

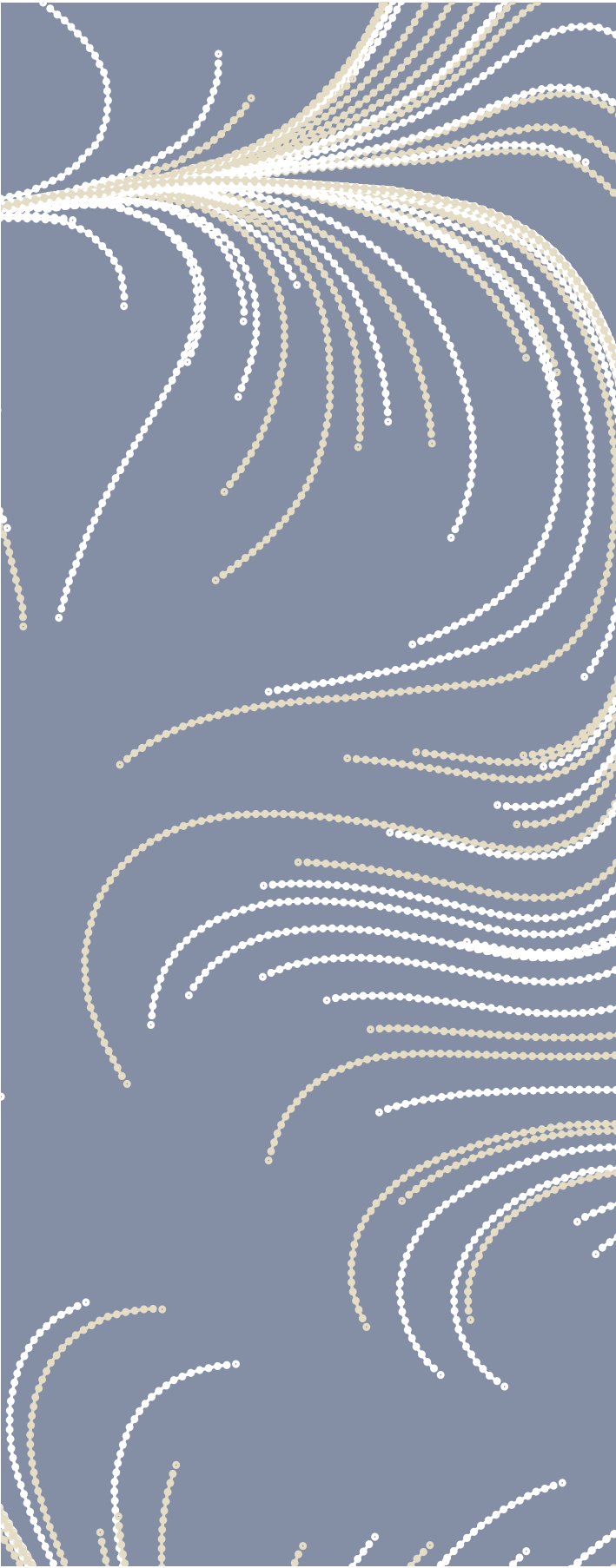
THE BROWN UNIVERSITY

# JOURNAL OF PHILOSOPHY, POLITICS & ECONOMICS

Special Feature:  
**PPE THEORY AS  
KNOWLEDGE**

*with a contribution from  
Bonnie Honig*

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**The Brown University**

**Journal of Philosophy,  
Politics & Economics**

Volume V, Issue I

## ACKNOWLEDGEMENTS

The Brown Journal of PPE remains thankful for the continued support and funding of the Brown University Center for Philosophy, Politics, and Economics. Additionally, we are grateful for the contributions of Geoff Mulgan, 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 Brown University Center for Philosophy, Politics, and Economics. 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.

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# FOREWORD

“Seek knowledge even if you have to go to China”<sup>1</sup>

In this issue, we welcomed articles that centered around the theme of “PPE theory as social knowledge.” We will first introduce a core rationale of epistemology and then briefly recapitulate the development of PPE theories as epistemic vehicles.

In PPE studies, “there are lots of kinds of models serving lots of different purposes.”<sup>2</sup> The complexity of models is further confounded by the interdisciplinary commitment of the PPE discipline, such that each model from one field must be related to a few other fields of inquiry. For instance, a theory of justice can be rationalized philosophically, debated politically, and modeled economically, with vastly divergent aims and implications. Historically, it is quite often that the proponents and opponents of the same brand of liberal morality fight with one another for conflicting means and goals.<sup>3</sup> A related inquiry is, given the self-proclaimed scientism, logicism, or rationality of philosophy, politics, and economics methodology, what accounts for progress as a current model, compared to those from previous “waves” of scholarship? What are the moral goals for such progress, or are there none? Can current PPE models properly serve purposes of social change?<sup>4</sup>

It is thus perfectly reasonable to question the foundations of PPE knowledge underlying such models. Scholars of care or students of ardent passions should take up concepts and methods of epistemology, in its individual and social dimensions, to acquire, document, and verify PPE-related knowledge. For the above, we will discuss the Socratic method, logic, and empiricism are

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1 For technicality, it has been judged weak in the fatāwā of Sheikh Ibn Bāz (زاب نبا), quoting the authority of Ibn Hibbān (نابح نبا) and Ibn al-Jawzi (يزوجل نبا), see (نورش عل او سداسل دل جمل، زاب نبا يواتف) (ففي عضل لثي داحال باباك، ين اثلل مسؤل لثي دحل). The general rationale is that the transmitter of this hadith Abū ‘Ātika (يرصلل لكلا ع وبأ) is not reliable, according to the authority of al-Bukhārī, Abū ātim, and other authentic authorities. A more acceptable version: “Seeking of knowledge is the duty of all who accept God”, see (بي غر لثل حي حص، هجام نبا ننس حي حص).

2 Cartwright, N. (1999). *The Dappled World: A Study of the Boundaries of Science* (1st ed.). Cambridge University Press.

3 Leonhard, J. (2001). *Liberalismus. Zur historischen Semantik eines europäischen Deutungsmusters* (Deutsche Historische Institute, Ed.; 1st ed.). Oldenbourg Wissenschaftsverlag GmbH.

4 Zhou, T., & Tantipipatpong, J. (2022). Editorial Board Foreword. *Journal of Philosophy, Politics, and Economics*, 4(2), 7–8, <https://www.brownjppe.com/features>.

foundation tools below. In addition, humanity obliges them to reflect and engage with the morality of such learning. Here, the epistemic of political economy and the Enlightenment, especially the classical and Marxist theories, are essential background knowledge, treated below as well.

The concept of knowledge (*scientia* in Latin and *espitêmê* in Greek) is central to civilizations that inherit from the Graeco-Roman traditions. Much of ancient philosophy began with a challenge to the received notion of truth. In *Meno*, Plato's Socrates wondered whether the words of traditional authorities of priests and priestesses are true. We ought not to be persuaded by the impossibility of inquiry: for it will make us idle and is only pleasant to those who are mentally weak (μαλακοῖς),” “Socrates discovered that knowledge can be measured by its truthfulness<sup>5</sup> and suggested didactics as means to seek such truth, known as the Socratic method.

While Plato and the Sophists developed epistemology based on philosophical arguments,<sup>6</sup> Aristotle invented systematic methods of science based on various forms of logic and empirical methods. On one hand, Aristotle claims that the certainty of truth in statements can only be obtained through *a priori* knowledge and deductive reasoning.<sup>7</sup> On the other hand, he furthered Socrates' critique on knowledge of pre-determined authorities, insisting that “no one can learn anything at all in the absence of sense.”<sup>8</sup> Based on sensible data and a posteriori reasoning, one

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5 My translation. Plat. *Meno* 81d, “οὐκ οὖν δεῖ πείθεσθαι τούτῳ τῷ ἐριστικῷ λόγῳ: οὗτος μὲν γὰρ ἂν ἡμᾶς ἀργοὺς ποιήσειεν καὶ ἔστιν τοῖς μαλακοῖς τῶν ἀνθρώπων ἡδὺς ἀκοῦσαι, ὅδε.”

Irwin argues that Plato's Socrates discovered the distinction between knowledge and true belief. Irwin, T. H. (1977). *Plato's Moral Theory: The Early and Middle Dialogues* (1st ed.). Clarendon Press. Vlastos claims that Plato's Socrates was measuring the certainty of truth in such statements by support of elenctic arguments. Vlastos, G. (1985). “Socrates' Disavowal of Knowledge”. *The Philosophical Quarterly* (1950), 35(138), 1–31. Taylor contends that Plato's Socrates was disavowing statements not supported by systematic reasoning. Taylor, C. C. W. (2019). “Plato's Epistemology.” In G. Fine (Ed.), *The Oxford Handbook of Plato* (2nd ed.). Oxford University Press.

6 Ryan, S. (2013). “Wisdom.” *The Stanford Encyclopedia of Philosophy*, Spring 2020 Edition.

Silverman, A. (2014). “Plato's Middle Period Metaphysics and Epistemology.” *The Stanford Encyclopedia of Philosophy*, Fall 2022 Edition.

7 Ebert, T., & Nortmann, U. (2008). *Aristoteles Werke in deutscher Übersetzung. Band 3/I.1* (E. Grumach, Ed.; 1st ed.). Akademie Verlag GmbH, Markgrafenstr. On Aristotelian propositional logic of propositions and syllogism, see Crivelli, P. (2012). “Aristotle's Logic.” In C. Shields (Ed.), *The Oxford Handbook of Aristotle* (1st ed.). Oxford University Press.

8 Aristot. *De Anima* 432a7–9. Aristotle. (1957). *On the Soul. Parva Naturalia. On Breath: Vol. VIII* (W. S. Hett,



can gain a better warrant of truth.<sup>9</sup>

After late antiquity, the empiricism of knowledge was first reborn among the scholastics,<sup>10</sup> reformed by the natural philosophers,<sup>11</sup> and reinvigorated with the early modern political economic studies.<sup>12</sup> For the first time, political economic studies, coupled with sound science and utilitarianism at various scales,<sup>13</sup> found an awesome impact on society. To begin, Adam Smith sought “first, to provide a plentiful revenue or subsistence for the people, or more properly to enable them to provide such a revenue or subsistence for themselves; and secondly, to supply the state or commonwealth with a revenue sufficient for the public services. It proposes to enrich both the people and the sovereign.”<sup>14</sup> This was not merely an axiological claim of what people perceive as good but also a statement of the morality of how knowledge of nature can serve better human conditions.<sup>15</sup> Based on natural laws of production, circulation, and reproduction and Scottish Newtonism,<sup>16</sup> Smith used a system of economic knowl-

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Trans.; 1st ed.). Harvard University Press.

9 Aristotle as a scientist would inspire Kuhn to propose the theory of scientific progress as paradigm shifts. Kuhn, T. S. (1987). “What are Scientific Revolutions?” In L. Krüger, L. Daston, & M. Heidelberger (Eds.), *The Probabilistic Revolution, Volume I: Ideas in History* (1st ed.). The MIT Press. On Aristotle the scientist’s broader involvement, Falcon, A. (2018). “Aristotle: An Overview.” In A. Jones & L. Taub (Eds.), *The Cambridge History of Science, Volume 1: Ancient Science* (1st ed.). Cambridge University Press.

10 Dawes, G. W. (2017). “Ancient and Medieval Empiricism.” *The Stanford Encyclopedia of Philosophy, Winter 2022 Edition*.

11 Miller, D. M., & Jalobeanu, D. (Eds.). (2022). *The Cambridge History of Philosophy of the Scientific Revolution* (1st ed.). Cambridge University Press. In particular, Sir Isaac Newton invigorated scientific practice with a new paradigm of reasoning, techniques, and evidence, Janiak, A. (2015). *Newton As Philosopher* (1st ed.). Wiley Blackwell. That the Newtonian paradigm posed a serious challenge to the Platonian-Aristotelian Leibniz directly triggered Kant’s synthesis in Paul Guyer. (1992). “Introduction.” In P. Guyer (Ed.), *The Cambridge Companion to Kant* (1st ed.). Cambridge University Press.

12 Samuels, W. J., Biddle, J. E., & Davis, J. B. (Eds.). (2003). *A Companion to the History of Economic Thought* (1st ed.). Blackwell Publishing.

13 Schofield, P. (2019). “Utilitarianism, God, and Moral Obligation from Locke to Sidgwick.” In W. Breckman & P. E. Gordon (Eds.), *The Cambridge History of Modern European Thought, Volume 1: The Nineteenth Century* (1st ed.). Cambridge University Press.

14 Smith, Adam (1776). *An Inquiry into the Nature and Causes of the Wealth of Nations*, book 4, Chap. 1.

15 Against its modern, neoliberal commentators, Adam Smith’s liberal axiology is far more than the Benthamite utility calculus, Fleischacker, S. (2020). “Adam Smith’s Moral and Political Philosophy.” *The Stanford Encyclopedia of Philosophy, Winter 2020 Edition*.

16 Rothschild, E., & Sen, A. (2006). “Adam Smith’s Economics.” In K. Haakonssen (Ed.), *The Cambridge Companion to Adam Smith* (1st ed., pp. 319–365). Cambridge University Press. On the influence of Newton on Scottish Enlightenment and Adam Smith, Montes, L. (2013). “Newtonianism and Adam Smith.” In C. J. Berry, M. P. Paganelli, & C. Smith (Eds.), *The Oxford Handbook of Adam Smith* (1st ed., pp. 36–53). Oxford University Press.

edge to vehemently attack the British mercantile policies of trade duties, partisan subsidies, and monopoly rights and advocated abolishing them.

While in Britain the Smithian liberal political economy succeeded in repealing the Corn Laws and establishing the British regime of free trade,<sup>17</sup> in France the same ideas of production and circulation<sup>18</sup> led to generations of statist physiocrats (instead of focusing on trade, emphasizing increase of agricultural productivity) and socialist Saint-Simonians. By then, the philosophy and political economy of production have become the subconscious assumption and motivation for the new industrial societies, with dramatic social and political implications.<sup>19</sup>

French Revolution and its underlying epistemic transformation marked a watershed in the human understanding of PPE models.<sup>20</sup> While formerly the liberties of learning, reading, and writing were limited to the patronized philosophers and royal officials, with the advent of the “reading revolution,” scholarship admitted to its ranks a much more significant portion of society.<sup>21</sup> With the production rate of one book per ten French inhabitants,<sup>22</sup> between 1750 and 1789 book ownership expanded

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17 Howe, A. (1998). *Free Trade and Liberal England 1846–1946* (1st ed.). Oxford University Press.

18 Whereas British political economy was informed by Newtonian science and Humean empiricism, the French version was by the Cartesians and Condillac. «Les sensations sont les motifs ou les causes déterminantes de la raison & de la volonté décisive», Quesnay, François, «Évidence», dans Oncken, A. (éd.), *Œuvres économiques et philosophiques de F. Quesnay*, 796.

19 Known as Say’s Law in Say, J.-B. (1803). *Traité d’Économie Politique, ou Simple Exposition de la Manière dont se Forment, se Distribuent, et se Consomment les Richesses* (1st ed.). Crapelet, chez Deterville. The unbalanced knowledge of productivity viz-à-viz demand will cost the global community a Great Depression from 1929 to 1939, see Galbraith, J. K. (1954). *The Great Crash of 1929* (1st ed.). Houghton Mifflin Publishing.

20 Since the French Revolution, history began to be understood as an open-ended succession of unique events rather than a closed circle of recurrent ones. Koselleck, R. (1987). “Das achzehnte Jahrhundert als Beginn der Neuzeit.” In R. Herzog & R. Koselleck (Eds.), *Poetik und Hermeneutik XII. Epochenchwelle und Epochenbewußtsein* (1st ed., pp. 269–283). Wilhelm Fink Verlag. The Revolution inspires intellectuals and global social leaders alike, Forrest, A., & Middell, M. (Eds.). (2016). *The Routledge Companion to the French Revolution in World History* (1st ed.). Routledge.

21 Burrows, S. (2014). Books, Philosophy, Enlightenment. In D. Andress (Ed.), *The Oxford Handbook of the French Revolution* (1st ed., pp. 74–91). Oxford University Press.

22 Based on estimated 1,500 copies of each eighteenth-century edition and around 1750 new first editions in the 1780s, we obtain 2,500,000–3,000,000 copies per year, which is one-tenth of the French population during 1780s. The number of copies was bimodal at 1,250 and 4,000, Gaskell, P. (2007). *New Introduction to Bibliography* (1st ed.). Oxford University Press, 160–162. List of new first editions, Conlon, P. M. (n.d.). *Le siècle des Lumières. Bibliographie chronologique, 32 vols* (1st ed.). Droz. Population, Livi-Bacci, M. (2000). *The Population of Europe: A History* (1st ed.). Oxford University Press, 8.

rapidly. Unlike in previous centuries, people must “intensively” read expensively printed texts (i.e., the Bible), pre-revolutionary Frenchmen “extensively” browsed religious and secular, scientific and vulgar literature alike.<sup>23</sup> Indeed, among such an ocean of erudition, knowledge of the enlightenment trickled down to sympathetic readers of broad social backgrounds, surprisingly, including the censors who gained royal office to maintain traditional orthodoxy.<sup>24</sup> Under such, knowledge of traditional authorities among the state and religious establishment was permanently scarred,<sup>25</sup> while liberty, equality, fraternity, and values of reason permanently advanced.<sup>26</sup>

With the development of classical political economy, the philosophy of its morality becomes critical: With the revenue maximized, how can one achieve better moral value with it? Under the socialists and then the Marxist radicals, the study of the political economy turned from a statist and business management tool to some knowledge that shapes society. While the liberal and socialist political economy and democratic theories share the belief in human cooperation united under philosophical or empirically tested knowledge of human nature, production, trade, and distribution, Marx holds the materialist view of pre-communist society as a constant, revolutionary struggle between human nature and social conditions, “which is the outright, resolute and comprehensive negation of that nature.”<sup>27</sup> This holist view rede-

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23 Most American scholarship on the French reading revolution was derived from Engelsing, R. (1969). “Die Perioden der Lesergeschichte in der Neuzeit. Das statische Ausmass und die soziokulturelle Bedeutung der Lektüre.” *Archiv Für Geschichte Des Buchwesens*, 10, 944–1002.

24 Collaborative nature among French authors and censors, compared with British Indian and communist East German censorship, Darnton, R. (2014). *Censors at Work: How States Shaped Literature* (1st ed.). W. Norton and Co. I argue that even China’s statist-communist-nationalist censorship permitted censors’ occasional sympathy given a shared human nature, <https://chinadigitaltimes.net/space/真理部指令>.

25 One of the “unholy trinity” of French enlightened authorship, Voltaire’s manipulation of legal and illegal publication space, Pomeau, R. (1995). *Voltaire en son temps, tome I* (1st ed.). Fayard.

26 Hobsbawm, E. (1990). *Echoes of the Marseillaise: Two Centuries Look Back on the French Revolution* (1st ed.). Verso Books.

27 “Die besitzende Klasse und die Klasse des Proletariats stellen dieselbe menschliche Selbstentfremdung dar. [...] Sie ist, um einen Ausdruck von Hegel zu gebrauchen, in der Verworfenheit die Empörung über diese Verworfenheit, eine Empörung, zu der sie notwendig durch den Widerspruch ihrer menschlichen Natur mit ihrer Lebenssituation, welche die offenerzige, entschiedene, umfassende Verneinung dieser Natur ist, getrieben wird. Innerhalb des Gegensatzes ist der Privateigentümer also die konservative, der Proletarier die destruktive Partei. Von jenem geht die Aktion des Erhaltens des Gegensatzes, von diesem die Aktion seiner Vernichtung aus”, Institut für Marxismus-Leninismus beim ZK der SED (Ed.). (1962). *Karl Marx, Friedrich Engels: Werke*.

financed production as not merely of material goods but also of all human knowledge.<sup>28</sup> Under Marxist materialism, a large share of human knowledge is fundamentally discredited.<sup>29</sup> Knowledge of the traditional (religious) authorities is only not truth-like but symptoms of social contradictions;<sup>30</sup> the legal study must cast away its liberal notion of the “essence of law,” and law is wholly formed out of extra-legal, including political, economic, and social, conditions;<sup>31</sup> liberalism in general, for promises of liberal rights and liberties, should be questioned as a veil of innocence for a contradictory capitalist society.<sup>32</sup> Whereas the French Revolutions of 1789 and 1848 transpired out of complex dynamics of society and a novel regime of knowledge, the Marxists sought to supersede the former through a violent campaign and conscious re-engineering of human understanding.<sup>33</sup> While the po-

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*Band 2* (1st ed.). Dietz Verlag, 37, [https://marxwirklichstudieren.files.wordpress.com/2012/11/mew\\_band02.pdf](https://marxwirklichstudieren.files.wordpress.com/2012/11/mew_band02.pdf) On Karl Marx’ personality, Berlin, I. (2013). *Karl Marx* (H. Hardy, Ed.; 5th ed.). Princeton University Press.

<https://www.thecharnelhouse.org/wp-content/uploads/2018/05/Isaiah-Berlin-Karl-Marx.pdf>

28 “Die Produktion der Ideen, Vorstellungen, des Bewußtseins ist zunächst unmittelbar verflochten in die materielle Tätigkeit und den materiellen Verkehr der Menschen, Sprache des wirklichen Lebens. Das Vorstellen, Denken, der geistige Verkehr der Menschen erscheinen hier noch als direkter Ausfluß ihres materiellen Verhaltens. Von der geistigen Produktion, wie sie in der Sprache der Politik, der Gesetze, der Moral, der Religion, Metaphysik usw”, Adoratsky, V. (Ed.). (1970). *MEGA1 I.5: Karl Marx, Friedrich Engels, Die deutsche Ideologie. Kritik der neuesten deutschen Philosophie in ihren Repräsentanten, Feuerbach, B. Bauer und Stirner, und des deutschen Sozialismus in seinen verschiedenen Propheten (1845-1846)* (1st ed.). Marx–Engels–Lenin Institute.

29 Materialism allows no epistemic attack, “Die Anklagen gegen den Kommunismus, die von religiösen, philosophischen und ideologischen Gesichtspunkten überhaupt erhoben werden, verdienen keine ausführlichere Erörterung”, *Manifest der Kommunistischen Partei* in Institut für Marxismus-Leninismus beim ZK der SED (Ed.). (1977). *Karl Marx, Friedrich Engels: Werke. Band 4* (1st ed.). Dietz Verlag, 480.

30 “Das religiöse Elend ist in einem der Ausdruck des wirklichen Elendes und in einem die Protestation gegen das wirkliche Elend. Die Religion ist der Seufzer der bedrängten Kreatur, das Gemüt einer herzlosen Welt, wie sie der Geist geistloser Zustände ist. Sie ist das Opium des Volks”, *Zur Kritik der Hegelschen Rechtsphilosophie* in Institut für Marxismus-Leninismus beim ZK der SED (Ed.). (1956). *Karl Marx, Friedrich Engels: Werke. Band 1* (1st ed.). Dietz Verlag, 378, 15. Thusberg & S. Engler (Eds.), *The Oxford Handbook of the Study of Religion* (1st ed., pp. 161–176). Oxford University Press. s became a foundational standpoint for the study of religion, Day, M. (2017). “Marxism.” In M. Sta

31 Synpnowich, C. (1990). *The Concept of Socialist Law* (1st ed.). Clarendon Press.

This became a foundation for the study of law, including an influential successor known as legal realism, Cohen, F. (1935). “Transcendental Nonsense and the Functional Approach.”, 35(6), 809–849.

32 As the ideology of the “ruling class”, “Die herrschenden Ideen einer Zeit waren stets nur die Ideen der herrschenden Klasse”, *Manifest der Kommunistischen Partei*, 480.

33 On French Revolution of 1789, “Es vermag dies indes nur durch gewaltsamen Widerspruch gegen seine eigenen Lebensbedingungen, nur indem es die Revolution für permanent erklärt, und das politische Drama endet daher ebenso notwendig mit der Wiederherstellung der Religion, des Privateigentums, aller Elemente der bürgerlichen Gesellschaft, wie der Krieg mit dem Frieden endet”, *Zur Judenfrage in Karl Marx, Friedrich Engels: Werke. Band 1*, [https://marxwirklichstudieren.files.wordpress.com/2012/11/mew\\_band01.pdf](https://marxwirklichstudieren.files.wordpress.com/2012/11/mew_band01.pdf). French

litical epistemology of the French Revolution crystallized in the popular outcry for “Liberté, Egalité, Fraternité,” Marx united British and French empirical political economy with a critical political epistemology.<sup>34</sup>

In our current issue, authors contributed to various topics bearing in mind the epistemic import of PPE studies, from the study of creativity to the objectivity of ethics, from women’s representation in politics to the illiberal COVID-19 policies, and from policy determinants of poverty to reform of public transportation cost. We hold that such issues are best examined through the lenses of philosophy, politics, and economics jointly. Through our pieces, we wish to illuminate both the diversity of thoughts and advise reflection on how readers might use this knowledge to improve social conditions.

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Revolution of 1848, Der achtzehnte Brumaire des Louis Bonaparte in Institut für Marxismus-Leninismus beim ZK der SED (Ed.). (1960). Karl Marx, Friedrich Engels: Werke. Band 8 (1st ed.). Dietz Verlag.

French Revolution of 1848, Der achtzehnte Brumaire des Louis Bonaparte in Institut für Marxismus-Leninismus beim ZK der SED (Ed.). (1960). Karl Marx, Friedrich Engels: Werke. Band 8 (1st ed.). Dietz Verlag.

34 Wood, A. (2004). *Karl Marx* (2nd ed.). Routledge.



## Special Feature

### Bonnie Honig

*Bonnie Honig is Nancy Duke Lewis Professor of Modern Culture and Media (MCM) and Political Science at Brown University, and (by courtesy) Religious Studies (RS) and Theater and Performance Studies (TAPS). Her research interest lies at the intersection of political theory and cultural studies, and has authored several books, including: Political Theory and the Displacement of Politics (Cornell, 1993), Democracy and the Foreigner (Princeton, 2001), Emergency Politics: Paradox, Law, Democracy (Princeton, 2009, David Easton Prize), Antigone, Interrupted (Cambridge University Press, 2013), Public Things: Democracy in Disrepair (Fordham, 2017), A Feminist Theory of Refusal (Harvard, 2021) and Shell Shocked: Feminist Criticism After Trump (Fordham, 2021: a collection of revised versions of her public writing since 2016).*

*JPPE: Interdisciplinary research is central to your work examining how language, imagery, history, film, literature, and theatre all contribute to our conceptions of justice. Why do you find this interdisciplinary approach so valuable? Where do you see intersections between politics and culture moving in the future?*

Honig: I have two answers. One is that all of us are interdisciplinary creatures until we get to high school or college and we start getting sorted into separated disciplines of knowledge. And if we want to understand ourselves, our formations, our historical moment, there's certainly an argument to be made for specialization and focus. But there's also an argument to be made for counterbalancing specialization and focus with still focused and still specialized but multidisciplinary sources and kinds of thinking.

The second answer, though, has to do with being aware of the history of disciplines. In other words, most things that we think of as pretty familiar and natural modes of knowing through politics, sociology, anthropology, and the rest, are creations of 18th and 19th century modes of knowledge and university formation. They each offer a very particular way of looking at the world, but they each acknowledge with their multiplicity that if you looked at the world through this other set of glasses it would look different. So, if you want to understand any kind of complex phenomenon, it's really important to use all the modes of knowing and experience that we can. In particular, the discipline that I know best is political theory in political science, and there are some very telling stories about how exactly political theory became analytic and not literary, argumentative and not imaginative.

One of the examples that I like to resort to in order to convey a sense of the historicity of certain ways of knowing is that up until the French Revolution, French political theory consisted of argumentative, literary, philosophical, imaginative, speculative, and fabulative forms of writing. Think about somebody like Rousseau who writes *The Social Contract*, but he also writes *Émile* and *The New Heloise*. He's doing a million different kinds of writing. He thinks he's being a political theorist in all of them, but now we would say, "Oh, wait, no, that's literature." So, what becomes known as political theory gets shaped through the crucible of the French Revolution, after the Revolutionary period, when Robespierre is forming a government. They decide that sentimental and passionate kinds of writing are too conducive to uprising and discontent, and so philosophy and political theory should be oriented to reason. They adopt German Kantianism as their model of what philosophizing about politics should look like. And as it happens, we know from the work of Carla Hesse, a historian at Berkeley, that the modes of writing that they thought were dangerous and conducive to disorder were mostly modes of writing that were done by women—novels, sentimental writing, and so on. Those kinds of writing were not supported by the new French state. After the revolution it became a supporter of analytic rational philosophy. They subsidized it monetarily and promoted it by giving it honors, and the other kinds of writing became low. In Carla Hesse's work you can see a moment at which a high and low culture divide is created. It's a gender divide, and it involves importing a foreign style of thinking as more rigorous than the domestic French way and that is conducive to order and good government. So it's a really fascinating episode, which to my mind means that political theory was originally multidisciplinary, that it was originally interdisciplinary, that it was originally multi-methodological. And then it got forcibly reshaped by the state into something that would serve its interests. Nowadays when we do democratic theory, we're not looking to serve the state's interests nor are we looking not to. We're asking questions about where justice or inequality will find their best homes, and the state is sometimes an opportunity for that, but often not. And so here's this tradition of political theorizing that was aborted in this particular political moment for statist purposes in this post-revolutionary period. So I see what I'm doing as reclaiming the authentic mode or multi-modality of doing political theory. I like to look back to the 18th century and say, you know, that was normal, and what we've been doing is a little weird.

*JPPE: Do you have any examples of projects where you really found yourself doing that political theory work that was prior to this division and into reason versus literature?*

Honig: Yeah, you're asking me if I've written a novel in my spare time. And the answer, sadly, is no. But I have experimented with different genres of writing more



recently. I would say it's more true and more accurate, even though I did just make this expansive claim for political theory, that I've been doing a certain kind of theory with many different kinds of objects of study, but the mode of theory hasn't been radically different from one project to the next. But I think all the objects, whether they are television shows, or film, or dramatic texts from the Classical Period, or more contemporary period are parts of political culture and therefore appropriate objects for political theorists to pay attention to. They shape our understandings after all. Certainly the classical dramas have a history of reception by prior political thinkers and philosophers as well.

The recent writing that I've done has been a little bit experimental. My book *Shell Shocked-Feminist Criticism after Trump* came out last year. It developed out of my interest in writing both forensically and somewhat fabulatively about the gender-political implications of Trump and Trumpism during that presidency. The mode of writing that was appropriate for that just was different. It was about trying to find and entrench moments of opportunity or empowerment in what felt at the time like a very besieged time. So the mode of writing was different. They were very short pieces. Most of them were four or five pages, most of them were published originally in public venues before I collected and rewrote them. So the book is 28 chapters, each of four to five pages. It still is a different kind of writing than a political theory work, which goes on a bit longer and probably has fewer jokes.

*JPPE: I'm curious what you think the role of theory is in instigating social change or contributing to popular opinion, or if it serves another purpose.*

Honig: I think the task of political theory is to open up room for thinking where habit or normativity or discipline have settled, wherein you think within a frame, but you can't really think about the frame. I do think political theory is a kind of pedagogy. So in my teaching, for example, I don't teach a particular political stance as much as I've figured out how to get students to think their way out of whatever they brought in so that they can either affirm or revise their position in a more informed way, drawing on some of the more elevating kinds of argument that you would find in political theory, as opposed to what you might find on television or YouTube these days. I think the task of political theory is to de-familiarize the things that we take for granted to show us that the mode of political theory itself is a product of a certain historical moment, to show us how many of the things that we think of as natural or given or unchangeable were made, at some point, and in principle could be unmade. And so it becomes an opportunity to think about not just how to continue with the world as we find it, but to consider how

we might leave it better than we found it and to feel empowered to do that. And I feel political theory is, in a sense, has this forensic task of helping you identify opportunities where things could be better. And it also has a normative orienting task, which is to suggest to people that they can feel empowered, that it is possible, because the world has been changed many times before, just by people getting together and thinking, whether about getting the vote for women or having a civil rights movement. These remain possibilities, and especially at moments of great challenge or crisis, people can feel very despairing about their lack of power. So I think it's both important for them to think critically about that and also to learn historically about other moments where people felt the same way and yet found a way out of having no way, as Saidiya Hartman says. Which is not to suggest that she thinks there is a way out of no way, but that it's worth trying.

*JPPE: Returning to what you said about objects, when did you find yourself drawn to the role of objects in democracy? Is there a first object that drew your attention to the relevance of things in collective action?*

Honig: That was a really good question, and I'm not sure what the first object might have been. I do think in my work, *Public Things*, that it was me trying to find a way out of what felt like an impasse, which is in democratic theory, as Rousseau being the apotheosis of this idea, you have this problem. How do you get good laws if people aren't already good so that they can make good laws? And how do you get good men, as he said, if you don't have laws and norms to make us good. How do you break the chicken and egg paradox of founding? I thought about various ways to meet the demands of that paradox in an earlier book. And then I started to think about how that paradox is constructed as a paradox of people and the law and whether there were other democratic orientations that might just tilt the paradox so it didn't have such a grip on us. And then I thought, well, what if we thought about democracy not in terms of the demos, the people, and crafty rule, or law? Those are the two terms that create the paradox for Rousseau. But what if we thought of it in terms of the delivery system of public things and the form of life that public things invite. And at the same time, there was a lot of really good work, some of it from James Bennett, who wrote *Vibrant Matter*, about the vibrancy of things, of how things are not just inanimate. I was aware of that and then at the same time it just so happened that I was reading work by D. W. Winnicott, who writes about the magical quality of objects in an infant and child's life. But, because of the developmental psychology he does, you never actually grow out of the developmental stage completely. You return to it over and over again as you grow older. He was really interested in how magical a baby's blanket might be. I don't know if you've ever seen a bereft child being given their favorite blanket,

but it calms them immediately. So it seems like the object is doing something for them that they can't yet do for themselves and that other humans can't do, that the parents can't do. But you give the blanket and the blanket brings peace. And so between Jane Bennett's work, which was about the vibrancy of objects and the psycho-analytic work about these magical properties of objects that teach infants about these world, and its stability and peace and order, I thought, why can't we think about democracy in terms and get out of this paradox of eternal return to the people and the law and which comes first, and instead think about public things? At the time in the US, there were big debates about Civil War statues that are divisive. People asked, How should they go up? Should they go up? And also, I remember in England at the time, there were ones that were memorializing people who had been deeply involved in the slave trade. There were questions about those as well. But I didn't have anything original to say about those. There were already a ton of people writing about those things in very limited ways. But one of the ones that really stayed with me, I'm from Montreal, and I did remember being really tuned into the occupation of an important bridge that connects Montreal, which is an island, to a different part of Quebec. There was a protest, and the Mohawk Tribe in that area occupied that bridge and shut down all traffic on that bridge for a couple of months. And it was a conflict that was eventually militarized on the Canadian government side. So that was very much in my mind, that bridge. It was a really important bridge to several different parties. It was important to French Quebec, which is newly empowered since the middle of the 20th century; before that was an English governed province. It's important to them because the architects and designers of it were French, in the 1910s, and at that time there wasn't access to those higher professions as much for the French as for the English in Quebec. But it was a glorious bridge, and it was designed by some of the few French people who were able to get involved in that kind of engineering and design. And then it was really important to the Mohawk because their people were famous ironmongers and they built the bridge. And it was important for English Quebec because they paid for it. So everybody had a different stake in what it represented, and the appropriation of it by the other parties felt like a betrayal. So it just shows how unifying a public thing could be even while it was divisive, because they were all very attached, and they were attached in conflict to the same object. So how can you take those kinds of energies in interminable conflicts and rework them? Because they all manifest in attachment to the same thing, is there a way to take that sense of object attachment and see it as the basis of democratic gathering, consensus building, and conflict? You cannot have public things without conflict.

*JPPE: How do you conceptualize the importance of disagreement? And how do you envision the political sphere embracing this confrontation that you mentioned?*

Honig: I don't only think of conflict in terms of disagreement. Disagreement is already pretty tame in a way because it implies that there's agreement and then there are these pockets of difference. And it also implies that it's more rational, that you can have a disagreement over what you think about different things. And often conflict is not like that in the political arena. People have very strong attachments and disagreement doesn't come close to describing what happens when they contemplate each other, and the ways of life we represent to each other. The kind of democratic theory that I do is called the agonistic. It's called that because it takes from the ancient Greek Agon, which was a space of contest and conflict. It takes from the idea that contest and conflict are kind of un-eliminatable elements of political life. They're not all of it, but they're never none of it. You can't have a political life in which those things have been eliminated unless you've eliminated them in a somewhat coercive way, for example eliminating a minority, which has been done and attempted before. The way I think about politics is in terms of trying to assume that there will be conflict and trying to figure out how to world-build through some sort of shared frame in spite of conflict, whether it's because there might be an emergent possibility that draws lots of people together—never everyone, but enough to make a difference. There might be a looming catastrophe like climate change that might make lots of different parties who have deeply divided views about how to govern set those aside because they have to face something that's impending. The model politics is not that all kinds of differences and diversities can be commensurate by making them into interests that can then be traded or compensated, which is one kind of political science model from the 20th century that's still around, but that there are some things that are just incommensurable. And so we have to find ways to live together in that incommensurability. And that is the challenge.

# Interpersonal Remembrance and Mnemonic Wronging

Andrej Gregus

*This essay presents a novel account of memory as an essentially interpersonal engagement. When we remember someone, we ought to conceive of our remembrance of them as a kind of dialogue we partake in with another subjectivity. To fail to do so—such as by conceiving of our memory as a mere recollection of representations which we can choose to dismiss, overlook, erase, or otherwise unilaterally tamper with—constitutes a *sui generis* wrong, which I call a mnemonic wrong.*

Falling out of love is chiefly a matter of forgetting how charming someone is.  
— Iris Murdoch, *A Severed Head* (1961)

## I. Introduction

This essay presents a novel account of memory as an essentially interpersonal engagement. When we remember someone, we ought to conceive of our remembrance of them as a kind of dialogue we partake in with another subjectivity. To fail to do so—such as by conceiving of our memory as a mere recollection of representations which we can choose to dismiss, overlook, erase, or otherwise unilaterally tamper with—constitutes a *sui generis* wrong, which I call a mnemonic wrong.

I make the case (Section II) that other people qua subjects hold a special place not just in the sphere of action, but also in the sphere of thought; it matters not only how we act toward others, but also how we think of them. I argue (Section III) that to do justice to another person in our thought requires that we recognize them as a different but equally real perspective on the world. I then apply (Section IV) this insight to the domain of memory to contend that existing proposals on memory ethics fail to appreciate the intersubjective nature of memory: they fail to recognize our acts of remembrance as dynamic, interactive encounters with others. As a result (Section V), we remain engaged in such dialogue even when the people we

remember have somehow hurt us, because compassionate conversation with them might evolve our relationship and help us heal in a way that simply erasing their memories would not.

## II. Others as special in thought

It is a bedrock of human life that we relate to other people in a way that is fundamentally different to us from everything else in the universe.<sup>1</sup> Our orientation toward another person is unique in kind from our orientation toward, say, a dog or a chair. Wittgenstein, as elaborated in Winch (1981), summarized this insight succinctly in the motto, *Meine Einstellung zu ihm ist eine Einstellung zur Seele* (“My attitude toward him is an attitude toward a soul”). Some have wanted to ground this special orientation that one owes to another in the autonomy, dignity, or humanity instantiated in the other’s person (Kant 1785). Others have emphasized that what makes a person special is not reducible to the fact that they instantiate some set of qualities but rather that each person is special in virtue of their totality, of the unique individual that they are. Simone Weil (1957) summed this up nicely: *Il y a dans chaque homme quelque chose de sacré. Mais ce n’est pas sa personne. Ce n’est pas non plus la personne humaine. C’est lui, cet homme, tout simplement.* (“There is in each man something sacred. But it is not his person. Nor is it the human person. It is he, this man, plain and simple.”<sup>2</sup>) Pick your favorite idiom, but the core tenet motivating all (good) moral thinking is—to put it as theory-neutrally as possible—that people are individually special.

But in what domain do others merit such special regard? One answer, which underpins many ethical theories, is action: we express our acknowledgement that others are special in how we act on, with, or around them. However, as Iris Murdoch (1956, 1970) incisively pointed out, this action-centered conception of morality leaves out the vast realm of one’s moral “being” which precedes one’s action. In Murdoch’s view, one’s moral “vision”—their thoughts, resolutions, and reflections; what pains or haunts them; the things they pay attention to, and the ones they overlook—is the stuff of morality, though it crucially lies outside the physical domain of action.

As a result, we may ponder the ethical implications not only of what people do, but also of what they think. Can what we think about another person be evaluable in terms of right and wrong? Rima Basu (2018, 2019, 2019b) has taken up this line of inquiry to argue that not only can certain thoughts or beliefs *be* wrong, but they can in fact *do* wrong to someone. She calls such wrongs *doxastic wrongs*,

1 This formulation, in terms of “relating” to others, is borrowed from Marušić and White (2018, p. 100), who say they are in turn inspired by Korsgaard (2018).

2 Translation forthcoming in Simone Weil, *Essential Texts*, translated by David Levy and Marina Barabas, London: Routledge, 2023.

and one commits a doxastic wrong against another person in virtue of what one believes about them.

I understand Basu to be appealing to two plausible intuitions to explain that doxastic wrongs are indeed wrongs. The first intuition is that we care about what others believe about us (2019a), which renders their believing certain things about us a moral matter. That others' beliefs about us carry moral significance comes out most clearly when we do in fact happen to find out what it is they believe. Suppose I find out my friend secretly thinks I'm not that smart. I naturally feel hurt and disappointed that she could ever believe that. Crucially, though, I am not disappointed that I found out my friend believes this information; rather, I am disappointed that she could ever have believed it in the first place. The wrong that I take my friend to have committed against me targets her holding the belief itself, not my finding out about it, which is what renders it a doxastic wrong.

