns do spend money earlier in states with early voting, in the six tests conducted here, there is no evidence to suggest that spending money early in conjunction with early voting actually improves candidate performance. This could be caused by early voters who are not persuadable, or it could be that we lack sufficient data or a sufficiently thorough model. There is certainly a case to be made that early spending is so widespread that there are only a handful of cases in 2008 where one candidate spent early while the other did not. Further research exploring early voting—possibly focusing on races where one candidate spent early and the other did not—could help verify this result. At face value, however, these results call into question the decision of so many candidates to spend in advance of early voting periods. The results also offer some circumstantial evidence to support arguments that candidate spending has little to no impact on elections overall. Due

to the model's construction, we cannot rule out that, on the whole, campaign spending is insignificant to outcomes, but we can conclude that early spending is.

The second set of models explored the electoral impact of early voting and early spending. Model (2) compared challenger vote share to campaign expenditure timing and the timing of early voting in a given state. The third model also compared challenger vote share to campaign expenditure timing, but replaced the timing of early voting with the volume of registrants voting early as a percentage of total voters. Expenditure timing was calculated as the number of days between when the observed challenger had spent a certain percentage of their expenditures and when the observed incumbent had spent that same amount. Each model was tested three times with this percentage calculated to 50, 75, and 90 percent of total expenditures. Both of these models used expenditure and party strength variables from Jacobson's 1978 study as controls.

Number of Days to Vote Early and Early Expenditures Show No Electoral Advantage

Model(2) $CV \sim CE + SD + SDED + ED + IE + P + PS$ was run three times with the main explanatory variables 'SD' (Spending Days) calculated as the number of days between when a challenger as well as the incumbent spent 50, 75, and 90 percent of their respective funds. The variable 'SDED' was also calculated three times as 'SD' multiplied by the number of days before Election Day at which general population early or absentee voting begins (zero for states without early voting).

In all three tests, the primary test variable "Spending Day Times Early Day", failed to show any significance, as did the "Spending Day" variable. The control variables taken from Jacobson's model all consistently showed significant findings, as expected given previous research using these variables. Interestingly, the 'ED'

Table 4. Vote Share vs. Fifty Percent of Expenditures, Vote Day

Variable	Estimate	Standard Error	T Value	P Value
Intercept	9.59E-02	2.25E-02	4.254	<.001***
Challenger Spending	1.78E-08	4.65E-09	3.815	<.001***
Spending Days	-1.60E-05	5.14E-05	-0.311	0.756
Spending Days	-3.69E-07	2.57E-06	-0.144	0.886
Early Days	-7.16E-04	2.76E-04	-2.59	0.01*
Incumbent Spending	1.47E-08	5.40E-09	2.724	0.007**
Party	8.42E-02	7.95E-03	10.597	<.001***
Party Strength	5.02E-01	4.77E-02	10.509	<.001***

R² = .651 F=57.27. 215 degrees of freedom

* p<.05, **p<.01, ***p<.001

Table 5. Vote Share vs. Seventy-Five Percent of Expenditures, Vote Day

Variable	Estimate	Standard Error	T Value	P Value
Intercept	9.19E-02	2.01E-02	4.58E+00	<.001***
Challenger Spending	1.78E-08	4.61E-09	3.855	<.001***
Spending Days	-4.49E-05	7.23E-05	-0.621	0.535
Spending Days	-4.73E-06	4.25E-06	-1.113	0.267
Early Days	-6.95E-04	2.60E-04	-2.676	0.008**
Incumbent Spending	1.51E-08	5.35E-09	2.829	0.005**
Party	8.54E-02	7.68E-03	11.117	<.001***
Party Strength	5.08E-01	4.45E-02	11.419	<.001***

R² = .656 F=58.58. 215 degrees of freedom

* p<.05, **p<.01, ***p<.001

Table 6. Vote Share vs. Ninety Percent of Expenditures, Vote Day

Variable	Estimate	Standard Error	T Value	P Value
Intercept	1.06E-01	1.94E-02	5.50E+00	<.001***
Challenger Spending	1.73E-08	4.61E-09	3.76E+00	<.001***
Spending Days	-7.99E-05	9.86E-05	-8.11E-01	0.418
Spending Days Early Days	-5.67E-06	5.98E-06	-9.49E-01	0.343
Early Days	-6.60E-04	2.61E-04	-2.53E+00	0.012*
Incumbent Spending	1.46E-08	5.34E-09	2.73E+00	0.007**
Party	8.17E-02	7.61E-03	1.07E+01	<.001***
Party Strength	4.83E-01	4.38E-02	1.10E+01	<.001***

$R^2 = .656$ $F=58.56$. 215 degrees of freedom

* $p<.05$, ** $p<.01$, *** $p<.001$

variable, for which there is not previous research, showed a significant negative impact on challenger vote share, suggesting that early voting in particular may actually hinder a challenger's ability to win. This is not particularly surprising; it takes time for a candidate to gain standing and name recognition as well as raise and spend money. A challenger who has less time as a result of an early voting date is, in fact, put at a disadvantage against an incumbent who likely had a head start.

Early Expenditures and Early Voting Volume Show No Impact

Model (3) $CV \sim CE + SD + SDEV + EV + IE + P + PS$, was also run three times, according to the same methodology as Model (2). In this model, the variable 'SDEV' was calculated as 'SD' multiplied by the percentage of the electorate that voted before Election Day (zero for states without early voting).

Again, in all three tests, the primary test variable 'SDEV' failed to show any significance, as did the 'SD' variable, while the control variables taken from Jacobsen's model again consistently

showed significant findings. Unlike the lone ‘ED’ variable from the previous model, the lone ‘EV’ variable did not have a significant negative impact on challenger vote share. This suggests that voting done particularly early may disadvantage challengers who may not have time to raise money, run ads, or make themselves known. Simply having a large portion of the population voting early does not have that same effect. In fact, one might hypothesize that larger populations voting early could actually mitigate the effects of the ‘ED’ variable by forcing challengers to start their campaigns early, but that’s a question for another study

Table 7. Vote Share vs. Fifty Percent of Expenditures, Vote Volume

Variable	Estimate	Standard Error	T Value	P Value
Intercept	8.80E-02	2.31E-02	3.81E+00	<.001***
Challenger Spending	1.80E-08	4.73E-09	3.82E+00	<.001***
Spending Days	-2.36E-05	4.97E-05	-4.76E-01	0.634
Spending Days Early Volume	-2.84E-05	1.80E-04	-1.58E-01	0.875
Early Volume	-1.51E-02	1.92E-02	-7.85E-01	0.433
Incumbent Spending	1.44E-08	5.48E-09	2.62E+00	0.009**
Party	8.72E-02	8.01E-03	1.09E+01	<.001***
Party Strength	4.96E-01	4.83E-02	1.03E+01	<.001***

