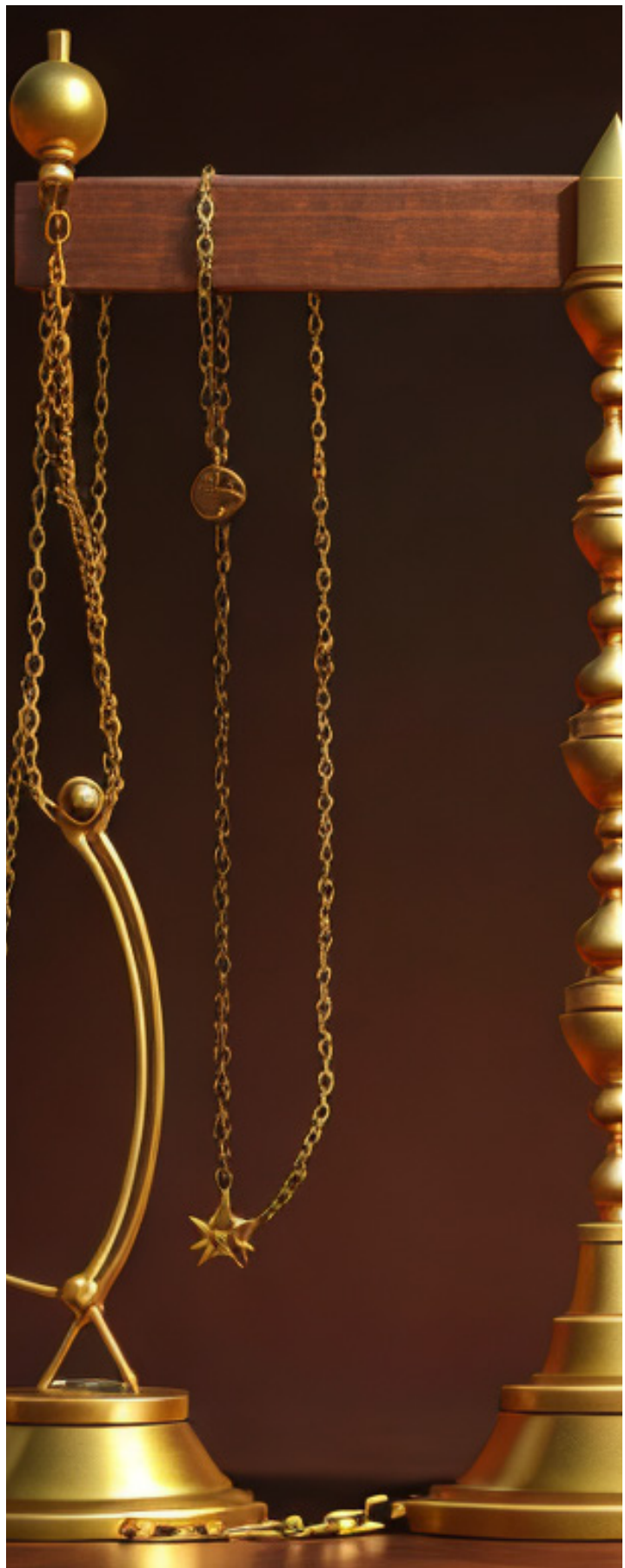


THE BROWN UNIVERSITY
**JOURNAL OF
PHILOSOPHY,
POLITICS &
ECONOMICS**

Special Feature:
**POWER
STRUCTURES**

*with a contribution from
Jay Clayton*

Are Wage Offers Coercive?.....	13
Defense of Externalist Reductive Representationalism.....	23
“All Lesbians go to Pride”.....	35
The Impact of Cross-Cutting Cleav- age Structures.....	51
Rethinking the Landscape of Guns in America.....	60
The Happiness of Nations.....	75
Varieties of Capitalism and Bank Bailout Designs.....	101
Female Education, Female Labor Force Participation, and Fertility Rates in Europe.....	127
The Rise and Effects of Non- standard Labour Contracts in the Netherlands.....	145



The Brown University

**Journal of Philosophy,
Politics & Economics**

Volume VI, Issue I

ACKNOWLEDGEMENTS

The Brown Journal of PPE remains thankful for the continued support and funding of the Center for Philosophy, Politics, and Economics at Brown University. Additionally, we are grateful for the contributions of Jay Clayton, whose perspective and accredited work guided the focus of this issue. Finally, we are grateful for the numerous students who submitted papers from across the world, for their willingness to share their ideas and engage in conversation during our editorial process.

VISION STATEMENT

The Brown University Journal of Philosophy, Politics, and Economics (JPPE) is a peer reviewed academic journal for undergraduate and graduate students that is sponsored by the Center for Philosophy, Politics, and Economics at Brown University. The JPPE aims to promote intellectual rigor, free thinking, original scholarship, interdisciplinary understanding, and global leadership. By publishing student works of philosophy, politics, and economics, the JPPE attempts to unite academic fields that are too often partitioned into a single academic discourse. In doing so, the JPPE aims to produce a scholarly product greater than the sum of any of its individual parts. By adopting this model, the JPPE attempts to provide new answers to today's most pressing questions.

— Julian D. Jacobs '19 and Daniel Shemano '19

MASTHEAD

Editorial Board

Rebecca Blumenthal, Jay Philbrick, & Elaine Wang	Editors-in-Chief
Xiang (Jessica) Ji	Content Director
Daniel Coffield & Mason Zhang	Philosophy Section Directors
Tom Li & William Loughridge	Politics Section Directors
Justin Lee & Manaal Saadaat	Economics Section Directors

Content Team

Philosophy

Editors

Prottoya Chowdhury
Koda Li
Joshua Silverman
Declan Allio
Artem Kyrylov
Aimee Zheng
Xuanyi Zhu

Politics

Editors

Cayetana Jaramillo
Koda Li
Ben Ringel
Ted Downing
Jeremiah Peebles
Declan Allio
Zachary Freer
Aimee Zheng
Kate Tobin

Economics

Editors

Maggie Jiang
Hans Xu
Joshua Silverman
Lilly Roth-Shapiro
Maria Felce Castillo
Zachary Freer
Theodore Young
Benjamin Levy

CONTENTS

SPECIAL FEATURES

<i>Jay Clayton</i>	9
--------------------------	---

PHILOSOPHY

Kilin Tang	13
Are Wage Offers Coercive?	
Sophia Decherney	23
Defense of Externalist Reductive Representationalism	

POLITICS

Caitlin Barotz	35
“All Lesbians go to Pride”: Barriers and Biases in Seeking Asylum as a Queer Person Fleeing Persecution	
Graham Hodgson	51
The Impact of Cross-Cutting Cleavage Structures on the Stability of Coalition Government: An Empirical Analysis of Parliamentary Systems	
Katherine Jeng	75
Rethinking the Landscape of Guns in America	

ECONOMICS

Amber Abdul	101
Varieties of Capitalism and Bank Bailout Designs: Differing Strategic Tilts	
Lucrezia Asdente	127
Female Education, Female Labor Force Participation, and Fertility Rates in Europe: The Cause of Lower Fertility Rates or the Solution?	

Tommaso Tulken	145
The Rise and Effects of Non-standard Labour Contracts in the Netherlands	

FOREWORD

The last year has been a turbulent one in financial markets, demanding answers at the intersection of philosophy, politics, and economics. The collapses of Silicon Valley Bank, First Republic Bank, and Signature Bank in the spring of 2023 exposed deep flaws in the financial system and raised foundational questions about the role of markets in everyday life – regulators, bank executives, and everyday citizens alike grappled to balance risk with economic growth, moral hazard with international competitiveness, and adverse selection with equity.

In light of these issues, a number of this edition of articles in this edition of the *Journal of Philosophy, Politics, and Economics* examine modern issues in economic policymaking, and the relationship between labor and capital. We feature an interview with Jay Clayton, former Chair of the U.S. Securities and Exchange Commission, discussing his view on securities market regulation as well as leadership in the public and private sectors. “Varieties of Capitalism and Bank Bailout Designs: Differing Strategic Tilts” articulates differing capitalist typologies, and examines their impacts through case studies in bank bailouts. Additional articles in philosophy and economics examine the theory and empirics of wage offers, and the rising prevalence of non-standard labor contracts.

These topics, and others including women’s labor force engagement, resolutions to the character problem, gun control, asylum for members of the LGBTQ+ community, and parliamentary democracy, form important cornerstones of contemporary political, philosophical, and economic discourse.

Special Feature

Jay Clayton

Jay Clayton is a Brown parent, an experienced corporate lawyer, and was Chair of the U.S. Securities and Exchange Commission from 2017 to 2020. He's now lead independent director at Apollo Global Management, an Adjunct Professor at the University of Pennsylvania and of counsel at Sullivan & Cromwell.

JPPE: Before being nominated as Chair of the U.S. Securities and Exchange Commission, you had a distinguished career at Sullivan & Cromwell, one of the most prominent law firms globally. Can you talk about how your background as a corporate lawyer informed your work at the SEC?

Clayton: First, I want to say how much I've enjoyed being on the Brown campus as a guest lecturer over the past few years. Before Chairing the SEC, I was a partner at Sullivan & Cromwell and also an adjunct professor at Penn Law School. Being a professor provided the opportunity to share my experiences with students and, importantly, learn from their questions and comments. Fortunately for me, I have a wide range of experiences thanks to Sullivan & Cromwell's global client base, an "experts" and "generalists" approach to the practice of law and my family's willingness to support moves from Washington to New York to London and back to New York.

My initial focus was public — think IPOs — and private capital raising. As a lawyer, you dig deeply into business, operations and financial condition of the companies raising capital, whether you're representing the company or the investors. This provided repeated insights into how good — and sometimes bad — companies are run. Thanks to an opportunity to represent European telecommunications companies in the build out of the Eurasian mobile networks, doing joint ventures, mergers and, sometimes, dispute resolution. Growing up in Pennsylvania, it never occurred to me that I would become intimately familiar with Stockholm, Istanbul, Athens and other European cities.

In late 2007 and then through 2008, my focus shifted to financial firms in distress, including representing Bear Stearns, Lehman Brothers, Barclays, Goldman Sachs and others in stabilizing transactions, working alongside Rodeg Cohen, now

Senior Chair of Sullivan & Cromwell and universally recognized as the greatest banking lawyer. In the wake of the financial crisis, I had the opportunity to shift again by using what I had learned about banks and international transactions to take on investigations of money laundering and other financial crimes.

Then, just as I was settling into counseling management teams and boards of directors on matters that touched on capital raising, strategy, regulation and law enforcement, the opportunity to be SEC Chair presented itself. I was totally surprised, but intrigued by the opportunity to serve and help middle class investors, and again my family fully supported a big professional and personal pivot as did my colleagues at Sullivan & Cromwell. I cannot thank them enough for their support.

JPPE: During your tenure, you were outspoken about the decline in the number of companies that choose to go public, and how this might exclude the American public from making investments in new, innovative companies. Four years later, how do you feel about the relationship between public and private markets? How has this perspective on public and private markets informed your work at Apollo Global Management?

Clayton: We, Congress, the SEC, the federal banking regulators and others, by our actions, have made the public markets exclusively for very large companies. You cannot “publicly” offer securities unless you have a \$5 to \$10 million dollar per year infrastructure to support being a public reporting company. We should recognize this reality and that the trend is to increase that \$5 to \$10 significantly.

I think the results — fewer public companies and no real opportunity for retail investors to participate in the growth phase of companies — is a public policy mistake. I also believe that the continuous addition of reporting and other requirements on public companies — with no subtractions — harms investors. Many of these requirements are not designed to help or protect investors, rather they are designed to achieve some other objective. This is bad government. You should not use the SEC to achieve climate objectives, you should use the EPA.

Understanding this landscape has helped me advise companies in various sectors. For example, for many companies, it does not make sense for the company, its employees, its investors, or other stakeholders for the company to become a public company. I love our public capital markets and what they have done for investors and our economy more generally over the past 80 years. But the decision of whether to become a public company requires extensive analysis, including whether alternative forms of financing are available.

This is where venture capital firms, private equity firms, family offices, insurance companies, conglomerates and other finance providers come in. I enjoy advising those groups and companies on finding the best financing solutions under the circumstances. These markets will continue to evolve and it is my hope that middle class investors will gain greater access to opportunities beyond our public markets with ample investor protection. I often ask, “in their 401(k)s where they are investing for the long term, shouldn’t retail investors be able to have a portfolio that looks like a well-managed pension fund?” Today, regulation effectively prohibits that outcome. I believe that’s an unfair and unsustainable regulatory position.

JPPE: You’ve been clear about your skepticism of cryptocurrency, but also said that the recent ETF approval of bitcoin was inevitable – especially in light of the D.C. Circuit’s ruling in the Grayscale case. How do you feel about this decision, and how do you think it will impact the cryptocurrency market?

Clayton: “Crypto” is a technology, with a few limited exceptions, it’s not a new product, it’s just a different way of providing products we all know. “ICOs” in large part were nothing more the “IPOs” with a new name and an effort to avoid regulation. Of course I’m skeptical about that. And the SEC was right to shut them down. Let me be very clear here, claims of “regulation by enforcement” — i.e., the SEC was using enforcement powers to make new regulation — are absurd. In shutting down the ICOs, the SEC was enforcing long-established and well-known regulations.

That does not mean I’m skeptical of crypto as a technology. I’m not. In fact, I think “tokenization” has great promise and I support efforts to bring crypto technology to mainstream finance. I also support efforts to bring crypto technology to non-securities markets, including for example, the markets for concert tickets, loyalty programs and other rights where capital raising is not involved.

JPPE: It’s been a turbulent 12 months in the financial industry. Rising interest rates and failures to appropriately hedge risk led to bank failures at SVB and First Republic, which have likely sped adoption of Basel III and new financial regulations. Although these depository banks are primarily regulated by the Federal Deposit Insurance Corporation, the Federal Reserve, and the Office of the Comptroller of the Currency, do you think these events will shift how Americans engage with the financial markets overseen by the SEC?

Clayton: Long-term middle class investors are looking for growth and stability. They need to beat inflation to have secure retirements. This is a scary proposition in turbulent financial times. I believe regulators should do all they reasonably can

to help middle class investors get started early, diversify their portfolios and stay invested over the long haul.

JPPE: Thank you for your time today. One last question – you’ve had an incredibly successful career with distinguished leadership in both corporate America and in public service. What reflections do you have on the differences between leadership in these two sectors?

Clayton: I have had the opportunity to watch great leaders in both sectors. One of the things they have in common is instilling a sense of shared mission in their colleagues. In the private sector, the mission generally involves growing the firm by better serving customers at less cost, with investors and employees sharing in the benefits. In the public sector, the mission is broader and requires you (and your colleagues) to think beyond specific groups. I can tell you, it feels great to be part of an organization that is trying to do its best for 50 million American households.

JPPE: Thank you again for your time. This has been incredibly insightful, and we wish you well going forward.

Are Wage Offers Coercive?

Kilin Tang

In “Coercive Wage Offers,” David Zimmerman argues that wage offers are inherently coercive in a capitalist society. In doing so, he rejects the view of coercion as a moral concept assessed in terms of a “baseline set by a morally required course of events.”¹ He argues that any definition of coercion must explain why coercion results in unfreedom and is thus *prima facie* wrong. However, for the moral definition of coercion, attempts to justify coercion as wrong via utilitarianism or Kantianism ultimately rely on the non-moral to explain why coercion is *prima facie* wrong.² To address this concern, Zimmerman constructs a non-moral definition of coercion. His non-moral definition is different in that, when certain circumstances are met, offers, in addition to threats, are considered coercive. Zimmerman then utilizes this new definition of coercion to argue that wage offers in a capitalist society satisfy said conditions and are thus coercive.

This paper seeks to evaluate the strength of both Zimmerman’s non-moral definition of coercion in and of itself as well as his ultimate argument that wage offers are coercive. I argue that Zimmerman’s definition of coercion dilutes the significance of the term, is too ambiguous to be practical, and overly depends upon the preferences of the victim. I then contend that under Zimmerman’s own definition, wage offers are not definitively coercive. I argue that capitalists as individuals do not necessarily actively prevent workers from receiving higher wages, and I point out that Zimmerman’s argument relies upon the unsubstantiated premise that workers strongly prefer a socialist alternative to the current capitalist state.

Zimmerman proposes a framework to understand coercion. Consider an example of 2 people, *A* and *Q*, where *A* is the aggressor and *Q* is the victim.³ When

1 Zimmerman, “Coercive Wage Offers,” 126.

2 Zimmerman, 130.

3 For consistency’s sake, I will use *A* and *Q* throughout the paper. Note that Zimmerman uses the letters *P* and *Q* in this example.

A has given an offer to *Q*, the situations that *Q* finds himself in can be broken down into three different types: the “pre-proposal situation,” the “proposal situation,” and the “alternative pre-proposal situation.”⁴ The pre-proposal situation describes *Q*’s situation before a proposal by *A* has been offered to *Q*, the proposal situation describes *Q*’s situation at the time *A* has offered a proposal to *Q*, and the alternative pre-proposal situation describes any situation before a proposal by *A* has been offered to *Q* that is different from the pre-proposal situation. Importantly, Zimmerman limits all alternative pre-proposal situations to those that are historically, technologically, and economically feasible.⁵

Using this framework, Zimmerman defines coercion as follows: offers from *A* to *Q* are coercive when *A* “actively prevents *Q* from being in the alternative pre-proposal situation *Q* strongly prefers.”⁶ Zimmerman proposes that for *A* to “actively prevent” *Q* from being in the pre-proposal situation, *A* must satisfy the “prevention condition.”⁷ The prevention condition is satisfied when “*Q* would have enjoyed his highly preferred pre-proposal situation but for the obstacles [*A*] erects.”⁸ In other words, to be considered coercive, it is required for *A* to erect obstacles that are necessary to prevent *Q* from enjoying his highly preferred pre-proposal situation.

Zimmerman offers an example to elucidate this definition. Consider two separate cases. In the first case, *A* kidnaps *Q* and places him on an island where *A*’s factory is located. The next day, *A* offers *Q* a genuine proposal to work at *A*’s factory for an extremely low wage or otherwise starve. In the second case, *Q* washes ashore on an island on which *B* owns a factory. *B* sees *Q* on the island and offers *Q* the same genuine proposal—to work at *B*’s factory for an extremely low wage or otherwise starve. According to Zimmerman, both offers are exploitative, but only the offer in the first case is coercive. Similarly to *A*, *B* has offered *Q* an extremely low wage. However, *B* has not satisfied the prevention condition: *B* has not erected any obstacles that would prevent *Q* from being in the pre-proposal situation *Q* strongly prefers, which is to not be on the island in the first place. It is only *A* who kidnaps *Q* and puts him on a remote island. In doing so, *A* erected an obstacle that prevented *Q* from being in his strongly preferred situation of not being on the island. With the prevention condition satisfied, *A*’s subsequent offer to work for an extremely low wage is defined as coercive.⁹

Utilizing his non-moral definition of coercion, Zimmerman argues that

4 Zimmerman, 132.

5 Ibid, 132.

6 Ibid, 133.

7 Ibid, 136.

8 Ibid.

9 Ibid, 135.

wage offers in a capitalist society are coercive. He writes that “capitalists prevent workers from having the pre-proposal situation(s) they strongly prefer.”¹⁰ Zimmerman contends that workers (*Q*) strongly prefer either of two pre-proposal situations: higher wage levels and a genuine alternative to current capitalist structures. First, Zimmerman argues that capitalists (*A*) attempt to actively prevent wage level increases by erecting numerous obstacles: union-busting, advocating for “right-to-work” legislation, and threatening to move overseas. Capitalists also resist attempts to move to alternative capitalist structures by refusing to invest in any opportunities that could create capitalist alternatives.¹¹ Second, Zimmerman contends that workers generally prefer various types of cooperative and communal enterprises over capitalist structures. As an example, Zimmerman points to a conglomerate that refuses to sell ownership of a steel plant to a group of workers and instead lets the plant sit unused.¹² He reckons that ownership of a steel plant by a group of workers could result in a socialist alternative in which there is “meaningful workers’ control of the workplace and the firm”: a balance of social planning and investment, a sensible mix of human planning and market, and an “emphasis on the fulfillment of human need rather than private enrichment.”¹³ For the purposes of his argument, Zimmerman assumes that such a socialist state is feasible, and presents it as a genuine alternative to capitalism.¹⁴ Importantly, Zimmerman notes that whether simply not providing the necessary resources to facilitate the emergence of a non-capitalist alternative economy counts as an “active prevention” of workers receiving higher wages is a question up for debate. He thus rests his claim upon a conditional statement: “if this kind of discretionary control of capital resources counts as preventing the emergence of an alternative non-capitalist pre-proposal situation, then one condition for the coerciveness of capitalist wage proposals is satisfied.”¹⁵ Thus, when capitalists actively prevent both wage level increases and socialist structures from emerging, both actions independently prevent workers from achieving their pre-proposal situations and therefore are considered coercive.

Here, I provide three critiques of Zimmerman’s non-moral definition of coercion in and of itself. First, it is unclear how to determine when the prevention condition is satisfied. What is an obstacle? Can we reasonably know if the obstacles erected by *A* are what prevented *Q* from enjoying *Q*’s highly preferred pre-proposal situation in most situations?

10 Zimmerman, 143.

11 Ibid.

12 Ibid, 143-144.

13 Ibid, 142.

14 Ibid, 142. Note that Zimmerman presents three versions of socialist states as genuine alternatives to capitalism.

15 Ibid.

Second, Zimmerman's definition of coercion dilutes the significance of the term by defining unimportant situations as coercive. Suppose *Q* strongly prefers to receive a fist bump from *C*. However, let us presume *C* does whatever *A* tells him to do. Before *Q* asks for a fist bump from *C*, *A* tells *C* to never offer a fist bump to *Q*. This is exactly what happens: When *Q* asks for a fist bump from *C*, *C* denies *Q*'s request because *A* told him not to. *A*, who is present for this interaction, offers to fist bump *Q* instead. *Q*, who would prefer receiving a fist-bump from *A* than no fist-bump at all, ends up deciding to fist bump *A*.

In this example, *Q* has been coerced by *A*, per Zimmerman's definition of coercion. *Q* has moved from the pre-proposal situation (getting no fist bump) to a proposal situation (fist bumping *A*). However, *A* has actively prevented *Q* from being in the alternative pre-proposal situation *Q* strongly prefers (fist bumping *C*). Despite *Q* strongly preferring a fist bump from *C*, it seems disingenuous to argue that *Q* has been coerced by *A*, given how unimportant *Q* receiving a fist bump is relative to other far more serious examples of coercion. Let us use Zimmerman's own example as a reference: *A* kidnaps *Q* and puts him on an island before offering him an extremely low wage or letting him starve. To admit that *Q* being unable to fist bump one person or another and *Q* having to work for an extremely low wage or starve are both examples of coercion dilutes the significance of the term. This is because the inclusion of everyday interactions to be classified as coercive increases the frequency with which one encounters coercion in various aspects of their lives, resulting in an overuse of the term. This may desensitize people to the concept of coercion, leading society to potentially underestimate the seriousness of significant coercive acts and fail to recognize more significant coercive situations, such as ones involving the threat or use of force. In other words, labeling less significant, or even insignificant, situations as coercion may lead people to view genuinely serious situations—such as *Q* having to choose between two choices that are life-or-death—less seriously. Thus, even if Zimmerman is correct that wage offers should be classified as coercive, the decreased signification and dilution of the term—given that coercion is now everywhere around us—can lead to a state of complacency, preventing genuine efforts to transition society from a capitalist to a non-capitalist state.

Third, Zimmerman's definition of coercion is too heavily dependent on the account of what *Q* strongly prefers. Zimmerman holds that it is "the *victim's preference* which determines which pre-proposal situation determines the status of the proposal itself, and it is *the frustration of this preference* which makes acquiescence to the proposal a case of unfreedom."¹⁶ This is what underlies any account of coercion and is what constitutes the foundation for Zimmerman's own definition

16 Ibid, 129. Emphasis added.

of coercion: *Q* must strongly prefer not to be in either the proposal or pre-proposal situation, but rather the alternative pre-proposal situation. Importantly, this means that whether something is defined as coercion relies heavily upon the preferences of the *Q*, the victim. Yet this gives rise to questions regarding the reliability of victim preferences, and on a fundamental level, a clear understanding of what our preferences are as human beings. Take the following example: When someone asks what you want for dinner, do you know *for certain* what you want? What if you wanted McDonalds for dinner at the time of ordering, but when the food arrives an hour later, you now strongly desire Burger King? As humans, do we truly know what our preferences are? If not, how does that impact our ability to understand coercion? Zimmerman's reliance on human preferences as a means for evaluating coercive acts thus gives rise to complicated debates about human preference within moral philosophy and philosophy of action that I will not delve into further here.

On a practical note, Zimmerman's definition can lead to counterintuitive results that I believe Zimmerman would not deem coercive. Consider a case where *A* and *Q* voluntarily live on an island and are foraging for food. Without food, both *A* and *Q* will starve. *A* and *Q* stumble upon two types of berries on the island: white berries and black berries. Let us presume that consumption of the white berries is fatal, while consumption of the black berries is safe and nutritious. *Q*, fascinated by the color of the white berries, strongly desires to eat the white berries. *A*, however, is knowledgeable about berries and warns *Q* that eating the white berries would be fatal. *A* suggests instead to *Q* to eat the black berries, telling *Q* that the black ones are safe and nutritious. Yet *Q* does not believe *A* and still strongly desires to eat the white berries. However, since the sun is setting, *A* and *Q* mutually agree to go back to their living quarters and pick the berries tomorrow. *A*, who is very fond of *Q*, does not want *Q* to die from eating the white berries. Therefore, in the morning, before *Q* is awake, *A* decides to pick all the white berries and throw them into the ocean. When *A* and *Q* go berry picking in the afternoon, *Q* is extremely upset, given that there are no more white berries on the island. In an effort to console *Q*, *A* offers to pick the black berries for *Q* to eat. *Q* realizes that eating the black berries is better than starving, and begrudgingly decides to take *A*'s offer.

By Zimmerman's account, *Q* is being coerced by *A*. *Q* has moved from the pre-proposal situation (starving) to the proposal situation (eating black berries), but would much rather be in the alternative pre-proposal situation (eating white berries). If not for *A*'s actions of throwing the white berries into the ocean, *Q* would likely have picked and eaten the white berries: *A* has erected an obstacle that has actively prevented *Q* from being in the alternative pre-proposal condition of eating white berries that *Q* strongly desires. Yet from a practical stand-

point, A has effectively saved Q from death. More generally, one can think of many situations in which Q 's strongly held preferences would be actively harmful to Q : not wearing a seatbelt while driving or drinking alcohol as a minor are a few examples. Therefore, Zimmerman's overreliance on the victim's preferences in establishing a non-moral definition of coercion fails to be completely realistic, practical, and applicable to the real world.

Utilizing his definition of coercion, Zimmerman's argument that wage offers are coercive falls short in three ways.

First, Zimmerman's argument relies on the assumption that all businesspeople who are offering wages to workers have engaged in some kind of union-busting, advocating for "right-to-work" legislation, and the like. This is certainly not always the case—there are plenty of small business owners and local mom-and-pop shops who have never engaged in such activities. These business owners, while still operating within a capitalist structure, often do attempt to pay fair wages, provide good benefits, and protect their workers. The critique Zimmerman presents seems to fundamentally critique the system of capitalism itself rather than the individuals who, voluntarily or involuntarily, participate in the system. In other words, it may be wrong to accuse individuals of coercion given the larger structure of capitalism at work, which motivates and encourages businesspeople to engage in what Zimmerman deems as coercive acts. Regardless, under Zimmerman's own terms, wage offers within our capitalist society cannot be considered coercive if the select businesspeople offering those wages have not erected any sort of obstacle to their workers' acquisition of higher wages.

Second, I argue that wage offers do not fulfill the prevention condition. This is because Zimmerman has taken a drastic step in expanding A from being one person to a collective group of people without properly examining its implications. Here, I denote A' to mean when A , the aggressor, is composed of a *collective* group of people. Zimmerman asserts that for the prevention condition to be satisfied, actions and policies taken by A' must involve "collective activity, coordinated in one degree or another."¹⁷ However, Zimmerman also concedes that he does not know how much coordination of collective activity is required for the prevention condition to be satisfied.¹⁸ Without a clear framework to determine what satisfies the prevention condition, it is difficult to assess whether wage offers are coercive.

With that in mind, we can take Zimmerman's analysis a step further. It is not readily apparent whether *all* individual members of A' (the capitalists) have each "actively prevented" Q from his pre-proposal situation. Suppose A'

¹⁷ Zimmerman, 143.

¹⁸ *Ibid.*, 146.

is composed of 2 individual people *X* and *Y*, who each own businesses, respectively. Both collectively agree that to decrease wage offers, they will both lobby for “right-to-work” legislation in their state. *X* donates \$1 million dollars for the cause, while *Y* only donates \$100. The “right-to-work” legislation gets passed, thereby undermining unionized attempts to negotiate higher wages.

Was it necessary for all \$1,000,100 to have been donated to cause the legislation to be passed? It is difficult to know—there are many factors that affect the passage of legislation. Let us suppose that only \$500,000 was necessary for the legislation to pass. The practical effect of *Y* donating to the cause is null—whether or not *Y* chooses to donate would not have altered whether the right-to-work legislation would pass or not. Is *Y* still engaging in coercion when he offers wages to his workers? To argue that *Y* is engaging in coercion is dubious given that *Y*’s donation was not necessary per se for the “right-to-work” legislation to pass. I find it hard to believe that *Y* actively erected an obstacle (the passage of such legislation) that prevents higher wages when *Y*’s actions practically had zero effect on the presence of that obstacle. If so, one would have to bite the bullet and argue that *Y* has engaged in coercion in the event that *Y* donated one dollar or even one cent to right-to-work lobbying. If not, then the prevention condition is not satisfied. But to argue that *Y* is not engaging in coercion for that reason makes it difficult to ascertain when any capitalist can be implicated in coercion. Suppose that *A*’ is composed of ten business owners, all of whom collectively coordinate to each donate \$100,010 to pass right-to-work legislation. No individual donation was necessary to pass the right-to-work legislation. Yet a collective effort was still required. Therefore, it is unclear whether, after successfully lobbying for right-to-work legislation, each of the ten business owners individually engage in coercion when offering wages to their workers.

Zimmerman’s unclear understanding of what the prevention condition entails is further complicated by what I deem to be an important distinction between prevention and non-participation. Zimmerman himself points out that not investing resources into alternative structures of capitalism may not necessarily be the same as actively preventing the alternative structure from emerging.¹⁹ It would be odd to argue that just because a person decides not to donate food to a hungry person that it is tantamount to coercion because they have actively erected an obstacle that prevents a hungry person from acquiring a meal. Rather, the person is neither making it easier nor more difficult for the hungry person to acquire a meal.²⁰ Under this lens, the act of non-participation should rather be

¹⁹ Zimmerman, 144.

²⁰ Whether or not that person should donate food to the hungry person all things considered is an entirely separate question.

seen as neutral in nature rather than as an active act, and therefore cannot satisfy the prevention condition with respect to not investing in alternatives to capitalist structures.

Both examples presented give rise to a fundamental question: what is the relationship between the concept of coercion, individual behavior, and group behavior? Aside from being uncertain about the requirement for coordination in satisfying the prevention condition, Zimmerman provides no insight in regard to this question.

Second, Zimmerman's argument that wage offers are coercive relies on the critical assumption that workers prefer a socialist alternative to capitalism. He writes that whether capitalist wage offers are coercive "depends on whether an alternative pre-proposal situation is feasible *which is sufficiently better* than the terms of the actual wage offer *and* which capitalists prevent workers from having."²¹ Yet whether a socialist alternative is *sufficiently better* than the current capitalist framework is not technically relevant to whether wage offers are coercive. Recall that Zimmerman defines offers from *A* to *Q* to be coercive when *A* "actively prevents *Q* from being in the alternative pre-proposal situation *Q* *strongly prefers*."²² Thus, what is relevant in Zimmerman's understanding of coercion is whether workers *strongly prefer* a socialist alternative to capitalism. *Prima facie* evidence seems to indicate the opposite: a 2022 Pew Research Center poll found that 57% of American workers view capitalism favorably, while only 36% of American workers view socialism favorably.²³ That being said, Zimmerman's version of a "genuine state of socialism" is likely different from what Americans perceive of socialism in a Pew poll. How can we know for certain whether workers prefer a socialist over a capitalist state if they have only experienced the latter and not the former? What happens if some workers prefer a socialist state one day but a capitalist state the next? All that said, a notable caveat to Zimmerman's argument is that it is conditional upon the fact that American workers strongly prefer a socialist state over the current capitalist state.

Overall, Zimmerman fails to justify wage offers as coercive under his own non-moral definition of coercion. His definition is too ambiguous to be practical, significantly dilutes the meaning of coercion, and overly relies upon the victim's preferences. Zimmerman must also clarify how the prevention condition can be satisfied when *A* consists of more than one person. Most notably, Zimmerman's claim that wage offers are only coercive is conditional upon the premise that workers strongly prefer a capitalist alternative. It is unclear if workers do, consid-

21 Zimmerman, 140.

22 Ibid, 133. Italics added.

23 Pew Research Center, "Modest Declines in Positive Views of 'Socialism' and 'Capitalism' in U.S."

ering a longstanding history of socialism being cast as evil for restricting people's freedoms. This makes it difficult for a genuine socialist state to ever be adequately considered and achieved.

Bibliography

“Modest Declines in Positive Views of ‘Socialism’ and ‘Capitalism’ in U.S.” Pew Research Center. Last modified September 19, 2022. Accessed May 5, 2023. <https://www.pewresearch.org/politics/2022/09/19/modest-declines-in-positive-views-of-socialism-and-capitalism-in-u-s/>.

Zimmerman, David. “Coercive Wage Offers.” *Philosophy & Public Affairs* 10, no. 22 (1981): 121-45. Accessed May 5, 2023. <https://www.jstor.org/stable/2264975>.

A Defense of Externalist Reductive Representationalism

Sophia Decherney

In this paper, I will discuss each of the primary solutions to the character question and argue for the External Reductionist Representationalism view. I will then defend the view against the objection that it does not provide an adequate account of pain.

1. Introduction to the Character Question

A central question in the field of Perception, referred to as the character question, asks, “What constitutes the character of experience?”¹ In other words, what does it mean to experience something? There are many answers to this question, each with its own problems and advantages. In this paper, I will discuss each of the primary solutions to the character question and argue for External Reductive Representationalism. First, I will explain the Sense Datum View, largely regarded as an inevitable conclusion from the Act/Object Assumption, an assumption that states that there must be an object of perception. I will explain how the Sense Datum View presents significant problems, such as perceptual imprecision and failure to explain major metaphysical questions. I will then shift to the Representationalist View, currently the predominant view amongst philosophers of perception, and explain how it answers some of the questions that the Sense Datum View faces. Lastly, I will explain two different options within Representationalism—Internal Non-Reductive Representationalism and External Reductive Representationalism—and prove that while the External Reductivist Representationalism view leaves some questions unanswered, it provides the most compelling answer to the character question.²

1 Character meaning the ways in which objects appear to you.

2 There are two other main views of perception not represented in this paper: Naive Realism and the Internal Physical state view. Naive Realism is not represented because it fails to be a unified view. It is reliant on sense data as an explanation of hallucination so therefore any objection to the Sense Datum View also holds for Naive Realism. The Internal Physical View will be briefly mentioned in response to Representationalism but quickly

2. Answer One: The Sense Datum View

2.1. *The Sense Datum Answer to the Character Question*

The Sense Datum view answers the character question by saying that to have a sensory encounter with a particular character is simply to experience Sense Data. Sense Data are non-physical objects of perception created by the brain, the spatial-temporal properties of which roughly match those of physical objects in the world. Imagine you and your sibling are both looking at an apple. According to the Sense Datum View, when you look at the apple, you do not see the apple. Instead, your brain creates an image of an apple, a Sense Datum of an apple, and projects it, similarly to how an Oculus Rift or a projector produces an image and makes it seem as if the image exists in the world. Having explained the Sense Datum View, I will now explain the arguments in favor of the view before moving onto the arguments against it.

2.2. *The Argument for Sense Datum*

The argument for the Sense Datum View, the Argument from Hallucination, starts with an assumption called the Act/Object Assumption. This assumption states that having an experience with a particular character is to experience that object, and further, that all objects of perception must be either physical or non-physical. The assumption is apparent on an intuitive level: it is natural to think that what you perceive is an object of your perception. In fact, when people speak about perceptual experiences they use objects as well, saying, “I saw it” or “I heard that.” For example, even in a hallucination, we say that we “saw a purple flower,” whether or not the object (purple flower) physically is there or just a mental picture. The next step in the Argument from Hallucination is to say that since the objects of hallucinations clearly exist, but do not exist in the external environment, they must be non-physical. To generalize from that statement, if hallucinations exist as non-physical objects of perception, all perceptions must be non-physical like hallucinations because there is no reason to believe that hallucination would be different from any other perceptual experience. These non-physical objects are named sense data.

2.3. *The Arguments Against Sense Datum*

There are two significant issues with the Sense Datum View. The first is that sense data are perceptually imprecise. When you look at an object, other objects also exist in the periphery of your vision. According to the Sense Datum View, these objects are sense data as well. Yet, unlike the sense data in the central part of your vision, the periphery objects are inexact, maybe fuzzy. Certainly, you would

dismissed because it provides no account of external directedness.

not be able to represent them precisely if asked to draw or describe them.

So what kind of objects are these sense data that your brain creates imprecisely? The first option is that they are, by nature, metaphysically imprecise non-physical objects. Yet, it is intuitive that there could not be such an object, since an object, by definition, should have defined features even if it is non-physical. A second option on the nature of the above object is that peripheral sense data is metaphysically precise, so your brain makes incomplete sense data based on the information it has. It is as if the brain, lacking information about the object, therefore represents it as imprecise.

This explanation, however, makes little sense, because it asks us to believe that our brains, having gone through the process of creating precise sense data, then fail to pick an accurate color, shape, etc., for the object. If the brain is able to create sense data without reliance on the outside world, there is no reason for it to create sense data that are physically imprecise. In this way, neither answer to the problem of perceptual imprecision succeeds in resolving the issue of peripheral impression of sense data.

The second problem with the Sense Datum View is the problem of the phenomenology of how a sense datum is created and projected. Sense data theorists claim that the object of experience is irreducible beyond sense data. Yet, they cannot explain how the sense data are made, how they exist non-physically, and how their brains can project them with such accuracy. Do sense data exist outside of physical space in their own mental realm? If so, how do they come to be projected in the physical realm?

This mysteriously irreducible process suggests that the Sense Datum View is not useful in answering the character question. Although, according to the Sense Datum View, to have an experience with a specific character is simply to experience Sense Data, the failure to explain how these mysterious sense data operate continually brings us back to the original question: what constitutes the character of experience? The Representationalist View will answer these questions by explaining perceptual imprecision and by positing a more precise description of the metaphysics of perception.

3. Answer Two: Representationalism

3.1. The Representationalist Answer to the Character Question

The Representationalist View answers the character question by arguing that to engage with an experience is to represent an array of perceptual properties experimentally. But what does this seemingly circular definition really mean? To understand this view, take the case of hallucination. The Representationalist View also utilizes the “seems gambit” in the case of a hallucination. The “seems gambit” means that if you hallucinate an apple, you do not actually perceive an apple

object – physical or nonphysical; instead, it just seems as if there is such an object. Having no need for an object of perception is a significant departure from the Act/Object Assumption, which states that such an object must exist in actuality. In experience, according to the Representationalist View, it seems that an object is there, but in actuality, it is merely a representation that your brain creates.

3.2. Argument for Representationalism

The main argument for Representationalism is that it does a better job than the Sense Datum View in explaining major problems in perception. First of all, it currently offers the most plausible explanation of the external directedness and internal dependence problem. The external directedness and internal dependence problem is the intuition that perception relates both to things out in the world and to our own internal processing of perceptions. Take the example of noise: it is intuitive that noise is simultaneously something that we process internally, and something we believe is also out there in space. Representationalism incorporates this intuition nicely by saying that although there are physical noises out in the world, your experience of hearing is just for your brain to make it seem to you (represent the noise) that there is noise in the space around you.

Representation also avoids the problem of perceptual imprecision. If your brain merely represents sensory experiences, it makes sense that, when the level of detection varies, so will the level of precision and completeness. To comprehend this view, it is helpful to picture representational experience as language. Language, when heard, conveys the understanding and meaning of what the speaker intends to say. Yet it is not in itself the meaning. For example, the word “apple” represents an apple, but while it may trigger the idea of an apple, it is not itself an apple.

Experiential representation also explains the problem of the object’s location with which, as we saw, the Sense Datum View struggled. In Representationalism there is no need for a non-physical or mental realm because these representations are existence-neutral, meaning that in order for the brain to represent something, there need not exist anything for it to represent. While the actual nature of these mental representations may still be mysterious, in these ways, Representationalism far exceeds the former views in answering critical questions with precision.

3.3. Questions for Representationalism

The main question for Representationalism is how much representations rely on internal and external factors. In other words, to what extent does representationalism require there to be something in the world for the brain to detect? How much of representationalism is reliant on internal directedness as opposed to the external environment? For example, is it that colors are real and that our brains

are detecting and representing them, or is it that objects are colorless and the brain merely represents them with color properties? How reductive is experienced representation?³

These questions will be answered differently by different views within representationalism. I will consider two options. The first option is the Internal Non-Reductionist View of Representation, which will favor internal dependence. According to this view, color does not exist in the world but rather is only represented by our brains. This view faces many of the same problems as the Sense Datum View. The second option is the Reductionist Externalist View, which grounds representations in the external world. For example, this view would have us believe that our brain is representing real colors that exist in the world, but the image we see only “seems” to be those colors. I will explain the Internalist Non-Reductive View first, and compare it to the Sense Datum View, explaining the similar problems it faces.

4. Non-Reductive Representationalism

4.1. Non-Reductive Representationalism’s Answer to the Character Question

If you remember the Sense Datum View mentioned above, you have already grasped the basic intuition about Internalist Non-Reductive Representationalism. Internalist Non-Reductive Representationalism holds that sensible qualities like color or smell are only internally dependent on experientially represented experiences; they are not “out there” in the world. However, Internalist Non-Reductive Representationalism does not hold that experience can be further reduced to any physical object or process. To experience the color red is simply to experientially represent the color red, and further, there is no property of red attached to any object in the real world parallel to this experience. This understanding of the location of sensible properties contrasts the reductive internal views that claim to further describe the process of experientially representing or the external views that rely on the physical external world to influence experiential representation.

Although the proponents of Externalist Non-Reductive Representationalism agree that representing red depends on neural processes in the brain, they also believe that this representation cannot be reduced to those properties.

4.2. Arguments for Internalist Non-reductive Representationalism

Unlike the Sense Datum View, the Internalist Non-Reductive Representationalism avoids problems of perceptual imprecision. Like all representationalist views, Internalist Non-Reductive Representationalism not only explains but also predates such cases by maintaining that the brain needs adequate information for representations. It also avoids non-physical objects such as sense data, therefore circum-

³ Reductive meaning how much can the experience be further broken down in more basic processes.

venting questions concerning location and space. Furthermore, Internalist Non Reductive Representationalism offers a strong account of internal dependence. Lastly, Internist Non-Reductive Representationalism predicts the weak correlation between external stimuli and internal response, as found through numerous neurological studies.

4.3. Problems with Internist Non-Reductive Representationalism

Many of the same phenomenological issues associated with the Sense Datum View are also found in Internalist Non reductive Representationalism. The non-reductive part of the view makes the view phenomenologically unclear. If experience cannot be reduced further, how do those representations come to be? What are they based on? Why are they so similar to other people's representations? How are they projected on the world? This phenomenological confusion makes the view impractical as an explanation of experience, resulting in more questions than answers. Because of its non-reductive nature, Internist Non-Reductive Representationalism gives very little new information about the nature of experience, maintaining that experience is experientially representing and does not in itself explain what experience consists of. In this way, Internist Non-Reductive Representationalism fails to be useful in answering the character question.

The view also gives a concerning answer to the external directedness part of the external directedness and internal dependence problem by failing to give an account of how the physical world affects perception. The view claims that experientially representing red is distinct from any physical conception of "red". However, they believe that experience depends on the physical. This complexity leads to an almost dualist account of perception. I will now turn to the second option within Representationalism, External Reductive Representationalism, which will preserve the benefits of Representationalism while at the same time addressing the concerns discussed above.

5. Externalist Reductive Representationalism

5.1. Externalist Reductive Representationalism's Answer to the Character Question

Externalist Reductive Representationalism believes that representations are grounded in the external. To get an intuitive feel for this view, picture a thermometer. A thermometer represents weather, yet the thermometer is not the weather; it is only representing its own detection measure of the external factor of weather. A thermometer that is designed to measure temperatures up to 90 degrees will represent 100 degrees as 90 just as a brain lacking proper information will experientially represent a hallucination. In this way, Externalist Reductive Representationalism demystifies the relationship between experientially representing the external world and the external world itself. The brain detects sensible properties

such as color that exist in the world and experientially represents them with the information it possesses.

5.2. Arguments for Externalist Reductive Representationalism

Externalist Reductive Representationalism does the perfect job of resolving the internal dependence and external directedness problem. It is essentially a view that believes experience is both internally and externally grounded. It also explains experience in physical terms thereby de-mystifying the nature of experience representation. Like all reductionist views it is able to avoid the Act/Object assumption and the problems that follow with that assumption like perceptual imprecision, location, etc. Moreover, Externalist Reductive Representationalism predicts and explains hallucination very well by utilizing the “seems” gambit and by giving an account of how hallucinations come to be represented.

Lastly, Externalist Reductive Representationalism offers an account of how evolution affects perception by explaining that an evolutionary history is a prerequisite for experience, just as syntax is a prerequisite for language. So it makes evolutionary sense that this perceptual account would be a selected trait. Cognitive American psychologist Donald Hoffman, suggests that, since our limited experiential representation of reality can only represent so much information at a time, the brain chooses the information that has seemed evolutionarily most necessary (The Case Against Reality). Therefore, our perception focuses us on essential experiential representations, allowing the brain to process its environment quickly and decisively.