Although my finding out was what causally prompted my offense, her belief would have been wrong regardless of whether I did in fact find out. This brings us to the second intuition which I take to be foundational to Basu's account: the distinction between wrongs and felt wrongs, the latter of which we may call harms (they are also sometimes called "relational harms," owing to Nagel 1970a). Simply put, not all wrongs are harms; or, to spin it another way still, adapting an Arendtian turn of phrase: there can be wrong beyond harm.<sup>3</sup> Paradigmatic among examples of wrongs which aren't harms is betrayal. Suppose I betray you behind your back, say, by exposing a secret of yours to someone who never ends up telling anyone else and never ends up acting on this knowledge in any way, and you yourself never find out about any of this. Although you will not have been harmed (you will not have felt the effects of my betrayal), it does not detract from the fact that I did betray you, and that this was wrong of me to do to you.<sup>4</sup> The intuitive appeal of such examples lends credence to the possibility of unfelt wrongs, of which doxastic wrongs Basu argues are an instance.

There are plenty of other ways we might wrong someone in thought besides the propositions that we believe about them. Further examples include failures to discharge doxastic duties (of partiality, or of inculcating certain dispositions within ourselves) toward our friends, i.e. failures to show a certain kind of preferential regard for what our friends tell us over what others tell us (see Basu 2018 for discussion). Another species of wrong is what Miranda Fricker (2007) calls epis-

3 Arendt notes that Enlightenment thinkers failed to realize that there can be "goodness beyond virtue and evil beyond vice"; as cited in Gaita 2004, p. 200.

4 The example of a non-harming wrong which I continue to find most resonant comes from a Swedish film about a father who finds out his daughter has terminal cancer and his first reaction is, "Wow, this could be really stimulating for my creative career." This betrayal is especially appealing because it never leaves the father's head, and therefore clearly illustrates how thoughts can wrong. The name of this film sadly eludes me.



temic injustices, which occur when we decrease the credential value of someone's testimony based on prejudices we hold about the identity of the person they are. However, insofar as we view others as sources of evidence with credential values to begin with, rather than as people who want to be believed and related to, then this too might itself constitute a kind of wrong (Moran 2005). Finally, we may wrong someone in thought by viewing our disagreements with them as disagreements about evidence rather than as disagreements with a fellow reasoner who we engage in mutual inquiry (Marušić and White, in preparation). Although the positions above are simply brief outlines, they are possible theoretical expansions of the ur-insight that we might wrong others in thought.

### III. How ought we to conceive of others?

The previous section explored how we may wrong others in thought. This section will outline what leads to such wrongs in the first place. What view must I take of another in order to wrong them in my thought? And what view might I take if I want to do right by them?

To answer this question, we must first consider one significantly more fundamental: what is another person anyway? Hegel famously argued that to be a person is to understand yourself as being encounterable by another who, like you, is a person in their own right; it is to understand yourself as being—to echo Marušić and White (in preparation), echoing Nagel (1970b)—one among others, equally real. In part IV of the *Phenomenology* (1807/2010), Hegel, following Fichte, famously predicates the existence of individual consciousness on the recognition of another consciousness which is likewise engaged in a relation of mutual recognition: “a self-consciousness exists for [another] self-consciousness ... outside of itself ... [such that] they recognize themselves as mutually recognizing each other” (§§177-182). The crucial insight from Hegel, as I understand him, is that to conceive of yourself as a subject is necessarily to conceive of yourself as encounterable by another subject, and to do this you must properly recognize the other as an equally real, fully fledged subject.

Nevertheless, there will of course be times when, going about our day, we lose ourselves in our own world and forget that others have (are!) subjectivities too. The crucial thing is that we can always snap out of this mode and switch back into a recognition of others as subjects. Sartre illustrates this point evocatively in a passage from *Being and Nothingness* (1943/1956, p. 349) where he imagines himself in a park, looking at lawns and chairs, when all of a sudden he lays eyes on a person. His perception of the person, however, is completely different from his perception of the chairs. In seeing the person, Sartre feels that his “world”—the world that absorbed him, the world of himself—had been “stolen”. He recognizes that the other person is likewise a perspective on the world, a perspective he is now



coming to recognize as a perspective. Although (to borrow Murdoch 1970's words) our "fat relentless ego" may sometimes lose sight of the existence of others as subjects, we are always capable of freeing ourselves from these "avaricious tentacles of the self" and switch into a mode of subjectual recognition.

To do right by someone, then, is to view them as a subject; to view them as a mere object, conversely, would do them wrong (for it deprives them of the full status of subjecthood). Strawson (2008) refers to the first stance we can take toward someone as a participant stance, and he refers to the latter as an objective stance. This distinction is by no means clean, and Strawson himself calls the two attitudes "profoundly opposed" though "not altogether exclusive" (p. 9). There might be times when to view someone participantly requires you to treat them as an object (Schroeder 2019), as essentially a marionette or a hydraulic assemblage primed by the whims of nature (young kids spring to mind as an obvious example here). Some people might even deserve to always be treated in this way, for they are too psychologically compromised (e.g. the severely mentally ill) or are too pathologically wicked (e.g. homicidal maniacs; Watson 2019), to merit proper recognition. Overall, however, it is the undisputed preference of most people to be treated as participants, to be treated, we may say, not as an "it" but as a "thou" (see Buber 1923). Only then can they be seen, really seen, for the unique perspectives on the world that they are.<sup>5</sup>

In taking the participant stance we acknowledge that we are not above the other, but that we are mutually answerable to each other, in good times and in bad. Even when we disagree, our disagreement does not entail that we see the other person as less than us. To regard another as a subject does not necessitate that we be in accord with them, or in any way conform ourselves to them. We can maintain that we are right and the other person is wrong while still preserving our status as mutuals; all that is required is that we remain open to hearing them out, open to the reality that they embody a view of the world we do not (Marušić and White, in preparation). I have heard Dr. Alistair Isaac sum up this idea nicely as, "reasonable people may reasonably disagree." What's important, however, is that they commit themselves, as mutuals, as equals, to continue negotiating with each other in a reciprocal, dialogic, good-faith fashion.

We now have all we need to answer the two questions from the start of this section. What view must I take if I want to do right by another in my thought? The participant view, that is, a view which recognizes the other as just as much a subject as myself, a locus of world, as someone I am accountable to and with whom

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5 The need to be seen is beautifully thematized in Season 5 Episode 6 of *Bojack Horseman* titled "Free Churro", where Bojack explores the significance of his mothers' dying words to him: "I see you." The comedic twist (\*spoiler\*?) is Bojack's realization that she was probably just confused by where she was and was reading the sign behind her that said "ICU" (Intensive Care Unit).

I engage in a project of shared interaction. What view must I take of another in order to wrong them in my thought? The objective view, a view wherein someone who might deserve to be seen as a participant is in fact reduced to and treated as an object, as someone I am not accountable to and who can be minimized, dismissed, treated with an absence of the kind of recognition that properly befits another subject.

#### **IV. Mnemonic wrongs and mnemonic rights**

So far I've established that people hold a special place in thought just as they do in action, and that to acknowledge this specialness requires that we conceive of others as subjects and not as objects. But does this insight apply to someone standing in front of me equally as it does to someone who is absent—someone who I may have nothing left of but memories? I will survey answers offered in the existing literature as to how we might wrong with our memories, but I argue that these are deficient insofar as they fail to acknowledge the role of remembered others as remembered subjects (4.1). I will then incorporate this critique into a positive account of mnemonic wrongdoing (4.2).

##### *A. Existing accounts and their flaws*

The existing literature on the ethics of memory focuses not so much on how we may wrong others in memory, but on how we may go wrong more broadly when it comes to memory. Much of this discussion focuses on the value of authenticity, i.e. that our memories correspond faithfully to what they are memories of. To tamper with our memories (usually through some medical procedure) would render our recollection of events, and therefore our lives/selves, inauthentic (Parens 2010; Erler 2011). Two arguments for authenticity and against memory tampering can then be constructed. The first argument is rooted in our intuitive desire for authenticity, as has famously been illustrated by Nozick's Experience Machine (1974, p. 43). The second argument is rooted in our duty-to-self not to deceive ourselves, which is an individualized application of the Kantian injunction not to deceive (and thereby undermine the autonomy of) any rational agent (Kant 1997, p. 125, as cited in Grau 2006). Insofar as we too are rational agents, we owe it to ourselves to fashion our lives after truth. Because messing with our memories would render our lives inauthentic, and we either desire authenticity or we owe a duty to ourselves to preserve authenticity within us, then messing with our memories constitutes a wrong.

On its own, this line of argument strikes me as egotistical and morally insufficient. I say "on its own" because though I do agree that removing my memories might deprive me of certain valuable outcomes (learning lessons from my past, forging a better self, etc.), this should not exhaust the reasons why memory remov-

al is bad. What is problematic about the authenticity accounts is that they place an emphasis solely on the memory-holder, on the moral injury one alone suffers. No heed whatsoever is given to how our memories implicate other people, and how they too might be wronged with our mnemonic conduct. Grau (2006) picks up on this when he says,

We may have a moral obligation to remember those we have had close relationships with [... though not necessarily] a moral obligation to have fond memories, or to like the person, for that would clearly be a ludicrous demand. (p. 126)

On this conception, we commit a mnemonic wrong when we fail to discharge our moral obligation to remember others faithfully. Grau notably limits the scope of his obligation claim to people who have stood in close relationships with us, for they are the ones most likely to weigh so heavy on our minds as to make us wish we could forget or otherwise blunt our memories of them. Nevertheless, insofar as we concede that everyone and not just our closest ones are special, we might want to quantify the obligation claim more generally.<sup>6</sup> With this in mind, we can construe a Grau-esque mnemonic wrong to be a wrong committed against the person we remember when we attempt to distort or otherwise modify our memories of them.

Although this might be the most compelling account of mnemonic wronging in the literature, I still find it lacking. Lacking, that is, in a way that cannot be fixed by amending a clause or swapping out one word for another, but in a way that requires rethinking what it is to remember someone in the first place. What I take to be flawed about the account is that it construes mnemonic duties as duties to preserve a fixed image of others as faithfully as possible—but this requires reducing others to fixed images which can be more or less faithfully recollected. To do full justice to the specialness of others, we ought to conceive of them not as objects to be recollected but as subjectivities to be engaged with. The issue with the authenticity accounts of mnemonic wronging is that they completely overlook the role that others play in our memories. The issue with the obligation-to-others account—though it acknowledges the moral importance of others—is that it then reduces them to a static image and our duty to them as a duty to preserve as accurately as possible the form of this static image. To put it simply, all of the existing accounts of mnemonic wronging fail to acknowledge the role that others play in our memories as full-fledged subjects.

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<sup>6</sup> I say “generally” rather than “universally” to leave room for some discussion on this point because quantifying “universally” would admittedly burden us with great obligations. Many thanks to Dr. Beri Marušić for this observation.

*B. Positive account of mnemonic wronging*

Memory lies in the delta between presence and absence. Although the remembered are physically absent by definition, they nevertheless figure actively in our consciousness here and now. Memories do not fit into a discrete past or a discrete present; they are somehow both safely backward-looking and inescapably near, somehow both past and progressively present. They are dynamic and ever-evolving, and the people we remember are alive to us and alive within us in a way that feels undeniably real and important.

To call this mere recollection fails to do the phenomenon justice. The three accounts surveyed in the previous section are grounded entirely in this deficient model of memory, however, in this model of memory qua recollection. The problem with this model is that it views our memories of others as pictures summoned from a shelf in our minds for inspection, to be judged as worthy either of being preserved or of being dismissed. More problematically than that, it views our memories of others as summonable, preservable, and dismissable. The other is completely calcified and inert, and full control over our recollection of them is granted to us as the rememberer.

What I propose instead of this static recollection model is an active remembrance model, a model which figures our encounter with the other in memory as a kind of dialogue. Admittedly, the stock of inputs for this dialogue is finite and objectual: we only have so many sense impressions of the other person, and the moments we had spent with them in real life too are numbered. But it would be a mistake to identify our memory of someone with this stock of inputs. Instead, our memory is the way we resurrect from the contours of these inputs another person, another subject, and the way we subsequently relate to and interact with this other subject. Memory is a dialogue, an exchange, an interaction we lead with this reconstructed subject.

One might object that insofar as our remembrances deal with reconstructed subjects, they do not actually deal with “real,” “proper” subjects at all, and are therefore no less objectifying than recollections. Insofar as recognition of subjecthood depends on the immediate physical presence of the other subject—mediated through a look into the eyes of the other, or an apprehension of their footsteps perhaps (as it might be for Sartre 1943/1956, p. 349; 356)—then memory will always fall short of full recognition. Perhaps memory is just not the kind of thing that lends itself to talk of recognition and is not a domain wherein the recognition of subjecthood is possible. And if we build recognition on a foundation of physical proximity, then I suppose that is correct.

My contention, however, is that physical proximity is not necessary for recognition of subjecthood, and that acts of remembrance can be subjecthood-recogniz-

ing in their own right. If recognizing another subject requires only the recognition that there is another perspective on the world besides ours, then I see no reason why recognition of subjecthood cannot be something we do in memory. I am not suggesting that the other's consciousness is co-instantiated within our own; I am merely suggesting that it is encounterable through our own, even if the actual person is physically removed.

By analogy, consider the kind of dialogue we might lead with a dead person or a textual persona.<sup>7</sup> All that they could have physically said or done has already been said, and is exhausted either by the stock of memory inputs we have of them, or the words they have committed to the page. In either scenario, however, we can still engage the person through whatever is left of them: we can engage them in dialogue, imagining at every turn what they might say back to us based on what they have already said. Although the dead person or the textual persona is in an important sense absent, they are also indelibly present to us. The presence of the dead person comes out in expressions such as, "He may be gone, but he will always be with us" (e.g. Trendell 2016); or "I carry him in my heart, everywhere I go" (May 2021). The presence of the textual persona comes out in our frequent abbreviation of speculative conditionals such as, "what de Beauvoir would argue," to the immediate, assertive, "de Beauvoir argues." Our ability to make those who are gone present, incorporating them into our thought and leading conversations with them, reveals that though they might be proximally distant, they are not beyond our reach.

In fact, we too are not beyond their reach. A crucial feature of any interaction is that both participants can be acted on by each other, that both can be transformed through the course of their interaction. Suppose someone slighted me. In my remembrance of this person I curse them and wish ill upon them. However, because this person refuses to let go of me, because the conversation keeps evolving and may never stop, I come to realize the wrong of what I had done when I had wished ill upon them. Though the wrong I had committed by cursing them might be a wrong, it is not a mnemonic wrong. By conceiving of the memory of the other as a living interaction, and my interlocutor as a subject I can hurt and am subsequently answerable to, I had in fact committed a mnemonic right. In so doing, I was able to deepen my moral understanding and—to use a formulation I like (due to Gaita 2004, p. 142)—rise to who I had been called to become. Conversely, if I had viewed the other person as a mere image I could not affect and which likewise could not affect me, I would have committed a mnemonic wrong. A signal feature of remembering others as subjects, then, is that we ourselves can develop as subjects through our mnemonic dialogue with others.

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7 Many thanks to Dr. Beri Marušić for suggesting these examples to me in conversation.

The final advantage of conceiving of memory as dialogue is that it leaves the problematic question of truth up for mutual negotiation. Recall that on the Grau-esque obligation-to-others model of memory, a significant emphasis is placed on how faithfully we remember others, on how accurately our memory-image of someone corresponds to the way they “actually” were. But how were they, “actually”? The poet hath wrote, people contradict themselves and contain multitudes. How could a recollected image possibly do justice to the infinite complexities of a human being?

This issue of representational accuracy is nicely sidestepped by my proposed dialogue- based remembrance model, which, by conceiving of remembrance as an evolving activity, leaves the truth up for negotiation with the other. Remembrance is an activity of mutual discovery, and insight can only be gleaned by engaging in the activity. In the same way that no one can predict where a conversation might go next, so too no one can predict where you might end up once you allow yourself to remember someone. This makes remembrance incredibly personal and individual, and its capacity for breakthroughs potentially limitless.

To bring my positive exposition to a telegrammatic close: to wrong others in how we remember them is to fail to engage them as equal participants in a dialogue which could help us learn, develop, and grow as subjects.<sup>8</sup>

## V. Painful memories

Philosophy often gets a bad reputation for being abstract to the point of being inapplicable to real-life. To defend myself against this charge, I will now try to apply my account of remembrance and mnemonic wronging to a sadly all-too-familiar type of memory: memory of those who hurt us. I argue that to try to willfully rid ourselves of such memories constitutes a mnemonic wrong against those who hurt us, as essentially an exchange of one wrong for another.

Take the extremely relevant and much discussed (e.g. in Grau 2006) thematization of memory removal depicted in *Eternal Sunshine of the Spotless Mind* (Gondry 2004). In this film, Joel finds out that Clementine, someone who once meant a great deal to Joel, has undergone a medical procedure to remove her memories of him. Heart-broken, Joel decides to do the same to her. As his memory is slowly being wiped, we see Joel reconstitute and relive some of their key moments together and engage in dialogue with the version of Clementine that still lingers on in his memory. The film culminates in Joel’s regretful realization that he actually doesn’t want to lose her, which realization is prompted by a final re-imagined conversa-

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8 It has been pointed out to me that my account of memory might be difficult to distinguish from fantasy. The border between imagination and memory is not easy to draw, nor do I have the space or capacity to attempt to do so here. But I do believe there is something true in what I propound above.

tion he has with Clementine on the beach where they first met.<sup>9</sup> I take this to be a perfect illustration of my account of remembrance, for it shows how engagement in dialogue with the remembered other can help us break new ground in how we relate to them. In this case, of course, Joel goes from wishing he could erase Clementine from his life to wishing he could reverse that decision.

As far as I understand it, the take-home insight of *Eternal Sunshine* can be summed up as follows: forgetting is not the way. However, this seems starkly at odds with the general advice people give in situations similar to Joel's. We have all likely had a friend advise us before (and perhaps we too have dispensed this advice) to "just forget him, he's not worth it." I ask: isn't he though? Save cases of extreme trauma, is it really fair to suggest that the other person is so utterly devoid of importance as to merit mnemonic erasure? Is whatever perspective they might have had on the situation which ended up bringing us so much pain really so entirely negligible and discountable?

My account of mnemonic wronging would follow *Eternal Sunshine* in saying no. Vilify the other if you must; curse them in your mind, insult them back, run them over with a double-decker bus. But forget them? No. To forget them would preclude any conversation whatsoever, and thereby foreclose on the possibility of gaining any further appreciation of or further insight into the situation and into how you relate to the other person. Joel might hate Clementine for doing this to him, but in allowing himself to feel and engage with the pain, he comes around to seeing that his memory with Clementine in it, despite everything, is better than one where he wipes her out without a trace.

Perhaps the best way into such a conversation is through compassion. Etymologically, compassion means "co-undergoing", "co-suffering", or "co-feeling" (Online Etymology Dictionary). The "co(m)" morpheme in English, and its correlates in other languages (the "Mit" in the German "Mitgefühl", the "sou" in the Czech "soucit"), underscore the mutuality and shared burden of a predicament between two people.<sup>10</sup> It is a commitment to approach the situation together, an affirmation that neither you nor the other person is alone in this. When we feel haunted by painful memories from our past, my suggestion is that we do not close ourselves off, that we do not listen to those who tell us the other person doesn't

9 This is similar to how Marušić and White (in preparation) propose we approach peer disagreement, viz. as an opportunity to engage in mutual inquiry with a fellow reasoner.

10 In a passage I like from *The Unbearable Lightness of Being* (1999, p. 19), Milan Kundera remarks that the English word "compassion" only means co-"suffering", which is essentially a stance based in pity toward the sufferer. It is therefore inferior to the version of the word in Czech or German, which stress the co-"feeling" aspect of compassion as essentially a stance of mutuality, regardless of whether the other is suffering or ecstatic. Co-feeling, Kundera argues, is a more egalitarian mode of relating to the other. However, as Dr. David Levy has pointed out to me in conversation, the Latin *pati* means not just "to suffer" but also "to undergo", putting pressure on Kundera's argument from etymology.



matter. The other person may very well be worthy of our contempt, but they do matter. Crucially, we ought not listen to those who urge us to forget and move on. What may bring us most solace and allow us to move on (or at least gradually move through) is compassion, a willingness to share the burden of conversation with another in mnemonic dialogue. It is beyond the scope of this paper, or any paper for that matter, to conjecture where such dialogue, or any dialogue, might lead. But my contention, for the time being, is that no matter where it leads, it is a dialogue worth having. To refuse would be wrong.

## **VI. Conclusion**

This paper has presented an account of memory wherein to remember someone is analogous to engaging them in a kind of dialogue. Because people hold a special status regardless of whether this dialogue is in person or in the domain of memory, it is possible for us to commit a kind of wrong in the way that we remember them. I have argued that this wrong amounts to a failure to recognize that our rememberings are essentially dialogues, and that we owe it to those we remember to engage them in good-faith mnemonic conversations.

This debt we owe to others is not a duty to remember, not a duty to represent faithfully, nor perhaps even any kind of duty at all. The language of duty might have become too theoretically loaded to make the point stick. What the possibility of mnemonic wronging is fundamentally about is remaining responsive to others and acknowledging that they remain alive to us—alive within us—even if they may not be physically present to us. Proximity is not only about geography, but also about memory, and we ought not shut ourselves off to the dialogue that plays out and will continue to play out in our heads long after those we hold it with are gone. In a way, they are never gone; in a way, remembrance, despite its seemingly backward-looking nature, is profoundly and continually present and future-going. This means that the possibility of wronging someone—degrading them, vilifying them, dismissing them, or the myriad other ways one might wrong someone in real life—remains likewise open in memory, and remains especially tempting given how uniquely ours our memory might at first seem. But by acknowledging the interpersonal nature of remembrance, we acknowledge not only the ways in which we might wrong someone, but we may begin, importantly, also to envision the ways in which we might do right by them—or, better still, the ways in which we have done, do, and might continue to do right by them, and by us, together.



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# Objectivity, Unraveled: Can We Ground Ethics in Human Language?

David Veldran

*In this essay, I use Wittgenstein's writings on language to assert that some moral statements can be, in one sense, objectively true or false. Though I suggest that one type of objectivity ("Platonist") is beyond reach, I argue that another, deflationary kind, is plausible—and potentially worth wanting. Such objectivity can emerge from the way we use language, and it does not require grounding in mind-independent facts. I argue, however, that securing this kind of objectivity ultimately fails to justify the practice of ethics, since it forfeits something else ethics needs: normativity. This indicates that ethics must rest on something beyond how we use language.*

## **I. Introduction: "Normative Objectivity"**

Ethics demands objectivity and normativity. When you and I do ethics, when we put forth arguments in an attempt to convince each other to set our views, and behavior, in line with morality. We appeal to an authority beyond ourselves that we regard as legitimate (objectivity), and we do this because we expect that this authority will *move* us (normativity). If, when I am trying to convince you that factory farming is wrong, I appeal to no such authority, I am simply telling you what I prefer, and it begs the question why you should prefer it too. If, on the other hand, I appeal to an authority you respect, but one that does not offer categorical prescriptions, I will fail to move you to change. Without objectivity, then, ethics is empty. Without normativity, it is impotent.

A natural place to look for objectivity is among those things we believe are most real or "mind-independent" because these items are least subject to illusion. Perhaps the thought is that there is an inverse, and monotonic, relationship between a thing's mind-independence and its subjectivity, such that the more mind-independent a thing is hypothesized to be (e.g., physical laws), the less subjective it is. Fortunately, as we will see, the later Wittgenstein can rescue us from this thought and show us that mind-dependent things can also afford objectivity. This is fortu-

nate because, if he is right, it will obviate the need to ground ethics in something mind-independent, which has proved a difficult if not pointless task. As we will see, once objectivity is claimed, normativity is often somewhat clumsily smuggled in. For some reason, it is easy to overlook this second criterion, and this is the downfall of many a moral claim.

Before demonstrating why a Wittgensteinian approach offers a plausible attempt to ground ethics, let me briefly sketch the approach by way of analogy. Suppose my friend and I are playing chess. When she illegally brings a captured rook back into the game (hoping I won't notice), what should I say to get her to take it back? It would be no more useful to say "I wouldn't do that if I were you" than to say "I don't like what you did, please take it back," for having that rook is good for her winning chances, and she may not believe in winning fairly. My best bet is: "This is chess. What you have done is not chess. Take it back."

In saying this, I appeal to an objective, but wholly mind-dependent, authority to call out her move—the rules of chess. But I also, *ex hypothesi*, appeal to a *compelling* authority. My valid objection to her move is usually all I need to get her to change it, assuming we both know how the game is played. If I succeed in getting her to change her move, I may seem to vindicate the assertion Sabina Lovibond attributes to Wittgenstein: that normativity "depends on our having been initiated into shared practices, so that it feels natural to us, much of the time, to proceed in one way rather than another..." (2019, p. 84). Reminding my friend of the rules of the game we inhabit, I let these rules pull her with their normative force.

For our purposes, the question is whether we can attain such (what I will call) normative objectivity beyond chess and in the domain of ethics. Let us begin by exploring the difficulties others have faced when attempting to ground normative objectivity. This will give us an idea of how to improve upon them.

## II. Realism and Normativity

Attempts to ground normative objectivity, as we said, often trigger a realist impulse. One kind of moral realist asserts that moral properties are primary properties—that is, they inhere in things mind-independently, like the property of roundness. But there are several problems with this "primary" realism. J.L. Mackie (1977) raised two. First, there is the problem of relativity, that moral disagreement "seems to reflect people's adherence to...different ways of life" rather than divergent inferences based on a paucity of evidence, which accounts for scientific disagreement (p. 36). More important, however, is the problem of "queerness"—that such posited moral properties, with their normative force, are quite unlike natural properties. Taking our cue from this latter argument, we can ask, even if morality can evade "relativity"—even if it is somehow woven into the fabric of the world, as Mackie would say—it still seems to be an open question why I should

abide by it. If morality were as objective as we take mathematics to be, we could ask the parallel question in mathematics: why should I care that I get ten, and not eleven, when I add five and six? Nothing intrinsic to mathematics or morality can tell me why I should play by their rules. Though their rules give us objectivity on how to play, something beyond the rules must supply normativity.

Perhaps the realist may try another approach, one that John McDowell (1985) offers. In what I will call “secondary” realism, the realist reconsiders her mind-independence claims to meet the objections to primary realism. She holds that, although morality is subjective because it requires moral judges, it is still *real*, akin to secondary qualities like color.<sup>1</sup> This move may evade the charge of “queerness,” giving us an idea of how moral properties could be motivating or normative. But it fails to provide objectivity: what produces one type of reaction in one agent can elicit an entirely different one in another. To take a famous example, phenylthiourea is bitter to some three-fourths of people and tasteless to the rest. In cases such as this—and nothing bars posited moral properties from having this problem—we cannot arbitrate who is right and wrong.

To avert this problem, McDowell introduces the notion of merit as a possible arbiter of correctness. Moral properties do not merely cause moral reactions; they merit them, he asserts. The idea is that some rational, and objective, evaluation is always in play when we make moral judgements. This promises to keep us out of the quagmire of phenylthiourea-like disagreement because in this picture, an application of a concept will “allow for the possibility of criticism” (p. 119). But whether something merits a reaction ineluctably traces back to the judging subject. Contra McDowell, if we assert that bears are “fearful,” we will forget that this statement requires the judge to have reason to fear the things the bear portends, and this is far from guaranteed. Not only does a bear portend different things for different beings (and not all these things are fearful!), but we also are on weak, and strange, grounds to say that all human judges, for instance, *should* fear what the bear portends. Here, we meet the inescapability of David Hume’s (1978) comment that reason is the slave of the passions. In the absence of a universal passion or non-cognitive reaction to bears, reason alone cannot supply the objectivity we need.<sup>2</sup>

### III. Deflationary Objectivity

Perhaps we may resign ourselves to the idea that, as morality goes, Platonist

1 Locke described these qualities as “powers to produce various sensations in us” but which are “nothing in the objects themselves” (2017, VIII.13).

2 Followers of McDowell may add another premise to assert that humans are sufficiently alike to react similarly to the things a bear could portend for them. Yet, even this is true now (and that is doubtful), nothing prevents it from becoming false in the future. This is no recipe for objectivity.

objectivity is not in the cards. So, we may relax our expectations and settle for a deflationary yet valuable objectivity. This, I think, is what grounding ethics in language can offer. But once we cross over into anti-realism and aver that morality has no claim to mind-independent existence, one must be careful not to deflate too far—to the point of losing normativity.

Simon Blackburn's (1988, 1993) "quasi-realist" program strikes me as doing just that. According to Blackburn, to make a moral judgment about something is to project my attitude onto it. When I call something comic, say, my statement lacks any mind-independent grounding, but I speak as if it did. This is quite plausible, but what the quasi-realist picture leaves out is normative force. Consider how, in the following passage, Blackburn offers us an apparent standard of objectivity ("the expression of fallibility") but does not give it any teeth:

We could learn that we come to admire things all too often because of propensities which we regard as inferior insensitivities, fears, blind traditions, failures of knowledge, imagination, sympathy. In this way we can turn our judgments on our own appetitive construction, and may find it lacking. The projection of this possibility is simply the expression of fallibility: I think that X is good, but I may be wrong. Thus a projectivist can go beyond saying of our moral sensibility that it might change, to saying that it might improve, and not only because of improving knowledge, but also because of improving reactions to whatever information we have. (2005, p. 175).

Thus, Blackburn fails to show us why this fallibility is something we should care about. Certainly, I may survey my judgments and decide that some of them are better than others, but what reason do I have to do this? We can illustrate the issue with Blackburn's metaphor of moral improvement as Neurath's boat, which rebuilds itself at sea: though Blackburn describes how moral judgements can change—and, by one's own lights, improve—he omits all normative force: how should I begin to convince the people on Neurath's boat, who are quite comfortable with the vessel as it is, to start recycling the planks? If all that can be said is that this will make one's life go *better*, we will introduce a Euthyphro-like problem and sidestep the moral question.

Having canvassed some of the difficulties with these influential attempts to ground morality, we can now turn to what I believe is the most promising candidate for grounding normative objectivity: language. With language, we can perhaps deflate objectivity without fear of losing normativity as the quasi-realist does.

#### IV. Why Language?

I turn to language because, like Mackie, I am baffled by what moral statements could mean outside of their use in language—that is, I cannot fathom the mind-independence of morality. In focusing on how our moral statements are used, rather than believing they track something mind-independent, I am drawing from the later Wittgenstein’s precepts on what grounds the meaning of our words. Namely, for him, it is words’ use among others that gives them meaning, not their representation of some extra-linguistic reality (Verheggen, 2003; Biletzki and Matar, 2021). Whether we are inclined to adopt this perspective for all our speech-acts, I find the theory especially plausible for moral statements, which predicate things with quite “queer” properties, as Mackie says.

Precisely where the above attempts to ground morality go wrong, I believe, is there aspiration to ground it in something extra-linguistic. Whether the proposed ground is a natural property, “pure reason,” a sense of fallibility, or some non-cognitive reaction, the path to normative objectivity faces at least one of the challenges we discussed. By turning to language, we may avoid some of these problems.

Consider the claim that causing others pain is *ceteris paribus* wrong, which is normative-objectively true if any moral statement is. Instead of, as it were, going beyond language to investigate the supposed reference of these concepts, causing others pain and wrongness, we can turn inwards and consider how these concepts are used in language. In doing this, we may find that, just as we can hardly call Sherlock Holmes unintelligent or Superman weak, we cannot truly say that causing others pain is right.<sup>3</sup> When we go beyond language and try to locate a property about causing others pain that makes it wrong, we are inevitably troubled by a G.E. Moore-inspired open question that such a property is not wrong at all. But within language, we can perhaps simply say that there is no open question: causing unnecessary pain just *is* wrong, for this is what that concept means, given how it is used. One who asserts otherwise, we may say, is simply misapplying the concepts we taught him.

Doubtless there will be many objections to this way of grounding, but in the rest of this paper, I will address the three I believe are strongest. First, we may find, when contemplating Moral Twin Earth (Horgan and Timmons, 1991), reason to doubt a use-theory of moral meaning; if language cannot ground meaning in either words’ use or reference, it is hard to see how it can be the backbone morality needs for objectivity. Second, we meet a problem of relativity: it seems that even concepts like causing others pain lack determinate meaning in language because it is always possible that some speakers have meant it—or will mean it—with ap-

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3 If I utter the words, “causing others pain is right,” one can argue that I do not mean anything or I mean my words in a different way than my linguistic community, so I am not truly disagreeing with this community.



probation. The final problem concerns normativity. Even if moral concepts can be said to apply correctly and incorrectly based on their use in language, what improvement does this offer on the situation Blackburn left us in, wherein the people on Neurath's boat had little motivation to strive for correctness? To put the matter in terms of the example I led with, although chess has rules, and one cannot play chess unless he follows them, why should one play chess?

### V. The Use-Theory of Meaning and a Moral Twin Earth

According to Mark Timmons and Terry Horgan (1991), if Twin Earthers<sup>4</sup> use moral concepts such as "right" and "wrong" differently than we do (though they employ them similarly to us when regulating their behavior), our intuition is that they are *disagreeing* with us and not merely using different concepts than we are. This diverges from the case of non-moral terms: if Twin Earthers used "water" to refer to XYZ rather than H<sub>2</sub>O (because it is XYZ that flows in their rivers), we would simply say that they mean something different by "water," and there would be no grounds for disagreement. Moral concepts, then, are not causally regulated by natural properties (as "water" is), Timmons and Horgan assert. This reasoning poses a difficulty for a use-theory of moral meaning, since in our picture, moral concepts were causally regulated by their use in language. To frame the problem in Moorean terms: it seems to be an open question whether what a linguistic community says is moral—its *use* of moral concepts—is indeed moral.

But we should note that our instinct to disagree with Twin Earthers is not restricted to moral terms. It will spring up every time one employs a concept that we believe commands universal correctness conditions (ones not fixed by a particular linguistic community). If Twin Earthers employed mathematical concepts like multiplication and division similarly to us—so that visiting Earthlings were inclined to translate these Moral Twin Earth terms "as identical in meaning to our orthographically identical English terms," (p. 459)—then, if we learned that they actually believed that these concepts could, say, only be used to keep track of the number of beans on their planet, we would feel the urge to correct them. We would believe that they were hitting on the same concept of mathematics that we have but were simply disagreeing about its interpretation.<sup>5</sup>

This discussion betrays that we are still clinging to a Platonist picture of those concepts we call "objective." Such a picture regards our "rules as rails"—as mind-independently correct ways of going-on—which Wittgenstein calls a "myth-

4 Residents of a planet that looks very much like ours except for a few differences, such as the kind of substance that flows in their rivers and the way they use their moral concepts.

5 Similar concerns would also apply to concepts like rationality, which we are often hesitant to grant multiple interpretations: if we believe Greg has the concept of rationality, we will eagerly correct him if he says that it is rational for Maria to empty her water bottle on the floor if she is thirsty.

ological description of the use of a rule” (*PI*, 218-221). In clinging to this picture, we forget the anthropocentric nature of even our most objective concepts, a key Wittgensteinian insight (Leich and Holtzman 2005, p. 21). To put the point directly, believing something to be Platonist-objective does not make it so. Thus, if we think that moral concepts are not causally regulated by their use, we may be wrong—we may only be expressing the intuition that there seems to be only one way to use our moral concepts—*our* way of using them. Our inability to imagine other uses may not be metaphysically significant; rather, it may just be an inability. With these insights, we can defend a use-theory account of our moral statements.

## VI. Linguistic Communities and Correctness Conditions

The second challenge that grounding ethics in language faces is an “argument from relativity.” If we adopt a use-theory of meaning, it may seem easy to defeat objectivity, for clearly people use moral words differently. We might think, unless *everyone* used a concept like slavery in connection with words like “immoral,” “unjust,” and “wrong,” slavery’s wrongness could not be an objective fact. I agree with this objection, but only if we take its use of “objective” to mean Platonist-objective. If we do, it nicely parallels the phenylthiourea case: most people find the taste bitter, but we do not take the majority’s word as gospel. Rather, we speak as if there were no Platonist-objective truth about the matter and simply say, “most find it bitter, and some find it tasteless.”

But losing Platonism does not entail losing objectivity. Instead of looking to the majority opinion to ground an objective statement, when we evaluate the truth of a statement, I think we always do so in reference to a linguistic community for which it has a correctness condition. By grounding our meaning locally (in specific linguistic communities) we can preserve some objectivity. We can say, for instance, that for linguistic community A, stealing is wrong, though we leave it open whether stealing is wrong for all communities.

This may not be the objectivity of our fantasies, but it is still an achievement: if we know that a certain moral agent belongs to A, we can call his stealing “objectively wrong.” Thus, if we can ascribe correctness conditions to some of our applications of concepts, then, even if those conditions are relative to linguistic communities, we may have an objectivity worth wanting. True, this objectivity will be nested in a larger relativism, but that need not concern us. If, in the moral domain, I can approach the objectivity of the truth of my statement, “This mug is red” (which I know is not true for all beings—not even all humans), this could mean that I sometimes have grounds to correct people’s moral judgements, just as I would correct a child who called my mug “pink.”

But how do we know which applications of concepts have correctness conditions and which can be made, as it were, freely? We should first establish that no

concept can truly be used freely if it wants to be meaningful. Even in the case of phenylthiourea's taste, though there is leeway in its intersection with a bitter-tasteless axis, we cannot apply any concept we choose to it. Calling the taste "blue" would be radically misapplying a concept, or akin to speaking in a private language, which Wittgenstein tells us is impossible.<sup>6</sup> Our moral concepts seem to be like phenylthiourea's taste in that their applications may only have correctness conditions in certain situations. In ethics, we often find the kind of disagreement we regard as genuine and irresolvable, unlike that in science, which we believe is soluble with enough evidence. These cases lack correctness conditions. Whether it is right to stay home and care for one's ailing mother or leave and fight for France is not a question that admits a clear answer (regardless of how much empirical data one collects). Though we may prefer one, either option seems like a plausible interpretation of "right."

Yet other moral cases do seem to have clear answers: we would not, for instance, find plausible an interpretation of "right" that ascribed the word to *ceteris paribus* to causing others pain. Similarly, if you claim that being honest, sustaining friendships, reciprocating favors, and loving one's children are *ceteris paribus* right and good, you may simply be correct—for, on a use-theory of meaning, this is what these words mean in our linguistic community. That some applications of concepts cannot be called into question receives much support from Wittgenstein. He tells us, for instance,

I did not get my picture of the world by satisfying myself of its correctness; nor do I have it because I am satisfied of its correctness. No: it is the inherited background against which I distinguish between true and false. (OC, 94).

Along these lines, we may ask, how can one dispute that friendship is good when one has partially learned the meaning of "good" through the example of friendship? It seems one simply does not have grounds for dissent.

## VII. Training Sets

One way to track whether an application of a concept has a correctness condition is to look at how the concept is taught. When teaching the meaning of "right" and "wrong," we normally do not use hard cases like the trolley problem.<sup>7</sup> Rather, we teach our moral concepts through such kindergarten examples as pushing and shoving, apologizing, and distributing crayons equally among students. These

<sup>6</sup> As he argues, "the use of [a] word stands in need of a justification which everybody understands" (PI, 261).

<sup>7</sup> And generally, we *ask* our students how they would apply the concepts here, we don't *tell* them how to!

kinds of examples make up what I'll call our linguistic community's *training set* for learning the concepts of right and wrong, and it is these applications that have correctness conditions. If we encounter one of these situations in the real world, we may find ourselves in one of those circumstances in which "a man cannot make a mistake" (*OC*, 155)<sup>8</sup> when we make our moral judgments. For the applications that lie outside of a community's training set, however—say, Sartre's existentialist dilemma—it seems to be underdetermined whether correctness conditions take.

It seems, then, that objectivity will apply only for applications given in a community's training set. But what is in our training set? One can argue that nearly every case for which we will have to make moral judgments will be outside of our training set, since we can never eradicate all the differences between two situations that could warrant different applications of a concept. We must, then, extrapolate rather than interpolate how to apply a rule, which opens the door to multiple methods. In Cora Diamond's (2019) example, a pair of boys who torture a cat apply the word "cruel" properly to others but refuse to call themselves cruel. What could we say to them to show them their mistake?

### VIII. Rule-Following and Relativity

This question takes us to concerns about rule-following. Namely, we must reckon with the problem of how one can know how to follow a rule he has learned from a finite set of cases for any possible case. Wittgenstein raises this concern in the passages of the *Philosophical Investigations* surrounding his so-called Rule-Following Paradox:

Following a rule is analogous to obeying an order. We are trained to do so; we react to an order in a particular way. But what if one person reacts in one way and another in another to the order and the training? Which one is right? (*PI*, 206).

If a rule admits multiple interpretations, we can never be sure that others are following the same rule we do, even if they claim to. To use Wittgenstein's example, a teacher can never be sure he has taught his student how to apply the rule "add two," for however much evidence the student provides that he is following the teacher's rule, his future behavior may call that into doubt. Worse, if it becomes apparent that he is *not* following the teacher's rule, the teacher may have no grounds to say he has erred, for the student's rule may be a valid interpretation of

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8 As Wittgenstein clarifies, he does not mean that one "cannot say anything false in [these] circumstances," but that, if one does, "we should regard him as demented."

what he has been taught.<sup>9</sup> This problem does not bode well for moral objectivity, for, if we view applying moral concepts as a form of rule-following (following rules dictated by the use-theory), it seems we have nothing to stand on when critiquing how others apply moral concepts.