R² = .640 F=54.64. 215 degrees of freedom

* p<.05, **p<.01, ***p<.001

Table 8. Vote Share vs. Seventy-Five Percent of Expenditures, Vote Volume

Variable	Estimate	Standard Error	T Value	P Value
Intercept	8.42E-02	2.08E-02	4.05E+00	<.001***
Challenger Spending	1.78E-08	4.68E-09	3.80E+00	<.001***
Spending Days	-6.41E-05	7.02E-05	-9.14E-01	0.362
Spending Days	-4.10E-04	3.89E-04	-1.05E+00	0.293
Early Volume Early Volume	-1.39E-02	1.79E-02	-7.76E-01	0.438
Incumbent Spending	1.53E-08	5.48E-09	2.79E+00	0.006**
Party	8.80E-02	7.77E-03	1.13E+01	<.001***
Party Strength	5.02E-01	4.54E-02	1.11E+01	<.001***

R² = .646 F=55.98. 215 degrees of freedom

* p<.05, **p<.01, ***p<.001

Table 9. Vote Share vs. Ninety Percent of Expenditures, Vote Volume

Variable	Estimate	Standard Error	T Value	P Value
Intercept	1.00E-01	2.00E-02	5.01E+00	<.001***
Challenger Spending	1.73E-08	4.70E-09	3.68E+00	<.001***
Spending Days	-1.09E-04	9.72E-05	-1.12E+00	0.262
Spending Days	-3.52E-04	5.41E-04	-6.51E-01	0.515
Early Volume Early Volume	-1.32E-02	1.78E-02	-7.44E-01	0.457
Incumbent Spending	1.46E-08	5.46E-09	2.67E+00	0.008**
Party	8.40E-02	7.79E-03	1.08E+01	<.001***
Party Strength	4.75E-01	4.45E-02	1.07E+01	<.001***

R² = .644 F=55.75. 215 degrees of freedom

* p<.05, **p<.01, ***p<.001

CONCLUSION

This study begins to fill a significant gap in the literature left by the exclusion of early voting from research on campaign expenditures and the study of campaigns at large. By no means should this be seen as an exhaustive attempt to do so. The study is limited, looking only at a single election cycle and only at U.S. House races, but it is an important first step. Early voting plays a major role in modern campaigns on the federal, state, and local levels, but the process has been segregated in the literature into its own sub-field. An adjustment must be made across the field to incorporate early voting into dozens of studies in every aspect of research into campaigns.

Rather than a comprehensive correction of this problem, this study should be seen as an attempt to expose the gap and challenge the field to fill it. The study demonstrates the significance of early voting in U.S. elections and the need to incorporate it into all lines of study. Specifically, in the findings of the first model, we see the real impact early voting has on the conduct of campaigns. Campaigns in early voting states are spending their money weeks ahead of those in states without early voting—something every avenue of research into campaigns needs to consider. This is almost certainly not a phenomenon reserved to U.S. House races and needs to be studied across the political landscape. What is more, the use of a staggered voting procedure provides a wealth of variables scholars can use to better understand voting behavior itself. The literature needs to incorporate this shift in voting patterns into every aspect of campaign research.

This study also holds real world applications, encouraging candidates and campaign strategists to reconsider their previous answers to the difficult question of when to spend money during a campaign. The findings call into question the decision of so many campaigns to sink valuable cam-

paign funds into ad buys and “get out the vote” programs well in advance of Election Day that which are aimed solely at targeting and turning out early voters. Further research into this question is necessary to conclude decisively that early spending is a waste of money, but the findings of Models (2) and (3) suggest that the spending is ineffective. At the least, they raise the distinct possibility that spending money in advance of early voting—often seen as a common sense practice—is actually not.

Finally, the findings of these models question the impact of campaign spending at all. This study demonstrates the potential for early voting to be used as a tool for delving more deeply into the relationship between campaign spending and candidate success. Using a proportional measure of campaign expenditures, we are able to control for lurking variables previously unaccounted for in studies of a large size and rigor. The technique used in this study can help to shine light on the hotly debated question of whether or not incumbent expenditures change outcomes and offer a method for analyzing campaign expenditure effects in the future.

Notes

1 J. Eric Oliver, “The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout,” *American Journal of Political Science*, Vol. 40, No. 2 (May, 1996), <http://www.jstor.org/stable/2111634>; Robert M. Stein and Patricia A. Garcia-Monet, “Voting Early But Not Often. *Social Science Quarterly*,” Vol 78, No. 3 (September 1997).

2 Robert M. Stein, “Introduction: Early Voting,” *The Public Opinion Quarterly*, Vol. 62, No. 1 (Spring, 1998), <http://www.jstor.org/stable/2749718>.

3 Paul Gronke, “Early Voting Reforms and American Elections,” *William and Mary Bill of Rights Journal* Vol. 17 (2008), http://electionlawissues.org/symposium2008/Paul%20Gronke%20-%20Early%20Voting%20Reforms%20and%20American%20Elections_withAppendix.pdf.

4 Andrew Busch, “Campaign effects of early voting,” *Southeastern Political Review* Vol. 26, No 3 (September 1998).

5 Gary Jacobsen, “The Effects of Campaign Spending in Congressional Elections,” *The American Political Science Review* Vol 72, No. 2 (June 1978), <http://www.jstor.org/stable/1954105>; Thomas Stratmann, “Some Talk: Money in Politics. A (Partial) Review of the Literature *Public Choice* Perspectives on the Post-9/11 World,” (Jul, 2005), <http://www.jstor.org/stable/30026707>.

6 William P. Welch, “The Economics of Campaign Funds,” *Public Choice*, Vol. 20 (Winter, 1974), <http://jstor.org/stable/30022783>; Andrea Pratt, “Campaign Spending with

Office-Seeking Politicians, Rational Voters, and Multiple Lobbies," *Journal of Economic Theory* Vol 103 (2002); Jeffrey Milyo, "What Do Candidates Maximize (and Why Should Anyone Care)?" *Public Choice* Vol. 109, No. 1/2 (2001), <http://www.jstor.org/stable/30026479>.

7 Jacobsen, "The Effects of Campaign Spending."

8 Donald Philip Green and Johnathan S. Krasno, "Salvation for the Spendthrift Incumbent: Reestimating the Effects of Campaign Spending in House Elections," *American Journal of Political Science* Vol. 32, No. 4 (Nov. 1988), <http://www.jstor.org/stable/2111193>; Donald Philip Green and Johnathan Krasno, "Rebuttal to Jacobsen's 'New Evidence for Old Arguments,'" *American Journal of Political Science* Vol. 34, No. 2 (May 1990).