6. A Major Objection to Externalist Reductive Representationalism

A major problem for Externalist Reductive Representationalism is the problem of how to treat pain. It has been proven that there is a weak correlation between external causes of pain and our experience of it internally. According to Externalist Reductive Representationalism, when the amount of pain increases externally the experience of that pain should increase with relative correlation. This example is similar to that of the thermometer: if the temperature increases outside, the thermometer should show a consistent increase as well. However, studies show that there is a very weak correlation between the levels of external sources of pain and the internal experience of pain. Stevens et al. found in their study on the correlation between the intensity of electric shocks and the internal experience of pain that it “seems to be universally true on prosthetic continua, the category scale is concave downward when plotted against the scale of subjective magnitude” (Stevens, 330). In other words, for each of their three methods of determining internal pain intensity (appearance of intensity, neuron response, and self-reporting), the correlation, while positive, was weak between increased external intensity and in-

ternal experience of pain (this will be referred to as the weak internal good external correlation problem). However, the correlation between neuron response and reported pain intensity is strong, suggesting that the experience of experientially representing pain is entirely internal (Stevens 335).

Another problem for Externalist Reductive Representationalism relating to pain has to do with exceptions to the traditional model of pain. For example, phantom pains (pains that appear where a missing body part should be) appear to have no external source yet it is hard to deny that they are pain experiences. In these cases the Internal Physical Model or the Internal Non Reductionist Representational View works better because not only does it predict a weak correlation between external and internal experiences of pain, but it also accounts for pain based on mental states that have nothing at all to do with the outside world (Hill 80).

The folk intuition about pain also supports this theory. Almost all statements about pain locate it in the body rather than in something “out there” that we experience. One would say “I have a headache” or “I am in pain” rather than “I am experiencing a pain that is in the door stubbing my toe.” To understand this difference take the example of color. When talking about color our intuition is that it is located in the object we are experiencing, i.e., “I see that brown door.” By contrast, pain appears to us to be only within our own experience of it, i.e., we say “my toe is in pain” not “that door that stubbed my toe is painful.” This intuition goes against the Externalist Reductive Representationalism view of pain, which always seeks to locate pain in the external world.

7. Addressing the Problem of Pain in Externalist Reductive Representationalism

7.1. Solution One

A simple answer is that pains not grounded in reality (such as phantom pains) are merely hallucinations. This resembles the case of the thermometer which, because it only goes to up to 90 degrees, represents 100 degrees as 90 degrees. While we do not know exactly why the hallucination exists, that is more an issue of the causation of pain than the perception of pain experienced. Thus it is not a requirement of Externalist Reductive Representationalism to answer the question of the cause of pain-related hallucinations.

As explained earlier, Externalist Reductive Representationalism offers a great explanation of hallucination, so it could be objected that phantom pains are not only explained, but also predicted by the Externalist Reductive Representationalist View. It would make no sense that every other sense – sight, sound, etc. – would experience representation and only pain would be required to respond solely to external stimuli. I think that this objection offers a clear defense of Externalist Re-

ductive Representationalism with regard to pains not caused by external stimuli. However, it does not address the weak correlation between internal experience and outside stimuli in cases where there are outside stimuli present. To address this issue I will lay out the three main ways that Externalist Reductive Representationalists explain weak correlation and evaluate each answer based on its compelling evidence and ability to fully set aside the concerns about pain.

7.2. Solution Two: Representing our Own Detection of Pain

One answer to the weak internal good external correlation problem is that when we externally represent pain, we are detecting not external sources of pain, but instead, our own physical response to pain. For example, when we feel a migraine for which there is no external source, what we are actually experientially representing is the physical response of our brain or spinal cord. That would explain, and even predict, the strong correlation observed between neuron response to stimuli and reported pain levels.

One positive result of locating the detection of pain in our body is that the result manages to find a physical source of pain. For those who are attracted to the Externalist Reductive Representationalist View because of its physicality, this is a very compelling resolution. Another positive outcome is that this answer neatly predicts the correlation problem. The negative outcome of this view is that, while the view does locate a physical source of pain, it does not locate an external source of pain as the spinal cord and brain are still internal.

Without an external source of pain, the relationship between hallucination and normal cases remains ambiguous, since phantom pain can still be located in the spinal cords and neurons. Additionally, the answer suggests that pain could not exist independently of human perception of it. It is one of the tenets of the Externalist Reductive Representationalist View that sensory qualities, such as color, shape, etc., pre-date humanity and continue to exist whether or not they are perceived. In conclusion, this solution, while compelling, may demand a large phenomenological shift in the Externalist Reductive Representationalist View.

7.3. Solution Three: Normal/Abnormal

A third answer to the problem of pain is that all pain is partially an illusion. That would mean that, while pain exists externally out in the world, our brain always tracks it a little incorrectly and thus all experienced representations of pain are partially illusions. This does fit the evidence, since experience of pain has a positive but not perfect correlation to external sources. The positive of this explanation is that it manages to locate pain entirely externally.

The negative is that Externalist Reductive Representationalism does not want to normalize illusion as an answer for the other senses. Differences in the experien-

tial representation of color, for instance, between color-blind and non-color-blind individuals, is not explained this way. So the explanation forces Externalist Reductive Representationalism into a dualist view in which pain is treated differently than every other perceptive quality. Unless a compelling reason is found why pain should operate differently, it seems unnecessary to resort to a dualist view and makes the Externalist Reductive Representationalist View less compelling overall because it is no longer a good view for simplicity concerns.

7.4. Solution Four: Divorcing Externalist Reductive Representationalism from the Folk Perception of Pain

Unlike other types of sensory perception the common or “folk” perception of pain is that to experience pain just is to feel pain (Hill 73). Significantly, we do not believe this about any other sense. For all other senses we distinguish between appearance and reality. For example, an apple might seem green to a regular person and red to a color-blind person. However, we would never say that the apple is red just because the color blind person perceived it as such. Nor would we equate seeing a hallucination of a red flower with actually seeing a red flower. Nor would we say that we failed to see the color of the apple just because there are animals that can see it in more colors than us. Thus, in all cases besides pain, we can successfully utilize the “seems” gambit to understand that appearance versus reality exists in regards to sensory perception.

This solution to the problem of pain can be stated in this way: it is not that our view of perception does not fit with pain, but rather that our view of pain is incorrect. This solution is strongly supported by the failure of any view to completely account for pain. Christopher Hill in his paper “Fault Lines in the Perception of Pain” suggests redefining pain using the “seems” gambit. In his view, all pain is based on some sort of external bodily disturbance. If one feels a pain such as a phantom pain with no apparent cause then one is not actually in pain, they just seem like they are what their brain is detecting and experientially representing. In the same way, if you see a red flower where no flower exists, you are simply hallucinating the red flower.

This solution also addresses opposite examples in which external causes of pain are present but the person does not feel pain. For example, when one has surgery but is under anesthetics, it seems to one as if they are not in pain but in reality they are experiencing external causes of pain. The solution would remain true for cases such as pain asymbolia, a condition where one is unable to feel pain. This answer would be a projectivist account of pain since pain is still found in external bodily disturbance. This account of pain still leaves some questions unanswered, such as the way that these hallucinations of pain work. However, this is a problem best served by neuroscience and essentially does not detract from the

view since Externalist Reductive Representationalism already has an account of hallucination.

7.5. Evaluation

In my view, the fourth and final answer is the best answer to the question of pain. It separates accounts of pain described by the hallucination and normal/abnormal answers, while explaining how this view does not create a dualist account and, in fact, works the same way as experientially representing the sense of sight. It also predicts the weak correlation between pain and external sources by eliminating internal experience as the criteria for pain intensity. In these ways, it solves the problem of pain for Externalist Reductive Representationalism while leaving open the possibility of further research on the nature of the relationship between external disturbance and pain.

8. Why is Externalist Reductive Representationalism the Most Compelling View?

Unlike the Sense Datum view, Externalist Reductive Representationalism does not need any assumptions like the Act/Object assumption, does not require any objects that are metaphysically imprecise, and has a clear internal and external relationship. In contrast to the Internalist Non-Reductive Representationalism the Sense Datum View, Externalist Reductive Representationalism's phenomenology is not mysterious and it is an externally grounded view. The Externalist Reductive Representationalism successfully reduces the nature of perceptive experiences, answering the character question, and giving an account of the external directedness and internal dependence problem. For these reasons, although there are still research questions, the balance of considerations is strongly in favor of Externalist Reductive Representationalism's view of perception.

Bibliography

- Coghill, Robert, et al. "Pain Intensity Processing Within the Human Brain: A Bilateral, Distributed Mechanism." *National Institutes of Health*, vol. 82, 1999.
- Cutter, Brian, and Michael Tye. "Tracking Representationalism and the Painfulness of Pain." *Philosophical Issues*, vol. 21, 2011.
- Hills, Christopher S. "Fault Lines in Familiar Concepts of Pain." *Brown University*, 2022.
- Hoffman, Donald. *Case against Reality: Why Evolution Hides the Truth from Our Eyes*. W W Norton, 2021.
- Stevens, S.S., et al. "A Scale of Apparent Intensity of Electric Shock." *Journal of Experimental Psychology*, vol. 56, no. 4, 1958.

“All Lesbians go to Pride”: Barriers and Biases in Seeking Asylum as a Queer Person Fleeing Persecution

Caitlin Barotz

This paper delves into the complex issue of asylum-seeking by queer individuals escaping persecution. The paper begins by providing a historical context, tracing the evolution of asylum law, particularly focusing on the United States’ recognition of sexual orientation as a valid ground for asylum. The landmark cases of Matter of Toboso-Alfonso and Pitcherskaia v. INS are explored, emphasizing the legal strides made in acknowledging the persecution faced by LGBTQ+ individuals. The core of the paper addresses the unique challenges faced by queer refugees and asylum seekers, highlighting the pervasive discrimination, oppression, and violence that LGBTQ+ individuals often experience even before fleeing their home countries. These challenges are exacerbated by logistical, financial, institutional, and psychological barriers that queer refugees encounter during their journey to safety and in the United States. The paper concludes with a comprehensive discussion of potential improvements to the asylum process for queer refugees. These include the need for better training for immigration officials to reduce bias, increasing diversity among immigration judges to provide a broader perspective, and employing specialized clinicians at the border to support queer refugees’ mental health and establish trust. The ultimate aim is to create a more inclusive and equitable asylum system that recognizes and validates the unique experiences of LGBTQ+ individuals. This paper calls for systemic changes to ensure that seeking asylum is a more accessible and just process for those fleeing persecution based on their sexual orientation and gender identity.

I. Introduction

As the United States has become increasingly accepting of queerness, many nations remain highly repressive, criminalize homosexuality, and lack the legal

protections to safeguard queer individuals from persecution.¹ 64 countries—one-third of United Nations member states—criminalize homosexuality, and a guilty verdict may result in imprisonment or the death sentence.² Some countries have instituted severe punishments for individuals who do not obey conventional gender norms and have barred non-traditional expressions of gender identity, such as cross-dressing.³ In many of these countries, queer people often face barriers to employment, leading to financial challenges and preventing them from living successful lives.⁴ Queer individuals around the world experience an alarming frequency of abuse rising above the level of mere harassment during their daily lives if they dare to express their sexual identity. For instance, there is a Russian criminal gang whose members pose as online romantic interests on gay dating apps and lure their victims in order to film, extort, and punish them for homosexual activity.⁵ The group, called “Occupy Paedophilia,” has also seduced gay men over Facebook and has uploaded videos of their victims being attacked and humiliated to VKontakte, an anti-gay website, as well as YouTube and Twitter.⁶ In cases like this, individuals seek out queer people in order to torment and abuse them. Even in countries where homosexuality identities are legal, queer people are mistreated by individuals who believe that queerness is wrong. As such, queer individuals are forced to conceal their identities, oftentimes from friends, family, and their larger social sphere.⁷ As this persecution persists, an increasing number of queer people have begun seeking asylum in the United States. However, as the understanding of queer people as a solidly defined social group is still emerging, legal questions are posed when it comes to proving their right to persecution-related asylum or proving that one is queer.

II. Understanding the Asylum Seeking Process

For individuals seeking safety from persecution in their home country,

1 University of Virginia Department of Family Medicine, “Clinical Guidelines for the Primary Care of Lesbian, Gay, Bisexual, Transgender, and Queer Asylum Seekers and Refugees.” Accessed May 8, 2023. <https://med.virginia.edu/family-medicine/wp-content/uploads/sites/285/2021/03/LGBTQasylumseekers.pdf>.

2 Wareham, Jamie. “New Maps Show Where It’s Illegal To Be LGBTQ+ In 2023.” *Forbes*, April 7, 2023. Accessed May 8, 2023. <https://www.forbes.com/sites/jamiewareham/2023/04/07/new-maps-show-where-its-illegal-to-be-lgbtq-in-2023/?sh=49e1420c7eaa>.

3 Ibid.

4 University of Virginia Department of Family Medicine, “Clinical Guidelines for the Primary Care of Lesbian, Gay, Bisexual, Transgender, and Queer Asylum Seekers and Refugees.”

5 “Gay ‘Hunters’ in Moscow Using Dating Apps to Target LGBTQ+ People.” *The Independent*. <https://www.independent.co.uk/news/world/europe/gay-hunters-russia-moscow-apps-gangs-homophobia-a8865376.html> (Accessed October 31, 2023).

6 “Russia’s Violent Anti-Gay Groups on VKontakte.” *The Guardian*. <https://www.theguardian.com/technology/2014/feb/11/russia-violent-anti-gay-groups-vkontakte-lgbt-sochi> (Accessed October 31, 2023).

7 University of Virginia Department of Family Medicine, “Clinical Guidelines for the Primary Care of Lesbian, Gay, Bisexual, Transgender, and Queer Asylum Seekers and Refugees.”

receiving asylum in another nation can mean the difference between life and death. International asylum law evolved following World War II, where over 2.3 million individuals were displaced, and many sought refuge in other countries.⁸ As of 2015, there are over 65 million forcibly displaced people worldwide, and this number continues to rise due to armed conflict, human rights abuses, and the global climate crisis.⁹ The principle of non-refoulement, which is a key component of international law, states that governments cannot forcibly return anyone to their country of origin if their life or freedom is threatened due to their race, religion, nationality, membership in a particular social group, or political opinion.¹⁰ However, although persecuted individuals have a right to non-refoulement, international law does not guarantee anyone the right to asylum.¹¹ As such, refugees who wish to stay in the country to which they have fled must apply for asylum, which is an extremely complex legal process, and many asylum claims are ultimately denied.

Since the development of asylum law in the 1950s, there have been many advancements to allow individuals to claim asylum on the grounds of being persecuted for their sexual orientation. However, there are countless reports of queer individuals being denied asylum for reasons directly relating to their queer identity. In this paper, “queer” is used to refer to anyone who identifies with the LGBTQ+ community, including homosexual and transgender individuals. The United States has a rigorous legal procedure that refugees must complete in order to prove that they face persecution in their home country and gain asylum status. Since granting asylum is costly for the host country, the United States often denies asylum claims on technicalities even when applicants are able to meet all other criteria. Due to widespread persecution of queerness around the world, queer refugees face many unique challenges at every step of the refugee process, especially in proving their identities when making legal claims for asylum. As such, the asylum process must be improved to support queer refugees, ideally through intentionally decreasing the impact of judicial bias on asylum decisions and creating a support system for queer refugees.

III. Queerness as a Legally Recognized Persecuted Social Group Entitled to Asylum

Asylum is a status of protection that is granted to individuals who meet the technical definition of a “refugee” under international law. In order to gain

8 Hynes, P. (2021). “Who is a ‘refugee’ and who is an ‘asylum seeker?’” In *Introducing Forced Migration*. essay, Routledge, Taylor & Francis Group.

9 Ibid.

10 Ibid.

11 Ibid.

asylum status, there are three baseline requirements that individuals must meet. First, the asylum-seeking individual must prove that they meet the definition of a refugee. A refugee is someone who is unwilling or unable to return to their home country due to persecution or a well-founded fear of persecution “on account of race, religion, nationality, membership in a particular social group, or political opinion.”¹² Second, they must prove that they have been persecuted or experienced “conduct rising above the mere level of harassment.”¹³ Third, the asylum seeker must prove that they fall within one of the five protected grounds and that their identification with at least one of these groups is a “central reason” for the persecution they faced or of which they have a well-founded fear.¹⁴ Asylum applicants will have vastly different legal processes depending on the grounds on which they claim asylum.

Securing asylum based on membership in a persecuted social group, as opposed to one of the other protected grounds, poses unique challenges in the refugee process due to the ambiguous nature of defining “particular social group” and the criteria required for recognition. Unlike race, religion, nationality, and political opinion, there is no set definition for what constitutes membership in a “particular social group” on the grounds of which someone can claim asylum. To be recognized as a particular social group, the group must be unique, identifiable, and individuals in the group must share a common characteristic that they cannot or should not be expected to change.¹⁵ Most commonly under this category, the United States currently offers asylum to subjugated tribes and ethnic groups, members of persecuted occupations (for example, police officers), influential leaders who are being targeted for assassination, child soldiers, and LGBTQ+ individuals.¹⁶ Seeking asylum on the basis of belonging to a particular social group means that individuals must first prove that they belong to this group, which is sometimes more ambiguous or harder to prove than characteristics like race or nationality. Next, applicants must prove that they have faced, or have a well-founded fear of, persecution. Finally, asylum seekers must substantiate that the persecution is directly due to their membership in this particular social group. In the United States, asylum is a “discretionary” status, meaning that even if individuals meet the definition of a refugee and are able to prove

12 “Asylum in the United States.” American Immigration Council, October 18, 2022. <https://www.americanimmigrationcouncil.org/research/asylum-united-states>.

13 Topel, Kimberly D. “‘So, What Should I Ask Him to Prove That He’s Gay?’: How Sincerity, and Not Stereotype, Should Dictate the Outcome of an LGB Asylum Claim in the United States.” *Iowa Law Review* 102, no. 5 (2017).

14 Ibid.

15 “What Does the Term, ‘Particular Social Group,’ Mean for Asylum?” The Law Office of Yifei He, PLLC, May 18, 2022. <https://yifeihelaw.com/2021/03/what-does-the-term-particular-social-group-mean-for-asylum/>.

16 Ibid.

that they face persecution because of the group to which they belong, they can still be denied asylum.¹⁷ These requirements for asylum prove to be uniquely challenging for queer individuals due to the fluidity in representing one's sexual orientation and gender identity and the difficulty in proving one's affiliation with the queer community.

The legal precedent set by the court case *Matter of Toboso-Alfonso* was crucial in acknowledging queerness as a persecuted social group in the United States, providing a foundational basis for queer individuals to seek asylum. In this 1990 court case, a gay man from Cuba was found to be eligible for "withholding of removal," or a form of relief similar to asylum status, on the basis that he belonged to the particular social group of homosexuals – this case was the first successful "relief-from removal" claim for persecution due to sexual orientation. Further, in order for one to gain asylum on the grounds of being part of a particular social group, the group must share a common characteristic that individuals cannot or should not be required to change.¹⁸ The *Matter of Toboso-Alfonso* established homosexual identity as an "immutable characteristic" that one cannot or should not be required to change,¹⁹ establishing queer identity as a protected social group from which people could claim asylum. The decision also reflected a change in the political attitude toward queerness from an inherently incorrect and deplorable lifestyle to an identity that deserves protection.

The decision resulting from *Pitcherskaia v. INS* was also imperative to solidifying that persecution on the basis of sexual orientation can be a valid ground for granting asylum in the United States. This case centered around a lesbian from Russia who fled after being beaten and receiving death threats from police officers because of her sexual identity.²⁰ At first, her asylum claim was denied, but the Ninth Circuit Court of Appeals reversed the decision in 1997, enshrining the precedent that sexual orientation can be a valid reason to grant asylum if the claimant can prove that the oppression they experienced was due to their sexual identity.²¹ This case also emphasized that the government cannot use sexual orientation as a reason to deny asylum to an individual because it would violate the Constitution's Equal Protection Clause.²² Recently, the Ninth Circuit affirmed that "all alien homosexuals are members of a particular social group," and other

17 American Immigration Council, "Asylum in the United States."

18 Ibid.

19 Topel, "'So, What Should I Ask Him to Prove That He's Gay?': How Sincerity, and Not Stereotype, Should Dictate the Outcome of an LGB Asylum Claim in the United States."

20 "A Brief History." Immigration Equality, August 7, 2020. <https://immigrationequality.org/asylum/asylum-manual/asylum-law-basics-2/asylum-law-basics/>.

21 Ibid.

22 Ibid.

countries have ruled similarly.²³

The *Pitcherskaia v. INS* ruling also provided additional pathways for queer individuals to prove persecution on the grounds of being LGBTQ+. In most asylum cases, the asylum seeker must prove that the persecutor has harmed or intends to harm the individual because of their identity. The decision resulting from *Pitcherskaia v. INS* specifically mentioned that “the infliction of harm through methods or devices that cause extreme, cruel, and unusual pain, such as [...] electroshock therapy” can be considered persecution.²⁴ This is significant for individuals seeking asylum on the grounds of sexual identity, because homosexuals are often subject to electroshock or other forms of conversion therapy in order to “cure” their sexual orientation.²⁵ As a result of this decision, courts have since determined that for queer individuals, persecution can occur even when the persecutor has no apparent intention to harm the individual.²⁶ This is often the case with electroshock therapy victims, as the objective of the perpetrators is often to “cure” the victim rather than to harm them.²⁷ As such, queer individuals are able to prove persecution due to sexual identity if they have been subject to or are being threatened with violent forms of conversion therapy, and this provides another way in which queer individuals can substantiate a well-founded fear of persecution in order to gain asylum. Despite all of these landmark court decisions, queer individuals still face significant obstacles when seeking asylum due to persecution based on their sexual identity.

The United States has a legal duty to provide a safe haven for individuals fleeing persecution based on their sexual orientation or gender identity. Congress incorporated the definition of a refugee set by the United Nations 1951 Convention and 1967 Protocol into United States immigration law in the Refugee Act of 1980.²⁸ As a signatory to both the 1951 Convention and 1967 Protocol, the United States is legally obligated to provide protection to those who qualify as refugees.²⁹ As long as U.S. law establishes queerness as a persecuted social group and grounds for asylum status, which it has through previously mentioned landmark court cases, the United States must grant asylum to queer refugees who qualify for such protected status.

23 Immigration Equality, “A Brief History.”

24 *Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997).

25 Immigration Equality, “A Brief History.”

26 Ibid.

27 Ibid.

28 American Immigration Council. “Asylum in the United States.” <https://www.americanimmigrationcouncil.org/research/asylum-united-states> (Accessed November 2, 2023).

29 Ibid.

IV. Challenges Faced by Queer Refugees

The United States asylum presents individuals with a complex web of physical and legal challenges. There are seven standard steps that asylum seekers must complete in order to receive asylum status. Firstly, refugees must arrive in the United States, which requires crossing the United States' border by land, sea, or air.³⁰ Asylum seekers must then apply for asylum within one year of their arrival in the country.³¹ After one's application is received by the United States Citizenship and Immigration Services (USCIS), they must be fingerprinted and undergo a background check.³² Next, the asylum seeker will be interviewed by the USCIS, at which point the court or asylum officer will determine whether or not the individual is eligible for asylum under the conditions previously stated.³³ On average, if an asylum seeker is approved at every step of the process, it can take several months to years to be approved for asylum.³⁴ However, although the asylum process is largely standardized queer individuals face unique barriers at specific stages of this process.

Queer people face unique logistical, financial, institutional, and psychological challenges on their journeys to the United States in order to apply for asylum status. Because many LGBTQ+ individuals cannot publically express their queer identities, they cannot turn to family or friends for assistance when trying to flee.³⁵ Travel is costly, and people who are barred from the workforce on account of discrimination due to their sexual identities have trouble obtaining the funds needed to get to the United States.³⁶ Countries that criminalize queerness often invest in widespread surveillance, making it difficult for people to leave without revealing the reason for their departure.³⁷ For example, in Iran, where queerness is penalized under Iran's Islamic Penal Code, a new repressive "Regulatory System for Cyberspace Services Bill" increases the state's surveillance power and bans encrypted communication sites, Virtual Private Networks, (VPNs), and many social media platforms.³⁸ This gives state security and police forces the ability to surveil citizens' use of certain websites with ease and impunity.³⁹ Further,

30 U.S. Citizenship and Immigration Services. "The Affirmative Asylum Process." <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/the-affirmative-asylum-process> (Accessed November 1, 2023).

31 Ibid.

32 Ibid.

33 Ibid.

34 Ibid.

35 Ibid.

36 University of Virginia Department of Family Medicine, "Clinical Guidelines for the Primary Care of Lesbian, Gay, Bisexual, Transgender, and Queer Asylum Seekers and Refugees."

37 Ibid.

38 "Internet Protection Bill and Its Impact on the Queer Community," Atlantic Council, <https://www.atlanticcouncil.org/blogs/iransource/the-internet-protection-bill-will-hurt-all-iranians-but-the-queer-community-will-have-the-most-to-lose/> (Accessed October 31, 2023).

39 Ibid.

the law prevents the queer community from accessing safe online queer spaces, such as Tinder, Bumble, Hinge, and Grindr, and hinders the ability for queer people to communicate with individuals outside of the country to plan their escape.⁴⁰ While traveling to the United States, queer refugees are often harassed by other refugees in refugee camps and have reported discrimination by immigration officials because of their sexual orientation.⁴¹ For instance, asylum seekers have reported being deported by U.S. immigration officers despite voicing fears about returning to Mexico because of their LGBTQ+ identity, many of whom had previously faced abuse linked to their gender identity, expression, or sexual orientation.⁴² These reports by Human Rights Watch also detailed severe abuse by Mexican border agents when queer asylum seekers attempted to enter the United States.⁴³ The multitude of challenges, from financial constraints to institutional barriers and the pervasive threat of discrimination, exacerbates the difficulties faced by LGBTQ+ individuals seeking asylum in the United States based on their sexual orientation or gender identity.

Once in the United States, queer refugees also face discrimination upon arrival. There are countless reports of border patrol and other government officials exhibiting bias and prejudice against queer refugees upon their arrival which can be attributed to the inadequate training that these officials receive.⁴⁴ For example, in March 2022, the El Paso region's official Twitter account for U.S. Customs and Border Control promoted homophobic content, liking several tweets containing homophobic slurs and criticizing gay U.S. representatives.⁴⁵ This incident clearly exemplifies the bias and prejudice that some U.S. Border Patrol officials hold regarding queerness. These discriminatory attitudes hinder refugees from being open and honest in their interview processes, which can be detrimental in proving an asylum claim.⁴⁶ There have also been instances in which queer refugees face abuse while detained in immigration centers in the United States.⁴⁷ In 2011 alone, Heartland Alliance's National Immigrant Justice Center (NIJC) filed 17 reports of abuse of LGBTQ+ individuals in detention centres, including

40 "Internet Protection Bill and Its Impact on the Queer Community," Atlantic Council.

41 Ibid.

42 Human Rights Watch, "US: LGBT Asylum Seekers in Danger at Border," Human Rights Watch, May 31, 2022, <https://www.hrw.org/news/2022/05/31/us-lgbt-asylum-seekers-danger-border>.

43 Human Rights Watch, "US: LGBT Asylum Seekers in Danger at Border."

44 "Internet Protection Bill and Its Impact on the Queer Community," Atlantic Council.

45 "El Paso CBP Twitter Account Promotes Conservative Homophobic Content," El Paso Matters, <https://elpasomatters.org/2022/09/10/el-paso-cbp-twitter-account-promotes-conservative-homophobic-content/> (Accessed October 31, 2023).

46 Ibid.

47 Nguyen, Mytien, Ryan Handoko, Emmanuella Asabor, and Katherine C McKenzie. "A Gay Nigerian Man's Journey to Asylum in the USA." *BMJ case reports*, April 5, 2019. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6453367/>.

sexual abuse by detention guards and other detainees.⁴⁸ Abuse in immigration detention centers can lead to severe emotional and psychological trauma, which may also prevent refugees from recounting their full experiences coherently and confidently during their asylum interviews.

Queer refugees also face unique legal barriers in proving their claims for asylum during the interview stage. As mentioned previously, a major requirement of the asylum process is proving that the individual claiming asylum is part of a particular social group that is persecuted. Since most queer people seeking asylum are forced to conceal their sexual and/or gender identities in their home country, there is often little to no evidence that they belong to the LGBTQ+ community. Many homosexual applicants have never been in queer relationships.⁴⁹ Others may have been in heterosexual marriages and may even have children from such marriages.⁵⁰ This can create substantial doubt in the minds of immigration judges as to the validity of an individual's claim to a queer identity.⁵¹ Applicants seeking asylum on other grounds may also have to hide aspects of their identities to escape persecution, but there are often other cultural, linguistic, or physical markers that can help prove their belonging in a persecuted community after they have fled, and similar markers do not exist for individuals trying to prove queerness.⁵² Immigration judges have been known to resort to extensive interrogation to determine whether an individual is queer and thus deserving of asylum status.⁵³ However, these questions are often inappropriate and invasive since they deal with the applicant's sexual history.⁵⁴ Asylum seekers have been asked sexually explicit questions such as, "Did you put your penis into X's backside?"⁵⁵ This line of questioning not only creates an extremely uncomfortable environment for the applicants but also may reignite trauma that an applicant has surrounding the discrimination they face for being queer.

The already difficult asylum process is not designed to recognize and accommodate the specificities of the queer experience, as LGBTQ+ asylum seekers are often denied asylum on technical grounds. An applicant's claim could be denied simply because they failed to file their application within their first year of arrival

48 Nguyen, Handoko, Asabor, and McKenzie. "A Gay Nigerian Man's Journey to Asylum in the USA."

49 National Center for Lesbian Rights. "Challenges to Lesbian Asylum Claims." San Francisco: National Center for Lesbian Rights, April 2013. Accessed May 8, 2023. https://www.nclrights.org/wp-content/uploads/2013/04/Resources_Challenges_Lesbian_Asylum_Claims.pdf.

50 Ibid.

51 Ibid.

52 Ibid.

53 Topel, "'So, What Should I Ask Him to Prove That He's Gay?': How Sincerity, and Not Stereotype, Should Dictate the Outcome of an LGB Asylum Claim in the United States."

54 Ibid.

55 Travis, Alan. "Gay asylum seekers in UK face 'sexually explicit' questions." *The Guardian*, October 23, 2014. Accessed May 8, 2023. <https://www.theguardian.com/uk-news/2014/oct/23/gay-asylum-seekers-sexual-questions-uk-immigration>.

in the United States.⁵⁶ Although this does not appear to relate to queerness on its surface, many queer applicants fail to meet this filing deadline because they are unable to “come out” during their first year in the United States.⁵⁷ Other applicants are denied asylum status due to criminal records in their home countries which disproportionately affects LGBTQ+ individuals from countries in which queerness is criminalized.⁵⁸ Further, applicants can be denied asylum if they are unable to prove their immigration history through employment records.⁵⁹ This is common for individuals from countries in which queer people are denied access to jobs and have been forced to work under the table and are therefore unable to provide proof of employment.⁶⁰ It is clear that queer individuals face additional barriers in the asylum process, proving that the unequal nature of the asylum seeking process is further amplified by an individual’s queer identity.

Even if queer applicants are able to meet every qualification necessary to be granted asylum, they can still be denied asylum status due to the personal feelings of the immigration judge or asylum officer. Since United States asylum law operates on discretionary grounds, the adjudicator may use their own discretion to make an “adverse credibility finding.”⁶¹ This means that an applicant can be denied asylum if the immigration judge does not believe that the individual’s story is credible.⁶² An adverse credibility finding is largely reliant on the applicant’s physical presentation in relation to their queer identity, as some judges may want the individual to look visibly queer in order to grant them asylum.⁶³ For example, an immigration judge denied the asylum claim of a lesbian woman from Jamaica because the judge did not believe she was homosexual, stating “you don’t look like a lesbian.”⁶⁴ The woman’s credibility was questioned further when she stated that she did not attend a Pride march, and the judge responded, “all lesbians go to Pride.”⁶⁵ In this case and countless others, a refugee’s asylum status is heavily reliant on the adjudicator’s attitudes and assumptions about the queer experience, making asylum decisions highly variable from judge to judge. This is an experience unique to queer people, as the judge’s opinion of other marginalized identities often does not influence whether they are granted asylum. Immigration

56 Cory, Connor. “THE LGBTQ ASYLUM SEEKER: PARTICULAR SOCIAL GROUPS AND AUTHENTIC QUEER IDENTITIES.” *The Georgetown Journal of Gender and the Law* 20, no. 3 (2019).

57 Ibid.

58 Ibid.

59 Ibid.

60 Ibid.

61 Ibid.

62 Ibid.

63 Ibid.

64 Topel, ““So, What Should I Ask Him to Prove That He’s Gay?”: How Sincerity, and Not Stereotype, Should Dictate the Outcome of an LGB Asylum Claim in the United States.”

65 Ibid.

judges and asylum officers cannot make an “adverse credibility finding” against an applicant seeking asylum on the grounds of racial or religious persecution, and it should not be any different for those seeking asylum on the basis of sexual orientation. Whether or not an individual is granted protection from persecution should not be up to an adjudicator’s belief that the individual fits their perceived notions of a queer person.

V. Proposals for a More Inclusive Asylum Process

While the process for claiming asylum on the grounds of persecution due to one’s sexual orientation is extremely flawed, the basis for queer asylum law is fairly new, and, as such, there are many opportunities for improvement. Almost all interviews involving LGBTQ+ claims result in positive determinations of fear of persecution; between 2012 and 2017, 96.3% of queer asylum applicants were found to have been persecuted or have a well-founded fear of persecution.⁶⁶ This indicates that in order to better the asylum process for queer applicants, improvements in the asylum-seeking process should be focused around reducing discrimination and bias directed at queer individuals claiming asylum. The United States has little ability to change other countries’ attitudes and policies regarding queerness and cannot prevent persecution that occurs outside of its jurisdiction. However, the United States can implement domestic policies to improve refugees’ experiences after arriving in the country.

First, there must be better training for immigration officers and border patrol in order to reduce prejudiced and biased attitudes towards queerness and help asylum seekers feel more comfortable discussing their queer identities. This training should be modeled after similar programs to mitigate bias against LGBTQ+ individuals by healthcare workers.⁶⁷ Effective strategies include those that increase knowledge about the specific needs of queer individuals, promote positive attitudes towards queerness, and increase comfort working with queer patients, all of which can be translated to a training program for immigration officials.⁶⁸ If immigration officials do not display discriminatory attitudes towards queerness, there will be fewer instances in which refugees refrain from expressing their queer identities. A refugee feeling comfortable to demonstrate their queer identity will ultimately be helpful in the asylum process and could be a key element in proving that they are part of the queer community.

66 Flores, Andrew R., Bianca D.M. Wilson, and Kerith J. Conron. “Asylum Seekers and Refugees Who Identify as LGBTQ: Challenges, Realities, and Hopes for the Future.” Williams Institute, UCLA School of Law, March 2021. Accessed May 8, 2023.

67 Morris, et al. “Training to Reduce LGBTQ-Related Bias among Medical, Nursing, and Dental Students and Providers: A Systematic Review.” *BMC Medical Education*, August 30, 2019. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6716913/>.

68 Ibid.

Next, since LGBTQ+ refugees are at greater risk of abuse while in detention centers, the United States should end the detention of queer refugees entirely. According to the United States Bureau of Justice statistics, 34% of detained bisexual men and 39% of detained gay men had reported experiencing sexual abuse while in detention, in comparison to only 3.5% of men who identified themselves as heterosexual.⁶⁹ Additionally, LGBTQ+ refugees are disproportionately subjected to elevated rates of verbal abuse and threats of sexual and physical violence.⁷⁰ As such, many human rights organizations strongly advocate for exploring more humane, safe alternatives to detention centers while queer individuals work to resolve their asylum claims.⁷¹ Such alternatives can manifest as community-based programs, managed by non-governmental and non-profit organizations closely connected to the communities they serve.⁷² These programs offer essential services, including legal guidance, representation, and access to social services such as medical care, while still ensuring asylum seekers' compliance with immigration obligations.⁷³ Pilot models of community-based programs prioritize the development of trust between asylum seekers and the non-governmental organizations overseeing their asylum claims, aligning services with clients' compliance with the legal requirements of the asylum process.⁷⁴ These programs have been shown to increase compliance with immigration proceedings and reduce obstacles to compliance that are created by detention centers.⁷⁵ While these initiatives are in their early stages, the elimination of immigration detention centers offers the promise of a more humane asylum process for queer refugees.

In addition to implicit bias training, the United States must ensure that there is diversity of sexual and gender identity among asylum judges and immigration attorneys. An increased amount of diversity among immigration judges helps bring a wider range of perspectives and understandings about different identities.⁷⁶ Further, judges with diverse backgrounds are more likely to be impartial and fair in their decisions.⁷⁷ It is largely acknowledged that immigration court appointments strongly affect immigration court decisions; the Trump administration appointed over 350 new immigration judges, constituting two-thirds

69 International Detention Coalition. "LGBTI Persons in Immigration Detention." Victoria: Australia, June 2016.

70 Ibid.

71 Ibid.

72 "Alternatives to Immigration Detention: An Overview." American Immigration Council, July 11, 2023. <https://www.americanimmigrationcouncil.org/research/alternatives-immigration-detention-overview>.

73 Ibid.

74 Ibid.

75 Ibid.

76 Kuck, Charles H. "Diversity in Immigration Law Firms." Think Immigration, American Immigration Lawyers Association, 7 Feb. 2020, <https://thinkimmigration.org/blog/2020/02/07/diversity-in-immigration-law-firms/>.

77 Ibid.

of the 520 federal immigration judges—and the asylum denial rate decreased from 54.6% in 2016 to 71.6% in 2020.⁷⁸ While other factors, such as court policy changes, also account for this decrease in asylum grants, many have attributed this in large to the lack of diversity in Trump’s appointments, revealing the importance of diversity of immigration judges in granting asylum claims.⁷⁹ People have since criticized President Joe Biden for failing to commit to racial, ethnic, and gender diversity in his appointment of immigration judges.⁸⁰ However, sexual diversity is often left out of this debate. The United States must employ more queer and gender nonconforming asylum judges in the same way diversity is considered for other aspects of identity. Ensuring greater sexual and gender diversity will limit the number of instances in which the decision to grant asylum to a queer individual is based on stereotypes of the community from an outsider’s perspective. A greater number of queer asylum judges would also increase the prevalence of the queer perspective in the asylum seeking process and in spaces where precedents regarding asylum law are set.

Finally, the United States should employ more clinicians—including psychologists, psychiatrists, and social workers—at the border who are specifically trained to help queer refugees. In cases where refugees are uncomfortable communicating with immigration officers, it is crucial to increase the availability of clinicians and mental health professionals with whom queer refugees may speak with upon their arrival in the United States. These clinicians will offer mental health support,⁸¹ which is necessary for refugees who faced traumatizing experiences in and on their journeys out of their home countries. The clinicians will also be able to build trust with refugees and encourage full disclosure of their experiences.⁸² Clinicians could use this evidence to testify in court in favor of the refugees during their asylum claims, which could be integral in granting asylum to an applicant.⁸³ If clinicians are able to establish a strong relationship with refugees, they may also be able to also assist the refugees in accessing other resources—such as specific healthcare needs, housing, and employment—to make the asylum process easier.⁸⁴ This will help create a supportive environment for refugees who may have had to conceal their identities for their entire lives. While it may be idealistic to assume that clinicians can seamlessly assist refugees in

78 Wolf, Rebekah. “First Round of Biden Immigration Judges Fails to Increase Diversity.” *Immigration Impact*, May 13, 2021. <https://immigrationimpact.com/2021/05/13/immigration-judges-under-biden/>.

79 Ibid.

80 Ibid.

81 University of Virginia Department of Family Medicine, “Clinical Guidelines for the Primary Care of Lesbian, Gay, Bisexual, Transgender, and Queer Asylum Seekers and Refugees.”

82 Ibid.

83 Ibid.

84 Ibid.

accessing various resources beyond their scope, any effort that can be made towards encouraging refugees to express themselves will be beneficial in validating refugees' asylum claims. If their claims are granted, refugees who feel supported and secure in the United States will have an easier time establishing themselves in the country.

V. Conclusion

While significant strides have been made in recognizing queerness as a basis for asylum, there remains an imperative to bridge the gap between legal standards and the lived experiences of LGBTQ+ individuals seeking refuge. Queer refugees face unique burdens when it comes to claiming asylum in the United States, and these hurdles are exacerbated by the unique forms of persecution queer individuals in their day-to-day lives. Although there have been tremendous advancements made towards granting queer people asylum on the basis of being members of a particular persecuted social group, there are still many reforms that must be instituted in order to make the process more accessible and equitable for queer refugees. The United States, as a signatory to international conventions, bears the responsibility to ensure a more equitable and humane asylum process that genuinely safeguards the rights of queer refugees fleeing persecution. Such efforts demand a commitment to reforming policies, addressing biases, and providing holistic support for LGBTQ+ individuals seeking asylum, ensuring that their right to safety and protection is upheld without prejudice. The ultimate goal is the establishment of sexual identity and gender as a permanent grounds on which individuals can claim asylum; this will not only cement the idea that queer individuals experience persecution due to their identities, but also it will increase the prevalence and legitimacy of queer perspectives in asylum law. Until this becomes a reality, the United States must focus on reducing bias towards queerness among immigration officials, increasing the diversity of immigration judges, and creating a supportive environment for queer asylum seekers, all of which will be significant steps towards inclusivity and equity in asylum law.

Bibliography

- “A Brief History.” Immigration Equality, August 7, 2020. <https://immigrationequality.org/asylum/asylum-manual/asylum-law-basics-2/asylum-law-basics/>.
- “Asylum in the United States.” American Immigration Council, October 18, 2022. <https://www.americanimmigrationcouncil.org/research/asylum-united-states>.
- Bergman, Aaron. “Immigration Judges Under Biden.” Immigration Impact, American Immigration Council, 13 May 2021, <https://immigrationimpact.com/2021/05/13/immigration-judges-under-biden/>.
- Cory, Connor. “THE LGBTQ ASYLUM SEEKER: PARTICULAR SOCIAL GROUPS AND AUTHENTIC QUEER IDENTITIES .” *The Georgetown Journal of Gender and the Law* 20, no. 3 (2019).
- Flores, Andrew R., Bianca D.M. Wilson, and Kerith J. Conron. “Asylum Seekers and Refugees Who Identify as LGBTQ: Challenges, Realities, and Hopes for the Future.” Williams Institute, UCLA School of Law, March 2021. Accessed May 8, 2023. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Asylum-LGBT-Claims-Mar-2021.pdf>.
- Hynes, P. (2021). “Who is a ‘refugee’ and who is an ‘asylum seeker?’” *In Introducing Forced Migration*. essay, Routledge, Taylor & Francis Group.
- Kuck, Charles H. “Diversity in Immigration Law Firms.” Think Immigration, American Immigration Lawyers Association, 7 Feb. 2020, <https://thinkimmigration.org/blog/2020/02/07/diversity-in-immigration-law-firms/>.
- Morris, et al. “Training to Reduce LGBTQ-Related Bias among Medical, Nursing, and Dental Students and Providers: A Systematic Review.” *BMC Medical Education*, August 30, 2019. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6716913/>.
- National Center for Lesbian Rights. “Challenges to Lesbian Asylum Claims.” San Francisco: National Center for Lesbian Rights, April 2013. Accessed May 8, 2023. https://www.nclrights.org/wp-content/uploads/2013/04/Resources_Challenges_Lesbian_Asylum_Claims.pdf.

Pitcherskaia v. INS, 118 F.3d 641 (9th Cir. 1997).

Topel, Kimberly D. “So, What Should I Ask Him to Prove That He’s Gay?’: How Sincerity, and Not Stereotype, Should Dictate the Outcome of an LGB Asylum Claim in the United States.” *Iowa Law Review* 102, no. 5 (2017).

Travis, Alan. “Gay asylum seekers in UK face ‘sexually explicit’ questions.” *The Guardian*, October 23, 2014. Accessed May 8, 2023. <https://www.theguardian.com/uk-news/2014/oct/23/gay-asylum-seekers-sexual-questions-uk-immigration>.

University of Virginia Department of Family Medicine. “Clinical Guidelines for the Primary Care of Lesbian, Gay, Bisexual, Transgender, and Queer Asylum Seekers and Refugees.” Accessed May 8, 2023. <https://med.virginia.edu/family-medicine/wp-content/uploads/sites/285/2021/03/LGBTQasylumseekers.pdf>.

Wareham, Jamie. “New Maps Show Where It’s Illegal To Be LGBTQ+ In 2023.” *Forbes*, April 7, 2023. Accessed May 8, 2023. <https://www.forbes.com/sites/jamiewareham/2023/04/07/new-maps-show-where-its-illegal-to-be-lgbtq-in-2023/?sh=49e1420c7eaa>.

“What Does the Term, ‘Particular Social Group,’ Mean for Asylum?” *The Law Office of Yifei He, PLLC*, May 18, 2022. <https://yifeihelaw.com/2021/03/what-does-the-term-particular-social-group-mean-for-asylum/>.

The Impact of Cross-Cutting Cleavage Structures on the Stability of Coalition Government: An Empirical Analysis of Parliamentary Systems

Graham Hodgson

Prior research on cross-cutting cleavage structures has focused primarily on their influence within political culture, and minimal literature has investigated their institutional effects. In this paper, I present a theoretical discussion and empirical analysis of the impact of cross-cutting systems on government stability in parliamentary systems. I examine the influence of three categories of cross-cuttingness (the degree to which cleavage structures are cross-cutting) on party system fragmentation and government stability in 25 European democracies. My results show a negligible effect on party system fragmentation and an ambiguous relationship with cabinet stability. These findings indicate the importance of typological cleavage variation in determining the influence of cross-cuttingness.

The emergence of novel political dimensions has redefined the European ideological landscape. New dimensions based on concepts like winners and losers of globalization have percolated into high-profile policymaking debates and are subject to a growing body of research.¹ Such trends within party systems and government can be understood through the perspective of cleavage theory, the realm of politics focused on cleavages. Political cleavages are dimensions of cultural or sociological identities that determine political support and policy priorities.² An example could be found in the linguistic cleavage, where a voter's identity as aligning with a particular language group determines the parties and policy ideas that they support (their language identity may alter their stance on immigration policy, for instance).