### IX. Staving off Relativity: Moral Bedrock

Let us consider what I believe are the strongest attempts to solve our relativity problem. As we will see, we will need to go beyond them. One solution is to block the possibility of multiple interpretations of a rule. Offering a “straight solution” to Wittgenstein’s paradox, McDowell (2005) emphasizes Wittgenstein’s claim that “there is a way of grasping a rule which is not an interpretation” (*PI*, 201). If following “add two” consists only in obeying—and not interpreting—a rule, then there is no room for indeterminacy in how a rule is to be applied. Thus, when Wittgenstein’s student, believing he is following the rule, outputs “1000...1004...1008...” (*PI*, 185) he is not enacting a valid interpretation of it—he is simply erring. McDowell quotes Wittgenstein: “Every sign is capable of interpretation; but the meaning mustn’t be capable of interpretation. It is the last interpretation” (*BB*, p. 53).

But why is it the last interpretation? Here, McDowell seems to rely on Wittgenstein’s notion of “bedrock.” Wittgenstein repeatedly tells us that, at some point, we must stop asking for justification for our actions, because at bedrock, all we can do is shrug and say, “This is simply what I do” (*PI*, 217). McDowell’s mediating premise must be that you and I share enough bedrock such that, when I attempt to teach you a rule, you cannot reinterpret it—you can either follow it correctly or *misinterpret* it. But, contra McDowell, being part of a linguistic community that teaches certain practices and customs cannot by itself guarantee convergence in rule-following. It is a perpetual challenge to block the possibility of multiple interpretations: everywhere we look, there are infinite choices to be made about how to divide up the world, and even if we tend not to make these choices and instead follow our rules “blindly,” as Wittgenstein says, it is still logically—and physically—possible to make them. As Alice Crary notes,

individuals who have mastered a given concept may have sensitivities to different – and equally real – similarities among its uses...But, even taking for granted the demand for a sensitivity to the importance of similarities uniting members of some such ‘core’ set of a concept’s applications, it is always in theory possible for the sensitivity internal to an individual’s mastery of a concept to develop and...deepen (2007, p. 310).

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<sup>9</sup> If the student has only learned on numbers below 1000, then doing something apparently different on numbers greater than 1000 will not contradict the rule he aims to follow.

Thus, even when we deflate what we mean by objectivity to be wholly anthropocentric, it may still be out of reach: because we humans are not clones but evolving beings, there is nothing to prevent novel mutations—genetic or “memetic”—from shaking up our *Lebensformen*. It seems, then, that any convergence in our rule-following will be contingent.

Perhaps, however, if you and I can communicate, we already share moral bedrock, and so convergence in our rule-following will result. As Donald Davidson argues,

The main thing is that finding the common ground [shared bedrock] is not subsequent to understanding, but a condition of it. This fact may be hidden from us because we usually more or less understand someone’s language before we talk with them. This invites the impression that we can, using our mutually understood language, discover whether we share their view of the world and their basic values. This is an illusion. If we understand their words, a common ground exists, we already share their way of life (2004, p. 5).

That members of linguistic communities enter into a sort of contract with each other in order to make understanding possible is insightful but, on its own, it cannot give us objectivity. As Hallvard Lillehammer (2007) brings to light, such shared bedrock only seems to guarantee agreement on some “basic” or core values, such as logical consistency, that communication demands. Given that Davidson recognizes the existence of disagreement in some domains (such as ice cream preference), how can he expect what he calls the “enlightened” values of rational agents—namely, moral values—to converge? (2007, p. 207). We are reminded of Crary’s admonition that, even if we admit “core” uses of concepts, it is difficult to block the possibility of novel interpretations and *Lebensformen* from springing up.

It seems our linguistic contract, then, is liable to break at any moment, and if it does, we may not even notice: like us and the Twin-Earthers, you and I may convince ourselves that we share common ground on the meaning of “right” and “wrong” because we have hitherto applied these words similarly. We may have even confirmed this through what Davidson (2003) calls “triangulation,” a method of ensuring we are responding to the same features of the world. But our uses can always diverge in the future, and we won’t be able to tell who has erred.

Now, one may think that, if everyone else agrees, then you cannot deviate from the norm because, as we said earlier, you would be speaking a private language. But the point is that we cannot guarantee universal agreement: it is possible not only for your sensitivities to change, but also your friend’s, and so, if you two

communicate, you may have a different interpretation of a concept we think we agree on.

### X. Whither Conservatism?

There are other counters to the problem of relativity that one can make, but they run into similar issues. For instance, we can use McDowell's (1985) concept of merit to argue that certain interpretations of a rule are merited: if a king call the punishment of three murderers "moral," but you also knew that each of them happened to be born in July, the correct rule to learn is that murderers, not July-borns, should be punished, for only murderers *merit* punishment. We may also promote McDowell's (1994) notion of "second nature," which culture instills in us, as a way to ensure convergence. But both solutions fail. Whereas the first solution runs into familiar "slave of the passions" problems, the second cannot give us reason to believe that the memetic inheritance of "second nature" is any less fallible than the genetic inheritance of "first nature."

Perhaps, then, one will bite the bullet here and insist on a conservative grounding of meaning. That is, one can say that a linguistic community has the authority to determine whether a given application of a rule is correct (and so conserve its way of doing things). One may also argue that we do not need to *invest* the linguistic community with this authority—it already has it. Though this move, like Saul Kripke's (1982) solution to Wittgenstein's paradox, is "skeptical" of non-dogmatic solutions, it is perhaps neither radical nor arbitrary.

If we reconsider our rule-following predicament, we may realize that we cannot abide the distinction between a training set and an "application" set, in which one begins to extrapolate the use of a concept to the "real world." For, when does learning stop and applying begin? There is no clear distinction, for although we might say that a teacher lecturing to a student is squarely in the realm of learning, as soon as the teacher begins to quiz a student on the rule, the student starts to apply what he knows. Yet quizzing occurs in one's training: a student learns a rule by acting and being corrected. He does not learn it by merely watching others apply it, for then he would only learn how to *watch* others apply a rule, not how to apply it himself. He needs to *practice* the rule, but not *only* practice it, because he may practice his own (incorrect) interpretation of it. What he needs is to practice it with a teacher who corrects him when he errs.<sup>10</sup>

Additionally, one does not cease to learn when one enters the realm of application. For, he is here subjected to more rules—about extrapolation—which are taught by others' responses to his actions. Never can one definitively say that some-

<sup>10</sup> And this is indeed the case for Wittgenstein's student: "Let us suppose we have done exercises and given him tests up to 1000" (from *PI*, 185).



one understands a rule, for what can be made out to accord with a rule “can also be made out to conflict with it” (*PI*, 201). We are thus always learning.

Before, we said that all examples outside of one’s training require extrapolation—rather than interpolation—because one can never be sure that a situation exactly matches that given in training. Now, because we cannot not distinguish between training and application, we can see that *even cases within one’s training set* require extrapolation. When Wittgenstein’s student added two in the same way up to eight, nothing prevented him from then jumping to twelve due to his own interpretation of the rule. How can we account for the thought that a teacher could justifiably correct him here—but not if he were to make a similar mistake after 1000? In other words, one who wants to deny the objectivity of meaning would only grant a teacher authority to correct a student when the numbers are below 1000 (within the training set). But since we cannot not distinguish between training and application, we cannot regard 1000 as a meaningful distinction. It is thus arbitrary why teachers, if they ever can be said to have authority, do not *always* have it.

### **XI. Normativity Strikes Back**

But, once we grant teachers, or a linguistic community, the authority to determine the correctness of applications of a rule, we come to a problem that will stop us in our tracks. What we grant in objectivity, we lose in normativity, for we can always ask the further question, “But why follow the rule *that* way?” The available answers to this question strike me as inadequate. In reviewing the one I find strongest, we can watch the promise of normative objectivity begin to unravel.

I began this paper by comparing our project to chess. As we said, there is some normativity built into chess such that, if one wants to play chess, one must play by the rules or else it isn’t chess. But the key premise is the antecedent in that conditional; the rules only gain normative force once we establish that one wants to play the game. As we noted, there seems to be a disanalogy with morality: asking why be moral is not like asking why move my bishop only on a diagonal—it is rather like asking why play chess, and neither morality nor chess can answer this kind of question. But one may allege that, unlike chess, morality is a game that is not easily exited. On our deflationary picture, we said that to play a moral game is to be part of a linguistic community that uses moral concepts. Perhaps, though I may try to use concepts (with my friend, to form a linguistic community) differently from the pack, I will still fail to escape my linguistic community, so I will be unwittingly bound to its rules.

Thus, one might say that it is a mistake to think that, because we invented language, we can do whatever we want with it. We invented language in that *humans* did, but is it not more accurate to say that we (you and I) *inherited* language? We learned the meaning of words, as Wittgenstein told us, by ostension. Our par-



ents pointed to various things in the world and told us that they were round, odd, dainty, beautiful, unjust, etc. It is tempting to believe that when a community applies a concept to something, one can make a conscious decision to disagree—for instance, though my community says the *Mona Lisa* is beautiful, my friend and I can decide that it is not. But this is a fallacy, one could say, since before one has a chance to enter his dissent, he will have already followed rules in the way his community taught him. In this way, the answer to “Is the *Mona Lisa* beautiful?” in some sense is out of your control, for, as you consider the question, it is already going past you—it is soon no longer a question (It would be like debating whether you like ice cream). Regardless of how you answer, one can hold, you will have tacitly agreed that the painting *is* beautiful, for this is what your community has taught you. It seems, then, that to renounce moral concepts and one’s membership in a moral game, one must renounce language altogether.

The problem with this “the master’s tools will never dismantle the master’s house” account is that it cannot handle changes in meaning. If it were amended to allow for this—and it recognized that we are not all clones who follow rules in the same way—then it would be plain that we cannot guarantee that my friend and I will have the same reaction as others when we see the *Mona Lisa*. All it could say is that we cannot really *gin up* a different reaction (say, revulsion), just like I can hardly make myself dislike chocolate. But that does not mean that everyone *must* find the painting beautiful—no more than it means that everyone must like chocolate.

Now we have the tools to see that, even if the *Mona Lisa* were in what we called our training set, even if it was taught to me as a paradigm case of beauty—or the first thing I learned to call “beautiful”—I could still, in principle, not find it beautiful. Because we erased the distinction between training and applying, there is no way to cordon off a set of applications as unimpeachable. Rather, contra Wittgenstein, every meaning is always in principle subject to criticism and doubt, and new meanings will obtain so long as at least two parties employ them. Thus, if during the training-applying dance that is our lives, my sensitivities change and new patterns begin to regulate my and my friend’s use of “beautiful”—Pollockian streaks of paint, say—then I could surely turn my back on my early training. And so, whatever authority my linguistic community has—and it may indeed have the authority to decide whether I am correctly applying its rules—it is not the kind we want for ethics, since it fails to encourage me to follow its rules.

## XII. Conclusion

If I have considered, and sufficiently defeated, the strongest arguments driving the project of grounding ethics in language, then it seems our project is a failure: it cannot secure what I have called normative objectivity. What, then, is the best we can do? It seems we must go beyond language somehow, though of course

not how the realist does. Other than appealing to the benefits of being “moral” (introducing a Euthyphro problem), we may be able to give a probabilistic, inference-to-the-best-explanation argument. This argument may go similarly to how one might try to convince someone that he should regard bears as fearful. Though, as we said, we can never really know, and say, that one has reason to fear bears, we may appeal to probability: based on what I know about you, you probably *are* afraid of what bears could do to you. To apply this line of argument to the moral realm, I might say that, in a particular circumstance, it is more likely that you are misapplying a concept than that you are genuinely disagreeing with your linguistic community (i.e., you are seeing things differently than the community is).

So, when you say that causing others pain is “good,” for instance, you may think you are not part of my linguistic community, but I may doubt this because, based on my analysis of your *Lebensform*, I believe you know “in your heart” that causing others pain is wrong. And, further, one might say you probably have a reason to be part of my linguistic community because your behavior tells me that you probably *want* to live in a linguistic community that finds causing others pain to be wrong. In this way, I may convince you to change your behavior just as I convinced my chess partner to take back her invalid move—by nudging her to play by the rules, given that she (probably) already wants to play chess.

Of course, the problem here is the converse of what we had before: we have normativity but no objectivity (only probability). Indeed, I may be wrong when I assess your *Lebensform*. Still, however, one might be justified in certain cases to employ this probabilistic argument when entreating others to change their behavior to be “moral.” Perhaps too, someone who is concerned about objectivity can rest at this thought: although my moral recommendations to you have no seal of objectivity, they are part of a dialectical movement of moral interrogation.

As Blackburn told us, such a Neurathian movement promises to improve our moral judgements, by each of our standards, thus helping us to articulate and drive at what is, for each of us, the most objectively true. This, it seems, is our best hope for arriving at full convergence—universal agreement—in our moral beliefs (beyond killing dissidents, which we might call immoral), which would be the apotheosis of the deflationary objectivity we seek. Here, if one likes, she can wax Hegelian, reinterpreting *Geist* as driving at a universal, but still deflationary—that is, use-theoretic and non-Platonist—truth.

These considerations make it at least plausible that the practice of ethics—making arguments and appealing to “right” and “wrong”—can be justified, even if we can never say that a particular moral statement is normatively objective. But to do this, we cannot give a truly “straight” answer to our problems, and we must seek help from beyond language.

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# Sovereignty as Non-Domination: The Contemporary Relevance of Machiavelli's Political Thought in the Age of Populism

Jiayan Sheng

*In his *Il Principe*, Machiavelli demonstrates how ruthless tactics can be adopted by the prince to consolidate his power. Many readers regard Machiavelli as the father of modern political philosophy and a promoter of the exploitation of the weak by the powerful. As a prominent figure during the Renaissance, Machiavelli is still relevant today due to his long-lasting influence on realism and everyday politics. On the one hand, the general conception of political theorists is that Machiavelli is a sneaky, cunning archetypal proponent of power politics who lacks a moral code. On the other hand, various scholars believe that it is essential to take his other book *Discorsi* into consideration in order to fully understand Machiavelli's political position. Recent scholarship suggests that Machiavelli wrote *Il Principe* with the intention to ridicule princely government and he should be viewed as a lifelong fighter for republicanism who defends the liberty of the citizens within his city. This paper is aimed at revisiting both Machiavelli's *capolavori* and it serves as a step towards a renewed understanding of Machiavelli's notion of popular republicanism in the ongoing philosophical dialogue surrounding the topic, as a misleading interpretation of his writings could lead to serious political implications in modern political context, especially with the rise of populism as a global phenomenon.*

## Introduction

In his *Il Principe*, Machiavelli introduces various ways in which a new prince could consolidate power through the employment of violence and brutal tactics. The vast majority of scholars in political theory throughout history, including Rousseau, have considered this as a clear indication that Machiavelli explicitly encourages Lorenzo de' Medici to oppress the masses and treat them as merely subjects. Along with Thucydides and Thomas Hobbes, Machiavelli has been con-

sidered as one of the founding fathers of political realism and realpolitik. Most Machiavellian scholars hold Machiavelli as a sneaky, cunning archetypal proponent of power politics who simply lacks a moral code. Despite all the negative attitude toward Machiavelli's character in the field of political theory, scholars who engage with intellectual history or the history of western political thought, especially the ones from the Cambridge School, believe that there are philosophical lessons that can be drawn from Machiavelli and generally regard him as a lifelong proponent of republicanism. Historians of the Cambridge School hold the view that Machiavelli's later work, *Discorsi*, is instead the key text to derive Machiavelli's political thought from and take the contextualist approach in their attempt to put forward his idea by situating Machiavelli's works in the historical context of Renaissance Florence in which they were written (Pocock 1975; Skinner 1998). In my view, the "Machiavellian" interpretation of Machiavelli endorsed by most political theorists is quite misleading. I personally do not take Machiavelli as a historical figure who is only occupied with the interests of the political elites. Notwithstanding, I do not necessarily concur with the idea that *Discorsi* is the only accurate representation of Machiavelli's political thought, implied in the works of certain Machiavellian scholars, either (Strauss 1958). Recently, a fresh line of interpretation has been gaining increasing attention that departs slightly from the ones of the majority of scholars who take *Il Principe* mostly as a satire. This new position argues that *Il Principe* is ironic only to a certain degree and in the sense that it ridicules power-mad princes in one mode while also contains serious advice in another mode (Benner 2013). I would not like to involve myself in that particular debate in this project, as it is not the topic that I intend to investigate, as I take Machiavelli's *Il Principe* more seriously. My interest in this paper is to explore the contemporary relevance of Machiavelli's political thought in the context of the rise of populism in current democracies. I wish to ground *Il Principe* and *Discorsi* in their Renaissance context emphasized by historians from the Cambridge school and take into account Machiavelli's repeated indications and dedications of his works simultaneously. As political theorists read Machiavelli's texts quite literally and scientifically for the most part, I shall proceed under the assumption that *Il Principe* and *Discorsi* are complementary to each other and both *capolavori* represent Machiavelli's political thought precisely, even though they were directed to different audiences.

I divide the paper below into two parts and each consists of two subsections. And each subsection is separated by two subsubsections depending on the questions that are being discussed. In the first part of this paper (1.1-1.2), I intend to provide a possible way of reconstructing Machiavelli's political ideas by means of a comparative analysis of *Il Principe* and *Discorsi*. I begin in the first subsection by briefly placing both works in the historical context of Renaissance Italy, a meth-

od adopted by the esteemed Cambridge School scholar J. G. A. Pocock in his work *The Machiavellian Moment*, and raising some questions associated with this line of interpretation (1.1.1). Then I address the debate over the accurate way of interpreting Machiavelli challenged by John P. McCormick (1.1.2). In the second subsection, I clarify Machiavelli's views on liberty and "the people" in order to prepare for the further discussion of the contemporary relevance of his works in Part II of the paper. I argue that Machiavelli's concept of liberty is non-domination and non-interventionism by incorporating McCormick's view with my own interpretation (1.2.1). Then, I present the people of Machiavelli's era as a great influence on political changes and Machiavelli's idea of the people as a historical project that constantly drives the progress of politics and moves the society forward (1.2.2). Throughout Part I, I attempt to avoid the problem of arbitrary historical reconstruction by keeping in mind what Machiavelli hoped to achieve in his works and conclude that Machiavelli cannot be considered a republican in the conventional sense. In the second part of the paper (2.1-2.2), I discuss the relevance of Machiavelli's political ideas in the contemporary political context of liberal states. In the first subsection, I draw the clear distinctions between left-wing and right-wing populism in current democracies based on their placement on the spectrum of political liberalism and their polarized conceptualization of the term "people", inspired by Peter A. Kraus's work. I begin by articulating right-wing populism as an exclusionary account of *monolist essentialism* and showcase it as a threat to the survival of liberal democracy (2.1.1). Then, I proceed to describe the rather inclusive left-wing approach to populist politics as *collective pluralism* (2.1.2). I try to avoid unnecessary confusion between the two positions by using the term populism in caution, as the term *populist* can be used indiscriminately in public discourses to refer to politicians with a radical political view regardless of whether they intend to bring positive or negative social changes. For the purpose of this paper, the term *populism* will refer exclusively to the political phenomenon of *monolist essentialism* and *popular republicanism* shall be the term of the other movement that is better characterized as *collective pluralism*. In the second subsection, I address the question whether Machiavelli could be understood as a populist in the contemporary political context. I begin by addressing the question of *the paradox of sovereignty* as a source of contention in current public discourse in democracy. I continue by arguing that Machiavelli does not run into the same issue by drawing a clear distinction between his vision and that of right-wing populism (2.2.1). Then, I frame Machiavelli's political thought as more in line with popular republicanism, although we should still be cautious not to call him a popular republican (2.2.2). I conclude by offering a note on how we should understand Machiavelli today by recollecting his political insights.



## 1.1 A Brief Reconstruction of Machiavelli's *Capolavori*

### 1.1.1. Cambridge School's Historical Reconstruction of Machiavelli

Among all major scholars of the Cambridge School, Pocock is the pioneer in the studies of republicanism and a great representative of Machiavellian scholars in intellectual history who takes a contextualist approach to his works.<sup>1</sup> In his most significant work *The Machiavellian Moment*, Pocock attempts to extract Machiavelli's view by situating his works in the historical context of the Italian Renaissance at large. According to him, Machiavelli can be best understood as a republican. Throughout his book, Pocock tries to demonstrate Machiavelli as a subscriber of civic humanism<sup>2</sup> and establish his political thought as a version of classical republicanism, a form of republicanism that has been largely influenced by the classical texts of Ancient Greece. As Pocock understands it, contrary to medieval thinkers, writers of Machiavelli's time had a new understanding of temporality. He calls it "an early form of historicism" emerged during the Italian Renaissance that has its intellectual roots in Aristotelian philosophy (Pocock 1975, 3-4). Under this line of thinking, Machiavelli is treated by Pocock as just like other writers of his time. In other words, Pocock places Machiavelli's writing in the larger framework of the intellectual movement of civic humanism and interprets Machiavelli's political thought via the lens of a newfound historical consciousness that only makes sense with the social context of the time.

In his *The Machiavellian Moment*, Pocock evaluates the concept of *virtù*, an idea that has been talked about extensively by Machiavelli in both of his *capolavori*, in great depth. He understands it as a concept that evolved directly from the Greek notion of *arete*. That is, for Pocock, Aristotelian virtue ethics had a profound influence in shaping the political culture and philosophy of Renaissance Florence and played a vital role in Machiavelli's development of the concept of *virtù*. On this account, *virtù*, as well as *arete*, is interpreted accordingly as one's ability to act effectively in the civic context, a characteristic, and the moral goodness (Pocock 1975, 37-38). Throughout his book, Pocock really emphasizes his position that the philosophical tradition of Ancient Greek is fundamental in the intellectual circle of Renaissance Florence and deems the classical model of Greek *polis* as the main source of inspiration for Machiavelli's republican model (Pocock 1975, 63-64). In other words, Pocock understands the republic as a predominant political model adopted by various Italian city-states by attributing the success of such a model and its popularity to the striving intellectual environment of civic humanism in Renaissance Florence that idealized the governance model

1 Other prominent figures of this tradition include Quentin Skinner and James Tully.

2 Civic humanism is a political philosophy and culture originated in Renaissance Italy in the 15th century, the term is often used interchangeably with classical republicanism or civic republicanism.

in Ancient Greece.<sup>3</sup>

In spite of his thoughtful historical contextualization, Pocock's position is quite a controversial one and has been challenged by contemporary scholars. For example, John P. McCormick has been a fierce critic of Pocock's interpretation of Machiavelli (whose position I will discuss in more detail in 1.1.2). One main issue of Pocock has to do with his contextualist approach to place Machiavelli political thought in the context of Renaissance historicism. This method has been called into question by McCormick, for ignoring Machiavelli's political vision behind his works. That is, Pocock simply overlooks the fact that Machiavelli does not advocate for the current republican model in place in Renaissance Florence in his writings. As the central theme of *Discorsi* is the Roman Republic and the book is essentially a commentary of the works of Roman historian Livy, Machiavelli definitely thinks highly of the republic as a form of government, because it is particularly suitable for Florence and other Italian city-states. However, it does not imply that the inspiration behind his work is the Greek *polis*, and Machiavelli's idea of *virtù* cannot be taken as a simple adaptation of Aristotle's concept of *arete*; instead, it should be understood as a direct employment of Roman virtues such as *prudentia* and *fortitudo* (Bos 2017, 34).

The former problem associated with Pocock's method of interpretation has also generated the question of whether one can interpret Machiavelli via the lens of Renaissance historicism at all. Both *Il Principe* and *Discorsi* seem to be written on the premise that human nature does not change. It is all due to that essence of humanity, lessons could be learned from their Roman predecessors by Italian leaders. In his *capolavori*, Machiavelli draws practical political wisdom from historical figures, so that depending on the specific audience he intends to address with each book, these rulers and citizens can learn from past examples in a tailored way in accordance with the conditions that they are confronted with. All things considered, Pocock's contextualist approach to Machiavelli's works could be best described as a rather obvious example of antiquarianism, which is a form of historical reconstruction of the social context that has been overdone (Makkreel 1990, 989).

### 1.1.2. McCormick: A Case Against Classical Republicanism

John P. McCormick, a political scientist from University of Chicago whose research primarily focuses on political thought in Renaissance Florence, particularly Guicciardini and Machiavelli, has raised major criticisms of Pocock and

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<sup>3</sup> Peter Adamson talks about the role of humanists at Italian universities during the Italian Renaissance in the history of philosophy in more detail in Episode 355 of his podcast series titled *History of Philosophy Without Any Gaps*. <https://historyofphilosophy.net/italian-universities>

other Cambridge School scholars' interpretation of Machiavelli throughout his academic career. According to McCormick, the line of historical reconstruction pursued by Pocock has an overemphasis on the historical context of Florence Republic and Pocock fails to give enough recognition to Machiavelli as a revolutionary political thinker of his time, who has also offered his fresh vision on institutional designs (McCormick 2003, 623). That is, by placing Machiavelli's political thought in the general framework of Renaissance historicism, Pocock has reduced Machiavelli's contribution to modern political theory merely to the development of a philosophy of history. In McCormick's view, Pocock and other Cambridge School scholars certainly have it correct on the point that Machiavelli appears to be a lifelong supporter of republicanism with the central theme of *Discorsi* being obviously liberty, but he never makes any claim in his works that the model of the Florentine Republic before the exile of the Medici was the ideal one for his city. The main error Pocock has committed is to ignore that Machiavelli holds a rather antielitist attitude in his works and aims for "a more popularly inclusive regime" (as I will discuss in Section II) that is not entirely dominated by the political elites and has the interest of the people in mind (McCormick 2003, 622).

In his *Discorsi*, Machiavelli demonstrates how such a popular regime that is democratic and anti-aristocratic in character would look like with the case of Clearchus, where "he cut to pieces all the aristocrats, to the extreme satisfaction of the people ... this way he satisfied one of the wishes that peoples have...as to the other popular desire, to recover freedom" (Machiavelli 1996, 46). It seems that Machiavelli has shown great interest in drafting a form of institution in which the wealthy elitists could be held accountable for their misdeeds. It would be a form of government that would not only take into account the demand of the people, but would also offer them a great level of protection against the aristocrats in certain scenarios. Machiavelli's anti-elitist inclination can also be detected in his *Il Principe*. Even in this guidebook presented to the Lorenzo de' Medici, Machiavelli urges the prince to gain the support of the people and stresses the importance of laying his sovereignty on the citizens, "when [the prince] lays his foundation on [the citizens], and allows himself to think that the people will liberate him if he is oppressed by enemies or by the magistrates" (Machiavelli 1998, 41). He warns the prince that the nobles are not reliable when geopolitical conditions change and places the need of the people if he were to seize power, "[The prince's] position is weaker [in an oligarchy] and more dangerous because...in adverse times, [they] can take away [the] state with great ease either by turning against [the prince] or by not obeying him" (Machiavelli 1998, 42).

Given the evidence that I have shown above through a preliminary analy-

sis of *Il Principe* and *Discorsi*, Machiavelli's political thought does not appear to be the best representation of classical republicanism, a position that has been endorsed by Pocock and other prominent Cambridge School scholars (Skinner 1978). Given that Machiavelli exhibits an apparent democratic tendency and anti-elitist attitude in his *capolavori* and both his works appear to be concerned with the liberty of the people, it raises the following question: is Machiavelli a populist? As someone who has been regarded as one of the most influential political thinkers in Western intellectual history and whose works are still to be included in the canon of the history of political thought, it is certainly impossible to avoid the discussion of Machiavelli's political position in the realm of everyday politics, as he has shaped the fields of political philosophy, political science, and international relations over the past few centuries. As we enter the age of populism and sovereign states, Machiavelli and his *capolavori* are more relevant than ever and we must investigate his political views further to get a more wholesome picture. In order to answer the question whether Machiavelli is a populist, we first need to make sense of Machiavelli's account of liberty and his understanding of the people as the sovereign basis of a republic.

## 1.2. Machiavelli's View on Liberty and "the People"

### 1.2.1. Liberty as Non-Domination and Non-Interventionism

As a fierce critic of the Cambridge School scholars, McCormick challenges Pocock's interpretation of Machiavelli's republicanism by highlighting the relationship of the leader in power and the liberty of the citizens in both *Il Principe* and *Discorsi* (McCormick 2003). As I have showcased above, he interprets Machiavelli's political thought as a democratic politics that requires the person in the position of power to secure the interest of the people and take their political demand into great consideration. He recognizes Machiavelli's account of liberty as being protected from tyranny and being free from the arbitrary exercise of power by the authority. According to his understanding, Machiavelli envisions the political leader as someone who embraces democracy and prioritizes the popular judgment of the people. In other words, McCormick takes Machiavelli as a sympathizer for popular rule within a democratic republic. Liberty, on his account, is in theory a version of non-domination. He clarifies in more depth in his more recently published article that it is a form of *buon governo* by the leader in charge that politically empowers the citizens and allows them to play a more active role in politics (McCormick 2012, 715). Hence, it is essentially a government that would provide the citizens with at least a certain degree of political agency, so that the state is not completely dictated by the agenda of the very few, namely the political elites in a close circle with the ruler. It would also offer some level of political protection in situations in which the elitist few govern poorly, as

extreme measures could be taken by the leader in charge in those scenarios.

Based on this interpretation offered by McCormick, I would like to take it further by taking into account the background of Machiavelli and argue that Machiavelli's notion of liberty is also non-interventionism, namely the absence of interference in one's actions.<sup>4</sup> As a diplomat, Machiavelli's official post mainly dealt with affairs relating to the administration of Florence's own territories and the republic's foreign relations (Skinner 2019, 6-11). Florence at the time was trying to maintain neutrality as much as possible when it came to the political conflict between France and the Papal States to ensure their independence, therefore, Machiavelli's job description mainly contains the duties and responsibilities to meet foreign leaders of his time and use whatever tactics it takes at the negotiation table to ensure the survival of the Florentine Republic and to safeguard the liberty of Italy, so the Italian people could be free of intervention from other political forces. In other words, he was in a way looking after the interests of Italian city-states as autonomous communities and making sure that the Florentine Republic could continue to operate as a sovereign entity capable of making political decisions for itself.

Machiavelli clearly despised the Papal States' influence in Italian republics and how the authority of the Roman Catholic Church proposed a serious issue for the unification of the Italian people. In both of his *capolavori*, Machiavelli questions the role of the pope in the shaping of geopolitical reality in the Italian Peninsula. In his *Il Principe*, Machiavelli touches on the issue of the Roman Catholic Church makes full use of its religious significance in order to consolidate power in Italy, "many of the large cities took up arms against their nobles, who formerly, supported by the emperor ... and the Church supported the cities to give herself reputation in temporal affairs ... [thus] Italy has almost fallen into the hands of the Church" (Machiavelli 1998, 52). In *Discorsi*, he develops his idea a step further and shows how the pope creates fractions among the Italian people, "the church has kept and keeps [Italy] divided ... no province has ever been united or happy unless it has come under obedience to one republic or to one prince" (Machiavelli 1996, 38). In both works, Machiavelli appears to be deeply concerned about the liberty of the Italian city-states and perceives the Papal States as a source that separates the Italian people and prevents the political unification of Italy.

Nevertheless, liberty, in this sense, does not necessarily mean being free from the domination of the sovereign completely. As brought up in the same passage in *Discorsi* quoted above, Machiavelli does not seem to have a problem with the Italian people coming under obedience to a prince (Machiavelli 1996,

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4 I do not mean to go into the direction of libertarianism here.

38). On the contrary, as illustrated throughout *Il Principe*, the sovereign in a principality plays an important role in safeguarding the liberty of the people through their capacity to exercise power on behalf of the people in the world of power politics. Needless to mention, Machiavelli wrote the entire book of *Il Principe* as a guidance for the Medici to follow, so that the new prince in power would act in accordance with the *raison d'état* and ensure the survival of the state. It is clear that Machiavelli does not encourage power politics on the basis of establishing a tyranny, and the intentions behind Machiavelli's works are to remind the prince to exercise his power in a way that would ultimately lead to the liberation of Italy. Although it might be true that he holds that the end justifies the means in the name of *raison d'état*, the ruthless tactics introduced by him are only intended to be employed for the purpose of safeguarding the liberty of the Italian people. In the closing chapter of *Il Principe*, Machiavelli reveals the real intention behind the need for political leaders to introduce all these brutal strategies. As Machiavelli concludes, it is all for defending the liberty of Italy and its citizens:

“to know the virtue of an Italian spirit it was necessary that Italy be reduced to the condition in which she is at present ... without a head, without order, beaten, torn, pillaged, and having endured ruin of every sort ... one should not let this opportunity pass, for Italy, after so much time, to see her redeemer” (1998, 102-05).

### 1.2.2. “The People” as a Historical Project

As I have demonstrated above, McCormick interprets Machiavelli's notion of liberty as a form of non-domination, in the sense that the citizens are not being placed under the oppression of a small group of political elites. It is not necessarily a complete form of non-domination that excludes the authority of the sovereign (if they command well), yet the voice of the public ought to be taken into great consideration in Machiavelli's ideal state, as it is advised by him for any sensible leader to serve the people and always meet their democratic demands to secure his position. One interesting point McCormick emphasizes repeatedly is that the people do desire to be governed, but they want to be ruled only under a good commander and a government that takes their well-being as its national priority (McCormick 2012, 722). This interpretation of Machiavelli's political position by McCormick greatly resembles Michel Foucault's notion of *critical attitude* discussed during two of his famous lecture series on *Security, Territory, Population* at Collège de France between 1977 and 1978, which he calls by “not to be governed as such” (Foucault 2007). On both McCormick and Foucault's account of Machiavelli, the notion of the people in his work seems to be better understood as a historical progress. In an ideal state, the power is exercised by the leader in

consultation with the people and the citizens have the right to question and challenge the legitimacy of the regime in power. Their collective will can also compel the government to make improvements on their behalf, as they possess the ability to greatly influence state politics to move into a direction that they desire.

As I have illustrated in the previous subsection, Machiavelli's notion of liberty is a specific form of non-domination from domestic political elites and non-interventionism from foreign great powers. The people, according to this line of interpretation, are not entirely passive in everyday politics and have rather effective means to challenge (and even alter) the institutional designs of the state in their sphere of influence. In his *Discorsi*, Machiavelli acknowledges that the citizens have a constructive role in the making of institutional orders, and the laws of a given state can vary greatly depending on the specificity of that country, "[t]he order of the state was the authority of the people, of the Senate, of the tribunes, of the consuls; the mode of soliciting and creating the magistrates; and the mode of making the laws. These orders varied hardly or not at all in accidents" (Machiavelli 1996, 49). Machiavelli holds that there is always checks and balances on each branch of an ideal republic and the laws are in most cases subject to democratic deliberation. Since the order of the state is always up to improvement in theory, the laws and even the very political and normative bodies that implement these rules are historically contingent entities. Even in the cases in which the state were to become corrupt, the laws can be "renewed" and the orders can still be changed through "innovation" of the people (Machiavelli 1996, 50).

Machiavelli's concept of "people" should be taken as a historical project because, according to him, the people are capable of actively engaging in political discussions, contesting the agenda of the political elites, and ensuring their state to be free of corruption. His notion of citizenship is also associated with the notion of *virtù*. Although Machiavelli has warned in both *Il Principe* and *Discorsi* on several occasions that the people are fundamentally self-interested (Machiavelli 1998, 69-70) and are always driven by their ambition (Machiavelli 1996, 78), I would argue that this aspect of human nature is not necessarily incompatible with the concept of civic virtues and *buon governo*. It shows clearly in Machiavelli's works that Roman virtues, such as *prudentia* and *fortitudo*, are qualities that need to be possessed by both leaders and the people regardless of the type of regime they are under. In his *Il Principe*, Machiavelli explains that *fortuna* alone cannot ensure good governance and suggests that an agent must also use his *virtù* to produce the best possible outcome, "it might be true that fortune is arbiter of half of our actions, but also that she leaves the other half ... for us to govern" (Machiavelli 1998, 98). Thus, they must also refine their political judgments alongside this process. In his *Discorsi*, Machiavelli goes a step further and stresses the crucial role of *virtù* over *fortuna*. He adopts the success of the Roman Empire as



a case to demonstrate the importance of virtù, “there has never been a republic that has made the profits that Rome did ... [f]or the armies’ virtue made them acquire the empire; and the order of proceeding and its own mode found by its first lawgiver made them maintain what was acquired” (Machiavelli 1996, 126).

It seems that Machiavelli’s view on civic virtue is consistent across his works, as he insists that military or political success are to a great extent shaped by the excellence in decision-making. That is, *virtù* is an indispensable factor that has contributed to the ultimate success of the Roman Empire. Since such civic virtue appears to be present across all citizens and given that human nature is fundamentally irrational and driven by their desires and appetites, it is reasonable to assume that the people’s judgment can be refined through experience and education. It is precisely what Machiavelli has been attempting to convey through his writings all along: although human nature is quite flawed and does not change, good governance is still very much possible through the learning of history and moral examples. Hence, the people, on the account of Machiavelli, can be understood not only as a historical progress in the sense that they could challenge the *status quo* and collectively push the society towards a direction in accordance with their political interest. It could also be interpreted as a critical project of self-reflection on human conditions and a program of rational discipline that cultivates virtù and contributes to the *buon governo* of the state.

## 2.1 Populism and Popular Republicanism in Current Democracies

### 2.1.1. Articulating Populism

In order to understand the relevance of Machiavelli’s *capolavori* in contemporary politics and whether he is a populist, the term populism ought to be clearly defined. Under the public discourse in current democracies concerning sovereignty, the very term *populism* has become a source of contention. The populist label has been applied uniformly to politicians, such as Bernie Sanders and Donald Trump, who are affiliated with parties from opposite sides of the political spectrum. The term *populism* has come to be associated with political actors who embody different sets of radical ideologies and represent conflicting (and often polarizing) political positions in relation to one another. Despite the fact that both sides enter politics by appealing to the people and establishing political legitimacy in the public interest, the democratic socialists and the extreme right aim to mobilize constituents with completely different demographic profiles. It is rather misleading to include all political figures and parties that seek to enter the political stage on behalf of the people under the category of populists. I would like to argue that populism, in its current common usage in public discourse and academic debates, refers to not one but various political movements and complex sets of mechanisms and rhetorics at play in current liberal societies.



Although right-wing and left-wing political interest groups under the populist umbrella both emphasize the idea of the people and often adopt the anti-elite or anti-establishment rhetoric, the agenda and goals of these political entities are non-identical and tend to run counter to each other. The main feature that sets these organizations apart is how they conceptualize the self and construct the collective identity. The right-wing's approach to politics falls under *monist essentialism*, which functions under the logic of the nation-state and conceives the people as a culturally or ethnically homogenous category (Kraus 2021, 6). The most distinct characteristic of parties of this kind is that political candidates belonging to such entities always begin their campaigns by presenting a crisis of representative democracy imposed by immigration and by imaging and identifying an idealized homeland within a community that is in urgent need to be defended in face of the influx of immigrants or refugees from diverse cultural, ethnical, and religious backgrounds (Taggart 2000, 78). Politicians located at this side of the political spectrum mobilize their voters on the basis that their imaginary homeland is under attack by the presence of "foreign" beliefs and ideologies and that the "aliens" would eventually undermine the current social basis and replace liberal values with those of the "barbaric" or "uncivilized."

Marine Le Pen and the far-right *Rassemblement National* (RN, formally known as *Front National*) party she represents is a prominent example of political parties of this nature. During the 2022 French presidential elections, she declared that France is under an "unprecedented democratic crisis" and justified her exclusionary policy proposals on immigration on the rhetorical grounds of "democracy and the exercise of power" of the French people (Trippenbach and Johannès 2022). Throughout her campaign, Le Pen focused on issues concerning the protection of the French identity and national rights and treated immigration as a disease from which the French nation ought to be cured. Although she has since held a relatively more moderate political stand since the last presidential election and no longer touches on the topic of "Frexit," her previous plan to withdraw France from the European Union, Le Pen still aimed to appeal to the French public through a proposal to abolish birthright citizenship, to put an end to settlement citizenship, and to block non French citizens from accessing to housing, health care, employment, and other social benefits and by placing the national interests of France first and making the French citizens the sole beneficiaries of her policies (Pascual 2022). On top of her immigration policy, euroscepticism, and anti-Muslim rhetoric, Le Pen's approach to politics has been described as rather "Bonapartist," "Legitimist," or "Orléanist" due to the emphasis she and her party draw on the legacy of the French revolution and their self-proclaimed ideal of devoted service and social loyalty to the French people (Zaretsky 2022).

Far right political parties on both sides of the Atlantic, including Donald Trump's *Republican Party* (GOP), Viktor Orbán's *Fidesz*, Tino Chrupalla's *Alternative für Deutschland* (AfD), Heinz-Christian Strache's *Freiheitliche Partei Österreichs* (FPÖ), Paul Golding's *Britain First*, and Matteo Salvini's *Lega Nord*, more or less all share this populist trend that I have illustrated via the case of Le Pen and her party above. In both North America and Europe, it has been a common phenomenon in current democracies for right-wing politicians belonging to these parties to enter political arena and gain popular support through the construction of an exclusionary, homogenous, and totalizing notion of national identity as their political foundation and base their conception of nationhood as "the patriotic self" against "the other." This form of populism is often interpreted as a threat to the survival of liberal democracy, since right-wing political movements of such characteristic tend to aim for illiberal purposes. These far right political groups' policy proposals are explicitly against liberal principles on the basis that they intend to undermine the rights of minorities protected by the basic principles of the constitution (Kraus 2021, 7). In the European context, Le Pen and her *Rassemblement National* party have been proposing a constitutional program ever since her presidential campaign in 2017 in the name of the French people to call for constitutional amendments on issues involving immigration, security, and unemployment (Fournier 2017). Le Pen's rhetoric and political agenda impose a major risk for the liberal principles the Fifth Republic holds dearly as its governing matrix, because her policy plans reflect a nationalist (or more precisely neo-fascist) and xenophobic vision that negates the demographic reality and cultural plurality of France and goes directly against the French constitutional identity that is based on inclusivity and is indiscriminatory regarding one's country of origin, race, and religious beliefs.