9 Dennis Coates, "Additional Incumbent Spending Really Can Harm (at Least Some) Incumbents: An Analysis of Vote Share Maximization," *Public Choice* Vol. 95 No. ½ (1998), <http://www.jstor.org/stable/30024361?origin=JSTOR-pdf>.

10 Steven D. Levitt, "Using Repeat Challengers to Estimate the Effect of Campaign Spending on Election Outcomes in the U.S. House," *The Journal of Political Economy* Vol. 102, No. 4 (Aug., 1994), <http://www.jstor.org/stable/2138764>.

11 Jacobsen, "The Effects of Campaign Spending"; Gary C. Jacobsen, "The Effects of Campaign Spending in House Elections: New Evidence for Old Arguments," *American Journal of Political Science* Vol. 34, No. 2 (May 1990), <http://www.jstor.org/stable/2111450>; Green, "Salvation for the Spendthrift Incumbent"; Green, "Rebuttal to Jacobsen's 'New Evidence for Old Arguments'"; Coates, "Additional Incumbent Spending."

12 Alan S. Gerber, "Does Campaign Spending Work?: Field Experiments Provide Evidence and Suggest New Theory," *American Behavioral Scientist* Vol. 47 (2004), <http://abs.sagepub.com/cgi/content/abstract/47/5/541>.

13 Levitt, "Using Repeat Challengers"; Gerber, "Does Campaign Spending Work?"; Donald Green and Costas Panagopoulos, "Field Experiments Testing the Impact of Radio Advertisements on Electoral Competition," *American Journal of Political Science* Vol. 52, No. 1 (January 2008).

14 Christopher Kenny and Michael McBurnett, "A Dynamic Model of the Effect of Campaign Spending on Congressional Vote Choice," *American Journal of Political Science* Vol. 36, No. 4 (Nov., 1992), <http://www.jstor.org/stable/2111354>.

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GONE ROGUE?: CHINA'S ASSERTIVENESS IN THE SOUTH CHINA SEA

Derek Pham

Despite China's efforts in the past decade to implement a "good neighbor" policy with surrounding states, in the past two years this foreign policy has been seemingly compromised by China's aggressive tactics in the contested South China Sea (SCS), including its imposition of unilateral fishing bans, arrests of foreign fishermen, and increased coastal patrols. China's supposed private declaration this past March to American officials that the South China Sea constituted a "core interest" appeared to affirm a newfound and unconventionally aggressive commitment to the question of sovereignty in the SCS.* This pattern of assertiveness was further apparent in China's vehement response to U.S. intervention in the dispute. Media reports attempting to interpret the change in posture concluded that there was still much uncertainty associated with China's ascendancy in the international system.†

Impassioned rhetoric might obscure the more interesting question at hand: why has China now chosen to assert its interests in the South China Sea through the use of aggressive tactics? For the past ten years, China had been remarkably successful in pur-

* For a comprehensive assessment and refutation of the "core interest" argument, see Michael Swaine's piece for the Carnegie Endowment, "China's Assertive Behavior, Part One: On Core Interests," *China Leadership Monitor* 34, Fall 2010. The paper argues that changes occurred in the strategic environment, and cites the "core interest" statement as perhaps the most notable example.

† Extensive media attention has been given to this perceived "new form" of Chinese assertiveness. For a select but diverse sample, see Vaudine England, "Why are South China Sea tensions rising?" *BBC News Asia-Pacific*, September 2, 2010; Peh Shing Huei, "Nations eye China's rise nervously," *The Straits Times*, September 30, 2010; Joshua Kurlantzick, "A Beijing backlash: China is starting to face consequences for its newly aggressive stance," *Newsweek*, October 4, 2010.

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suings a policy of “shelving disputes [and] joint development” with the other claimants. As Daniel Blumenthal of *Foreign Policy* writes: “The Chinese were supposed to be using their deep reservoirs of ‘soft power’ and practicing a highly skilled diplomacy at assuring all that China is rising peacefully. But over the past year, Beijing has been [clumsy].”¹ Other commentators noted that “China’s actions in the region have led to unease over what was perceived as its increasing assertiveness, and caused [questions over] its commitment to a peaceful rise. [China] took on a menacing visage. Its diplomacy seemed reactive rather than proactive.”² These comments underscored a change in the status quo which was highlighted at the July 2010 Association of Southeast Asian Nations (ASEAN) Regional Forum (ARF) meeting in Hanoi where the United States departed from its previous neutrality on sovereignty issues in the contested sea and declared a “national interest” in the sea and a “maritime commons,” challenging China’s claim to the entire SCS.³

The following analysis examines China’s changing stance on sovereignty and concludes that Chinese assertiveness in the South China Sea is in fact a natural consequence of an unfortunate intersection between growing Chinese naval capacity and other states’ misunderstanding of China’s strategic outlook. The combination of these factors resulted in a security dilemma, but China has been held solely responsible for the resulting crisis. Eager to confirm the reality of an “aggressor China,” media reports and other commentary have neglected to provide critical insights into China’s strategic behavior and the rationale behind its “assertiveness.” Instead, the tendency has been to ascribe China’s actions to the “maritime threat theory,” which claims that China’s naval forces are developing with the sole aim of “threaten[ing] U.S. security and interests” and must therefore be deterred.⁴

This analysis first examines two alternative explanations for China’s changed posture—resource politics and nationalism—and argues why both have inadequately addressed the tensions behind the recent situation. It then shows that although China’s strategic view of the SCS and its broader goals of naval development helped fuel the security dilemma, China was by no means the sole perpe-

trator of the breakdown in cooperation. It concludes by positing a function that may explain Chinese behavior in which, all other things being equal, enforcement or deterrence, credibly leveraged by growing naval capacity, is the response to provocation.

RESOURCE POLITICS, AGAIN

One argument explaining China's growing assertiveness in the SCS concerns resource politics, which posits China's need to meet energy demands as the primary driver behind the country's recent aggressive behavior. Ian Storey and Clive Schofield believe that China's "insatiable demand for energy is an important driver of the [recent dispute]"⁵ and Bruce Stokes has observed that "Chinese analysts have dubbed the South China Sea the new Persian Gulf, and Beijing wants to solidify its dominion over potential oil and natural-gas reserves there."⁶ China is attracted by the prospects of lessening its dependence on foreign imports of oil and gas, and as a result has acted abrasively in the SCS. As evidence of this notion, proponents have cited the growing role of the China National Offshore Oil Corporation (CNOOC) in sea exploration and joint development agreements. Despite the popularity of this viewpoint, the resource politics explanation has several shortcomings in the context of the recent dispute.