In the past, authors writing on cleavage theory have focused on the inception and politicization of cleavage structures and their effect on political institutions. For instance, Raymond investigates the effect of class cleavages in bringing about

1 Kriesi et al., "Western European Politics in the Age of Globalization".

2 Note that I use the terms 'Social Cleavage' and 'Political Cleavage' interchangeably.

proportional representation systems, arguing that the politicization of class created the necessary level of party fragmentation to enact electoral reform.³ Zielinski assesses the merits of the ‘frozen party system’ concept, which posits that cleavages conceived after democratization are less likely to be politicized and gain partisan representation than those whose inception occurred before (or during) democratization.⁴

Cleavage theory gains a greater level of complexity with the introduction of cross-cuttingness, incorporating subgroups by way of intersecting cleavage axes; when the group membership of one cleavage differs from (rather than mirroring) the distribution of voters along another cleavage, the structure is cross-cutting. Using the example of language-income cross-cuttingness, if two language groups have roughly equal proportions of high and low earners among them, the cleavage system would be cross-cut. Meanwhile, if one language group is mostly wealthy, and the other is mostly poor, the cleavages *reinforce each other* instead of contradicting.

Cross-cutting and other multidimensional cleavage structures challenge common unidimensional conceptions of ideology by presenting a more nuanced representation of sociological realities; Policy stances are commonly depicted along a single axis (often the left-right spectrum). But by introducing multiple intersecting axes of political support, cross-cutting structures cast doubt on this model. Moreover, cross-cuttingness is given greater importance by the appearance of new cleavages. In Europe, for example, much of the voter base of radical right populist parties identifies with the cleavage defined by the losers of globalization (a type of economic cleavage).⁵ Meanwhile, the same category of radical right populist party hosts a distinct mix of working- and middle-class supporters, whose economic interests contradict.⁶ Taken together, these findings indicate the role of cross-cuttingness in one of Europe’s fastest growing political movements—a demographic of electors (those disenfranchised by globalization) split into two subgroups by differing economic circumstances. The presence of cross-cutting cleavages is apparent in Europe’s far-right.

Prior research on cross-cuttingness has emphasized its capacity to alleviate social conflict. Several studies have found that more diverse subgroup structures can moderate the median voter, reduce partisanship, and facilitate compromise by enhancing minority participation.⁷ Minimal research has been conducted on

3 Raymond, “In Defiance of Duverger”.

4 Zielinski, “Translating Social Cleavages into Party Systems”.

5 Rooduijn, “What Unites the Voter Bases of Populist Parties?”.

6 Röth et al. “The Impact of Populist Radical Right Parties on Socio-Economic Policies”

7 Goodin, “Cross-Cutting Cleavages and Social Conflict”. ; Powell, “Political Cleavage Structure, Cross-Pressure Processes, and Partisanship” ; Klausen, Askim, and Christensen, “Local Government Reform: Compromise Through Cross-Cutting Cleavages”.

the relationship of cross-cutting cleavage structures with the stability of parliamentary governments. The notable exception is the working paper written by Gordon, Landa, and Le Bihan, who use mathematical and game-theoretic modeling to predict an ambiguous relationship between cross-cuttingness and party disaffection. They find that the outcome depends on the specific characteristics of the involved cleavages, so disaffection can be positively or negatively impacted by cross-cuttingness.⁸ Given the purely theoretical nature of their conclusions, I aim to empirically examine the impact of cross cuttingness on cabinet stability, which I define as a coalition's longevity and susceptibility to collapse. Will higher degrees of cross cuttingness yield less stable governing coalitions?

Intuition alone can tell us that cross-cuttingness will lead to fragmentation in the political party system by introducing a diverse array of subgroups. It seems likely that more subgroups will lead to more policy ideas, and therefore more political parties needed to represent them. Empirical evidence supports some of the thinking behind this intuitive approach, if not the approach itself. Neto and Cox find that party fragmentation increases with higher levels of heterogeneity within the ethnic cleavage.⁹ Heterogeneity along the single ethnic cleavage indicates more ethnic groups, and therefore more conflicting policy priorities coming from these groups; a broader range of policy priorities leads to a broader range of political parties through which they are represented. This finding pertains only to the diversity of cleavage groups along a single dimension—that is, *single-cleavage heterogeneity*. But because of the interplay between single-cleavage heterogeneity and multidimensional subgroup fragmentation, Neto and Cox lend some credence to our intuitive approach. When cleavages crosscut, they create divisions among previously homogenous social groups. Such divisions resemble, in some respect, the divisions of heterogeneity along a single cleavage. Raymond's study, meanwhile, finds the reverse effect to Neto and Cox within the religious cleavage. Raymond concludes that religious heterogeneity can in fact reduce party system fragmentation by fostering greater cross-religious cooperation. Based on our extrapolation from Neto and Cox's finding and the caveat presented by Raymond's study, I empirically measure whether there exists a relationship between cross-cuttingness and party system fragmentation.

If cross-cuttingness leads to party system fragmentation, what does this mean for the performance of parties in parliament? Various authors have discussed the role of fractionalization in government stability. Taylor and Herman measure the duration of government with respect to different indicators of party fragmentation. They find a decrease in government stability associated with increases in the num-

8 Gordon, Landa, and Le Bihan, "Crosscutting Cleavages and Political Conflict".

9 Neto and Cox, "Electoral Institutions, Cleavage Structures, and the Number of Parties".

ber of parliamentary parties, as well as the fractionalization (Herfindahl) indices of parties in government and parliament.¹⁰ In contrast, a survey of Postcommunist European countries by Somer-Topcu and Williams, measuring the hazard rate of government collapse (the likelihood of collapse after a given interval of time), finds no significant correlation between overall party fractionalization—expressed as the Effective Number of Parties (ENP)—and government instability. As with Taylor and Herman, the correlation between the fractionalization of government parties and instability is significant and positive.¹¹ Both studies support the conclusion that party system fragmentation is associated with increased instability. Despite the lack of correlation between the overall ENP and instability in Somer-Topcu and William’s study, we can still glean a *de facto* relationship between overall fragmentation and stability: a high level of overall fractionalization indicates a higher number of parties overall, which generally leads to more parties in the cabinet, assuming equal distribution of fragmentation among all parties (as opposed to a system of high fractionalization among small parties and a few large, unfragmented parties, which compose the cabinet). Still, the discrepancy in results has an important implication: it seems Postcommunist countries are less susceptible to the destabilizing effects of fractionalization.

The combination of the findings from Neto and Cox and the stability studies raises important questions about the mechanisms of cross-cuttingness and instability in parliamentary government. I assess the question of whether cross-cutting cleavage structures lead to cabinet instability through party system fragmentation by examining the role of power-sharing arrangements—mechanisms for the inclusion of minority representatives in decision-making—and inter-party negotiation difficulties in hindering the stability of parliamentary government. An analysis of multiple categories of cleavage structures and government longevity data from 25 European countries shows cross-cuttingness to have a negligible effect on party fragmentation and mixed impact on government stability; different measures of cross-cuttingness have distinct positive and negative effects on stability. My findings illustrate the importance of typological cleavage differences, as well as the ambiguity of cross-cuttingness, which has different effects depending on the nature of cleavages involved. I raise questions about geographic disparities in the outcomes of cleavage representation, as well as diverging results based on where actors are distributed along a cleavage range, and provide methodological observations.

I. Party System Fragmentation

It has already been demonstrated that political cleavage heterogeneity can

10 Taylor and Herman, “Party Systems and Government Stability”.

11 Somer-Topcu and Williams, “Survival of the Fittest? Cabinet Duration in Postcommunist Europe”.

play a role in party system fragmentation.¹² This effect is more prominent among social cleavages with less potential for compromise, often those of ethnic or linguistic orientation. Put differently, greater fractionalization is associated mostly with what Lipset and Rokkan define as the ideological cleavage (whose orientations are determined by deeply rooted frameworks of belief and opinion) and internal-instrumental cleavage (largely fixed cultural identities, including ethnic and religious orientations). Resource-allocation cleavages, meanwhile, are defined by more easily resolvable policy conflicts, typically consisting of short-term budgetary policy debates with simple numerical solutions. Unlike resource-allocation cleavages, ideological and internal-instrumental cleavage interests are fundamental and fixed, and policy conflicts cannot be easily resolved through a ‘meet in the middle’ approach to intra-party negotiation;¹³ while proponents of opposing budgetary policies often meet halfway on a spending figure, the same cannot be done with such issues as ethnicity or language. Heterogeneity in such cleavage structures is more likely to translate into a fractionalized party system, since voters will be unwilling to compromise their fundamentally rooted identities by supporting a party representing another interest.

Critically, the effect of social cleavage heterogeneity and party fractionalization is contingent on the permissiveness of the electoral system to party system fractionalization.¹⁴ Fractionalized cleavage structures will be likely to introduce fractionalized party structures, but only if the conditions of the electoral institutions allow it. Proportional Representation (PR) systems largely permit the translation of sociological dimensions into political factions, but First-Past-the-Post (FPTP) and other single-winner systems incentivize the coalescence into cross-cleavage, broad-base parties. Therefore, I focus my research primarily on multiparty PR systems, where fractionalization is a more plausible effect.

So far, I have focused on cleavage fragmentation within unidimensional cleavages structures, which Neto and Cox have shown to have fractionalizing partisan effects.¹⁵ But does this relationship extend to cross cutting structures? If we define single-dimension cleavage heterogeneity as the number of distinct groups (with distinct interests) along a single cleavage axis—consider ethnic diversity, as assessed by Neto and Cox, as an example—then cross-cuttingness will produce a similar result. Through the intersection of multiple dimensions, cross-cuttingness creates subgroups with distinct interests along a single cleavage axis, fractionaliz-

12 Birnir and Van Cott, “Disunity in Diversity”. ; Lublin, “Electoral Systems, Ethnic Heterogeneity and Party System Fragmentation”. ; Neto and Cox, “Electoral Institutions, Cleavage Structures, and the Number of Parties”.

13 Lipset and Rokkan, *Party Systems and Voter Alignments: Cross-National Perspectives*.

14 Neto and Cox, “Electoral Institutions, Cleavage Structures, and the Number of Parties”.

15 Ibid.

ing otherwise cohesive cleavage groups; the subgroup fractionalization generated by cross-cutting structures resembles the group fractionalization generated by unidimensional structures. If the regional cleavage intersects with that of ethnicity, for instance, ethnic groups will be subdivided by their regional identities, the results of which will resemble the group division of a fragmented ethnic cleavage alone. Mechanically, multidimensional subgroups are institutionalized in the same way as single-cleavage groups—their distinct interests are translated into separate political party platforms. Considering the similarities between the subgroup heterogeneity introduced by cross-cuttingness and unidimensional group heterogeneity, they should have a similar relationship with the party system. So, drawing from Cox's conclusion on the effect of social heterogeneity on party fractionalization, I expect that:

Hypothesis 1: Parliamentary democracies characterized by salient cross-cutting cleavage structures will demonstrate higher levels of party-system fragmentation.

II. Inter-Party Negotiation

If cross-cuttingness results in party fractionalization, this effect will extend into various manifestations of parliamentary performance, including the stability of the coalition government. Since variations in cabinet stability have been attributed in part to partisan fragmentation, this relationship must extend to cross-cuttingness as well, assuming hypothesis 1 is correct.¹⁶ The existence of a multi-axis party system, determined by two or more intersecting cleavages, jeopardizes coalition building. A two-axis party system, for example, will at least double the number of parties (when both axes have equal levels of political salience, and each axis has institutional representation of both extremes). The introduction of a cross-cutting cleavage will cause parties to be subdivided into smaller groupings based on the number of orientations on the intersecting cleavage. When more parties are present in parliament, and when the average seat share of each party is smaller, more parties are required for the formation of government. A greater number of involved actors complicates coalition and other inter-party negotiations, as each party has a unique set of demands. The likelihood of contradicting policy interests increases with the number of demands made, indicating—via the failure to determine a coalition with shared interests—the likelihood of government collapse or investiture deadlock.

Cross-cutting fragmentation endangers the capacity for political parties to act as a cohesive unit of organized support, as this task is less effective among mul-

¹⁶ Taylor and Herman, "Party Systems and Government Stability". ; Somer-Topcu and Williams, "Survival of the Fittest? Cabinet Duration in Postcommunist Europe".

tiple actors. Even if party orientations align on one or more cleavage axes, parties will have more difficulty cooperating than they would as a single unit, since nominal disputes outweigh ideological ones in their effect on party collaboration.^{17 18}

A case in point is Belgium, where the ideological cleavage is evenly crosscut by the language cleavage, such that each major party has split into a French-speaking and Dutch-speaking derivative.¹⁹ As a result, Belgian politics has—according to Swenden, Brands, and De Winter—“one of the most fragmented party systems of any modern democracy”, and has been characterized by a history of turbulent and unstable government majorities, as the subgroup fragmentation of language and ideology has materialized within cabinets.²⁰ Such instability was especially evident in the 2020 coalition crisis, when the country went nearly two years without a government.²¹

III. Policy Making Dimensions and Bundled Systems

The discussion of inter-party negotiation has thus far assumed what Gordon, Le Bihan and Landa label as a *bundled* system of policymaking.²² Such a system is characterized by a single, fixed coalition, which determines policy in all political dimensions. Because of the structural tendency towards a fixed executive, almost all parliamentary systems adopt a bundled policymaking system.²³ In an unbundled system, as Gordon, Le Bihan and Landa define it, the “coalition that forms to make policy on one dimension may differ from the coalition that forms on the other dimension. In the unbundled governance structure, crosscutting cleavages are instantiated in dimension-specific coalitions, thus giving the opportunity for all [. . .] factions to participate in the creation of policy.”²⁴ Whereas cross-cuttingness will produce a destabilizing effect on bundled parliaments, I argue that unbundled parliaments will not have the same result. The reasons for this are threefold:

First, bundled systems alienate certain parties by relegating them to a per-

17 Somer-Topcu and Williams, “Survival of the Fittest? Cabinet Duration in Postcommunist Europe”.

18 Institutionalized differences between parties as separate groups (ignoring their ideological differences) are more influential than the ideological differences that are supposed to lead to this official differentiation—even with identical ideologies, two parties would conflict solely because they exist as two separate entities.

19 Lijphart, *Patterns of Democracy*.

20 Swenden, Wilfried, Marleen Brans, and Lieven De Winter, *The Politics of Belgium: Institutions and Policy Under Bipolar and Centrifugal Federalism*.

21 Matt Apuzzo and Monika Pronczuk, “After 2 Years of Paralysis, Belgium Forms a (Very Fragile) Government”.

22 Gordon, Landa, and Le Bihan, “Crosscutting Cleavages and Political Conflict”.

23 A key component of the unbundled system is executive independence from the legislature. With an independent executive, the legislature is free to create policy in whichever way it can without threatening government collapse. These characteristics alone would imply the existence of the unbundled model in all presidential systems, where there is also executive independence. However, such systems usually lack the relevant consensus frameworks, and legislative activity typically follows fixed majorities anyway (which may or may not coincide with the executive’s party affiliation).

24 Gordon, Landa, and Le Bihan, “Crosscutting Cleavages and Political Conflict”, 3.

sistent minority position and disincentivizing their cooperation and involvement in policymaking processes. The disaffection of opposition parties has a plausible effect on the stability of government. Even with a majority in parliament, cabinets require some participation from minority parties, who serve an important role in critiquing government policies. Without feedback from the opposition, policy debate will have to take place *within* the majority coalition, which can have a destabilizing effect on the cabinet.

Second, realignments in the preference order of policy dimensions will upset majorities. In parliaments characterized by high levels of cross-cuttingness, the dimensions of policy discussion will mirror the issues of each institutionalized cleavage, and parties' stances will mirror their cleavage orientations. One policy dimension will take precedence over the others as the most politically salient, and the government will usually form based on this policy dimension.²⁵ When policy dimensions realign and the primary dimension is upset, the coalition built around that dimension will be upset as well.²⁶ Government coalitions are therefore liable to the possibility of preference order realignment. The prior example of a two-dimensional cleavage structure, with parties $a_x, a_y, b_x, b_y, c_x,$ and c_y —where a, b, c are the policy positions along one cleavage and x, y are those along the cleavage that intersects it—can illustrate this principle. If cleavage a, b, c is of primary salience—that is, first in the preference order—then coalitions will be formed around similar positions of $a, b,$ or c : a governing coalition between parties b_x and b_y , for instance. If the preference order changes, and cleavage x, y becomes of primary salience, coalition b_x, b_y will lose its cohesion, as parties b_x and b_y no longer agree on the issue of primary salience. The governing coalition, therefore, will collapse, and another will be formed around similarities in x or y stances. Coalition b_x, b_y will therefore give way to coalition a_y, b_y, c_y . This effect is illustrated in Fig. 1: as the primary cleavage shifts from a, b, c to x, y , the coalition formed around stance b (red) collapses, and is replaced by the coalition formed around stance y (blue).

25 Gordon, Landa, and Le Bihan, "Crosscutting Cleavages and Political Conflict", 3.

26 Ibid.

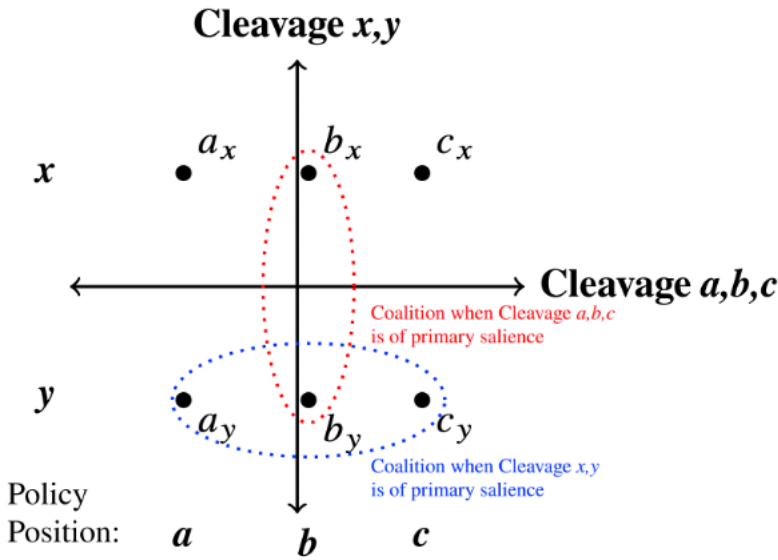


Figure 1. The Effect of Preference Order Realignment on Governing Coalition

Third, the bundled model hinders intra-government cooperation by requiring agreement within the cabinet across all dimensions. Since governments in crosscut democracies usually form on the basis of adjacent orientations on one primary dimension (fiscal policy, for instance), they often lack shared policy on secondary dimensions (policies stemming from language, religious, or regional identity). As such, policymaking discussion within secondary dimensions will result in conflict and division within the parliamentary majority. Now consider a new example, where there are only three parties: a government composed of parties a_1 and a_2 and an opposition party b_2 , where a and b denote orientation on the primary cleavage and 1 and 2 denote orientation on a secondary cleavage. In primary policymaking discussions, the government is in agreement, and successfully passes legislation in line with their shared stance a . On secondary issues, however, the government parties diverge. In an unbundled model, parties a_2 and b_2 can form a temporary majority—passing legislation in accordance with their cleavage orientations—without threat of government collapse or snap elections. In a bundled policymaking system, party a_2 cannot represent its cleavage orientation without causing conflict with its coalition partner a_1 , and the coalition experiences policy conflict which impedes its ability to remain as a stable entity, including possible collapse. I theorize that institutionalized fixed-majority systems permit the destabilizing effects of cross-cuttingness.

IV. Power-Sharing

Many European democracies with cleavage fractionalization and cross-cuttingness have adopted a consociational model of democratic governance. Consociationalism is a framework that allows for stability within fragmented democracies, promoting “accommodation and recognition by enhancing autonomy and encouraging collaborative governance.”²⁷ Consociational democracies utilize institutionalized practices in order to promote cooperative, inclusive, and consensus-based governance. Principal among these practices are power-sharing institutions: regulations ensuring the inclusion of representatives from minority groups within political decision making. Examples of power-sharing arrangements include the “promotion of grand coalition building, the proportional allocation of government seats, [. . .] and minority veto power.”²⁸ Democracies with deep social divisions are known to benefit from the inclusion provided by consociational models of government, where majoritarian systems will result in the exclusion of social groups.²⁹ Lijphart finds that power-sharing within consociationalism produces greater systemic government performance than is seen in majoritarian systems—using indicators of economic success, efficiency of bureaucratic processes, control of corruption, and so on.³⁰ Other research has questioned this view by focusing on the shortcomings of consociationalism with regards to political violence.³¹ The research from both perspectives measures the impact of power-sharing on the performance of the democratic regime and does not examine the effect on parliamentary functions. Despite the benefits of consociationalism for inclusive representation in divided societies, I theorize that power-sharing, when combined with cross-cutting cleavage structures, can produce instability in parliamentary government.

Power-sharing requirements can bog down legislative function and weaken cabinet stability when compounded by high levels of cross-cuttingness. Examples include quotas on group representation in the cabinet, such as the requirement of linguistic balance in the Belgian parliament—wherein the government must include proportionate numbers of parties from each linguistic group.³² In instances of high cross-cutting fragmentation, when—in the case of Belgium, for example—language groups do not correlate with ideological tendencies, such provisions complicate coalition-building and artificially enlarge the cabinet, increasing the potential for intra-government policy conflict. Moreover, they encourage the for-

27 Wilson, “A Closer Look at the Limits of Consociationalism”.

28 Ibid.

29 Lijphart, *Patterns of Democracy*.

30 Ibid, 255-273.

31 Selway and Templeman, “The Myth of Consociationalism? Conflict Reduction in Divided Societies.”; Wilson, “A Closer Look at the Limits of Consociationalism”.

32 Lijphart, *Patterns of Democracy*, 91.

mation of oversized coalitions, where the number of parties exceeds the minimum amount needed for a majority.³³ It is tempting to think that oversized cabinets may demonstrate greater stability by providing a buffer from collapse, but empirical results point to the contrary. Hazard rate of government collapse increases with the number of dispensable parties in an oversized coalition.³⁴ This likely owes to the increasing number of potential policy conflicts with each additional party, the effect of which must outweigh the positive effect of a buffer from collapse.

Cross-cuttingness inspires the creation of power sharing mechanisms, but it can also hinder their utility; the presence of more fragmented groups and subgroups reduces the capacity to accommodate the needs of each group through institutionalized methods of inclusion. It seems that in a bundled policy making environment with high levels of cross-cuttingness, inclusive representation comes at the cost of government stability. A quantitative analysis of the interaction between consociationalism and cleavage structures is beyond the scope of this study, but theoretical assessment lends to the view that cross-cuttingness impacts government stability. By combining this assessment with the evaluation of the impacts on inter-party negotiation, I expect that:

Hypothesis 2: Parliamentary democracies with high levels of cross-cuttingness will demonstrate lower levels of government stability.

V. Methodology and Case Selection

To investigate the hypotheses outlined above, I compare data from 25 European countries.³⁵ The sample focuses on Western and Eastern European countries with parliamentary systems. Certain countries with semi-presidential systems are included as well, as these countries rely on parliamentary confidence for executive branch composition, and the government coalition plays the primary role in determining the policy agenda. In the case selection, I take into consideration the regulating effects of electoral systems on the institutionalization of cleavage fragmentation.³⁶ As such, most of the included countries have proportional representation systems in order to ensure that the cleavage structures of society are fully politicized, and all are multiparty systems. Certain non-FPTP single-winner systems are included also (notably France), since such systems have the same benefits as PR systems in representing sociological cleavages. Countries are selected based

33 Lijphart, *Patterns of Democracy*, 91.

34 Grotz and Weber, "Party Systems and Government Stability in Central and Eastern Europe."

35 The countries included in the dataset are Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Estonia, Finland, Germany, Italy, Latvia, Lithuania, The Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Iceland, Ireland, France, and Luxembourg.

36 Neto and Cox, "Electoral Institutions, Cleavage Structures, and the Number of Parties."

on availability in existing datasets; all countries matching the criteria and available in the datasets are included.

To quantify cross-cuttingness, I draw from Selway's dataset, which uses polls on individual cleavage orientation from 1992-2008 to aggregate cross-fractionalization scores for several cross-cutting cleavages.³⁷ I use Selway's cross-fractionalization index (which he appropriates from Rae and Taylor) rather than his cross-cuttingness score;³⁸ both measure the extent to which cleavage structures are crosscut, but cross-fractionalization—unlike the cross-cuttingness metric—weights relative cleavage size by integrating the fractionalization of individual cleavages (using the Herfindahl index). This accounts for the fact that cross-cuttingness among relatively larger cleavage groups will have more salient effects on the party system than cross-cuttingness within small cleavage groups, as the latter will produce only insubstantial subgroup heterogeneity. Specifically, I use Language-Income (LRXC) and Religion-Income (RIXC) cross-fractionalization as indicators of the presence of cross-cutting structures. The income measure approximates the socioeconomic cleavage, which usually composes the primary political dimension, and I select language and religion as the most universally salient secondary cleavages (aside from ethnicity, whose data is scarce). I also incorporate language-religion cross-fractionalization (LRXC) as a third independent variable.

I compare these variables with party system fragmentation and government stability as dependent variables. I measure party system fragmentation (hypothesis 1) using Effective Number of Parliamentary Parties (ENPP).³⁹ Although this same variable could be appropriately operationalized using the Effective Number of Electoral Parties, I opt for ENPP because it captures the institutionalization of party system fragmentation, which is relevant to government stability. In order to account for extraneous variation in ENPP from election to election, I average the last three entries in Gallagher's dataset, accomplishing a roughly stabilized measure of ENPP. As indicators of the stability of coalition governments, I use the mean cabinet duration from 1995-2021 and the number of hostile terminations from 1995-2021,⁴⁰ which I define as government terminations resulting from: 'voluntary resignation of PM', 'Dissension within government / coalition break', or 'Lack of Parliamentary Support', categorizations appropriated from Armingeon et al.'s dataset.⁴¹

With these variables, I conduct separate bivariate ordinary-least-squares

37 Selway, "Replication data for: The Measurement of Cross-cutting Cleavages". ; Cross-cuttingness score is given by: $x = \ln p_x \cdot 2 + y = \ln p_y \cdot 2 + x, y \ln p_{xy} \cdot 2$.

38 Given by a modified Cramer's V.

39 Data from: Gallagher, "Election Indices Dataset."

40 Except in the case of Croatia, for which I use the mean since 2000.

41 Data from: Armingeon et al., "Supplement to the Comparative Political Data Set."

regression analyses to determine the validity of my hypotheses. Because of the discrepancy in history and political circumstances between Western and Eastern Europe, I examine the data for these regions individually, in addition to analyzing the relationships overall.

VI. Results

Table 1 presents the Pearson correlation coefficients measuring the relationships between cross-fractionalization indicators and stabilized ENPP, grouped by region. From the ten Eastern European and fifteen Western European democracies, there is a mean ENPP of 5.27 and 5.11, respectively. The overall average ENPP is 5.17. There are nine total correlations for hypothesis 1, and I find no statistically significant relationships between ENPP and cross-cuttingness measures in any of them ($p > 0.1$ in all regressions). This result is consistent across all regions.

These findings demonstrate no support for hypothesis 1 within our sample. It appears that cross-cutting cleavage structures are not associated with greater levels of party system fragmentation. The hypothesis was predicated on the assumption that cross-cutting fragmentation resembles fragmentation on a single cleavage, but my findings indicate that this assumption is invalid. The heterogeneity introduced by cross-cuttingness cannot be equated with single-cleavage heterogeneity, as the former has no relationship with party system fractionalization, while the latter—according to Neto and Cox’s findings—does. This result has important implications for the analysis of subgroup fractionalization introduced by cross-cuttingness; if unidimensional social cleavage heterogeneity translates into the political dimension by gaining representation in fragmented political parties (higher ENPP), and cross-cutting cleavage heterogeneity does not, then how is cross-cutting heterogeneity politicized? Since hypothesis 2 was based on the notion introduced in hypothesis 1, this result might lead us to predict that the results for hypothesis 2 likewise have no significant correlations. But my findings show that this is not the case.

Therefore, while cross-cuttingness may not relate to fractionalization within the party system, it may relate to fractionalization *within parties themselves*: the inception of new parties representing each cross-cutting cleavage subgroup might not be realistically viable, but the introduction of intra-party factions based on these subgroups could still occur. Such factions could impair the cohesion of governing parties, so a relationship with coalition stability is still plausible. This can explain some of the findings for hypothesis 2.

Table 2 illustrates the relationship between cross-fractionalization with government stability, again presented as Pearson correlation coefficients. As with the earlier findings, results are broken down into region; The data demonstrates lower levels of government stability in Eastern Europe overall, with Eastern European averages of cabinet duration and number of hostile terminations at 1.55 years and 8.2 counts, compared to Western Europe's 2.42 and 3.73 (a perfectly stable coalition, for comparison, would last about 4-5 years, depending on specific national electoral laws).

Starting with Language-Income cross-fractionalization, we can observe a significant negative correlation with cabinet duration and a borderline significant positive correlation with hostile termination count, both confined to Western Europe. These findings give support to Hypothesis 2 for Western Europe alone. Cross-cuttingness between the language and income cleavages in Western European democracies is associated with lower levels of government stability, explaining approximately 52% of variation within cabinet duration ($R^2=0.518$) (Fig. 2), and approximately 36% of variation within the number of hostile terminations ($R^2=0.358$). This is despite the findings indicating no effect on party system fragmentation, which undermines much of the theoretical basis for hypothesis 2. Still, it is possible that cross-cuttingness can produce fragmentation in parliament outside of nominal party system fragmentation, in the form of ideological fragmentation *within parties*—which can have a similar effect in creating policy conflict in the government. This can explain the correlation between cross-cuttingness and

government instability without the effect of party system fractionalization.

Figure 2. LIXC And Cabinet Duration (years) in Western Europe

A statistically significant relationship between cross-cuttingness and government stability does not exist on the religion-income dimension. Yet I find Language-Religion Cross-Fractionalization to be associated with higher levels of government stability overall. LRXC has significant positive correlation with cabinet duration in the aggregate ($R^2=0.242$), though this correlation is not found to be statistically significant on the regional level, likely because of smaller sample sizes. Number of hostile terminations is significantly, negatively correlated with LRXC on both the aggregate and Western European levels (Fig. 3).

Figure 3. LRXC And Hostile Terminations

This result diverges starkly from my hypothesis but is not without a plausible explanation; Language-Religion Cross-cuttingness may not be indicative of cross-cuttingness with the primary ideological cleavage, so subgroup heterogeneity may reinforce, rather than fragment, ideological cleavage groups. Or, this result might be contextualized by Raymond's study, concluding that religious het-

erogeneity can foster greater cross-cleavage cooperation.⁴² If heterogeneity along a single religious cleavage reduces political conflict, by fostering interreligious cooperation, it stands to reason that cross-cutting subgroup heterogeneity involving religious cleavages would have the same effect. Cross-cuttingness involving religious groups may therefore increase policy cooperation between parties, potentially explaining why I find LRXC to be associated with more coalition stability. However, this connection is diluted by the findings presented in Table 1, showing little relation between multidimensional fractionalization and the single-cleavage heterogeneity that Raymond discusses.

The best explanation for the ambiguity of the results between LIXC and LRXC indicators relates to typological variation in cleavage structures. Since my results indicate that different cleavages yield different results when measured against government stability, the rational conclusion is that distinct, differentiating characteristics within these cleavages are altering their institutional effect. To examine this, I draw from Gordon, Landa, and Le Bihan.⁴³ Using utility theory to compare theoretical cleavage systems and corresponding coalition formations, they conclude that coalition-building and stability varies based on the relative weight of each cleavage dimension and the distribution of parties within it.⁴⁴ Depending on the political salience of two cleavages and the relative distribution of political actors along them, cross-cuttingness between these cleavages can have either a positive or negative effect on party negotiation and government stability. Though not fully substantiating this conclusion, my results provide important empirical context. Gordon, Landa, and Le Bihan's study also provides one plausible explanation for the divergent outcomes for LIXC vs. LRXC; these two cleavages have different distributions of actors and different partisan positions within the bargaining range: It is possible that the religious cleavage consists of more moderate positions among the primary factions, which could extend into the cross-cutting policy realm, serving to offset conflict within the linguistic dimension. This would have a stabilizing influence on policy dialogue as compared to LIXC.⁴⁵ It would be difficult to ascertain the specific distributional differences that explain stability outcomes, however; determining such an effect would require an empirical examination into actor distributions within real-world social cleavages. Further investigation is necessary to examine the potential effect of distribution and weight differences on the behavior of cross-cuttingness, though research may be complicated by the difficulty in precisely measuring the political salience and numerical party distribution of social cleavages.

42 Raymond, "Not All Social Cleavages Are the Same."

43 Gordon, Landa, and Le Bihan, "Crosscutting Cleavages and Political Conflict."

44 Ibid.

45 Ibid.

My findings demonstrate a substantial discrepancy in outcomes between Western and Eastern Europe. Eastern Europe sees no statistically significant relationships in any domain of analysis, indicating that cross-cutting cleavage structures play a lesser role in its political systems and institutions. This discrepancy can perhaps be explained by the greater relevance of clientelist policy and economic underdevelopment in Eastern European politics (as compared to Western Europe), factors which may eclipse ideological identities and cleavage orientations as determinants of partisan support. However, there is nothing in my findings that points to this specific explanation.

VII. Conclusion

Past literature has focused primarily on the impacts of cross-cutting cleavage structures on political culture, but there has been little focus on the influence of cross-cuttingness on the stability of coalition governments.⁴⁶ I present a theoretical and empirical investigation of the relationship between cross-cuttingness and government stability.

By examining the conclusion that social cleavage heterogeneity produces party system fragmentation and theorizing that single cleavage heterogeneity and cross-cutting subgroup heterogeneity are sufficiently similar to replicate this result, I hypothesize that higher levels of cross-cuttingness will relate to party system fractionalization.⁴⁷ I synthesize this hypothesis with the documented relationship between fragmentation of parliamentary parties and the stability of coalition government, stimulating the hypothesis that cross-cuttingness will correlate with instability of government.⁴⁸ Based on analysis of cleavage structures in 25 European parliamentary democracies, I show that cross-cuttingness does not correlate with party system fragmentation. I determine that Language-Income and Language-Religion cross-cuttingness relates to opposite results with regards to government stability.

My analysis is substantially limited by its small sample size. Only 25 cases are included, which may not be a sufficiently large sample to balance out extraneous cases. When broken down into regional-level calculations, the sample is yet smaller. Moreover, the sample size for analyses involving LIXC and LRXC variables is only 19, since Luxembourg, Iceland, Ireland, Denmark, Belgium, and Austria lack language data. In spite of the small sample, the analysis presents valuable and le-

46 Goodin, "Cross-Cutting Cleavages and Social Conflict". ; Powell, "Political Cleavage Structure, Cross-Pressure Processes, and Partisanship". ; Klausen, Askim, and Christensen, "Local Government Reform: Compromise Through Cross-Cutting Cleavages."

47 Neto and Cox, "Electoral Institutions, Cleavage Structures, and the Number of Parties."

48 Somer-Topcu and Williams, "Survival of the Fittest? Cabinet Duration in Postcommunist Europe". ; Taylor and Herman, "Party Systems and Government Stability."

gitimate findings in its rejection of both hypotheses. Since the regressions included data from most of Europe, it is unlikely that additional data could have made the observed relationships any stronger, so rejecting hypothesis 1 and determining an ambiguous relationship for hypothesis 2 are reasonable conclusions. Though these conclusions should be interpreted with caution, they can serve as a step in guiding future research, which can aim to remedy the sampling issue using more elaborate methods. The potential for sample size enlargement is limited by the finite number of parliamentary democracies, but statistical techniques like bootstrapping regressions can be used to contextualize results for a small sample, and the incorporation of local or provincial government data, as well as qualitative methodology, can improve the validity of results. Given the complex and ambiguous observed relationship, adopting a nonlinear model to assess cross-cuttingness and stability could reveal a more conclusive result.

This study demonstrates the important variance between cleavage dimensions. I show that different cleavages are associated with different government stability outcomes, a finding that lends to the theoretical analysis of Gordon, Landa, and Le Bihan.⁴⁹ Future efforts should be made in examining the impacts of political salience and factional distribution of social cleavages.

Finally, I find a substantial geographic divergence in cross-cuttingness outcomes. Cross-cutting heterogeneity has minimal impact on Eastern European political institutions but a larger impact in Western Europe. This result is similar to the conclusion obtained by comparing Somer-Topcu and Williams with Taylor and Herman, that Postcommunist democracies are more resistant to the effects of party system fragmentation.⁵⁰ Future research is needed to investigate why institutional and sociological heterogeneity appear to take on less importance in Eastern European democracies.

Investigating the compatibility of political institutions with the sociocultural systems that underlie them is crucial towards informing effective democratic systems. Cleavage theory comprises a substantial part of this aim. By understanding the impact of different cross-cutting cleavage structures on various institutionalized systems, political scientists can come a step closer to realizing the vision of effective democratic governance.

49 Gordon, Landa, and Le Bihan, "Crosscutting Cleavages and Political Conflict."

50 Taylor and Herman, "Party Systems and Government Stability". ; Somer-Topcu and Williams, "Survival of the Fittest? Cabinet Duration in Postcommunist Europe."

Bibliography

- Apuzzo, Matt, and Monika Pronczuk. 2020. "After 2 Years of Paralysis, Belgium Forms a (Very Fragile) Government." In *The New York Times*. <https://www.nytimes.com/2020/10/01/world/europe/belgium-government-coalition.html>.
- Armingeon, Klaus, Sarah Engler, Lucas Leemann and David Weisstanner. 2023. "Supplement to the Comparative Political Data Set – Government Composition 1960-2021". Zurich/Lueneburg/Lucerne: University of Zurich, Leuphana University Lueneburg, and University of Lucerne.
- Birnir, Jóhanna Kristín, and Donna Lee Van Cott. 2007. "Disunity in Diversity: Party System Fragmentation and the Dynamic Effect of Ethnic Heterogeneity on Latin American Legislatures" In *Latin American Research Review* 42, no. 1: 99–125. <https://doi.org/10.1353/lar.2007.0000>.
- Frogner, André-Paul. 1978. "Parties and Cleavages in the Belgian Parliament." *Legislative Studies Quarterly* 3, no. 1: 109–31. <https://doi.org/10.2307/439682>.
- Gallagher, Michael. 2021. Election Indices Dataset at https://web.archive.org/web/20220928124407/https://www.tcd.ie/Political_Science/people/michael_gallagher/ElSystems/Docts/ElectionIndices.pdf
- Goodin, Robert E. 1975. "Cross-Cutting Cleavages and Social Conflict." In *British Journal of Political Science* 5, no. 4: 516–19. <https://doi.org/10.1017/S000712340000836X>.
- Gordon, Sanford, Dimitri Landa, and Patrick Le Bihan. 2015. "Crosscutting Cleavages and Political Conflict." IAST working paper: 5-30.
- Grotz, Florian, and Till Weber. 2012. "Party Systems and Government Stability in Central and Eastern Europe." In *World Politics* 64 no. 4: 699–740. <https://doi.org/10.1017/S0043887112000196>.
- Klausen, Jan, and Jostein Askim, & Tom Christensen. 2021. "Local Government Reform: Compromise Through Cross-Cutting Cleavages." In *Political Studies Review* 19, no. 1: 111–126. <https://doi.org/10.1177/1478929919887649>.
- Kriesi, Hanspeter et al. 2008. *West European Politics in the Age of Globalization*. Cambridge: Cambridge University Press.

- Lijphart, Arend. 2012. *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*. New Haven and London: Yale University Press.
- Lipset, Seymour M., and Stein Rokkan. 1967. *Party Systems and Voter Alignments: Cross-National Perspectives*. New York: Free Press.
- Lublin, David. 2017. "Electoral Systems, Ethnic Heterogeneity and Party System Fragmentation." In *British Journal of Political Science* 47, no. 2: 373–89. <https://doi.org/10.1017/S0007123415000137>.
- Neto, Octavio, and Gary Cox. 1997. "Electoral Institutions, Cleavage Structures, and the Number of Parties". In *American Journal of Political Science* 41, no. 1: 149–174. <https://doi.org/10.2307/2111712>
- Powell, G. Bingham. 1976. "Political Cleavage Structure, Cross-Pressure Processes, and Partisanship: An Empirical Test of the Theory." In *American Journal of Political Science* 20, no. 1: 1–23. <https://doi.org/10.2307/2110506>.
- Raymond, Christopher D. 2015. "In defiance of Duverger: The class cleavage and the Emergence of District-level Multiparty Systems in Western Europe." In *Research & Politics* 2, no. 1. <https://doi.org/10.1177/2053168014567557>.
- Raymond, Christopher D. 2016. "Not All Social Cleavages Are the Same: On the Relationship between Religious Diversity and Party System Fragmentation." In *Politics and Religion* 9, no. 2: 364–88. <https://doi.org/10.1017/S1755048316000250>.
- R Core Team. 2023. "R: A Language and Environment for Statistical Computing." Vienna: R Foundation for Statistical Computing. <https://www.R-project.org/>.
- Rogers, James R. 2005. "The Impact of Divided Government on Legislative Production." In *Public Choice* 123, no. 1/2: 217–233. R Foundation for Statistical Computing <https://doi.org/10.1007/s11127-005-0261-5>.
- Rooduijn, Matthijs. 2018. "What Unites the Voter Bases of Populist Parties? Comparing the Electorates of 15 Populist Parties." In *European Political Science Review* 10, no. 3: 351–68. <https://doi.org/10.1017/S1755773917000145>.

- Röth, Leonce, Alexandre Afonso, and Dennis C. Spies. 2018. "The Impact of Populist Radical Right Parties on Socio-Economic Policies." In *European Political Science Review* 10, no. 3: 325–50. <https://doi.org/10.1017/S1755773917000133>.
- Selway, Joel Sawat, and Kharis Templeman. 2012. "The Myth of Consociationalism? Conflict Reduction in Divided Societies." In *Comparative Political Studies* 45, no. 12: 1542–1571. <https://doi.org/10.1177/0010414011425341>.
- Selway, Joel Sawat. 2010. "Replication data for: The Measurement of Cross-cutting Cleavages and Other Multidimensional Cleavage Structures [computer file]" (doi: 10.7910/DVN/FWAZ60). Harvard Dataverse, Version 3.
- Selway, Joel Sawat. 2011. "Cross-Cuttingness, Cleavage Structures and Civil War Onset." In *British Journal of Political Science* 41, no. 1: 111–38. <https://doi.org/10.1017/S0007123410000311>.
- Selway, Joel Sawat. 2011. "The Measurement of Cross-Cutting Cleavages and Other Multidimensional Cleavage Structures." In *Political Analysis* 19, no. 1: 48–65. <https://doi.org/10.1093/pan/mpq036>.
- Somer-Topcu, Zeynep, and LK Williams. 2008. "Survival of the Fittest? Cabinet Duration in Postcommunist Europe." In *Comparative Politics* 40, no. 3: 313–329. <https://doi.org/10.5129/001041508X12911362383075>.
- Swenden, Wilfried, Marleen Brans, and Lieven De Winter. 2009. *The Politics of Belgium: Institutions and Policy Under Bipolar and Centrifugal Federalism*. 1–11. London: Routledge.
- Taylor, Michael, and Douglas Rae. 1969. "An Analysis of Crosscutting between Political Cleavages." In *Comparative Politics* 1, no. 4: 534–547. <https://doi.org/10.2307/421494>.
- Taylor, Michael, and V. M. Herman. 1971. "Party Systems and Government Stability." In *American Political Science Review* 65, no. 1: 28–37. <https://doi.org/10.2307/1955041>.
- Wickham, Hadley. 2016. "ggplot2: Elegant Graphics for Data Analysis". New York: Springer-Verlag. <https://ggplot2.tidyverse.org>

-
- Wilson, Matthew. 2019. "A Closer Look at the Limits of Consociationalism." In *Comparative Political Studies* 53, no. 5: 700–733. <https://doi.org/10.1177/0010414019858956>.
- Zhu, Hao. 2021. "kableExtra: Construct Complex Table with 'kable' and Pipe Syntax". R package version 1.3.4. <https://CRAN.R-project.org/package=kableExtra>.
- Zielinski, Jakub. 2002. "Translating Social Cleavages into Party Systems: The Significance of New Democracies." In *World Politics* 54, no. 2: 184–211. <https://doi.org/10.1353/wp.2002.0005>.

Rethinking the Landscape of Guns in America

Katherine Jeng

*This report examines racial disparities in gun arrests, possessions, and violence, and how the criminalization of gun possession is producing mass incarceration. Gun violence is increasingly viewed as a major national problem and disproportionately impacts Black Americans. Yet current methods of reducing gun violence are failing and causing harm as gun violence continues to increase in the United States. This report analyzes two types of solutions from experts: the first type is recommendations to reform the gun industry, while the second is various gun diversion programs in cities across the United States. Furthermore, the report discusses the role of bipartisan support in gun reform policies. Lastly, this report analyzes how *New York State Rifle and Pistol Association v. Kevin J. Bruen* changed the framework for Second Amendment cases and long-standing laws.*

New York State Rifle & Pistol Association, Inc. v. Bruen is a landmark decision of the United States Supreme Court that expanded the power of the Second Amendment and altered the way gun possession cases are handled. With the outcome of this case, developing gun litigation is causing debate in headlines and courts. This paper was written from May to August 2023 under the direction of Nazgol Ghandnoosh, Ph.D. (Co-Director of Research, The Sentencing Project) to understand the current climate of guns in America and what solutions advocates must seek to combat the gun epidemic.

I. Executive Summary

Jasmine Phillips lawfully owned a gun in Texas but was charged with unlicensed possession while visiting family in New York.¹ Even after her case was dismissed, she lost her custody of her child and her lease was terminated. Benjamin

¹ *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022).

Prosser, who was carrying a gun for self-defense, was convicted of illegal gun possession and declared a “violent felon” by the New York penal code because he did not have a license.² Lastly, Sam Little was carrying a gun to protect his child when he was stopped by the police.³ He had to drop out of classes from his associate’s program and spent eight months in jail. All three were clients of Bronx Defenders and mentioned in their amicus brief against New York’s concealed carry license law in *New York State Rifle and Pistol Association v. Kevin J. Bruen*. Despite exercising their Second Amendment rights, these clients suffered immense consequences.