This categorization of people is also polemical on the grounds that it runs into *the paradox of sovereignty*. In the modern world of nation-states, right-wing political parties are becoming increasingly discontent with the current economic reality of globalization. They describe it as a major threat to their national interest. Unlike developing countries that aim at diminishing the negative effects of globalization on the ground of being exploited, right-wing populists in wealthy Western nations resort to protectionism in order to reclaim "sovereignty". In the context of Brexit, right-wing populist parties have successfully mobilized the public and drew support from voters, primarily in England, who grew increasingly dissatisfied with immigration and with the British government losing physical control of borders (Westcott et al. 2020).

Political candidates from these populist parties have always been eurosceptic since the time of Margaret Thatcher and campaigned for the United Kingdom to withdraw from the European Union up until the 2016 EU referendum in

accordance with their vision of Britain's national interest, which is often placed by them in the context of national sovereignty. Despite the subsequent painful consequences the United Kingdom would face in the years to come, the British government carried out negotiations with the European Union and exited the political and economic union that values the free movement of people and shares the same liberal values. Even in the post-Brexit era, conservative parties in Britain still channel the same energy and continue to focus on regaining absolute physical control of its borders. As of May 2022, the UK government is in the process of introducing a law that will override the Northern Ireland Protocol as a part of the Brexit deal with the European Union in the name of the unity of the country (BBC News 18 May. 2022). It appears that right-wing politicians would take whatever political and legal measures to ensure the sovereignty of the nation at whatever expense, even if it means a trade war with the European Union that would undermine the economic interest of the Kingdom and the good partnership between Britain and its European neighbors. It becomes increasingly evident that the objective of the right-wing populist candidates and political parties have never been genuinely liberal. On the contrary, they hold an exclusionary account of the people as a nation and enter politics with a geopolitical vision to exercise sovereignty in its traditional and quite literal sense.<sup>5</sup>

### 2.1.2. *Defining Popular Republicanism*

As the political right approaches populist politics on an essentialist view of the people as a nation, the left-wing takes the more inclusive approach of *collective pluralism*, which neither functions under the logic of the nation-state nor conceives the people as a culturally or ethnically homogenous category (Kraus 2021, 6). Left-wing political candidates and parties envision its constituents, namely "the people," as a unified yet diverse and dynamic political entity with a collective will. Politicians located at the other side of the political spectrum mobilize their voters on the basis that they wish to challenge the *status quo* of the current political and/or social structure and mainstream neoliberalism. Unlike right-wing populism that endangers democracy and progressive liberal values, left-wing political parties, such as Bernie Sanders' *Democratic Party* and Ione Belarra Urteaga's *Unidos Podemos*, place great importance on constructing a form of citizenry that is open, inclusive, and plural. Since movements under such rhetoric and ideologies are clearly distinct from those of the right-wing populists, the term *populism* simply fails to describe any sort of common essence between right-wing

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5 This attitude may be subject to change in the coming years in the face of the 2022 Ukrainian refugee crisis, as we are currently seeing the Conservative government adopting a more inclusive rhetoric. As a result of post-Brexit labor shortages, a more relaxed immigration policy is also currently in the shaping process.

and left-wing populist politics, except in their shared anti-establishment and anti-elitist rhetorical emphasis. To avoid any further confusion, I shall proceed by using the term *populists* to exclusively refer to right-wing politicians who hold the outdated view of the people as a nation in a sovereign sense and assigning the term *popular republicanism*, as suggested by Kraus, exclusively to the type of political movements incentivized by the left-wing political parties from both sides of the Atlantic that directly challenge the notion of people as a fixed and closed group held by right-wing populist politicians.

Some of the left-wing political parties that closely embody popular republicanism are *Esquerra Republicana* (ERC) and *Candidatura d'Unitat Popular* (CUP) in the Autonomous Community of Catalonia and *Coalició Compromís* (or simply *Compromís*) of the region of Valencian Community in Spain. ERC, as a prominent example of such political parties and the current governing party in Catalonia, has its origins in the republican and federal movement of the past two centuries. Although nationalist in character, in their efforts to construct a new Catalan Republic that is independent of the Spanish state, ERC's idea of a nation is not essentialist like the former government under Carles Puigdemont's *Convergència i Unió* (CiU) backed by wealthy Catalan elites with the geopolitical imagination of a Catalan Republic with the Catalans being the social majority and Catalan as the sole official language of the hypothetical new state. On the contrary, ERC does not make such claims and is a left-wing party that understands the plural nature of the Catalan society and hopes to address issues concerning the Catalan lower classes and immigrants (La Humanitat 21 Feb. 2019). That is, ERC is a clear departure from the traditional Catalan nationalism that has an exclusionary vision of an independent Catalan nation-state.

Pere Aragonès, the current President of the Government of Catalonia, has a much progressive vision in comparison with his former counterpart and does not see the previous model proposed by Catalan nationalists led by Puigdemont as a viable solution to challenge the region's status as an autonomous region of the Spanish state. He hopes to achieve Catalonian independence in a democratic way by putting "an end to the general clause against independence" in the 1978 Spanish Constitution and acknowledges that "social rescue and economic recovery as well as the feminist and the environmental revolutions" are also important issues to resolve in the Catalan society (Esquerra Republicana de Catalunya, 22 May. 2021). In other words, Aragonès wants the Catalan question to be addressed by the Catalan public through a referendum of self-determination, which includes both Spanish and Catalan speakers and both locals and migrants/immigrants. He neither denies the pluralistic nature of the current socio-demographic reality of Catalonia nor tries to deepen the political fracture already effectively in place as a social consequence of the 2017 Catalan Independence Referendum.

As highlighted above in his previous statement, Aragonés advocates for better co-existence between different linguistic communities, a more equal society in which marginalized social groups could voice their concerns and receive a response, and a more sustainable model that takes into account the new diverse reality of the current Catalan society.

One central feature of popular republicanism is that politicians and political parties of this characteristic adopt an inclusive account of the people as a historical project and hope to build coalitions between citizens from diverse social groups. In contrast to right-wing populists' regressive agenda of defending an exclusionary notion of nation as a sovereign entity, popular republicans at the left side of the spectrum seek to accommodate the new socio-political reality by replacing that logic of the nation-state with a progressive project of open citizenry (Kraus 2021, 7). *Coalició Compromís*, a political coalition formed by *Bloc Nacionalista Valencià* (BLOC), *Iniciativa del Poble Valencià* (IdPV), *Els Verds–Esquerra Ecologista del País Valencià* (EV–EE) and many other organizations is one of such parties that promote a form of collective identity building based on citizenry. As a major political force in Valencia that attracts the overwhelming support from younger voters, *Compromís* aims to bring revolutionary changes to the local and national its commitment to collaborate with plural organizations and Valencian citizens with similar progressive and environmentalist views for their shared dedication to alter the current state of affairs both at the regional and state level (“Manifesto-Compromís,” n.d.). That is to say, left-wing politicians and political parties that hold this vision of popular republicanism firmly believe that identity is both fluid and constantly evolving. They challenge the mainstream political status quo by embracing the plural nature of a liberal democratic society instead of trying to deny or threaten it like the right-wing populists do.

## 2.2 Machiavelli: A Populist?

### 2.2.1. *The Paradox of Sovereignty*

On the face of it, Machiavelli's notion of liberty seems to be tied with the concept of sovereignty, as his popular enthusiasm for the unity of Italy and its people could potentially be interpreted by readers as a form of ethnonationalism. This raises the question of whether Machiavelli runs into the same issue of the paradox of sovereignty as the right-wing populist politicians and political parties do with their nationalistic (and often neo-fascist) project of defending the sovereignty of their state from the “other.” As I argued previously, Machiavelli is interested in providing advice on what political measures political leaders could implement in order to liberate Italy and unite the Italian people in both *Il Principe* and *Discorsi*. By the looks of it, he appears to be an Italian patriot filled with nationalistic aspirations. Scholars have long taken these statements of Machiavel-

li as a form of *realpolitik* and regarded him as “the prophet of the modern nation-state” (Gilbert 1954, 39). It seems that it is rather impossible to address the question of whether Machiavelli is a right-wing populist figure that channels the popular spirit of the Italian people and champions the eventual construction of an Italian nation-state without placing it in the historical context of Renaissance Italy.

Although Machiavelli is most famous for his involvement in the Republic’s foreign relations and his diplomatic missions abroad through his post, he also played an important role in Florentine politics in the historical context of the Italian Wars. He was not only appointed to the courts in France, Germany and the Papal States to help the Florentine Republic to maintain its political neutrality and stay as independent as possible, but also to the ones of other Italian city-states to maintain peace within the Italian Peninsula (Lynch 2012, 2-3). It is apparent that Machiavelli was interested in keeping Italy free from foreign influence through his politics of non-domination and non-intervention and it goes hand in hand with his ambition to construct a form of domestic unity between Italian city-states to counter the power of greater geopolitical players in Europe at the time. Machiavelli’s politics must be understood in accordance with these two layers and his objectives could not be achieved without addressing domestic tensions within the Italian city-states.

To give a full account of Machiavelli’s political view, it is important to also take the general themes of two of his lesser known books, *Dell’Arte della Guerra* (“The Art of War”) and *Istorie Fiorentine* (“Florentine Histories”) into consideration. In his *Dell’Arte della Guerra*, Machiavelli echoes many themes and ideas he has already expressed in his more famous *capolavori Il Principe* and *Discorsi*, which I have discussed in detail previously, and elaborates on how war could and should be conducted in the cases in which diplomacy fails (Machiavelli 2006). Through the book, Machiavelli especially emphasizes the need for a state to have a military of its own and the importance of promoting an armed citizenry. In his *Istorie Fiorentine*, Machiavelli elaborates on the theoretical framework he has developed in his *Dell’Arte della Guerra* and highlights the necessity in the creation of a national army, which ultimately landed him a position in Medici’s government in Florence before his death (Machiavelli 1988). In combination with the comparative analysis of *Il Principe* and *Discorsi*, it becomes apparent that Machiavelli’s political thought is not fixated on the idea of forming an Italian nation-state. It seems that his advice is based on his years of experience as a diplomat and historian and his geopolitical vision leans more towards the direction of forming a sort of strategic partnership among Italian city-states to confront their common political and military threat. That is, this formation of alliance is essentially an integral part of safeguarding the liberty of Italian citizens. It is not a form of

unity concerned with Italian city-states coming into forming a nation-state in the traditional sovereign sense, but rather a form of solidarity and peace building among them.

I would argue that Machiavelli's idea of Italy could not run into the paradox of sovereignty, because he does not perceive sovereignty as the maximizing of the national interest like the right-wing populists do. The nation-state is a modern phenomenon and one cannot analyze Machiavelli from a standpoint of anachronism. It would be truly misleading to interpret his notion of sovereignty in a classical sense, because it would be hard to imagine that his view of the people is based on an essentialist account of the people as a nation, because the marriage between the "nation" and "state" to come into forming the nation-state is a relatively modern phenomenon. His account of sovereignty should be understood in the framework of liberty that I have established above: a free Italian state under a specific form of non-domination from domestic political elites and non-interventionism from foreign great powers. It is safe to assume that Machiavelli is not a populist, because his idea of a nation is simply not in line with the logic of the nation-state, as they simply did not exist back then. Moreover, populism is a contemporary phenomenon that is a direct reaction to globalization.

The paradox of sovereignty does not impose a challenge to Machiavelli's notion of sovereignty, since he believes in the power of cooperation and strategic partnership, as his main intention behind all his works is to bring Italian city-states together to form a sort of uniformed front against greater geopolitical threats. Unlike the right-wing populist politicians and parties that seek to protect their so-called national interest by engaging less with or even withdrawing from multilateral organizations in a world of interdependence, Machiavelli clearly does not shy away from diplomacy and negotiations, as he sees war as the last resort. And it is safe to suppose that Machiavelli would not propose a policy that would potentially devastate the economy of the Italian city-states either, if these republics were placed under the current economic and political context. Although the Italian republics were weak in terms of their military position at the time of Machiavelli, they were extremely wealthy, and even Maximilian I, the emperor of the Holy Roman Empire, needed to borrow money from these republics (or at least from the mercantile class in these republics) for their military expenditure (Robinson 2000, 18-20). The Florentine, the Genoese and the Venetian merchants all had extensive networks abroad, as they were often financiers of kings and emperors. It would be unlikely for Machiavelli to endorse any form of policy that would sabotage this form of economic control that the Florentine Republic and other Italian city-states had over other great powers, as these networks were so powerful that even foreign kings and emperors at the time needed the support of these merchants to make official political decisions.



### 2.2.2. *Machiavelli: A Case of Popular Republicanism?*

Now it arrives at the question whether Machiavelli's politics is a case of popular republicanism. I wish to proceed with this question cautiously to avoid appropriating his political thought via a modern lens. In order to understand Machiavelli's republicanism, we must return to his ideal form of government. Machiavelli mentions that principality, aristocracy, democracy, tyranny, oligarchy, and anarchy all have their problems, "six types of governments, of which three are the worst; that three others are good in themselves but so easily corrupted that they too come to be pernicious... if an orderer of a republic orders one of those three states in a city, he orders it there for a short time" (1996, 11). He proposes that only a mixed form of republic that combines the strengths of all good forms of government could solve the issues associated with each of these three regimes, "[all kinds of government] are pestiferous because of the brevity of life in three good ones and because of the malignity in the three bad ... one that is shared in all [is] more stable ... since in one and the same city there are the principality, the aristocrats, and the popular government" (Machiavelli 1996, 13). As illustrated in *Discorsi*, Machiavelli indeed recognizes the monarchical element in a perfect mixed form of government, as such an ideal regime must include features of all three good forms of government. Although he does not endorse popular republicanism explicitly in these passages, he does suggest that a mixed republic is the most politically stable form of government in safeguarding civil liberties, at least in the context of Italian city-states. Another point that needs to be emphasized is that Machiavelli does not make any universal claim about which is the best form of government in his works. Since Machiavelli mainly concerns what political system is most suitable for small wealthy trading city-states, his ideal form of government may be only applicable to Italian city-states. That is, Machiavelli thinks highly of republics because it is particularly suitable for Florence and other Italian city-states, but it does not imply that he is directly against principality, since he wrote *Il Principe* as a guidance for a prince. Even the model of the Roman Republic, which Machiavelli is so fond of, is itself a mixed form of government that combines the elements of democracy, aristocracy and monarchy. On the contrary, as I argued previously, the sovereign plays an important role in safeguarding the liberty of the people through its capacity to exercise power on behalf of the people. As the leader of a state, their role is essential in the survival of the state in the world of power politics. As much as I would like to envision Machiavelli as a popular republican, it would simply be misleading to make such a claim, as Machiavelli's liberalism is inherently tied with good leadership and governance.

Nevertheless, there do exist elements of popular republicanism in Machia-



velli's political thought. His ideal republican model for Italian city-states is based on the account of the people as a historical project and the theoretical framework of open citizenry. Under such a new republican model, Machiavelli wants the common people to participate in ruling both collectively and directly as a positive and constructive voice (McCormick 2012, 722-723). In his *Discorsi*, Machiavelli explicitly endorses the people to be included in governmental institutions, "It was fitting at an early hour that the plebs have hope of gaining the consulate... and It was fitting that it come to the effect" (Machiavelli 1998, 122). In the same passage, Machiavelli also goes directly against traditional Aristotelian view<sup>6</sup> and makes the progressive claim that age does not matter and governmental posts should not only be open for the prudent elderly, but also available for the young citizens with admirable qualities, "It is even necessary, for in choosing a youth for a rank that has need of the prudence of the old ... When a youth is of so much virtue that he makes himself known in some notable thing, it would be a very harmful thing for the city not to be able to avail itself of him then, and for it to have to wait until that vigor of spirit and that readiness grow old with him" (Machiavelli 1998, 122).

Machiavelli's works are still relevant today because the political thought expressed in his *Il Principe* and *Discorsi* can be taken as an important piece of inspiration for contemporary left-wing politicians and political parties that share the same progressive vision. Various political parties (both regional and national) of the popular republican character on both sides of the Atlantic have all founded their own youth wings or organizations in recent decades. In the case of *Coalició Compromís*, *Joves del País Valencià* (Joves PV) was founded in 2014 as a youth branch of the left-wing political coalition to promote Valencia's cultural and linguistic identity and its progressive and environmentalist ideologies. As a political organization mainly consists of aspiring Valencian youth who embraces Valencianism, ecologism, feminism and antifascism as their liberal and progressive values, it seeks to accomplish the party's political objectives of democratic regeneration by involving anyone who wishes to transform local, regional and national politics into the project (Joves PV, n.d.). Just like Machiavelli has intended to advocate for the involvement of youthful energy in political institutions, these popular republican parties have now realized his political theory in practice. These parties' commitment to include young people in political institutions has helped integrate the youth perspective into policies at all political levels on issues concerning our contemporary world the most, including social inequal-

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6 In the earlier section, I have described that Pocock interprets Machiavelli's concept of virtù as a direct adaptation of the Aristotelian notion of arete. This point here further challenges Pocock's view, as virtue is a sort of practical wisdom that can only be cultivated through a lifetime of experience in Aristotle's framework.

ity and injustice, the violation of freedoms and human rights, environmental catastrophe, and the disappearance of local cultural and linguistic heritage. With the emergence of these left-wing political parties and the creation of these youth political organizations within them, Machiavelli's revolutionary works can still influence how we think of citizenry in a meaningful way, even if his form of republicanism cannot be described as completely identical to popular republicanism. We could definitely still adopt his theoretical framework of "the people" as a historical project in current democracies. As we live in an ever more globalized and pluralistic world, his practical advice can also assist us on our way to strategically accomplish progressive and transformative goals towards a liberal society of tolerance, diversity, and inclusion.

Many additional lessons on domestic politics and international relations in the age of populism and the crisis of multilateralism could also be learned through Machiavelli's idea of sovereignty. Although all forms of sovereignty are geopolitical in nature, Machiavelli's notion of sovereignty appears to be a form of responsible sovereignty that advocates diplomacy and cooperation at both domestic and international level: neutrality policy, strategic partnership, military alliance, domestic and international cooperation, peace promotion, etc.<sup>7</sup> As a seasoned governmental official and diplomat, Machiavelli has developed his ideas and put forward his practical advice on how to govern a state through *Il Principe*, *Discorsi*, and other works. Just like we are facing global challenges such as the Covid-19 pandemic, climate change, migration, poverty, and the rise in authoritarianism, Machiavelli was dealing with the national, regional, and international issues of his in the era of the empires. Although we live in a completely different historical context from Renaissance Italy, we can still learn lessons from Machiavelli's works, if we subscribe to his account that human nature does not change. Just like Machiavelli was trying to include historical lessons of his Roman predecessors from an entirely distinct historical era, we could certainly also include his *capolavori* in our course plans of philosophy and politics to continue to inspire future generations of world leaders and policy makers. In the context of current democracies, Machiavelli's notion of Italian unity could be adapted to reinforce European or NATO values, to promote the construction of a potential European federation with the shared strategic and military defense goals, and to build solidarity with Ukraine against Putin's aggression. The EU's decision to grant Ukraine and Moldova candidate status is a great indication that we could achieve such goals.<sup>8</sup> In the global context of rising populism and nationalism, we

7 Although the *realpolitik* / pragmatist approach is still very much the central feature of today's politics, countries can still incorporate responsible sovereignty as a governing principle in conducting diplomacy and formulating political and economic policies in order to address transnational threats.

8 As of June 23 2022, the EU has officially awarded Ukraine and Moldova EU candidate status in the face of

need to also draw lessons from his notion of “the people” as a historical progress<sup>9</sup> and use his concept of citizenry to construct an anti-elitist and anti-establishment global citizenship that resists the current international system controlled by political elites<sup>10</sup> and works towards a better common future of humanity.

### Conclusion

In brief, historians of western political thought, particularly the Cambridge School scholars, often take a contextualist approach to Machiavelli’s works and reconstruct his political idea by situating it in the historical context of Renaissance Florence. As a prominent figure of the Cambridge tradition that adopts this method, Pocock draws particular emphasis on the intellectual climate of Renaissance historicism and regards Machiavelli as a lifelong fighter for classical republicanism like other scholars of this school. However, his interpretation has encountered various issues. As put forward by McCormick, Pocock disregards the underlying idea in Machiavelli’s works that human nature does not change. In my effort to avoid such errors committed by Pocock, I have undergone a more careful historical reconstruction by paying close attention to the real intentions behind Machiavelli’s writings. I have analyzed the concept of liberty and the people via a comparative analysis of *Il Principe* and *Discorsi*. I have offered an interpretation of liberty as non-domination and non-interventionism and of the people as a historical project and argued that Machiavelli could be understood correctly as a classical republican as a forward thinker of his time. The debate then shifts to whether Machiavelli is an anti-elitist and anti-establishment populist. In order to better solve that question, I have drawn a clear distinction between left-wing and right-wing populist politics in current democracies in the context of Europe and North America. After I defined right-wing populism and left-wing popular republicanism, I intended to solve the issue of the paradox of sovereignty Machiavelli’s idea of Italy seems to fall into and clarified that his position is not associated with a form of Italian ethnonationalism but rather a form of strategic partnership, cooperation, and solidarity. I advanced to solve the last question of whether Machiavelli could be interpreted as a popular republican and concluded that it would be too ambitious of a claim to understand him as he recognizes the monarchical element of a perfect republic. Nevertheless, Machia-

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Putin’s aggression in Ukraine. <https://www.bbc.com/news/world-europe-61891467>

9 It does not imply the change of human essence. The concept of a fixed human nature and the project of historical progress are not mutually exclusive.

10 The current international system can be described as a system of government controlled by oligarchs in which the power rests with a small number of political elites. As we can see from the war in Ukraine, putting political pressure on Russian oligarchs could have a great impact, but this also applies to oligarchs in Western democracies who can use their wealth to pressure the government to produce policies or legislation that are favorable to them.

velli's works still have contemporary relevance in the age of populism because the way in which his political thought is interpreted has major political implications. As Machiavelli wrote *Il Principe*, *Discorsi*, and other works with the goal to form a stable government that can secure the liberty of the citizens within his city, it is important to channel his political thoughts with the same energy while trying to apply his conceptual framework and practical advice to the current domestic politics and international relations. I hope my more inclusive interpretation of Machiavelli's *capolavori* will contribute to the ongoing polarizing discussion on Machiavelli's true political view in the present time as a step towards a liberal society of tolerance, diversity, and inclusion and a world in which international players could exercise responsible sovereignty.

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# Migration, Covid-19, and Italy's Quarantine Ships: An International Law Perspective

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*The impact of the COVID-19 pandemic was felt particularly in terms of travel restrictions, border closures, and the introduction of sanitary measures to control and minimize the spread of the virus. This outbreak had a major impact on the flow of migrants and refugees arriving in the European Union. Italy, which has always been a strategically located destination for migrants and asylum seekers, issued a formal decree on April 7, 2020, declaring its ports “unsafe” for the disembarkation of people rescued at sea outside the Italian SAR zone.<sup>1</sup> While this might seem to have been a rational choice, aimed at protecting in the first place the wellbeing of the Italian population, it has created a controversial situation under international law principles.*

*In order to justify its actions, in April 2020 Italy issued a new decree which established special procedures that included vessels carrying out the mandatory period of health surveillance for migrants before accessing the country. However, this practice also turned out to be strongly controversial from a human rights and human dignity perspective, undermining some of the main principles of international law aimed at protecting the status of asylum seekers, and refugees.*

*To understand and assess whether Italy's decrees comply with international law, this paper will first describe the legal framework underpinning the introduction of the Port Closed Decree and quarantine ships. Then, it will analyze what the practice consists of and how the quarantine procedures on ships are implemented today, while also looking at the controversies that the system raises in terms of economic and humanitarian costs. It will next analyze Italy's practices from an internation-*

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1 “Rights on the Skids. The Experiment of Quarantine Ships and Main Points of Criticism,” In Limine project (Association for Juridical Studies on Migration), accessed March 31, 2023, <https://inlimine.asgi.it/wp-content/uploads/2021/05/Report-Rights-on-the-skids.-The-experiment-of-quarantine-ships-and-main-points-of-criticism-ASGI.pdf>.



*al human right law, international refugee law, and law of the sea perspective. Finally, it will examine the possible outcomes once Italy goes out of the state of emergency and provide future policy recommendations.*

## **I. Introduction**

After the number of migrants, refugees, and asylum seekers arriving in Europe started intensifying during the European Migration Crisis of 2015, tension emerged among the European Member States. This tension was strengthened by the spread of the COVID-19 pandemic in 2020, which eventually created difficulties in the management and regulation of migration policies. In this context, states started to limit access to migration in order to control and manage their internal situation, creating an unprecedented humanitarian crisis.

Italy in particular, which has always been a strategically located destination for refugees, was one of the countries first affected by COVID-19. As the pandemic in Italy rapidly evolved, so did the government's response. On April 7, 2020, the Italian government issued the so-called Ports Closed Decree declaring that the Italian ports did not meet requirements as a Place of Safety during the pandemic. Eventually, Quarantine ships in Italy were introduced to justify a possible breach of international law. This situation in Italy generated a huge debate among NGOs like Sea-Watch, Doctors Without Borders, Open Arms, Mediterranean Saving Humans and Tavolo Asilo, organizations which immediately raised the alarm on the issue. For this reason, the country was ultimately led to introduce new disembarkation procedures for migrants rescued at sea. After the Ports Closed Decree, on April 12, 2020, Italy issued the official decree establishing the first ships for carrying out the mandatory period of health surveillance and quarantine ships were placed strategically around the coast of Sicily, near the main Migration hotspots of Trapani, Catania, and Palermo.

The installation of quarantine ships to host migrants at sea has raised several critical questions on the legality and humanity of the strategy. Additionally, Italy's use of the practice has been questioned and discussed from an international law of the Sea perspective. With this in mind, it is crucial to look at whether the quarantine ships system fully complies with international law, by analyzing the perspectives of human rights, international refugee law, and the law of the sea. Eventually, It is also important to understand why the practice represents a failure in economic, social, and legal terms. In order to have a clearer understanding of the legality of the system, the case of the cruise ship La Suprema will be analyzed.

## **II. The Legal Framework for Port Closures and Quarantine Ships**

As a consequence of the outbreak of the COVID-19 pandemic and the resulting difficulty in the management of the influxes of migrants and asylum

seekers arriving in the Italian territory, on April 7, 2020, the Italian government issued the so-called Ports Closed Decree. The Minister for Infrastructure and Transport, the Minister for Foreign Affairs and International Cooperation, the Minister for the Interior, and the Minister for Health claimed that the Italian ports did not represent a safe place to rescue cases outside the Italian SAR area).<sup>2</sup> Their justification for this measure was the impossibility of ensuring healthcare and essential services for refugees and the fear that these refugees could compromise the functioning of the national security and healthcare systems. After the decree, the “Alan Kurdi” ship, which carried 150 migrants, was refused permission to dock. A week later, the same happened with the “Aita Mari,” a ship carrying 39 people on board. This decision was ultimately controversial, and NGOs soon accused Italy of not “guaranteeing human rights and neglecting its responsibilities.”<sup>3</sup> For this reason, on April 12, 2020, the Italian government decided to introduce a new decree establishing quarantine ships to carry out a mandatory period of health surveillance for migrants and asylum seekers before accessing the country. Ultimately, this decree was meant to remain valid until the end of the state of emergency planned for March 31, 2022.

Despite the criticism regarding Italy’s borders and port closures, it is necessary to note that, under international law, states have clear rights and decisional power when it comes to their border control. Ports are internal waters that belong to a state’s territory and over which states have sovereign rights. This is expressed in Article 8 of the 1982 UN Convention on the Law of the Sea (UNCLOS) on “Internal Waters,” which states that “waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.” Also, under Article 25 of UNCLOS on “Rights of protection of the coastal State,” States Parties, including Italy, have the right to control entry or deny access to their ports. In fact, states can close ports when required to protect their vital interests. Accordingly, professor De la Fayette has noted that the closure of ports is lawful whenever health and safety are meant to be preserved by keeping away from ports ships carrying passengers with contagious diseases.<sup>4</sup> Also, according to the European Commission, “with regard to reception conditions, Member States may exercise the possibility provided by Directive 2013/33/EU to establish, in justified cases and for a reasonable period, arrangements for reception conditions different from those normally required.”<sup>5</sup>

2 CILD, “Ship-Based Quarantine: A Covid Prevention Measure for Migrants Only”.

3 Ibid.

4 Louise de La Fayette, “Access to Ports in International Law,” Brill (Brill Nijhoff, January 1, 1996), [https://brill.com/view/journals/estu/11/1/article-p1\\_1.xml](https://brill.com/view/journals/estu/11/1/article-p1_1.xml).

5 “The ‘Quarantine Ships’ Experience: A Practice to Isolate Migrants,” GLIMER, October 29, 2020, <https://www.glimer.eu/the-quarantine-ships-experience-a-practice-to-isolate-migrants/>.

Of course, while port closures and new standards for refugee reception conditions are permissible under international law, some exceptions still apply. Importantly, the new arrangements must ensure that migrants' and asylum seekers' rights are maintained, including the respect for the right to life, the prohibition of inhuman treatment, the special protection for vulnerable categories, such as children and pregnant women, the respect for the right to family life, and the protection of health. Also, while isolation measures may be imposed on asylum seekers, the principles of proportionality and non-discrimination must be respected. For port closures, there is an exception related to the situation of vessels in distress. In case of distress, a ship is allowed to enter a port. According to the Maritime SAR Convention, distress is a situation that threatens the safety of passengers or is a danger to a ship.<sup>6</sup> It is clear then that the current situation of a health emergency, in the context of quarantine ships, does represent a situation of intense distress. This also has severe consequences in terms of compliance with the non-refoulement principle, and increases the risk of COVID-19 infections or the worsening of pre-existing medical conditions or physical and psychological trauma that cannot be treated appropriately on ships.

### III. Violation of Human Rights on Quarantine Ships

The entire system of quarantine ships has ultimately contributed to an unprecedented humanitarian crisis at sea, affecting people's fundamental rights inside these ships. Scholars and experts have recently begun researching the impacts of the quarantine procedures, and most of them have argued that the system of quarantine ships represents a massive violation of rules included in international human rights law. Today, the number of individuals potentially impacted by these violations are particularly striking. Since the implementation of the quarantine ships, according to the Italian Red Cross, more than 24,000 persons have gone through the quarantine period on the ships, 13,000 of which did in 2020 and 11,000 in 2021.<sup>7</sup>

On the one hand, the closure of ports and the introduction of quarantine ships have been legally justified in terms of health protection for preserving Italy's internal stability. However, despite the legal framework behind the implementation of the decrees, there are certain exceptions to the legal justifications that apply and which must be considered when analyzing the legality of the practice. Quarantine ships represent a "particular circumstance," outlined in

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6 Natalie Klein, "International Law Perspectives on Cruise Ships and Covid-19," Brill (Brill Nijhoff, December 9, 2020), <https://doi.org/10.1163/18781527-bja10003>.

7 Alessandro Puglia, "Costi Esosi e Diritti a Rischio: In Sicilia Le Navi-Quarantena Finiscono Sotto ACCUSA," *la Repubblica*, June 22, 2021, [https://palermo.repubblica.it/cronaca/2021/06/22/news/costi\\_esosi\\_e\\_diritti\\_a\\_rischio\\_in\\_sicilia\\_le\\_navi-quarantena\\_finiscono\\_sotto\\_accusa-307079083/](https://palermo.repubblica.it/cronaca/2021/06/22/news/costi_esosi_e_diritti_a_rischio_in_sicilia_le_navi-quarantena_finiscono_sotto_accusa-307079083/)

international law, especially in the way they are implemented and managed by the Italian Government.

In particular, the use of quarantine ships is concerning from the perspective of human rights with regard to the implementation of the system. After the Civil Protection Department measure of April 12, 2020 there were five quarantine ships operating, and the operation of these ships generated a cost which amounted to more than nine million euros per month. With the implementation of quarantine ships, the Italian government started financing a system that not only does not work properly, but also creates controversies and problems. The ships are located near the coast of Sicily and were first identified by the Italian Ministry of Infrastructure and Transport.<sup>8</sup> The Red Cross played a crucial role on these ships since it was in charge of providing health care and other primary services to people on board.<sup>9</sup> Among the services which must be provided on quarantine ships to migrants and asylum seekers are services of “health and psychological assistance, identification of and support to pregnant women and vulnerable persons presenting clinical/psychological risks, treatment of chronic diseases, linguist-cultural mediation, social assistance, logistical support and provision of services including the distribution of PPEs to onboard staff.”<sup>10</sup> However, most of these services do not seem to have been provided. In fact, people on the ship, together with numerous health professionals and immigrant advocates, complained about the lack of medical care, psychological support, and legal assistance available to passengers.<sup>11</sup> On the ships, people found themselves forced to live in small, poorly ventilated spaces, which made the COVID-19 virus even easier to spread, and the number of deaths started to rise. According to the first reports published after a few months from the implementation of quarantine ships, the number of deaths already amounted to three people, two of which were minors.

It is evident that the current health emergency has laid out the framework for practices and measures that restrict foreign nationals’ personal freedom. In his latest report to the Parliament, the National Guarantor of the rights of persons detained or deprived of personal liberty denounced this limbo situation of migrants, who are under the jurisdiction of the Italian legislation but do not have the opportunity to exercise rights which should be guaranteed to them by

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8 Charlotte Oberti, “Italy: Quarantines on Board Ships Are ‘Discriminatory towards Migrants,’” *InfoMigrants*, April 9, 2021, <https://www.infomigrants.net/en/post/31351/italy-quarantines-on-board-ships-are-discriminatory-towards-migrants>.

9 Gennaro Santoro, Paola Petrucco, and Flaminia Delle Cese, “Migrant Detention in Covid-19 Times,” *cild.eu*, August 10, 2020, <https://cild.eu/en/2020/08/04/migrant-detention-in-covid-19-times/>.

10 “Rights on the Skids. The Experiment of Quarantine Ships and Main Points of Criticism”.

11 Sara Creta, “Alarm Raised over Italy’s Migrant Quarantine Ships,” *The New Humanitarian*, November 11, 2020, <https://www.thenewhumanitarian.org/news-feature/2020/11/9/italy-migration-ferries-coronavirus-quarantine-health-asylum>

the state.<sup>12</sup> Most importantly, they cannot enjoy the right to personal freedom and movement. Quarantine ships must stay 2.4 kilometers from the coast, near port cities like Palermo and Trapani.<sup>13</sup> In the Italian Constitutional Court Judgment No. 105 of 2001, relating to the deportation of foreign nationals, the court pointed out that “restriction of physical liberty affects personal liberty as long as it is more than negligible. And personal liberty must be considered restrained whenever a person is physically subject to the power of another, and when this leads to the mortification of human dignity [...] which is a clear sign that the measure is affecting the sphere of personal liberty.” With this judgment in mind, the migrants’ current living conditions on quarantine ships seem to have all the prerequisites and characteristics of the deprivation of personal freedom, going against Article 13 of the Italian Constitution, which states that “Personal Liberty is inviolable.” It is clear, then, that quarantine ships go against some of the fundamental and inalienable principles of the Italian Constitution.

From an international law perspective, the system of quarantine ships is considered strongly discriminatory and unlawful. Both migrants and workers in the quarantine ships have been put in a vulnerable position that violates fundamental human rights principles. Foreign nationals have been subjected to a restriction of their rights not only as migrants, but also as persons in general. Individuals, including migrants, should not be subjected to arbitrary arrest or detention. Indeed, the prolonged detention of a migrant is not justified by waiting for an entry permit or until the removal of normative proceedings.<sup>14</sup> According to the Universal Declaration of Human Rights of 1948, people have the right to protection in the case of vulnerability and a safe shelter (Article 25). However, a ship located in the middle of the sea, under any weather condition, characterized by its close and small places where a deadly virus can easily circulate, does not represent a safe shelter where people can live. In addition to this, being isolated on a ship without the ability to communicate with the external world also represents a violation of the right to communication and good information under Article 19 of the Universal Declaration of Human Rights.

Under national and international law, Italy (and states in general) have an explicit duty to protect individuals’ human rights when they exercise directly or indirectly effective control over the national territory. The Human Rights Council has indicated that states must take the appropriate measures for the protection of these rights, including facilitated access to health care. Also, the European

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12 CILD, ““Ship-Based Quarantine: A Covid Prevention Measure for Migrants Only”.

13 Ismail Einashe, “The Troubled History of Quarantine Ships,” Frieze, accessed April 1, 2023, <https://www.frieze.com/article/troubled-history-quarantine-ships-2021>

14 “Immigration & Migrants’ Rights,” International Justice Resource Center, August 22, 2018, <https://ijrcenter.org/thematic-research-guides/immigration-migrants-rights/#Non-Refoulement>.

Court of Human Rights has held that if a state voluntarily puts an individual's life at risk by denying them access to emergency healthcare, this represents a violation of the right to life.<sup>15</sup> In this regard, the flag state must protect this right by protecting the health and safety of individuals and by making medical care available to passengers on onboard quarantine ships legally and adequately.

Through its use of quarantine ships, Italy is also violating some of the main principles of the European Convention on Human Rights (ECHR). Article 2 of the Convention, which concerns the "Right to life," claims that "everyone's right to life shall be protected by law." However, the conditions on Italy's quarantine ships pose serious threats to the life of those onboard. Also, the Convention's Article 5, on "the Right to liberty and security," presents a particular reference to unlawful detention.<sup>16</sup> The long period spent on the ships, being constantly surveilled by authorities, and the living conditions seem to indicate that being held on the quarantine ships qualifies as unlawful detention. Time spent on the ships only aggravates the physical and psychological condition of individuals who experienced a perilous journey to arrive in Italy. Even more striking is the fact that studies have shown that the period of quarantine on ships is ineffective in containing the spread of COVID-19 and actually increases the risk of contagion among people on the ship.<sup>17</sup> The precarious and dangerous conditions in which people are forced to live onboard seem to violate Article 3 of the ECHR, which states that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

It is important to note that in times of public emergency like the COVID-19 pandemic, according to Article 15 of the European Convention on Human Rights, there might be a derogation of obligations under the Convention in time of emergency, "provided that such measures are not inconsistent with its other obligations under international law." However, Italy should have informed the Secretary General of the Council of Europe of these derogations to receive a legal suspension of its obligations. No legal suspension has ever been communicated, making Italy's behavior unlawful under European law.

#### **IV. Quarantine Ships as a Violation of International Refugee Law**

By detaining migrants and asylum seekers onboard quarantine ships, Italy is also denying foreign nationals some of the fundamental rights that migrants, refugees, and asylum seekers possess under international refugee law. First of all, the

15 Sofia Galani, "Persons at Sea, International Law and Covid-19," EJIL, November 24, 2020, <https://www.ejiltalk.org/persons-at-sea-international-law-and-covid-19/>.

16 European Court of Human Rights, "European Court of Human Rights," accessed April 5, 2023, [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

17 "Rights on the Skids. The Experiment of Quarantine Ships and Main Points of Criticism".

treatment of asylum seekers and migrants on the ships is a clear violation of the principles of non-discrimination and non-penalization listed in the 1951 Convention Relating to the Status of Refugees. Discriminatory behavior is evident in the different isolation measures applied to nationals and foreigners. According to the sanitary measures outlined for the containment of COVID-19 in Italy in 2020 and 2021, citizens who tested positive for Covid-19 had to self-isolate in their accommodation or residence until they recovered. After 20 days, they were no longer subject to mandatory isolation. Instead, those subject to a precautionary isolation order had an obligation to be reachable and avoid contact with people. Any breach of the quarantine rules led to an administrative offense which was often punished by a fine.<sup>18</sup>

For asylum seekers and migrants, the situation was different. For both precautionary and mandatory self-isolation cases, foreigners were immediately brought to the quarantine ships. During the ensuing health surveillance period onboard, they were physically prevented from disembarking since the ships were not anchored to land most of the time. They had to stay in their rooms, which usually hosted two to five people, and had no windows or external exits. Moreover, they were constantly surveilled by security officers and found themselves subjected to the power of controlling authorities.<sup>19</sup> Often, those subject to a precautionary quarantine who did not test positive were mixed with those subject to mandatory isolation, who already tested positive. While quarantine for nationals might have lasted no more than a few days or weeks, quarantine on the ships could last for months.<sup>20</sup> In numerous cases, asylum seekers and migrants were forced to undergo quarantine for months despite negative swab results.<sup>21</sup> This condition of detainment goes against Article 31 of the “1951 Convention relating to the Status of Refugees: Non-penalization, Detention and Protection” according to which the state is prohibited from giving penalties to the person, like arbitrarily detaining the asylum seeker purely on the basis of seeking asylum. However, today Italy arbitrarily detained asylum seekers by bringing them on quarantine ships rather than hosting them in reception centers on land. In this regard, the Associazione Ricreativa e Culturale Italiana (ARCI) stated that “by choosing to quarantine people on board ships, the idea that foreigners are an incubus of illness and ‘dangers to our security’ is able to gain more traction” (InfoMigrants, 2020). Strong concerns were also raised when asylum seekers

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18 “Rights on the Skids. The Experiment of Quarantine Ships and Main Points of Criticism”.