Beijing's interest in the sea as a source of oil is not recent news. In fact, Beijing has long persisted in claiming that oil and gas deposits exist in large quantities and has provided generous estimations of the resource potential of the sea.⁷ China estimates that 34.97 billion tons of petroleum reserves remain to be drilled, in addition to the 1,182 billion tons of oil and 8,000 billion cubic measures of gas already discovered.⁸ Though the U.S. Department of Energy has declared that "there is little evidence outside of Chinese claims to support the view that the region contains substantial oil resources,"⁹ China maintains that these reserves exist and has commenced several exploration projects with various foreign companies from other claimant states and the United States. In 2006, for example, CNOOC partnered with the American company Husky

International to conduct explorations in the Spratly Islands in the South China Sea and claimed that four to six trillion cubic feet of natural gas reserves existed near the archipelago.¹⁰

Furthermore, though China is a major oil consumer, it also uses coal, natural gas, hydroelectric, and nuclear power to meet its energy needs. Imported oil currently makes up only around 10 percent of China's overall energy usage,¹¹ and the ratio of petroleum in China's energy consumption structure is around 24 percent.¹² Coal, not oil, accounts for the majority of energy consumption at 71 percent.¹³ Roughly 85 percent of China's oil production capacity is located onshore, while only 15 percent is located offshore.¹⁴ Offshore oil may help to ease Chinese oil consumption demands, but it has yet to replace onshore production as the main source of crude oil production. As one Chinese scholar has suggested, "China, at least, is not focusing on the SCS for its future energy sources."¹⁵

If resource politics is the issue, what explains China's unusually cooperative behavior towards some of the claimant states in the period before relations deteriorated? Observers have noted that the escalation of tensions in the SCS has grown in tandem with increasing energy needs. But China is not alone in its hunger for resources; other claimants also view the sea as a resource prize. This view overlooks China's position on joint development, which has been for the most part cooperative. In the early 1980s, Deng Xiaoping called joint development "one of the...most important peaceful means for international dispute resolution."¹⁶ Joint development was first proposed by Chinese premier Li Peng in 1990 when he "called upon claimants to set aside sovereignty to enable joint development to proceed."¹⁷ The 2003 and 2005 joint development programs with the Philippines and Vietnam are two occasions when China promoted this strategy to rein in sovereignty contests and further enhance its image as a cooperative regional actor. Thus, if resource politics induced a change in China's posture, the argument must also explain why China has altered its stance concerning resource cooperation, despite accommodating and even initiating

joint development on several occasions in the past decade.*

NATIONALISM OVERUSED

China's assertiveness in the SCS has also been attributed to nationalism. Growing nationalistic sentiments in the party have placed pressure on the leadership to act assertively in order to re-inforce legitimacy and project the image of a capable China. Although this argument is often used retroactively to explain China's foreign policies, it offers little authoritative analysis of the origins of the current tensions. Blumenthal cites author Christopher Ford, who argues that China's bullying behavior in the South China Sea was a direct result of its "hardwired cultural conditioning"; Chinese leadership has been conditioned for "imperious behavior" and possesses "the mind of an empire."¹⁸ Ott backs these sentiments, claiming, "Powerful emotions are at work. China has become convinced that it is ready to replace the United States as the global power... the Chinese let their pride get out of control."¹⁹

Observers examining the increased tensions between China, the other claimants, and the United States have been *reactive* to China's actions in the SCS, interpreting China's assertiveness to be the result of a rising tide in public nationalism. Yet, while nationalism is inextricably linked to the escalation of tensions, it does not reflect China's motivations for assertiveness in the SCS. A useful case study is the 1995 Mischief Reef incident in the SCS, which at the time was a sore spot in Sino-Southeast Asian relations. China's actions during that conflict led its neighbors to believe that it harbored a nationalist ambition to re-establish hegemonic power in the region.²⁰ As Mark Valencia argued at the time, "China's actions in the South China Sea are the result of a rising tide of nationalism that seemed to be replacing socialism as the preferred societal

* This topic is beyond the scope of this paper. For an overview of some examples of Chinese cooperation over fisheries management and joint oil and gas development, see David Rosenberg, "Fisheries management in the South China Sea," 61-79, at 70-72; Zou Keyuan "Cooperative development of oil and gas resources in the South China Sea" 80-92, at 85-87; Li Mingjiang, "China's South China Sea dilemma: balancing sovereignty, development, and security," 140-54, at 148-51.

glue.”²¹ Likewise, Gerald Stegal stressed the point: “The Chinese regime copes with the internal consequences of reform by taking a tough stand on nationalist issues, hence Beijing’s active and vigorous pursuit of claims in the South China Sea.”²²

Both the 1995 Mischief Reef incident and the subsequent flare-up of the same crisis in 1997 were eventually defused. No direct linkages were made between rising nationalism and the reasons for China’s actions during that period; rather, nationalist rhetoric inflamed the debate *after* the crises came to light. In periods of controversy or high crisis, nationalistic sentiments were mobilized only to immediately evaporate when the crises subsided. However, it seems possible that nationalism is an effect rather than a cause of aggression, crippling its persuasiveness as an explanation. In authoritarian states like China, nationalism is a legitimating device. But in pursuit of legitimacy, did the regime “fan the fire” to stir up support for its actions in the SCS, or did nationalistic pressures force the regime to act aggressively in the SCS? By extension, why did the regime stir up support for such actions, or contrarily, why did nationalists need to pressure the regime to act? The causality is unclear. The nationalism argument ultimately fails to explain China’s behavior. As Stenseth has argued, “The regime may use nationalism to bolster legitimacy, which in turn can easily reflect back on the elite and force it to behave more aggressively than it would otherwise have done.”²³ The role of nationalism in igniting the SCS dispute is at best ambiguous, though it is clear that once the dispute garnered attention in Chinese and Western media, nationalism naturally reinforced the intractability of the sovereignty question and obscured its causes, as nationalist responses to tensions in the SCS might have come from either the public or the regime.

A FRAMEWORK

Given these unsatisfactory explanations, a more plausible reason is needed for China’s behavior in the past two years, which has been noticeably different from the previous

period of cautious optimism. From 2002 to 2008,^{*} China persisted with its strategy of joint development as the principle dispute resolution strategy. However, in the past two years, China has grown increasingly unsure of the sustainability of such a strategy. Analysis demonstrates that its assertive rhetoric, matched with tangibly aggressive actions in the disputed seas, were a response to a rapid change in the security environment brought on by the actions of the other claimants. A convergence of factors contributed to China's perception of a threat that, *inter alia*, included "arms modernization" in Southeast Asia, the internationalization of the dispute under Vietnam's ASEAN chairmanship, harassment of Chinese fishermen, and repeated violations of China's maritime laws. Through the framework of a security dilemma, these were legitimate reasons for China to respond, but only if its navy or maritime forces had the capacity to do so effectively and credibly.