This report examines racial disparities in gun arrests, possessions, and violence, and how the criminalization of gun possession is producing mass incarceration. Gun violence is increasingly viewed as a major national problem that disproportionately impacts Black Americans.⁴ Yet current methods of reducing gun violence are failing and even causing harm as gun violence steadily increase in the United States.⁵ This report analyzes two broad solutions from experts: the first is their recommendations to reform the gun industry, while the second solution involves various gun diversion programs in cities across the United States.⁶ Furthermore, the report discusses how bipartisan support fits into these solutions. Lastly, this report analyzes how *New York State Rifle and Pistol Association v. Kevin J. Bruen* changed the framework for Second Amendment cases and long-standing laws.

II. Racial Disparities in Gun Licensing and Possession Cases

In November of 2021, the Supreme Court ruled on *New York State Rifle and Pistol Association v. Kevin J. Bruen*, a case concerning New York State’s proper concealed carry law. Robert Nash and Brandon Koch were rejected from their concealed-carry applications based on their inability to provide “proper cause.”⁷ Progressive organizations like the ACLU and NAACP wrote amicus briefs in support of New York’s choice to regulate public carry, with the latter stating that “public carry restrictions remain an important feature of states and localities’ public safety regimes today.”⁸ However, Bronx Defenders, Brooklyn Defender Services, and numerous other New York public defender offices wrote an opposing amicus brief

2 *New York State Rifle & Pistol Association, Inc. v. Bruen*.

3 *Ibid.*

4 Pew Research Center, “Large Majority of Americans Support Raising Minimum Age for Buying Guns to 21,” June 27, 2023, https://www.pewresearch.org/politics/2023/06/28/gun-violence-widely-viewed-as-a-major-and-growing-national-problem/pp_2023-06-28_gun-violence_00-04/.

5 Pew Research Center, “What the Data Says about Gun Deaths in the U.S.,” April 26, 2023, <https://www.pewresearch.org/short-reads/2023/04/26/what-the-data-says-about-gun-deaths-in-the-u-s/>.

6 Everytown, “Lack of Gun Industry Accountability,” 2023, <https://www.everytown.org/issues/lack-of-gun-industry-accountability/>.

7 *New York State Rifle & Pistol Association, Inc. v. Bruen*.

8 *Ibid.*

stating that the denials violated the Second Amendment.⁹ Citing cases like *District of Columbia v. Heller* and *McDonald v. City of Chicago*, the public defenders argued that the court's precedent for firearm possession for self-defense was not the reality for their clients.¹⁰

Before the ruling, acquiring a concealed-carry license was up to the sole discretion of the New York Police Department (NYPD). They had the ability to brand firearm possession as a crime or licensed right. The application process is often expensive and discretionary; the license costs about \$400 in fees and an assessment of the "moral character" of the applicants.¹¹ As a result, the NYPD holds a preference for former police officers, who often get their fees waived and a "Good Guy" letter.¹² The letter is given to nearly all retiring full-duty cops, certifying that the applicant is "of good character" and able to continue carrying a gun. On the other hand, Robert Nash and Brandon Koch were denied from obtaining a license because they did not display "proper cause," which is defined as demonstrating "a special need for self-protection distinguishable from that of the general community."¹³ With this decision, the Supreme Court could invalidate this monopoly over gun licensing.

The language in New York's penal law covers firearm-possession cases broadly, yet the consequences for these arrests are life-long. For example, if a firearm is not loaded but there is ammunition in the same area, it is considered "loaded."¹⁴ If a firearm is in a car, "all persons" in the car possess it and can be charged. If a person possesses a gun without a license, then the law presumes they possessed it with "intent to use [it] unlawfully against another."¹⁵ Altogether, simply owning a gun becomes a "violent felony."¹⁶

Despite having a constitutional right to bear arms, the public defender's clients face severe repercussions if charged with illegal gun possession. The ones charged are oftentimes physically threatened by police and held pretrial at Rik-

9 *New York State Rifle & Pistol Association, Inc. v. Bruen*.

10 *District of Columbia v. Heller* was a landmark decision where the Supreme Court found a District of Columbia law strictly regulating gun ownership to be unconstitutional. *McDonald v. City of Chicago* was a landmark decision where the Supreme Court ruled that the 14th Amendment requires state and local governments to respect the Second Amendment.

11 "New Application Instructions · Government Portal," accessed August 24, 2023, <https://licensing.nypdonline.org/new-app-instruction/?AspxAutoDetectCookieSupport=1>.

12 "NYPD 'Good Guy' Note Let Suspect Pack Heat," accessed August 24, 2023, <https://nypost.com/2006/05/18/nypd-good-guy-note-let-suspect-pack-heat/>.

13 National League of Cities, "SCOTUS Strikes Down 'Proper Cause' Requirement to Carry a Gun in Public," June 24, 2022, <https://www.nlc.org/article/2022/06/24/scotus-strikes-down-proper-cause-requirement-to-carry-a-gun-in-public/>.

14 NY Law, "Article 265 Penal Law Firearms - Dangerous Weapons," accessed August 24, 2023, <https://ypdcrime.com/penal.law/article265.php>.

15 *Ibid.*

16 *Ibid.*

ers.¹⁷ As a result, many suffer from psychological trauma. Furthermore, people convicted of felony gun possession are branded as criminals and face a civil death: they may lose their jobs, custody of children, and immigration status and could face a year or more in prison.¹⁸ Even if they avoid prison, they still suffer from damaging criminal records, legal fees, car impoundments, probation, and job loss.¹⁹

Ultimately, with all these consequences, lawmakers have made the Second Amendment rights discriminatory towards African Americans.²⁰ The New York defenders stated in their brief, “Virtually all our clients whom New York prosecutes for exercising their Second Amendment right are Black or Hispanic. This is no accident. New York enacted its firearm licensing requirements to criminalize gun ownership by racial and ethnic minorities.”²¹ Despite making up only 18% of the population, Black New Yorkers make up 78% of the state’s felony gun possession cases.²² On the other hand, white New Yorkers make up 70% of the population, but only 7% of cases.²³ In Chicago, *The Marshall Project* found that despite Black people making up less than a third of the population, more than 80% of people arrested for unlawful possession were Black.²⁴ In Houston, arrests for illegal possession jumped up 70% between 2019 and 2021, and, despite being less than 25% of the population, Black people made up more than 60% of those arrests.²⁵ In Cleveland, Black people accounted for nearly 90% of arrests for weapons-related charges in 2022.²⁶ We can see how these disparities play out in gun ownership, as white men are especially likely to be gun owners: 48% of white men say they own a gun, whereas only 24% of nonwhite men say they own a gun.²⁷ Only 24% of Black people report they own a gun as compared to 36% of white people.²⁸

In June 2022, *Bruen* was decided. The Supreme Court held, consistent with *Heller* and *McDonald*, that the State’s licensing requirements went against the Sec-

17 Avinash Samarth, Aimee Carlisle, Christopher Smith, Michael Thomas, and Meghna Philip, “We Are Public Defenders. New York’s Gun Laws Eviscerate Our Clients’ Second Amendment Rights,” SCOTUSblog, October 28, 2021, <https://www.scotusblog.com/2021/10/we-are-public-defenders-new-yorks-gun-laws-eviscerate-our-clients-second-amendment-rights/>.

18 Ibid.

19 Lakeidra Chavis and Geoff Hing, “5 Things to Know About the Failed War on Gun Violence,” *The Marshall Project*, March 23, 2023, <https://www.themarshallproject.org/2023/03/23/gun-laws-violence-chicago-policing-what-to-know>.

20 This report uses the terms Black and African American interchangeably.

21 *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*.

22 Ibid.

23 Ibid.

24 “5 Things to Know About the Failed War on Gun Violence.”

25 Ibid.

26 Ibid.

27 Travis Mitchell, “The Demographics of Gun Ownership,” Pew Research Center’s Social & Demographic Trends Project (blog), June 22, 2017, <https://www.pewresearch.org/social-trends/2017/06/22/the-demographics-of-gun-ownership/>.

28 Ibid.

ond and Fourteenth amendment.²⁹ However, it is unclear yet whether this ruling will affect racial discrimination in felony gun possession cases. In fact, the NYPD has been granting fewer gun possession licenses, leaving them pending after *Bruen*.³⁰ Furthermore, the NYPD reports that gun arrests have been at a historic high.³¹ They indicated a significant increase in Queens and the Bronx, both neighborhoods with clusters of Black New Yorkers.³² Even still, *New York State Rifle and Pistol Association v. Kevin J. Bruen* and its ruling has become a catalyst for gun legislation and Second Amendment cases.³³

III. The Criminalization of Gun Possession Contributes to Mass Incarceration

Not only do laws that criminalize gun possession sustain mass incarceration but they are also ineffective at reducing the number of shootings on the streets or increasing solved investigations. In 2021, 72% of firearm convictions in Illinois were for possession offenses, and the state saw a 27% increase in prison admissions for firearm possession from 2014 to 2019.³⁴ A *The Marshall Project* report found that Illinois police made over 38,000 arrests for illegal gun possession in 2022, doubling from 2010.³⁵ Yet *The Marshall Project* found that as possession arrests increased, so did shootings—but the percentage of shooting victims where someone was arrested in their case declined.³⁶ Similar results were seen in Philadelphia. Whereas illegal gun possession arrests shot up more than 100% from 2015 to 2020, cases prosecuted by the District Attorney’s Office fell from 65% to 42%.³⁷ Clearance rates for fatal shootings, the percentage of cases solved by the Philadelphia Police Department, declined from 41% to 37% over the same period. Since 2010, Chicago police have failed to make an arrest in more than 8 in 10 shootings.³⁸ According to *The Marshall Project*, this may be because “investigating shootings used very different

29 *New York State Rifle & Pistol Association, Inc. v. Bruen*.

30 Gwynne Hogan and Suhail Bhat, “NYPD Granting Fewer Gun Permits After Supreme Court Ruled It Had to Grant More, Data Shows,” *The City*, July 23, 2023, <https://www.thecity.nyc/2023/7/23/23803195/nypd-gun-permit-approvals-bruen-supreme-court-ghost>.

31 “NYPD Announces Citywide Crime Statistics for June 2023.”

32 “NYPD Announces Citywide Crime Statistics for November 2022.”

33 See Section V. A World Post-*Bruen*.

34 David E. Olson et al., “Sentences Imposed on Those Convicted of Felony Illegal Possession of a Firearm in Illinois,” 3.

35 Lakeidra Chavis and Geoff Hing, “The War on Gun Violence Has Failed. And Black Men Are Paying the Price,” *The Marshall Project*, March 23, 2023, <https://www.themarshallproject.org/2023/03/23/gun-violence-possession-police-chicago>.

36 “5 Things to Know About the Failed War on Gun Violence.”

37 Sarah Bedford, “Democrats Call for More Gun Laws despite Not Enforcing the Ones They Have,” *Washington Examiner*, April 20, 2023, <https://www.washingtonexaminer.com/restoring-america/fairness-justice/democrats-want-more-gun-laws-dont-enforce-ones-they-have>.

38 “The War on Gun Violence Has Failed. And Black Men Are Paying the Price.”

policing resources than the kinds of stops that result in gun possession arrests.”³⁹

Focusing on gun possession is a misplacement of police resources. Roughly \$557 billion in tax money per year pays for our country’s gun violence epidemic, which is around 2.6% of the U.S. Gross Domestic Product.⁴⁰ The *Center for American Progress* ran an analysis of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) and its budget from 2013 to 2020; during this time, funding for “firearms criminal use and possession” and “combating criminal organizations” grew from 36% of the overall budget whereas funding focused on “detering illegal firearms trafficking/violent gun crime” and “diversion of firearms from legal commerce” were at 24% and 27%, respectively, and remained stagnant.⁴¹ *Everytown for Gun Safety* is critical of the economic consequences of gun violence, stating, “Instead of funding education, social services, economic redevelopment grants, and so many other vital public goods from which we all benefit, we are spending precious funds on an epidemic that brings nothing of benefit and plenty of heartbreak and shattered lives.”⁴² The *Center for American Progress*, on the other hand, suggests an overhaul of ATF’s spending priorities for more effective gun violence prevention.⁴³

The focus on gun possession is deeply linked to race. Nevertheless, the disproportionate number of arrests of Black people do little to reduce gun violence. Chief public defender of Cook County, Illinois, Sharone Mitchell, states, “Laws criminalizing gun possession not only devastate Black and brown communities; they also fail to achieve one of their primary objectives: reducing the supply of guns on our streets.”⁴⁴ There’s no shortage of guns on illegal markets, and access to them is far too easy. *The Marshall Project* echoes this sentiment, writing “disproportionate arrests of Black people for gun possession don’t directly address the violence that captivates headlines and moves policy: major mass shootings in schools, stores, houses of worship and nightclubs.”⁴⁵

Not only do Black people overwhelmingly make up gun possession arrests, but Black communities in Chicago also remain the most affected by gun violence.

39 Geoff Hing and Lakeidra Chavis, “How We Reported on Rising Gun Possession Arrests,” *The Marshall Project*, May 3, 2023, <https://www.themarshallproject.org/2023/05/03/how-we-reported-on-rising-gun-possession-arrests>.

40 “The Economic Cost of Gun Violence,” July 19, 2022. <https://everytownresearch.org/report/the-economic-cost-of-gun-violence/>.

41 Chelsea Parsons, Eugenio Weigend Vargas, and Rukmani Bhatia, “Rethinking ATF’s Budget to Prioritize Effective Gun Violence Prevention,” *Center for American Progress*, September 17, 2020, <https://www.americanprogress.org/article/rethinking-atfs-budget-prioritize-effective-gun-violence-prevention/>.

42 Everytown, “The Economic Cost of Gun Violence,” July 19, 2022. <https://everytownresearch.org/report/the-economic-cost-of-gun-violence/>.

43 “Rethinking ATF’s Budget to Prioritize Effective Gun Violence Prevention.”

44 Sharone Mitchell Jr., “There’s No Second Amendment on the South Side of Chicago,” *The Nation*, November 12, 2021, <https://www.thenation.com/article/politics/gun-control-supreme-court/>.

45 “The War on Gun Violence Has Failed. And Black Men Are Paying the Price.”

The majority of gun deaths are Black men ages 20-30s.⁴⁶ Black people's life expectancy is almost 10 years shorter on average than non-Black residents due to gun violence, as well as other factors like economic and health inequities.⁴⁷ Three in ten Black adults have personally witnessed someone being shot, one-third of Black adults have a family member who was killed by a gun, and one-third of Black adults say they worry either "every day," or "almost every day" about themselves or someone they love being a victim of gun violence (compared to one in ten white adults).⁴⁸ One in five Black adults feels like gun-related crimes, deaths, and injuries are a "constant threat" to their local community, more than double the share among white adults (8%).⁴⁹

The rise in gun possession arrests mirrors the larger ineffectiveness and racially unjustness of other methods of the war on gun violence like "broken windows" policing, stop-and-frisk, and the war on drugs. A lawsuit was filed in 2012 deeming stop-and-frisks as unconstitutional in 2013.⁵⁰ While this decreased recorded stop-and-frisks by over 480,000 cases, there were still 92,383 stops and 60,583 frisks of people on the street between 2014 to 2017.⁵¹ Worse, the racial disparities in these stops and frisks persisted. Of those numbers, 81% of stops and 84% of frisks were of Black or Latino people. 38% of all the "stops" were Black and Latino men from ages 14 to 24, though they only made up 5% of the population. Although being overrepresented in these stop-and-frisks, Black and Latino people were "less likely to be found with a weapon" than others.⁵² *The Marshall Project's* report, which focused on over 100 interviews in Chicago, found that researchers, attorneys, and advocates often compared the United States' current approach to gun violence to the war on drugs.⁵³ These tough-on-crime policies are disproportionately affecting Black communities and inflating incarceration rates.⁵⁴ Ultimately, these forms of gun control (gun possession arrests and stop-and-frisks) end up sustaining mass incarceration.⁵⁵

IV. Industry Reform, Gun Diversion Programs, and Alternative Sentencing

46 "The War on Gun Violence Has Failed. And Black Men Are Paying the Price."

47 Ibid.

48 "Americans' Experiences with Gun-Related Violence, Injuries, And Deaths," accessed September 19, 2023, <https://www.kff.org/other/poll-finding/americans-experiences-with-gun-related-violence-injuries-and-deaths/>.

49 Ibid.

50 New York Civil Liberties Union, "Stop-and-Frisk Data," January 2, 2012, <https://www.nyclu.org/en/stop-and-frisk-data>.

51 Ibid.

52 *New York State Rifle & Pistol Association, Inc. v. Bruen*.

53 "The War on Gun Violence Has Failed. And Black Men Are Paying the Price."

54 Ibid.

55 James Forman Jr., *Locking Up Our Own: Crime and Punishment in Black America*, n.d.

To reduce gun violence, an exploration of alternative solutions that don't produce mass incarceration is critical. Punitive sentencing laws do little to curb gun violence, especially as sentences for gun-related offenses are more often for possession than actual acts of violence.⁵⁶

Instead, experts suggest a variety of methods. Sharone Mitchell Jr., Chief Public Defender of Cook County Illinois, recommends stemming the flow and use of guns by repealing gun industry immunity, educating gun owners on safe usage and storage, implementing targeted buybacks, prohibiting the manufacturing of assault weapons, and investing in gun violence prevention and restorative justice initiatives.⁵⁷ *Everytown, Giffords, Brady United*, the *National Education Association*, and others call for a ban on all assault weapons.⁵⁸ This memo will look at two other forms of gun policies: gun industry reform and gun diversion programs.

A. Gun Industry Reform

Multiple organizations like *Everytown, Giffords, Center for American Progress*, and *The Trace* have all criticized the gun industry and its special immunities.⁵⁹ *Everytown* suggests four recommendations to keep the gun industry accountable.⁶⁰

(1) Repeal Gun Industry Immunity

The gun manufacturing industry has obtained unprecedented immunity in America.⁶¹ In 2005, President Bush signed the federal Protection of Lawful Commerce in Arms Act (PLCAA) into law, which shields gun manufacturers from liability and accountability.⁶² The act prohibits plaintiffs from bringing “qualified civil liability actions” against these industry defendants who now have broad immunity from many common law tort actions.⁶³

However, the PLCAA also provides exceptions, including what has been called the “predicate exception.”⁶⁴ The clause allows plaintiffs who were harmed

56 Austin Fisher, “Harsher Sentences Do Not Reduce Gun Violence, Research Shows,” Source New Mexico (blog), February 2, 2022, <https://sourcenm.com/2022/02/02/harsher-sentences-do-not-reduce-gun-violence-research-shows/>.

57 “There’s No Second Amendment on the South Side of Chicago.”

58 “Prohibit Assault Weapons”; “Assault Weapons”; “Demand a Ban on Assault Weapons”; “Ban Assault Weapons”

59 “Lack of Gun Industry Accountability”; *Center for American Progress*, “Frequently Asked Questions About Gun Industry Immunity,” May 4, 2021, <https://www.americanprogress.org/article/frequently-asked-questions-gun-industry-immunity/>; “Frequently Asked Questions About Gun Industry Immunity”; Kohrman, “States May Have Found a Way Through the Gun Industry’s Liability Shield.”

60 *Ibid.*

61 *Center for American Progress*, “Frequently Asked Questions About Gun Industry Immunity,” May 4, 2021, <https://www.americanprogress.org/article/frequently-asked-questions-gun-industry-immunity/>.

62 Sen. Larry E. Craig [R-ID], “Text - S.397 - 109th Congress (2005-2006): Protection of Lawful Commerce in Arms Act,” Legislation, October 26, 2005, <http://www.congress.gov/bill/109th-congress/senate-bill/397/text>.

63 *Ibid.*

64 *Ibid.*

to use civil actions against a gun industry defendant who has knowingly violated a statute of the sale or marketing of a firearm. This exception was used in Sandy Hook Elementary School's \$73 million settlement with Remington Arms Co.⁶⁵ The Connecticut Supreme Court held that one of the plaintiffs' claims survived PLCAA's bar. Although the case sparked hope in many against the immunity that the gun industry has, this strategy does little to open the door for more lawsuits against gun makers.

The gun industry is protected not only because of PLCAA but also by state immunity laws that have been adopted in some form in 34 states.⁶⁶ Similar to PLCAA, these immunity laws shield firearm and ammunition manufacturers, sellers, and other industry members from many kinds of traditional civil lawsuits. The immunity laws prohibit or deter cities or local governments from bringing lawsuits against gun industry defendants. Not only do Arkansas, Colorado, and Indiana, have these immunity statutes, but they also have laws that include punitive provisions to force victims who attempt to file lawsuits to pay for the gun industry's legal fees.⁶⁷

The possibility of civil litigation can incentivize industries to make their products or business practices safer. Civil litigation is proven to better protect public health and safety, but currently, the gun industry has no reason to enact changes to make guns safer. *Giffords* and *Everytown* argue that PLCAA gives the gun business special protections unlike any others, and it should be repealed. PLCAA blocks legal responsibility for manufacturers that have failed to innovate and add safety features to guns and for sellers with irresponsible sales practices that contribute to illegal firearms in our communities. Gun manufacturers and sellers should abide by the same rules as every other industry and be held accountable when its actions result in harm. Nineteen states have already begun rejecting legal immunity for the gun industry.⁶⁸ In 2002, California was the first state to repeal a gun industry immunity statute that stated: "No firearm or ammunition shall be deemed defective in design on the basis that the benefits of the product do not outweigh the risk of injury."⁶⁹ In 2020, Virginia also repealed their statute followed by Delaware in 2022.⁷⁰ According to *Giffords*, in New York, Delaware, and California, laws were passed to allow a new cause of action authorizing any person harmed by a firearm industry member who has knowingly violated a statute surrounding the sale or marketing of a firearm to file suit and seek compensation or other fair remedies

65 Chan, "Why It's So Difficult to Sue Gun Makers, Despite Sandy Hook."

66 "Frequently Asked Questions About Gun Industry Immunity."

67 "Gun Industry Immunity."

68 Ibid.

69 Giffords, "Gun Industry Immunity in California," January 5, 2023, https://giffords.org/lawcenter/state-laws/gun-industry-immunity-in-california/#footnote_0_14451.

70 "Gun Industry Immunity."

in court.⁷¹ New Jersey holds a similar law but expressly authorizes only the state Attorney General to file lawsuits in these circumstances.⁷² *Giffords* also states New York and California also empower certain local officials to bring civil lawsuits in their jurisdictions.⁷³

Everytown found that in 2022, California passed SB 1327, a first-of-its-kind legislation that allows individuals to sue anyone who violates certain California firearm laws, including those who make or sell illegal assault weapons or ghost gun parts, and those who sell guns to underage buyers.⁷⁴ California also enacted the Firearm Industry Responsibility Act in July 2023, which is a firearm industry standard of conduct in the Civil Code, complete with specific obligations and prohibitions that are unquestionably about the sale and marketing of firearms.⁷⁵

Repealing gun industry immunity provides many avenues of gun control. From keeping gun sellers and manufacturers accountable, increasing public and product safety, to deterring irresponsible business practices, there are many benefits to removing these special protections.

(2) Gun Seller Reform

In the United States, almost all firearms are sold by licensed sellers, including the ones recovered in crimes. Gun sellers are the essential connection between manufacturers and buyers. Yet policies around gun sellers have not been updated since the 1960s. The Gun Control Act of 1968 established a federal licensing system with requirements for firearms manufacturers, importers, pawnbrokers, collectors, and sellers, but did not significantly reduce crime or gun purchases.⁷⁶ Now, over 58,000 gun sellers in the United States are regulated by an act over 55 years old.⁷⁷ Furthermore, federal law does not require sellers to conduct business on commercial premises, which, in 1998, resulted in over 56% of all sellers operating out of their homes and 11% of all sellers operating out of businesses not normally associated with a gun business (like funeral homes and auto parts stores).⁷⁸ The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the federal agency

71 “Gun Industry Immunity.”

72 *Ibid.*

73 *Ibid.*

74 Everytown, “VICTORY FOR GUN SAFETY: Following Tireless Advocacy From Moms Demand Action And Students Demand Action, Governor Newsom Signs First-Of-Its-Kind Gun Safety Bill,” July 22, 2022, <https://www.everytown.org/press/victory-for-gun-safety-following-tireless-advocacy-from-moms-demand-action-and-students-demand-action-governor-newsom-signs-first-of-its-kind-gun-safety-bill/>.

75 “Gun Industry Immunity in California.”

76 Giffords, “Gun Dealers,” accessed August 24, 2023, <https://giffords.org/gun-laws/policy-areas/gun-sales/gun-dealers/>.

77 *Ibid.*

78 “Report of Active Firearms Licenses,” Bureau of Alcohol, Tobacco, Firearms and Explosives, January 10, 2020.

that regulates gun sellers, is underfunded and influenced by the gun industry.⁷⁹ This results in only 42% of sellers being inspected by ATF in a five-year period.⁸⁰

On the state level, only 26 states and the District of Columbia have adopted laws regulating firearms sellers.⁸¹ Seventeen states require sellers to post and/or deliver written warnings to purchasers regarding the risks of storing firearms in a manner accessible to children.

Sixteen states and the District of Columbia generally require firearms sellers to obtain a state-issued license.⁸² Even fewer states require firearms sellers to utilize security measures or background checks.⁸³

Everytown analyzed various investigations of gun sellers and revealed a majority of investigations of gun sellers had some violations like improper inventory, failing to complete required forms, and failing to conduct background checks.⁸⁴ Increasing supervision around gun sellers and creating gun seller reform would restrict dangerous transfers of firearms. *Everytown* found that intrastate gun trafficking was 64% lower in places with strong gun dealer regulations and oversight.⁸⁵

There has been increasing public support for comprehensive gun seller reform.⁸⁶ *Giffords* recommends a legislative framework to ameliorate such issues.⁸⁷ They recommend that sellers report all firearm sales, theft or loss, and physical inventory to law enforcement. Furthermore, *Giffords* calls for legislation to prohibit sellers in residential areas and require background checks or licenses for firearms sellers and seller employees. Ultimately, gun seller reform should consist of updating practices, increased record keeping, training, and holding sellers accountable.

(3) Smart Guns and Gun Safety Features

Roughly one gun is stolen every 90 seconds every day in the U.S.⁸⁸ This amounts to approximately 380,000 stolen guns every year. These guns often fall into an underground market, where people circumvent legal regulations to acquire

79 “Gun Dealers.”

80 David Chipman, “MEMO: ATF at a Time of Transition”; Buckles, “Commerce in Firearms in the United States”; “Review of ATF’s Federal Firearms Licensee Inspection Program.”

81 “Gun Dealers.”

82 Ibid.

83 Ibid.

84 Everytown, “Gun Dealer Reform,” accessed September 19, 2023, <https://www.everytown.org/solutions/gun-dealer-reform/>.

85 “Gun Dealer Reform.”

86 Colleen L. Barry, Elizabeth M. Stone, Cassandra K. Crifasi, Jon S. Vernick, Daniel W. Webster, and Emma E. McGinty, “Trends In Public Opinion on US Gun Laws: Majorities Of Gun Owners and Non-Gun Owners Support a Range of Measures,” *Health Affairs (Project Hope)* 38, no. 10 (October 2019): 1727–34, <https://doi.org/10.1377/hlthaff.2019.00576>.

87 “Gun Dealers.”

88 David Hemenway, Deborah Azrael, and Matthew Miller, “Whose Guns Are Stolen? The Epidemiology of Gun Theft Victims,” *Injury Epidemiology* 4 (April 10, 2017): 11, <https://doi.org/10.1186/s40621-017-0109-8>.

them. Furthermore, guns are exempt from federal consumer product safety regulations, which means no agency can investigate alleged malfunctions, set mandatory manufacturing or design standards, or recall models found to be defective.⁸⁹

Authorized-use technology, safety features, and smart gun technology can stop unsanctioned gun use and theft. Much like how your phone scans your thumb, scans your face, or requires a passcode, the technology helps ensure a gun can only be fired by an authorized user.⁹⁰ Furthermore, *Everytown* suggests semi-automatic handgun models should have a loaded chamber indicator to visually show if a round is in the chamber, as well as a magazine safety disconnect to help prevent the gun from being fired unintentionally. All firearms should also meet childproof standards like higher trigger resistance or multiple motions to fire the gun. Three states already have a form of this legislation in place: Massachusetts, Maryland, and California require new handgun models to have childproofing features.

(4) Repeal Restrictions on Gun Trace Data

The Tiahrt Amendment of 2003 prohibits the release of gun trace data to anyone other than a law enforcement agency or a prosecutor. It was added by Todd Tiahrt, who argues that it protects the anonymity of undercover officers and the confidentiality of law enforcement investigations. This amendment is supported by the National Rifle Association (NRA).⁹¹ However, the reality is that the amendment restricts law enforcement from investigating gun crimes and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) from releasing firearm trace data or requiring gun sellers to submit inventories. Furthermore, the amendment restricts information investigators can obtain, like where a gun was purchased or who it was sold to. The FBI is also required to destroy records of approved background checks in 24 hours. The Tiahrt Amendment makes it hard for law enforcement to prosecute or solve gun crimes, and repealing these restrictions would aid in the enforcement of gun laws. Gun trace data, like gun sellers' license revocations, are practices that could reduce the number of stolen or lost guns.

Repealing this amendment has received overwhelming support. Former and longest-serving New York City Police Department (NYPD) commissioner Raymond W. Kelly, wrote an opinion piece in the *New York Times* in 2007 on behalf of himself and "more than two dozen other law enforcement organizations, including the International Association of Chiefs of Police and a bipartisan coalition of

89 Champe Barton, "Lawmakers Push for Guns to Be Regulated Like Other Products," *The Trace*, April 27, 2023, <https://www.thetrace.org/2023/04/congress-gun-safety-bills-cpsc-sig-sauer/>.

90 Everytown, "Smart Guns and Gun Safety Features," accessed August 24, 2023, <https://www.everytown.org/solutions/smart-guns-and-gun-safety-requirements/>.

91 Raymond W. Kelly, "Washington's Secret Gun Files," *The New York Times*, June 16, 2007, sec. Opinion.

225 mayors” to oppose the reauthorization of the Tiahrt amendment.⁹²

Proponents of the Tiahrt amendment argue that public release of this data is a breach of privacy and could jeopardize criminal investigations. The *National Shooting Sports Foundation* states that repealing this amendment could jeopardize ongoing criminal investigations, putting the lives of law enforcement, witnesses and others at risk;⁹³ however, *Everytown* states that the amendment hinders law enforcement and contends that public safety must come first.⁹⁴

In 2015, Rep. Barbara Lee introduced a bill to repeal certain aspects of these amendments. She reintroduced the bill in 2018, and again in 2021 with Senator Bob Menendez.⁹⁵ The bill would repeal the prohibition on the ATF from releasing firearm trace data, the requirement for the FBI to destroy all approved gun purchaser records within 24 hours, and the prohibition on the ATF from requiring gun sellers to submit their inventories to law enforcement.⁹⁶ Furthermore, twelve states (Oregon, California, Illinois, North Carolina, Virginia, Pennsylvania, New York, Massachusetts, Connecticut, Delaware, Maryland, and New Jersey) require crime guns to be traced.⁹⁷

B. Gun Diversion Programs and Alternative Sentencing

Giffords recommends gun diversion programs as an alternative sentencing option for individuals with certain gun charges.⁹⁸ Gun diversion programs have become an increasingly popular rehabilitative approach to reducing the amount of gun crime in America. These programs use a variety of strategies such as community-based violence intervention and public health models to help people on a path to incarceration to exit the criminal legal system or avoid it entirely. Evidence of the results of these programs shows promising results. Cure Violence, also known as the “Interrupters Model,” involves paying and training trusted members of a community to anticipate where violence will occur and intervene before it erupts.⁹⁹ A study released in 2014 found a 31% drop in homicides and a 19%

92 Giffords, “Tiahrt Amendments,” accessed August 24, 2023, <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/tiahrt-amendments/>.

93 “Biden’s Dangerous Gun Control Plans: Repealing Tiahrt,” NSSF, accessed October 24, 2023, <https://www.nssf.org/articles/bidens-dangerous-gun-control-plans-repealing-tiahrt/>.

94 Everytown. “Repeal Restrictions on Gun Trace Data.” Accessed August 24, 2023. <https://everytownresearch.org/solution/gun-trace-data/>.

95 Barbara Lee - Congresswoman for the 12th District of California, “Rep. Lee, Sen. Menendez Reintroduce Bicameral Bill to End NRA-Backed Ban on Preservation, Disclosure of Gun Records,” March 25, 2021, <https://lee.house.gov/news/press-releases/rep-lee-sen-menendez-reintroduce-bicameral-bill-to-end-nra-backed-ban-on-preservation-disclosure-of-gun-records>.

96 Ibid.

97 “Repeal Restrictions on Gun Trace Data.”

98 Everytown Research & Policy, “Crime Gun Tracing,” accessed August 24, 2023, <https://everytownresearch.org/rankings/law/crime-gun-tracing/>.

99 Giffords, “A Second Chance: The Case for Gun Diversion Programs,” December 7, 2021, <https://giffords.org>.

decline in shootings in two Chicago districts where Interrupters worked.¹⁰⁰ Another program, the Youth and Community in Partnership (YCP), is an alternative sentencing program by Kings County District Attorney's office in Brooklyn.¹⁰¹ The results show that there is a 22% lower rearrest rate for 16-24 year old participants.¹⁰² Moreover, Operation CeaseFire is a Chicago-based violence prevention program that focuses on affecting violence with a small number of selected community members. The program was implemented beyond Chicago, reaching Boston, Cincinnati, and Indianapolis. All these cities achieved reductions in gun homicide ranging from 25% to over 60%.¹⁰³ Lastly, Save Our Streets is a Brooklyn-located community-based project to address gun violence.¹⁰⁴ The program saw a 20% relative reduction in gun violence as the average monthly shooting rates in Crown Heights decreased by 6%, which compared to surrounding neighborhoods.¹⁰⁵

Giffords finds that although research supports diversion, many programs cannot demonstrate a positive impact on costs or savings because their focuses are on extremely low-level offenses.¹⁰⁶ The result is called net widening, where new treatments are more burdensome than some of the original consequences defendants faced. *Giffords* provides evidence that expanding diversion programming to felonies and more serious charges can be more effective and reduce net widening. They provide an evaluation of a Drug School program in Cook County, Illinois, that has separate tracks for individuals accused of misdemeanor and felony drug charges. Only 1% of those enrolled in felony Drug School received a jail sentence, as compared to 37% of those who did not opt for diversion.¹⁰⁷

Community-based violence intervention programs are growing rapidly throughout the United States and show promising results. A 2019 survey finds 55% of 220 prosecutors' offices had diversion programming.¹⁰⁸ *Giffords* finds that diversion programs have the potential to be a proven method of reducing gun violence that does not contribute to mass incarceration. Increasing research shows that investing in and establishing these programs can allow for greater public safety.

org/lawcenter/report/a-second-chance-the-case-for-gun-diversion-programs/.

100 "Cure Violence Evidence Summary."

101 David B. Henry, Shannon Knoblauch, and Rannveig Sigurvinsdottir, "The Effect of Intensive CeaseFire Intervention on Crime in Four Chicago Police Beats: Quantitative Assessment."

102 "Youth Diversion."

103 "A Second Chance: The Case for Gun Diversion Programs."

104 "Operation Ceasefire and the Safe Community Partnership."

105 Sarah Picard-Fritsche and Lenore Cerniglia, "Testing a Public Health Approach to Gun Violence," *Center for Court Innovation*, 2012.

106 *Ibid.*

107 "A Second Chance: The Case for Gun Diversion Programs."

108 *Ibid.*

C. Bipartisan Cooperation

Bipartisan cooperation is essential to address the deeply divisive issue of firearms regulation in a way that respects both individual rights and national safety. Consensus-driven policymaking is an essential way that legislation surrounding gun control is accepted and effective. The need for public safety, reducing gun violence, and stopping mass shootings must transcend party lines. Bipartisanship not only lends legitimacy to the resulting policies but also increases the likelihood of their successful implementation and enforcement. It is through the collaboration of lawmakers from both sides of the aisle that a balanced, evidence-based approach can be achieved to make our communities safer.

One example of successful bipartisan cooperation is the Bipartisan Safer Communities Act (BSCA) that President Joe Biden signed into law on June 25, 2022.¹⁰⁹ Both Democratic and Republican senators worked on this bill, including Connecticut Sen. Chris Murphy, Arizona Sen. Kyrsten Sinema, Texas Sen. John Cornyn, and North Carolina Sen. Thom Tillis. The *Center for American Progress* called it “the most significant gun violence reduction legislation in 30 years.”¹¹⁰ The BSCA prioritizes improving background checks by broadening the definition of licensed gun dealers and buyers under age 21. It furthermore increases access to mental health services, crisis intervention services, and community violence intervention programs. Lastly, it tightens criminal offenses for straw purchasing and trafficking. Lucy Sarkissian, a 19-year old gun survivor-activist, announced that one year after the BSCA passed, Colorado received more than \$9 million to fund mental health care in schools and communities, support gun violence survivors, and to implement extreme risk protection orders. Although the BSCA is an amazing step in the right direction, we must continue off this momentum to continue bipartisan collaboration for gun safety.¹¹¹

V. A World Post-Bruen

New York State Rifle and Pistol Association v. Kevin J. Bruen altered our country’s approach to Second Amendment Rights in the legal system. *Bruen* has overturned a New York law created in 1913 that included “good moral character” and “proper cause” as conditions to public carry, expanding Second Amendment rights to more people.¹¹² Before *Bruen*, due to the Buffalo, New York shooting on May 14, 2022, New York had been taking steps to strengthen gun control.¹¹³ Just seventeen

109 Michela Lowry and Ashmini Kerodal, “Prosecutor-Led Diversion.”

110 Margaret Finerty, “The Supreme Court’s Bruen Decision and Its Impact: What Comes Next?” New York State Bar Association, August 9, 2022, <https://nysba.org/the-supreme-courts-bruen-decision-and-its-impact-what-comes-next/>.

111 Ibid.

112 Ibid.

113 “Legal Alert OAG 2022 02.” California Department of Justice Office of the Attorney General, February

days before *Bruen* was decided, New York Governor Kathy Hochul signed a 10-bill legislative package that bans the sale of semiautomatic rifles to people under 21, expands the definition of a firearm, restricts the sale of body armor to specific professions, broadens the list of people who can file an Extreme Risk Protection Order, and publishes requirements for social media platforms to bolster their hateful conduct policies.¹¹⁴

However, the *Bruen* case is already having ripple effects in other states, reversing the tide of gun control laws. California Attorney General Rob Bonta released a legal memo a day after the *Bruen* ruling stating that the “good cause” requirements in the California Penal Code are unconstitutional.¹¹⁵ The Massachusetts Attorney General released a joint advisory with the Executive Office of Public Safety and Security to “cease enforcement of the ‘good reason’ provision of the license-to-carry statute in response to *Bruen*.”¹¹⁶ Maryland removed their “good and substantial reason” requirements for concealed carry.¹¹⁷ Gov. Hochul signed the Concealed Carry Improvement Act into law on July 1, 2022.¹¹⁸ Hawaii passed legislation to allow more people to carry concealed firearms, following similar steps as New Jersey and New York.¹¹⁹

Bruen has allowed for has further stirred up new debate regarding the dismissal of federal felon-in-possession prosecutions, creating new legal inconsistencies between federal and state rulings.. In June 2023, a year after *Bruen*, District Judge Carlton Reeves dismissed Jessie Bullock’s criminal charges for owning a firearm despite a felony conviction in *United States v. Bullock*.¹²⁰ He ruled that prohibiting Bullock from owning a gun because of a conviction would violate the Second Amendment. Although Reeves is bound to the law and decision from the Supreme Court, he has been vocal about his disapproval. In October 2022, Reeves strongly criticized the Supreme Court’s *Bruen* decision, which ruled that gun laws should depend on whether they are consistent with the “history and tradition” of restric-

2022.

114 “Joint Advisory Regarding the Massachusetts Firearms Licensing System After the Supreme Court’s Decision in *New York State Rifle & Pistol Association v. Bruen*,” Massachusetts Attorney General’s Office and the Executive Office of Public Safety and Security, 2022.

115 “Bipartisan Safer Communities Act,” Office of Elementary and Secondary Education, accessed October 24, 2023, <https://oese.ed.gov/bipartisan-safer-communities-act/>.

116 Nick Wilson, Chandler Hall, Allison Jordan, “The Bipartisan Safer Communities Act, 1 Year Later.” *Center for American Progress*. <https://www.americanprogress.org/article/the-bipartisan-safer-communities-act-1-year-later/>.

117 Young Activists Call for Reforms to Combat Gun Violence | C-SPAN.org. (n.d.). Retrieved October 24, 2023, from <https://www.c-span.org/video/?c5074816/young-activists-call-reforms-combat-gun-violence>.

118 Lawlor, “Maryland Court Follows Supreme Court’s Gun Permit Ruling.”

119 “The Supreme Court’s *Bruen* Decision and Its Impact: What Comes Next?”

120 McAvoy, “Hawaii Allows More Concealed Carry after US Supreme Court Ruling, but Bans Guns in Most Places”; “New Jersey Governor Signs Bill Overhauling Gun Carry Rules”; Hill, Khan, and Caina Calvan, “New York to Restrict Gun Carrying after Supreme Court Ruling.”

tions in place at the time the Constitution was written.¹²¹ He stated the Supreme Court needed a “trained historian” to help understand gun laws.¹²² He cites disagreement about the Second Amendment and heavy criticism of *Bruen* among historians. *The Washington Post* states Reeves “calls the Supreme Court’s bluff on guns.”¹²³ Through this ruling, it is evident that *Bruen* “has created quite the mess” and leads to many questions that judges now must decide.¹²⁴

As another example, Zackey Rahimi was arrested after police found a gun in his home. He was involved in five shootings and has a restraining order against him due to domestic violence. He was convicted on the grounds of the 1994 federal law that prohibits firearm possession for subjects of restraining orders. However, after *Bruen*, he is appealing his indictment in *United States v. Rahimi*. He argued that *Bruen* overturned the previous law and therefore his indictment is unconstitutional.¹²⁵ The case has made its way to the Supreme Court and is pending. *Everytown* calls the decision “extremely dangerous for women in America” and advocates for the decision to be immediately vacated or reversed.¹²⁶

Yet there’s still hope with this Supreme Court decision. The Justice Department and the Biden administration are asking the court to revoke the lower court ruling.¹²⁷ *NBC News* calls it the “first real test of how broadly the court’s conservative majority wants its 2022 ruling to be interpreted”, referring to *Bruen*.¹²⁸

Furthermore, progress on gun reform continues as some states refuse to back down from gun control because of *Bruen*. Connecticut’s Office of the Attorney General acknowledged *Bruen* and its impact on Connecticut’s gun laws but released a statement saying the office “is ready to aggressively defend Connecticut’s laws and our right to protect the safety of all our citizens.”¹²⁹ Moreover, in July 2023, California Governor Gavin Newsom proposed a constitutional amendment on gun safety. It aims to do four things: ban assault weapons, mandate background

121 “Reeves Order.”

122 Marcus, Ruth. “A U.S. District Judge Calls the Supreme Court’s Bluff on Guns.” *Washington Post*, July 8, 2023. <https://www.washingtonpost.com/opinions/2023/07/07/originalism-supreme-court-second-amendment-reeves/>.

123 *Ibid.*

124 ABA Journal. “In ‘scorching’ Opinion, Federal Judge Considers Appointing Historian to Help Him in Gun Case.” Accessed September 19, 2023. <https://www.abajournal.com/news/article/in-scorching-opinion-federal-judge-considers-appointing-historian-to-help-him-in-gun-case>.

125 “A U.S. District Judge Calls the Supreme Court’s Bluff on Guns.”

126 Fritze, “Guns for Domestic Abusers?”; “1117. Restrictions on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence.”

127 “Opinion: The Fifth Circuit’s Rahimi decision protects abusers’ access to guns. The Supreme Court must act to protect survivors of domestic violence.”

128 Everytown. “*United States v. Rahimi*: The Fifth Circuit’s Dangerous and Extreme Decision,” February 8, 2023. <https://www.everytown.org/united-states-v-rahimi-the-fifth-circuits-dangerous-and-extreme-decision/>.

129 Reuters. “DOJ Asks Supreme Court to Uphold Domestic Violence Gun Law.” *NBC News*, March 18, 2023. <https://www.nbcnews.com/politics/supreme-court/justice-department-asks-supreme-court-uphold-domestic-violence-gun-law-rcna75606>.

checks on gun buyers, implement a waiting period, and add a minimum purchasing age of 21. The *Los Angeles Times* applauds Newsom for offering something “more muscular than the typical thoughts-and-prayers response”, yet simultaneously acknowledges that this amendment would have “no chance of being adopted.”¹³⁰

Massachusetts House Judiciary Chairman Michael Day criticized the “rogue Supreme Court” and filed a large gun reform bill in June 2023 that would help “ensure the health and safety of [Massachusetts] residents.”¹³¹ The bill expands the state’s Extreme Risk Protection Order (ERPO), otherwise known as the “Red Flag” law.¹³² The law directs a person to surrender their license to carry. The bill also focuses on controlling ghost guns by requiring two essential gun parts, receivers and barrels, to be registered and have serial numbers. Furthermore, it updates the state’s concealed carry law to prohibit licensed gun owners from carrying firearms in schools, colleges, universities, government buildings, polling places, and private property.¹³³ *The Boston Globe* applauds this bill, declaring, “Making Massachusetts safer is the best we can hope for. This legislation helps get us there.”¹³⁴

The decision of *New York State Rifle & Pistol Assn., Inc. v. Bruen* has fundamentally changed the constitutionality and methodology of gun laws. It has distorted historical precedent to radically expand the Second Amendment right in the face of epidemic gun violence. Ultimately, the decision compels us to ask: how effective are our current solutions to gun violence, and how must we rethink them? We are now living in a pivotal moment of gun legislation and must advocate, with bated breath, for effective gun regulation.

130 “DOJ Asks Supreme Court to Uphold Domestic Violence Gun Law.”

131 Dave Altimari, “Supreme Court Gun Ruling Could Prompt ‘wave of New Litigation’ in CT,” *CT Mirror*, June 23, 2022, <http://ctmirror.org/2022/06/23/wave-of-new-litigation-in-ct-possible-after-supreme-court-gun-law-ruling/>.

132 *Los Angeles Times*. “Editorial: Newsom Gun Amendment Is a Non-Starter, but It Still Has Value,” July 17, 2023. <https://www.latimes.com/opinion/story/2023-07-17/newsom-gun-amendment-non-starter>.