19 Ibid.

20 Valerio Nicolosi, “Inchiesta: Immigrazione, Il Fallimento Delle ‘Navi Quarantena,’” *Micromega*, November 12, 2021, <https://www.micromega.net/immigrazione-navi-quarantena-inchiesta/>

21 Silvia Di Meo, “Quarantined Migrants and Unequal Lives,” *Borderline Sicilia*, March 5, 2021, <https://www.borderlinesicilia.it/en/monitoring/quarantined-migrants-and-unequal-lives/>



were brought to the ships from on-land centers, even after spending years in Italy waiting for an answer to their asylum requests. According to reports that began to emerge in October 2020, migrants who had already been in Italy for months and had their residency permits were also transferred to quarantine ferries after they tested positive for the Coronavirus.<sup>22</sup> Lawyers from the Association for Juridical Studies on Immigration<sup>23</sup> alleged that “since the beginning of October, approximately 100 asylum seekers who were in reception centers in different Italian cities have been transferred to quarantine ferries off the coast of Sicily after testing positive for coronavirus.”<sup>24</sup> Interviews and the experiences shared by several refugees suggest that after testing positive, refugees were transferred to the quarantine ships without knowing where they were being taken. They had to face long trips in large groups, and were given water but no food before reaching Sicily and being quarantined in ferries offshore Palermo. In many cases, when the isolation period onboard ended, they were brought back to the reception centers and told to undergo the whole asylum procedure again. Often, they were not even shown evidence of their positive COVID-19 tests but were just immediately displaced by the authorities from the centers to Sicily on board the ferries. Once they arrived at the reception center, many of them lost their place in the reception system, so they were refused entry.<sup>25</sup>

The decision also appeared to be discriminatory and unlawful since this procedure was also enforced outside the regulations and standards of quarantine ships provided by the April 12, 2020 decree.<sup>26</sup> The decree established the use of quarantine ships exclusively for foreign nationals rescued at sea and not for those already legally residing in Italy and hosted in reception centers. This whole situation went against some of the fundamental rights of asylum seekers and refugees, including the right to non-refoulement. This is a fundamental principle of refugee law, which refers to the obligation of states to not return a refugee “to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.”<sup>27</sup>

The violations of migrants’ and asylum seekers’ rights contributes to the

22 Creta, “Alarm Raised over Italy’s Migrant Quarantine Ships”.

23 “Rights on the Skids. The Experiment of Quarantine Ships and Main Points of Criticism”.

24 Creta, “Alarm Raised over Italy’s Migrant Quarantine Ships”.

25 Emma Wallis, “‘Deprived of Their Liberty’: Long-Term Asylum Seekers in Italy Who Test Positive for Covid-19 Sent to Quarantine Ships,” InfoMigrants (Infomigrants, October 14, 2020), <https://www.infomigrants.net/en/post/27902/deprived-of-their-liberty-longterm-asylum-seekers-in-italy-who-test-positive-for-covid19-sent-to-quarantine-ships>.

26 Creta, “Alarm Raised over Italy’s Migrant Quarantine Ships”.

27 United Nations High Commissioner for Refugees, “The 1951 Refugee Convention,” UNHCR (UNHCR, The UN Refugee Agency), accessed April 5, 2023, <https://www.unhcr.org/en-us/1951-refugee-convention.html>



difficulty of family reunification procedures, prevents them from being assisted as victims of smuggling and trafficking, and interferes with applying for asylum.<sup>28</sup> Quarantine ships have also led to the invisibility of asylum seekers and migrants confined on the ships, contributing to “hiding their identities”].<sup>29</sup> In particular, the impossibility of applying for asylum represents a major legal issue. In fact, according to the EU Charter of Fundamental Rights, Article 18, “The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of July 28, 1951, and the Protocol of January 31, 1967, relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union.”<sup>30</sup> By violating this right framework, quarantine ships have put asylum seekers in a condition of limbo by preventing them from defining their legal status once they arrived in Italian territory.

### **V. Quarantine Ships as a Violation of the Law of the Sea**

Along with quarantine ships violating international human rights and international refugee law, they also fail to comply with the international law of the sea. As a matter of fact, experts claim that quarantine ships represent a violation of International Maritime Law.<sup>31</sup> Under the UN Law of the Sea Convention (LOSC), the flag state has direct control over ships that navigate its national waters, and it has an obligation to “render assistance to any person found at sea in danger of being lost.”<sup>32</sup> Eventually, under articles 94 and 98 of the Convention on the Law of the Sea, the flag state must ensure safety at sea and see that ships are provided with a qualified crew appropriate to the ship’s type and size (LOSC, 1982). These measures are necessary to ensure the observance of the international regulations concerning the safety of life at sea. However, the reality of the conditions within the quarantine ships does not comply with the standards provided by the UN Law of the Sea Convention. In fact, people are constantly in danger inside the ships because of the problematic health and psychological conditions they must live with. Also, as reported by testimonies, the crew and medical personnel on the ships are not sufficient to ensure the system’s proper functioning. As a result, Italy is failing to render proper assistance and support to

28 Santoro, “Migrant Detention in Covid-19 Times”.

29 Chiara Denaro, “Diritto, Immigrazione e Cittadinanza Fascicolo n. 3/2021,” accessed April 5, 2023, <https://www.dirittoimmigrazionecittadinanza.it/archivio-saggi-commenti/saggi/fascicolo-n-2-2021-2/824-reflections-on-human-rights-law-as-suitable-instrument-of-complementary-protection-applicable-to-environmental-migration/file>.

30 “Charter of Fundamental Rights of the European Union - European Parliament,” accessed April 5, 2023, [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf).

31 Creta, “Alarm Raised over Italy’s Migrant Quarantine Ships”.

32 Hayley Roberts, “Turning Back Migrant Boats: What Does the International Law of the Sea Say?,” *The New Humanitarian*, January 19, 2023, <https://theconversation.com/turning-back-migrant-boats-what-does-the-international-law-of-the-sea-say-167679>.

refugees and asylum seekers by violating some fundamental international law of the sea principles.

Additionally, as stated in the “UN GA Oceans and the Law of the Sea” report, states have a clear obligation to take measures to guarantee safety at sea, including respect for labor conditions and the training of a ship’s crew.<sup>33</sup> However, during the pandemic, the treatment of seafarers has been strongly incompatible with labor law and maritime law standards. Seafarers have often faced unlawful extensions of confinement on board quarantine ships and been unable to leave their ships and receive their salaries. According to several interviews released by operators working on the quarantine ships, a work day might last 16 hours for 30 consecutive days, with no break. Even after their 30 days of being on the ships, they were often asked to stay longer.<sup>34</sup> Also, there have been cases in which food or water was lacking on quarantine ships, posing a high risk to workers’ lives.<sup>35</sup> Article 5 of the 2006 Maritime Labor Convention sets out the core rights of seafarers, like the right to decent working and living conditions onboard ships and the right to health protection. In this framework, a state must make sure that the standards for medical care on board quarantine ships are as similar as possible to the standards onshore.<sup>36</sup> Even though Italy has not ratified the 2006 Convention, it is still relevant to consider what international law says on the matter, as it will eventually be important to push for possible ratification of the treaty to harmonize Italy’s standards with international ones.

What was even more controversial was the denial of medical treatment to ill seafarers, who were inevitably forced to return to sea even though they could not perform the tasks for the standard management of the ship. Given that the crews of the quarantine ships were put into unhealthy and insecure conditions and directly exposed to the high risk of contagion with COVID-19, it is evident that the quarantine ships did not fully comply with the international law of the sea standards aimed at ensuring the proper and safe operativity such ships. As a matter of fact, because of extreme fatigue, there were many accidents onboard quarantine ships which put the lives of the crew and the passengers in danger. With this in mind, Italy has clearly failed at providing financial, humanitarian, and health security and assistance to migrants on the ships and to its nationals, and not complied with fundamental provisions of the international law of the sea.

33 “Oceans and Law of the Sea,” United Nations (United Nations), accessed April 5, 2023, <https://www.un.org/depts/los/index.htm>.

34 Valerio Nicolosi, “Inchiesta: Immigrazione, Il Fallimento Delle ‘Navi Quarantena,’” *Micromega*, November 12, 2021, <https://www.micromega.net/immigrazione-navi-quarantena-inchiesta/>

35 “Persons at Sea, International Law and Covid-19”.

36 Klein, “International Law Perspectives on Cruise Ships and Covid-19”.

## VI. Conclusion and Final Recommendations

In the COVID-19 pandemic, the implementation of quarantine ships turned out to be a massive failure for Italy in terms of economic and humanitarian costs because of their incompatibility with national law standards and international law regulations. Although these ferries may be seen legitimate devices aimed at preventing contagion and protecting the public health of the Italian population, they served as a severe discriminatory tool that contributed to widening the gap between foreign nationals and Italians. Life inside the ships represented a tough psychological and physical challenge for asylum seekers who already experienced the traumatic journey from their native land to Italy and found themselves confined on a boat in the middle of the sea without the ability to communicate with the external world.

The whole quarantine ship system can be regarded as an evident violation of international human rights, international refugee law, and international law of the sea standards. Salvatore Fachile, a lawyer representing one of the asylum seekers who was transferred from Rome to one of the ferries in Sicily, claimed that the transfers to quarantine ships “are discriminatory and without a legal basis, [...] the isolation should be limited to protecting the right to health of the individual and the community, not to justify restrictions on personal freedom.”<sup>37</sup> In particular, the displacement of asylum seekers and refugees from centers to the ships brought up questions on the possible legitimization and admissibility of exclusion practices.

Of course, managing the flow of immigration has always been a difficult task for states, and in COVID-19 times it has become more demanding than ever. It might be relevant to point out that, at least in the short-term, quarantine ships might represent a good solution for managing the difficult situation of a health crisis. This claim was supported by the UK government, which states that this practice can be used in a limited and specific way.<sup>38</sup> However, the Italian government must show compliance with international law and its national law to use such ships, and the country must make sure that quarantine ships will be reorganized according to the standards imposed by the International Convention on the Law of the Sea and to respect human rights and dignity. In the long-term, however, quarantine ships only aggravate the suffering of foreign nationals on the ships, especially as those outside of the ships return to everyday life.

Today, there is a growing concern about the possibility of the use of quarantine ships becoming a paradigm and that quarantine ships might transform into

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37 Creta, “Alarm Raised over Italy’s Migrant Quarantine Ships”.

38 Roberts “Turning Back Migrant Boats: What Does the International Law of the Sea Say?” .

“floating hotspots” used as a standard tool to manage the influxes of migrants and refugees arriving in Italy.<sup>39</sup> Experts from the ASGI are concerned with a possible “radicalization of the hotspot approach”),<sup>40</sup> which would only aggravate the physical and psychological suffering of those who had already made a perilous journey. This concern became even more relevant given the recent use of quarantine ships by Italy, which had to remain operational until the end of the State of Emergency. However, still after a few months after the exit from the State of Emergency, the ships continued to work, and migrants and asylum seekers disembarking in Sicily were still brought on the ships without any legal basis or justification. As a matter of fact, according to the newspaper *Il Manifesto*, after disembarking in Augusta’s port, thanks to the rescue operations carried out by the NGO Sea-Eye, 89 migrants were brought to the ships.<sup>41</sup> Unfortunately, it is evident that the conditions of the ships are inadequate for carrying out the delicate activities of reception and definition of the legal status of foreign nationals.

It is necessary to put an end to the system of quarantine ships and adopt new strategies that can not only be more profitable from an economic point of view, but that can, more importantly operate, in full respect of and compliance with international and national law and the fundamental rights of people. In order to do this, Italy might use buildings as quarantine facilities, as provided by Article 6 (7) of Decree No. 18 of March 17, 2020, which states that “Regional authorities may set up temporary healthcare areas inside and outside public and private hospitalization, care, reception and assistance facilities or other suitable places.”<sup>42</sup> Also, hotels or other suitable properties have been used during Covid-19 to accommodate people in self-isolation in case they could not self-isolate in their homes. However, this also created controversies in terms of its potential to promote discrimination because no hotels or facilities set aside for use by refugees or asylum seekers during their self-isolation, as was done for nationals. It is also of crucial importance to inform asylum seekers of their rights. Italy should ensure adequate access to protection and psychological, medical, and legal assistance for refugees and asylum seekers. Finally, since the phenomenon of quarantine ships today remains widely unrecognized, it is essential to raise awareness of the issue. Many civil society organizations have tried to denounce the situation, but the most significant obstacle remains the lack of transparen-

39 Laura Lo Verde, “Le ‘Navi Quarantena’: Una Misura Temporanea o UN Nuovo Approccio Oltre L'emergenza?,” *Oxford Law Blogs*, June 9, 2021, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2021/06/le-navi>.

40 “Rights on the Skids. The Experiment of Quarantine Ships and Main Points of Criticism”.

41 Giansandro Merli, “Le Navi Quarantena Ancora in Mare. Ma La Legge Non C'è,” *il manifesto*, accessed April 5, 2023, <https://ilmanifesto.it/le-navi-quarantena-ancora-in-mare-ma-la-legge-non-ce>

42 “Rights on the Skids. The Experiment of Quarantine Ships and Main Points of Criticism”.

cy and the difficulty in accessing the field and collecting enough information.<sup>43</sup> Indeed, it is necessary to shed light on such an evident violation of human rights to put an end to the quarantine ship system.

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<sup>43</sup> Francesca Esposito and Giulia Fabini, "Detention and Migrant Confinement in Italy at Times of Covid-19," *Oxford Law Blogs*, June 7, 2021, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2021/06/detention-and>.

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# Renewables Versus Rights: The Case for an Indigenous Veto of Renewable Energy Projects

Lydia McVeigh

## I. Introduction

Renewable energy sources are our next frontier as the world looks to move away from dependence on fossil fuels. Almost all states have signed onto the Paris Climate Agreement, which sets a goal of limiting global warming to 1.5 degrees Celsius compared to pre-industrial levels. In order to accomplish this goal, countries submit plans to reduce their greenhouse gas emissions, known as nationally determined contributions.<sup>1</sup> Key to the success of most of these plans is a move away from fossil fuels, replacing these energy sources with renewable energy such as wind power, solar power, hydropower, biomass, or geothermal energy. Wind, solar, and hydropower have a carbon-free energy source, and therefore emit no greenhouse gases.<sup>2</sup>

Because renewables are oftentimes framed as the “clean” alternative to “dirty” carbon-based energy sources, it is frequently overlooked that a transition to renewable energy, although desirable on a large-scale carbon reduction plane, may have unintended, yet severely negative consequences to communities. Renewable energy is extremely land-intensive: according to the Brookings Institute, “wind and solar generation require at least 10 times as much land per unit of power produced than coal- or natural-gas fired power plants, including land disturbed to produce and transport the fossil fuels.”<sup>3</sup> Common objections to building renewable energy capture facilities (which I will refer to as *siting* renewable energy) have included aesthetic objections, noise complaints, or concerns about disruption to wildlife, like the effect of wind farms on birds.<sup>4</sup>

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1 United Nations Framework Convention on Climate Change, “The Paris Agreement,” United Nations, accessed 9 March 2021, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>.

2 Tennessee Valley Authority, “The Role of Renewable Energy in Reducing Greenhouse Gas Buildup,” September 2003, <https://www.nrc.gov/docs/ML1217/ML12170A464.pdf>.

3 Samantha Gross, “Renewables, Land Use, and Local Opposition in the United States,” Brookings Institute, January 2020, <https://www.brookings.edu/research/renewables-land-use-and-local-opposition-in-the-united-states/>.

4 U.S. Department of Energy, “Advantages and Challenges of Wind Energy,” accessed 10 April 2021, <https://>

For Indigenous people, who attach particular cultural value to the land, the siting of renewable energy sources can disrupt economic or cultural ways of life that have been in place for centuries or millennia.<sup>5</sup> Because this paper centers around land use, I define “Indigenous community” by the spatial area where a concentrated group of Indigenous people live, such as a municipality under the *usos y costumbres* system in Oaxaca, Mexico. In the context of Indigenous communities’ claims to sovereignty, I will also use the term “Indigenous nations” to refer to Indigenous communities’ political identities. Because this paper compares Indigenous political identities to those of other political entities, I use the term “state” to describe the 195 internationally-recognized countries, and specifically “colonial state” to denote the state that colonized a particular Indigenous nation.

In theory, existing international frameworks protect the right of Indigenous communities to give “free, prior, and informed consent” (FPIC) to developers looking to site facilities on Indigenous land.<sup>6</sup> However, these standards are insufficient: they are deficient in practical application and the language of the standard as articulated in international law supports a reading of FPIC as mere “consultation” and does not afford a weighty-enough interest to Indigenous self-determination.

Therefore, I argue in this paper that Indigenous communities should possess the right to veto any type of green development on their land. I use “veto” to signify that Indigenous communities should possess a mechanism to accept or reject a development proposal in a definitive and participatory manner. If undertaken properly, this would stand in contrast to the way that FPIC is currently accomplished, through a “consultative process” that does not necessarily include the opinions of the whole community (non-participatory), can be bypassed by the developer (non-definitive), and is not justified by appealing to Indigenous self-determination or sovereignty.

Much of this paper will center on the situation in Oaxaca, Mexico (introduced in Section III), where Indigenous communities have been made to bear the brunt of the country’s transition to renewable energy. Oaxaca now generates 90% of the country’s wind energy, but wind farms have been developed without the consent of the mainly-Indigenous groups who occupy and farm the land used for siting. The developed farms pose a danger to longstanding Indigenous ways of life in the state, while the Indigenous communities do not reap the benefits of

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[www.energy.gov/eere/wind/advantages-and-challenges-wind-energy](http://www.energy.gov/eere/wind/advantages-and-challenges-wind-energy).

5 Kyle Powys Whyte, “Is It Colonial Déjà Vu?: Indigenous Peoples and Climate Injustice,” in *Humanities for the Environment: Integrating Knowledge, Forging New Constellations of Practice* ed. Joni Adamson et al. (London: Earthscan Publications, 2017), 1, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2925277](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2925277).

6 Brant McGee, “Community Referendum: Participatory Democracy and the Right to Free, Prior and Informed Consent to Development,” *Berkeley Journal of International Law* 27 (2009): 585.

renewable energy in the area.<sup>7</sup>

My argument for an Indigenous veto, advanced in section IV, uses the insights generated through the framework of “decolonial climate justice,” such as the need to understand environmental degradation and protection through the lens of settler colonial history and the need to respect Indigenous ways of life, land use, and political systems by valuing Indigenous sovereignty.<sup>8</sup> These arguments establish general principles through which Indigenous people could claim a veto right over all land use decisions in their community.

In section V, I will finally consider the unique case of renewable energy and respond to objections concerning the competing interests inherent in renewables siting. I will again return to the necessity of valuing Indigenous sovereignty as “nation-to-nation” on par with other states, and will offer thoughts as to how colonial histories make attempting to adjudicate between competing interests undesirable. At the end of this section, I will offer a positive alternative: epistemologies of coordination, which emphasize trust and mutual responsibility between Indigenous and colonial states, and are undertaken with the choice and leadership of Indigenous communities.

Ultimately, I aim to focus on Indigenous voices throughout my argument and advocate that Indigenous conceptions of sovereignty ought to be the determinative factor for activities on Indigenous land, while remaining cognizant of the demand for reconciling Indigenous interests with those of the colonial state and international community.

## II. Wind Farm Conflicts in Oaxaca, Mexico

The issue of renewable energy siting concerns within Indigenous communities has most famously come to the forefront in the State of Oaxaca, Mexico, located on the Isthmus of Tehuantepec, a narrow strip of land between the Pacific Ocean and the Gulf of Mexico. Oaxaca is one of the Mexican states with “higher Indigenous diversity”: 47% of people in Oaxaca identify as Indigenous, and “thirteen Indigenous peoples and communities are officially recognized,” including the “Amuzgo, Chatino, Chinanteco, Chocho, Chontal, Cuicateco, Huave, Ixcateco, Mazateco, Mixe, Mixteco, Triqui, and Zapoteco” peoples (using Spanish names).<sup>9</sup> In 2010, 34% of the population spoke an Indigenous

7 Courtney Jung, “The Politics of Horizontal Inequality: Indigenous Opposition to Wind Farm Development in Mexico (Working Paper),” *UNU-WIDER*, 2017, 1, <https://www.wider.unu.edu/publication/politics-horizontal-inequality>.

8 Nichole Vargas, “The Effects of the Wind Farms on the Indigenous Zapotec Community of the Isthmus of Tehuantepec, Mexico,” *Occam’s Razor* 10 (2020): 25, <https://cedar.wvu.edu/cgi/viewcontent.cgi?article=1064&context=orwww>.

9 María Elena Huesca-Pérez, Claudia Cheinbaum-Pardo, and Johann Köppel, “Social Implications of Siting Wind Energy in a Disadvantaged Region – The Case of the Isthmus of Tehuantepec, Mexico,” *Renewable and*

language, primarily Zapotecas and Mixtecas.<sup>10</sup> In terms of governance, “each community has its own customary law called *usos y costumbres* recognized by the state constitution.”<sup>11</sup>

For the purposes of this paper, I will now briefly define what I mean by an “Indigenous community.” Indigenous peoples in Oaxaca define themselves as part of communities through various methods: for instance, Sofia Avila-Calero, development studies researcher at the Universidad Nacional Autónoma de Mexico, states that the “political character of *Isthmeño* communities ... is reflected throughout history by local defense of territorial rights and cultural identity.”<sup>12</sup> For instance, she mentions the Coalition of Workers, Students, and Peasants that “during the second half of the 20th century propelled and defended a political project based on their ethnic identity”; other ways of self-identification involve attention to the maintenance of sacred sites or rituals.<sup>13</sup> Another potential definition of community focuses on a mix of land and political system: the overarching governance structure of Oaxaca illuminates pockets of concentrated Indigenous communities. The State of Oaxaca contains 570 total municipalities, and 418 are governed by the *usos y costumbres* structure, denoting that the communities incorporate “a diverse range of traditional Indigenous practices and customs of election and governance.”<sup>14</sup> Both forms of defining communities carry potential pitfalls, as is expected from an attempt to define a community from the position of an outsider. The first method seemingly requires Indigenous people to have either engaged in “pre-contact practices” or avenues of resistance, while the second method may exclude those who live outside communities that use the *usos y costumbres* system.<sup>15</sup> For the purpose of this paper and in the interest of simplicity, however, I will define “Indigenous community” by the spatial area where a concentrated group of Indigenous people live, such as a municipality under the *usos y costumbres* system in Oaxaca or a reservation in the United States.

While I define Indigenous communities in Oaxaca in terms of the presence of a concentrated group of Indigenous people (*usos y costumbres* municipalities), it is also important for the history of renewable development in Oaxaca to describe patterns of individual land ownership and privatization that constitute the larger municipalities. Land that is held by Indigenous people in Oaxaca is generally social property, either an *ejido* or a *comunale*. The *ejido* originated in Article 27 of

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*Sustainable Energy Reviews* 58 (May 2016): 959.

10 Huesca-Pérez, “Social Implications,” 959.

11 Ibid.

12 Sofia Avila-Calero, “Contesting Energy Transitions: Wind Power and Conflicts in the Isthmus of Tehuantepec,” *Journal of Political Ecology* 24, no. 1 (2017), 995.

13 Avila-Calero, “Contesting,” 995; Jung, “The Politics,” 12–13.

14 Jung, “The Politics,” 7.

15 Ibid., 16.

the 1917 Mexican Constitution as the fulfillment of a promise made during the Revolution to return land to peasants.<sup>16</sup> Until 1992, it was only possible to cultivate on *ejidos*, but changes to Article 27 in 1992 made it possible for those with membership in an *ejido* to “privatize their portion of land and sell it.”<sup>17</sup> *Comunales* relate to “pre-colonial land claims” held by Indigenous peoples.<sup>18</sup> The same 1992 Agrarian Reform that allowed for the privatization of *ejidos* also allowed for the privatization of *comunales*.<sup>19</sup> For comparison to the rest of Mexico, in 2016 91% of land in Oaxaca belonged to an *ejido*, compared with 54% in the rest of the country, and although more recent statistics are scarce, in 1960 38% of land in Oaxaca was a *comunale*, compared with 5% in the rest of the country.<sup>20</sup>

While Oaxaca is home to many Indigenous peoples and communities, it is also home to a very important natural resource: wind energy potential. The Isthmus forms a natural wind corridor, and has been identified by the World Bank’s International Finance Corporation as the place with the “best wind resources on Earth.”<sup>21</sup> Table 1, excerpted from a 2003 National Renewable Energy Laboratory report, shows that up to ten percent of Oaxaca’s surface area contains moderate to excellent wind potential.<sup>22</sup>

Table 1

Moderate-to-Excellent Wind Resource at 50 m (Utility Scale)

Wind Resource Utility Scale	Wind Class	Wind Power at 50 m W/m <sup>2</sup>	Wind Speed at 50 m m/s*	Total Area km <sup>2</sup>	Percent Windy Land	Total Capacity Installed MW
Moderate	3	300 – 400	6.1 – 6.7	2,234	2.4	11,150
Good	4	400 – 500	6.7 – 7.3	2,263	2.5	11,300
Excellent	5	500 – 600	7.3 – 7.7	1,370	1.5	6,850
Excellent	6	600 – 700	7.7 – 8.5	1,756	1.9	8,800
Excellent	7	> 800	> 8.5	1,248	1.4	6,250
Total				8,870	9.7	44,350

\* Wind speeds are based on an elevation of 2000 m and a Weibull k value of 2.0

Assumptions

Installed capacity per km<sup>2</sup> = 5 MW  
Total land area of Oaxaca = 91,500 km<sup>2</sup>

16 Alexander Dunlap, “Counterinsurgency for Wind Energy: The Bñ Hioxo Wind Park in Juchitán, Mexico,” *Journal of Peasant Studies* 45, no. 3 (2018): 636, 10.1080/03066150.2016.1259221.  
17 Vargas, “The Effects,” 27.  
18 Dunlap, “Counterinsurgency,” 636.  
19 Sofia Avila-Calero, “Contesting,” 996.  
20 Dunlap, “Counterinsurgency,” 636; Huesca-Pérez, “Social Implications,” 959.  
21 Alexander Dunlap, “The ‘Solution’ Is Now the ‘Problem:’ Wind Energy, Colonisation and the ‘Genocide-Ecocide Nexus’ in the Isthmus of Tehuantepec, Oaxaca,” *The International Journal of Human Rights* 22, no. 4 (2018): 485.  
22 D. Elliott et al., “Wind Energy Resource Atlas of Oaxaca,” National Renewable Energy Laboratory, August 2003, 45, <https://www.nrel.gov/docs/fy03osti/34519.pdf>.

This area is of great strategic importance to Mexico, as “the development of wind energy capacity is crucial to Mexico’s ability to attain the goals it has set out in national legislation and international agreements.”<sup>23</sup> For instance, the 2015 Energy Transition Law established targets of 35% electricity from clean energy sources in 2024, 40% by 2035, and 50% by 2050.<sup>24</sup> For these reasons, Zárate-Toledo states that “It is not an exaggeration to say that the situation of the south of the Isthmus of Tehuantepec in relation to wind energy... mark[s] the political agenda of renewable energies in the country.”<sup>25</sup>

Even prior to establishing these renewables targets, the Mexican government has incentivized the development of the Oaxaca region through numerous private-public partnerships and pieces of legislation. In the mid-1990s, coinciding with the 1992 Agrarian Reform, President Ernesto Zedillo “launched a megaproject for the ‘development’ of the Isthmus...through investments in infrastructure...and industry.”<sup>26</sup> This was followed by the incorporation of this “development into a broader framework called *Plan Puebla Panama*,” announced in 2001 by President Vicente Fox.<sup>27</sup> Mexico also joined the Clean Technology Fund during President Felipe Calderon’s 2006–2012 term, which supports low-carbon initiatives in Mexico and is owned by the government of Mexico for the International Bank for Reconstruction and Development (IBRD), the Inter-American Development Bank (IADB), and the International Finance Corporation (IFC).<sup>28</sup> In 2013, President Enrique Peña Nieto opened the door for energy privatization by ending the state monopoly on the generation and commercialization of energy.<sup>29</sup> This reform was followed in 2014 by a package of operationalizing laws, under which private project developers would negotiate with the Mexican Energy Secretary and landowners to develop energy sources.<sup>30</sup> This structure has recently been changed in 2020 to shift more energy production back toward the state, but for the purpose of recounting the events in Oaxaca, the laws prior to

23 Jung, “The Politics,” 2.

24 Madeleine Wattenbarger, “Mexico Blocks Private Renewable Energy Expansion,” *Diálogo Chino*, 7 September 2020, <https://dialogochino.net/en/climate-energy/37327-mexico-blocks-private-renewable-energy-expansion/>; International Renewable Energy Agency, “Renewable Energy Policy Brief: Mexico,” June 2015, 3, [https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2015/IRENA\\_RE\\_Latin\\_America\\_Policies/IRENA\\_RE\\_Latin\\_America\\_Policies\\_2015\\_Country\\_Mexico.pdf?la=en&hash=31908495CBB5E5DC3C61B23949C517B26C611521](https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2015/IRENA_RE_Latin_America_Policies/IRENA_RE_Latin_America_Policies_2015_Country_Mexico.pdf?la=en&hash=31908495CBB5E5DC3C61B23949C517B26C611521).

25 Ezequiel Zárate-Toledo, Rodrigo Patiño, Julia Fraga, “Justice, Social Exclusion and Indigenous Opposition: A Case Study of Renewable Energy Development on the Isthmus of Tehuantepec, Mexico,” *Energy Research & Social Science* 54 (2019): 3.

26 Jacobo Ramírez, “Impacts of Neoliberal Wind Energy Investments on Environmental Justice and Human Rights in Mexico,” in *Business and Development Studies: Issues and Perspectives* ed. Peter Lund-Thomsen et al. (Abingdon: Routledge, 2020), 361.

27 Ramírez, “Impacts,” 361.

28 Ibid.

29 Ibid.

30 Ibid., 362.

I2020 governed the vast majority of the development of wind farms in the area.<sup>31</sup>

Studies conducted by the Mexican and U.S. governments as early as 1980 indicated that the Isthmus was “one of the most attractive regions in the country to implement commercial wind farms.”<sup>32</sup> In 1994, the Mexican government enacted a “pilot” wind project, La Venta I, with seven turbines that “successfully attracted private investments,” leading to a series of meetings with “government institutions, research foundations, private companies, multi/bilateral funding agencies, and experts within the sector” to envision a Wind Corridor in the region.<sup>33</sup> After these meetings, foreign companies formalized their interest in developing wind projects, “nudging the government to propose an appropriate territorial division of the region,” meaning that “the Isthmus region was distributed into land plots for private wind energy companies, *without* consulting or gaining permission from the local communities who owned the land.”<sup>34</sup> Next, enabled by the 1992 Agrarian Reform, in 1994 multinational corporations “created contracts and began renting parcels of land that individual farms owned within the communal land...once one company acquired property, like a domino effect, the land gradually shifted from under the control of the Indigenous groups to that of multinational actors.”<sup>35</sup> The first large-scale project, La Venta II, was constructed in 2006.<sup>36</sup> As of 2020, more than 3200 turbines have been constructed in the region, generating more than 90% of Mexico’s wind energy.<sup>37</sup> These farms continue to be owned by primarily-European multinational corporations, and are backed by institutional players such as the IADB or are registered as Clean Development Mechanism projects, through which high-emitting countries can finance an emission-reduction project in developing countries.<sup>38</sup>

While these farms clearly serve a noble objective in that they generate a large portion of Mexico’s renewable energy, the local and mostly-Indigenous communities that these farms are located in have experienced a variety of harms related to the construction of and continued presence of the farms. Before wind farms were even constructed, the process appears to have “gone over the heads” of local and Indigenous communities and their established land prac-

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31 Wattenbarger, “Mexico.”

32 Avila-Calero, “Contesting,” 996.

33 Ibid.

34 Ibid., 997.

35 Vargas, “The Effects,” 33.

36 Avila-Calero, “Contesting,” 996.

37 Jung, “The Politics,” 2.

38 Sergio Oceransky, “Wind Conflicts in the Isthmus of Tehuantepec: The Role of Ownership and Decision-Making Models in Indigenous Resistance to Wind Projects in Southern Mexico,” presented at the 7th World Wind Energy Conference (Kingston, Canada), 24 June 2008, 203, <https://thecommoner.org/wp-content/uploads/2020/06/Oceransky-Wind-Conflicts-in-the-Isthmus-of-Tehuantepec.pdf>; Scott Sellwood and Gabriela Valdivia, “Interrupting Green Capital on the Frontiers of Wind Power in Southern Mexico,” *Latin American Perspectives* 45, no. 5 (2018): 210–211.



tices: Avila-Calero describes closed-door negotiations that divided the Isthmus into parcels without consultation except for one-off meetings with individual landowners.<sup>39</sup> On an individual level, usage of “unscrupulous tactics” such as “fake consultation practices, manipulation of information, illegal land titles and false land leases, bribery and corruption, bullying and violence” also occurred.<sup>40</sup> When local communities were “consulted,” many companies only consulted the local leader, or *cacique*, who may have received a commission for community members signing lease contracts.<sup>41</sup> In the Mareña Renovables project, “residents accused the president of the agrarian association of receiving money from the company in exchange for signing over San Dionisio’s communal land” which was later not shared with the community,<sup>42</sup> and in the Granja Sedena project, the Oaxacan governor and mayor of San Blas Atempa “[pressured] the communal land commissioners to sign over 20 hectares of communal land” to the Secretary of National Defense “without public consultation.”<sup>43</sup> While “free, prior, and informed consent” is in theory required for wind development to take place on Indigenous land, in these instances, consent was either never sought in favor of manipulation or violence, or consultation practices were reduced to non-participatory monetary transactions.

Post-construction, local communities still are feeling the adverse effects. Although wind farms were pitched by authorities as a way to revitalize a “low productivity” area (which in and of itself devalues the “agricultural wealth” of the region), the community does not share many of the benefits of the farms.<sup>44</sup> Although some in the Isthmus lack electricity, “the power generated from the farms are usually sold to multinational corporations like Coca-Cola and Heinek-en,” and most jobs related to the construction of the turbines go to non-Indigenous “businessmen, representatives, engineers and other workers around the world,” rather than local community members.<sup>45</sup> In addition to a lack of benefit-sharing, local ways of livelihood (primarily agriculture, animal husbandry, and fishing) are harmed by the presence of the turbines. In La Venta II,

The roads and the lines of generators have been raised, affecting irrigation channels and the natural water flows to discharge rainwater.

39 Vargas, “The Effects,” 33; Avila-Calero, “Contesting,” 997.

40 Vargas, “The Effects,” 33.

41 Oceransky, “Wind Conflicts,” 206.

42 Stephanie Friede, “Enticed by the Wind: A Case Study in the Social and Historical Context of Wind Energy Development in Mexico,” *Wilson Center Mexico Institute*, 19, [https://www.wilsoncenter.org/sites/default/files/media/documents/publication/mi\\_151220\\_enticed\\_by\\_wind\\_v4.pdf](https://www.wilsoncenter.org/sites/default/files/media/documents/publication/mi_151220_enticed_by_wind_v4.pdf).

43 Alexander Dunlap, “Wind Energy: Toward a ‘Sustainable Violence’ in Oaxaca,” *NACLA Report on the Americas* 49, no. 4 (2017): 487.

44 Ibid.

45 Jung, “The Politics,” 13; Dunlap, “The Solution,” 561.



Therefore, there are plots with no access to irrigation and others that get flooded when it rains... In addition, the contracts include an appendix with restrictions on the use of the land by the farmers, banning them from planting anything that grows beyond 2 meters, erecting any kind of building, opening wells, etc. In contrast, the contracts grant “usufructo” (unrestricted use rights) of the land to the companies.<sup>46</sup>

Currently, the wind farms enclose 10,000–15,000 hectares of land, but could balloon to 40,000–50,000 hectares if the full wind energy potential of the region is developed, promising livelihood concerns similar to these for even more farmers.<sup>47</sup>

A serious concern articulated by Indigenous leaders, such as Bettina Cruz Velásquez, member of the Zapoteca community and a prominent leader of the Assembly in Defense of the Land and Territory of Juchitán (“Assembly”), is the potential for wind farm construction to force changes in “Indigenous cultural identities that have remained alive in the Isthmus for the last 500 years,” inviting comparisons to earlier patterns of settler colonialism.<sup>48</sup> This concern flows from multiple dimensions. First, the Assembly states that “the wind, sun, sea and land have shaped the life and culture of our *Binnizá* [Zapotecos] and *Ikjoots* [Huaves] people” in an intrinsic and non-commercial fashion.<sup>49</sup> In contrast, the Assembly states that “by waving the clean energy flag, private companies have turned wind into a commodity.”<sup>50</sup> The influx of foreign workers and capital “flood[s] [the town] with people holding values which prioritize wind park construction, capital generation and the right to work.”<sup>51</sup> Alexander Dunlap shares observations from Indigenous community members that prices increase with the influx of workers, as does drug use, while at the same time, workers promote “images of modernisation that create enchanted visions of development.”<sup>52</sup> When projects are completed after one to three years, workers leave, and “productive community structures” have been “altered” or “weakened,” while issues such as drug consumption and high prices persist.<sup>53</sup> Second, the way that the Mexican government and corporations have defined this area as formerly of “low productivity” showcases a rhetoric that upholds “only one right way to use land, develop a nation and culture” rather than recognizing alternative formations of develop-

46 Oceransky, “Wind Conflicts,” 212.

47 Sellwood and Valdivia, “Interrupting,” 212.

48 Oceransky, “Wind Conflicts,” 212.

49 Avila-Calero, “Contesting,” 1000.

50 Ibid.

51 Dunlap, “The Solution,” 561.

52 Ibid.

53 Ibid.

ment, relationships, and land use that have been in place for centuries.<sup>54</sup> Finally, the “most recurrent” claim against farms concerns the potentiality for continued “territorial dispossession (*despojo del territorio*),” which is connected to the concerns about identity articulated above. Bettina Cruz Velásquez asserts that

...the loss of identity is a necessary condition to undertake other kinds of megaprojects in the Isthmus, a region of great geo-strategic interest. The fact that land lease contracts are valid for 30 years and automatically renewed for another 30 years is one of the main reasons for concern with regards to the future of this territory. The perception of opposing groups is that after 60 years there will be no local population left.<sup>55</sup>

In sum, for many Indigenous activists, this struggle plays out in multiple realms: one major concern centers on immediately-observable issues, such as unscrupulous processes and lack of benefit-sharing, while the other centers on countering cultural long-term erosion, “how to preserve and continue what remains of Zapotec and Ikoot lifeways ‘that value mother earth’, know ‘how to ask for forgiveness’ from the land and know how to share harvest yields.”<sup>56</sup>

Indigenous communities have recently mounted opposition to wind farms through a variety of forums. Observers such as Avila-Calero often identify opposition to the Mareña Renovables project owned by Preneal SA as the beginning of Indigenous direct action against renewable development in the region. In 2011, the San Dionisio Zapotec community “filed a lawsuit to nullify leases signed with Preneal,” which escalated to direct action, drawing responses such as repression, harassment, and violence against protestors, such as the arrest of Bettina Cruz for “crimes against national wealth” when planning a peaceful protest in front of the Comisión Federal de Electricidad.<sup>57</sup> By the end of 2012, the community recorded a victory with a federal judge acknowledging “violation of communal property rights” and a suspension of the project.”<sup>58</sup> Other avenues of resistance have included summits like the Indigenous Communities, Self-Determination, and Energy Sovereignty Forum in 2009, in which Indigenous activists put forth proposals for communal wind energy farms.<sup>59</sup> Unfortunately, the permitting process still remains most conducive to private investment, and

54 Dunlap, “The Solution,” 553.

55 Oceransky, “Wind Conflicts,” 212.

56 Dunlap, “The Solution,” 565.

57 Ibid.; International Service for Human Rights, “Bettina Cruz,” 6 January 2015, <https://ishr.ch/defender-stories/bettina-cruz-mexican-human-rights-defender-working-business-and-human-rights/>.

58 Ibid.

59 Ibid.

continued direct action against wind farm construction has turned deadly in recent years with at least fifteen people killed while authorities continue to paint resistance as “minor [and] isolated,” yet at the same time “unacceptably political.”<sup>60</sup>

### III. The Failure of Free, Prior, and Informed Consent

In theory, the Indigenous communities of Oaxaca possess the right to oppose development on their land through established tenets of international law. The “free, prior, and informed consent” (FPIC) standard was first established in binding international treaty law in the International Labour Organization’s Convention 169 (Indigenous and Tribal Peoples Convention known as C169), adopted beginning in 1989 by 23 Central- and South American countries, including Mexico.<sup>61</sup> In C169, FPIC is explicitly mentioned as the standard that states must secure from Indigenous groups before any relocation.<sup>62</sup> FPIC is also articulated in the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), ratified by 144 countries including Mexico. Like C169, UNDRIP also mentions FPIC as the standard in cases of relocation (Article 10), but also sets forth in Article 32 that “States shall consult and cooperate in good faith with the Indigenous peoples... in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.”<sup>63</sup> In earlier articles, the UNDRIP also affirms Indigenous self-determination:

Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Despite the possession of these rights in theory, numerous scholars and community members debunk the ability of FPIC to meaningfully protect the inter-

60 Business & Human Rights Resource Centre, “Mexico: 15 People Killed in Dispute Linked to Wind Energy Projects in Oaxaca,” 7 July 2020, <https://www.business-humanrights.org/en/latest-news/mexico-15-people-killed-in-dispute-linked-to-wind-energy-projects-in-oaxaca/>; Sellwood and Valdivia, “Interrupting,” 212.

61 McGee, “Community,” 585.

62 International Labour Organization, “C169 – Indigenous and Tribal Peoples Convention,” Article 16.

63 United Nations Department of Economic and Social Affairs, “United Nations Declaration on the Rights of Indigenous Peoples,” (Geneva, 2007), <https://www.un.org/development/desa/Indigenouspeoples/declaration-on-the-rights-of-Indigenous-peoples.html>.

ests of Indigenous communities in the face of powerful governmental or private developers. Brant McGee calls FPIC an “unrealized mandate” and explains that FPIC “lacks a common, internationally accepted definition.”<sup>64</sup> McGee mentions that many interpret the “C” to signify merely a “consultative process” rather than “consent.”<sup>65</sup> This interpretation may not be entirely off-base: the UNDRIP article that applies for all types of development on Indigenous lands sets forth that “states shall *consult* and *cooperate* in good faith with the Indigenous peoples” in *order to* obtain consent. Here, consultation is framed as the primary action verb, illuminating the real possibility for the necessity to obtain “consent” to be subordinated to a cursory process of consultation. The Mexican constitution of 2011, revised four years after the country signed onto the UNDRIP, showcases this error by providing that the government must consult Indigenous groups and “where appropriate, incorporate the recommendations into proposals,” without mentioning any standard of consent.<sup>66</sup> Additionally, the inclusion of “*obtain* consent” rather than a word like “ascertain” indicates the assumption that consultation is synonymous with the eventual obtaining of consent.