Since the culmination of the dispute this past July at the ARF meeting, China has felt the ripple effect of its actions. Storey and Schofield have claimed that "China's behavior sets the tone of the dispute, and since 2007-2008, its behavior has become more assertive."²⁴ With the focus on China's reactive behavior, little attention has been given to China's strategic perspective on the sea and its connection to national security interests, the role of the People's Liberation Army Navy (PLAN) in preserving those interests, and the combination of these three elements in guiding and justifying China's actions in the SCS. These are important factors that must be examined in order to understand China's seemingly irrational actions. Although this discussion inevitably gives rise to a "battle of perspectives," it helps to inform the rationale behind China's actions.

* I use this time period for the purposes of this analysis, using the 2002 Declaration on the Conduct of States in the SCS as the starting point and the 2008 completion of Hainan naval base as the ending point of China's active pursuit of cooperation in the SCS. However, other analyses might note the period after the 1997 Asian financial crisis as the beginning of the positive shift in relations between China and Southeast Asia.

CHINESE PERSPECTIVES ON NAVAL POWER, NATIONAL SECURITY, AND THE SCS

China is a geopolitically vulnerable country that for much of its history has faced real and imagined threats from both land and sea. During the Cold War, efforts were made to modernize China's defenses, but naval development was delayed as a result of the government's emphasis on modernizing a land force capable of deterring continental threats.²⁵ The end of the Cold War brought changes to China's traditional threat environment. With the exception of India and Bhutan,²⁶ China resolved all outstanding land disputes along its terrestrial periphery.²⁷ Therefore, in the 1990s, China refocused its attention on the sea—an area that it had been unable to effectively control during the Cold War. A common strategic view took shape, which predicted that “challenges to China's territorial integrity and sovereignty [would] mostly come from the ocean, including the South China Sea.”²⁸ To hedge against these threats, China focused its efforts on naval modernization.

Even before the force's modernization in the 1990s, China maintained a fairly formidable maritime fleet relative to its neighbors. However, this force, mainly comprised of World War II-era Russian naval craft, was fairly inexpensive and expendable.²⁹ These weapons acquisitions were the products of naval developments begun earlier during the 1970s and 80s when China was attempting to modernize its amphibious forces to respond to contingencies that could arise during a China-Taiwan conflict.³⁰ Aside from Taiwan, the perception of coastal threats gave way to a strategy that linked China's security with its interests in the Yellow Sea, the East and South China Seas, and the island chains that served as a “perimeter” separating Chinese claims from Japan and Russia.

Accelerated naval modernization came only after the tense Taiwan Strait Crisis of 1995-1996.³¹ During that incident, China recognized that it did not have the naval capacity to deter the United States. The Strait Crisis thus set off a continuing effort to modernize China's navy, which has encompassed a broad range of

weapon acquisition programs, including anti-ship ballistic missiles (ASBMs), anti-ship cruise missiles (ASCMs), land-attack cruise missiles (LACMs), surface-to-air missiles, submarines, destroyers, patrol craft, and amphibious ships.³² Rapid naval modernization reflects the government's focus on maritime security, which has been given equal or greater priority compared to continental security.

China's rapid naval modernization program is undeniably the result of the navy's growing strategic importance. According to then-Director of the PLA's General Equipment Department, General Cao Gangchuan, "The [PLAN] shoulders the important mission of safeguarding the security of the territorial sea and is placed at the forefront of military [engagements]."³³ Former USN Naval Attaché to China Brad Kaplan agrees: "Such support by senior PLA leadership has resulted in the PLAN being allocated a higher proportion of the defense budget in recent years, allowing it to pursue force modernization aggressively."³⁴ The real strategic shift, however, came in a December 2006 senior navy officers' meeting where Chairman Hu Jintao declared China a maritime power and called on the PLAN to develop a powerful People's Navy that would "adapt to its historical mission during a new century and a new period."³⁵ The PLA newspaper *Jiefangjun Bao* published a piece which extolled China's status as a self-declared maritime power.³⁶ These views seem to corroborate the perception that PLAN's maritime mission had evolved from "static coastal defense" to "active offshore defense"³⁷ and that the enforcement of national interests relied on the accelerated development of a modern force capable of asserting China's interests in the "deep seas."³⁸

How does one make sense of China's aims regarding the rapid modernization of its maritime and naval capabilities? One common view holds that China's naval modernization is meant to challenge the American presence in the region and that the PLAN will continue to act as an anti-access force that could deter U.S. intervention in any potential dispute with Taiwan.³⁹ Although China may be enhancing its naval capacity to safeguard its territorial claims from other claimants and to ensure maritime rights against what

it sees as an overbearing U.S. presence near waters it claims as its own,^{*} these factors do not necessarily make China unreasonably aggressive. Realists would endorse China's attitude towards national security because Beijing's perception of threat, which often includes U.S. naval presence during tense periods, is important to its strategic calculations and greatly influences the pace of China's military modernization programs.

Scrutinizing its actions through a prism other than security, China's motivations for naval modernization are varied. Ralf Emmers has argued that "the Chinese military build-up in the South China Sea goes beyond avoiding, by force if necessary, any violations of its sovereign rights in the disputed areas. Other factors that drive the Chinese naval build-up include guaranteeing China's maritime security...economic prosperity and energy supplies."⁴⁰ In the Chinese strategic view, the sea has always been important for purposes beyond naval defense, even if it remains the most important consideration.[†] Increasingly, China needs the ability to respond to issues that threaten coastal security such as piracy, resource exploitation, and territorial claims. The navy aside, other maritime fleets like the coastguard and fisheries patrol[‡] help respond to emergencies and enforce China's maritime laws.

Naval modernization has its benign elements. A Congressional Research Service report found that China's pursuit of naval modernization serves a range of goals, including the ability to regulate foreign military activities in its 200-mile exclusive economic zone (EEZ), protect its sea lines of communication, and enhance

* See, for example, the view of an "aggressor" China (rising in tandem with growing naval capacity): Abraham Denmark, "China's Navy Gets its Act Together, and Aggressive," Center for New American Security, April 26, 2010.

† Mao Zedong in 1952 declared "we must build a powerful navy against aggression by imperialism."