133 *BostonGlobe.com*. “Five Days, 26 US Mass Shootings. Here’s a Proposal to Slow the Bloodshed.,” July 10, 2023. <https://www.bostonglobe.com/2023/07/10/opinion/mass-shootings-gun-safety-legislation-ghost-guns-red-flag-law/>.

134 *Mass.gov*. “Extreme Risk Protection Orders.” Accessed September 19, 2023. <https://www.mass.gov/extreme-risk-protection-orders>.

Bibliography

ABA Journal. "In 'scorching' Opinion, Federal Judge Considers Appointing Historian to Help Him in Gun Case." Accessed September 19, 2023. <https://www.abajournal.com/news/article/in-scorching-opinion-federal-judge-considers-appointing-historian-to-help-him-in-gun-case>.

"Aim4Peace Evaluation Brief Report 2018-2020." Aim4Peace, 2020.

Altimari, Dave. "Supreme Court Gun Ruling Could Prompt 'wave of New Litigation' in CT." CT Mirror, June 23, 2022. <http://ctmirror.org/2022/06/23/wave-of-new-litigation-in-ct-possible-after-supreme-court-gun-law-ruling/>

"Americans' Experiences with Gun-Related Violence, Injuries, And Deaths." Accessed September 19, 2023. <https://www.kff.org/other/poll-finding/americans-experiences-with-gun-related-violence-injuries-and-deaths/>.

AP News. "New Jersey Governor Signs Bill Overhauling Gun Carry Rules," December 22, 2022. <https://apnews.com/article/new-jersey-phil-murphy-413d6205f23a715290db75300b89d1fb> .

Avinash Samarth, Aimee Carlisle, Christopher Smith, Michael Thomas, and Meghna Philip. "We Are Public Defenders. New York's Gun Laws Eviscerate Our Clients' Second Amendment Rights." SCOTUSblog, October 28, 2021. <https://www.scotusblog.com/2021/10/we-are-public-defenders-new-yorks-gun-laws-evi-scerate-our-clients-second-amendment-rights/>.

"Ban Assault Weapons." Accessed September 19, 2023. <https://www.nea.org/advocating-for-change/action-center/take-action/ban-assault-weapons> .

Barbara Lee - Congresswoman for the 12th District of California. "Rep. Lee, Sen. Menendez Reintroduce Bicameral Bill to End NRA-Backed Ban on Preservation, Disclosure of Gun Records," March 25, 2021. <https://lee.house.gov/news/press-releases/rep-lee-sen-menendez-reintroduce-bicameral-bill-to-end-nra-backed-ban-on-preservation-disclosure-of-gun-records>.

- Barry, Colleen L., Elizabeth M. Stone, Cassandra K. Crifasi, Jon S. Vernick, Daniel W. Webster, and Emma E. McGinty. "Trends In Public Opinion on US Gun Laws: Majorities Of Gun Owners and Non-Gun Owners Support a Range of Measures." *Health Affairs (Project Hope)* 38, no. 10 (October 2019): 1727–34. <https://doi.org/10.1377/hlthaff.2019.00576> .
- Barton, Champe. "Lawmakers Push for Guns to Be Regulated Like Other Products." *The Trace*, April 27, 2023. <https://www.thetrace.org/2023/04/congress-gun-safety-bills-cpsc-sig-sauer/> .
- Biden's Dangerous Gun Control Plans: Repealing Tiahrt • NSSF. (n.d.). Retrieved October 24, 2023, from <https://www.nssf.org/articles/bidens-dangerous-gun-control-plans-repealing-tiahrt/>
- Bipartisan Safer Communities Act. (n.d.). Office of Elementary and Secondary Education. Retrieved October 24, 2023, from <https://oese.ed.gov/bipartisan-safer-communities-act/>
- BostonGlobe.com. "Five Days, 26 US Mass Shootings. Here's a Proposal to Slow the Bloodshed." July 10, 2023. <https://www.bostonglobe.com/2023/07/10/opinion/mass-shootings-gun-safety-legislation-ghost-guns-red-flag-law/>.
- Brady. "Demand a Ban on Assault Weapons." Accessed September 19, 2023. <https://www.bradyunited.org/act/ban-assault-weapons> .
- Buckles, Bradley A. "Commerce in Firearms in the United States." Department of the Treasury, February 2000.
- . "The Bureau of Alcohol, Tobacco, and Firearms (ATF) Submits This Report on Its Activities Relating to the Regulation of Firearms during the Calendar Year 1999. This Report Is Submitted in Accordance with ATF's Mission of Informing the Public.," n.d.
- Butts, Jeffrey A., Caterina Gouvis Roman, Lindsay Bostwick, and Jeremy R. Porter. "Cure Violence: A Public Health Model to Reduce Gun Violence." *Annual Review of Public Health* 36, no. 1 (2015): 39–53. <https://doi.org/10.1146/annurev-publhealth-031914-122509>.
- Center for American Progress*. "Frequently Asked Questions About Gun Industry Immunity," May 4, 2021. <https://www.americanprogress.org/article/>

frequently-asked-questions-gun-industry-immunity/.

Chan, Melissa. “Why It’s So Difficult to Sue Gun Makers, Despite Sandy Hook,” February 18, 2022. <https://time.com/6149343/sandy-hook-remington-other-gun-lawsuits/>.

Chavis, Lakeidra, and Geoff Hing. “5 Things to Know About the Failed War on Gun Violence.” *The Marshall Project*, March 23, 2023. <https://www.themarshallproject.org/2023/03/23/gun-laws-violence-chicago-policing-wh-at-to-know>.

———. “The War on Gun Violence Has Failed. And Black Men Are Paying the Price.” *The Marshall Project*, March 23, 2023. <https://www.themarshallproject.org/2023/03/23/gun-violence-possession-police-chicago>.

Chelsea Parsons, Eugenio Weigend Vargas, and Rukmani Bhatia. “Rethinking ATF’s Budget to Prioritize Effective Gun Violence Prevention.” *Center for American Progress*, September 17, 2020. <https://www.americanprogress.org/article/rethinking-atfs-budget-prioritize-effective-gun-violence-prevention/>.

City of New York. “NYPD Announces Citywide Crime Statistics for June 2023,” July 6, 2023. <https://www.nyc.gov/site/nypd/news/p00084/nypd-citywide-crime-statistics-june-2023>.

City of New York. “NYPD Announces Citywide Crime Statistics for November 2022,” December 5, 2022. <https://www.nyc.gov/site/nypd/news/p00070/nypd-citywide-crime-statistics-november-2022>.

Craig, Larry E. S.397 - 109th Congress (2005-2006): Protection of Lawful Commerce in Arms Act, 109-92 § (2005). <https://www.congress.gov/bill/109th-congress/senate-bill/397/text>.

David B. Henry, Shannon Knoblauch, and Rannveig Sigurvinsdottir. “The Effect of Intensive CeaseFire Intervention on Crime in Four Chicago Police Beats: Quantitative Assessment,” September 11, 2014.

David Chipman. “MEMO: ATF at a Time of Transition: Underfunded and Unduly Restricted.” *Giffords* (blog), April 25, 2019. <https://giffords.org/press-release/2019/04/atf-director-announcement-memo/>.

David E. Olson, Don Stemen, Kaitlyn Foust, Cynthia Guzman, Lisa Jacobs, Sophia Juarez, Holly Michalak, Avery Pankratz, and Amanda Ward. “Sentences Imposed on Those Convicted of Felony Illegal Possession of a Firearm in Illinois.” *Center for Criminal Justice Research, Policy, and Practice*. Loyola University Chicago, 2021.

Department of Justice Archives. “1117. Restrictions on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence,” February 19, 2015. <https://www.justice.gov/archives/jm/criminal-resource-manual-1117-restrictions-possesion-firearms-individuals-convicted>.

Everytown. “Gun Dealer Reform.” Accessed September 19, 2023. <https://www.everytown.org/solutions/gun-dealer-reform/>.

Everytown. “Lack of Gun Industry Accountability,” 2023. <https://www.everytown.org/issues/lack-of-gun-industry-accountability/>.

Everytown. “Prohibit Assault Weapons.” Accessed September 19, 2023. <https://www.everytown.org/solutions/assault-weapon-ban/>.

Everytown. “Smart Guns and Gun Safety Features.” Accessed August 24, 2023. <https://www.everytown.org/solutions/smart-guns-and-gun-safety-requirements/>.

Everytown. “United States v. Rahimi: The Fifth Circuit’s Dangerous and Extreme Decision,” February 8, 2023. <https://www.everytown.org/united-states-v-rahimi-the-fifth-circuits-dangerous-and-extreme-decision/>.

Everytown. “VICTORY FOR GUN SAFETY: Following Tireless Advocacy From Moms Demand Action And Students Demand Action, Governor Newsom Signs First-Of-Its-Kind Gun Safety Bill,” July 22, 2022. <https://www.everytown.org/press/victory-for-gun-safety-following-tireless-advocacy-from-moms-demand-action-and-students-demand-action-governor-newsom-signs-first-of-its-kind-gun-safety-bill/>.

Everytown Research & Policy. “Crime Gun Tracing.” Accessed August 24, 2023. <https://everytownresearch.org/rankings/law/crime-gun-tracing/>.

Finerty, Margaret. “The Supreme Court’s Bruen Decision and Its Impact: What Comes Next?” New York State Bar Association, August 9, 2022. <https://>

nysba.org/the-supreme-courts-bruen-decision-and-its-impact-what-comes-next/.

Fisher, Austin. “Harsher Sentences Do Not Reduce Gun Violence, Research Shows.” Source New Mexico (blog), February 2, 2022. <https://sourcenm.com/2022/02/02/harsher-sentences-do-not-reduce-gun-violence-research-shows/>.

Forman Jr., James. *Locking Up Our Own: Crime and Punishment in Black America*, n.d.

Giffords. “A Second Chance: The Case for Gun Diversion Programs,” December 7, 2021. <https://giffords.org/lawcenter/report/a-second-chance-the-case-for-gun-diversion-programs/>.

Giffords. “Assault Weapons.” Accessed September 19, 2023. <https://giffords.org/gun-laws/policy-areas/hardware-ammunition/assault-weapons/>.

Giffords. “Gun Dealers.” Accessed August 24, 2023. <https://giffords.org/gun-laws/policy-areas/gun-sales/gun-dealers/>.

Giffords. “Gun Industry Immunity.” Accessed September 19, 2023. <https://giffords.org/gun-laws/policy-areas/other-laws-policies/gun-industry-immunity/>.

Giffords. “Tiahrt Amendments.” Accessed August 24, 2023. <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/tiahrt-amendments/>.

Glenn Thrush, Danny Hakim, and Mike McIntire. “How the A.T.F., Key to Biden’s Gun Plan, Became an N.R.A. ‘Whipping Boy’” *The New York Times*, May 2, 2021. <https://www.nytimes.com/2021/05/02/us/politics/atf-nra-guns.html>.

Giffords. “Gun Industry Immunity in California,” January 5, 2023. https://giffords.org/lawcenter/state-laws/gun-industry-immunity-in-california/#-footnote_0_14451 .

Gwynne Hogan and Suhail Bhat. “NYPD Granting Fewer Gun Permits After Supreme Court Ruled It Had to Grant More, Data Shows.” The City, July 23, 2023. <https://www.thecity.nyc/2023/7/23/23803195/nypd-gun-permit-approvals-bruen-supreme-court-ghost> .

Hemenway, David, Deborah Azrael, and Matthew Miller. “Whose Guns Are Sto-

len? The Epidemiology of Gun Theft Victims.” *Injury Epidemiology* 4 (April 10, 2017): 11. <https://doi.org/10.1186/s40621-017-0109-8>.

Hill, Michael, Maysoon Khan, and Bobby Caina Calvan. “New York to Restrict Gun Carrying after Supreme Court Ruling.” AP News, September 1, 2022. <https://apnews.com/article/us-supreme-court-travel-manhattan-gun-politics-legislature-507daf2e3b85e72af606b4f44ef2ceab>.

Hing, Geoff, and Lakeidra Chavis. “How We Reported on Rising Gun Possession Arrests.” *The Marshall Project*, May 3, 2023. <https://www.themarshallproject.org/2023/05/03/how-we-reported-on-rising-gun-possession-arrests>.

John Fritze. “Guns for Domestic Abusers? Skirts at School? A Look at What May Be Next at the Supreme Court.” USA TODAY, June 17, 2023. <https://www.usatoday.com/story/news/politics/2023/06/17/guns-dress-codes-voting-heres-what-may-be-next-for-supreme-court/70321024007/>.

Johns Hopkins Bloomberg School of Public Health. “Opinion: The Fifth Circuit’s Rahimi Decision Protects Abusers’ Access to Guns. The Supreme Court Must Act to Protect Survivors of Domestic Violence.” March 1, 2023. <https://publichealth.jhu.edu/2023/opinion-the-fifth-circuits-rahimi-decision-protects-abusers-access-to-guns-the-supreme-court-must-act-to-protect-survivors-of-domestic-violence>.

“Joint Advisory Regarding the Massachusetts Firearms Licensing System After the Supreme Court’s Decision in *New York State Rifle & Pistol Association v. Bruen*.” Massachusetts Attorney General’s Office and the Executive Office of Public Safety and Security, 2022.

Kelly, Raymond W. “Washington’s Secret Gun Files.” *The New York Times*, June 16, 2007, sec. Opinion. <https://www.nytimes.com/2007/06/16/opinion/16kelly.html>.

Kohrman, Miles. “States May Have Found a Way Through the Gun Industry’s Liability Shield.” The Trace, August 11, 2022. <https://www.thetrace.org/2022/08/plcaa-california-new-york-allow-lawsuits/>.

Lawlor, Mason. “Maryland Court Follows Supreme Court’s Gun Permit Ruling: ‘Good and Substantial Reason’ Requirement Also Unconstitution-

al.” Law.com, August 1, 2022. <https://www.law.com/2022/08/01/maryland-court-follows-supreme-courts-gun-permit-ruling-good-and-substantial-reason-requirement-also-unconstitutional/>.

Lawrence Hurley. “Supreme Court Considers Recoil from Landmark Gun Rights Ruling,” June 18, 2023. <https://www.nbcnews.com/politics/supreme-court/supreme-court-considers-recoil-land-mark-gun-rights-ruling-rcna89261>.

“Legal Alert OAG 2022 02.” California Department of Justice Office of the Attorney General, February 2022.

Los Angeles Times. “Editorial: Newsom Gun Amendment Is a Non-Start-er, but It Still Has Value,” July 17, 2023. <https://www.latimes.com/opinion/story/2023-07-17/newsom-gun-amendment-non-starter> .

Marcus, Ruth. “A U.S. District Judge Calls the Supreme Court’s Bluff on Guns.” *Washington Post*, July 8, 2023. <https://www.washingtonpost.com/opinions/2023/07/07/originalism-supreme-court-second-amendment-reeves/>.

Mass.gov. “Extreme Risk Protection Orders.” Accessed September 19, 2023. <https://www.mass.gov/extreme-risk-protection-orders> .

McAvoy, Audrey. “Hawaii Allows More Concealed Carry after US Supreme Court Ruling but Bans Guns in Most Places.” AP News, June 3, 2023. <https://apnews.com/article/hawaii-gun-control-law-concealed-carry-permit-72e5ebe107fdea85319a4552dcb23b97>.

Michela Lowry and Ashmini Kerodal. “Prosecutor-Led Diversion.” *Center for Court Innovation*, March 2019.

Mitchell Jr., Sharone. “There’s No Second Amendment on the South Side of Chicago,” November 12, 2021. <https://www.thenation.com/article/politics/gun-control-supreme-court/>.

Mitchell, Travis. “The Demographics of Gun Ownership.” Pew Research Center’s Social & Demographic Trends Project (blog), June 22, 2017. <https://www.pewresearch.org/social-trends/2017/06/22/the-demographics-of-gun-ownership/>.

National League of Cities. “SCOTUS Strikes Down ‘Proper Cause’ Requirement to Carry a Gun in Public,” June 24, 2022. <https://www.nlc.org/article/2022/06/24/scotus-strikes-down-proper-cause-requirement-to-carry-a-gun-in-public/>.

“New Application Instructions · Government Portal.” Accessed August 24, 2023. <https://licensing.nypdonline.org/new-app-instruction/?AspxAutoDetectCookieSupport=1>.

New York Civil Liberties Union. “Stop-and-Frisk Data,” January 2, 2012. <https://www.nyclu.org/en/stop-and-frisk-data>.

New York State Rifle & Pistol Ass’n, Inc. v. Bruen, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022)

NY Law. “Article 265 Penal Law Firearms - Dangerous Weapons.” Accessed August 24, 2023. <https://ypdcrime.com/penal.law/article265.php>.

“NYPD ‘Good Guy’ Note Let Suspect Pack Heat.” Accessed August 24, 2023. <https://nypost.com/2006/05/18/nypd-good-guy-note-let-suspect-pack-heat/>.

Pew Research Center. “Large Majority of Americans Support Raising Minimum Age for Buying Guns to 21,” June 27, 2023. https://www.pewresearch.org/politics/2023/06/28/gun-violence-widely-viewed-as-a-major-and-growing-national-problem/pp_2023-06-28_gun-violence_00-04/.

Pew Research Center. “What the Data Says about Gun Deaths in the U.S.,” April 26, 2023. <https://www.pewresearch.org/short-reads/2023/04/26/what-the-data-says-about-gun-deaths-in-the-u-s/>.

Picard-Fritsche, Sarah, and Lenore Cerniglia. “Testing a Public Health Approach to Gun Violence.” *Center for Court Innovation*, 2012.

“Red Flag Law, Ghost Guns for Sale: A New MA Bill Aims to Fix It.” Accessed September 19, 2023. https://www.bostonglobe.com/2023/07/10/opinion/mass-shootings-gun-safety-legislation-ghost-guns-red-flag-law/?utm_source=TMP-Newsletter&utm_campaign=e03e156db3-EMAIL_CAMPAIGN_2023_07_12_11_02&utm_medium=email&utm_term=0_5e02cdad9d-e03e156db3-%5BLIST_EMAIL_ID%5D.

Reeves, Carlton. *United States of America V. Jessie Bullock*, 3:18-cr-00165-CWR-FKB § (2023).

“Report of Active Firearms Licenses.” Bureau of Alcohol, Tobacco, Firearms and Explosives, January 10, 2020.

Reuters. “DOJ Asks Supreme Court to Uphold Domestic Violence Gun Law.” NBC News, March 18, 2023. <https://www.nbcnews.com/politics/supreme-court/justice-department-asks-supreme-court-uphold-domestic-violence-gun-law-rcna75606>.

“Review of ATF’s Federal Firearms Licensee Inspection Program.” U.S. Department of Justice, April 2013.

Samarth, Avinash Nitin, and Meghna Philip. “Brief of the Black Attorneys of Legal Aid, the Bronx Defenders, Brooklyn Defender Services, Et Al. As Amici Curiae in Support of Petitioners,” n.d.

Sarah Bedford. “Democrats Call for More Gun Laws despite Not Enforcing the Ones They Have.” *Washington Examiner*, April 20, 2023. <https://www.washingtonexaminer.com/restoring-america/fairness-justice/democrats-want-more-gun-laws-dont-enforce-ones-they-have>.

Sen. Craig, Larry E. [R-ID. “Text - S.397 - 109th Congress (2005-2006): Protection of Lawful Commerce in Arms Act.” Legislation, October 26, 2005. 2005-02-16. <http://www.congress.gov/bill/109th-congress/senate-bill/397/text>.

“Sen. Menendez, Rep. Lee Reintroduce Bicameral Bill to End NRA-Backed Ban on Preservation, Disclosure of Gun Records.” Accessed August 24, 2023. <https://www.menendez.senate.gov/newsroom/press/sen-menendez-rep-lee-reintroduce-bicameral-bill-to-end-nra-backed-ban-on-preservation-disclosure-of-gun-records>.

The Bipartisan Safer Communities Act, 1 Year Later. (2023, August 10). *Center for American Progress*. <https://www.americanprogress.org/article/the-bipartisan-safer-communities-act-1-year-later/>

The Brooklyn District Attorney’s Office. “Youth Diversion,” n.d.

Everytown. "The Economic Cost of Gun Violence," July 19, 2022. <https://everytownresearch.org/report/the-economic-cost-of-gun-violence/>.

"The Evidence of Effectiveness: Cure Violence." Cure Violence Global, August 2022.

United States Attorney's Office Northern District of California. "Northern District of California | Operation Ceasefire and the Safe Community Partnership," November 18, 2014. <https://www.justice.gov/usao-ndca/operation-ceasefire-and-safe-community-partnership>.

Young Activists Call for Reforms to Combat Gun Violence | C-SPAN.org. (n.d.). Retrieved October 24, 2023, from <https://www.c-span.org/video/?c5074816/young-activists-call-reforms-combat-gun-violence>.

Varieties of Capitalism and Bank Bailout Designs: Differing Strategic Tilts

Amber Abdul

On September 15, 2008, the US-based investment bank Lehman Brothers filed for bankruptcy, signaling the beginning of the 2008 financial crisis, caused by the collapse of the US housing market. This collapse was triggered by a sudden drop in housing prices and the value-decline of real estate assets held by investment banks. As the value of these real estate assets plummeted, it left many homeowners owing more on their mortgages than their homes were worth. This made it challenging for homeowners to refinance or sell their properties, resulting in increased mortgage-payment delinquencies, which rippled out into the larger economy. As investment banks such as JP Morgan Chase, Lloyds, and BNP Paribas began to show signs of failure, governments around the world drew up comprehensive bailout plans. Despite the bailouts, the harms caused by the global financial crisis of 2008 were significant, exposing the weakness of governments, banking sectors, and their complementary institutions, regardless of their capitalist characteristics.

In the wake of the crisis, there was a reemergence in the academic literature of the Varieties of Capitalism (VoC) approach to understanding capitalism in different countries. Pioneered by Peter A. Hall and David Soskice in 2001, this approach seeks to understand how capitalist economies differ across countries, categorizing the economies based on their organization structure and the level of government coordination present.¹ Hall and Soskice identify two capitalist typologies: liberal market economies (LMEs) and coordinated market economies (CMEs). In LMEs, the government takes a more laissez-faire approach to oversight of the private sector, allowing markets to facilitate coordination among economic actors. Governments and firms in CMEs, however, rely more heavily on non-market relationships, such as information networks, to make agreements rather than relying on the market to coordinate economic actions.² CMEs are by no means command economies, but governments in CMEs are far more likely than LME governments

1 Hall & Soskice, "Varieties of Capitalism," 8.

2 Ibid.

to use targeted interventions and intersectoral planning, creating cooperation between businesses and labor. Britain and the United States are widely considered LMEs, whereas Germany is considered a typical CME.³ The VoC approach is crucial because it highlights the diversity in economic and institutional structures across nations. Through this, it sheds light on the adaptation of economic models to specific national contexts, of which the 2008 financial crisis is one of many. Given the analysis of

Because the global financial crisis of 2008 affected all countries regardless of their capitalist typology, many scholars began to doubt the VoC framework's ability to accurately predict the effects of economic crises. However, this paper argues that VoC-predicted institutional frameworks can help predict how countries were affected by the crisis insofar as they reflect how countries created their bailout plans. This paper seeks to analyze how and to what extent the VoC framework influences bailout design. It also hopes to reintroduce the framework into the literature surrounding the global financial crisis. The paper will begin with a literature review to understand the current scholarly attitudes towards the VoC typology in the context of the crisis. The paper will then delve into the case studies of the United States, Britain, and France. These case studies will introduce nuance to how LMEs are defined, shed light on state-coordinated market economies (SMEs) which will later be introduced by the paper Schmidt (2012), provide a brief understanding of CMEs, and illustrate how these categorizations play out in the real world. This paper will conclude with thoughts about the VoC framework and its relationship to financial institutional structures and bailout methods.

Literature Review on the VoC Framework and Brief of Bank Bailout Games

In general, scholars believe the VoC framework is unhelpful in analyzing national responses to the 2008 financial crisis. Regini (2014) argues that the VoC framework falls short in describing the national structures in which firms fail, showing a gap between how structural characteristics might influence a national response. Given the different institutional arrangements that the VoC model defines, the surrounding literature is divided on whether government institutions, such as formal rules and structures, or power resources, such as lobbying, corporations, and other informal relationships between the public and private sector, explain the variation in national responses.⁴ This debate is important to the bank bailout case, as there exists a two-way relationship between government and banks: banks have lobbying power which can constrain the institutional power

3 Hall & Soskice, "Varieties of Capitalism," 16.

4 Regini, "Models of Capitalism and the Crisis," 24.

of governments, and government officials who have passed through the revolving door can tap into their former Wall Street relationships. Returning to the VoC framework, while the particular type of capitalism a country practiced may not predict crisis response, the crisis opened the possibility of unpredictable forms of institutional reorganization.⁵ Though the VoC framework lacks explanation for this reorganization scheme, a deeper analysis can improve the framework by assessing how professional networks shape economic and government behavior within different capitalist systems. The VoC framework must account for the new institutional arrangements the crisis produced as well as recognize the importance of power resources in regards to possible lobbying groups, businesses, and other bodies that can influence government policy. Exploring the relationship between VoC and bailout methods may answer the question of which analytical method is more powerful.

Scholars largely agree that the VoC framework does not place enough importance on the power resources and government institutional debate. However, there is some disagreement about whether the government institutional approach or power resources approach is more effective. Drahokoupil and Myant (2010) prioritize the power resources section of the debate, whereas Howell (2015) finds a deeper analysis of institutions to be more convincing in the context of financial crises. Drahokoupil and Myant (2010) argue that the VoC literature understates the importance of the state's developmental capacity, stability of the financial system, and separation of politics and business.⁶ Howell, arguing that government institutions primarily determine bailout methods, identifies the European Union as a market-coordinating institution.⁷ Howell posits that EU regulations restrict the bank bailout methods its member nations are able to employ, leading, often, to coordinated actions among member states. These scholars thus continue the power resources and institutional debate but begin to open avenues where bank bailout method analysis can be used to better the VoC framework analysis.

Two papers seek to discuss this tension between domestic and international obligations. Welch (2011) identifies strain that was caused by the European Commission's desire to form an EU-wide response despite most EU nations wanting to individually stabilize their banking systems rather than focus on the EU at large.⁸ Swagel (2015) finds a similar tension in the US, where differing institutional, policymaker and corporate interests contributed to a delayed response to the crisis.⁹ Analyzing diverging incentives and institutional allegiances can help strengthen

5 Regini, "Models of Capitalism and the Crisis," 29.

6 Drahokoupil & Myant, "Varieties of Vulnerabilities," 271.

7 Howell, "Coordination in a Crisis," 133.

8 Welch, "Financial Crisis," 485.

9 Swagel, "Political and Institutional Constraints," 108.

the VoC framework. Such diversity can constrain bank bailout methods as it affects the dialogue between the banking and governmental sector. Bank bailout methods shed light on both and can thus be used to strengthen the VoC framework.

Works such as Schmidt (2012) try to combine the institutional and power resources analysis through the consideration of a new addition to the VoC framework: the state-influenced market economies (SMEs). SMEs are countries where the government takes on a large role in the involvement and direction of the economy through centralized-decision making and regulations.¹⁰ SMEs exist, in effect, somewhere between CMEs and command economies, though they remain primarily liberal and capitalist. In contrast, CMEs foster cooperative relationships with corporations and government while LMEs prioritize flexible labor markets and market competition. The financial crisis of 2008 was a notable instance where free markets and minimal government intervention were not optimal. The crisis forced governments to be involved in the direction of their economies and intervene in the day-to-day operations of private sector businesses in a way they may not have previously, demonstrating that countries do not have “set” VoC typologies, but may find it valuable to switch between typologies during major crises.

Hindmoor and McConnell (2015), however, argue that many regulators and institutions in LMEs, which had historically solved economic problems by relying on free markets, were blinded by their faith in market forces, leading to divided responses to the financial crisis.¹¹ Hindmoor and McConnell contend that good responses depended on quality government-delivered solutions rather than firm-delivered ones, but that this division prevented the decisive response necessary to mitigate the crisis. Like Schmidt, Hindmoor and McConnell argue that, in order to best respond during the 2008 financial crisis, LMEs needed to, in effect, temporarily become SMEs, using the state far to influence the market far more than had been previously done. Overall, however, the literature finds that the VoC framework must work to improve its government, institutional, and power resource analysis to explain response patterns to the financial crisis.

When crafting bank bailouts, government officials must navigate a minefield of obstacles, including contagion effects, coordination games both domestically and abroad, and moral hazard. Possibly the most important of these concerns is the contagion effect, where the actions taken in one nation affect other nations, especially given the interconnectedness of the global economy. Because it increased the perception that policies implemented in one nation might clash with the policies implemented in another, the 2008 financial crisis caused experts to increasingly believe that more coordination for crisis management between countries was

10 Schmidt, “State-Influenced Market Economies,” 156.

11 Hindmoor & McConnell, “The UK’s Great Financial Crisis,” 63.

needed.¹² This concern was especially relevant in the highly connected European Union (EU), which placed rules on the laws member nations could enact, although still giving its member nations a substantial degree of freedom. This forced EU countries to seriously consider the potentially negative impact, such as the propagation of economic instability, their policies have on their neighbors, often greatly restricting what bailout policies a country can implement.¹³ This was not seen in the US, where bailout design was merely a federal issue.

Moral hazard is the most commonly cited argument against bailouts. In this case, moral hazard manifests as potential encouragement for reckless behavior since investment banks would be supported or rescued in times of failure. Governments needed to strike a balance between intervening in the short term (i.e. bailing out banks to mitigate the impact of the crisis) and managing long term risks (i.e. that generous bailouts would lead banks, assuming more bailouts would come in the event of another crisis, to adopt riskier policy).¹⁴

The United States Case: A Corporate Advisor and a Temporary SME *The United States Political and Institutional Environment*

The 2008 financial crisis in the US raised questions on how the bailout design would be constructed given its LME structure. Many scholars assumed that, because it tended to enact laissez-faire policy, the US would choose to uphold current market conditions as much as possible, with intervention consisting only of aid designed to create liquidity for businesses. In the US, firms have opportunities to invest fluid capital in search of higher returns and acquire liquid assets.¹⁵ The structure of financial markets in LMEs links a firm's profitability to its access to capital, even in recessions.¹⁶ This is because firms in flexible labor markets, such as in the US, are able to lay off workers when access to capital is limited. Flexible labor markets are a common characteristic of LMEs because these kinds of economies typically have less stringent employee protections and wages decided at the firm level rather than through collective bargaining, unlike their CME and SME counterparts.

In the US, institutions are influenced by powerful lobbyists and their fragmented nature makes it hard to coordinate. The institutional design of the US banking sector consists of many small banks, with a few major investment banks such as JP Morgan and Goldman Sachs dominating the sector.¹⁷ Figure 5.1 shows

12 Niepmann & Eisenlohr, "Bank Bailouts," 270.

13 Ibid., 288.

14 Poole, "Moral Hazard," 17.

15 Hall & Soskice, "Varieties of Capitalism," 17.

16 Ibid., 8.

17 Wöll, "The US and U.K.," 95.

a clear trend of increasing consolidation of these major investment banks. In 2008, the first year of the financial crisis, fewer than 50 banks, with assets totaling over \$350 billion, failed. In subsequent years, more, smaller banks, with a combined \$250 billion in assets, failed. The financial crisis in the US thus first hit the largest investment banks and spread to the rest of the economy. Major investment banks were the most vulnerable early in the crisis, suggesting that policy designed to prevent big banks from failing might stop a crisis before it ever begins. This vulnerability can be predicted by the LME typology because it ties access to highly mobile capital to firm profitability. LMEs prefer highly mobile capital due to their emphasis on market-driven mechanisms that attract individual investors and investment banks. During this crisis, declining asset values and mortgage defaults restricted the mobility of capital, impacting investment banks who were heavily reliant on these assets. Larger investment banks, despite having greater access to capital, were more impacted due to their higher exposure to high-risk mortgage-backed securities, amplifying their vulnerability compared to smaller banks. Because LMEs tend to encourage investments in these riskier but more profitable and mobile securities, the VoC typology may indicate which banks of the economy were most vulnerable, which can point to a bailout design crafted to aid such banks.

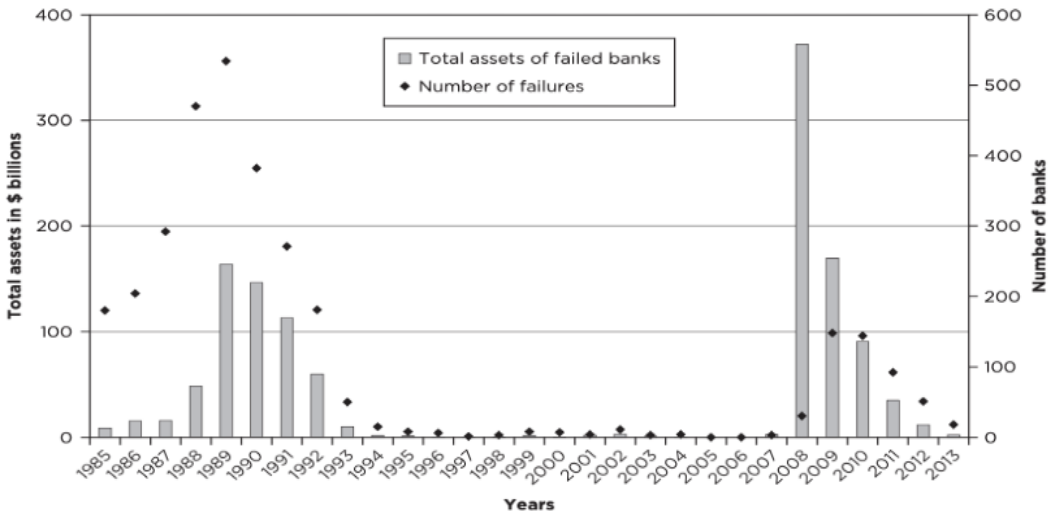


Figure 5.1 FDIC resolution of banks

Source: Based on data provided on FDIC website, www.fdic.gov/bank/individual/failed; figures for 2013 are up to September 2013.

Crucially, accepting aid from the government often comes with added regulations and oversight, which is not in the best interest of investment banks – especially those that have not failed. This is a characteristic present in the US as well as other LMEs. As previously stated, the US has uniquely strong special interests and

lobbying groups. Powerful and large contributors to the economy such as investment banks play a larger role than the government in determining policy towards the markets, with their interests being represented by such lobbying groups. It is thus expected that healthy investment banks will exercise their political power to influence government intervention in order to avoid regulations. This is because a healthy bank would not need the bailout and thereby would not want to be restricted by the government. Such action would likely create a bailout design with a sort of “opt out” option, or a threshold that a bank reaches where they can opt out.

Fragmentation of government institutions also contributed to the crafting of a bailout design. Leading the crisis response were the US Department of the Treasury and the Federal Reserve. Feeling the tremors of the crisis as early as August 2007, these institutions relied on tried-and-tested tools of monetary policy and regulatory discretion.¹⁸ The US’ initial response was thus one of status quo. Even after regulators began to realize intervention was necessary to limit the damage caused by the crisis, the tools available to them were limited by legal [and political?] constraints, with the Treasury often having to rely on the Fed’s emergency authority rather than directing policy itself.¹⁹ While this fragmentation is primarily a result of the historical development of the roles of the Treasury and the Fed, it is important to note the specific influence that large investment banks can wield over the design of bailout strategies. The influence of large investment banks is a characteristic feature of LMEs. This highlights how the VoC may indeed retain relevance, especially when examining the specific dynamics within LMEs related to the influence of major financial institutions on bailout policies. Bailout design must consider differing bank wants, institutional fragmentation, and the dialogue between the governmental and banking sectors.

Early Bailout Schemes

In March 2008, the collapse of Bear Stearns marked the first bailout of the financial crisis.²⁰ The failure worried policymakers because of the bank’s interconnectedness with other financial firms had the potential to create a domino effect across the financial system.²¹ This fear of additional failures arose out of the prevailing ideology of “too big to fail,” which refers to the notion that some financial firms are so large and of such systematic importance that their failure would severely damage the economy, compelling the government to rescue them. The failure of a large investment bank would greatly damage the economy due to

18 Swagel, “Institutional Constraints,” 108.

19 Ibid., 111.

20 Ibid., 110.

21 Swagel, “Institutional Constraints,” 108.

the outsized role they play in hiring, lending, and reputability of credit. A failure of such a bank would usher a larger scale of unemployment and the freezing of credit markets as banks would be hesitant to lend to one another. The bailout design for Bear Stearns involved minimal government funding and the presence of a major private buyer, JP Morgan. The Fed financed Bear Stearns' illiquid assets, forced Bear Stearns shareholders to take large losses, and left JP Morgan to acquire Bear Stearns while the Fed took only \$1 billion in losses.²² This bailout method was clearly crafted in a manner expected of an LME. It assumed a smaller role for government intervention, and benefited another large investment bank. In addition, JP Morgan was incentivized to acquire Bear Stearns to expand the scope and size of its company. Although the Fed financed Bear Stearns' illiquid assets, this bailout method was primarily based around non-government actors and largely followed the predictions set out by the US' LME typology of the government relying on an acquisition as opposed to a liquidity injection. However, the initial financing of Bear Stearns' illiquid assets showed the beginnings of the US government acting as an SME.

The Lehman Brothers' collapse in September 2008 provided the impetus for the second major government bailout. This collapse is especially noteworthy because Lehman Brothers was a more international bank, with a sizable U.K. arm containing 5,500 employees.²³ This bailout design, unlike that of Bear Stearns, did not follow traditional LME predictions. Rather, its bailout design allowed for Lehman's collapse by the government actively denying Lehman's acquisition by other investment banks. The decision to not bail them out can be largely explained by public opinion. The public took interest in the transparency of government bank bailout policy and accountability of investment banks. Facing immense amounts of public pressure to ensure this accountability, and prevent the moral hazard of continuously bailing out banks, policymakers took a stricter approach to markets.²⁴ The Lehman Brothers' collapse is a noteworthy example of the institutional power of government superseding the power of major investment banks, such as Barclays, who signaled initial interest in buying, but was only permitted to buy after government approval after a fire sale held by Lehman Brothers.²⁵ It also signaled the point where government institutions became significantly more involved in bailout design, and thus when the US temporarily exhibited SME characteristics despite traditionally being regarded as an LME.

22 Woll, "The US and U.K.," 95.

23 The Guardian, "£1.1bn in fees, 3.1m hours, 14 years: the UK cost of winding up Lehman Brothers," 2022.

24 Dosdall & Rom-Jensen, "Letting Lehman Go," 202.

25 White & Dash, *New York Times*, "Barclays Reaches \$1.75 billion Deal for a Lehman Unit", 2008.

The Troubled Asset Relief Program

As failures mounted, the US government moved to create a general bailout design. The government hoped to be widely cooperative and general in the services it provided. The Troubled Asset Relief Program (TARP), a Treasury Department initiative that began after the 2008 financial crisis, required the participation of all major banks, including healthy ones.²⁶ TARP provided insurance for up to \$700 billion in troubled assets to banks.²⁷ The program also placed caps on corporate compensation, which is compensation given to senior management and executives of a company. This plan required the participation of healthy banks because it helped avoid the perception that the banks in the program were especially unstable.²⁸ Facing pressure from the Treasury, the largest banks, such as Citigroup, Goldman Sachs, Morgan Stanley, JP Morgan, and Wells Fargo, agreed to accept a total of \$125 billion worth of TARP assistance.²⁹ This pressured acceptance of aid shows that the government assumed an SME-like role: it heavily influenced the decisions made by the top banks. This coordination, though happening due to pressure, is also reminiscent of the expected action of CMEs. In addition, the fact that banks were forced to participate in TARP shows that healthy banks such as JP Morgan and Wells Fargo were unable to exercise their political capital to negotiate themselves out of accepting government aid. Overall, this represents the increasing directive of the government and the fluidity of the US VoC typology during dire crises.

Ultimately, the goal of these bailout designs and of TARP was to restore investors' confidence in financial markets. The US stayed true to its goal of returning to the status quo of self-sufficient markets, but the government understood it had to increase its role and thus act as an SME in order to achieve this goal. What this raises for the VoC literature is the idea that a country's VoC typology is not stagnant and can change given the presence of an extreme strain on either government or economy. This is especially true of LMEs, as the VoC literature assumes them to be one-dimensional due to their presumed heavy reliance on markets. There must be an understanding that LMEs are multidimensional, in that their tools to stabilize crises can involve temporarily switching to other VoC typologies such as SMEs. Bank bailouts in the United States serve as evidence of the fluidity of VoC typologies.

26 Culpepper & Reinke, "Structural Power and Bank Bailouts", Table 2.

27 Swagel, "The Financial Crisis," 2.

28 Culpepper & Reinke, "Structural Power and Bank Bailouts," 436.

29 Calomiris & Khan, "An Assessment of TARP," 56.

The United Kingdom Case: An “Intrusive” Temporary SME

The United Kingdom’s Political and Banking Environment

The United Kingdom, with one of the largest banking sectors in Europe, had major exposure to the United States’ financial crisis. The beginning of the financial crisis in the UK is widely considered to be Northern Rock’s request for financial support from the Bank of England. After being publicized by the British Broadcasting Corporation (BBC), news of the request caused a £1 billion bank run on Northern Rock.³⁰ Although an LME with the goal of returning to the market status quo, the UK’s response deviated greatly from the US’ response. This is primarily because the media beat the government in informing the media of the crisis.³¹ Because of this media publicization, the UK suffered from a more politically salient lack of market trust than the US. This forced the government to take a greater role from the start to stave off this stigmatization. While suffering from the typical problems faced by an LME such as institutional coordination, the UK uniquely had to craft a bailout plan that wrested control from the media and appeased public sentiments.

As a member state of the European Union, the UK had to create a bailout plan within the constraint of the European Commission’s (EC) guidelines. Article 87(1) EC states that “any aid granted by a Member State or through state resources [that] distorts or threatens to distort competition [is] incompatible with the common market.”³² Two things are to be gleaned from such language: that a member state must have its bailout package approved by the EC and that this package must be compatible with the “common market.” Unlike the US, the UK had an added legal constraint of creating a bailout package that did not benefit itself at the expense of other member states. Article 87 (3) (b) EC defines common market compatibility as aid that “remedies a serious disturbance in the economy of the member state” and must “be applied restrictively and must tackle a disturbance in the entire economy of a member state.”³³ Based on the rules given by the EC, the UK had to craft a bailout package that limited contagion effects to other member states, encompassed all main economic problems, and had measures that offset the distortions in competition.

The UK had to balance two different objectives: that of wresting control of public sentiments from the media and appeasing a larger, sovereign body, the EC. Insight can also be gleaned from statements made by the Chancellor of the Exchequer, the chief financial official in the UK, and the Prime Minister. The Chancellor of the Exchequer during the crisis was Alistair Darling, whose early rhetoric

30 Pritchard, “Dark Clouds and Turbulence in Europe,” 99.

31 Ibid.

32 European Commission, “State Aid N 507/2008 - UK”, 6.

33 Ibid., 7.

capitalized on the UK's EU membership and its economic relationship with the US. Darling placed blame for the crisis on outside actors such as the US and the EU's financial institutions, rather than the British government itself.³⁴ This lack of accountability crafted a press that was highly critical of Darling and the Labour Government, placing blame on globalization and British financial regulation.³⁵ Interestingly, Prime Minister Gordon Brown's response echoed one of cooperation: "the global crisis required a global solution, [to increase] international cooperation to regulate global capital flow."³⁶ Given Brown's rhetoric, being a member of the EU caused an ideology that was in support of a sort of global "bailout plan" between states. This rhetoric also indicates that the UK government was interested in pushing the narrative that they were not responsible for the crisis. This support is likely because EU states are used to policy that supersedes the national level. Overall, however, the UK was beholden to restrictions imposed by a supranational organization, whereas the US only answered to its own market and governmental structures. Thus, the UK suffered more from political constraints than the US.

Darling and Brown's strategy of basing their rhetoric on globalization is based in fact. The UK's banking sector is one of the most globalized of all major capitalist economies.³⁷ Barclays, Lloyds, HSBC and many others are headquartered in London's "Square Mile," where over 550 international banks and 170 global securities houses conduct their services.³⁸ From 2007–2008, there was an increase in foreign involvement in the banking sector from 14% to 19% of the UK's total banking assets.³⁹ The UK's banking sector was more globalized than the US' banking sector, which had large investment banks that mainly conducted their services within the US. However, the UK's banking sector was also highly concentrated, with 5 banks making up 76.8%–79.1% of total banking assets from 2007–2008.⁴⁰ The size of the banking sector increased from \$4,895.3 billion in total assets to \$5,299.6 billion from 2007–2008.⁴¹ There is a clear trend with the UK that is not seen in the US: in the early stages of the crisis, the UK experienced an expanding banking sector with an increase in foreign involvement. This indicates the slight delay of the contagion effects, where UK investment banks were likely still investing in assets very early into the announcement of the US' Lehman Brothers failure. This also points to the idea that the UK government, along with the banks, initially undermined the crisis, relying on Darling's belief in the mar-

34 Pritchard, "Dark Clouds and Turbulence in Europe," 105.

35 *Ibid.*, 106.

36 *Ibid.*, 110.

37 Grossman & Woll, "The Political Economy of Bailouts" Figure 3, 583.

38 Moschella, "Different Varieties of Capitalism?," 85.

39 McNamara, "The UK'S Credit Guarantee Scheme (U.K GFC)," 930.

40 *Ibid.*

41 *Ibid.*, 929.

ket's self-correcting power and the Bank of England's (BOE) ability to stabilize the banking sector with its interest rate changes. The UK was on a similar bailout trajectory to the US; however, their bailout design had to be uniquely crafted to protect its large, EU constrained banking sector.