Nichole Vargas conducted personal interviews with Zapotec community members on the subject of FPIC and found that community members perceived that FPIC requirements posed “little obstacle” to corporations who did the “bare minimum or less” in terms of consultation.<sup>67</sup> The interviewees shared that ignoring FPIC lacks consequences: the same corporations who lost legal battles for ignoring Indigenous land claims were able to quickly construct more projects after-the-fact.<sup>68</sup> Dunlap echoes these findings, stating that consultations are an afterthought: they may not occur until one to fifteen years after the start of development. Dunlap states that FPIC does not “actually permit Indigenous or other communities to reject development projects. Instead, they are forced to either negotiate, accept the company’s offer, or fight to stop the arriving projects.”<sup>69</sup> These interviews and research appear to reveal that the Indigenous community itself is not the entity that decides whether FPIC has been accomplished in a manner satisfactory to begin or continue with a project. Indigenous community members express dismay with developers’ “bare minimum” efforts, yet projects continue with “little obstacle,” and Indigenous communities are limited as to the oppositional actions they can undertake that are “permitted” even though they possess this right.

64 McGee, “Community Referendum,” 589.

65 Ibid.

66 Ramirez, “Impacts,” 364.

67 Vargas, “The Effects,” 34.

68 Ibid.

69 Dunlap, “Wind Energy,” 484.

In Oaxaca, FPIC faces further implementation challenges as discussed in Section II, such as the subversion of consent-seeking processes in favor of one-off conversations with *caciques*, withholding information necessary for informed decision-making, or resorting to intimidation or violence. The lack of definitional clarity of the FPIC standard enables developers to bypass the processes, rather than creating understanding of FPIC as a necessary condition to begin development.

Second, when read in conjunction with UNDRIP Articles 3 and 4 that are meant to safeguard Indigenous self-determination, it is not actually clear whether Indigenous rights to FPIC in land use decisions could be understood as an exercise of self-determination. The definition of Indigenous self-determination in the UNDRIP is limited to “autonomy or self-government in matters relating to their internal and local affairs.” Given that land use decisions, especially renewable siting decisions, also affect to a lesser degree those outside of the Indigenous community, the use of FPIC might not be able to be justified by appealing to the version of Indigenous self-determination set forth by the UNDRIP. It is also unclear who is placed in the position of determining whether a given issue relates to “internal or local affairs,” meaning that those outside the Indigenous community may be able to constrain which activities an Indigenous community exercises self-governance in.

If FPIC cannot be justified as a right flowing from Indigenous self-determination, it is understandable that this standard can be frequently trivialized and understood as a “cooperation” process between the Indigenous community and the state or developer. Cooperation is not an inherently negative state of affairs. However, when combined with the power imbalance as seen in the situation in Oaxaca, the inability to justify FPIC as a right connected to Indigenous self-determination does not support an outcome of Indigenous communities as having a final say in the process of renewables development.

In sum, the current institutional mechanism for Indigenous communities to assert their voice against projects deeply affecting their land, cultural values, and livelihood is inadequate because it is frequently circumvented without repercussion for developers, forcing Indigenous communities to take up expensive action in the courts or time-consuming and potentially dangerous direct action tactics. FPIC, as currently in practice, is oftentimes neither free, prior, nor informed, and obtaining “consent” may be sidestepped in favor of a cursory “consultation.” This practical failure of FPIC is revealed as an understandable consequence given the language of the treaties through which it is articulated that do not meaningfully connect FPIC to Indigenous self-determination or sovereignty.

#### IV. A Solution: Veto Power for Indigenous Communities

Based on the failure of current mechanisms to center Indigenous voices in the process of permitting renewable energy facilities in Oaxaca and the neocolonial harms perpetuated by the current style of development, I propose that Indigenous communities should possess the right to veto any type of green development on their land. The argument advanced in this section would also presumably apply to an Indigenous veto against other types of development, although I will elaborate on the complexities of the specific case of renewables in Section V.

I use the word “veto” to signify that Indigenous communities should possess a mechanism to accept or reject a development proposal in a definitive and participatory manner. Explicit approval is needed before implementation, yet a veto could be undertaken at later stages in the process as well. If undertaken properly, this would stand in contrast to the way that FPIC is currently accomplished, through a “consultative process” that does not necessarily include the opinions of the whole community (non-participatory), can be bypassed by the developer (non-definitive), and is potentially not justified by appealing to Indigenous self-determination.<sup>70</sup> A veto power would also not preclude the Indigenous community from negotiation with the developer, but would signify that the Indigenous community reserves a final say in the siting process.

My justification for the possession of a strong veto power relies on the insights generated from the framework of “decolonial climate justice,” such as the imperative to respect Indigenous practices and Indigenous sovereignty.<sup>71</sup> “Decolonial climate justice” is defined as:

A climate justice movement for climate change mitigation that includes social justice efforts such as seeking to reverse existing structural inequalities and mitigate the disproportional damage of climate change on marginalized peoples. A decolonial climate justice also centers par-

70 An issue that I purposely do not attempt to address in this paper is the precise mechanism through which a veto should be accomplished. Attention must be paid simultaneously to issues of just process (to avoid the same implementation issues that plague FPIC) but with an eye toward respecting traditional *usos y costumbres* or other Indigenous forms of governance, so as to afford the largest degree of autonomy to Indigenous communities. One promising proposal for accomplishment of a “veto”-like scenario is Brant McGee’s study of community referenda or *consulta popular* for extractive projects in Central and South America, which take the form of a community-wide poll – if the majority approve a project, it will go forward. McGee states that these polls have been used by communities in “Peru, Argentina, Mexico, [and] Guatemala” and argues that they “offer a potentially effective means to overcome efforts at the manipulation of information...and promote community discussion” (McGee 573; McGee 603). McGee’s proposal still raises issues related to majoritarian rule – should a majority be required to approve development (meaning veto is more likely) or should a majority be required for a veto? Given the possibility for members of the community to be swayed by developers, should the threshold be raised even higher than a majority rule?

71 Vargas, “The Effects,” 25.

ticularly on Indigenous peoples, their leadership, and the just reclamation of Indigenous land and sovereignty.<sup>72</sup>

This framework begins with the imperative to address “existing structural inequalities,” and thus necessitates attention to the colonial histories of Indigenous peoples. For definitional clarity, I cite political theorist Daniel Butt, who puts forth “three primary characteristics of colonialism: 1) the external domination of one people by another; 2) the imposition of colonial culture and customs onto the colonized; and 3) the exploitation of the colonized.”<sup>73</sup> For the purposes of this paper, I am most concerned with “settler colonialism,” a particular type of colonialism wherein “one society settles on the territories of another society... according to its own cultural and political systems,” according to Kyle Powys Whyte, an Indigenous Potawatomi scholar.<sup>74</sup> Like other settler colonial societies such as the United States, Canada, Australia, and New Zealand, the State of Oaxaca has experienced settler colonialism along with the rest of Mexico: it was colonized by Spain in the mid-15th century and soon after became host to Spanish nobles who attempted to “Europeanize” the region’s “social practices, politics and religion.”<sup>75</sup> After Mexico’s independence from Spain in 1821, Garza states that the Indigenous communities in Oaxaca still continued to experience a “colonial relationship” with the Mexican state, exacerbated by continued attempts to privatize communal Indigenous land.<sup>76</sup>

Whyte and others recognize the role that systems of colonialism have played into present-day environmental issues. Whyte maintains that settler colonialism is predicated on “eras[ing] Indigenous peoples’ adaptive capacity and self-determination by repeatedly containing them in different ways, destroying the ecological conditions that are tightly coupled with Indigenous cultural and political systems.”<sup>77</sup> Speaking in the specific context of the U.S. but maintaining that this history also applies elsewhere, he argues that this logic of containment enabled extractive industry to flourish by allowing “carbon-intensive activities on Indigenous territories”; as Indigenous lands were degraded, Indigenous people were further contained by the immediate disruption to their ecosystems and knowledge systems.<sup>78</sup> Alexander Dunlap echoes this connection in a piece specifically

72 Vargas, “The Effects,” 25.

73 Dunlap, “The Solution,” 553.

74 Whyte, “Is This Colonial,” 5.

75 “Oaxaca,” History.com, 21 August 2018, <https://www.history.com/topics/mexico/oaxaca/>.

76 Jorge Hinojosa Garza, “Troubled Winds from the South: The Impact of Large-Scale Wind Energy Projects on Indigenous Communities in Oaxaca,” *Master Thesis Series in Environmental Studies and Sustainability Science* (2009): 4.

77 Whyte, “Is This Colonial,” 7.

78 Whyte, “Is This Colonial,” 9; Whyte, “Is This Colonial,” 6.



concerning Oaxaca when he mentions “ecocide” – “killing buffalo, fish, crops, and other means of subsistence” as a method to “undermine the life, existence and resistance of Indigenous populations,” while at the same time producing large-scale environmental destruction.<sup>79</sup> In sum, these scholars make clear that Indigenous vulnerability to climate change is not simply “bad luck” but the result of legacies of colonialism.<sup>80</sup>

Indigenous people have attempted to respond to the unique danger climate change poses through advocating for environmental and climate justice – Whyte describes that Potawatomi cultural and political systems already center around adaptation to environmental change, and that Indigenous people have participated in calls for international action to curb climate change, such as the presence of 200 Indigenous delegates at the 2015 Conference of Parties in France (where the Paris Accords were agreed to).<sup>81</sup> Ironically, however, while environmental *destruction* poses special harms upon Indigenous communities, many mainstream methods of environmental *protection* also can harm Indigenous communities.

Responses to crises like climate change often maintain colonial dynamics through a “presumption of urgency” and a presumed need for “swiftness of action,” what Whyte defines as “crisis epistemology.”<sup>82</sup> He argues that crisis rhetoric oftentimes calls for “sacrifices to be made” without examination of who bears the brunt of sacrifice – therefore, this rhetoric can “mask numerous forms of power, including colonialism, imperialism, capitalism, patriarchy, and industrialization.”<sup>83</sup> Viewed in context with the systematic devaluation of Indigenous land use and practices – such as officials who designated Oaxacan agricultural land as “low productivity” – “crisis rhetoric” could lead to the “perpetuation of colonialism.”<sup>84</sup> Other scholars, such as James Fairhead, Melissa Leach, and Ian Scoones, concur with Whyte’s point by coining the term “green grabbing.” Green grabbing occurs through “the appropriation of land and resources for environmental ends,” and is also connected to “the construction and perpetuation of a sense of crisis” as well as the increasing commercialization and privatization of nature.<sup>85</sup>

In sum, these scholars point out longstanding patterns associated with colonial domination and land-grabbing that have not ceased even though the policy

79 Dunlap, “The Solution,” 557.

80 Whyte, “Is This Colonial,” 15.

81 Whyte, “Is This Colonial,” 4; Whyte, “Is This Colonial,” 9.

82 Kyle Powys Whyte, “Against Crisis Epistemology,” in *Handbook of Critical Indigenous Studies*, edited by Brendan Hokowhitu et al., (London: Routledge, 2020), 5, [https://www.researchgate.net/profile/Kyle-Whyte/publication/343214624\\_Against\\_Crisis\\_Epistemology/links/5f1ebe0992851cd5fa4b2c9c/Against-Crisis-Epistemology.pdf](https://www.researchgate.net/profile/Kyle-Whyte/publication/343214624_Against_Crisis_Epistemology/links/5f1ebe0992851cd5fa4b2c9c/Against-Crisis-Epistemology.pdf).

83 Whyte, 1, 6.

84 Ibid., 5.

85 James Fairhead, Melissa Leach, and Ian Scoones, “Green Grabbing: A New Appropriation of Nature?,” *Journal of Peasant Studies* 39 (2012): 237; Fairhead, Leach, and Scoones, “Green Grabbing,” 243; 245.



agenda is now “green.” While action against climate change does need to happen rapidly, crisis rhetoric can legitimize marginalized communities’ continued sacrifices. The necessity to rectify the harms associated with colonial governance is justified through a humanistic lens: Whyte argues that “many strategies for lowering emissions impose harms themselves on Indigenous peoples if colonialism is not addressed.”<sup>86</sup> It is also justified through an environmental lens: because colonial systems of land domination contributed to the present environmental crisis, decolonial climate justice advocates argue that true sustainability must be accomplished through channels that do not replicate past destructive patterns.

According to the framework of decolonial climate justice, solutions to climate change that further decolonial ends center on “Indigenous peoples, their leadership, and the just reclamation of Indigenous land and sovereignty.”<sup>87</sup> Because systems of colonialism devalue and seek to extinguish Indigenous values and ways of life, Whyte advocates for the “respect [of] tribal values and genuine acknowledgement of tribes’ particular situations.”<sup>88</sup> Respect is a crucial building block for Indigenous “collective continuance,” the future “flourishing” of Indigenous “livelihoods” that comprises “contesting colonial hardships” but also “pursuing comprehensive aims at robust living, like building cohesive societies, vibrant cultures, strong subsistence and commercial economies, and peaceful relations with a range of non-tribal neighbors.”<sup>89</sup>

These forward-looking conceptions of justice cannot be accomplished without respect for Indigenous political systems. Whyte grounds his advocacy for standards of respect in strong appeals to Indigenous sovereignty. To define sovereignty, I will use the assertion of Dale Turner, political scientist and member of the Temagami First Nation in Ontario, that Indigenous people view their political relationship to that of the colonial state as “nation to nation...They owned their lands before contact, they made treaties to share, and they never gave up their claims.”<sup>90</sup> Turner writes that Indigenous sovereignty should be thought of as “*sui generis*” or unique rights, those that “flow out of Indigenous nationhood and are not bestowed by the...state.”<sup>91</sup> In other words, Turner recognizes that sovereignty can be bolstered by legal agreements, such as treaties, but he maintains that sovereignty originates in continuous claims to nationhood that were never “given up” even within treaty landscapes. Indigenous groups in Oaxaca

86 Whyte, “Is This Colonial,” 12.

87 Vargas, “The Effects,” 25.

88 Kyle Powys Whyte, “The Recognition Dimensions of Environmental Justice in Indian Country,” *Environmental Justice* 4, no. 4 (2011): 200.

89 Kyle Powys Whyte, “Justice Forward: Tribes, Climate Adaptation and Responsibility,” *Climatic Change* 120, no. 3 (2013), 2, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2244276](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2244276).

90 Turner, *Not A Peace Pipe*, 4.

91 *Ibid.*, 31.

and neighboring states have a long history of asserting their sovereignty. Armed conflict over land claims has occurred regularly over time, such as notably in 1860 when the Mexican government sent the army to claim land from the Zapotecos.<sup>92</sup> More recently, in response to the 1996 San Andrés Peace Accords signed by Indigenous Zapatistas in neighboring Chiapas and the Mexican government, the Oaxacan state constitution was revised to allow for the *usos y costumbres* form of governance, which has been claimed by over 70% of the state's municipalities.<sup>93</sup> Whyte concurs that an understanding of Indigenous sovereignty as nation-to-nation, or as he puts it, "government-to-government," is advantageous because it "[reflects] Indigenous national identity."<sup>94</sup>

Turner and Whyte's strong conceptions of Indigenous sovereignty as *sui generis* and "nation-to-nation" convey the significance of Indigenous political claims. These conceptions of Indigenous sovereignty are stronger than the current internationally-accepted conception of Indigenous "self-determination" as articulated by the UNDRIP. The language of "self-determination" in Articles 3 and 4 creates room for colonial states to circumscribe the powers of Indigenous communities by designating which activities are "internal or local" and thus fall under the purview of Indigenous self-governance.<sup>95</sup> As discussed in Section III, Indigenous rights to FPIC in land use decisions may not be understood as a right that flows from Indigenous self-determination, because land use decisions – especially in a renewables context – often affect "external" or "non-local" communities.

FPIC also cannot be understood as a right that fully articulates a strong conception of Indigenous sovereignty. Indigenous communities themselves do not decide whether FPIC has been accomplished in order to move forward with a project. Even governments that have signed onto the UNDRIP, such as Mexico, bypass the FPIC standard in their own constitutions in favor of consultations and "[incorporation of] recommendations" "where appropriate."<sup>96</sup> The current extent of FPIC practices are determined by the developer or the government – an example of a non- "*sui generis*" right where each nation can determine the extent to which it will allow for Indigenous interests in a renewable land use decision.

In contrast, a veto power allows Indigenous communities a determinative say on climate change mitigation tactics that will occur on their land, which in

92 Garza, "Troubled Winds," 4.

93 "Indigenous Rights and Self-Determination in Mexico," *Cultural Survival Quarterly Magazine* (1999), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/Indigenous-rights-and-self-determination-mexico>.

94 Whyte, "Justice Forward," 2.

95 UNDRIP, Article 4.

96 Ramirez, "Impacts," 364.

turn supports the ability of Indigenous peoples to determine their activities as sovereigns. A veto power signifies that an Indigenous community is able to reject a proposed development on its land, even if there exist some external or non-local implications of the project – similar to the way a nation could reject a foreign country’s development proposal on its lands. A veto power accomplishes the insights generated by a decolonial framework of climate justice in that it respects the leadership, political systems, and interests of Indigenous people.

### **V. Implications: Reconciling a Veto Power with Competing Interests in the Renewables Context**

The argument advanced for Indigenous sovereignty as articulated through a veto power could theoretically be utilized to justify an Indigenous veto over all instances of development, renewable or nonrenewable. However, the landscape of renewable energy siting raises unique implications that deserve further address.

Renewable energy siting is uniquely difficult due to the stringent standards needed for land to be ideal for energy potential. This issue is rarely encountered when siting other locally-unwanted land uses: for example, developers of a sanitary landfill must primarily consider “local zoning and land use criteria” as well as transportation accessibility, which theoretically can result in many possible sites.<sup>97</sup> In contrast, the NREL report that determined the advantageous wind potential of Oaxaca had to consider “terrain and climatic data sets, GIS technology, analytical and computational techniques,” including data on “surface and upper-air and ocean surface winds.”<sup>98</sup> If wind energy was not sited in Oaxaca, the location of possibly the “best wind resources on earth,” alternate locations would likely not produce the same amount of wind energy. In this sense, the siting of renewable energy shares features with the siting of extractive industries in terms of the specificity of site characteristics. However, I argue that the interest in siting renewable energy is even more pronounced than siting extractive industry given the international effort to curb climate change by committing to carbon reduction or even carbon-neutral standards in the next years and decades.

Indigenous communities’ ability to veto a proposed project poses the potential to directly conflict with national and even international interest with regard to the promotion of renewable energy. Those affected by renewables siting within a nation might involve energy regulatory boards, economic decision-makers, and lawmakers responsible for emissions-reduction treaties. A renewables siting decision might also involve the interests of other nations working in conjunction

97 Patrick Walsh and Philip O’Leary, “Lesson 5: Evaluating a Potential Sanitary Landfill Site,” *Waste360*, 1 May 2002, [https://www.waste360.com/mag/waste\\_evaluating\\_potential\\_sanitary](https://www.waste360.com/mag/waste_evaluating_potential_sanitary).

98 Elliott et al., “Atlas,” vi.

to reduce emissions. Additionally, as we “all have a joint interest in survival,” the interest in promoting renewable energy in the most advantageous sites affects to some degree all who could experience harm from climate change.<sup>99</sup> A veto that affords final say on renewables projects only to the Indigenous community, therefore, might appear to conflict with or disenfranchise the interests of others who would be affected by decisions to install renewable energy facilities. As outlined above, because of the limited sites with excellent potential as renewable energy drivers, this conflict is all the more challenging.

In response, I first argue that potential conflicts due to the worldwide interest in promoting renewable energy are insufficient to justify any abrogation of this veto right. While individuals, groups, or governments may possess interest in promoting renewable energy, the interests of Indigenous nations in deciding the activities that occur on their land are of a different character. As established in Section IV, Indigenous nations’ rights to sovereignty should be understood as “*sui generis*” and as a class of political rights that are “not bestowed by the state.”<sup>100</sup> As an illustration, the Mexican government could not unilaterally decide to build a farm in California because the state’s soil has excellent farming potential – the rights of Indigenous nations to claim their sovereignty are on par with those of states who assert sovereignty over their own territories.

Attempts to adjudicate between competing interests – instead of respecting an unconditional veto right – imply that the state may become the arbiter of these interests, because Indigenous rights are oftentimes and historically articulated and protected by colonial states. It is worth noting that through the destructive systems of settler colonialism, Indigenous interests, and Indigenous “cultural and political systems” were devalued or classified “under” colonial cultural and political systems which operated for the purposes of establishing the colonial system as the standard.<sup>101</sup> Because state systems of governance were formed within the context of settler colonial regimes in countries like Mexico, it is almost impossible to imagine forums in which Indigenous peoples might command equal respect amidst other voices. For instance, even when the participatory mechanism of FPIC is in theory guaranteed as an international right, Indigenous people are unable to avail themselves of the full right to participation. Therefore, without the exclusive elevation and protection of Indigenous peoples’ unique interests, governments run the risk of continuing to drown out Indigenous voices in existing systems of governance that have colonialism indelibly “woven” into them.<sup>102</sup> Fully implementing respect for Indigenous political systems and ways of

99 Dahl, *After the Revolution?*, 51.

100 Turner, *Not a Peace Pipe*, 31.

101 Whyte, “Is This Colonial,” 7.

102 Turner, *Not a Peace Pipe*, 30.

life thus requires that Indigenous concerns are addressed separately and above systems of colonial dominance.

While I have provided additional justification why a veto right still is justified even amidst the urgent global milieu of climate change, I also wish to sketch some positive alternatives. This essay has thus far outlined the negative case of renewable development - Indigenous communities ought to possess a veto right that *stops* impending development on their land. While it would be naïve to assume that Indigenous people would not exercise a right to veto simply because they care about environmental protection, it is also unnecessarily pessimistic to assume that Indigenous interests stand directly opposed to broader interests when it comes to climate change.

As an alternative to the rhetoric of crisis, Kyle Powys Whyte offers an “epistemology of coordination.” Whyte states:

Epistemologies of coordination emphasize coming to know the world through kin relationships... Kinship relationships refer to moral bonds that are often expressed as mutual responsibilities. The moral bonds are similar to familial relationships in the sense of local and broader families that can engage *responsibly* in coordinated action together to achieve particular goals that they have.<sup>103</sup>

According to Whyte, “epistemologies of coordination are focused just as much on responses to crisis” – he outlines that Indigenous peoples have utilized coordination in order to respond to the challenges of colonialism and forced relocation.<sup>104</sup>

Epistemologies of coordination emphasize trust and mutual responsibility, and are undertaken with the choice and leadership of Indigenous communities. As stated earlier, Indigenous peoples have vested interest in environmental protection. Whyte argues that “government-to-government” Indigenous sovereignty is advantageous in the case of climate justice because “tribal governments are oftentimes in a better position to respond to climate change impacts at the local scale than any other sovereign.”<sup>105</sup> An emerging field of research in community-based development details an affirmative case for renewable development on Indigenous land – one where Indigenous communities initiate projects on their terms and partner with developers while retaining equity in the projects.<sup>106</sup> While

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103 Whyte, “Against Crisis,” 7.

104 Ibid., 8.

105 Whyte, “Justice Forward,” 2.

106 Robert Stefanelli, Chad Walker, et al., “Renewable Energy and Energy Autonomy: How Indigenous People In Canada Are Shaping An Energy Future,” *Environmental Reviews* 27, vol. 1 (2018): 97.

community-based projects must be evaluated with the same scrutiny and detail that researchers are now able to amass for the situation in Oaxaca, championing community-based development supports Indigenous communities' agentic movement toward climate resiliency and is an example of epistemologies of coordination at work.

In all, the respect for Indigenous ways of life and political systems that is communicated through the support of a veto right is a promising avenue to consider joint Indigenous and state responses to climate injustice in the future.

## VI. Conclusion

This paper has argued that existing mechanisms to ensure Indigenous voice in renewable energy siting decisions are insufficient because they do not flow from a strong understanding of Indigenous sovereignty; therefore, a veto right that affords Indigenous communities a final say on renewables development activity is necessary.

Existing literature commonly attempts to justify Indigenous rights within a larger framework of democratic governance. Will Kymlicka offers one of the most prominent accounts of Indigenous rights in *Multicultural Citizenship: A Liberal Theory of Minority Rights* when he advocates for Indigenous self-government rights on the basis of equality, which aim to show that “the minority is facing some sort of unfair disadvantage that can be rectified by a group-differentiated right” and history, which aim to show that “the minority has some historical claim to the group-differentiated right.”<sup>107</sup> My justifications for a veto transcend these common justifications by putting pressure on the supposed need to completely define Indigenous rights within democratic theory because Indigenous sovereignty should be conceptualized as a right that is not bestowed by any other state.

This paper is limited in scope and therefore does not address many important implications of an Indigenous veto, which I will briefly outline here as an invitation for further research. As stated earlier, chief among those concerns is the operationalization of such a veto. Courtney Jung raises important qualifications in the case of Oaxaca by highlighting instances of “horizontal inequality,” a web of marginalization that includes “multiple, overlapping, and intersecting exclusions” within Indigenous communities themselves.<sup>108</sup> A veto power therefore must respect that Indigenous communities are not homogenous and be able to include the sentiment of marginalized communities within Indigenous nations, rather than representing the will of the relatively-privileged Indigenous leader-

107 Kymlicka, *Multicultural Citizenship*, 108.

108 Jung, “The Politics,” 2.

ship. Additional considerations related to operationalization include consideration of the implications of a veto occurring *after* construction has already begun, as well as further interrogation into the definition of the communities themselves who might possess such a right. In the case of Oaxaca, Indigenous communities are not concentrated in a reservation system, and Indigenous land might be mixed with those of poor peasants who may be marginalized but not Indigenous. Is there a better metric to define the Indigenous “community” who could participate in this right, especially if a community does not participate in *usos y costumbres* governance? In a final related consideration, there exist groups that claim historic sovereignty but have not suffered the same degree of past environmental harm as Indigenous groups (for example, French colonists who settled in Quebec) and groups that have suffered the same degree of past environmental harm but do not claim sovereignty (for example, descendants of enslaved African-American laborers in the U.S. who continue to face environmental racism). Might either of these considerations justify a veto right for those groups?

In all, the message that I wish to convey in this paper is that Indigenous groups’ voices ought to be exclusively centered during any discussion related to Indigenous land, but especially when the discussion centers around the response to climate change, a subject that Indigenous communities have a unique interest in. In the words of Bettina Cruz, Indigenous peoples possess “autonomy and the capacity to decide collectively about their future which ought to be respected by surrounding governments,” which is why a veto power is necessary.<sup>109</sup>

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109 Oceransky, “Wind Conflicts,” 212.

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# What effect, if any, do gender quotas have in addition to increasing the representation of women in politics?

Ekaterina Vanurina

*This paper focuses on gender quota implementation's effects in addition to an increase in representation of women in politics and discusses different attitudes toward gender quota policy around the globe. It reviews, analyses, and compares literature of the 2010s, proposing potential outcomes and future avenues for research. The literature review is divided into three sections: public support for women in politics, political engagement among women, and change in women's role in society. We are to find that gender quotas may bring positive changes for both state systems – such as greater expenditures on social welfare and health care promoted by female politicians – and women as a group – such as social benefits and freedoms in terms of education and career choices. Unexpected negative changes comprise biased attitudes from male politicians, including men's withdrawal from politics, and marital discord leading to increased divorce rates. This work seeks to encourage further research dedicated to the study of gender quotas and their contributions to the gradually changing role of women at home, at work, and in our society.*

## I. Introduction

In September 1995, in Beijing, the United Nations held the fourth World Conference on Women, which was devoted to the development of gender equality and the advancement of women's rights. This conference is considered to be a turning point in the establishment of the theory of gender quotas. The main idea behind the gender quota system has been to provide reserved seats to female candidates and ensure women's representation in legislatures. Nonetheless, it is an attempt not only to increase the political representation of women and improve gender equality in all spheres of life as an implementation of the feminist practice, but also to pursue balance in the decision-making sector and in government

expenditures. It is widely corroborated that women tend to promote spending on social welfare, education, health benefits, and child support. As Lovenduski and Norris (2003) conclude in their famous research on women in the British parliament, women are better advocates of women's interests.<sup>1</sup>

Today gender quotas have been or are being implemented in many states throughout the world. To date, the total number of countries with constitutional, electoral, or political party quotas is 137.<sup>2</sup> The average level of representation for women in countries with quotas is 27.6%.<sup>3</sup> Rwanda has the highest female representation in the world at 61.3%, while Haiti and Vanuatu have 0% representation.<sup>4</sup> On average, the role of the party of women in legislatures varies from 20% to 40%, which is still much less than male representation.<sup>5</sup>

This literature review analyzes data on gender quotas and female representation worldwide — in particular in Afghanistan, India, Rwanda, Lesotho, and Latin American countries — and evaluates the effectiveness of gender quota policies beyond just the political representation of women. Scholars usually discuss the increase in the presence of women in legislatures as the most thoroughly assessed criteria of the gender quotas' impacts; fewer authors investigate their effect on other spheres and dimensions. Herein, we review research that looks at three different aspects that quotas are hypothesized to affect: public support for women in politics, political engagement among women, and change of women's role in society. There is no consensus as to whether the effects of quotas on these issues are positive enough for advancing gender equality due to the data limitations and the scholars' focus on individual countries. This work seeks to attract the attention of political scientists, sociologists, and academics in business, law, international relations, and history.

## II. Public Support for Women in Politics

Whereas much research has hypothesized that gender quotas ought to increase public support for women in politics and other male-dominated fields, there is limited empirical support for this claim. Beath et al. (2013), in one of the first studies on this subject, find that gender quotas implemented in Afghanistan increase public support for women, whose rights were generally limited in local village councils, wherein the seats were reserved for them through National Solidarity programs. The sentiment is true for both men and women, which is

1 Lovenduski, Joni, and Pippa Norris. "Westminster Women: The Politics of Presence." *Political Studies* 51, no. 1 (2003): 84-102. <https://doi.org/10.1111/1467-9248.00414>.

2 "Country Overview." Gender Quotas Database. International Institute for Democracy and Electoral Assistance. <https://www.idea.int/data-tools/data/gender-quotas/country-overview>.

3 Ibid.

4 Ibid.

5 Ibid.

particularly interesting given the conservative context. Still, the author does not find that this support of women extends to higher, national-level offices either for men or women. This may be attributed to Afghan local councils' lack of jurisdiction over issues unrelated to the allocation of development funds. The effect, however, may be more significant over the long term. In this study, the impact of gender quotas on attitudes toward women in politics is measured within two years of the quotas' adoption. Due to its systematic discrimination of women and many other minorities, Afghanistan may be regarded as one of the extreme cases, where the effect of quotas is likely to be the weakest, given the political and social upheavals — and yet strong patriarchal culture with structural limitations. In the gravest times, women are obligated to travel with a male escort, forbidden to attend school, and stripped of any control over their assets. The effect of quotas on public support for women in politics is expected to be greater in less patriarchal societies.<sup>6</sup>

Indeed, Allen and Cutts (2018) study how the position of women in society in different countries varies mainly due to the scope of authority of the patriarchal system. The scholars analyze the effect of gender quotas on public support for women in politics in 56 countries worldwide, the United States and Europe inclusive, where we assume the effect to be much more significant. Citing Amy Alexander, the authors express assent to her analysis: “the most accurate portrayal of the relationship between women’s presence in parliament and women’s beliefs in women’s ability to govern is a virtuous cycle of mutually reinforcing changes in women’s empowerment as political leaders.”<sup>7</sup> After testing their hypotheses with a cross-national data set and interaction of all variables set, Allen and Cutts find that support for women in politics can be increased by the presence of gender quota and shall not vary by sex. Moreover, quota implementation itself happens to be a “vote of confidence” in female politicians resulting in a more positive attitude towards them and women in politics in general, and the mandate-type of the quotas would not impact the overall positive attitude. Yet, the authors do not report the results for individual countries; we do not know what the effect of quotas in countries with more patriarchal cultures is or how long quotas need to be in place before the effects of quotas are realized in those countries.<sup>8</sup>

6 Beath, Andrew, Fotini Christia, and Ruben Enikolopov. “Empowering Women through Development Aid: Evidence from a Field Experiment in Afghanistan.” *American Political Science Review* 107, no. 3 (2013): 540–57. <https://doi.org/10.1017/s0003055413000270>.

7 Alexander, Amy C. “Change in Women’s Descriptive Representation and the Belief in Women’s Ability to Govern: A Virtuous Cycle.” *Politics & Gender* 8, no. 04 (2012): 437–64. <https://doi.org/10.1017/s1743923x12000487>.

8 Allen, Peter, and David Cutts. “How Do Gender Quotas Affect Public Support for Women as Political Leaders?” *West European Politics* 41, no. 1 (2017): 147–68. <https://doi.org/10.1080/01402382.2017.1320082>.

Krook (2008) suggests that one potential reason that gender quotas might not increase public support for women in politics is that women elected through quotas are less effective than their male counterparts. This phenomenon might be present because the competition to win a seat is less intense where quotas are present, so there is not enough stimulation or motivation for female candidates to get a better education or be more professionally competent. Furthermore, women elected through quotas may also be given lower-ranked positions, which is why they are prevented from proving their effectiveness to the public. Krook bases her theory and four intuitions on her previous studies and the literature of such authors as Towns (2004), Garcia Quesada (2005), Abou-Zeid (2006), and others.<sup>9</sup>

Echoing Krook's argument, Lloren (2014) finds that gender quota implementation may increase women's descriptive representation but not their symbolic representation. In Morocco, despite being legally and constitutionally enforced as well as greatly supported by the local women's movement, quotas do not lead to gender equality because they fail to challenge the political structure of the regime ruled by men. Specifically, women are often only selected for these reserved seats thanks to their family ties (specifically through husbands and fathers) or political party funds. Therefore, owing to the potential for nepotism or lesser qualifications, female officeholders are seen to have reduced agency to act on behalf of women and voice their needs.<sup>10</sup>

Beaman et al., however, find that gender quotas are in fact able to reduce bias against female politicians' ineffectiveness. Having conducted a study in India, the authors suggest that action programs with gender quotas' implementation can reduce usual discrimination against women in leadership positions and beyond. Their 2009 paper on West Bengal considers how public attitudes change across Indian villages. While the seat reservation policy does not eliminate the strong preference of Indian villagers for male leaders over female leaders, quota systems could reduce bias in perceptions of female leaders' effectiveness, compelling men to recognize that women can lead.<sup>11</sup>

Furthermore, Sacchet (2008) finds that the quota system helps make the efficacy of women's actions visible and change prejudices about women as a group, advancing progressive policies and social changes. In her interviews with 78 representatives of the Brazilian National Congress chambers and NGO members, she finds that the quota system has great potential to drive cultural changes and

9 Krook, Mona Lena. *Quotas for Women in Politics: Gender and Candidate Selection Reform Worldwide*. Oxford England: Oxford University Press, 2009.

10 Lloren, Anouk. "Gender Quotas In Morocco: Lessons For Women's Descriptive And Symbolic Representation." *Representation* 50, no. 4 (2014): 527-38. <https://doi.org/10.1080/00344893.2014.979224>.

11 Beaman, Lori, Raghendra Chattopadhyay, Esther Duflo, Rohini Pande, and Petia Topalova. "Powerful Women: Does Exposure Reduce Bias?" *Quarterly Journal of Economics* 124, no. 4 (2009): 1497-1540. <https://doi.org/10.1162/qjec.2009.124.4.1497>.

build support for women's political action, backed up by women's activism. To be noted, Brazil is behind other countries in the region with regard to its number of female representatives in national legislatures of only 9 percent.<sup>12</sup> The author emphasizes that such underrepresentation is not a failure of the quota system in general but is rooted in the specific flaws in the quota law in Brazil. These laws include non-binding implementation and institutional features that increase gender inequalities, such as the low degree of institutionalization of political parties, heavy campaign spending involving corruption and clientelism, and geographical separation from family. Precisely, women usually lack the funds or connections with prosperous sponsors and are bound by domestic responsibilities, which hinders their assumption of leadership positions far from home. Although the "critical mass" of women in legislatures is far from being achieved, Sacchet explains that the quota policy holds an essential symbolic effect. Not only does it highlight women's effectiveness, but quota adoption also urges the public to recognize the magnitude and importance of problems and social reforms spearheaded by women, including child care, prevention of violence against women, and employment rights.<sup>13</sup>

Alexander (2012) studied the quotas' influence on women's beliefs in women's ability to govern across 25 countries. The author assumes religious beliefs to be a significant factor in public perceptions of women's role in society since religious institutions support traditional subordinate roles for women. Hence, in her study, Alexander uses respondents' education and religiosity along with the standard demographic controls. Although she finds that religiosity does not hold particular significance, respondents with a university education appear more supportive of women's ability to govern. Similarly, women express greater support than do men. Still, accelerating women's descriptive representation is prospectively effective for eroding cultural barriers to female political empowerment. In addition, she illuminates the importance of cultural attitudes in women's recruitment and election to public office. She states that the influence is generally positive, and women become more assured in both their capabilities and effectiveness in the wake of quota adoption.<sup>14</sup>

Gender quotas allow for practical evidence and real-life examples of female leaders and decision-makers. The policy's ability to accelerate acceptance and support for women in politics among the public differs across regions and

12 Sacchet, Teresa. "Beyond Numbers." *International Feminist Journal of Politics* 10, no. 3 (2008): 371. <https://doi.org/10.1080/14616740802185700>.

13 Ibid., 369-86.

14 Alexander, Amy C. "Change in Women's Descriptive Representation and the Belief in Women's Ability to Govern: A Virtuous Cycle." *Politics & Gender* 8, no. 04 (2012): 437-64. <https://doi.org/10.1017/s1743923x12000487>.



contexts. The developed and some developing nations seem more willing to adopt quotas if they can observe progressive effects beyond solely representation in a short timeframe. On the other hand, countries with stronger patriarchal or religious traditions need more time to re-acclimate people to the new norms. In order to determine the levels of benefit that these countries could gain from quota adoption, it is crucial to analyze the gender quota system's effects over longer periods of time. As the paradigm is likely to gradually shift, female politicians might not only attract support on behalf of other women and hopefully men, but also increase women's desire for political engagement.

### III. Political Engagement Among Women

Scholars disagree about whether or not the presence of more female politicians stimulates more political interest among other women. This section will discuss these two opposing viewpoints starting with the affirmative stance on women politicians' influence and finishing with the negative.

As mentioned in the previous section, Beaman et al. investigated the effects of a nationwide policy experiment in India, which was, in simple terms, based on the reservation of women's seats in village councils. In 2012, the authors came up with an idea of a 'role model' effect, in which female leaders inspire adolescent girls to achieve comparable educational and career goals as they have attained, supporting the reduction of the gender gap in politics. Correspondingly, it means that female politicians may encourage other women, including young girls, to be politicians like they are. A particularly valuable finding of the paper is that in Indian villages with a female leader, girls spent less time on household chores and more time on education.<sup>15</sup> Consequently, the gender gap in educational attainment was narrowed, but it was again driven by an increase in girls' aspirations, not by a decrease in boys'. Eventually, the authors determine that the presence of female role models resolves gender equality on an individual basis, opening new opportunities to young women as a group.<sup>16</sup>

An even more detailed approach to the study of women's engagement in politics is presented by Wolbrecht and Campbell (2007). The authors find that female politicians serve as role models, inspiring other women to be politically savvy and potentially participate in political activity. They claim that the greater the number of female members of parliament (MPs), the more adolescent and adult women are likely to discuss politics and be politically active. Using three cross-national datasets from European social surveys and value studies (EVS,

15 Beaman, Lori, Esther Duflo, Rohini Pande, and Petia Topalova. "Female Leadership Raises Aspirations and Educational Attainment for Girls: A Policy Experiment in India." *Science* 335, no. 6068 (2012): 584. <https://doi.org/10.1126/science.1212382>.

16 Ibid.

ESS, & CES), Wolbrecht and Campbell examine the impact of female legislatures on the political activity of women of different ages. From the very beginning, the authors insist that only young women are more politically engaged due to other female politicians. Their results suggest that the gender gap in political involvement can be ameliorated when adolescent girls and young women can envision themselves as politicians as a result of political discussion. Younger generations of women are more likely to be inspired to become politicians because the role model effect may result not only in abstract aspirations but in a career path choice. Ergo, young women may not simply be versed in world news, but play an active part in political activity.<sup>17</sup>

Karp and Banducci (2008) investigate how women's representation in national legislatures influences political engagement among women and their attitudes toward the political process. They rely on data from the Comparative Study of Electoral Systems (CSES) and introduce the cross-national approach, studying the situation in more than 35 countries. The scholars claim that the greater number of women in parliament is correlated with the greater number of positive evaluations of the legitimacy of democratic institutions, i.e. fairness of elections. This effect is beneficial for both men and women as it represents a more favorable policy outcome. However, the authors do not fully explain why the equal representation of women may be important to men, too. Based on the literature above, we shall assume that this idea of fair participation in political life is the basic idea of modern democracy, benefiting all identities.<sup>18</sup>

Barnes and Burchard (2012) agree that as women's descriptive representation increases, the political engagement gender gap diminishes. Exploring 'engendering' politics, Barnes and Burchard select sub-Saharan Africa (20 African countries) as the field of study and detect that African women are more likely to get involved in politics as the percentage of women in the national legislature increases. Thus, the gender gap in political participation that is still present there narrows and decreases. What is particularly intriguing is that Barnes and Burchard claim that this conclusion holds independent of country-level variations and separate socioeconomic indicators. In addition, they pay special attention to making sure it is women's descriptive representation, not simply the adoption of quotas, that is affecting women's political engagement. Their use of a mixed logistic regression helps to regard the relationships within countries and

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17 Wolbrecht, Christina, and David E. Campbell. "Leading by Example: Female Members of Parliament as Political Role Models." *American Journal of Political Science* 51, no. 4 (2007): 921-39. <https://doi.org/10.1111/j.1540-5907.2007.00289.x>.