‡ Bonnie Glaser. Personal Interview. Center for Strategic and International Studies, Washington, DC: October 21, 2010. For example, the South China Fishery Administration dispatches ships to "protect China's national maritime interests and safeguard Chinese fishing fleets' safety. [Other goals include] standardizing fishing activities, strengthen conservation efforts, and provide Chinese fishing fleets with rescue services." [Wang Tong and Youwei Suo, "To Fight Piracy and Protect Fishing Fleets, Spratly Islands Patrol Flotilla of Chinese Fishery Administration Left Sanya." Zhongguo Xinwen She, April 6, 2010].

its prestige on a global scale.⁴¹ Even the U.S. Department of Defense noted in their report to Congress that, apart from “challenging” the United States, the Chinese navy has demonstrated the capability to conduct limited deployments to support counter-piracy operations, and has acquired new classes of ships to support humanitarian and disaster relief missions.⁴²

Aside from such humanitarian missions, strategic calculations for force modernization also involve strategies to sustain China’s long-term role as a “maritime power.” The Defense Department report states that “in response to the 2004 articulation of the PLA’s ‘New Historic Missions,’ China’s senior military leaders began developing concepts for an expanded regional maritime strategy and presence ... PLA Navy Commander Wu Shengli called for a ‘powerful navy to protect fishing, resource development and strategic passageways for energy.’”⁴³ The report further notes that “many of [Wu Shengli’s] ideas echo the debates in the late 1980s and early 1990s over building PLA naval capabilities. However, the rise of Taiwan contingency planning as the dominant driver of PLA force modernization ... largely sidelined these discussions.”⁴⁴

These observations imply that concern over China’s naval modernization has generally focused on the “aggressiveness” of the modernization effort, but China’s naval development aims also include objectives unrelated to deterrence capacity against the United States in a dispute with Taiwan. For example, in their response to Ross’s assertion that China’s more aggressive naval development is connected to its decision to develop a “carrier-centered navy” with the wherewithal to challenge the U.S. Navy, Saunders and Glosny argue that the PLAN is “much more likely to develop a limited power-projection capability that increases China’s ability to defend regional interests in contingencies not involving the United States, to protect expanding overseas interests, to perform nontraditional missions, to conduct military diplomacy, to demonstrate international responsibility, and to increase China’s prestige.”⁴⁵ Their argument underscores the fact that though China is undeniably interested in balancing the American naval presence in the region, China is also developing its navy for many other purposes that do

not involve confronting the United States, and in areas that do not explicitly challenge the 7th Fleet of the U.S. Navy.

The South China Sea is uniquely important to China as a natural shield for security in the south. Stability in this region is critical for China's national security because an undisturbed periphery is a precondition for peaceful development.⁴⁶ Ever cognizant of the need to achieve this goal, Beijing clashes with the other claimants in order to increase its control over the "near seas."⁴⁷ The occupation status of the claimant countries illustrates the significance of control. Though China may be the strongest of the claimant states, it is Vietnam that occupies most of the land features in the SCS. This struggle for control has roots in the history of SCS tensions that characterized Sino-Southeast relations until 2002. China twenty years ago was in no position to enforce its claims to the sea. While it has been argued that China's show of military force during the 1974 and 1988 clashes with Vietnam over the Paracel and Spratly Islands in the SCS clearly indicated its enforcement ability, those cases reflect Chinese opportunism more than assertions of power. In 1974, capitalizing on the imminent collapse of South Vietnam and the unlikelihood of U.S. intervention, China seized the Paracel Islands from Vietnam. The brief naval clash was an "uncomplicated military maneuver that did not require deploying significant naval forces, which China did not then possess."⁴⁸ China acted because of low opportunity costs, and not necessarily the ability to project sustained naval power. The post-Cold War threat environment led China to enhance its navy's power projection capabilities, acquire new and advanced weapons systems, and modernize its South Sea Fleet (SSF).⁴⁹ Of the three fleets under the command of the PLAN, the SSF was the weakest in the 1970s, but it now rivals and perhaps surpasses the North and East Sea Fleets.⁵⁰

Chinese claims to the sea encompass four different perspectives, all equally valid in the Chinese legal sense, which inform China's rationale for assertiveness. First, China has always viewed the South China Sea, one of its "near seas," as "a region of core geostrategic interest and part of a great defensive perimeter established on land and at sea to protect China's major population and economic

centers along the coast.”⁵¹ But the nature of China’s claim over the waters, islands, shoals, and rocks found within the 1947 U-shaped territorial boundary has never been clarified,⁵² leading to several different and at times, politically convenient interpretations.

According to Peter Dutton, the U-shaped line may be interpreted as denoting China’s sovereign waters, and is subject to the government’s jurisdiction. If this were the case, the waters would be seen as China’s territorial seas. Under the 1982 UN Convention on the Law of the Sea (UNCLOS), this designation has several strategic implications for claimant states, the most important being that the term “territorial” gives China complete jurisdiction over those waters. As identified by Dutton, this view helped inform the passing of the 1992 Law of the PRC on the Territorial Sea and Contiguous Zone, which essentially claims all the island groups in the South China Sea and promotes the U-shape line as a “zone of sovereignty.”⁵³ Thus, this law gives Beijing the right to use force to protect the islands.*

Another interpretation of the 1947 line claims the sea as historic waters, premising China’s claim on historic rights. Chinese law incorporated historic rights in the 1998 Law of the PRC on the Exclusive Economic Zone and Continental Shelf, and has used historic rights to argue for “administrative responsibilities” over the islands.⁵⁴ This argument has helped justify Chinese claims to broad jurisdictional authority over the islands in the SCS, and in combination with China’s “sovereign waters” perspective, it explains China’s rationale “for increased activities in the sea by the vessels of China’s Maritime Surveillance Service, Fisheries Service, Coast Guard, and others.”⁵⁵

A third view argues that the line simply claims the land features† that are found within those waters. However, this implies that UNCLOS allows coastal states to claim sovereignty over the land features and the adjacent waters surrounding those land features. Since China claims all of the land features within the U-

* See Article 14 of the Law, which states that the PRC has the right to exercise “hot pursuit” when foreign vessels enters the PRC’s waters.

† Land features, *inter alia*, include islands, rocks, sand bars, and coral heads.

shaped line, it has also argued for its right to the entire sea surrounding those features.* This perspective contributed to China's decision to pass the 1992 and 1998 laws, which first claimed island groups in the SCS and then claim the accompanying territorial seas, exclusive economic zones, and continental shelf associated with those land features.⁵⁶

One final perspective contends that China's assertiveness about its claims in the waters of its near seas has grown in tandem with the size of its navy and maritime services. Therefore, "the U-shaped line reflects China's long-standing maritime security interests in the South China Sea, and they should have legal protection."⁵⁷ The view suggests that China's maritime security interests are closely linked with the boundaries of the U-shaped line, and threats posed by other claimants to these security interests would result in a show of force, contingent on a capable maritime force credibly asserting control. The four perspectives provide critical insights into the Chinese strategic and legal perspective on the disputed sea, and explain in some detail how China's "law-based" view of the sea has led it to promulgate laws that guide and justify its aggressive actions in situations where those laws are violated.