Early Responses and the Credit Guarantee Scheme

The UK's crisis response first deviated from the US' with the government takeover of banks Northern Rock and Bradford & Bingley (B&B). In LMEs, adjustment to economic changes is almost always company-led, with the government acting as a shareholder, giving aid in the form of loans, grants and relatively low levels of equity acquisition.⁴² However, in the cases of these banks, both were nationalized via equity transfer. Equity transfer is the internal transfer of shares to existing shareholders, in this case the government, whereas equity acquisition is when an external actor buys a large stake in a company. This was the first time the British government had taken control of a bank since 1984.⁴³ Recall that the US allowed JP Morgan to acquire Bear Stearns and allowed Lehman Brothers to collapse early in the crisis. While the UK government made attempts to find large buyers for Northern Rock and B&B, a lack of trust in banks and desire to punish incompetent managers caused the nationalization schemes.⁴⁴ Nationalization of banks are punishments to managers because they are constrained by government interests and are paid less than if they were managing a private bank. While both acted like SMEs, the US stayed closer to LME principles, intervening in the crisis far less than the UK. The US took an "advisor" SME approach, merely acting as an arbiter between large investment banks, their CEOs, and potential buyers. The UK, however, took on an "intrusive" SME approach, seeking to nationalize rather than letting the banks collapse.

This intrusive approach grew even more pronounced with the UK's announcement of the Credit Guarantee Scheme. The Credit Guarantee Scheme had measures that intended to provide banks with sufficient funds to help firms restructure their finances and maintain lending in the medium term.⁴⁵ This bailout plan had measures that amounted to £250 billion, with debt issuance making up £100 billion⁴⁶ and a bank recapitalization fund making up £50 billion.⁴⁷ Steep, risk-based fees were also imposed on banks that opted into the plan.⁴⁸ Participating

42 Moschella, "Different Varieties of Capitalism?", 84.

43 Ibid., 86.

44 Ibid., 79.

45 United Kingdom Debt Management Office, *2008 Credit Guarantee Scheme*.

46 McNamara, "United Kingdom: Credit Guarantee Scheme," 927.

47 Ibid., 934.

48 Swagel, "Institutional Constraints," 110.

institutions also faced prohibitions on the level of advertising.⁴⁹ The government could also direct a firm's payment of dividends on their shares to stockholders.⁵⁰ Finally, one of the most controversial components of the plan was the fact that the government cut bonus payments from banks that were fully or partly nationalized⁵¹ and the Treasury could appoint new corporate board members when it saw fit.⁵² This component was not popular among bank executives, and some banks likely chose not to opt into the plan due to these controls alone. The UK government was thus far more intrusive in the firms that joined the plan than the US was with the TARP.

Comparing the UK and the US

While the UK bailout plan was far stricter and more selective than the US bailout plan, it still displayed some LME characteristics, namely having the government act as a shareholder and imposing restrictions in order to maximize its shareholder profits, although in the end the government did nationalize the companies. However, the US and UK differ in their levels of intrusiveness. While the US pressured cooperation, the extent to which it involved itself in the corporate governance of the bank was very limited. The US government merely "advised" the CEOs of each bank. The UK government, however, directly involved itself in corporate governance, even going as far as to reappoint members to the board of directors. The UK was thus an intrusive temporary SME, whereas the US was an advisory temporary SME. The US government did not have the absolute authority over bank CEOs like the UK government did, hence the "advised" label.

It is widely understood that LMEs tend to stay out of corporate governance. The differences in responses between the US and UK lie in a separate but adjacent topic: central bank independence (CBI). Central bank independence indicates the level of influence politicians have on central bank policy and leadership. A 1998 paper by William Bernhard discusses the differences between the US' and UK's CBI. The US has a highly independent central bank, whereas the UK is characterized by a more dependent banking system. Despite both being LMEs, the US has a mean independence value of .73, whereas the UK has a mean value of .42.⁵³ These values are calculated on a scale of 0 to 1, with 0 indicating a low CBI and 1 indicating high CBI. These values were computed through averaging indices developed by other authors.⁵⁴ There is a relationship between CBI and the

49 McNamara, "The UK'S Credit Guarantee Scheme (U.K GFC)," 930.

50 Woll, "The Power of Inaction", Figure 2.2.

51 Pritchard, "United Kingdom: Politics of Government Survival," 115.

52 Moschella, "Different Varieties of Capitalism?" 88.

53 William Bernhard, "Variations in Central Bank Independence," Table 1.

54 *Ibid.*, 312.

limits a government sets for itself when choosing to intervene in a firm's corporate governance. Having heavy oversight for central bank board appointments likely indicates that changing a corporate board is accepted as a viable solution for poor firm governance. This is because a lower CBI indicates that the government has more political influence over its central bank, thereby making the central bank with shorter-term policy goals due to changing administrations, and a greater inclination for government and the central bank to coordinate on policies. Low CBI shows that a government is more willing to intervene in the setting up of the boards of its financial institutions, thereby indicating a greater level of comfort in intervening in the corporate board of a failing firm if necessary. For example, a dependent central bank shares similar policy objectives with the government, tying efficient policy outcomes with government reputation.⁵⁵ This aligns with the Credit Guarantee Scheme's bonus limit imposed on nationalized banks, as the performance of these banks laid under the government's direction. This relationship underscores how a lower CBI corresponds with increased government involvement and oversight in bailout efforts.

Although both LMEs followed a similar SME-like strategy, the US and UK fundamentally differ in their level of "intrusiveness" in participating firms. It is true that both have unique characteristics, such as the US-based firm's lobbying power and the UK's early politicization of the crisis and their membership in the EU. However, their divergent responses point to the deeper institutional underpinnings, such as the regulatory frameworks and governance of each economy. With greater institutional understanding, the VoC literature can identify subtle differences between LMEs.

The French Case: The Maverick

Dirigisme and Post-Dirigisme

France, also with one of the largest banking sectors in the EU, stands as a peculiar case amongst the traditional LMEs. The paper Schmidt (2012) France an SME, with its statecraft being called "*dirigiste*," in which firms exercise autonomy in their respective sectors but heed the advice and direction provided by the state.⁵⁶ Unlike its LME counterparts, however, France did not behave like an SME, which would be expected when crafting a bailout design. Instead, it relied on an informal network of cooperation and negotiations between the nation's top banking CEOs. France, with its oligarchic capitalist system and negotiated bailout design, stands alone.

Beginning in the 1980s, the banking sector underwent radical privatiza-

55 William Bernhard, "Variations in Central Bank Independence," 314.

56 Schmidt, "What Happened to the SMEs?," 162.

tion and internationalization. The three largest French banks, Société Générale, Banque Nationale de Paris (BNP), and (now dissolved) Crédit Lyonnais were privatized from 1987–2002.⁵⁷ These privatizations were designed to create national champions: large banks that would come to dominate the French financial sector and gain a global scale. This move aligned with a larger strategy to strengthen France's financial sector. In 1988, legislation was passed to create confidence in the new financial technique of securitization, which condenses financial assets such as mortgages and loans into a single security, which was promoted due to new solvency guidelines given by the EC.⁵⁸ Other countries, like the UK, opted for a more *laissez-faire* approach when introducing securitization, meaning that the government allowed firms to operate with more freedom with this new financial instrument and did not immediately opt for explicit legislation.⁵⁹ In addition, the government's behavior towards its financial sector points to the idea that EU membership forced economies to become more competitive. This competitiveness is fostered because it attracts more investors seeking diverse investment opportunities, lower borrowing costs, and increased liquidity in economies. This idea of competition appears to be in line with the LME model. Throughout the 1980s and into the early 2000s, the French state took on a leading role in transforming its banking sector to be internationally competitive, thereby diminishing the French government's role in its economy. *Dirigisme* had temporarily come to an end.

This “diminishment,” however, was not to be taken at face-value. Where nationalization fell, informal contacts and cross-bank cooperation between firm and government took its place. In this post-*dirigisme* world, government officials and powerful bankers were not distinct groups.⁶⁰ These large private banks were controlled by an elite coming out of public service.⁶¹ Consequently, there was a close and established relationship between the political and banking elites. Of the cases explored in this paper, only the US comes close to such intertwining relationships between government and banks through its powerful lobbying system. However, the difference between the US and France lies in the kind of relationships that were cultivated. In the US, these relationships were cultivated by lobbyists, intermediaries who leverage their governmental connections to further the interests of the organization they represent (typically a corporation). In France, however, these relationships were fortified by shared education and experiences, creating an “informal consortium” between the banking sector and government.⁶²

57 Howarth, “France and the International Financial Crisis,” 383.

58 *Ibid*, Directive no. 89/647., 384.

59 *Ibid*.

60 Jabko & Massoc, “French Capitalism Under Stress,” 563.

61 *Ibid.*, 565.

62 Jabko & Massoc, “French Capitalism Under Stress,” 566.

The government thus maintained a level of dirigisme through friendships. It is through these friendships that the government gained an “advising” nature similar to the US. However, given the unique friendship ties between the government and banking sector, its bank bailout system was informally decided through trust and agreements rather than by direct legislation.

Bailouts and the Structure of the French Banking Sector

Relative to other countries, France did not have significant exposure to the financial crisis. Compared to the UK and the US, France’s value-added of non-financial companies grew by 0.5%, where these had contracted in the UK and US by 2.1% and 1.7% respectively.⁶³ This is because the French government cultivated a balanced business model of banking, while the UK and US relied more heavily on their investment banking institutions. The fiscal policy of the 1980s–2000s produced a retail-focused economy, a highly saturated domestic retail market, and low-foreign penetration into the French banking sector.⁶⁴ France has a significantly smaller investment banking sector compared to the US and UK, saving them from major exposure to toxic assets. However, the liberalization policies of the 1980s–2000s increased equity investments from 29.1% to 79% among banks.⁶⁵ Equity market capitalization, a measure that estimates the market value of a company, also reached a peak of 105.5% of GDP in 2007, reflecting the French financial system’s increasing dependency on banks and valuation of their assets.⁶⁶ What this created was a dual market in which large, mutual banks (those owned by depositors rather than shareholders) had investment banking arms while investment banking was a secondary service to retail banking. The inseparability of mutual banks and investment banking, however, made these mutual bank arms suffer large losses.

Of the many small banks within the French system, two mutual banks and two commercial banks dominated. On the mutual bank side were Banques Populaire and the Caisse d’Epargne (BPCE) with their shared investment banking arm Natixis, and Crédit Agricole with its investment banking arm Calyon. On the commercial bank side, BNP Paribas stood as the largest, suffering the most losses out of any French bank, alongside Société Générale, which also suffered large losses. BNP Paribas, Société Générale and Crédit Agricole each increased their foreign bank lending in the years leading up to the financial crisis.⁶⁷ This penetration into foreign markets is where France suffered most of their losses. While the

63 Cabannes et. al., “French Firms in the face of the 2008/2009 crisis,” 1.

64 Howarth, “France and the International Financial Crisis,” 385.

65 Ibid., Table 1.

66 Ibid.

67 Ibid., 379.

larger investment banks faced repercussions due to their foreign involvements with failing banks and markets, smaller banks operating solely within France were less exposed and shielded from the brunt of the crisis. This contrast in exposure levels led to unintentional safeguarding for the smaller French banks.

The cooperative and friendly nature between the banks and the government is the result of a “financial network economy.” The banking sector is closely knit in France, with each having membership in the French Banking Federation (FBF). Because of the government’s relationship with the banks, the FBF acted as a de facto government agency, although it was run by the banks. With over 500 members, five French banks make up its Executive Council.⁶⁸ Recall that an SME describes an economy where firms heed the advice of government but otherwise act freely, whereas a CME is close, constant coordination between businesses and government. France, under SME direction, has been displaying the coordinated networking characteristics of a CME. France thus cannot necessarily be called a pure SME, but is something in between. Characterizing France as an amalgamation of SME and CME characteristics is further proven by the role taken by the FBF during bailout discussions, in which the FBF decided how to distribute the bailout money to the member banks.⁶⁹ Overall, the banking sector is one that is highly coordinated, has strong friendly ties to the government, and shows that France is an SME and CME hybrid.

Plan De Soutien Bancaire – SFEF and SPPE

On October 16, 2008, the Société de Financement de l’Economie Française (SFEF) and the Société de Prise de Participation de l’Etat (SPPE) were established by legislation. The SFEF is jointly owned by the largest banks in the French economy and the government. The banks own 66% of the SFEF and the government owns 34%.⁷⁰ This ownership agreement represents the coordination between the government and the banks. This coordination also shows deference given to the banks, as they own most of SFEF. The purpose of SFEF was to raise funds by issuing debt instruments on the global market.⁷¹ By the end of its operation, it had raised €77 billion.⁷² Like the UK’S Credit Guarantee Scheme, institutions had to qualify to be considered under the plan. This plan raised funds on the international market and used the money raised to give loans to struggling banks in France.⁷³ Interestingly, however, beneficiary credit institutions had to abide by economic

68 Jabko & Massoc, “French Capitalism Under Stress,” 574.

69 Ibid.

70 Woll, “The Power of Inaction,” 117.

71 Fang, “French Liquidity Support through SFEF”, 682.

72 Ibid.

73 Fang, “French Liquidity Support through SFEF,” 1.

and ethical obligations with the French government.⁷⁴ Even within the fine print of SFEF, relationships between government and the banks were strengthened and maintained. It is clear that with SFEF, France leaned into more CME characteristics.

Interestingly, the French government acted as a company through SPPE. SPPE was a limited liability company owned entirely by the state that participated in both domestic and global bailouts.⁷⁵ Of its domestic banks, SPPE capital injections amounted to €21.9 billion to the top 6 banks in the French economy.⁷⁶ Abroad, the SPPE participated in the bailout of Dexia, a Belgian-owned bank that had made headway in the French banking sector. This demonstrates cross-border lines of cooperation, which can be attributed to both Belgian penetration in the French economy and EU membership facilitating coordination. Firms could participate voluntarily in SPPE, and those who took capital injections had to comply with lowering executive compensation and lending targets.⁷⁷ In addition, the French state acquired securities, albeit without voting rights, thus depriving major penetration into corporate governance.⁷⁸ With SPPE, the French government shows an intrusiveness reminiscent of the UK.

The significance of the SFEF and SPPE laid in their strategic role in navigating EC constraints. As an EU member, France faced the same EC constraints as the UK. However, unlike the UK, France created loopholes to avoid the restrictive rules on public debts.⁷⁹ The SFEF's ownership structure creates ambiguity over whether the debt belongs to the state or to the banks. It should also be noted that the SFEF and SPPE were not explicitly structured as bailout designs, but rather as institutions that facilitated capital infusions from the government. This allowed France to introduce capital infusions without overtly violating EC rules. Originality of these state aid designs was thus on France's side, as both SFEF and SPPE were eventually approved by the EC.

In contrast to the more explicit intervention designs of the US' TARP and the UK's Credit Guarantee Scheme, SFEF and SPPE were not initially structured as bank bailouts and were merely covers for capital infusions. This distinctiveness is crucial because it shows that France was leaning towards CME characteristics, emphasizing collaboration between the French government and investment banks and thereby showing the malleability of a country's VoC typology under crisis. Overall, this emphasizes the importance of institutional flexibility when shaping

74 Ibid., 686.

75 Jeffereis, "France SPPE," 65.

76 Ibid., 70.

77 Ibid., 65.

78 Jabko & Massoc, "French Capitalism Under Stress", 571.

79 Ibid., 576.

bank bailout responses, and thereby adds nuance to how the VoC typology can be applied.

Comparing France, the UK, and the US

Despite both being EU members, France and the UK crafted bank bailout and state aid systems that were decidedly different. For the UK, it was the hardest hit due to its large and globalized investment banking sector. As an LME, the UK followed a similar path to the US, which was increasing government involvement in the economy, temporarily mimicking an SME. Interestingly, France, traditionally regarded as an SME, did not stick to an SME-like strategy. While the state did take a leading role in France, it is clear that deference was given to firms when crafting the SFEF and SPPE. From dirigisme to post-dirigisme, it appears that France cannot purely be regarded as an SME. Rather, France morphed into something that is both an SME and CME, and during the crisis, it transitioned to a more CME-centered strategy. More intrusive than France, the UK utilized nationalizations and saw board appointments as a viable solution; their bailout plan was more punishment based. Given that the French capitalist system is friendship-based, France did not use nationalization. In the event that they obtained securities, the French state even kept out of corporate governance by denying themselves voting rights. It is clear that the French government respected the authority of firms, and that some level of trust underlines the state aid process that was not observable in the UK. The more punishment-based UK bailout system also produced the largest budget, with France producing the smallest budget. The UK government thus dedicated the most resources, was the most intrusive, and was the strictest in its bailout design.

Previously, this paper considered CBI as a possible explanation for intrusiveness levels. However, the UK and France have similar CBIs at .40 and .47 respectively.⁸⁰ With a consideration of the French case, it is clear that CBI alone does not determine intrusiveness. Rather, an in-depth analysis of the dialogue between the banking sector and the government must be explored. As an LME, the UK did not have an intimate dialogue with its banking sector, allowing it to increase its presence without damaging any existing relationships. Although the US is also an LME, there is still some direct dialogue between the government and the banking sector due to its powerful lobbying system. This is likely why the US avoided nationalizations. However, the French government has the strongest and most direct relationship with its banking sector due to years of SME-like interactions and policies cultivating a CME-like banking sector. In other words, the informal relationships between the French government and its financial sector cultivated an

80 William Bernhard, "Variations in Central Bank Independence," 312.

environment where coordination between the government and investment banks was the norm. There is thus more trust between the French government and its banking sector. Like the US, therefore, France was able to be far less intrusive than the United Kingdom.

In terms of cooperation between firms, the US was the only one to compel each firm to sign up for its bank bailout plans. Both France and the UK employed the use of voluntary participation. One possible explanation for this is the level and type of political salience in each country. Of the three, the UK faced heavy politicization of the financial crisis. The dissatisfied sentiments felt in the UK during this time would later lead to the 2016 referendum on continued EU membership, commonly known as Brexit. Voluntary participation in the UK bailout plan was likely a result of wanting to avoid public backlash and bank runs similar to Northern Rock. With regards to France and the US, lower levels of politicization occurred as the crisis progressed. France's choice of voluntary participation likely rested in the trust between banks and the government, as compelling them to join would erode the relationship between the sectors. The US, being the starting location of the crisis, was primarily concerned with protecting confidence in its markets. The US employed a "blanket" strategy so that the weakest banks were not picked apart by public scrutiny. With varying levels of salience and interactions with their respective banking sectors, each country crafted different bailout plans.

Conclusion: What Does this Mean for the VoC Literature?

This paper has sought to answer to what extent VoC typology determines bank bailout design. Instead, this paper has found little relationship between VoC typology and bailout design. Rather, what has been found is that VoC typology determines the structure of the banking sector, which thereby determines exposure levels to the crisis. VoC typology is, however, indirectly related to bailout design. Overall, the development of bailout designs are influenced by many inputs such as the structure of the banking sector and the dialogue between government and banks. These are indirectly influenced by VoC typology due to differing institutional structures, norms, and relationships that shape a country's economic landscape.

This paper has also found that VoC typology is fluid and should change under times of extreme crisis. The US and UK, both LMEs, employed an SME approach, and after the crisis, reverted back to being LMEs, albeit with new regulations. However, France, the SME, employed a hybrid of an SME-CME approach, with more CME characteristics. That said, France's response was in line with their long-term transition from an SME to a CME that began with the mass privatization of the 1980s. As a result, France did not have any radical changes in VoC typology, unlike the UK and US. The exact reason for France's shift from

an SME to a CME occurred is beyond the scope of this paper, but it nonetheless displays the fluidity of VoC typology and questions whether France can still truly be considered an SME given its amalgamation of characteristics.

The VoC approach is an interesting baseline that can be used to analyze a variety of a country's political and economic characteristics. This paper has shown that the VoC framework cannot alone determine a country's bailout strategies and that additional analysis of a country's institutions must be made. With an adoption of an expanded scope of analysis, the VoC framework can be improved to explain the response patterns to the 2008 financial crisis and beyond.

Bibliography

- Bernhard, William. "A Political Explanation of Variations in Central Bank Independence." *American Political Science Review* 92, no. 2 (1998): 311–27. <https://doi.org/10.2307/2585666>.
- Cabannes, Pierre-Yves, et al. "French Firms in the face of the 2008/2009 crisis." *L'économie Française*, 2013.
- Calomiris, Charles W., and Urooj Khan. "An Assessment of TARP Assistance to Financial Institutions," 2015. <https://www.jstor.org/stable/24292123>.
- "Credit Guarantee Scheme." United Kingdom Debt Management Office, 2008. <https://www.dmo.gov.uk/responsibilities/guarantee-schemes/credit-guarantee-scheme/>.
- Culpepper, Pepper D., and Raphael Reinke. "Structural Power and Bank Bailouts in the United Kingdom and the United States." *Politics & Society* 42, no. 4 (2014): 427–54. <https://doi.org/10.1177/0032329214547342>.
- Drahokoupil, Jan, and Martin Myant. "Varieties of Capitalism, Varieties of Vulnerabilities: Financial Crisis and Its Impact on Welfare States in Eastern Europe and the Commonwealth of Independent States." *Historical Social Research / Historische Sozialforschung* 35, no. 2 (132) (2010): 266–95. <http://www.jstor.org/stable/20762459>.
- Dosdall, Henrik, and Byron Z. Rom-Jensen. "Letting Lehman Go: Critique, Social Change, and the Demise of Lehman ..." GESIS - Leibniz Institute for the Social Sciences, 2017. <https://www.jstor.org/stable/44425368>.
- European Commission. C(2008)6058, State Aid N 507 /2008 - UK, "Financial Support Measures to the Banking Industry in the UK", Brussels, 2008.
- Fang, Everest. "French Liquidity Support through the Société de Financement de l'Economie (SFEF) (France GFC)," *Journal of Financial Crises*: Vol. 2 (2020) : Iss. 3, 681-698.
- Grant, Wyn, Graham K. Wilson, and Vivien A. Schmidt. "What Happened to the State-Influenced Market Economies (SMEs)? France, Italy, and Spain Confront the Crisis as the Good, the Bad, and the Ugly." Essay. In *The Consequences of the Global Financial Crisis: The Rhetoric of Reform and Regula-*

- tion*, 156–86. Oxford: Oxford University Press, 2014.
- Grossman, Emiliano, and Cornelia Woll. “Saving the Banks: The Political Economy of Bailouts.” *Comparative Political Studies* 47, no. 4 (2013): 574–600. <https://doi.org/10.1177/0010414013488540>.
- Hacker, Jacob S., and Paul Pierson. “Winner-Take-All Politics: Public Policy, Political Organization, and the Precipitous Rise of Top Incomes in the United States.” SAGE Publications, 2010. <https://journals.sagepub.com/doi/abs/10.1177/0032329210365042>.
- Hall, Peter A, and David Soskice. “An Introduction to the Varieties of Capitalism.” Essay. In *Varieties of Capitalism*, 1–44. Oxford University Press, 2001.
- Hart, Paul, Karen Tindall, and Justin Pritchard. “United Kingdom: the Politics of Government Survival.” Essay. In *Framing the Global Economic Downturn: Crisis Rhetoric and the Politics of Recessions*, 99–121. ANU Press, 2009.
- Hindmoor, Andrew, and Allan McConnell. “Who Saw It Coming? the UK’s Great Financial Crisis.” *Journal of Public Policy* 35, no. 1 (2014): 63–96. <https://doi.org/10.1017/s0143814x1400004x>.
- Howarth, David. “France and the International Financial Crisis: The Legacy of State-Led Finance.” *Governance* 26, no. 3 (2012): 369–95. <https://doi.org/10.1111/j.1468-0491.2012.01611.x>.
- Howell, Patrick. “Coordination in a Crisis: Domestic Constraints and EU Efforts to Address the 2008 Financial Crisis.” *Foreign Policy Analysis* 11, no. 2 (2013): 131–49. <https://doi.org/10.1111/fpa.12030>.
- Jabko, Nicolas, and Elsa Massoc. “French Capitalism under Stress: How Nicolas Sarkozy Rescued the Banks.” *Review of International Political Economy* 19, no. 4 (2012): 562–85. <https://doi.org/10.1080/09692290.2011.638896>.
- Jeffereis, Devyn. “France Société de pris de participation de l’état (SPPE),” *The Journal of Financial Crises*: Vol. 3 (2021) : Iss. 3, 64-87.
- Lieberman, Ira W. “The Eurozone Crisis, 2008-15.” Essay. In *In Good Times Prepare for Crisis: From the Great Depression to the Great Recession: Sovereign Debt Crises and Their Resolution*, 389–410. Washington, D.C.: Brookings Insti-

tution Press, 2018.

McNamara, Christian M. “The United Kingdom’s Credit Guarantee Scheme (U.K. GFC),” *Journal of Financial Crises*: Vol. 2 (2020): Iss. 3, 927-947.

Moschella, Manuela. “Different Varieties of Capitalism? British and Italian Recapitalization Policies in Response to the Sub-Prime Crisis.” *Comparative European Politics* 9, no. 1 (2011): 76–99. <https://doi.org/10.1057/cep.2009.11>.

Niepmann, Friederike, and Tim Schmidt-Eisenlohr. “Bank Bailouts, International Linkages, and Cooperation.” *American Economic Journal: Economic Policy* 5, no. 4 (2013): 270–305. <https://doi.org/10.1257/pol.5.4.270>.

Poole, William. “Moral Hazard: The Long-Lasting Legacy of Bailouts.” *Financial Analysts Journal* 65, no. 6 (2009): 17–23. <https://doi.org/10.2469/faj.v65.n6.8>.

Regini, Marino. “Models of Capitalism and the Crisis.” *Stato e Mercato*, no. 100 (1) (2014) 21–44. <http://www.jstor.org/stable/24650926>.

Swagel, Phillip. “The Financial Crisis: An Inside View.” The Johns Hopkins University Press, 2009. <https://www.jstor.org/stable/25652713>.

Swagel, Phillip. “Legal, Political, and Institutional Constraints on the Financial Crisis Policy Response.” *Journal of Economic Perspectives* 29, no. 2 (2015): 107–22. <https://doi.org/10.1257/jep.29.2.107>.

Welch, Jennifer. “The Financial Crisis in the European Union: An Impact Assessment and Response Critique.” *European Journal of Risk Regulation* 2, no. 4 (2011): 481–90. <https://doi.org/10.1017/s1867299x00001550>.

White, Ben, and Eric Dash. “Barclays Reaches \$1.75 Billion Deal for a Lehman Unit.” *The New York Times*, The New York Times, 17 Sept. 2008, www.nytimes.com/2008/09/18/business/worldbusiness/18barclays.html#:~:text=In%20its%20filing%2C%20Lehman%20listed,the%20troubled%20real%20estate%20portfolio.

Woll, Cornelia. “Crisis Management across the World.” Essay. In *The Power of Inaction*, 16–43. Cornell University Press, 2014.

Woll, Cornelia. "France and Germany." Essay. In *The Power of Inaction*, 112-138. Cornell University Press, 2014.

Woll, Cornelia. "The United States and the United Kingdom." Essay. In *The Power of Inaction*, 82-111. Cornell University Press, 2014.

"£1.1bn in Fees, 3.1m Hours, 14 Years: The UK Cost of Winding up Lehman Brothers." *The Guardian*, Guardian News and Media, 28 Dec. 2022, www.theguardian.com/business/2022/dec/28/the-cost-of-winding-up-lehman-brothers.

Female Education and Female Labor Force Participation in Europe: The Cause of Lower Fertility Rates or the Solution?

Lucrezia Asdente

The relationship between female education, female labor force participation (FLFP), and fertility rates has always been highly debated among scholars. Nowadays, as Europe faces the challenges posed by an aging population and decreasing fertility rates, it is critical to examine what could counter the bleak implications of such trends. This article aims to contribute a possible solution to change current European population prospects. The analysis of the relationship between female education and FLFP demonstrates how they are positively correlated with fertility intentions in developed countries and, in certain institutional contexts, with actual fertility outcomes (Impicciatore & Tomatis, 2020). Therefore, it is suggested that the implementation of policies fostering gender equity both inside and outside the household would enable women to invest both in their human capital and in family life (Jaumotte, 2004). The essay starts with a brief introduction of Europe and its current demographic framework. The subsequent segments investigate the association between female education and fertility, FLFP and fertility, and, lastly, the relationship between the three of them. Finally, the role of family policies is discussed, and it is followed by the closing section on the findings and limitations of this study. It is concluded that, in developed countries with equitable socioeconomic contexts, higher female education and labor force participation could be a valuable means to counter the implications of current European demographic trends.

The global population experienced unprecedented economic and social development in the twentieth century, yet it also witnessed significant declines in fertility and population growth rates (Bryant, 2007). Until the 1980s, only the most developed countries had low fertility rates. Lately, however, it has become a global problem. An increasing number of Asian, Latin American, and Carib-

bean nations report sub-replacement fertility rates, meaning they are under the threshold that ensures that a population perfectly replaces itself from generation to generation (Sobotka et al., 2019). Nevertheless, decreasing fertility is far from a homogeneously diffused phenomenon.

Indeed, nowadays, half of the world's population lives in countries where the period Total Fertility Rate (TFR) is below the replacement level threshold of around 2.1 births per woman. This distribution results from the negative relationship between fertility and economic and social progress, which has become one of the most well-established empirical regularities in the social sciences (Lee, 2003). As Lee explains, most economic models of fertility indicate that parents have a desired number of surviving children (2003). As economic and social advancement improves child survival rates, the number of desired offspring decreases (see Nerlove, 1974). This negative relation has been regarded as individuals' rational reaction to improvements in medical technology, wealth, nutrition, contraceptive technology, and evolving societal norms and values. These factors have de facto resulted in lower desired fertility rates, smaller family sizes, and an overall trend toward an aging population. In several highly developed countries which have reached "very low" (with a TFR below 1.5), "lowest-low," or "ultra-low" (with a TFR below 1.3) fertility, the trend of decreased fertility is even assumed to be irreversible, especially as it is associated with rapid population aging (Basten et al., 2014).

Europe, the region examined in this analysis, is one of the most affected areas with a TFR of 1.53 live births per woman in 2021 and "very low" to "ultra-low" fertility rates of 1.2 to 1.5 children per woman being recorded across the continent, particularly in Southern and Eastern European countries (Eurostat, 2023a). The shrinking working-age population strains labor markets and welfare states and leads to major socioeconomic concerns and policy challenges. The reduction in the working-age population leads to labor shortages, a decrease in overall economic output, reduced productivity and innovation, and increased pressure on social welfare systems. This hampers a country's ability to sustain economic growth (Mason et al., 2022). As Mason and his colleagues explain, this leads to a higher old-age dependency ratio—meaning there is more consumption in excess of aggregate labor income for the population aged 65 and older—which places a burden on social welfare systems including healthcare and pensions (2022). This strain on public resources may result in difficulty funding these systems and increased per-capita burden of public debt (Mason et al., 2022).

In this regard, many factors have been investigated in an attempt to find the reasons behind falling TFR and counter its bleak implications. Among them, female education and female labor force participation (FLFP) have been traditionally considered negatively correlated with women's childbearing. However,

the EU is also striving to achieve greater gender equality, with policies granting women the same employment and educational opportunities as their male counterparts implemented alongside other policies fostering TFR growth (European Commission, 2020). Therefore, were the negative relationship between female education and FLFP to hold, the European Union, while attempting to attain the best of both worlds—higher TFR *and* higher rates of educated and working women—would risk ending up empty-handed.

In light of the challenges that Europe is presently facing, this article presents a counterargument to historical views by reexamining the relation between female education, FLFP, and fertility (both intended and actual). The analysis demonstrates that female education is positively correlated with fertility intentions. The relationship between female education, FLFP, and fertility outcomes, however, is more complex as there is evidence, polarized across EU member states, supporting both their positive and negative associations.

Therefore, this paper argues that when policies enable women to achieve both childbearing and other possible life paths, education, FLFP, and reproductive behaviors can be positively correlated. Implementing family leave policies, promoting gender equity inside and outside the household, investing in female education, enacting family-supporting tax schemes, and fostering a supportive work environment can enable women to balance their careers and motherhood. Enforcing such policies and harnessing the potential positive association between education, FLFP, and reproductive behaviors across all European countries would be highly beneficial to the EU, which could advance both fertility rates and women's education and employability.

I. Female education, fertility intentions, and actual fertility

Because a woman's education attainment level is regarded as one of the major predictors of family behavior, it is important to investigate the relationship between higher education among women and fertility in Europe (Bongaarts, 1978). Historically, the relationship between female education and fertility has been thought to be negative. Indeed, the postponement of motherhood, which clashes with social stigma around childbearing at mature ages, and low total fertility rates have been consistently considered the result of women's increased access to education (Sobotka, 2004).

Some of the most relevant arguments supporting this assumption are the low fertility rates registered in women's educational years, due to:

- (1) the difficulties of balancing family life and academic achievements, which is reinforced by
 - (a) the lack of economic means to raise children and
 - (b) societal conventions deterring women from having children before

completing their education (Bhrolcháin & Beaujouan, 2012); and (2) the reduced likelihood of eventual motherhood due to the prospective reproductive window being narrowed by the long period of schooling (Lappegård & Rønsen, 2005).

Ultimately, these considerations relate the general deferral of motherhood as a result of higher education with a greater likelihood of remaining childless (Impicciatore & Tomatis, 2020).

Nevertheless, despite the lengthy history of research into the association between education and reproductive outcomes, little is known about how educational disparities impact fertility *intentions* (Berrington & Pattaro, 2014). Investigating this is extremely relevant as, according to the Theory of Planned Behavior, intentions are the most immediate determinant of the resulting outcomes (Ajzen, 1991). Research suggests that graduate women are equally likely to desire a large family as their less educated counterparts (Berrington & Pattaro, 2014). There is even a positive relationship between women's education and lifetime fertility intentions at the individual level and throughout the EU (Testa, 2014). However, when analyzing educational disparities in the realization of fertility intentions, an overall tendency to under-reach reproductive goals is observed: highly educated women have a tendency of failing to fulfill their fertility intentions (Berrington & Pattaro, 2014). These findings indicate that, were the institutional framework to allow highly educated women to have large families, women of fertile ages would invest in both their human capital and family size (Testa, 2014).

The rationale proposed by the developments in gender theories supports this assumption. According to this view, higher fertility rates are positively correlated with macro- and micro-level gender equality (McDonald, 2000 and Goldscheider et al., 2015). The macro-level deals with overall equality between men and women in broader social, political, and economic structures and institutions. On the other hand, micro-level gender equality focuses on the distribution of rights, responsibilities, and resources between men and women within specific social institutions and relationships (Goldscheider et al., 2015). Despite many European countries achieving almost equal levels of education and employment among men and women (macro-level), the gender equity or Gender Revolution approach claims that, within the household, women still encounter a deeply unequal division of chores with their partners (micro-level). Indeed, Figure 1 shows how disproportional the division of Unpaid Care and Domestic Work (UCDW) between men and women is in the EU, with women's share being almost double that of their male counterparts, on average. This disequilibrium is rooted in a patriarchal model which imposes a choice between work and family life on potential mothers. Hence, women's decision to minimize the number of children

is due to a trade-off between childbearing and being able to fulfill their academic and career objectives (Goldscheider et al., 2015). In this regard, education has a twofold positive effect on fertility rates as people with higher education have higher lifetime fertility intentions *and* are more likely to display equity within their relationships (Duvander et al., 2010). Indeed, Duvander and colleagues’ research reveals that higher educational attainment for both parents is connected with an increased probability of having a second or third child in both Norway and Sweden (2010). This shows that highly educated women are better at balancing work and family life since their partners are more likely to take an active role in childcare. Overall, the findings appear to suggest that higher levels of academic achievement might favorably contribute to greater gender equity within the relationship, allowing women to pursue both motherhood and their career aspirations.

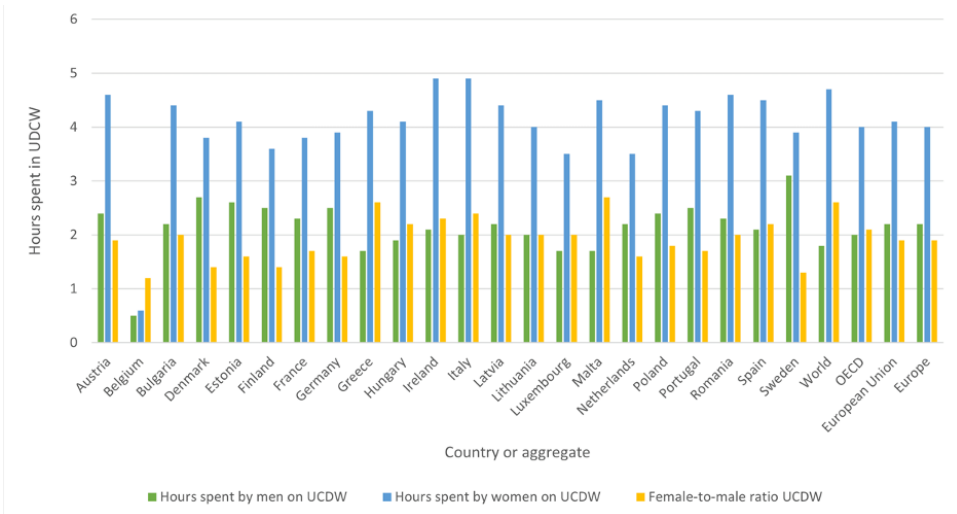


Figure 1. Hours spent on Unpaid Care and Domestic Work (UCDW) by men and women in the EU¹, 2023.

Source: Personal elaboration from the data from OECD. (2023). Gender, Institutions and Development (Edition 2023) [Dataset]. In OECD International Development Statistics. <https://doi.org/10.1787/7b0af638-en>

Despite the historical perception of a negative relationship between educa-

1 The European countries considered are the member states of the European Union because of data availability. Croatia, Cyprus, Czech Republic, Slovakia, and Slovenia do not appear in Figure 1 as no data was collected in those countries. Figure 1 also presents the aggregates of the European continent, the European Union, the Organization for Economic Cooperation and Development (OECD) and the world to show how European countries compare with them. Although EU countries still display a disproportionate division of UCDW between men and women, on average, their distributions are more equal than the world’s; that holds even when considering them individually, except in the cases of Italy and Ireland.

tion and fertility, there are still cases of favorable relationships between women's education and reproduction rates. For instance, in Norway and Sweden, women with higher education have more children, on average (Duvander et al., 2010). In this case, long-established family policies in both Norway and Sweden contribute to more egalitarian relationships outside and within the household. This includes policies such as parental leave for approximately twelve months after childbirth with reserved periods for the father, as well as social conventions, and attitudes toward equality among genders, (Duvander et al., 2010). Thus, highly educated women's desire to build large families is facilitated by the balanced division of family duties characteristic of highly educated partners. This supports the idea that women's higher education, by fostering gender equality, positively impacts women's opportunities to balance work and family life, and thus gives them more leeway in childbearing decisions. Therefore, gender equity, in this instance, serves as a mediator driving the positive relationship between female education and reproduction rates. Consequently, gender equity plays a key role in FLFP as well due to the positive impact that it has on women's capacity to balance their family lives and other life goals.

II. Female labor force participation and fertility

As in the case of female education, the correlation between female labor force participation rates (FLFPR) and reproductive behavior has commonly been regarded as negative. The theory of the "value of children" is one of the most accredited arguments supporting this relationship. This theory claims that the motivation for motherhood may be greater among women who consider their alternative paths to self-realization, like career development, less appealing (Friedman et al., 1994). In this context, it is assumed that larger families play a more significant role in the lives of less educated women. This is because poorly educated women experience greater difficulties in the labor market (Impicciatore & Tomatis, 2020) as education is positively associated with earnings (Amidei et al., 2023) and, thus, with FLFP.

The negative relationship between FLFPR and fertility is also an economically solid assumption since rising female workforce participation is predicted to increase the opportunity cost of childbirth (Becker, 1992). Although it might seem logical that having a higher income would entail a smaller relative expense of a child, the "income effect" could be offset by two main factors: (1) since motherhood is time-demanding, the opportunity cost of childbearing may increase with career status and its subsequent earnings (Impicciatore & Tomatis, 2020); (2) wealthier couples might not necessarily have more children but rather higher quality offspring, as research has shown that the trade-off between quality and quantity of children is critical (Becker & Lewis, 1973). "Higher quality" offspring

refers to children who display attributes that society values. Intelligence, health, academic achievement, talent, and conduct are examples of such criteria. According to Becker and Lewis (1973), the cost of raising children of higher quality is greater, resulting in a negative association between the quantity and quality of children per household. Therefore, higher FLFPR tend to be associated with lower fertility due to the quantity-quality tradeoff of children.

However, current cross-sectional studies and time-series evidence for several countries undermine such reservations, pointing to the effectiveness of work-family reconciliation policies in enabling women to avoid choosing between pursuing either motherhood or their careers (Jaumotte, 2004). For example, despite having high FLFPR, Sweden also has a high number of childbirths relative to the OECD average (Jaumotte, 2004). In particular, Sweden's comprehensive public policies during the late 1980s and early 1990s successfully increased both FLFPR and fertility. Sundström & Stafford argue that Sweden's high rates of taxation, separate taxing for spouses, subsidized daycare, flexible working hours, and financial support for couples with children enhanced women's labor-force participation (1992). In addition, its expanded parental leave program decreased the opportunity cost of having children (Sundström & Stafford, 1992). These schemes incentivized fertility and paid labor for women by lowering the expense of having children while requiring parents to be employed to access full benefits (Sundström & Stafford, 1992).

Still, European institutional frameworks often do not feature such policies meant to narrow gender disparities in the labor force. Figure 2 shows that the proportion of women aged 20 to 64 outside the labor force accounts for 1.5% of the total population in the EU, more than three times the share of men, which is less than 0.5%. Moreover, it can be observed that the countries displaying the greatest difference between women's and men's inactive population share—namely Italy, Greece, and Spain, respectively with 2.6, 1.7, and 1.5 percentage point differences between the female and the male population—are also among the ones with the highest imbalance in UCDW in Figure 1.

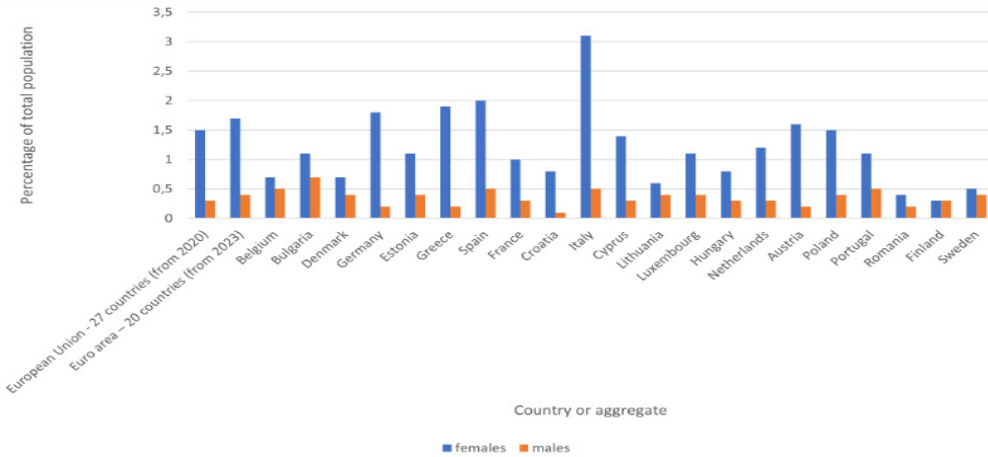


Figure 2. European inactive population due to caring responsibilities, by sex, by country, 2022.²

Source: Personal elaboration from the data from Eurostat. (2023b). Inactive population due to caring responsibilities, by sex, by country, 2022 [Dataset]. In Eurostat. https://ec.europa.eu/eurostat/databrowser/view/sdg_05_40/default/table?lang=en

As mentioned before, starting from the mid-1980s, the cross-sectional relationship between female employment and fertility within advanced countries like Sweden shifted from negative to positive due to the introduction of new family policies (Oshio, 2019). This included policies aimed at expanding public expenditure on families through benefits such as early childhood education and home support (Oshio, 2019). These measures were put in place to improve the socio-institutional context for parenthood, reduce the incompatibility of mother and worker roles, and raise working women's earnings (Oshio, 2019). This newly found positive association was also attributed to a shift in a third component, namely social norms and values. Motherhood and women's careers were no longer regarded as mutually exclusive, thus driving female employment and fertility in the same direction (Engelhardt et al., 2004). This framework is consistent with the findings of the gender theories previously discussed, claiming that fertility increases in countries whose policy schemes promote gender equity (McDonald, 2000).

² The countries represented are the European countries for which the data was collected on both female and male 2022 inactive populations. It is possible to check them looking at the linked dataset.

III. The interrelation between female education, FLFP, and fertility

In light of the above considerations, it is clear that the interconnection between female education, FLFP, and fertility rates is just as crucial as it is complex. If educational achievement is evaluated as a proxy for socioeconomic standing and income, its positive relationship with reproductive behavior—also referred to as the “income effect” previously discussed—can be explained from an evolutionary standpoint. Wealthier social strata couples display higher fertility rates because they have a greater means to raise children (Impicciatore & Tomatis, 2020). Nevertheless, throughout this essay, it has been observed that both education and women’s employment lead to ambivalent, and sometimes even polarized, fertility results.

The findings of the study by Impicciatore and Tomatis on the correlation of these variables across six European countries highlight an East-West divide. In Eastern European countries, fertility rates are higher among less educated women. In contrast, in the West, more educated women show the highest fertility rates (2020). This cross-country variation is consistent with the literature stating that fertility intentions and actual fertility are not conditional upon just individuals’ preferences, but also on country-specific institutional frameworks (Neyer, 2006). Indeed, it has been observed that fertile-aged women living in a country where employment and family life are not perceived as incompatible are more likely to invest in both education and family size (Testa & Stephany, 2017).

The analysis of the relationship of these factors in the Organization for Economic Cooperation and Development (OECD) countries also supports this theory: despite strong FLFP, Nordic countries’ fertility rates are higher than the OECD average; Southern European nations, on the other hand, have both low female involvement rates and low fertility rates (Jaumotte, 2004).

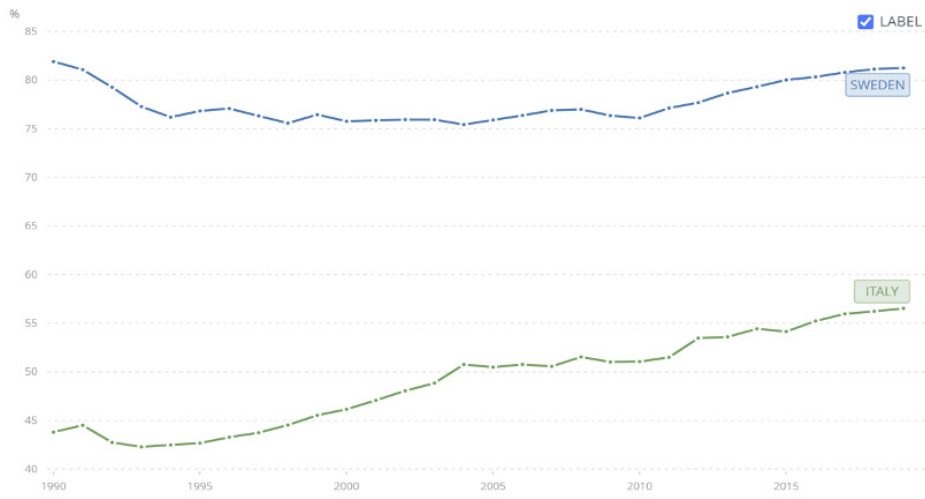


Figure 3. Labor force participation rate, female (% of female population ages 15–64), Sweden and Italy, 1990–2019.