18 Karp, Jeffrey A., and Susan A. Banducci. "When Politics Is Not Just a Man's Game: Women's Representation and Political Engagement." *Electoral Studies* 27, no. 1 (2008): 105-15. <https://doi.org/10.1016/j.electstud.2007.11.009>.

not just between countries, which is needed to realize the dependence of women's political engagement on women's descriptive representation.<sup>19</sup>

Similarly, in their gender and politics study in Latin America, Desposato and Norrander (2009) confirm that the higher female presence among elected officeholders increases the involvement of women in politics. What is particularly interesting is that the authors expand the definition of political engagement to specifically include protest activities, which in authoritarian regimes, for example, are the only form of mass participation in politics. Accordingly, they find the regime type to be an important variable in determining the participation rates; under authoritarian rule, female politicians may also reflect the "protestor role," encouraging women's participation in political activism among the masses as well as the elite. The institution of marriage has quite the opposite effect; married women are much less prone to political engagement. Yet, the authors conclude that a gender quota reduces the gender gap and is likely to equalize political participation rates among men and women.<sup>20</sup>

On the contrary, Zetterberg (2008) looks at seventeen Latin American countries but infers that the presence of female politicians is not positively associated with political activity among women. As he supposes that most of the earlier findings are based on single cases, Zetterberg tests the hypothesis on a large data set covering 10,000 women across Latin America. The author justifies his analysis with chart representations of the relationship between quotas and models of women's political action, which show that certain quota provisions do not appear to be associated with increased levels of political involvement among Latin American women. The author studies gender quota's relationships with women citizens' political attitudes (political trust, political knowledge, and political interest) and political activities (party or campaign activities, political contacts, and protest activities). His results suggest that there is no positive relationship with any of the three analyzed political attitudes. In other words, quota legislation is not positively associated with women's political engagement in Latin America.<sup>21</sup>

Another contradictory view of female domination in politics belongs to Burnet (2011), who explores the matriarchal society of Rwanda and finds negative implications for political engagement among women. After the Civil War in 1990-1994, as most of the surviving population was predominantly female, wom-

19 Barnes, Tiffany D., and Stephanie M. Burchard. "'Engendering' Politics: The Impact of Descriptive Representation on Women's Political Engagement in Sub-Saharan Africa." *Comparative Political Studies* 46, no. 7 (2012): 767-90. <https://doi.org/10.1177/0010414012463884>.

20 Desposato, Scott, and Barbara Norrander. "The Gender Gap in Latin America: Contextual and Individual Influences on Gender and Political Participation." *British Journal of Political Science* 39, no. 1 (2009): 141-162. <https://doi.org/10.1017/s0007123408000458>.

21 Zetterberg, Pär. 2008. "Do Gender Quotas Foster Women's Political Engagement?" *Political Research Quarterly* 62, no. 4 (2008): 715-30. <https://doi.org/10.1177/1065912908322411>.

en had to rebuild and run the affairs of the state. Female education was prioritized; girls began to study male-dominated subjects, such as law-making, politics, and engineering. Since 2003, the country has had the highest female representation of parliamentarians in the world, albeit the presidency remains the domain of men. Thus, Burnet introduces a new view of women's empowerment. Interviewing Rwandan citizens, she studies the perceptions of women and attitudes toward women's roles in politics and society. She finds that quota implementation truly brought many benefits to Rwandan women's lives and opportunities, such as increased access to education, greater autonomy in decision-making, more respect from community members and family, etc. Nevertheless, despite improving social mobility among women, quota implementation brought some unintended downsides, which worsened men's attitudes toward female politicians and toward women as a group. Burnet found three severe problems that emerged in the interviews: increased friction with male siblings, men's withdrawal from politics, and increased marital discord. Quotas have made several civil society organizations favor female candidates over males (even those with similar qualifications), reserving "good places" for women. Therefore, some men felt left out, which, for example, resulted in rising divorce rates as conservative husbands became frustrated with their wives' participation in governance (the traditional gender roles had not let women speak out or take part in decision-making). Supposedly, the fear of marital discord could discourage political engagement among women unwilling to risk their domestic bliss.<sup>22</sup>

All in all, Burnet comes to the following conclusions: a greater number of women in government does not necessarily lead to greater democracy, similar gender equality policies may carry significant cultural changes in attitudes toward women and their competence, and more women in government can bring an increase of political, social and economic agency among female citizens outside the government, too. Finally and most importantly, the author specifies that women's increased autonomy is likely to have negative consequences as it may induce people to become more prejudiced toward women, discouraging female political engagement.<sup>23</sup>

Like Zetterberg and Burnet, Clayton (2015) claims that female representatives either have no effect on or reduce several dimensions of women's self-reported engagement with local politics. In the randomized policy experiment in Lesotho, South Africa, she addresses the distribution of power between quota-mandated women, non-quota-mandated women, and men, and discovers

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22 Burnet, Jennie E. "Women Have Found Respect: Gender Quotas, Symbolic Representation, and Female Empowerment in Rwanda." *Politics & Gender* 7, no. 03 (2011): 303–34. <https://doi.org/10.1017/s1743923x11000250>.

23 Ibid.

that in the population of community counselor positions in Lesotho, women occupy more than half of the seats in total. Still, she faces a negative reaction against quota-mandated women when comparing this group with women elected via regular electoral rules. Clayton mentions that living in a reserved electoral division often reduces women's general interest in politics, calling it a 'reservation effect'. Consequently, she finds that even female citizens express less interest in politics and become less politically efficient under a quota-assigned female leader. One of her conclusions is that quotas are likely to be more successful when implemented in systems with discrimination, especially in open competition with men, as it would provide historical justifications for preferential policies based on gender to the public.<sup>24</sup>

The last three articles study the effect of female representation in developing countries with growing economies, such as Rwanda, Lesotho, and Latin American countries. Their investigations conclude that the quota effect on political engagement among women does not seem promising or significant. Nonetheless, more evidence from countries with diverse economies is needed to judge how the presence of women in governments affects the situation. Remarkably, the factor of marital status turns out to be one of the most striking findings; Burnet, Desposato, and Norrander show that marriage and domestic obligations impede women's political engagement and activism.

#### IV. Change of Women's Role in Society

With regard to the changes in women's role in society over time, some literature considers gender quota implementation to be a significant contributor to the equalization process. Accordingly, some scholars suggest that quotas affect public perceptions and attitudes toward women's traditional roles (Burnet: 2011; Li-Ju Chen: 2008; Hughes et al.: 2017). Others consider that quotas do not change the role of women in the family or the broader public sphere (Beath et al.: 2013). The papers presented in this section are based either on cross-national datasets or specific cases dependent on geographical contexts, such as Rwanda and Afghanistan, which could have additionally contributed to the difference in the results. On all occasions, this effect of gender quotas is more global, essential, and applicable to all women.

Comparing the gender quota implementation in different regions, Li-Ju Chen (2008) conducts research based on the dataset from 22 countries with legal gender quotas, 47 countries with voluntary party quotas, and 43 countries with no gender quotas. She finds that quota adoption has a positive effect on the share

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24 Clayton, Amanda. "Women's Political Engagement Under Quota-Mandated Female Representation: Evidence From a Randomized Policy Experiment." *Comparative Political Studies* 48, no. 3 (2015): 333-369.

of female legislators in society, which in turn, shifts government spending decisions from defense and economic affairs to the issues related to women's traditional roles. For example, in Arab countries with intense religious prejudice and sectarian division of the ruling powers, a woman's role remains in the framework of the family. Nevertheless, as a true pioneer, Tunisia adopted voluntary party quotas, taking a huge step forward toward the change of the perception of womanhood. Due to the changes promoted by female politicians, such as education level, employment, and non-discrimination laws for women as a group, women's living conditions do change. When the share of female legislators increases by one percent, the ratio of expenditure on social welfare to GDP increases by 0.28 percent.<sup>25</sup> Analyzing other impacts of female policymakers on social welfare, Li-Ju Chen supports the theory that there is also an increase in expenditures for general public services and health. Besides, the results of the survey do not significantly vary among the countries with different types of quotas implemented.<sup>26</sup>

Sharing Chen's perspective, Hughes, Paxton, and Krook (2017) investigate the adoption and impact of gender quotas and conclude that the proliferation of quotas transforms gender roles and deepens democratic institutions. As the most important factor of gender quotas' proliferation, they name the increasing numbers of women in leadership posts, which allows them to join forces to support other women as candidates or business executives. According to the authors, women are empowered to promote their policies and commonly tend to invest more in the public goods linked to women's concerns, such as access to education or health insurance. Hughes et al. confirm that quotas are positively associated with women's party leadership and growing incumbent legislator representation; they might even reduce some male villagers' negative attitudes toward women's leadership effectiveness. Thus, even conservative parents' aspirations for their daughters, wives, and sisters improve; the authors cite Beaman's survey<sup>27</sup> and agree that the actual educational outcomes and use of time were improved for girls when a female leader was in charge of the village. Although some scholars believe that women elected through quota policies may be regarded as inferior in their qualifications compared to any male candidate, there is an evident change in laws and values that result in a greater good for society by shifting gender roles.<sup>28</sup>

This statement can be subverted in the case of Rwandan society where the

25 Chen, Li-Ju. "Do Gender Quotas Influence Women's Representation and Policies?" *European Journal of Comparative Economics* 7, no. 1 (2010): 28.

26 Ibid.

27 Beaman, Chattopadhyay, Duflo, Pande, and Topalova, "Powerful Women."

28 Hughes, Melanie M., Pamela Paxton, and Mona Lena Krook. "Gender Quotas for Legislatures and Corporate Boards." *Annual Review of Sociology* 43, no. 1 (2017): 331–52. <https://doi.org/10.1146/annurev-soc-060116-053324>.

state's GDP is not that high. Focusing on a concrete region and delving into the historical context, Burnet (2011) focuses on the 1994 genocide and explains the inevitable change in perceptions of gender roles within Rwandan society. Notwithstanding subsequent negative men's attitudes towards women in a larger sense, the war accelerated and irrevocably changed the female role. After the genocide, the women found the new "freedom" to engage in any commercial and business activity, taking on new roles in the domestic and public spheres that had been inconceivable before. Hence the implementation of gender quotas reversed the gender paradigm in which men worked in the public sphere while women ran the domestic sphere and remained financially dependent on men. This pattern shifted when most Rwandan women had to take economic responsibility for their families, as their husbands were either absent or unable to participate. Women were presented with the burden of bittersweet emancipation which left them no choice but to follow new paths even in the leading sectors of the government. "Girl children" were now allowed to attend school in large numbers (in greater numbers than "boy children"), breaking from a past in which they were kept at home to cook, look after and bring up their younger relatives, clean, and work in the fields — this dramatic change was also supported by the World Bank Development Indicators. As we saw in the last chapter, these measures were not easily accepted; many men felt left out and faced an identity crisis, which led to an increase in divorces and fights among relatives. However, in conclusion, the author states that such equality policies as gender quotas do lead to significant cultural changes in perceptions of women and their competence.<sup>29</sup>

On the contrary, Beath, Christia, and Enikopolov examine whether gender quota development programs can improve women's status in societies characterized by female repression; they conclude that such quota implementation does not change the role of women in the family institution. The authors choose Afghanistan as a society with widespread gender discrimination in order to test their hypotheses that a development program mandating female participation (NSP) will increase the acceptance of women's involvement in local governance and increase women's engagement in economic activity. Having provided general information about women's status in local governance and about the National Solidarity Program itself, they present tables with data based on two surveys conducted in 500 Afghan villages spanning ten rural districts and establish that even in such a conservative context as Afghanistan, the development program with gender quotas has positive effects on the acceptance of female participation in local governance. However, these effects do not carry over to such areas as the role of women in household decision-making. Consequently, the authors claim

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29 Burnet, "Women Have Found Respect."



that the two-year development programs did not change the Afghan conservative societal attitudes toward women as a group. While educated women appear to be more open to the idea that women can achieve a higher status in society, older respondents of any gender are unlikely to change their views because of their deep-rooted social bias and religious prejudice. This particular development aid program is limited to the areas closely linked to the exactly prescribed interventions. However, if the NSP were not limited by such a short time span and age gap, the result might change dramatically.<sup>30</sup>

The two opposing claims demonstrate once again that specifics of cultural context result in a wide spectrum of gender quota system effects. What is common among all is that fostering democratic institutions changes women's opportunities and living conditions, giving them the chance to voice their needs in the electorate. Thanks to development programs involving gender quota implementation, women's empowerment can work even in environments where women are still discriminated against. Nevertheless, the influence of older generations' authority and insistence on tradition certainly dampens the gender quota's capacity for change.

## V. Conclusion

After analyzing the gender quota system's effects on female representation, it has been noted that women's role has indeed advanced in the spheres of male dominance like politics and legislature. In addition, we can see changes in public support for women in politics, political engagement among women, and perception of their role in society. Still, as suggested by some scholars, the system is not a universal panacea. This should not be confused, however, with an argument against the quota system.

Firstly, the authors raise the issue of social and cultural bias, which decreases the effectiveness of women's recruitment and reservation policies in general, diminishing the potential for pro-women public sentiment. Cultural attitudes ought to be regarded as an omitted variable that has essential value to the interpretation of results of the gender quota system's impact on public support for women in politics.

Secondly, there is dissension in literature on the effect of women's representation on the motivation of other women to choose politics as their career path or, at least, as an area of interest and discussion topic. Experiments in different geographical and cultural contexts, specifically those of developing or post-conflict countries exhibiting a long patriarchal tradition, present contradictory results. While more female politicians in national legislatures are expected to

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30 Beath, Christia, and Enikolopov, "Empowering Women through Development Aid."



trigger more political engagement among women and their attitudes to political life, findings show that women may become less engaged in politics under a quota-assigned female leader due to growing male discontent.

Thirdly, some authors suggest that quota policies have no impact on public perceptions of women's traditional roles. Such divergent conclusions may be a result of either different research methods or the socio-political and economic situations in different countries. The existing literature consists of single- or multi-case comparisons and examinations. However, not all work provides strong and tentative conclusions or suggestions for solving the issues of gender egalitarianism. Some of the papers that were found truly both persuasive and useful for further research or resolution are highlighted below.

Chen provides a lot of visual data on the classification of government expenses and the relationship of female legislators per capita, using a cross-national analysis (of over 60 states around the world) in support of her theory. In her concluding remarks, she advises using an even more extended country data set.<sup>31</sup> Due to the lack of examples and variation of effects and attitudes, there are not enough arguments that can facilitate a more detailed comparison. Therefore, future tracking of the data would boost interest in spheres concerning women in politics and its outcomes.

Sacchet performs a valuable in-depth analysis of the broader processes involved in the legislation governing gender quotas and their importance for continuing to further this legislation. Remarkably, she explores the role of institutions and authority systems as hurdles that prevent women from coming to power.<sup>32</sup> Issues of campaign management and household chores, exacerbated by additional obstacles from institutional bias, induce politicization of gender issues and activism. Desposato and Norrander also discuss this in their paper, along with the marital status as an aggravating factor in women's political engagement.<sup>33</sup> These findings are relevant to any society, where the redistribution of power is required to challenge male dominance.

Another author worth mentioning is Burnet and her Rwandan investigation. To assess the real existing situation in the state, she elucidates every point with a primary source, attaching individual sample statistics from her interviews. She concludes that the increased representation of women in politics encourages women to take on executive ranks in other areas. Not only does she state the historical output, but she also delves into the cultural and social contexts of the changes in Rwandan society and the ethnographic field, which took place in

31 Chen, "Do Gender Quotas Influence...Representation...?"

32 Sacchet, "Beyond Numbers."

33 Desposato and Norrander, "The Gender Gap in Latin America."

1997 and 2009. She explains “the success story of Rwanda” and convincingly demonstrates that it is relevant and helpful for the well-being of other countries.

As the literature review has revealed, the study of the effects of gender quotas on factors other than legislative representation is still in its period of formation, and there is a large field for further research. For example, not many researchers consider the gap between the generations of women, such as the young girls who strive for equality and the boomers who take a conservative stance on women’s place at home. A far greater impact is expected among young women as they are more liberated, free-thinking, and prone to ignore social boundaries and intolerance, a mindset that is more typical among older generations. Additionally, the impact of race and faith on political preferences with regard to gender equality remains unexplored. While Rwanda, Lesotho, Bolivia, and Finland are usually cited as examples of success in quota policies, the issue has not yet been observed through the lens of cross-racial research. Public policies like gender quotas could alter voters’ belief systems and change the roles of certain groups in society, but the scale of impact certainly varies among cultures with different racial demographics and religions. For example, the effect is expected to be smaller in countries with higher religiosity, where religious beliefs and traditional sex roles may relegate women to their households.

The idea of male withdrawal from political life or other spheres as one of the consequences of gender quota implementation needs further development because its implications could overturn the traditional power distribution all over the world. The advancement of women might result in men losing autonomy on different social levels, to wit not only in the workplace but also family. For instance, in Rwanda, men were highly discontent with their wives officially working, shirking their duties at home and in the fields, and communicating with other men, which destabilized the institution of marriage.<sup>34</sup> This backlash should not be underestimated in order to ensure more supportive attitudes toward women from people of all sexes.

In spite of obstinate resistance, fundamental traditions do change. For example, the rules of inheritance, which always favored male children, are being altered in ordinary households and even royal houses, giving women more opportunities to develop their careers, education, and sense of life. Alternatively, more countries are adopting legislation on combating and punishing sexual harassment and domestic violence, forcing the public to realize the dignity of women.

What drives these changes is public policies like gender quotas in place. Although the situation is being reshaped slowly, the present conditions with higher

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34 Ibid.

female representation and protection of women's rights are preparing and encouraging new generations of women to accelerate this change. Reserving seats is endowing female legislators with the right to voice women's issues and resolve them, from confronting violence against women to expanding health opportunities and reproductive rights. Nevertheless, this paper shows that there are certain limitations to the quota system's positive implications associated with levels of authoritarianism, patriarchy, and religiosity. This is why research on various effects and unplanned consequences of gender quota adoption should be encouraged. Through further investigation and exploration, legislatures could refine the quota law to target the system's flaws and broader impacts, ultimately leading to social progress and movement forward towards equality, freedom, and improvement in the quality of life of people.

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# **Policy Behind Poverty: Reinterpreting the Child Tax Credit (CTC) as an Automatic Stabilizer**

**Joshua Grundhoefer**

*The delay associated with the U.S. federal government's crisis response to recessions stems from the distinct logistical and political constraints of responding to the anticipated need of U.S. families through discretionary legislation. Moreover, the crisis response often falls short of the needs of its potential recipients. This can be seen in the case of essential benefits programs such as the 2021 Child Tax Credit (CTC). The constraints faced by the federal response include, but are not limited to, program financing, political will, and the implementation of expanded program eligibility during periods of dramatic economic shock. High levels of expert consensus indicate that reinterpreting the CTC as an automatic stabilizer may aid in addressing the challenges faced by economic relief responses. It can also facilitate more targeted discussion on why the CTC expired, and how it can be designed more efficiently to meet the needs of families during the next crisis.*

## **I. Introduction**

In the wake of the 2021 Child Tax Credit (CTC) expiration, and the end of congressional relief responses to the COVID-19 pandemic, the efficacy of federal efforts to fight the recession remains contentious. The pandemic-era CTC expansions proved to be an essential tool to support families and households. In December 2021, months after its implementation, the tax credit served as a critical measure to mitigate the incidence of child poverty during the pandemic. The CTC is estimated to have prevented 3.7 million children from falling into poverty (Parolin, Collyer, and Curran 2022). However, in January 2022, the expiration of the 2021 CTC program caused a 41 percent increase in the monthly child poverty rate, signaling that those 3.7 million children had fallen into poverty (Parolin, Collyer, and Curran 2022). Overall, the child poverty rate in the U.S. increased from 12.1

percent in December to 17.0 percent in January. This is particularly significant considering that the expanded CTC program—prior to its expiration—served as one of the “central [components] of economic relief” for families with dependents like children toward the end of 2021—alongside expanded food assistance (Parolin, Collyer, and Curran 2022, 2).

The expiration of essential relief programs like the CTC has been followed by open calls to increase and maintain active cash stimulus measures during the pandemic. For example, an open letter made by economists highlighted the need for long-lasting stimulus to achieve economic recovery (Economic Security Project 2020). Given early indicators that families were quickly spending their stimulus payments, particularly on essentials, and given the high unemployment rates, scholars sought to demonstrate that sustained stimulus was necessary to alleviate economic hardship and to drive consumer spending (Economic Security Project 2020). Discretionary policy responses, which require legislation to pass, play a significant role in the continued expansion of programs like the CTC, which was passed in the American Rescue Plan (H.R. 1319). Scholars believe that non-discretionary measures to deliver economic relief, particularly through cash transfers or “refundable tax credits,” provide a more “sustained” approach to relief efforts (Economic Security Project 2020). One example is an automatic stabilizer, a mechanism intended to automatically secure funding for continuous economic relief. Automatic stabilizers serve to control the “size of cyclical movements” in the economy through “private spending” (Russek and Kowalewski 2015). In theory, these measures do not require legislative action to take effect. The federal government can increase spending on essential programs without the discretionary legislative process (Russek and Kowalewski 2015). Furthermore, this encourages households to spend more than they otherwise would in a liquidity-constrained environment. For example, past recessions—such as the 2008-9 housing crisis—relied on the expansion of programs like the unemployment insurance initiative which operated as an automatic stabilizer. The program encouraged spending that offset income loss (Cortes and Forsythe 2020, 4). This occurred (to an extent) automatically and stabilized the economy by sustaining the essential consumers.

Countercyclical measures to respond to a recession are not unique to automatic stabilizers. In many instances, discretionary measures are relied upon by the federal government. This reliance has negatively impacted economic recovery in part due to the unreliability of federal policy implementation (Rocco, Beland, and Waddan 2020, 459). The impact of policy falling short of need, or of a temporary policy remaining the last barrier to millions falling into poverty, suggests that distinct structural components of discretionary responses might play a role in the efficacy of federal response to a crisis. It also raises questions regarding the efficacy of the federal government’s approach to expanded relief programs and



countercyclical action.

This article identifies the challenge of responding to crises such as the COVID-19 pandemic; it explores the logistical and political difficulties of responding to the anticipated need of vulnerable groups, often households with dependent children, through available qualitative and quantitative data collected throughout the pandemic. Given these challenges, the role and efficacy of the social security net that emerges from recession policy responses are critically evaluated. Broadly, this evaluation explores the manner in which policy responses potentially play a role that delivers critical income-based protection and countercyclical fiscal action.

Therefore, to address and conceptualize a potentially more effective crisis response, the role of automatic stabilization is analyzed through its impact on income protection and its effect on consumption. This article builds on the view that redistributive tax programs, which are developed to insulate families from the harmful effects of a recession, can simultaneously stimulate aggregate demand. As part of this study's research methodology, a literature review was conducted alongside the article to pinpoint key aspects of the CTC's implementation and outcomes to provide context for the prompts utilized in the Delphi method. The results of the Delphi Panel and responses were additionally incorporated into an analysis and discussion section.

## **II. Methodology**

### *Background*

The Delphi method is the chosen method for this particular research study. In practice, the Delphi method can serve to "explore (or achieve) consensus on disputed topics" (Iqbal 2009). This is particularly relevant as the focus of this research study includes reconciling specific aspects of the 2021 Child Tax Credit that generated debate, conflict, and unresolved policy disputes. The debate encompasses concerns surrounding the cost, impact, and value of extending the CTC beyond 2021. In this regard, generating consensus-building on the CTC served as a valuable initiative. Evaluating consensus via the Delphi Method about policy-oriented inquiries represents a dynamic tool for data collection and analysis. The process for conducting this method includes three rounds of a Delphi panel, where relevant experts on the Child Tax Credit (CTC) and automatic stabilizers convened to generate group consensus on key considerations involved with the CTC and its outcomes. These considerations sought to address the unresolved concerns surrounding the extension of the 2021 CTC. For example, this included the cost of the programs and concerns about disincentives to work while on the 2021 version of the CTC, alongside many other considerations. The group consensus method serves to facilitate and encompass a wide range of perspectives from experts

on potential policy solutions. Alongside this data collection, an evaluation of the empirical and theoretical foundations of income support programs during a crisis were examined alongside the goals and outcomes of the CTC in 2021.

Historically, policy examination has grown to “recognize the importance of the implementation process in achieving legislative goals” (Buck et al 1993, 271). Currently, the lack of consensus concerning programs like the CTC highlights a legislative challenge. For example, the program’s implementation, outcomes, and purpose are subject to constant amendment. Prior to 2021, the CTC has experienced multiple changes by a host of administrations, from altering the refundability of the tax credit to changing the identification requirement for children to be eligible for the tax credit (Rockefeller Foundation 2020). Oftentimes, these changes occur through legislative packages like the Tax Cuts and Jobs Act (Rockefeller Foundation 2020). However, this can have troubling effects on potential recipients, as indicated by the expiration of the 2021 amended Child Tax Credit and the impact it had on families threatened by poverty (Parolin, Collyer, and Curran 2022). For example, if a family that is financially reliant on the CTC’s benefits is suddenly no longer eligible for the program, then the consequences could be life-changing. While the CTC as a program has been in place for decades, Delphi studies are uniquely situated to “investigate the performance of a past policy action” (Manley 2013). In this regard, it offers policymakers the opportunity to reevaluate policy and examine faults, in order to avoid “future mistakes” (Manley 2013).

The procedure for the Delphi Method was chosen through recommendations received through an informational interview with an expert on the subject; the procedure involved to conduct is easy to conduct and comprehensive. Moreover, certain aspects of the study design were modified to account for time constraints and the subject of the research. This stems from consultation with researchers familiar with the Delphi method and reference sources accrued from solicitations.

### *Procedure*

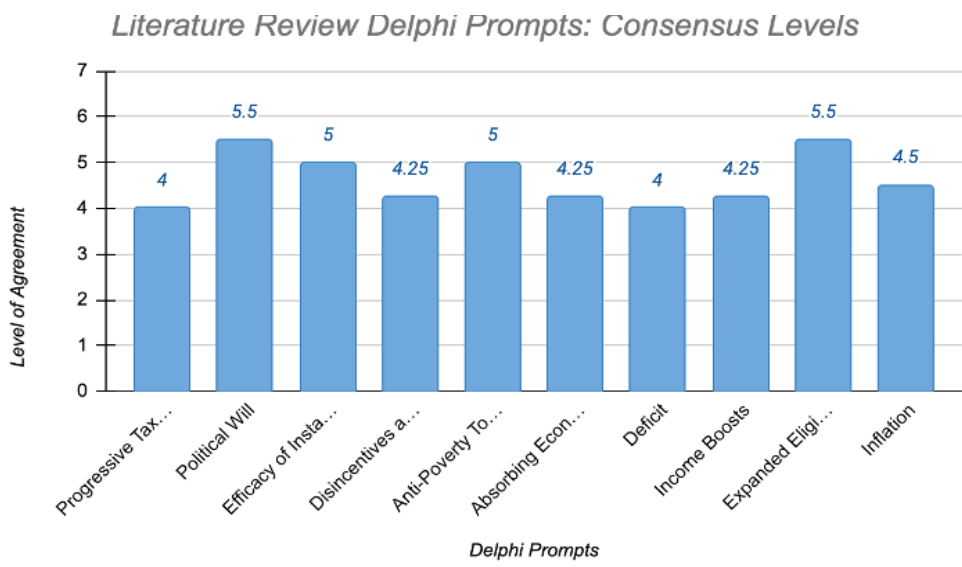
The panelists were tasked to respond to a series of prompts to ascertain if key concerns regarding the 2021 CTC, in terms of implementation and outcomes, could be substantively addressed by interpreting the 2021 CTC as an automatic stabilizer. The prompts encompassed all relevant features of an automatic stabilizer: automatic increases and decreases in government spending, absorption of economic shock, and countercyclical spending that seeks to deliver incentives to increase consumption. This task took place across three rounds. In the 1st round, panelists responded to the prompts with “agree”, “unsure”, or “disagree”. Panelists were also provided space under each prompt to provide an alternative consideration (AltCon) if there was a component or variable involved with the implementation and outcomes of the CTC not included (or if the scope of the prompt

was limited).

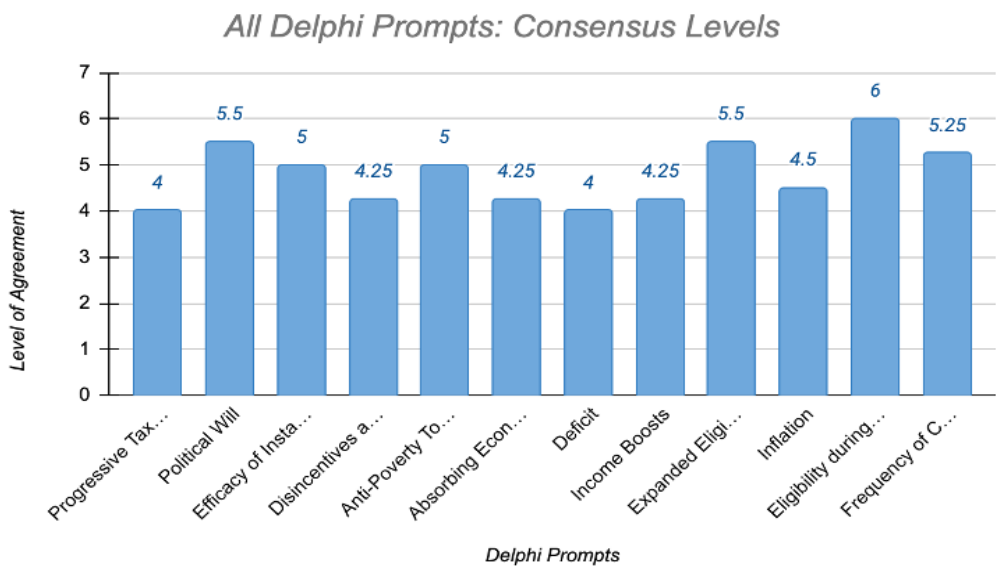
In the 2nd Round, the alternative considerations from the 1st round were presented to panelists in the form of new Delphi prompts, and they were tasked to answer the same question: whether or not the essential components of the prompt can be addressed by a CTC that also functions as an automatic stabilizer. The 3rd Round provided the anonymized voting responses in the form of percentages with which participants had agreed or disagreed from the previous rounds. This includes the initial responses from the 1st round and the questions generated from the AltCons in the 2nd round. Panelists were asked to respond to all of the prompts again in light of the previous group voting patterns. This round seeks to establish consensus among the panelists. A 7-point Likert scale was provided to the panelists, ranging from “strongly disagree” to “strongly agree” when responding to the prompts. Consensus, as determined by informational interviews, followed the following requirements: 0-3 served as a low consensus status, 4-5 would be the moderate consensus stats, and 6-7 retained a high consensus status.

### III. Discussion & Analysis

A total of ten Delphi prompts were developed from a literature review. An additional two prompts were generated based on panelist responses in the second Delphi round. The full list of prompts can be seen in Figure 3. The additional prompts typically utilized the structure of the previous literature review prompts with more context given or an added variable included based on feedback from the panelists. These formed the alternate consideration (AltCon) group of Delphi prompts. Prompts from these panelist responses retained some of the highest consensus levels. The highest level (6) of a consensus prompt came from this group; the prompt sought to examine if the difficulty involved with updating eligibility for potential CTC recipients can be addressed through an automatically stabilizing CTC program given that there is a dramatic shock to the economy. For example, the initial prompt developed by the literature review examined the contribution of the expanded CTC program to the federal deficit and received moderate (4) levels of consensus. However, an additional prompt generated utilizing panelist feedback achieved higher levels of consensus. This can potentially be attributed to the feedback proposed through the panelist response made available in the second Delphi round. The second panelist-generated prompt also established moderate-high (5.25) levels of consensus, indicating that the impact of spending on the federal deficit from the expanded CTC program can also be addressed by interpreting the program as an automatic stabilizer. Specifically, this impact is perceived in terms of how often it would need to be implemented. This prompt similarly built upon a literature review prompt that received a lower level of consensus (4).



**Figure 1. Literature Review Delphi Panel Prompts**  
The Delphi Panel was conducted through a Qualtrics survey with the panel of experts. The prompts were developed through a literature review.



**Figure 2. All Delphi Panel Prompts**  
The Delphi Panel was conducted through a Qualtrics survey with the panel of experts. The prompts were developed through a literature review and based on responses from participants.

Two literature review prompts also received high levels of consensus. The first sought to answer if the delay between the implementation of the CTC program and the moment in which recipients actually acquire these benefits can be addressed. High levels of consensus (5.5) from the panel suggest that this delay can potentially be mitigated by automatic stabilization. The shorthand for this prompt was “Political Will.” However, delay can also refer to the logistical constraints outlined in the article alongside political constraints.

The second prompt sought to examine whether the implementation of expanded eligibility for the CTC program during an economic downturn can also be addressed. Panelists recorded high levels of consensus (5.5). This prompt shares parallels with the feedback-generated prompt that received the highest consensus level, as both prompts focus on the same concept of expanding eligibility. It can be surmised that through panelist feedback, the increase in consensus level from 5.5 to 6 indicates that panelists reached a consensus on this subject. The remainder of the prompts received moderate levels of group consensus (4-5). Another critical consideration is that it may be difficult to fully encapsulate each issue through a 7-point Likert scale. Therefore, this requires focus when interpreting the results in the panel.

Based on responses from experts, there is still no strong consensus on whether or not many aspects of the discretionary implementation of the 2021 CTC can potentially be addressed by an automatic stabilizing program. The sample size of the Delphi panel was 5 experts, with one expert dropping out before the final Delphi round. Most of the experts identified that their expertise most closely aligned with family and childcare programs, although one expert chose not to self-identify. The prompts, as seen below, included in the survey were sent out to the panelists through Qualtrics.

Shorthand	Literature Review: Delphi Panel Prompts
Progressive Taxation	“The partisan divide over the expansion or restriction of CTC’s eligibility for low-income families via progressive taxation.”
Political Will	“Delay between the implementation of the CTC benefits during economic crisis and its recipients receiving potential benefits”
Efficacy of Installments	“Efficacy of monthly CTC installments to families experiencing financial crisis”
Disincentives and Employment	“The disincentive effects of income support concerning parental employment”
Anti-Poverty Tool Post-Recession	“The viability of the CTC as an anti-poverty measure in a post-recession economy.”

Absorbing Economic Shock	“The absorption of income shock, given the federal government’s increased spending on the CTC during the financial crisis”
Deficit	“The contribution of federal spending on a CTC to the federal deficit.”
Income Boosts	“The role of the CTC as a supplement to household/family income as a refundable tax credit during economic downturns”
Expanded Eligibility	“Implementation of expanded eligibility for the CTC during economic crisis or downturn”
Inflation	“The contribution of federal spending on income support programs to inflation”
Shorthand	<b>Second Round: Delphi Prompts</b>
Eligibility during Shock	The difficulty involved with updating eligibility for potential CTC recipients given that there is a dramatic shock to the economy.
Frequency of CTC Spending	The impact of CTC spending on the federal deficit, in the context of how often it would need to be implemented.

### Figure 3. Delphi Panel Literature Review

Notes: The following figures display the Delphi Prompts developed from the Literature Review and the consensus levels from these prompts. Shorthand references to prompts are utilized for visualization purposes in the graph, and broadly describe the primary focus of each prompt. These shorthand references are also visible in the literature review. The panelists responded to each prompt with agree or disagree (along a 7-point Likert Scale) based on the extent which they believed could be addressed if the CTC was implemented as an automatically stabilizing program rather than as part of a discretionary legislation.

## IV. Crisis Response to COVID-19: Delays, Lags, and Lessons

In order to substantively engage with the context in which the expanded CTC was implemented, and evaluated through expert consensus, the crisis response to COVID-19 can be examined to reveal key lessons for policymakers. Amidst the rapidly fluctuating economic and political environment during the early months of the COVID-19 pandemic, initial legislative response to the pandemic, in part, addressed the changing needs of vulnerable groups. In a report, the Government Accountability Office outlined key provisions within relief legislation that successfully passed during this period that acted as critical support. For example, unemployment insurance (UI) operated as a successful buffer against poverty (Government Accountability Office [GAO] 71). Other provisions like the Economic Impact Payments (EIP), often referred to as stimulus checks, similarly occupied a critical role. The report further references a larger breadth of studies that suggest these benefit programs served to stabilize the economy (GAO, 68). The Coronavirus Aid, Relief and Economic Security (CARES) Act, which expanded the benefits

available to struggling households, allowed families to maintain their normal levels of household consumption (Aylward et al). In turn, this enabled families to maintain their quality of living (Aylward et al).

Yet, it is also clear that periods of “delayed action” from the federal response to the pandemic, during peaks of increased COVID-19 infections, stymied the nascent recovery of household financial stability (Shaefer 2021). This is evident through testimony to the Select Subcommittee on the Coronavirus Crisis, which sought to evaluate the efficacy of relief legislation and to build upon pandemic relief programs (Shaefer 2021). During the period between the passage of the CARES Act and successive relief packages, “food insufficiency increased by 20% percent” for adults with children (Shaefer 2021), illustrating a clear need for aid during critical breaks in the COVID-19 response in 2020 and 2021. This occurred because intervention, in the form of standalone relief legislation like the CARES Act, requires attentive focus on a rapidly changing economic environment. The “flexibility” associated with expansive safety-net legislation is useful for facilitating support mechanisms such as cash stimulus, as seen in the case of Economic Impact Payments (EIP), or UI (Shaefer 2021). However, it is specifically dependent on the caveat that similar legislation can pass through political bodies. In the context of the pandemic, recipient reliance on the ‘safety-net’ provided by relief packages served as an essential component of household spending and finances (Shaefer 2021). The disruption of the funding pipeline to vulnerable households, now reliant on federal investment, illustrates the unique concerns of the crisis response to economic hardships caused by the pandemic.

Witness testimony delivered to the Select Subcommittee further highlighted fears about legislative delay and its impact on families in 2020. This included concerns about food instability, financial uncertainty, and mental health— all of which necessitated additional federal packages to address (Shaefer 2021). Congress was largely responsible for leveraging the federal spending apparatus to safeguard families on these issues—most commonly in discretionary-based responses (Shaefer 2021). The dynamics at play that impacted Congress’s ability to act on these issues provoked an important question: what was preventing further federal relief aid?

Firstly, the logistical and political constraints of responding to anticipated need in discretionary spending packages complicated the response to the COVID-19 pandemic. Anticipated need encompasses the economic conditions which require countercyclical spending during a recession. However, in the context of CTC benefits, this need also refers to the demand for social safety net programs for struggling households. The logistical and political constraints involved with responding to this need are observable through an examination of previous federal relief packages like the CARES Act and the American Rescue Plan. These constraints



describe the extensive political and financial procedures Congress undergoes to pass large stimulus or relief-related legislation during a crisis. These packages often directly impact individual households, as seen with the unemployment insurance program in 2008-9 or the EIP payments during the pandemic.

Secondly, even when policy responses to crises are implemented they often fall short of anticipated need. Trends in safety-net style responses manifest as insulated income-based protection. This response is inextricably aligned with the success of spending outcomes from legislative packages passed under the aforementioned constraints.

### *Logistical and Political Constraints*

Discretionary countercyclical policy, which served as a key component of the federal response to COVID-19, relies on key aspects of logistical implementation and on political will (Rocco, Beland, and Waddan 2020). The efficacy of these style of responses rests on the logistical challenge of launching and “maintaining” discretionary policy” throughout the duration of the crisis (Rocco, Beland, and Waddan 2020, 466). Crisis response, in individual discretionary packages, can often be complicated by information uncertainty. The aforementioned refers to an environment where not everything is known about an unexpected or quickly changing economic environment (Rocco, Beland, and Waddan 2020). Discretionary packages often require legislators to accurately assess the conditions of the economic downturn to respond to the situation. Yet, oftentimes, this information is not available. In effect, entire legislative packages can be passed without the entire scope of the crisis being known to legislators or to the federal government (Rocco et al). Hence, the logistical delay of impactful relief to families and the economy manifests itself. For example, due to the rapid proliferation of the negative effects of the pandemic on the economy, individual states were unable to collectively provide distinct “revenue estimates” that would give the federal government a means to develop an effective discretionary response (Rocco et al, 463). This meant that this information was not available during the construction of packages like the CARES Act (Rocco et al, 463). This disparity is characteristic of the incohesion in federal-state responses to crises, particularly in the context of discretionary responses (Rocco et al).

These informational factors can undermine the effectiveness of countercyclical policy during an economic crisis and it is especially harmful to provisional elements of legislation that require state and federal cooperation like UI (Rocco et al, 2020). While tax relief programs like the Child Tax Credit do not necessarily involve federal-state collaboration, any expansion of eligibility for CTC would need to be passed as part of a legislative package that operates within a similar incomplete informational context.