The role of the Chinese navy in assuring China's national security and defining the threat environment helps to elucidate China's understanding of its claims to the disputed sea, and its motivations in forcefully asserting its claim. Naval development, prioritized under the national security strategy, has affected China's position in the South China Sea. It makes China more confident in its ability to deter other claimants from violating Chinese maritime laws concerning the disputed sea. Over the past two years, China's naval and maritime forces have played a role in this dispute by carrying out activities such as arrests, patrols, and fines, which align with the national interest. But with force projection secured, what of the catalysts that moved China to respond to other SCS

* This interpretation is contrary to existing international definitions of what constitutes an island, but for the purposes of this paper, I examine the Chinese view of these claims.

claimants? The following analysis turns to the roles of those states whom the Chinese have dubbed the “true provocateurs” in the dispute.*

PROVOCATEUR OR VICTIM? – THE SECURITY DILEMMA IN SOUTHEAST ASIA

Emmers argued, “Beijing is not solely responsible for the rise in tension in the South China Sea.”⁵⁸ Likewise, Storey and Schofield have admitted that “the activities of other claimants have led China to pursue a more hard-line policy [in the SCS].”⁵⁹ Having examined the Chinese strategic view of the SCS and its relationship to broader goals in naval development, this analysis now turns to the more controversial question behind the dispute: what caused China to act in a manner that elicited worldwide criticism? Underlying this analysis is the classic security dilemma, in which disputant states acting rationally in their own interests misperceive each other’s intentions and collectively produce a suboptimal outcome.

Chinese sources point to several actions undertaken by the Southeast Asian claimants that intensified the security dilemma to the point of “forcing” China’s hand. President of the National Institute for South China Sea Studies Wu Shicun has claimed, “The direct cause to the Nansha [South China Sea] dispute is the encroachment of the four countries Vietnam, the Philippines, Malaysia, and Brunei on the rights and interests of China’s Nansha Sea areas. [C]laimant countries concerned in the Nansha dispute and seeking to capture sea areas by ‘force’ have triggered an arms race.”⁶⁰ What were these “encroachments”?

As even some Western scholars have suggested, the first “provocation” to trigger an “aggressive” response from China resulted from tensions over the Philippines’ 2009 Baselines Law. However,

* Many online commentators have argued that the provocations have become unbearable to the extent that China’s problem is no longer Taiwan, but Vietnam. Though questionable in their objectivity, they offer a glimpse into what some Chinese believe regarding the present dispute. See “Courageous attack: China’s objective is not Taiwan but Vietnam and the Nansha Sea” (大胆进攻：中国目标不是台湾而是越南是南海), <http://www.1n0.net/Article/jqcb/77061.html>.

Emmers notes that China was already incensed by the Philippine Parliament's decision to pass the 2007 Maritime Boundary Act, which incorporated parts of the disputed Spratly Islands into Philippine territory. Fueling the fire, the Philippine military announced in 2008 it would repair and lengthen the airstrip at Kalayaan Island, the largest island occupied by the Philippines, and upgrade troop quarters.⁶¹ Thus, when the Philippines passed the Baselines Law in 2009, which essentially claimed sovereignty over the contested Huangyan and some reefs and islands in the Spratly Islands, China's embassy in Manila lodged a complaint and vehemently criticized the law. China "made strenuous attempts to dissuade the Philippines from enacting [the 2009 law] but was ultimately unsuccessful."⁶² As a result, Chinese naval analysts predicted China would seek to safeguard the country's maritime rights and interests by speeding up the demarcation of China's territorial waters, tightening administrative control of the islands, and intensifying naval readiness by adding training on operating weaponry.⁶³ This response elicited regional concern that China was taking a notably "aggressive" stance in the dispute.

A second "trigger," according to Sam Bateman, was Malaysia and Vietnam's joint submission in May 2009 to the United Nations Commission on the Limits of the Continental Shelf (CLCS).⁶⁴ The submission, which followed the Philippines Baselines Law, was regarded as highly provocative because it not only claimed the entire southern part of the contested seas but also internationalized the dispute,⁶⁵ challenging China's attempts to keep the conflict on a bilateral level. China's response was to submit a protest note that included the uninterrupted U-shaped line map, therefore "reviving old suspicions in Hanoi, Kuala Lumpur and Manila."⁶⁶ To show its displeasure, Beijing also established a new Department of Boundary and Ocean Affairs and "enhanced patrolling capabilities in an attempt to further assert its sovereignty."⁶⁷ As Bateman notes, Malaysia and Vietnam's persistence in keeping the submission on the table despite China's protestations "[was] seen as a political gesture that only served to inflame the situation."⁶⁸

A third factor of China's aggressive actions in the SCS was

Vietnam. As ASEAN Chair for 2010, Vietnam was well positioned to accord the SCS dispute a high priority on the ASEAN agenda.* According to one Chinese commentary in the daily newspaper of the CPC Central Committee *Renmin Ribao*, Vietnam's persistence in internationalizing the issue was like "playing with fire," and it warned that Vietnam needed to "constructively respond to China's consistent good-neighbor policy on its periphery."⁶⁹ Indeed, from China's perspective, Vietnam had been opportunistic, denying China's attempts to be a good neighbor and encouraging members to unite against China. Vietnam's success was evident during the ARF meeting when, in an unprecedented move, twelve of the 27 ARF members voiced support for Clinton's demand that China respect the maritime commons.⁷⁰ Both Glaser and Ott argue that China was surprised and shocked by the show of unity and consensus that had grown around this issue, further provoking China to continue its sea strategy of arrests and patrols.⁷¹ As Glaser has also suggested, Clinton had been prepared to make such a statement only with the backing of others in the region. The Chinese media interpreted this cooperation as an attempt by the United States and Vietnam to drive a wedge between China and the other claimants.

Aside from the actions criticized by China, other incidents have also exacerbated the security dilemma. The PRC-owned press agency *Zhongguo Tongxun She* reported that "in addition to dealing with the SCS issue by political and diplomatic means, Vietnam, the Philippines, and Malaysia have repeatedly taken military actions...to capture 'sea areas' by force."⁷² Predicting the tensions that would come in 2010, another Chinese analyst pointed out in 2009 that "the navies of countries in the South China Sea areas have developed very rapidly in recent years...The weapons that

* For examples of "internationalization" of the issue, see speeches from Secretary Gates at the Shangri-La Dialogue 2010 (IISS) and Secretary Clinton's remarks at the ARF 2010 forum. Robert Sutter in a *Comparative Connections* Report also claimed that "Vietnamese officials visiting Washington were unusually direct in complaining about what they depicted as escalating Chinese military actions in the area and seeking support from [Washington]." [Senior Officials Visit; South China Sea Tensions." *Comparative Connections* 12 (2): 69-76.] Also see Richard Weitz in "Why US made Hanoi Move" who claims that the US was "under pressure" from ASEAN countries to step up over the South China Sea [The Diplomat, August 18, 2010].