Source: International Labor Organization (ILOSTAT). (2021, June). Female labor force participation rate—Sweden, Italy. World Bank Open Data. Retrieved April 30, 2023, from <https://data.worldbank.org/indicator/SL.TLF.ACTI.FE.ZS?end=2019&locations=SE-IT&start=1990&view=chart>

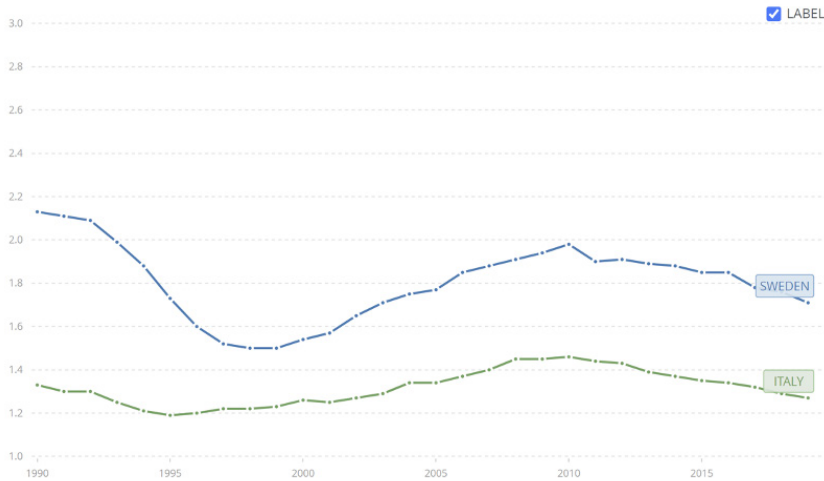


Figure 4. Total Fertility Rate (births per woman), Sweden and Italy, 1990–2019.

Source: United Nations Population Division. World Population Prospects. (2022a). Total fertility rate—Sweden, Italy. World Bank Open Data. Retrieved April 30, 2023, from <https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?end=2019&locations=SE-IT&start=1990>

As seen in the comparison of Figures 3 and 4, Sweden and Italy are quintessential examples of this differentiation. The two figures outline that the correlation between TFR and FLFPR can be positive in developed countries. In the case of Italy, both variables are very low, reaching an “ultra-low” TFR of 1.3 births per woman in 2019 and only a 57% FLFPR that same year. The opposite goes for Sweden which, with a 1.7 TFR and an 81% FLFPR, is remarkably above the 2019 EU average of 1.53 births per woman (INED, 2021) and 46.1% FLFPR (World Bank, 2022b).

This contrast has been attributed to the diverging institutional contexts of the two countries. In the Italian case, the welfare state and societal norms obstruct the compatibility of female employment and family life (Impicciatore & Tomatis, 2020). In Italy, inadequate childcare facilities, rigid labor markets, and conventional gender norms constitute severe challenges for women (Impicciatore & Tomatis, 2020). The absence of affordable and accessible daycare services se-

verely hinders women's ability to work while raising their children. Additionally, the inflexible labor market raises the opportunity cost of having children, complicating the balance even further (Impicciatore & Tomatis, 2020). In Sweden, on the other hand, the implementation of policies allowing women to balance work and motherhood, especially through family leave policies and a family-supportive tax scheme, have increased both labor force participation and fertility (Sundström & Stafford, 1992).

These findings demonstrate the importance of policies that target more-educated working women when it comes to raising TFR. The relevant literature presented in this essay shows that both the rise and fall in fertility rates in developed countries are driven by people of the same socioeconomic class, namely higher-educated couples, who register greater heterogeneity in fertility outcomes than their less educated counterparts (Berrington & Pattaro, 2014).

IV. The role of family policies in Europe

The pivotal role of family policies is highlighted in the previously mentioned examples, such as the reversal of the negative relationship between FLFP and fertility in developed countries during the mid-1980s (Impicciatore & Tomatis, 2020). Having established this, it is noteworthy to examine how family policies could be utilized to counter the concerns stemming from the current demographic challenges Europe faces.

If European measures fostering gender equality worked in the same direction as those aimed at increasing TFR, they could provide a valuable new means to reduce the burden of a declining and aging population on the shrinking working age population. These regulations would allow women who previously stayed at home to care for their children to combine family life with labor force participation. In addition, women who had decided to decrease their family size in order to pursue their careers could then invest in their family life as well (Jaumotte, 2004).

Countries, such as Sweden, which were more successful in reaching the convergence of these objectives show that the implementation of general welfare family policies per se is not effective. Rather, benefits should be related to employment and earnings history: fruitful policies are the ones reducing the opportunity cost of parenthood while requiring the parents to have a job in order to access such state subsidies (Sundström & Stafford, 1992). Moreover, as discussed, women in more egalitarian relationships are more prone to capitalize both on their human capital and family size (Impicciatore & Tomatis, 2020). This trend underlines the importance of the involvement of women's partners in family care. In this regard, the implementation of family leave policies for *both* parents is crucial. These measures must also be matched by a cultural shift away from the tra-

ditional share of housework and childcare across genders, which is still extremely unbalanced to the disadvantage of women (Figures 1 and 2). If their partner's contribution in these fields is significant, the family size may grow (Nitsche et al., 2018). The positive relationship between women's education and the chances of ending up in a relationship with a more equal division of UCDW (Impicciatore & Tomatis, 2020) also emphasizes the relevance of school reforms promoting and investing in female education.

Lastly, the benefits stemming from these policies would not only be limited to the increase of TFR in the immediate future. Research shows that the fertility rates of highly educated women may have a spillover effect on the intended fertility of younger highly educated women (Testa, 2013). This feedback spillover pushes younger women to plan for larger families (Testa, 2013). This suggests that as the proportion of highly educated women with children expands, future generations are likely to end up having more children. This is because they have seen previous generations successfully combine work with family life and are thus more inclined to believe in their ability to achieve the same.

In addition, being highly educated and living in a country with a high proportion of college-educated women are factors positively correlated with women's childbearing intentions (Testa & Stephany, 2017). The positive impact of working women having children does not stop at fertility intentions. Social contact has been proven to affect actual fertility behavior among women working in the same business—the transition rates to first pregnancy double within twelve months after a co-worker has given birth (Pink et al., 2014). According to further analysis, such impact of co-workers' fertility is mediated by social learning (Pink et al., 2014). This phenomenon might explain the positive social contagion that affects couples surrounded by young children—the chances of a couple transitioning into parenthood increase proportionally to the number of young children present in their social network (Lois & Becker, 2014).

V. Discussion and conclusion

This essay examined the manifold relationships between female education, FLFP, and fertility rates, while being aware of the density and complexity of the literature on these elements. Although the research on these subjects is extensive, they usually investigate the correlation among only two of the three variables that have been hereby analyzed. This consideration is brought forth in the attempt to highlight a fruitful prompt for future research. A shortcoming which should be acknowledged is that women's relationship statuses were not accounted for in their reproductive decisions. Indeed, partnership transitions are a crucial proximal driver of fertility, and women who never marry are considerably less likely to fulfill their fertility intentions (Berrington & Pattaro, 2014). Therefore,

the marriage market plays a key role in fertility behaviors: as more educated women are more likely to marry, have a lower likelihood of divorcing, and are more likely to have a spouse who is more educated, their fertility rates are likely higher (Testa, 2013). Controlling for this component when dealing with the interrelation of female education, FLFP, and fertility rates is another premise for future research in this field.

In conclusion, this study has demonstrated that the relationship between female education, FLFP, and fertility rates in Europe is polarized between Western and Eastern countries and Northern and Southern European member states. The findings additionally highlight that, in developed countries, highly educated working women in fertile ages are equally as likely to desire large-size families as their less educated counterparts. However, they tend to underachieve their intended fertility if the policies and institutional frameworks under which they live pressure them to choose between motherhood and alternative life paths. On the other hand, these highly educated women are also the drivers of TFR increases in countries fostering gender equity both within and outside the household. Therefore, supporting female education and FLFP and implementing family policies such as family leave benefits for both parents are in the best interest of European governments. Doing so can not only build a more equitable society but also counter the demographic challenges posed by declining fertility rates and an aging population.

Bibliography

- Ajzen, Icek. "The Theory of Planned Behavior." *Organizational Behavior and Human Decision Processes* 50, no. 2 (December 1991): 179–211. [https://doi.org/10.1016/0749-5978\(91\)90020-T](https://doi.org/10.1016/0749-5978(91)90020-T).
- Amidei, Federico Barbiellini, Sabrina Di Addario, Matteo Gomellini, and Paolo Piselli. *Female Labour Force Participation and Fertility in Italian History*. Centro Studi Luca D'Agliano, 2023.
- Basten, Stuart, Tomáš Sobotka, and Kryštof Zeman. "Future Fertility in Low Fertility Countries." In *World Population and Human Capital in the Twenty-First Century*, 39–146. Oxford University Press, 2014. <https://doi.org/10.1093/acprof:oso/9780198703167.003.0003>.
- Becker, Gary S. "A Treatise on the Family." *Population and Development Review* 18, no. 3 (September 1992): 563–64. <https://doi.org/10.2307/1973663>.
- Becker, Gary S., and H. Gregg Lewis. "On the Interaction between the Quantity and Quality of Children." *Journal of Political Economy* 81, no. 2, Part 2 (March 1973): S279–88. <https://doi.org/10.1086/260166>.
- Berrington, Ann, and Serena Pattaro. "Educational Differences in Fertility Desires, Intentions and Behaviour: A Life Course Perspective." *Advances in Life Course Research* 21 (September 2014): 10–27. <https://doi.org/10.1016/j.alcr.2013.12.003>.
- Bongaarts, John. "A Framework for Analyzing the Proximate Determinants of Fertility." *Population and Development Review* 4, no. 1 (March 1978): 105. <https://doi.org/10.2307/1972149>.
- Bryant, John. "Theories of Fertility Decline and the Evidence from Development Indicators." *Population and Development Review* 33, no. 1 (March 2007): 101–27. <https://doi.org/10.1111/j.1728-4457.2007.00160.x>.
- Duvander, Ann-Zofie, Trude Lappegård, and Gunnar Andersson. "Family Policy and Fertility: Fathers' and Mothers' Use of Parental Leave and Continued Childbearing in Norway and Sweden." *Journal of European Social Policy* 20, no. 1 (February 2010): 45–57. <https://doi.org/10.1177/0958928709352541>.

Engelhardt, Henriette, Tomas Kögel, and Alexia Prskawetz. “Fertility and Women’s Employment Reconsidered: A Macro-Level Time-Series Analysis for Developed Countries, 1960–2000.” *Population Studies* 58, no. 1 (March 2004): 109–20. <https://doi.org/10.1080/0032472032000167715>.

European Commission. “Gender Equality Strategy.” European Commission, March 5, 2020. https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en#:~:text=The%20European%20Commission%20launched%20a,care%20responsibilities%20and%20decision%2Dmaking.

Eurostat. 2023a. “Fertility Statistics.” Eurostat, 2023. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Fertility_statistics#live_births_per_woman_in_the_EU_in_2021.

———. 2023b. “Persons Outside the Labour Force due to Caring Responsibilities by Sex.” Eurostat, 2023. https://ec.europa.eu/eurostat/databrowser/view/sdg_05_40/default/table?lang=en.

Friedman, Debra, Michael Hechter, and Satoshi Kanazawa. “A Theory of the Value of Children.” *Demography* 31, no. 3 (August 1994): 375. <https://doi.org/10.2307/2061749>.

Goldscheider, Frances, Eva Bernhardt, and Trude Lappegård. “The Gender Revolution: A Framework for Understanding Changing Family and Demographic Behavior.” *Population and Development Review* 41, no. 2 (June 2015): 207–39. <https://doi.org/10.1111/j.1728-4457.2015.00045.x>.

Impicciatore, Roberto, and Francesca Tomatis. “The Nexus between Education and Fertility in Six European Countries.” *Genus* 76, no. 1 (November 2, 2020). <https://doi.org/10.1186/s41118-020-00104-4>.

INED. “Total Fertility Rate.” Ined - Institut national d’études démographiques, 2021. https://www.ined.fr/en/everything_about_population/data/europe-developed-countries/fertility-indicators/.

International Labour Organization. “Labor Force Participation Rate, Female (% of Female Population Ages 15-64) (Modeled ILO Estimate) - Sweden, Italy.” World Bank Open Data, June 2021. <https://data.worldbank.org/indicator/SL.TLF.ACTI.FE.ZS?end=2019&locations=SE-IT&start=199>

0&view=chart.

- Jaumotte, Florence. "Labour Force Participation of Women." *OECD Economic Studies* 2003, no. 2 (July 9, 2004): 51–108. https://doi.org/10.1787/eco_studies-v2003-art9-en.
- Lappegård, Trude, and Marit Rønsen. "The Multifaceted Impact of Education on Entry into Motherhood." *European Journal of Population / Revue Européenne de Démographie* 21, no. 1 (March 2005): 31–49. <https://doi.org/10.1007/s10680-004-6756-9>.
- Lee, Ronald. "The Demographic Transition: Three Centuries of Fundamental Change." *Journal of Economic Perspectives* 17, no. 4 (November 2003): 167–90. <https://doi.org/10.1257/089533003772034943>.
- Lois, Daniel, and Oliver Arránz Becker. "Is Fertility Contagious? Using Panel Data to Disentangle Mechanisms of Social Network Influences on Fertility Decisions." *Advances in Life Course Research* 21 (September 2014): 123–34. <https://doi.org/10.1016/j.alcr.2013.10.001>.
- Mason, Andrew, and Ronald Lee. "Six Ways Population Change Will Affect the Global Economy." *Population and Development Review* 48, no. 1 (February 14, 2022): 51–73. <https://doi.org/10.1111/padr.12469>.
- McDonald, Peter. "Gender Equity, Social Institutions and the Future of Fertility." *Journal of the Australian Population Association* 17, no. 1 (May 2000): 1–16. <https://doi.org/10.1007/bf03029445>.
- Nerlove, Marc. "Household and Economy: Toward a New Theory of Population and Economic Growth." *Journal of Political Economy* 82, no. 2, Part 2 (March 1974): S200–218. <https://doi.org/10.1086/260301>.
- Neyer, Gerda. "Family Policies and Fertility in Europe: Fertility Policies at the Intersection of Gender Policies, Employment Policies and Care Policies." *MPIDR Working Paper WP-2006-010*, March 1, 2006. <https://doi.org/10.4054/mpidr-wp-2006-010>.
- Ní Bhrolcháin, Máire, and Éva Beaujouan. "Fertility Postponement Is Largely due to Rising Educational Enrolment." *Population Studies* 66, no. 3 (August 14, 2012): 311–27. <https://doi.org/10.1080/00324728.2012.697569>.

- Nitsche, Natalie, Anna Matysiak, Jan Van Bavel, and Daniele Vignoli. "Partners' Educational Pairings and Fertility across Europe." *Demography* 55, no. 4 (June 7, 2018): 1195–1232. <https://doi.org/10.1007/s13524-018-0681-8>.
- Oshio, Takashi. "Is a Positive Association between Female Employment and Fertility Still Spurious in Developed Countries?" *Demographic Research* 41 (November 21, 2019): 1277–88. <https://doi.org/10.4054/dem-res.2019.41.45>.
- Pink, Sebastian, Thomas Leopold, and Henriette Engelhardt. "Fertility and Social Interaction at the Workplace: Does Childbearing Spread among Colleagues?" *Advances in Life Course Research* 21 (September 2014): 113–22. <https://doi.org/10.1016/j.alcr.2013.12.001>.
- Sobotka, Tomáš. "Postponement of Childbearing and Low Fertility in Europe." University of Groningen, 2004. <https://pure.rug.nl/ws/files/9808316/title-con.pdf>.
- Sobotka, Tomáš, Anna Matysiak, and Zuzanna Brzozowska. "Policy Responses to Low Fertility: How Effective Are They?" UNFPA Technical Division, 2019.
- Sundström, Marianne, and Frank P. Stafford. "Female Labour Force Participation, Fertility and Public Policy in Sweden." *European Journal of Population* 8, no. 3 (September 1992): 199–215. <https://doi.org/10.1007/bf01797210>.
- Testa, Maria, and Maria Rita. "Women's Fertility Intentions and Level of Education: Why Are They Positively Correlated in Europe?" 2013. https://www.oeaw.ac.at/fileadmin/subsites/Institute/VID/PDF/Publications/EDRP/edrp_2012_03.pdf.
- Testa, Maria Rita. "On the Positive Correlation between Education and Fertility Intentions in Europe: Individual- and Country-Level Evidence." *Advances in Life Course Research* 21 (September 2014): 28–42. <https://doi.org/10.1016/j.alcr.2014.01.005>.
- Testa, Maria Rita, and Fabian Stephany. "The Educational Gradient of Fertility Intentions: A Meta-Analysis of European Studies." *Vienna Yearbook of Population Research* 15 (2017): 293–330. <https://www.jstor.org/sta->

ble/26506109.

World Bank. 2022a. “Fertility Rate, Total (Births per Woman) - Sweden, Italy.” World Bank Open Data, 2022. <https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?end=2019&locations=SE-IT&start=1990>.

———. 2022b. “Labor Force, Female (% of Total Labor Force) - European Union | Data.” World Bank Open Data, 2022. <https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS?locations=EU>.

The rise and effects of non-standard labour contracts in the Netherlands¹

Tommaso Tulkens

This article analyses the rise of non-standard labour contracts (NSLC) and their effect on working compensation in the Netherlands since the 1970s. The analysis employs two two-way fixed effects models to examine the impact of NSLC on wages and pension benefits. The findings show a wage and pension benefits penalty associated with the adoption of on-call contracts. The wage penalty for on-call work is large even when controlling for hours worked. Temporary contracts are associated with a decrease in pension benefits. Younger and low-income workers face a larger wage penalty when engaging in non-standard employment arrangements. The historical analysis shows that the struggle against unemployment, political choices, union power, and the turn to a liberal market economy drove the trend towards NSLC. Falling transaction costs in firms likely encourage the use of market-mediated work. The findings are discussed in relation to monopsony power.

I. Introduction

For most of his life in Salzburg, W. A. Mozart was employed by the Archbishop of Colloredo. Frictions between the two personalities, the low wages, and the artistic impediments imposed by Colloredo prompted Mozart to quit his position in 1781 to become one of the first entirely freelance composers in Western history (Greiner, 2008). For Mozart, in the short term, this switch constituted a welcome change, raising income and enabling him to liberate himself from the constraints of hierarchy.

¹ I would like to thank both Maanik Naath and Diego Requena for their time and precious advice, as well as Auke Rijpma, Anna Salomons, Christophe Schellekens, and Henry Tulkens for their tips and comments. Thanks to Famke Seine and Julia de Reus for proofreading. Thank you to the reviewers from Brown University for their great comments on this article.

The contemporary outlook on flexible contracts may not look as good as in Mozart's case. In the Netherlands, the number of workers without stable and open-ended labour contracts has been increasing rapidly since the 1980s (see Figure 1). Employers argue that these contracts increase the number of workers they are willing to hire, whilst offering flexibility to adjust working around other daily tasks. However, critics (and chiefly among them, unions) raise concerns about job insecurity and inadequate fringe benefits associated with flexible contracts. In the Netherlands, the debate on the desirability of flexible labour contracts is long-standing due to the early adoption of these arrangements in the 1980s. This debate continues to be very active in the media.²

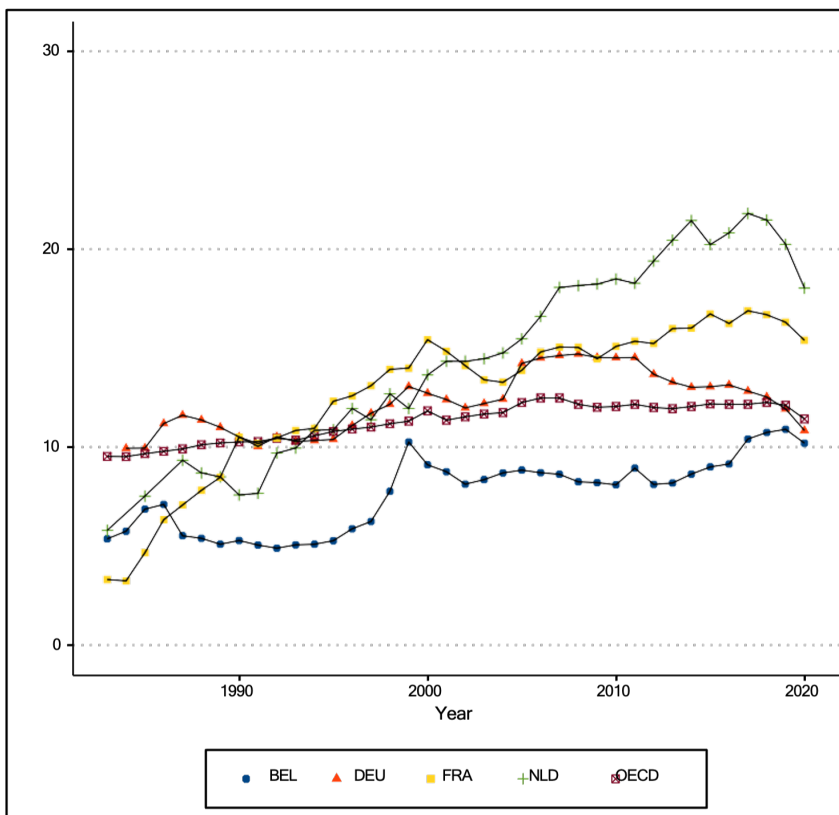


Figure 1: % of the employed labour force in temporary work in the Netherlands, Belgium, France, Germany and the OECD, 1983-2020. Temporary employment includes wage and salary workers whose job has a pre-determined termination date. Data from OECD (2023b).

² See <https://www.nrc.nl/nieuws/2023/01/24/krappe-arbeidsmarkt-werknemers-wisselen>; or <https://www.volkskrant.nl/nieuws-achtergrond/kabinet-draait>, and many more in the Dutch press.

Clear answers on the societal effects of non-standard labour contracts have so far remained elusive. As pointed out by Bernhardt (2014), government statistics fail to reflect the variety of labour contracts in modern economies, making it difficult to assess their effects on job quality and well-being.³

Before introducing the research questions, it is crucial to define the types of contracts under analysis. Non-standard labour contracts (NSLC) are often used as an umbrella term encompassing all labour arrangements that deviate from a working relationship characterised by one employer, fixed hours of work, and an open-ended contract. Burri et al. (2018) provide more clarity on the legal and statistical realities within non-standard work in the Netherlands. Open-ended full-time and part-time contracts are equal in terms of protection under Dutch law. These contracts guarantee a number of work hours per month and do not have a pre-determined termination date.

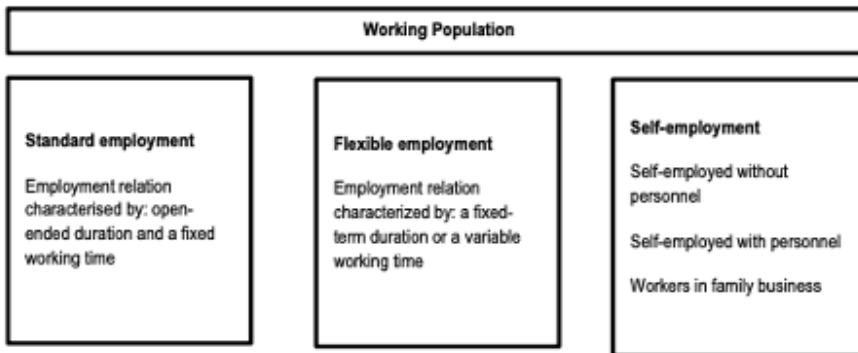


Figure 2: Labour force classification. Burri et al. (2018).

Temporary contracts, on the other hand, have a pre-determined termination date. Part-time contracts may also have variable hours, in which case they do not have the same legal status as open-ended fixed-hours contracts. Part-time contracts with variable hours are called ‘on-call’ contracts. They can have a fixed duration or be open-ended. Temporary agency work is another form of non-standard work arrangement. This is a triangular work arrangement between a worker, a temp agency, and an employer (Burri et al., 2018). Workers perform work for the employer, whilst the temp agency performs administrative tasks such as payrolling. The relationship between the agency and the worker is a formal employment contract. Lastly, freelance and independent workers, known as *zelfstandigen zonder personeel* (or *zzp’ers*), are not subordinate to an employer and constitute a growing part

³ In her review of ‘non-standard labour’, Kalleberg (2000) shows the conceptual difficulties and confusions that arise when tackling alternative labour arrangements, an issue we will return to.

of the workforce in the Netherlands (Burri et al., 2018).

The legal reality, however, does not always match the official statistical taxonomy available in the data. Figure 2 shows how the Dutch *Centraal Bureau voor de Statistiek* (CBS) distinguishes between different working arrangements. The LISS panel, used in the empirical research of this article, provides a different methodology than CBS data. The panel respondents can choose among 8 categories: permanent employee, temporary employee, on-call employee, temp-staffer, self-employed/freelancer, independent professional, director, or shareholder.

This article reviews the institutional context in which the shift to NSLC occurred. It innovates by analysing a broad range of contract types, whilst considering the historical context. While doing so it considers historical and economic narratives. Labour markets, central to this article, are embedded in a historically constructed fabric of institutions, networks, and norms, whilst governed by economic incentives. As argued by Granovetter (2005), the best way to come to a meaningful understanding of such socio-economic institutions is to make use of the comparative advantage of each discipline. This article aims to put this mantra into practice.

Transaction costs economics and the monopsony model are used to explain the development of NSLC, and formulate hypotheses on the effect of these contracts on wages and pensions. This analysis is supplemented by considering the social, historical, and local drivers of the development of NSLC in the Netherlands.

The historical analysis in this article relies on a review of historical research on Dutch industrial relations since the 1970s. Combining an economic and historical understanding enables testing the drivers of institutional change across historical settings. As will become clear, power relations, institutional structure, and ideas had a remarkable effect on how businesses, governments, and unions thought about work.

The central research question of this article is: how did employment conditions evolve in the Netherlands since 1970? This question is broken down into two sub-questions. The first part of the research investigates why firms adopted flexible working contracts in the Netherlands. The second part evaluated whether varieties of labour contracts have heterogeneous effects on workers' wages and pensions. I focus on the following categories of contracts: temporary workers, on-call workers, temp staffers, and freelancers. I use the LISS panel from Centerdata (2023) to conduct an empirical analysis using two-way fixed effects panel regression.

The historical results show that the structure of firms, as well as power dynamics within Dutch corporatism, drove the rise of flexible contracts. The fight against unemployment in the 1980s played a determining role in shaping ideas on work flexibility. The econometric results show a wage and pension benefits penalty associated with a switch from permanent to on-call and temporary contracts. The

results hold controlling for hours worked. The findings are discussed in relation to monopsony power and historical developments.

The article is structured as follows. Section 2 presents the theory mobilised in the article (2.1) and reviews relevant historical and economic case studies (2.2). The data and methodology used in the empirical analysis are presented in section 3. The econometric results are interpreted in 4.1 and discussed in 4.2 before concluding in section 5.

II. Theoretical framework and literature review

II.1 Theory

II.1.i Transaction costs economics

This article makes use of the transaction cost (TC) theory of the firm, which is deemed best suited to explain what incentives modern corporations have to outsource parts of their labour force. Coase (1937) was the first to set the “firm boundary” puzzle. He proposed that firms, as non-market institutions, arise in markets to address the issue of asymmetric information between economic agents.

Organizing economic activities within a firm can serve as an alternative to the market if it is more cost-effective. TC economics is mainly interested in explaining the vertical integration of labour in large firms. This article uses the same logic to explain firms’ vertical disintegration, a phenomenon intertwined with the development of flexible work. To assess whether a transaction will be market-mediated or internalised, a transaction is characterised by 1) its frequency, 2) how uncertain (and risky) it is, and 3) the specificity of the exchanged asset (Williamson, 2010).⁴ In this framework, the three aspects are positively related to internal governance. Internalising these types of activities, and imposing the control of hierarchy on them is likely to reduce these costs. Conversely, infrequent relationships, tasks requiring relatively generic skills, or less risky transactions will be market-mediated.

The TC literature points to three factors that possibly reduced transaction costs for labour, prompting firms to use more market-mediated work contracts in the past 50 years. In the framework of Williamson (1980) these factors are: technological advances, decreased transportation costs, and improved management practices. These factors reduced transaction costs and made market-mediated transactions more cost-effective for firms. According to TC theory, this is especially true for activities that do not require firm-specific knowledge. These insights can be refined by introducing the notions of hold-up, incomplete contracts and asset ownership, as developed in the industrial organisation literature (IO) reviewed hereafter.⁵ Hart (1989) presents a model of property rights to explain how firm

4 By specificity, Williamson (2010) means that reallocation implies loss of production value.

5 See Holmstrom and Roberts (1998) for a review.

boundaries are formed. His models explain why firm activities subject to high “lock-in” (or hold-up effects) are more likely to be integrated within a firm.

Furthermore, Holmstrom and Roberts (1998) demonstrate that when ‘superstar firms’ occupy central positions in a production network and engage in repeated interactions with contractors, it can reduce information asymmetries and diminish the necessity for hierarchical integration, thereby promoting the adoption of market-mediated work. Abraham and Taylor (1996) corroborate this last idea by showing that high-wage firms outsource their labour force more than low-wage firms. These factors indicate that modern corporations possess various incentives to outsource certain segments of their labour force.

II.I.ii The monopsony model

The previously discussed theory shows how changes in the structure and boundaries of the firm can affect the organisation of employment. The monopsony model, a deviation from the competitive labour market model, can explain how changes in labour organisation (and hence in bargaining power dynamics) would play out for workers in terms of wages, benefits, and employment. Illustrating this model, Figure 3 represents the hiring decision of a non-discriminating monopsonist. The market represented is that of a single firm in a larger market characterised by monopsony power. The competitive equilibrium on the graph is represented for comparison.

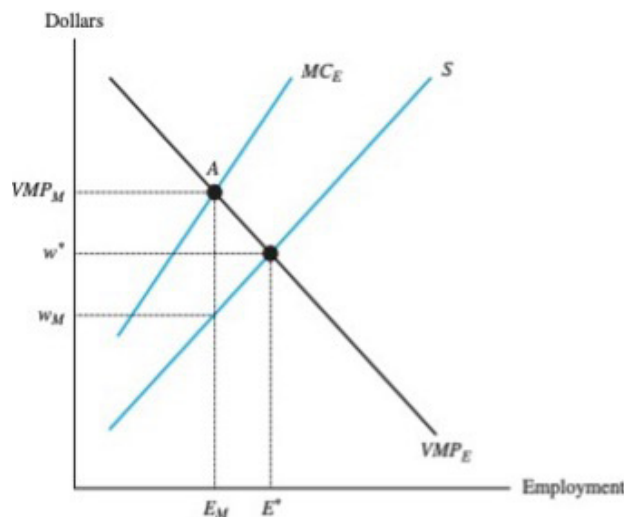


Figure 3: (Borjas and Van Ours, 2010, p.196). The hiring decision of a non-discriminating monopsonist. The MC_E curve represents the marginal cost of labour (and lies above the supply curve), S is the labour supply, VMP_M is the value of the marginal product of labour for the monopsonist. E^* and w^* designate respectively the competitive equilibrium wage and employment. E_M and w_M represent the equilibrium wage and employment in a market characterised

by the presence of non-discriminating monopsonist.

In the competitive labour market model, profit-maximising firms hire workers up to the point at which the wage (W^*) equals the value of the marginal product of labour (VMP). The competitive equilibrium is characterised by a number E^* of workers employed at the firm for a wage W^* . This model assumes a perfectly elastic labour supply and perfect competition, in which workers and firms can find alternative employers, and firms are price takers.

A monopsonist is a firm that faces an upward-sloping supply curve and can thus increase employment by raising wages (Manning, 2006). This implies that contrary to the competitive model, if an employer lowers wages not all workers will quit and find another job that pays the market wage. The monopsony model identifies costs linked to job mobility, quantifying the reluctance that employees may have to change jobs (due to scarce options, search costs, or other reasons). A profit-maximising monopsonist hires workers up to the point at which $VMP_M = MC_E$. By comparing the competitive and monopsony equilibria in the figure, firms pay their workers less than in the competitive equilibrium wage ($w_M < w^*$), and they hire fewer workers than they would in the competitive equilibrium ($E_M < E^*$). According to this simple model, monopsonistic labour markets present underemployment and lower wages than competitive markets.

Building on this model, researchers have put forward reasons why labour markets may present monopsonistic characteristics. Labour markets may be monopsonistic if there are many more labour sellers (workers) than buyers (firms). Similarly to product markets, excess supply gives firms wage-setting power over workers (Araki et al., 2022). This power enables firms to impose lower wages and hire less than would otherwise be optimal. The costs of finding a new job at another firm, can also be a driver of monopsony power. Workers reluctant to change jobs may create monopsonistic situations in which employers know they can impose certain conditions on workers. These search frictions are exacerbated by non-compete clauses which, in a negative feedback loop, are more prevalent in monopsonistic labour markets (Lipsitz and Starr, 2022). Lastly, idiosyncratic taste for a job may explain how monopsony power develops in labour markets. Such attachment to one job, due to preferences, creates an environment in which employers may allow themselves to pay lower wages, and hire less.

The available evidence suggests that firms' monopsony power in modern labour markets is considerable (Ashenfelter et al., 2021; Manning, 2021; Card, 2022). To the best of my knowledge, no study has attempted to measure monopsony power in the Dutch labour market. However, given the trends observed in OECD countries, it is reasonable to think that it presents some degree of monopsony power, although it might be unevenly distributed across sectors and profes-

sions.

The anticipated presence of monopsony power in the Dutch labour market has implications for this study. Firstly, the negative effects of monopsony power (in terms of wage and employment) are not distributed evenly across the population. Araki et al. (2022) show that vulnerable groups, such as women, less-skilled workers, non-western migrants, or younger workers are more likely to bear the effects of monopsony.

Secondly, the increased use of market-mediated labour, likely to have eroded more secular social norms and networks surrounding work, is closely linked to rising monopsony power. In a negative feedback loop logic, the use of market-mediated work may compound the negative effects of unfavourable labour arrangements for workers. The theoretical predictions of the monopsony model shape the hypotheses of the empirical analysis. In particular, the empirical section investigates whether different contract types have heterogeneous wage effects for women, low-skill workers, or younger workers. The exploration of the interaction between monopsony and NSLC is a relatively unexplored approach in the literature.

II.II Empirical studies

II.II.i Business and labour history

As pointed out by Granovetter (1985), Williamson's TC framework abstracts from the institutional context and social embeddedness of industrial relations.

Sociological network theory, as developed in Granovetter (1973), sheds light on the role of historically formed norms and practices in the formation of economic outcomes. This theory provides strong motivation for a historical analysis of NSLC development. The following section proposes a review of the business and labour history literature on institutional and entrepreneurial change in the Netherlands since the late 1970s, which is pivotal to understand the changes that ensued in the labour market.

The Dutch model of labour-related decisions is characterised by a high level of coordination (Touwen, 2014a). This 'corporatist' coordination is typically tripartite, involving employers, the government and unions. Two strands of historical literature discuss the evolution of labour relations in the Netherlands, with differing levels of analysis. The 'Utrecht school' uses businesses as a unit of analysis, whereas the 'Leiden school' tends to analyse events from the perspective of industrial relations.

The Utrecht and Leiden schools largely agree on the fact that the volatile economic conditions triggered by the 1973 and 1979 oil shocks marked the start of the transition away from the vertically integrated conglomerates that ensured high levels of employment in the post-war era (Sluyterman, 2013).

These conditions prompted large firms to reorganise their production into

“lean” and diversified production, geared towards small inventories and very efficient production chains (De Jong et al., 2011). Achieving these structural adaptations implied shedding a large part of the labour force away (thus reducing employment), in line with corporate strategies geared more towards shareholder value. The Leiden historiography adds to this point that the economic shock and ensuing layoffs triggered a lasting trend of increasing unemployment, with the effect of strengthening the bargaining power of firms (Touwen, 2014a; Visser and Hemerijck, 1997). Moreover, the Dutch business community saw an increased influence of American business consultants in the 1980s, prompting large Dutch firms to separate between core and non-core competencies (Sluyterman, 2013; De Jong et al., 2011). These changes were possible in the context of high unemployment and wage moderation, which rendered labour unions willing to accept liberal policies (De Jong et al., 2010). In this context, increased use of managers, labour rationalisation, and high demand for returns saw an important development in the Dutch economy, along with an increase in labour outsourcing.⁶

With the government and unions’ enthusiasm for a reduction in unemployment, firms pushed for more hours-flexibility for their workers. The two historiographies are clear on the effect of business restructuring on employment levels. The changes observed for the Phillips corporation are unequivocal: the firm went from employing 402 000 employees in 1973 (Sluyterman, 2013) to 77 233 in 2022.⁷ This illustrates the shift in priorities from employment to shareholder value between 1970 and the 2000s. Implicit in the writings of Utrecht historians, however, is that no sweeping flexibilisation of the labour market occurred in the Netherlands in that period.

The Utrecht school suggests that social partners agreed with necessary changes to revitalise the private sector in the 1980s (Sluyterman et al., 2015). The Leiden narrative supports the idea that the economic changes in the late 1970s were a strong force pushing not only for business change but also social reform. These policy changes materialised in the 1980s. This sheds light on an aspect ignored in the Utrecht narrative, namely the successful influence of businesses in changing policies within a coordinated system.

Central to the argument of Visser and Hemerijck (1997) is that economic conditions in the 70s hit the Dutch economy violently. Touwen (2008) argues that these conditions forced a paradigm change for the three institutions involved in Dutch industrial relations, expanding the policy solutions that could be agreed upon to fight against the consequences of macroeconomic volatility. As can be

6 Though strong checks and balances on firm boards insulated the Netherlands from the more radical transformations analysed by Weil (2014) in the US.

7 <https://www.awvn.nl/app/uploads/2019/10/GEHEUGEN-VAN-DE-POLDER-HOOFDSTUK-31-BRIEF-VAN-DE-NEGEN>

seen in Figure 4, unemployment spiked in the early 1980s due to the recession of 1979.

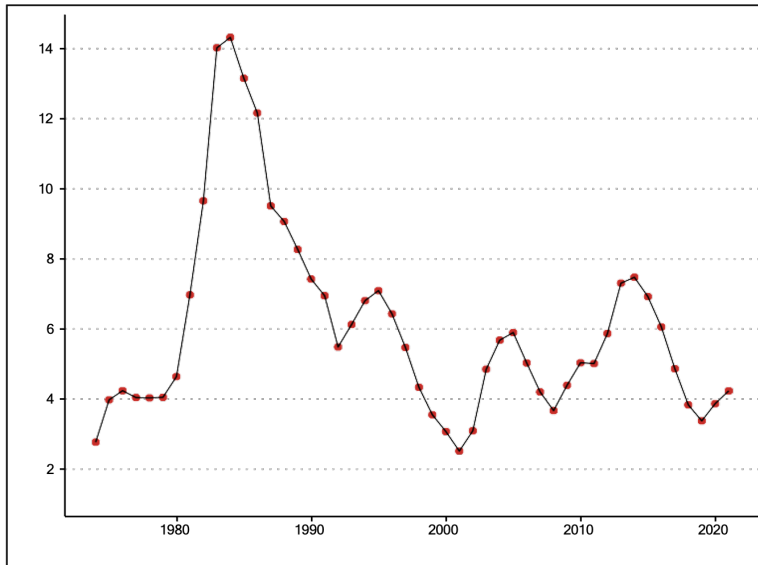


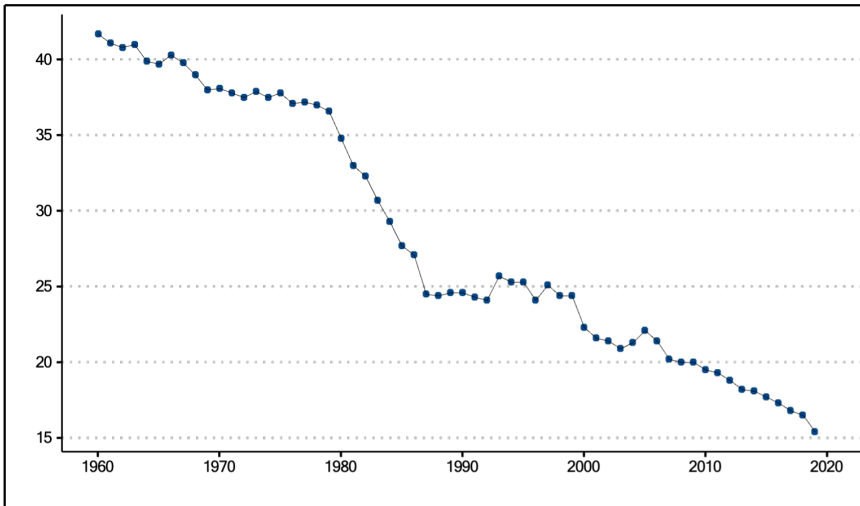
Figure 4: Unemployment as % of unemployed as a fraction of the working population 1973-2022. Data from OECD (2023c).

Solving this persisting issue prompted reform in three related policy areas: labour market reform, welfare spending, and budgetary discipline, in line with the demands of businesses. The 1982 Wassenaar agreements embody the change of policy direction within Dutch industrial relations. These agreements promoted work sharing in the Dutch labour market, whereby it assumed that an increase in part-time work would lead to more employment. Such arrangements had been long refused by unions. Within both historiographies, this agreement between unions and employers is regarded as an important event in that it constituted a real shift in mentality for the government and unions. Both schools of thought differ, however, in their interpretations of how this change crystallised the power relations between unions and employers. An important factor downplayed in the business literature is that these changes took place in a context in which the influence of unions was dwindling (Kösters et al., 2021).

Union membership rates were falling at the time (see Figure 5), and their failure to respond to the spike in unemployment undermined their credibility. Unions therefore accepted to open themselves to work sharing in labour contracts to stimulate employment, also due to the push of numerous women within their staff (Visser et al., 2000). The Wassenaar agreements had the effect of pushing unions to accept more time flexibility in labour contracts, whilst the government favoured a more decentralised system of negotiation and withdrew from intervening in the

wage-setting process.

The historical literature clearly assesses that wage moderation failed to address the issue of unemployment. The Leiden narrative provides, however, more elements to understand subsequent developments in labour market policy. The priority of the government in the mid-80s became job creation through other means, supply-side policies. This led to an important change in attitudes toward other types of flexible contracts such as temp-agency and on-call work (expanding flexibility beyond fixed-hours part-time arrangements).



*Figure 5: Union density trend computed as the proportion of employees who are members of a trade union (NUM) among all employees (WSEE): $(NUM/WSEE)*100$. Data from OECD (2023a)*

Koene and Van Driel (2011) show how temp agencies, who struggled for legitimacy since 1965, rushed into the breach opened by the policy enthusiasm for employment. The government gave up on its monopoly on public employment procurement, and increasingly used temp agencies as a substitute. The legitimization of temp agencies and acceptance of flexible contracts as devices to create employment accelerated the move to flexible work arrangements into the 1990s (Koene and Van Driel, 2011).

Clear differences emerge between the two historiographies. The Leiden narrative shows that successful lobbying from business actors, changing bargaining power dynamics and the fight against unemployment shaped the debate around flexibility from the late-1970s onwards. The Utrecht narrative guards against overhasty conclusions on the timing and of flexibilisation, suggesting it took off after the 1990s.

II.II.ii Labour Economics

The literature on NSLC is related to multiple other phenomena explored by labour economists. The concept of “workplace fissuring” developed by Weil (2014) connects NSLC to various phenomena such as firm organization, domestic outsourcing, subcontracting, and technological change. Bernhardt (2014) adds that the development of flexible work arrangements must also be related to the inclusion of women in the labour force, a major positive change in modern labour markets. Weil documents how firm organisation has changed since the 1970s, by showing that practises such as franchising, supply chain management, and subcontracting led businesses to change the way they organised employment. He argues these changes significantly altered the modern American workplace and links fissuring to the prevalence of low labour standards compliance, low wages, low benefits, and poor working conditions to the increased use of market-mediated work.⁸

On the prevalence and effects of NSLC, Katz and Krueger (2019) show how contracted work and non-standard labour rose between 2005 and 2015. They find that 95% of the net employment growth in the US has been in alternative working arrangements, the contractors being the fastest rising category. They show that workers in alternative work arrangements earn significantly less per week than standard workers despite having higher per-hour wages, indicating that alternative workers are hour-constrained.

In the Dutch context, Goos et al. (2022) find causal evidence that payrolling (i.e. being switched to an alternative contract scheme whilst performing the same work at the original firm) has significant and persisting negative effects on worker outcomes. They find a 6,5% decrease in wages for three years before it recovers to the pre-payrolling level. Pension contributions are reduced by 90% in the first quarter following the move to a payrolling firm. The probability of being employed on a permanent contract and the number of hours worked are also reduced after the move. They also show that improvement in working outcomes for workers is achieved by moving away from payrolling firms, suggesting that within establishment mobility is low.⁹

The development of NSLC is tightly related to the development of domestic outsourcing (Mas and Pallais, 2020).¹⁰ On the effects of domestic outsourcing on workers, Goldschmidt and Schmieder (2017) identify occurrences in which a firm

8 See Le Moigne (2021) for a detailed empirical exploration of the effects of fissuring in France.

9 The specific working arrangement exploited by Goos et al. (2022) is no longer possible since the Dutch government has legislated at the end of 2019 to protect payrolled workers more (*Wet Arbeidsmarkt in Balans*). An evaluation of the effects of the policy would be interesting, but would be difficult to realise given that Covid-19 hit simultaneously.