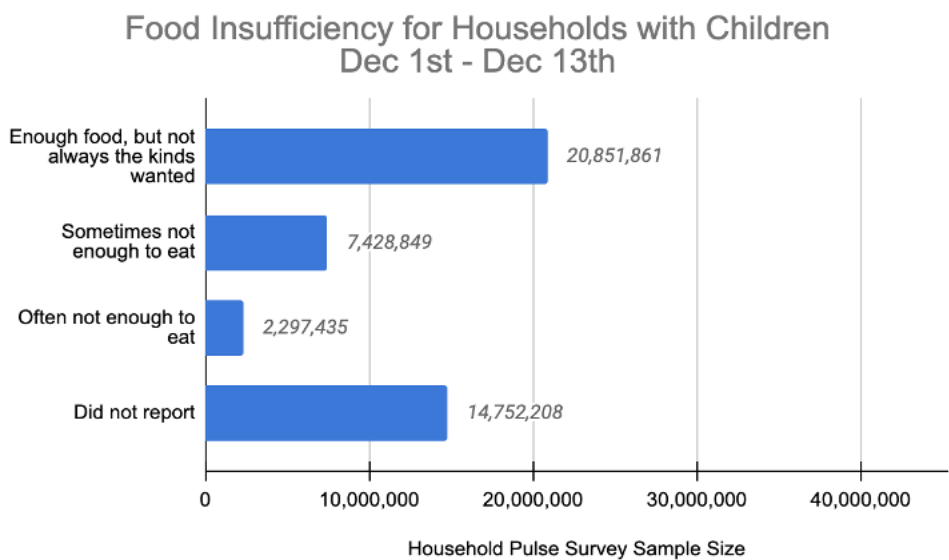


Conversely, the political constraints involved in responding to anticipated need stem from the fact that the ‘political will’ required to enact and “maintain essential programs” through “federal spending wanes before the need for it ends” (Galston 2020). Federal policymaking is a primary component of funding for any countercyclical response to crises, and states are reliant on the federal government to occupy this role (Rocco et al 2020). Waning political will is often a product of spending fatigue due to fears of increasing federal deficit (Galston 2020).

Moreover, this facilitative role is often stymied by “partisan polarization in Congress,” which complicates federal-state relationships even further (Rocco et al. 464, 2020). As outlined in a Congressional Research Service report on shifting away from the “Regular Order” procedure, Congress has transitioned to “a party-centered institution” in which major “policy disagreements” now result in “gridlock” (CRS, 2020). This polarization stymies responses to crises. States themselves are incapable of engaging in countercyclical responses to a crisis due to their balanced budget constraints (Galston 2020). It can therefore be surmised that diverging political philosophies regarding the government’s fiscal responsibility paralyzes fiscal action. Consequently, both the federal and state governments provide insufficient aid during recessions. This insufficiency is further supported by findings reported to the Select Subcommittee on the Coronavirus Crisis in 2021. Thus, the federal government’s decision to stop essential funding and the inability to reconcile partisan conflict produces delayed responses to crisis. Regardless, the historical trend of employing discretionary responses to recession often leads to a shift away from increases in spending and toward austerity; in other words, contractionary policy (Galston 2020).

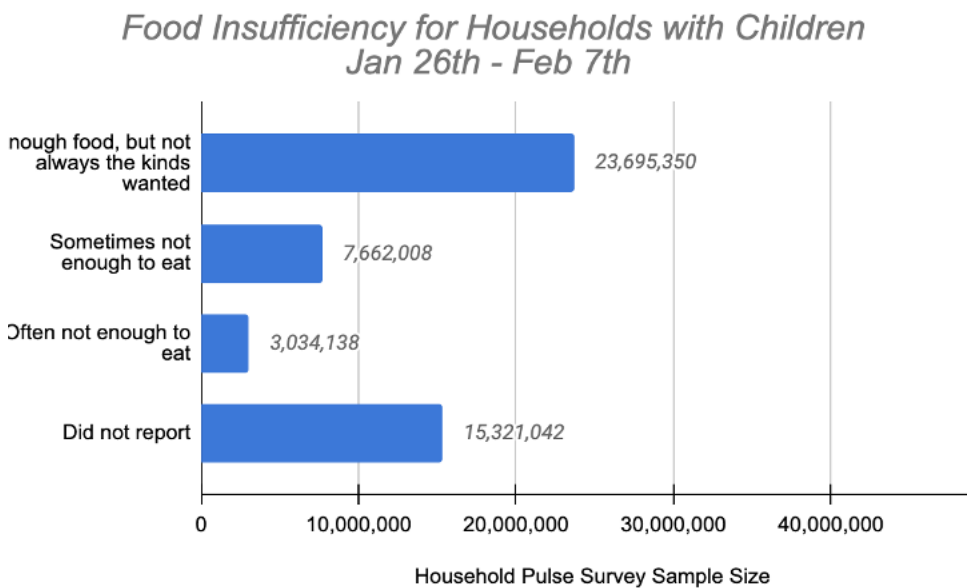
#### *Falling Short of Anticipated Need*

When reviewing the principal focus of this article, the Child Tax Credit (CTC) operates within a similar framework. The increased federal spending on tax benefit programs operates within the same logistical and political constraints. The expiration of the CTC expansion program, initially designed to respond to the anticipated need of families, shows that discretionary legislation that extends or expands programs can abruptly end. This occurs despite many indicators that suggest that without the extension of an essential tax credit program, as seen in the case of the CTC, families otherwise retain less financial security. This phenomenon can clearly be seen through data acquired throughout the COVID-19 pandemic by the U.S. Census Bureau’s novel Household Pulse Survey. The survey was developed to ensure that the federal government can respond rapidly to changing environments during the pandemic (U.S. Census Bureau).



**Figure 4. Food Insufficiency for Households with Children December 1st - December 13th**

Notes: Week 40 Household Pulse Survey: December 1st – December 13th | Recent Food Insufficiency for Households with Children, by Additional Food Related Characteristics.

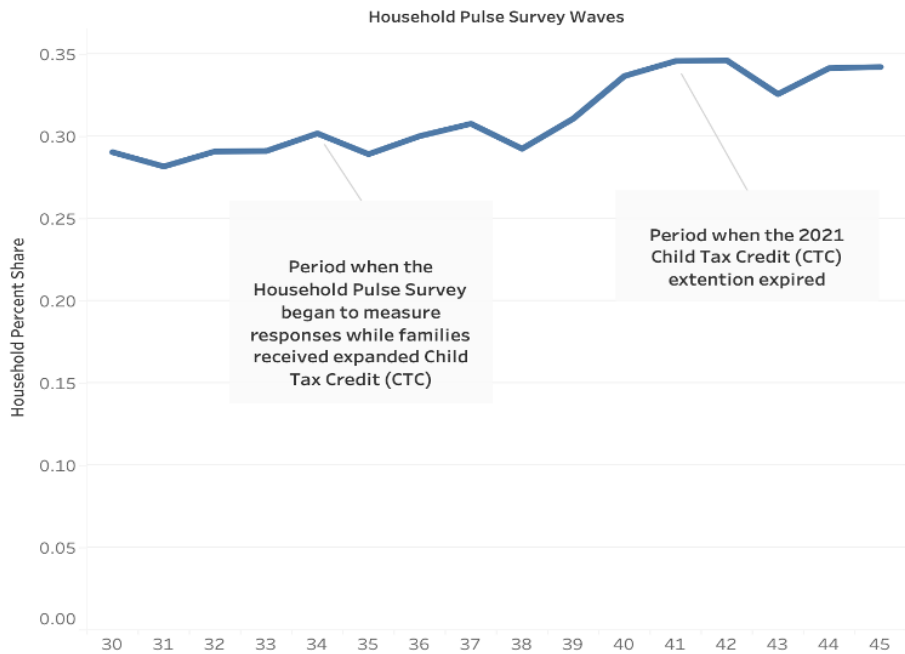


**Figure 5. Food Insufficiency for Households with Children January 26th – February 7th**

Notes: Week 42 Household Pulse Survey: January 26th-February 7th | Recent Food Insufficiency for Households with Children, by Additional Food Related Household Characteristics.

The initial sample above shows information regarding household food consumption collected in December 2021, prior to the expiration of the CTC expansion in 2022. It illustrates the breakdown of various states of food insufficiency expressed by households recorded in the Pulse Survey. Household Pulse data highlights that in the months following the expiration of the CTC, food insufficiency for households with children rose (U.S. Census, week 40-42).

Percent Share of Households with Children that cited “Couldn’t afford to buy more food” as reason for Food Insufficiency



**Figure 6. Percent share of households with children that cited “Couldn’t afford to buy more food” as reason for Food Insufficiency**

Notes: Calculated from Household Pulse Survey Waves 30-45, Recent Food Insufficiency of Households with Children, by Additional Food Related Household Characteristics.

The most cited reason for food insufficiency, amongst all of the varying gradations of insecurity, is a household’s inability to afford the costs of food (U.S. Census, week 40-42). For instance, the percent share of families that reported they often did not have enough to eat rose in the weeks after the CTC’s expiration

during waves 40, 41, and 42 of the Household Pulse Survey. This dynamic encapsulates the increasing household insufficiency following the CTC expiration. For example, the percent share of households that cited that they could not afford to buy food as the reason for their food insufficiency grew in the following weeks of the CTC's expiration. Food insecurity remained particularly high in February 2022 for households with children. 14 percent of these households reported food insufficiency during this period (Bovell-Amon et al., 2022).

As illustrated by the figures above, after the implementation of the CTC expansion, families began to rely on the program passed in discretionary relief bills. This describes the logistical imperative that falls on the federal government: managing the critical lifeline afforded to vulnerable groups and households. The expansion of the CTC was included in the American Rescue Plan discretionary package and titled the "Child Tax Credit improvements for 2021". It outlined the necessary adjustments for the 2021 period and the efficacy of the provisions' improvements is reflected by the severity of family financial insecurity and the increases in poverty after its expiration. This finding on the impact of the CTC is further represented in the Household Pulse Data in the weeks following the expiration of the CTC.

While the improvements made to the CTC addressed issues exacerbated by the pandemic, such as food insufficiency, the provision was not extended. It is evident that the effects of the COVID-19 pandemic lasted beyond the 2021 period; as explored earlier in the article, the monthly child poverty rate rose by 41 percent in the month after the amended CTC's expiration in December 2021 (Hamilton et al 2021). This increase reflected the highest levels of monthly child poverty since December 2020 (Parolin, Collyer, and Curran 2022). The jump in poverty seemingly occurred due to the CTC absence which had acted as a buffer against poverty (Parolin, Collyer, and Curran 2022).

As shown by the combination of Household Pulse Survey data and other indicators of monthly poverty increases, it is surmisable that the CTC expansion is critical in protecting household economic security. Moreover, it retains the potential to provide dramatically more inclusive benefits before anticipated need falls. Increased economic security, despite the liquidity constraints created by a recession, potentially offers positive outcomes for the economy in the form of consumption responses (Auerbach and Feenberg 45, 2000). The rationale for this article's examination of food insufficiency for the Household Pulse Survey data is based on the notion that food consumption is an important barometer for consumption; "one of the most basic and important" as noted by researchers at the St. Louis Federal Reserve (Rubinton and Isaacson 2021). Additional protection for families can, therefore, ensure that relief manifests in the economy.

*Impact of Relief on the Economy*

This relief stems from the rising consumption of essential “goods and services,” which increases spending (Hammond and Orr 2021, 4). This “process” occurs when the advanced monthly Child Tax Credit payments benefit service providers, who continue to spend at a greater rate (Hammond and Orr 2021, 5). This dynamic is known as a “multiplier effect,” which describes how the overall ‘impact’ of investing in the CTC program will reflect positively on increased spending outcomes more largely (Hammond and Orr 2021). Moreover, this suggests that federal investment reflects a net positive: the overall impact on the economy will outweigh the costs of government spending on the program (Hammond and Orr 2021, 5).

The countercyclical potential of increased household consumption, despite poor economic conditions, paves the way toward rebounding from the fall in revenue caused by a recession. In this context, this countercyclical policy shares the characteristics of an automatic stabilizer. In a Congressional Budget Office series on the subject, automatic stabilizers were described as being able to ‘restrain’ or ‘support’ “private spending.” In turn, household spending can be utilized as a tool to “dampen” the magnitude of cyclical shifts in the economy (Russek and Kowalewski 2015).

Typically, discretionary countercyclical policy serves as the traditional ‘instrument’ to respond to economic crises (Rocco et al, 2020). Yet, when discretionary policy reliant on legislative success does not work as intended, there can be dire consequences for crisis response. This can be seen when studying the effects of the expiration of the 2021 CTC on food insufficiency and child poverty (Parolin et al, 2022). The utility of discretionary crisis responses to periods of recession, or to periods of atypical economic conditions like during the pandemic, is reflected in the efficacy of legislative—albeit provisional—improvements to the Child Tax Credit in terms of outcomes for families. From this conclusion, it is essential to examine the limits of these packages and the limitations imposed on discretionary packages—both in terms of design and of the variables involved with recurrent legislative packages. Ultimately, the relevant expansion of program eligibility and the consistency of federal spending serves as the primary focus when interpreting the CTC through the lens of an automatic stabilizer.

*Examining the 2008-9 recession*

The 2008-9 recession is an example of discretionary spending that addressed anticipated need and supported automatically stabilizing programs. This spending includes the development of a federal funding apparatus for automatic stabilizers to achieve the aim of expanding inclusive benefits while delivering stimulus to the economy (Burtless 2009). Yet, a critical aspect of the relief response to the 2008-9

recession was the delayed approach taken by the federal government to fund state unemployment programs (Burtless 2009). As expressed in written testimony to the Committee on Finance in the U.S. Senate in 2009, a key aspect of the discretionary response to the 2008 recession was the extension of UI through the ‘Expanded Benefits’ (EB) programs (Burtless 2009).

By design, the EB program extends the period UI benefits are available based on an automatic trigger which depends on the unemployment level (Burtless 4, 2009). However, the EB program has been historically ineffective. During this period the program did not immediately trigger when unemployment levels rose (Burtless 2009). The federal government was required to pass “legislation to provide UI extensions that should have been automatically provided by the EB program” (Burtless 2009, 5). In part, this occurred because the federal government only paid half of the price for the UI under the law prior to the recession (Burtless 2009). The program does not trigger because of state reluctance to spend. States hold no incentive to have a lower threshold for the unemployment rate to launch the EB program (Burtless 2009). This is likely due to state-balanced budget requirements during recessions. However, under the non-permanent provision of the 2009 stimulus package, the federal government funded the total cost of benefits for UI. As a result, states retained an “incentive to adopt” a lower threshold for EB unemployment benefits (Burtless 2009, 5) The triggers for UI benefits ultimately served as “income protection” (Burtless 2009, 3).

A flaw with the UI as an automatically stabilizing program concerns its implementation through discretionary federal spending. The federal policy shift toward austerity during the 2008-9 recession exemplifies this fact (Galston 2020). The expiration of successive stimulus packages following the 2008-9 recession negatively impacted the economic recovery (Galston 2020). Consequently, essential protection, conceived as an automatic benefit, relied exclusively on the constraints of discretionary legislation—the federal and state willingness to spend—during the critical period when it was uncertain if potential aid would fall short of anticipated need.

## **V. Income Support and Stimulus**

The formation of these automatic stabilizers, like UI, served two principal functions as described in testimony to the U.S. Senate: “income protection” and aiding laid-off workers to “maintain their consumption during recessions” (Burtless, 2009). The dual focus on income support and stimulus demonstrates key aspects of the federal response to recession; the program emerges as a rational policy approach in which care-based programs, based on anticipated need from recipients, expand eligibility.

Firstly, UI can act as a means to prevent poverty through the safety net pro-

vided by the government (Chodorow-Reich and Coglianesi 2019). The Extended Benefits (EB) retain a “trigger threshold” that varies across states but serves to provide income protection (Chodorow-Reich and Coglianesi 2019, 156). This threshold, its extension, and federal financing represent a significant portion of the concerted legislative effort in previous recessions as seen in the 2008-9 recession (Burtless 2009).

Secondly, by ensuring consumption levels remain constant, the automatic triggers for continued investment serve as a stimulating force on the economy. In addition, it operates in a similar manner to an automatic stabilizer, due to the design of UI’s automatic threshold point for increased funding. Consequently, benefits continued to be available for workers and “consumption inequality” decreased (Cortes and Forsythe 2020, 4). Moreover, scholars suggest that “government transfer” played a part in addressing “recessionary income-loss” (Cortes and Forsythe 2020, 4). UI can also potentially serve to stabilize the economy by maintaining consumption (Chodorow-Reich and Coglianesi 2019). The utility of evaluating “repeated” food insufficiency is important given the correlation between food consumption and consumption-related aspects of unemployment (Gruber 1997, 193). Presumably, this is also useful in the context of the Child Tax Credit’s impact on anticipated need following increases in food insufficiency.

When evaluating the utility of government UI, Jonathan Gruber’s 1997 study on the effects of UI on consumption (through food purchases) demonstrates the benefit it may reap for the economy. Specifically, UI provides a means for “smooth consumption” during high periods of unemployment (Gruber 1997, 192). Without UI, Gruber found that consumption falls for recipients experiencing unemployment, eventually returning after a period. However, over a two-year period, consumption remained constant for recipients that received a “generous” UI benefit (Gruber 1997, 199). It is also important to consider that there may be more effective ways to examine the effects of a UI multiplier effect. For example, when reviewing this study, scholars suggested that it might be more valuable to view the effects of consumption directly from the actual recipients of the benefit, rather than external variables, such as food expenditures or purchases (Chodorow-Reich and Coglianesi 2019).

Yet, the stimulative effects of UI are evident. It can be assumed that income support via UI operates as a “countercyclical stimulus” (Chodorow-Reich and Coglianesi 2019, 170). Proposals to improve the program rest on the impact social-security net recipients will have on the economy. It is also important to consider that not all aspects of spending on general UI allowance, in terms of “benefits”, will immediately translate into consumption (Burtless 6, 2009). However, it is also clear that many UI recipients are at the lower end of the income distribution (Burtless 2009, 6). Low-income households given “additional income” are driv-



en to spend more and quickly (Sahm 2019, 74). This is because these recipients, who likely lack significant savings, are unable to pay essential utilities or bills with credit. Thus, it drives them to continue to spend given additional income (Burtless 2009). The premise of the dual focus of income support and stimulus is, therefore, representative of specific economic measures that can be taken when periods of unemployment are high or countercyclical action is necessary.

### *Child Tax Credit as Income Support*

Income-based protection is critical during a recession, as indicated by the correlational examples of UI and the CTC. Critically, both policies can reasonably be measured through basic food insufficiency, revenue generation, and stabilization. In the context of a rapidly shifting economic situation, recurrent and trigger-based stabilizing programs serve as an effective means to provoke a multiplier effect. In the case of evaluating the CTC as a means of income support, the CTC is explicitly developed to aid families and is based on need (Rockefeller Foundation 2020). During times of crisis, that need increases dramatically. The expansion of the CTC, in addition to other measures like stimulus payments and UI, represented an “important temporary safety net” (Hamilton et al 7, 2020). The CTC shares similar aspects of the dual focus outcomes associated with social-security net investment vis-a-vis income protection. Food insufficiency can act as a larger correlate with the consumption-related effects of unemployment, and it is clear that the CTC served to address expenditures to this insufficiency while in effect. Moreover, the utility of the CTC as a multiplier finds an empirical basis in consumption responses that are attributable to increases in state revenue (Hammond and Or 2021).

## **VI. Interpreting Automatic Stabilizers: Income Support and Stabilization**

The role of the CTC as an income support program is supported by the analysis of census data from the Household Pulse Surveys and a larger body of corroborating literature. However, the supportive role it assumes when delivering aid to families and its capacity to encourage spending requires further examination. The premise of a program fulfilling both the role of income protection and stabilization sparks an essential question: what is the theoretical basis for implementing the Child Tax Credit through automatic stabilization?

Scholarship about automatic stabilization postulates stimulating aggregate demand through federal taxes can act as a stabilizing force (Auerbach and Feenberg 2000). In this regard, the operation of automatic stabilizers, which seek to “offset fluctuations” of demand through increased spending, aligns with the intended outcomes of tax programs (Auerbach and Feenberg 2000). More broadly, federal programs can decrease (or increase) tax liability, effectively mitigating the



effects of a recession.

In the context of addressing aggregate demand, the efficacy of the automatic stabilizer relies on the “private consumption response” that develops from an ‘inducement’ provided by the government (Auerbach and Feenberg 2000, 38). An inducement describes a government initiative to encourage spending through an incentive (Auerbach and Feenberg 2000). When an automatic stabilizer seeks to respond to an economic shock, the inducement typically engenders an increase in available “disposable income” (Auerbach and Feenberg 2000, 38). Tax programs that deliver income to recipients to encourage spending, through inducements, can be viewed as redistributive programs. Programs such as the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) are prime examples (Hoynes and Rothstein 2016). Ordinarily, redistributive programs provide security and benefits for recipients. For example, they operate as “social insurance” and allow opportunities for job mobility (Kugler 2013).

As the credit is expanded, its purpose in addressing poverty is more clear. Particularly, these expansions, and evidence that the CTC serves to insulate families while energizing the economy through spending outcomes (Hammond and Orr 2021), highlight the positive byproducts of the CTC. The theoretical basis for redistributive programs, therefore, applies in the context of relief-related responses to the COVID-19 pandemic in which tax-based programs like the Child Tax Credit and the EITC were employed.

The context of this relief response can be observed through economic recessions. When seeking to address economic ‘shock’, the consumption response from the recipients of the federal program must occur when a “household faces a liquidity constraint” (Auerbach and Feenberg 2000, 45). A report from the Bureau of Labor Statistics corroborates the fact that for households who lost income during the COVID-19 pandemic, the “severity” of the recession causes “liquidity restraints to bind more tightly” so that spending was necessary (Parker et al 2021, 3). In this regard, households are more likely to rely on these tax programs, and in turn, increase their spending which is valuable when addressing aggregate demand during economic downturns. A majority of lower-income households, up to seventy-six percent, intended to utilize the Child Tax Credit for routine expenses (Hammond and Orr 2021). While not conceived as a program meant to stabilize, the effects of the injection of stimulus via income boosts provide the necessary disposable income. Recipients occupy a similar role within concurrently implemented relief programs such as UI.

Scholars also suggest that the effect of smoothing consumption can occur through “implicit” and “explicit” means (Bitler, Hoynes, and Kuka 2014, 1, Kniesner and Ziliak 2002). Typically, ‘implicit’ implies that the relevant form of inducement comes from tax incentives, while ‘explicit’ refers to cash transfers

(Bitler, Hoynes, and Kuka 2014). Given the CTC's expanding role as a program that serves to deliver aid to encourage household consumption (Hammon and Orr 2021), it is sensible that the transition to a more explicit, transfer-based program through the expansion of more substantial, tangible income supplements (refundable tax credits) reflects a more direct means to address aggregate demand during a recession.

Moreover, the CTC also alleviates short-term financial burdens through income support in the form of a refundable tax credit (Hamilton et al 2022). Growing literature exists on refundable tax credits providing stabilizing effects, particularly in light of stimulus relief in past recessions (Sahm 2019). For instance, the stimulating effect of the CTC's implementation in 2021 has the potential for the program to pay for itself (Hammond and Orr 2021). Research suggests that the program would generate an additional 27.6 billion dollar increase in revenue from consumer spending. In particular, state and local governments would receive 1.9 billion dollars in new revenue (Hammond and Orr 6, 2021). Stimulus relief occurs through the multiplier effect that encompasses low-income households with dependants like young children whose spending yield "a potent economic stimulus" (Hammond and Orr 5, 2021). The value of this stimulus also informs fiscal budgetary considerations while evaluating the cost-effectiveness of implementing benefit program like the CTC in 2021 (Hammond and Orr 5, 2021).

Investment in stimulus requires an appropriate "spending response from households" for overall 'cost-efficiency' (Sahm 2019, 70). Anticipating program recipients' consumption includes considering "forward-looking consumers" who may not significantly deviate from prior spending behavior. Other scholars also raise the point that in order to anticipate the recipient's consumption response to an increased income, explicit caveats are required (Auerbach and Feenberg 2000, 45). For example, in one study, "forward-looking" consumption habits were explicitly evaluated through liquidity constraints, or recipient self-interest (Auerbach and Feenberg 2000, 45). A rational consumer might not increase their spending unless they know that they will continue to operate within a liquidity-constrained environment or expect their increase in income to be permanent under future reliable market conditions (Auerbach and Feenberg 2000, 45). Despite the concern of the 'forward-looking consumer', empirical evidence from programs like unemployment largely shows that low-income households acted to stimulate "aggregate demand" (Government Accountability Office [GAO], 2022). Alongside Economic Impact Payments" (EIP) (Cortes and Forstythe 2020, 19), UI saw consumption rates maintained during months of its implementation in the COVID-19 pandemic (Cortes and Forstythe 2020). The value of stimulus on short-term spending is also corroborated by the impact of payments made during the Great Recession (Sahm 2019, 70).

An additional consideration is that the design of the CTC, alongside other income support programs like the EITC, is not expressly intended to generate high growth outcomes (LaJoie 2020). The purpose of the CTC is not to improve “macroeconomic growth” even if the program outcomes for spending for families have yielded helpful effects on the economy (LaJoie 15, 2020). However, its role as an anti-poverty tool passed as part of a larger COVID-19 response package reaffirmed its substantial positive impact alongside other key crisis-relief programs. While the 2021 expansion of the CTC followed Democratic partisan lines, the importance of the role of the CTC is considerably bipartisan, in terms of support as indicated by similar proposals made by opposing Republican groups (Orr and McCabe 2022). The importance of the CTC during the pandemic as indicated in the Household Pulse Surveys underscores the utility of anti-poverty programs in hostile economic conditions, as seen during a recession.

#### *Bypassing Federal-State Collaboration*

Given the basis for interpreting federal taxes as automatic stabilizers, it is important to consider the complications associated with previous federal policy implementation in response to recessions. As explored in previous sections of this article, federal-state collaborations have historically presented an issue for countercyclical policy. This extends to informational uncertainty during the implementation of the CARES Act or inconsistent expanded eligibility for UI during the 2008-9 recession among many other complications. However, it is critical to note that while federal support and funding of countercyclical policy can be hampered by federal-state partnerships (Rocco, Beland, and Waddan 2020), federal tax systems avoid issues with federal-state collaborations that hamper crisis-spending. In terms of other automatic stabilizers like UI, the delays observed during the 2008-9 recession can be attributed to the formation of ‘discrete’, disparate systems in each state, characteristic of U.S. federalism (Rocco, Beland, and Waddan 2020 467). Yet, in the case of the CTC, the Internal Revenue Service (IRS) managed, in part, the administration of benefits made available through the tax credit. For example, the third round of payments alone delivered 14 billion in child tax credits to families (Internal Revenue Services 2021). The issue of federal-state cooperation can be addressed by the structure of the administrative implementation of federal tax programs like the CTC. This involves instructing the Internal Revenue Service to directly administer the program through social security and other identifying measures (IRS 2021).

## **VII. Delphi Prompts & Literature Review**

The response to the COVID-19 pandemic reveals key issues with the effectiveness of federal relief. Yet, it is also clear that lessons can be learned from what best served families, the economy, and recovery during the crisis. Most significantly, the success of the expanded CTC and the effects of its expiration can now be easily contextualized within the larger discourse surrounding income support, economic stimulus, and the potential utility of automatic stabilization. When considering the drawbacks from the CTC program, and the challenges it encountered when it was set to expire, the literature review draws on the foundation of the previous sections. This includes, but is not limited to, the political and logistical constraints faced by discretionary legislation, the critical role of income support, and the previous history of economic relief packages. In this aspect, the Delphi Panel prompts were derived from the theoretical foundation provided by earlier sections in the article. Additional research literature was used to identify specific political constraints associated with the implementation and outcomes of the 2021 Child Tax Credit program. Both the literature review for the Delphi prompts and the previous sections were written concurrently so they are referential.

#### *List of Delphi Prompts and Rationale*

##### **Progressive Taxation**

*Delphi Prompt: “The partisan divide over the expansion or restriction of CTC’s eligibility for low-income families via progressive taxation.”*

Eligibility can be expanded or restricted depending on demonstrated need or in the event of crisis, as is the case for other types of expanded eligibility for automatic stabilizers (like UI’s Extended Benefits). Recent proposals by Republican sponsors of amending the CTC (through consolidation and expansion) prioritize eliminating regressive tools like Head of Household (HoH) filing as seen in the case of the Romney-Burr-Daines proposal (Orr and McCabe 2022). The HoH filing can disadvantage lower-income families; it is one of the “most regressive tool for slivering benefits to children in the federal tax code” with “little to no benefit for low-income households” (Orr and McCabe 2022). This is because the HoH filing provides larger benefits the more income you earn. In this aspect, this excludes low-income households (Orr 2022). When considering bipartisan support for an automatic CTC, it is critical to consider whether the tax scheme may overcome barriers relating to political gridlock in Congress.

##### **Political Will**

*Delphi Prompt: “Delay between recipients receiving potential the CTC benefits and the implementing programs that deliver benefits.”*

The lack of sustained income protection, often stemming from the temporary nature of past discretionary legislation, underlines the need for a more effective

federal policy response to the crisis. As mentioned previously, the term ‘need’ can refer both to a program recipient’s reliance or the natural economic conditions of the crisis. This encompasses responding proportionally to recipients’ reliance on expanded programs during recession.

This article earlier explored the impact of policy that fails to respond to consistently address this need, as seen during the 2008-9 recession and early pandemic. This extends to the variable of political will, in which willingness to continue support for federal spending on income support programs and stabilization efforts “wane” before the needs dissipate (Galston 2020). For example, the federal delay in spending during a crisis often occurs in instances when the launch of policy is stymied by decentralization. The implementation of countercyclical programs is sometimes reliant on an indecisive central body, oftentimes without a formal venue to achieve necessary information on the size or scale of the crisis (Rocco, Beland, and Waddan 2020). This can manifest in informal venues for state and federal interactions which present issues for negotiating. This is particularly significant when individual states have to lobby for “relief payments” (Rocco, Beland, and Waddan 2020, 461).

In addition, often the spending infrastructure simply does not exist or is not capable of handling the program expansion seen in the discretionary responses to recessions (Rocco, Beland, and Waddan 2020). Federal grants for states decline over time and illustrate how the infrastructure for stabilizing programs, like UI, is not prepared to provide immediate support in wake of a crisis (Rocco, Beland, and Waddan 2020). Federal grants for UI, which helped to fund individual state insurance programs, had declined by thirty percent “between 1999 and 2019” (Rocco, Beland, and Waddan 2020, 467). Federal funding from these grants was insufficient for the unanticipated need that would expand with the onset of the pandemic. It is incumbent on states to both navigate the political artifice of federal funding for new expansive programs while also delivering necessary benefits for its residents. This information indicates that federal-state partnerships with automatic stabilizers complicate responses to a crisis - especially leading up to future recessions (Rocco, Beland, and Waddan 2020). It is clear that automatic stabilizing programs are tumultuously affected by decentralization (Rocco, Beland, and Waddan 2020). As a result, conceptualizing an automatic stabilizer that is primarily federally funded has been suggested by scholars (Galston 2020). Reinterpreting stabilization through the lever of federal taxes, similarly, presents a case where the complications of federal-state relationships can be avoided.

Literature on the subject suggests that government spending and a distinct threshold to “trigger ... federal spending [to] states and localities” could be based on requirements like “increasing unemployment” or “decreasing revenues” (Galton 2020). The trigger for these increases or decreases in federal spending would

serve as automatic stabilizers (Galston 2020). This could potentially ensure that critical benefits programs do not rely on a politically indecisive body as a lifeline and ensure that the federal government's spending is more or less dependent on the empirical need for it.

Conversely, the current status quo of benefits made available through discretionary responses, as seen in the cases of discretionary expansions to UI benefits, is unsustainable. Gaps between responses threaten recipients receiving discretionary-based benefits who typically require an extended period of aid or successive discretionary packages. This is seen in the testimony to the Select Subcommittee on the Coronavirus Crisis Hearing on the Impact of Pandemic Relief Legislation with delays between COVID recovery packages (Shaefer 2021). It is reasonable to surmise that the waning political will to continue the expansion of the Child Tax Credit contributed to the expansion's expiration. This is considerable in numerous ways. The "federal financing provisions" for these stabilization programs are essential for their success (Rocco, Beland, and Waddan 2020). As explored earlier in this article, states "cannot engage in counter-cyclical spending," in part because they do not have enough revenue generation during these recessions as they are embroiled in significant "revenue shortfalls" and are therefore reliant on the federal government (Rocco, Beland, and Waddan 2020, 460-462). Moreover, "balanced budget requirements" constrain states from driving up the deficit due to these requirements (Galston 2020).

Given the burden placed on the federal financing apparatus and the reluctance of state governments to spend, maintaining financing provisions through gaps between legislative packages is not an easy task. This can be seen in the concern about the need for more federal funding after the CARES act. The federal government's inaction raises alarms (Shaefer 2021).

### **Efficacy of Installments**

*Delphi Prompt: "Efficacy of monthly CTC installments on household income experiencing financial crisis."*

When considering the efficacy of the CTC installments, it is useful to explore how the installments are regularly implemented. Families prefer monthly payments of lump annual sums and evidence indicates that installments generate positive impacts on families, particularly during a financial crisis (Hamilton et al 2022). The most "common planned use" of the CTC benefits included emergency savings (Jabbari et al, 2021). As illustrated in 'Crisis Response to COVID: delays, lags, and lessons', the need for extended income protection can be addressed by facilitating effective and efficient federal spending. For example, this includes directly delivering benefits to relief program recipients while also driving consumption to address budgetary issues for states—such as decreasing revenue. As explored

in ‘Interpreting Automatic Stabilization: Income Support and Stabilization’, bypassing state-federal collaboration for more centralized payments allays common communicative and collaborative issues that prevent the aforementioned efficient federal spending.

Concerns regarding the discretionary countercyclical response to recession can potentially be mitigated by amending general automatic mechanisms (Fiedler, Furman, and Powell 2019). This change could prove to accurately respond to the “magnitude of [...] economic shock” during the “duration of the subsequent recovery from economic recession” (Fiedler, Furman, and Powell 2019, 95). For example, proposals for the streamlining of stabilizers for Medicaid and other insurance-based programs suggest that the “federal share of expenditures” for state-based benefit programs would “automatically” increase when states are unable to provide sufficient funds or benefits (Fiedler, Furman, and Powell 2019, 99). For example, this might encourage states not to eliminate benefits programs that require more spending during periods of recession (Fiedler, Furman, and Powell 2019). A similar case of this can be seen during the 2008-9 recession in which states sought to avoid threshold triggers for UI benefits.

This issue also underscores the larger problem of state budget requirements despite the increased need for programs that are federally funded. The solution for the expansion of relevant programs like UI insurance in 2008-9, for example, presented itself via the federal government assuming the role of primary spender for extended benefits programs (Burtless 2009). This would account for the challenges regarding budget constraints, preventing scenarios where states increase eligibility requirements in order to avoid spending on relief programs with more recipients as seen in 2008-9.

Moreover, anticipating recovery periods and the financing involved with implementing regular benefits enables further preparation for legislators when approaching economic relief efforts. This can involve designing automatic stabilization that accounts for state behavior and the repeat installments, or benefits, that must be delivered based on need. Targeted monthly installments can potentially yield effective results. This includes the capacity of families to have monthly disposable income but also as a way to drive spending. This conceptual framework is characteristic of the federal response to the 2008-9 recession in which a dual focus of income protection and stabilization was achieved. The use of CTC funds also generates significant financial slack for families. This refers to the necessary surplus of funds, particularly during medical emergencies, as part of short-term savings (Hamilton et al 2022). The structure of advanced payments and monthly installments may decrease the chance of households relying on “unsecured debt” (Hamilton et al 2022, 9). For example, households may rely on “high-cost options” like payday loans available for those with lower credit scores (Hamilton et al 2022).



Financial slack can represent a similar “inducement” as seen in ‘Interpreting Automatic Stabilization: Income Support and Stabilization’.

### **Disincentives and Employment**

*Delphi Prompt: “The disincentive effects of income support concerning parental employment.”*

Self-reporting data states that “93.6% of parents planned to continue working or work more while receiving the credit” (Hamilton et al 2022, 10). This is further corroborated by “Census Pulse data” which found no “statistically significant changes in parental employment” (Hamilton et al 2022, 3). However, negotiations regarding the implementation of the expansion of the 2021 amended CTC continued to feature concerns regarding work requirements.

A larger dispute emerged from specific partisan disagreements regarding work requirements. This is illustrated by various alternative proposals of the CTC with these requirements in place (McCabe and Orr 2022). For example, West Virginia Senator Joe Manchin’s ‘red lines’ for the extension of the 2021 amended Child Tax Credit represented key aspects of the Child Tax Credit’s negotiation and implementation (Hammond and Orr 2021). Senator Manchin’s redlines included specific work requirements in order for recipients to be eligible for the tax credits. This would exclude parents that did not have a job from being eligible to receive the tax credit. In addition, eligibility for the expanded CTC would also phase out for families making above \$60,000 a year (Hammond and Orr 2021). These requirements also factored into the modeling constraints conducted by researchers of the Child Tax Credit in 2021 (Hammond and Orr 2021). In this respect, comments made by critical political actors served to influence the future modeling of an amended CTC based on the 2021 version. Addressing this critical component of the 2021 Child Tax Credit should be a relevant consideration when examining a stabilizing refundable tax credit.

### **Anti-Poverty Tool Post-Recession**

*Delphi Prompt: “The viability of the CTC as an anti-poverty measure in a post-recession economy.”*

This prompt originates from the assumption that increased eligibility helps during the crisis, but it is uncertain if its positive effects will continue when the economy is not in crisis—presuming that eligibility is still based on need. For example, after the expiration of the 2021 expansion of the CTC benefits abruptly expired, reducing eligibility for the credit while also altering the number of payments to families. Ensuring that the benefits still operate as an effective anti-poverty tool beyond the immediate need expressed by potential recipients during a recession is an essential political consideration for proponents of an expanded Child Tax



Credit.

### **Absorbing Economic Shock**

*Delphi Prompt: “The absorption of income shock, given the federal government’s increased spending on the CTC during the financial crisis.”*

When considering shifts in the distribution of income based on changes of taxation, it can be useful to think of certain programs as ‘redistributive’ (Auerbach and Feenberg 2000, 38). This is true for programs focused on “lower-income households” that “may have a greater stabilizing effect” on the economy (Auerbach and Feenberg 2000, 39). This is true for the EITC. However, it follows that the stabilizing effect on the economy would be generalizable to other redistributive programs. The Child Tax Credit is also “explicitly redistributive”, as it is “designed to transfer money to families rather than tax it away from them” (Hoynes and Rothstein 2016, 1). Absorbing economic shock may be possible given the stabilizing effects of redistributive programs.

### **Deficit**

*Delphi Prompt: “The contribution of federal spending on a permanent CTC to the federal deficit.”*

During the negotiation process for the extension of the 2021 CTC in the Biden Administration’s Build it Back Better (BBB) plan, the fear of its potential to increase the federal deficit served as a key financing concern for legislators

(Carney 2021). A hypothetical scenario in which temporary programs like the CTC conceptualized in the BBB, alongside others, become permanent was projected by the Congressional Budget Office and the Joint Committee on Taxation to increase the deficit “by \$3.0 trillion over the 2022–2031 period” (CBO 2021). This calculation served to generate concerns about federal spending programs like the Child Tax Credit for conservative Democratic senators like Joe Manchin. Addressing concerns surrounding government spending and its contribution to the deficit served as a critical variable leading up to the expiration of the expanded CTC. A CTC program developed as an automatic stabilizer, in which government spending will automatically decrease spending during periods of economic stability, may potentially address the financial concerns surrounding the projected costly expanded CTC program.

### **Income Boosts**

*Delphi Prompt: “The role of the CTC as a supplement to household/family income as a refundable tax credit during economic downturns.”*

It is valuable to consider the CTC through the lens of income support when considering the efficacy of the 2021 CTC. This can be achieved by interpreting

the launch of the expanded CTC as a tool to fight the negative effects of the COVID-19 pandemic and support households through “income boosts” (Waxman, Sherman, and Cox 2021). As highlighted in earlier sections, the Government Accountability Office highlights the importance of program expansion during ‘adverse times’ (GAO 2022). This was reflected during previous recessions in the form of income boosts. For instance, UI served a unique role in “maintaining aggregate demand” which could also be seen through the lens of the UI extended benefits program operating as an automatic stabilizer for the economy (GAO 2022, 68). Examining how the role of income boosts serves to mitigate financial strain is a critical component of evaluating an automatically stabilizing Child Tax Credit.

### **Expanded Eligibility**

*Delphi Prompt: “Implementation of expanded eligibility for the CTC during economic crisis or downturn.”*

The implementation of expanded eligibility for benefit programs featured prominently in literature explored throughout the article. This extended to recessionary relief legislations and efforts income-based support and automatically stabilizing programs like UI. Due to the nature of the contraction of stabilizing programs during times of strong economic performance, the concern that decreased eligibility might impact the CTC’s anti-poverty measures informs this Delphi Prompt.

### **Inflation**

*Delphi Prompt: “The contribution of federal spending on income support programs to inflation.”*

Inflationary concerns also served as a variable to the financing costs of the CTC. This likely encompasses concerns surrounding excess spending but also extends to future inflation. On a report on the potential factors affecting the cost of modifying the CTC, the Congressional Research Service suggested this would also include inflation not necessarily caused by spending provisions in the bill but inflation olike the BBB. Future inflation could make eligibility for the credit fluctuate from “full and partial” eligibility (CRS 2022).

## **VIII. Conclusion**

A host of factors invariably impacted the 2021 CTC’s expiration, yet this article discusses how the most pressing challenges of the program can be addressed through an automatically stabilizing program—in addition to other reforms. Examination of the U.S. Census Bureau’s novel Household Pulse Survey, alongside relevant literature, indicates that the CTC functions as an approximate income support program. In particular, the mitigation of food insufficiency for families

served as a critical example of the CTC's impact. Moreover, the exploration of the CTC's utility in addressing food insufficiency provides a reference for household consumption responses. This indicates the long-lasting impact of the 2021 CTC's support apparatus is a boon for macroeconomic stability. This can potentially encompass securing income protection, improving recessionary conditions, and avoiding political gridlock.

This research provides further indication that a theoretical basis exists for interpreting an essential CTC program as an automatically stabilizing program. This interpretation directly addresses longstanding issues associated with the previous CTC program. This includes the logistical and political constraints that stymie discretionary legislation. The success of a revised CTC program must focus on the shortcomings of previous iterations, like the 2021 program, to better serve the most vulnerable.

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BROWN



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