the [non-Chinese claimants] have purchased...includes U.S.-built Hornets and the Russian-built MIG-29s and Su-27s. We cannot afford to be optimistic over the situation in the South China Sea. While China will neither take part in [an] arms race nor threaten other countries with force, China must consider its own security."⁷³ The sentiment echoed Foreign Minister Yang Jiechi's remarks in a statement refuting the media fallacies over China's position on the SCS. In a response to China's aggressive patrols, Yang stated that "China, being a big country, also has its legitimate concerns. Is this expression of one's legitimate concerns coercion? That is not logical."⁷⁴ In the framework of the security dilemma, China reacted to something that may not have been a tangible threat, but was certainly perceived as such.*

Besides the perceptible arms buildup, China also considered skirmishes between fishermen and patrol boats in the SCS to be "illegal activities"⁷⁵ on its waters and responded accordingly under the provisions of its maritime laws. The literature has pointed to Vietnam, but other claimants also played a role in the tensions. In June 2009, China protested Indonesia's arrest of seventy-five Chinese fishermen who were accused of fishing illegally in Indonesia's EEZ.⁷⁶ This past June, Chinese fishermen were arrested and their fishing boats detained by both Philippine and Indonesian authorities on charges of illegal fishing.⁷⁷ According to an IISS report,⁷⁸ another serious incident came in March 2010 when Chinese fishing trawlers reported that the Vietnamese coastguard was harassing them, and it was only when the Vietnamese heard that a Chinese flotilla of six ships from the North Fleet was headed towards the SCS that they dispersed.⁷⁹ As the IISS report suggests, the Chinese flotilla was sent as a warning to the Vietnamese.⁸⁰

* The traditional argument that China is the biggest actor in the region and most militarily powerful, so it feels less constrained to act within the realm of established law.

ENFORCEMENT: A FUNCTION OF PROVOCATION AND CAPACITY

This analysis, premised on the assumption that states are rational actors operating under a security dilemma, asserts that the security dilemma has been a significant cause of China's aggressive behavior. This assertion relies on two analyses, the first establishing the framework for China's strategy regarding naval development and the second detailing provocations that may have led China to act assertively on the sea. Combining both analyses yields a simple function that describes China's muscular behavior. *Enforcement* response is the function of the level of *provocation* and *capacity*. The first analysis suggested that when China's naval capacity increases, its enforcement capacity grows as well. If provocations persist, China feels obligated to defend and assert itself, but only with sufficient naval capacity. When combined into a function stripped of its spatial and temporal elements, these two analyses provide a critical insight: regardless of the situation in the South China Sea, China's view of its naval power, coastal defense obligations, and claims to other disputed seas remain essentially the same. The U.S. naval presence, Taiwan, and the Yellow or the East China Seas also present potential threats to China's sovereignty and territorial integrity. In light of China's broader strategic goals and its security dilemma-induced environment, it may be asserted that China's naval modernization, while condemned by both the United States and the other claimants, will proceed irrespective of any disputes over the SCS. Admittedly, the naval build-up has formed and intensified one dimension of the security dilemma, provoking strong reactions from the non-Chinese claimants. But this has led to increased emphasis on China's assertiveness as indication of its recalcitrance, and distorted to some degree the cause of this dispute: a spillover in the security dilemma.

Together, the two previous analyses make it clear that although Beijing may still be regarded as a perpetrator, it is not the only perpetrator, despite portrayals of a rogue China that has finally "risen" and now must be deterred. Indeed, while attempts have

been made to depict China as a regional bully, it would be unfair to ignore the fact that China was responding to what it saw as an imbalance in the status quo, in which the other claimants engaged in threatening activities. As one commentator notes, Beijing's position on the SCS prior to the recent flare-up had been one of pained flexibility:

Beijing may not be happy about the fact that it still has the smaller presence in the South China Sea and that it has not been able to dictate recent developments on the South China Sea. Instead, Beijing has often found itself on the defensive. China has scrupulously accepted those declaratory, moral, political, and even legal commitments on the premise that those commitments should not fundamentally challenge the bottom line of Chinese sovereignty in the South China Sea.⁸¹

CONCLUSION

Though responsibility for the SCS tensions remains disputed, it is clear that tensions have escalated in the past two years, and the list of confrontations continues to point to China—the biggest, strongest, and most vocal of the claimant countries—as the aggressor. An examination of the dispute dynamic shows that an unfortunate security dilemma has arisen as a result of misperceptions of Chinese naval capacity, goals, and strategic outlook. For their part, the Southeast Asian claimants have had similar experiences, and their own motivations and rationales for action deserve attention as well. However, in seeking to understand the other claimants' perspectives it is helpful to elucidate the problems of a security dilemma in the context of China's position.

This analysis surely has its own shortcomings, and leaves unanswered several issues for future research. It has not devoted sufficient attention to the role of the United States, instead emphasizing China's strategic view and its perspectives on provocation. Future research might consider to what degree the United States has influenced tensions, as it only recently articulated its position

on the status of the sea as “a maritime commons.” One other critique of this analysis will inevitably be the appearance of lenience in its interpretation of the Chinese view of the sea and of its naval capacity. China’s claim that its four legal perspectives legitimize its sovereign contests is easily countered by contrasting interpretations from Vietnam, the Philippines, Malaysia, and Brunei. Which interpretation is superior? While the use of these perspectives to defend China’s actions fuels a conflict over semantics, law, and historical interpretation, the introduction of these four perspectives helps to establish a rationale for Chinese action, and need not preclude the basis of any other claim. This analysis has sought to show that China’s motivations are underscored by four interpretations that help to explain the legitimacy of its actions. Observers are not privy to Chinese leadership decisions, but it is reasonable to assume that in the world of rational players, distorted by a security dilemma, reasons to act aggressively—often justified by domestic law and corroborated by existing international law*—help, ironically, to frame rational choice.

Despite its shortcomings, the present analysis does clarify the complex issue of perception, its relationship to the security dilemma, and its potential to distort the dynamic and variable dimensions of the dispute. At the time of this writing, China and the involved member states of ASEAN have begun a dialogue to establish a legally binding code of conduct. The prospects for success of such an endeavor may depend on the legacy of past actions. Regardless, China will continue to face a dilemma of its own creation. Though it has begun a process of damage control with its southern neighbors, it would weaken its position by admitting to being the perpetrator of conflict or by seeking any accord that undermines its claims. The outcome of the drama in the South China Sea remains uncertain. It seems that for China, no matter the maneuver, being perceived as a “good neighbor” has not

* For example, China subscribes to the UNCLOS as legitimizing its claim (historical, sovereign, etc), although the premise of its claim has ironically been questioned by UNCLOS.

been enough.

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