10 I use the term ‘domestic outsourcing’ to distinguish this phenomenon from offshoring.

outsources part of its services to a subcontractor.¹¹ They find negative wage effects of domestic outsourcing (up until 10% after 10 years, or more depending on the sample definition), but close to no employment effects. By analysing changes in outsourced workers' pay in high-paying establishments, the authors find evidence of assortative matching in the labour market (selection of low-paying firms into outsourcing, and selection of low-wage workers into low-pay firms). Decreased unionisation and collective bargaining are also cited as drivers of inequality in the German labour market. Importantly, the negative wage effects of domestic outsourcing are less clear for high-skilled occupations.

On the firm motivations to outsource labour, Abraham and Taylor (1996) and Goldschmidt and Schmieder (2017) cite four possible factors: more flexibility, the comparative advantage of subcontractors in efficiency, finite management capacity in-firm, and labour cost saving. Both studies find strong evidence that domestic outsourcing is a way to reduce labour costs, thus excluding workers from rent sharing within the firm. Empirically more subcontracting is found in low-skill occupations, along with a significant wage penalty for workers in those sectors.

On the supply side of NSLC, Mas and Pallais (2017) find that certain types of workers (especially women) are willing to give up to 8% of their wage to have some flexible aspects in their job. They find strong evidence, however, that workers have a strong distaste for short-term flexible schedules. Mas and Pallais (2020) also explain that certain workers self-select in certain NSLC because of idiosyncratic preferences. Interestingly they find no evidence that women select into flexible contracts.¹²

Two main lessons emerge from the labour economics literature review. Firstly, NSLC seem to have a polarising effect on the wage distribution. Low-skill workers tend to lose from a switch to a NSLC (wage-wise), whereas high-skill workers can gain from this process. Secondly, the boundaries of the firm clearly matter in wage-setting. For similar work, being employed in or out of a firm seems to have heterogeneous effects on workers. The evidence points to a negative effect incurred by non-standard workers (whether payrolled, subcontracted, or in other arrangements). In line with the predictions of the monopsony model and the above review of the labour economics literature on NSLC, the following hypotheses are tested in the empirical analysis:¹³

H₁: Temporary, on-call, and temp staffer workers incur an earnings penalty

11 A typical example could be that of a firm outsourcing its cafeteria services to a subcontractor, with workers previously working in-firm becoming subcontracted.

12 Though women do select into part-time work (non-flexible), especially in the Netherlands.

13 These hypotheses make the realistic assumption (underpinned by empirical findings) that the effects of monopsony power and the negative wage and fringe benefits effect of NSLC dominate the compensating differential effect theorised by Rosen (1986). See section 4 for further detail.

compared to permanent contracts.

H_2 : Temporary, on-call, temp staffers, freelancers, and independent workers have lower pension benefits than comparable workers with permanent contracts.

H_3 : The earnings and pension penalty of NSLC is stronger for women, citizens with a non-western background, and low-skill workers.

This article offers a similar analysis to that of Katz and Krueger in the European context. It also aims to broaden the analysis to different types of NSLC, in a way extending the work of Goos et al. (2022).

III. Data, models, and methodology

The empirical research is based on two questionnaires administered by Centerdata (2023) to the LISS panel, a true probability sample of the Dutch population ($n = 7500$), using internet interviewing. The sample also covers the population that does not have Internet access, by providing alternatives to online interviewing. The respondents are paid for every interview they complete, these interviews are proposed every month and are conducted face-to-face. Moreover, Centerdata also has strong follow-up procedures to maximise response rates, which are around 80% in most years (Scherpenzeel, 2011).

The LISS respondents are administered eight main surveys every year, from which I merge two. The panel offers detailed information on the level of education, monthly income, yearly pension benefits, work characteristics, ethnic background and importantly, the type of work situation that working individuals are in. Table 1 presents a tabulation of wage summary statistics per contract category. Tables 7 and 6 (both relegated to the appendix) present a tabulation of summary statistics of yearly pension benefits per contract category and a tabulation of a selection of variables in the data.

Table 1: Descriptive statistics of gross monthly income (€) by contract type 2008-2019

Contract type	Obs.	Mean income	Std. Dev.	Median
Permanent	21,503	3,272.234	20,944.0	2,656
Temporary	2,099	2,148.81	3,141.81	1,979
On-call	278	1,066.51	1,048.57	680
Temp-staff	308	1,849.844	1,048.107	1,600
Self-employed	1,372	3,026.57	2,950.08	2,100
Independent	213	4,287.27	3284.77	3,500
Director	120	4,255.48	2,358.44	4,000
Majority shareholder	290	5,101.55	2,703.46	4600

Table 1 shows differences in mean monthly gross wages between contract types. Temporary, on-call, and temp staff workers earn significantly less on average than permanent contracts. Self-employed, independent workers, directors, and shareholders earn more per month than permanent workers. The latter two categories are excluded in the analysis that follows, given the different nature of their work. Table 1 shows that a majority of workers in the panel declare themselves to be on permanent contracts. The temporary and self-employed (freelance) categories also represent an important fraction of the workers in the sample. Table 2 shows the % share of each one of these contract types in the total number of contracts in 2008 and 2019. The summary statistics give suggestive evidence of two trends. Firstly, while the number of permanent contracts as a percentage of the total number of contracts has decreased, the decrease is modest between 2008 and 2019. This suggests that the growth in NSLC likely occurred before 2008 and the great recession.¹⁴

Table 2: Changes in Share of Contract Type and Mean Income (€) in 2008 and 2019

Year	Permanent	Temporary	On-Call	Temp-Staff	Self-Employed	Independent
Share of Contract Type						
2008	81.33 %	7.61%	1.18%	1.26%	5.89%	1.18%
2019	78.51%	10.71%	1.30%	1.36%	5.70%	0.62%
Mean Income by Contract Type						
2008	3024.18	2528.96	647.48	1644.03	2860.20	3829.88
2019	4548.72	2452.65	1345.76	1870.73	3740.40	6410.1

This idea is supported by Figure 1, in which the bulk of the growth in temporary employment contracts occurs before 2008. This implicitly gives some credence to the argument that the foundations of the development of flexible labour lie before the 2010s. Secondly, the difference in mean incomes between the two moments shows that the nominal income growth was strong for permanent, on-call (although the baseline is low), self-employed, and independent workers. Temporary workers see a nominal drop in income in this period. These differences suggest that there is an earnings gap between these categories, which may be due (among other factors) to the type of labour contract of the workers.

The summary statistics do not perfectly coincide with the statistics of CBS on flexible work. This could indicate that the LISS data underestimates the number

¹⁴ Mas and Pallais (2020) note that the share of different contract types has remained relatively stable in the past 20 years in the US. This seems to be broadly similar in the Netherlands in the past 10 year.

of flexible workers in the labour market.¹⁵ There are two possible reasons for this mismatch. Firstly, the methodology defining different contract types is different in the LISS panel and in CSB data. This seems to be a source of difference, given that other statistics such as gender and education are similar in both data sources. Summary statistics presented in Burri et al. (2018) are very close to those in the LISS panel, confirming the idea that methodological differences are the source of this discrepancy. Secondly, misreporting of contractual situations may be an issue in the LISS data. Given the complexity of contractual arrangements, some workers may misreport their current situation in the data.

The econometric analysis is based on two panel regression models, one with monthly gross income as the dependent variable and the other with yearly gross pension benefits at the age of 65 as the dependent variable. The panel data enables the use of individual fixed effects to control for time-invariant individual characteristics. The final wage model estimated is:

$$\ln(\text{Wit}) = \beta_0 + \beta_1 \cdot \text{Citit} + \beta_2 \cdot \text{Eduit} + \beta_3 \cdot \text{Ageit} + \beta_4 \cdot \text{Ageit}_t^2 + \beta_6 \cdot \text{Secit} + \beta_7 \cdot \text{Tenit} + \beta_8 \cdot \text{Hoursit} + \lambda_t + \alpha_i + \epsilon_{it} \quad (1)$$

The model is an “augmented” Mincer model with contract types, similar to that used in Katz and Krueger (2019), with the dependent variable being the log of monthly gross wages. C_{it} is a vector of dummies of different contract types, I exclude directors and majority shareholders from the sample.¹⁶ $Educ_{it}$ is a vector of educational dummies, each corresponding to a level of educational level in the Dutch system, as in the CBS classification. Age_{it} and $AgeSq$ replicate the quadratic earnings function shape commonly found in Mincer models. Sec_{it} is a set of sectoral dummies, that follow the CBS classification. Ten_{it} and $Hours_{it}$ represent job tenure (in years) and the hours worked, respectively. λ_t captures time fixed effects, and α_i individual fixed effects. ϵ_{it} is the error term. In other words, it measures the mean difference in wages for workers with different contracts but with the same gender, educational background, or sector.

Year fixed-effects can be added on top of these control variables. They absorb the unobserved time-varying factors affecting wages for all individuals in the dataset, such as changing macroeconomic conditions. The final specification, with individual fixed effects, measures the wage effect of contract types differently. By having both year fixed effects and individual fixed effects, the estimator captures the within-individual change in income associated with a change in contract type, controlling for other time-unvarying characteristics, and then averages them out over the sample. This latter model is a robust, though not causal, way of estimating

¹⁵ See <https://opendata.cbs.nl/#/CBS/nl/dataset/85278NED/table?dl=6F03C> for comparison.

¹⁶ The categories are: permanent, temporary, on-call, temp staffers, self-employed, freelancer, director, and majority shareholder.

the wage effect of contract types, though some of its drawbacks are discussed in section 4.

To refine the analysis, I build on model 1 by adding interaction terms (not included in the equation) between contract type dummies and gender, contract dummies and skill level, contract dummies and sub- median income, and contracts with non-western background. This enables finding out whether different contract types have heterogeneous effects for women, low-skill workers, lower-income workers and workers with non-western origins.

The model estimating the effect of contract types on pension benefits is constructed with a similar method to the wage model. Its final specification is:

$$P_{it} = \beta_0 + \beta_1 \cdot Cit_{it} + \beta_3 \cdot Age_{it} + \beta_4 \cdot Age_{it}^2 + \beta_5 \cdot Edu_{it} + \beta_6 \cdot Sec_{it} + \lambda t + \alpha_i + \epsilon_{it} \quad (2)$$

The starting model is slightly different from the baseline wage model. It measures the mean difference in pension benefits between NSLC and permanent contracts controlling for years of contribution. The mean age difference between contracts explains the inclusion of age as a control, as older workers (with more years of contribution) tend to be more often in permanent contracts. The subsequent models add control variables, and the last specification combines year and individual fixed effects. As can be seen in Table 6 in the appendix, the number of observations for the pension benefits variable is considerably lower than for wages. The lower quality of the data on pensions is considered in the interpretation of the results.

For all models and specifications, standard errors are clustered at the individual level. Robustness checks are provided in the appendix. In the robustness checks, outlier observations are dropped and the models are re-run with slightly different specifications.

IV. Analysis

IV.I Econometric results

IV.I.i Wage model

Tables 3 and 4 contain the main results of the econometric analysis. The main dependent variable in table 3 (gross monthly income) is presented in logs, its interpretation can closely approximate differences in percentages. Each column in the tables presents the coefficients of the covariates in a given model. The first specification includes all working respondents in the sample. In total, 5,981 individuals were observed between 2008 and 2019. I truncate the data in 2019 to avoid biasing the results with the effects of the Covid-19 lockdown in 2020.

The naive model in column (1) shows the mean difference in wages associated with a switch from a permanent contract (the baseline) to a given alternative contract. The difference associated with a switch to a temporary contract is a -12.9%

lower wage, and -70.9% for on-call workers. Workers switching to a temp staff contract present a -11.6% lower wage than permanent workers. The three mean differences are all statistically significant at conventional significance levels. The same differences in means are statistically insignificant at conventional levels for freelancers and independent workers.

This naive model does not consider that workers in each contract type may be characterised by different ability levels, educational attainment, skills, or age, all of which are positively correlated to earnings. Some contract types may have an over-representation of women who are known to earn on average less than men.

Table 3: Regressions on log income

	Naive (1)	Mincer (2)	M-YFE (3)	2WFE (4)	2WFE-H (5)
Temporary	-0.129*** (0.0194)	-0.0692*** (0.0154)	-0.0659*** (0.0152)	-0.0436*** (0.0160)	-0.0494*** (0.0140)
On-call	-0.709*** (0.101)	-0.471*** (0.0692)	-0.440*** (0.0694)	-0.390*** (0.0766)	-0.201*** (0.0719)
Tem. staff	-0.116** (0.0588)	-0.0623 (0.0408)	-0.0771* (0.0404)	-0.0331 (0.0435)	-0.0204 (0.0382)
Freelancer	-0.0476 (0.0565)	-0.101** (0.0515)	-0.0975* (0.0514)	-0.0539 (0.0631)	-0.0352 (0.0601)
Indep.	-0.112 (0.111)	-0.201** (0.0953)	-0.187* (0.0992)	-0.206 (0.130)	-0.229* (0.123)
Age		0.0967*** (0.00637)	0.0916*** (0.00613)	0.120*** (0.00865)	0.0821*** (0.00733)
AgeSq		-0.000908*** (7.85e-05)	-0.000858*** (7.57e-05)	-0.000907*** (6.48e-05)	-0.000643*** (5.48e-05)
Gender		-0.461*** (0.0157)	-0.429*** (0.0178)		
Hours					0.0116*** (0.000782)
Constant	7.706*** (0.0109)	5.154*** (0.155)	5.194*** (0.152)	4.028*** (0.281)	5.073*** (0.270)
Obs	24,153	24,121	23,780	23,780	21,802
R ² (with.)	0.032	0.275	0.287	0.292	0.328
Number of <u>id</u>	5,981	5,973	5,856	5,856	5,692
Educ		✓	✓	✓	✓
Year fe			✓	✓	✓
Sector			✓	✓	✓
Individual fe				✓	✓

Clustered (individual level) standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Regression results on log monthly gross income. Each column reports the results of a model. I do not report all of the included covariates' coefficients. A✓ denotes the presence of the corresponding control. The suffix _d indicates that the control is coded as a dummy.

The Mincer model in column (2) partially accounts for these factors by including some control variables. This model reports the Generalised Least Squares (GLS) random effects coefficients for a Mincer model with controls for contract types, age, age squared, and a gender dummy. The GLS model computes the (log) difference in mean income by contract type, holding the above-listed control variables constant. The absolute value of the coefficient on the temporary dummy

shrinks substantially to a difference of -6.9%. The same occurs with the on-call dummy coefficient which is reduced to -47.1%. This indicates that the Naive model (1) overestimates the earnings difference between permanent and these two contract types. Statistical significance is lost for the temp staff dummy but gained for the freelance and independent dummies which respectively show a difference of 10.1% and 20.1% with the baseline of permanent contracts.

The M-YFE model (3) adds year fixed-effects and sectoral controls on top of the Mincer model. These additions slightly reduce the sample size as the sectoral variable is at times inconsistently coded in the data. The coefficient for temporary workers is -6.59% and -44.0% for on-call workers. The absolute value of the coefficients in the YFE-M model is slightly lower than in the Mincer model, showing that part of the variation in wages could be accounted for by across-year and sectoral differences. The slightly higher R^2 substantiates that claim. It must be noted that I omit the ethnicity control variable in both models, as the variable is inconsistently coded and leads to a large loss in observations when included, which could bias the results. In the robustness checks, the same regression is run with the ethnicity variable in Table 8 in the appendix, with relatively small differences in the results.

The two-way fixed effects (2WFE) specification in column (4) adds individual fixed effects to the previous specification. As mentioned in section 3, individual fixed-effects absorb all the time-invariant individual variation. 2WFE specifications estimate the mean individual change associated with a contract switch controlling for several characteristics. The 2WFE estimator reduces the size of the coefficients on both temporary and on-call dummies. This is in line with the expectation that certain individual characteristics that may have previously biased results upwards can be absorbed by the individual fixed effects (thereby reducing the absolute value of the coefficients). Both coefficients remain highly significant, with a wage penalty associated with a switch from permanent to temporary contracts of -4.36%, and a -39.0% associated with a switch to on-call.

Katz and Krueger (2019) find that NSLC workers in the US are subject to an earnings penalty whilst being “hours constrained”, an interesting claim to test in the Dutch case. The 2WFE-H (5) includes this factor by controlling for the number of hours worked, with the addition of job tenure (this latter coefficient is not reported, as it is small and insignificant). The inclusion of the hours control on the two-way fixed-effects estimator slightly raises the coefficient of the temporary dummy, but it almost halves the coefficient for on-call workers, for which I find a -20.1% wage penalty after controlling for hours worked. This means that about half of the wage difference compared to permanent contracts is explained by the fact that on-call workers work fewer hours, suggesting they are hours constrained. Nevertheless, even controlling for hours worked, on-call workers face a large wage

penalty compared to permanent workers. The fact that the wage penalty associated with a switch to a temporary contract slightly increases suggests that the temporary workers are not hours-constrained, indicating heterogeneous causes of wage differences among NSLCs.

The regression results suggest that H_t is mostly substantiated by the data. I find a wage penalty for temporary and on-call workers, even when controlling for hours worked in a 2WFE specification. I do not, however, find any statistical evidence of a wage penalty for temp staffers. Importantly, controlling for hours worked reduces the wage penalty for on-call workers, though the gap remains considerable. The results indicate that there is no statistically significant wage effect for temp staffers compared to permanent workers.

IV.I.ii Pensions model

Table 4 contains the results of the regression of NSLC on the level of pension benefits at age 65. The dependent variable is presented in logs and approximates percentage differences. The number of observations for the pension regressions is much lower than for the wage regressions. The potential non-response bias in the sample encourages caution in the interpretation of the results. The baseline specification in column (1), which includes the number of years of contribution, suggests a statistically significant and large pension benefit penalty associated with a switch to temporary (-77.5%) and on-call contracts (-146.2%). Surprisingly, no effect is found for temp staffers, freelancers, or independent workers. The basic model (2) adds year fixed-effects, gender, age squared and age controls. For this specification, the pension penalty associated with a switch to temporary contracts is reduced to -62.7%. For a switch to on-call contracts, the difference is -102.2%. The additional controls show that the baseline model overestimates the pension benefit penalty for both contracts.

The full model (3) adds sectoral and educational controls, which could bias the coefficient upwards as more skilled individuals and certain sector dummies may be correlated with higher pension benefits. This specification estimates a -63.5% pension benefits penalty for temporary workers, and a -79.6% penalty for on-call workers, which is a reduced coefficient compared to the basic specification. The 2WFE-P (4) adds individual fixed effects to lead to a 2WFE estimator for pensions. Statistical significance is lost on both coefficients. This result could be due to different factors. A possibility is that individually unobserved confounders bias the results. More likely in this case is that the significantly lower number of observations for the pension survey questions may impair a 2WFE estimator.

Table 4: Regression on log yearly gross pension benefits at age 65

	Baseline (1)	Basic (2)	Full (3)	2WFE-P (4)
Years contrib.	0.0506*** (0.00329)	0.0535*** (0.00422)	0.0517*** (0.00429)	0.0508*** (0.00744)
Temporary	-0.775*** (0.148)	-0.627*** (0.145)	-0.635*** (0.144)	-0.314 (0.210)
On-call	-1.462*** (0.364)	-1.022*** (0.342)	-0.796** (0.323)	-0.625* (0.370)
Temp staf.	-0.362 (0.308)	-0.213 (0.320)	-0.166 (0.307)	0.120 (0.543)
Freelancer	0.0883 (0.192)	0.180 (0.192)	0.127 (0.189)	0.441 (0.443)
Indep.	-0.403 (0.348)	-0.275 (0.353)	-0.366 (0.352)	-1.041* (0.628)
Age		0.199*** (0.0257)	0.201*** (0.0254)	0.00104 (0.162)
AgeSq		-0.00230*** (0.000281)	-0.00224*** (0.000276)	-0.00123** (0.000570)
Gender		-0.746*** (0.0728)	-0.545*** (0.0760)	
Constant	7.203*** (0.0659)	3.601*** (0.579)	2.632*** (0.625)	9.924 (6.778)
Obs.	7,635	7,635	7,624	7,624
R ²	0.0215	0.0276	0.0288	0.0356
Number of <u>id</u>	2,911	2,911	2,906	2,906
Year fe		✓	✓	✓
Educ_d			✓	✓
Sector_d			✓	✓
Individual fe				✓

Clustered (individual level) standard errors in parentheses
*** p<0.01, ** p<0.05, * p<0.1

Table reading key: Each column reports the results of a model regression on log pension benefits at age 65. I do not report all of the included covariates' coefficients. ✓ denotes the presence of the corresponding control

This is especially likely if the number of contract switches for the sub-sample of respondents who respond to the pension questions is lower, which is the case here. This inflates standard errors, thereby foreclosing any significant interpretation. Given the drawbacks of the 2WFE specification, the results of the full model (3) are used to discuss the effects of heterogeneous contract types on pension benefits. The large pension benefits penalty associated with temporary contracts and on-call contracts compared to permanent contracts provides suggestive evidence that temporary and on-call workers are also penalised on their side benefits, which is in line with the findings of Goos et al. (2022).

Referring back to H_2 , the hypothesis can only partly be confirmed, although the absence of pension effect for freelancers is likely due to the different types of pension schemes used by these workers. These workers are more likely to rely on capital goods to secure their pensions than to use traditional pension schemes. The results for pension benefits should be taken with a grain of salt due to the possible non-response biases in the data.

IV.I.iii Interactions

Table 5: Interactions - 2WFE-H specification on log income

	*Gender (1)	*Non-Western (2)	*Low-skill (3)	*Low-inc (4)	*Young (5)
Temporary	-0.0417* (0.0224)	-0.0556*** (0.0150)	-0.00762 (0.0189)	0.0209 (0.0162)	-0.0503* (0.0271)
Temp*	-0.0214 (0.0289)	0.0174 (0.0343)	-0.0988*** (0.0287)	-0.102*** (0.0228)	-0.00500 (0.0310)
On-call	-0.242** (0.118)	-0.325*** (0.0818)	-0.303** (0.129)	0.00456 (0.0638)	-0.172*** (0.0574)
On-call*	-0.125 (0.156)	0.139 (0.0912)	-0.0305 (0.160)	-0.378*** (0.100)	-0.221** (0.108)
Temp staff.	-0.0230 (0.0385)	-0.0557 (0.0384)	-0.0275 (0.0790)	-0.0287 (0.0457)	-0.131** (0.0529)
Temp staff*	-0.0485 (0.0732)	0.184 (0.121)	-0.0448 (0.0869)	0.00436 (0.0608)	0.141** (0.0683)
Freel.	-0.0709 (0.101)	-0.0506 (0.0617)	-0.0776 (0.0671)	-0.164*** (0.0632)	-0.110 (0.0678)
Freel.*	0.0593 (0.124)	0.205 (0.153)	0.119 (0.129)	-0.347*** (0.0655)	0.129* (0.0686)
Indep.	-0.225 (0.183)	-0.225* (0.134)	-0.204 (0.153)	-1.05e-05 (0.102)	-0.242 (0.148)
Indep*	0.00361 (0.252)	0.0878 (0.148)	-0.0896 (0.278)	-0.496*** (0.190)	0.0613 (0.299)
Constant	4.792*** (0.288)	4.866*** (0.286)	4.896*** (0.284)	5.459*** (0.281)	4.842*** (0.289)
Observations	23,373	23,373	23,373	23,373	23,373
R ²	0.284	0.284	0.287	0.375	0.288
Number of <u>id</u>	5,749	5,749	5,749	5,749	5,749
Educ_d	✓	✓	✓	✓	✓
Year fe	✓	✓	✓	✓	✓
Sector_d	✓	✓	✓	✓	✓
Individual fe	✓	✓	✓	✓	✓

Clustered (individual level) standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Table reading key: Each column reports the results of a model regression on log monthly income. I do not report all the included covariates' coefficients. A✓ denotes the presence of such control. The suffix _d signifies that the controls are coded as dummies.

The regression results can be refined by verifying whether contract effects play out differently for different groups. This can be implemented by including interaction terms in the model specification. Table 5 shows the results of the regression of log income on the 2WFE-H specification with added interactions with gender, ethnicity (coded as a dummy for respondents with a non-western background), low-skill (as respondents with a degree classified as lower than HBO), low income (respondents under the median income), and young (aged lower than the sample median). Each column of the table reports the coefficients of the contract covariates along with the coefficients of the interactions between the contract covariates and the corresponding interacted variable. The coefficients of the interacted variables are omitted, as they are not of direct importance for the analysis.

The gender interaction model in column (1), estimating whether heterogeneous contracts have a stronger negative effect on women, yields no statistically significant results. The same occurs for the non-western (2) and low-skill interactions (3), which show no additional effect for these groups of workers. This is at

odds with H_3 .

The interactions with low-income (dummy for individuals under the mean sample income, in column (4)) and youth (under median age, column (5)) yield interesting results. The coefficient for temporary contracts in the low-income model becomes insignificant, whilst the interaction of the temporary dummy with low-income becomes highly significant. The wage penalty associated with a switch from permanent to temporary contract is insignificant at the mean but large (-10.2%) for lower-income workers. The same phenomenon is observed for on-call workers. The coefficient at the mean becomes insignificant, and the wage penalty for low-income on-call contracts grows to -37.8%. The low-income interaction model also shows that a switch from permanent work to freelance work is associated with a 16.4% wage premium at the mean, but low-income freelancers face the opposite effect, with a final wage penalty of -18.3%. This suggests large heterogeneity of the effects of NSLC along the wage distribution, the implications of which are discussed in the analysis.

The youth interaction specification also yields the only statistically significant result for temp staffers in the analysis. The specification with the youth interaction shows a wage penalty associated with a switch from permanent to temp staffer, though this effect is counterbalanced by a wage premium for young workers. The corresponding overall change is a 1% increase in wages. In the case of on-call workers, the additional wage penalty for young workers is -39.3%. These two results are likely to capture the work situations of students or young unskilled workers. The large difference in wage outcomes between on-call and independent contracts compared to permanent positions is compelling and gives weight to the idea that contract types are significant in shaping worker outcomes.

The results are robust to different model specifications and changes in sample size. Table 8 in the appendix reports the results of these models. In the checks, ethnicity control is included (it is miscoded in the data) with few changes in the results. I also try controlling for different professional activities, both in one-way and two-way fixed effect specifications, with unchanged results. Restricting the sample size by eliminating outlier observations does not affect the results.

IV.II Discussion

The results of the previous section can be summarised as follows. A wage penalty is associated with a switch from permanent to temporary contracts (controlling for hours worked) of -4.94%. A large wage penalty is found for switches to an on-call contract even controlling after hours worked (-20.1%). Looking into the effect of heterogeneous contract types on pension benefits, suggestive evidence is found of a large pension benefits penalty for both on-call and temporary contracts (respectively of -63.5% and -79.6%) compared to the benefits for permanent con-

tracts, though caution should be exercised when interpreting these results due to potential data biases.

Lower-income and younger workers are subject to the worst of the negative wage effects, experiencing a larger wage penalty compared to higher-income workers. The interaction terms also reveal that lower-income permanent workers experience a wage penalty of -18.4% when switching from permanent to freelance contracts and a -49.6% wage penalty when switching to an independent contract. I do not find any evidence of pension effects for independent and freelance contracts.

These estimates, although informative, present drawbacks. Although 2WFE allows controlling for certain individual characteristics that affect a worker's productivity, these estimates may suffer from selection bias, and are therefore not causal. In particular, less performing workers may be more likely to be moved to a NSLC than very capable workers.

Selection may therefore bias these results upwards, as I may be capturing contract switches of less productive workers, on characteristics that cannot be accounted for by fixed effects. The relatively low number of respondents to the pensions-related questions impedes a meaningful interpretation of a 2WFE model for pension benefits. Moreover, the potential non-response bias in the data encourages prudence in the interpretation of the results on pensions. Nevertheless, the findings seem to be in line with what previous studies have found in the Dutch context with more sophisticated causal identification strategies (see Goos et al. (2022) and Zijl (2006)).

IV.II.i Economic implications

The following section discusses the econometric findings on temporary contracts in relation to the theory and existing empirical research. Theoretical models of wage differentials and empirical evidence give different predictions on how temporary contracts might affect wages and pensions. An economic theory of compensating differentials, such as found in Rosen (1986), suggests that NSLC would present a wage premium due to the extra demands posed on workers in terms of flexibility. Albanese and Gallo (2020) find empirical evidence of a wage premium for workers in temporary contracts (especially for low-skill jobs) in line with this theory. Their result is in stark contrast with numerous other empirical studies, which almost unanimously find a negative wage effect for temporary contracts.

Existing literature suggests that other factors such as firm boundaries, monopsony power, bargaining power, and historical norms are key for wage-setting outcomes and point to a wage and pensions penalty for NSLC. The empirical findings of this study clearly contradict the predictions of Rosen's (1986) model. Overhasty conclusions on the societal effects of temporary contracts are, however,

unwarranted. In the Dutch case, Zijl (2006) finds evidence that temporary contracts often work as a stepping stone to a permanent contract, suggesting that temporary contracts are used as a screening device by employers. Employees may in turn be willing to accept a lower starting wage, expecting to receive a permanent contract later-on.

The results suggest that temporary workers incur a significant pension penalty compared to permanent workers, an effect that Albanese and Gallo (2020) ignore in their study. This finding shows that employers are able to reduce labour costs by cutting into fringe benefits, whilst keeping relatively high wages. Whereas this analysis does not settle the debate on temporary contracts, the results suggest that fringe benefits are an important consideration when assessing the welfare effects of these contracts.

An interesting result of the econometric analysis is the large wage penalty found after controlling for ours worked for on-call workers. This is penalty compounded by the hours constraint, and is borne mainly by younger and low-income workers. The wage penalty combined with the pension penalty suggests that on-call contracts provide worse working compensation than permanent contracts. These results are novel and contribute to bridging the gap in knowledge signalled by Burri et al. (2018) on the social consequences of on-call work in the Netherlands. It is possible that part of the contract effect captures the situation of relatively well-off students in higher education, with a less important effect on inequality. Nevertheless, these results raise concerns for all workers that involuntarily have on-call contracts. Indeed, the results also show that older workers on on-call contracts face a large wage and pension benefits penalty. The concerns raised by Burri et al. (2018) on involuntary on-call work are therefore valid.

Regarding freelance and independent work, the wage penalty borne by lower-income workers suggests a polarising effect of these two types of contracts in the labour market. Better-off workers tend to gain from switching to these kinds of contracts, although lower-income lose out in such a move. The wage effect is slightly different for freelance and independent contractors. Higher-income freelancers experience a wage gain by switching contracts, whilst no evidence is found of a wage premium for higher-income independent workers. Interestingly, no pension benefits effect is found for these two contracts. The most likely explanation for this finding is that these workers rely on selling capital goods accumulated through business activities to secure an income for their pension. For temp staffers, the results show a wage premium for young workers and a wage penalty for older workers, a pattern at odds with other contracts.

Overall, the story painted by the empirical analysis is that NSLC have a detrimental effect on wages and pension benefits, with heterogeneity among contract types. These results nuance the conclusions of earlier studies positively assessing

the welfare effects of NSLC in the Netherlands, such as Gielen and Schils (2014) or Remery et al. (1999). It appears that certain NSLC provide less favourable working compensation, especially at the lower end of the earnings and age distribution (the only exception being temp staffers).

The results are related to the predictions of the monopsony model. The empirical analysis shows stronger adverse wage effects on young and low-income workers but does not show evidence of worse wage outcomes for women, non-western workers, and less skilled workers.²⁶ These results are suggestive of a link between NSLC and monopsony, though the lack of evidence of a larger wage penalty for women and individuals with a non-western background speaks against the monopsony hypothesis.

This result may be due to the type of data and the unit of analysis used here. Although the results do not give enough evidence to corroborate the presence of monopsony power across sectors, the link between the development of NSLC and monopsony power should not be dismissed. In particular, the present analysis is cross-sectoral and may fail to capture monopsony power, which tends to be observed in certain sectors more than others. The results of this analysis and the link to monopsony power posited here are, however, in line with recent studies such as Goos et al. (2022) and Goldschmidt and Schmieder (2017), suggesting that work arrangements requiring time flexibility and excluding workers from the boundary of the firm have adverse effects on labour retribution. These studies also provide strong evidence suggesting that certain NSLC significantly erode workers' bargaining power, especially if these are excluded from rent-sharing.

The present analysis suggests that when evaluating NSLC it is imperative to reckon with the large diversity of existing working arrangements. Whereas some forms of NSLC may have positive effects on skill-matching and benign effects on employment, other forms of work implying very high flexibility and exclusion of firm rents are problematic. In particular, the results found for on-call workers are worthy of policy attention.

IV.II.ii Some historical lessons

Labour history's perspective suggests that the fight against unemployment and the changing bargaining power dynamics in Dutch industrial relations were major factors in the development of flexible contracts. Touwen (2014b) argues that the Netherlands went through a process of "compartmentalised liberalization" in the struggle against unemployment in the 1980s. High unemployment and financial stress in firms, giving the upper hand to businesses in negotiations, can be linked to the development of flexible work.

Low union coverage, high unemployment and the quest for competitiveness in a global economy likely eroded the influence of unions, damaging the institu-

tional complementarities that characterised the pre-1980s status quo in Dutch industrial relations. Nevertheless, as discussed by Sluyterman et al. (2015), whether the choices to favour a flexible labour market were a pragmatic adjustment to the needs of certain groups in society or “ruthless neoliberal reforms” (p.1) remains a matter of debate among historians.

The rise of NSLC must also be related to the rise of women’s participation in the labour force. Visser et al. (2000) discuss the importance of women (who composed large parts of unions’ staff) who pushed for more part-time and flexible work in the 1980s to be able to work alongside family responsibilities. Labour market flexibilisation must be viewed in relation to the evolution of the family structure, thus reminding us of the importance of political structures in the formation of labour market outcomes.

The business history case studies show that around the late 70s into the 1980s, large Dutch firms proceeded to change their structure to favour a ‘leaner’ model, relying more on market-mediated work, whilst keeping core activities in-house. Historical studies suggest that these changes happened due to genuine financial distress in the 1970s, increased shareholder power, as well as influence from American business consultants. Restructuring led to a reduction in total in-house employment. Whether these historical changes encouraged the adoption of flexible contracts is unclear. Further business history research could delve into the employment behaviour of non-core branches of large Dutch corporations to improve our understanding of the drivers of labour market flexibilisation within firms.

This suggests a link between firm structure, technology, and labour force organisation, with effects on worker outcomes. Future research at the frontier of history and economics could delve into the role that technology likely played in shaping the structure of modern businesses and how labour was governed between the 1980s and 2000, a perspective that this article did not cover.

IV. Conclusion

This article presents an economic and historical framework to analyse changes in employment conditions in the Netherlands since the 1970s. The historical perspective shows that flexibilisation emerged from a coordinated system of industrial relations, with a multitude of factors affecting attitudes towards flexibility in firms, government, and unions. The timing and scope of flexibilisation are a matter of debate among historians, though. The transaction costs economics perspective suggests that technology may have been a catalyst of change towards NSLC, a factor somewhat overlooked in the historical literature. Recent economic research underpins this argument, which could be promising for further research.

The empirical analysis identifies (non causally) the effects associated of NSLC on wages and pension benefits using two two-way fixed effect models. I test if these

contracts have differential effects on certain groups of workers. The findings show a wage penalty associated with a switch from a permanent to a temporary or an on-call contract, even when controlling for hours worked. The evidence suggests that this latter group is hours-constrained. Suggestive evidence is found of a large pension penalty associated with both temporary and on-call contracts compared to permanent contracts. The interaction terms reveal wage penalties associated with a switch to freelance or independent work for lower-income workers. No pension effect is found for temp staffers, freelancers and independent workers. The results on on-call contracts are novel and contribute to the existing knowledge gap on the societal effects of this type of work.

The econometric results are discussed vis-à-vis the monopsony model and the current literature in labour economics. The differential effects found for young and low-income workers suggest that the monopsony model is relevant to analyse the causes and effects of NSLC. The results for on-call workers, as well as for young and low-income freelancers, point to worse working retribution associated with these contracts. A more fleshed-out analysis (or causal) of the interplay between monopsony power and NSLC could refine and strengthen the results of this analysis.

Thinking about NSLC requires reckoning with the large diversity of working arrangements in modern labour markets. Whereas certain arrangements seem warranted to provide for the needs of certain businesses in terms of skills and time flexibility, other contract types seem to exclude workers from rent sharing. In particular, the results on on-call work question the desirability of such an arrangement for regular workers (excluding students). Efforts to enforce the recent policy advances in the *Wet Arbeidsmarkt in Balans* through the strategic use of labour law enforcement and a continuation of the recently observed rise in union membership rates among younger workers can go some way in bridging the working conditions gap prevalent among different contract types.

Bibliography

- Abraham, K., Haltiwanger, J., Sandusky, K., & Spletzer, J. (2017). Measuring the gig economy: Current knowledge and open issues. *Measuring and Accounting for Innovation in the 21st Century*.
- Abraham, K., & Taylor, S. (1996). Firms' use of outside contractors: Theory and evidence. *Journal of labor economics*, 14 (3), 394–424.
- Albanese, A., & Gallo, G. (2020). Buy flexible, pay more: The role of temporary contracts on wage inequality. *Labour Economics*, 64, 101814.
- Angrist, J. D., & Pischke, J.-S. (2009). *Mostly harmless econometrics: An empiricist's companion*. Princeton University Press.
- Araki, S., Bassanini, A., Green, A., & Marcolin, L. (2022). Monopsony and concentration in the labour market.
- Ashenfelter, O. C., Card, D., Farber, H. S., & Ransom, M. (2021). *Monopsony in the labor market: New empirical results and new public policies* (tech. rep.). National Bureau of Economic Research.
- Autor, D., Dorn, D., Katz, L. F., Patterson, C., & Van Reenen, J. (2020). The fall of the labor share and the rise of superstar firms. *The Quarterly Journal of Economics*, 135 (2), 645–709.
- Bergeaud, A., Mazet-Sonilhac, C., Malgouyres, C., & Signorelli, S. (2021). Technological change and domestic outsourcing.
- Berlinski, S. (2008). Wages and contracting out: Does the law of one price hold? *British Journal of Industrial Relations*, 46 (1), 59–75.
- Bernhardt, A. (2014). Labor standards and the reorganization of work: Gaps in data and research. *IRLE Working Paper No. 100-14*. <http://irle.berkeley.edu/workingpapers/106-14.pdf>
- Borjas, G. J., & Van Ours, J. C. (2010). *Labor economics*. McGraw-Hill/Irwin Boston.
- Burri, S., Heeger-Hertter, S., Rossetti, S., et al. (2018). *On-call work in the Netherlands: Trends, impact and policy solutions*. International Labour Office.

- Card, D. (2022). Who set your wage? *American Economic Review*, 112 (4), 1075–90. <https://doi.org/10.1257/aer.112.4.1075>
- Card, D., Heining, J., & Kline, P. (2013). Workplace heterogeneity and the rise of West German wage inequality. *The Quarterly Journal of Economics*, 128 (3), 967–1015.
- Centerdata. (2023). *Work and schooling longitudinal survey* (data) [<https://doi.org/10.17026/dans-x26-tttv>]. Centerdata.
- Chandler, A. D. (1992). Organizational capabilities and the economic history of the industrial enterprise. *Journal of economic perspectives*, 6 (3), 79–100.
- Coase, R. H. (1937). The nature of the firm. *Economica*, 4 (16), 386–405. <https://doi.org/https://doi-org.proxy.library.uu.nl/10.1111/j.1468-0335.1937.tb00002.x>
- De Jong, A., Röell, A., & Westerhuis, G. (2010). Changing national business systems: Corporate governance and financing in the Netherlands, 1945–2005. *Business History Review*, 84 (4), 773–798.
- De Jong, A., Sluyterman, K., & Westerhuis, G. (2011). Strategic and structural responses to international dynamics in the open Dutch economy, 1963–2003. *Business History*, 53 (1), 63–84.
- Gielen, A. C., & Schils, T. (2014). *Non-standard employment patterns in the Netherlands* (tech. rep.). IZA Policy Paper.
- Goldschmidt, D., & Schmieder, J. F. (2017). The rise of domestic outsourcing and the evolution of the German wage structure. *The Quarterly Journal of Economics*, 132 (3), 1165–1217.
- Goos, M., Manning, A., Salomons, A., Scheer, B., & van den Berge, W. (2022). Alternative work arrangements and worker outcomes: Evidence from payrolling.
- Granovetter, M. (1973). The strength of weak ties. *American Journal of Sociology*, 78 (6), 1360–1380.
- Granovetter, M. (1985). Economic action and social structure: The problem of

- embeddedness. *American Journal of Sociology*, 91 (3), 481–510.
- Granovetter, M. (2005). The impact of social structure on economic outcomes. *Journal of Economic Perspectives*, 19 (1), 33–50. <https://doi.org/10.1257/0895330053147958>
- Greiner, P. (2008). Mozart et l'archevêque de salzbourg: Les voies d'une incompréhension. *Transversalités*, (3), 125–140.
- Hart, O. (1989). Economist's perspective on the theory of the firm, an. *Colum. L. Rev.*, 89, 1757.
- Hart, O. (2008). Economica coase lecture: Reference points and the theory of the firm. *Economica*, 75 (299), 404–411.
- Hikino, T., & Chandler, A. D. (2009). *Scale and scope: The dynamics of industrial capitalism*. Harvard University Press.
- Holmstrom, B., & Roberts, J. (1998). The boundaries of the firm revisited. *Journal of Economic Perspectives*, 12 (4), 73–94. <https://doi.org/10.1257/jep.12.4.73>
- Kahneman, D., Knetsch, J. L., & Thaler, R. (1986). Fairness as a constraint on profit seeking: Entitlements in the market. *The American Economic Review*, 728–741.
- Kalleberg, A. L. (2000). Nonstandard employment relations: Part-time, temporary and contract work. *Annual Review of Sociology*, 26 (1), 341–365.
- Katz, L. F., & Krueger, A. B. (2019). The rise and nature of alternative work arrangements in the united states, 1995–2015. *ILR review*, 72 (2), 382–416.
- Koene, B., & Van Driel, H. (2011). The rhetoric of restraint: The struggle for legitimacy of the dutch temporary work agency industry, 1961–1996. *Enterprise & Society*, 12 (3), 562–600.
- Kösters, R., Van Diepen, L., Van Dijk, M., Van Rossum, M., et al. (2021). Fle land in wording.: De reactie en strategie van de vakbeweging ten aanzien van flexibilisering in nederland in de jaren tachtig. *TSEG-The Low Countries Journal of Social and Economic History*, 18 (1), 109–146.

- Le Moigne, M. (2021). *Exploring the "fissured workplace": Fragmentation of internal job ladders and workers' careers* (tech. rep.). Working paper.
- Lipsitz, M., & Starr, E. (2022). Low-wage workers and the enforceability of non-compete agreements. *Management Science*, *68* (1), 143–170.
- Manning, A. (2006). A generalised model of monopsony. *The Economic Journal*, *116* (508), 84–100.
- Manning, A. (2021). Monopsony in labor markets: A review. *ILR Review*, *74* (1), 3–26. <https://doi.org/10.1177/0019793920922499>
- Mas, A., & Pallais, A. (2017). Valuing alternative work arrangements. *American Economic Review*, *107* (12), 3722–3759.
- Mas, A., & Pallais, A. (2020). Alternative work arrangements. *Annual Review of Economics*, *12*, 631–658.
- OECD. (2023a). Collective bargaining database (data) [<https://www.ictwss.org/downloads>]. OECD.
- OECD. (2023b). Employment indicator (data) [doi : 10 . 1787 / 75589b8a - en(Accessed on 25 February 2023)]. OECD.
- OECD. (2023c). Labour force statistics by sex and age - indicators [(Accessed on 05/08/2023)].
- Remery, C., Stigt, J. v., Doorne-Huiskes, J., & Schippers, J. (1999). Flexibilisering van arbeids-en inkomenspatronen. de verdeling van lasten en lusten. *Tussen Efficiëntie en Rechtvaardigheid*.
- Rosen, S. (1986). The theory of equalizing differences. *Handbook of Labor Economics*, *1*, 641–692.
- Scherpenzeel, A. (2011). Data collection in a probability-based internet panel: How the liss panel was built and how it can be used. *Bulletin of Sociological Methodology/Bulletin de Méthodologie Sociologique*, *109* (1), 56–61.
- Sluyterman, K. (2013). *Dutch enterprise in the 20th century: Business strategies in small open country*. Routledge.

- Sluyterman, K., et al. (2015). Ruthless neoliberal reform or pragmatic adjustment to globalizing markets: That's the question. *TSEG-The Low Countries Journal of Social and Economic History*, 12 (3), 83–86.
- Song, J., Price, D. J., Guvenen, F., Bloom, N., & Von Wachter, T. (2019). Firming up inequality. *The Quarterly Journal of Economics*, 134 (1), 1–50.
- Touwen, J. (2008). How does a coordinated market economy evolve? effects of policy learning in the netherlands in the 1980s. *Labor History*, 49 (4), 439–464.
- Touwen, J. (2014a). *Coordination in transition: The Netherlands and the world economy, 1950–2010*. Brill.
- Touwen, J. (2014b). The hybrid variety: Lessons in nonmarket coordination from the business system in the netherlands, 1950–2010. *Enterprise & Society*, 15 (4), 849–884.
- Visser, J., et al. (2000). *The first part-time economy in the world: Does it work?* AIAS, Amsterdam Institute for Advanced Labour Studies.
- Visser, J., & Hemerijck, A. (1997). *A dutch miracle: Job growth, welfare reform and corporatism in the Netherlands*. Amsterdam University Press.
- Webber, D. A. (2015). Firm market power and the earnings distribution. *Labour Economics*, 35, 123–134. Weil, D. (2014). *The fissured workplace*. Harvard University Press.
- Williamson, O. E. (1980). The organization of work a comparative institutional assessment. *Journal of Economic Behavior & Organization*, 1 (1), 5–38.
- Williamson, O. E. (2007). *The economic institutions of capitalism. firms, markets, relational contracting*. Springer.
- Williamson, O. E. (2010). Transaction cost economics: The natural progression. *American Economic Review*, 100 (3), 673–690.
- Zijl, M. (2006). *Economic and social consequences of temporary employment*. Thela Article.



BROWN



Art by Jack Merullo