



LOUGH JOURNAL

OF CONSTITUTIONAL DEMOCRACY



The Clough Center of Boston College Undergraduate Research Journal



ISSUE I





Clough Journal of Constitutional Democracy

MISSION STATEMENT

The mission of *The Clough Journal* is to embark on investigative analyses of issues and events that build a more insightful and inclusive understanding of constitutional democracies and to correct the misconceptions of democracy both at home and abroad.

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All those who submitted articles

Democracy is a device that ensures we shall be governed no better than we deserve.
-George Bernard Shaw

I am pleased to present the first edition of the Clough Journal of Constitutional Democracy. This undergraduate research journal acknowledges the burden of the citizen in a democracy to be informed on democracy in the world and hopes to provide insight from talented young writers into the future of democracy in our world. Our mission echoes the vision of Gloria L. and Charles I. Clough Jr., which is to help correct the misconceptions about democracy both at home and abroad. For democracy to survive in an increasing global world dialogue must become a higher priority in academia and in the world at large. This journal offers a platform for undergraduate students the world over to showcase their insight on democracy in the world. In the worlds of the Clough family be the “megaphone to disseminate a greater understanding of democracy to a greater number of people”.

I would personally like to thank our writers, staff and Professor Kersch. The journal was fortunate to receive submissions from students across the globe. These submissions, although diverse in content, all remain consistent in both passion and excellent scholarship. Our staff worked tirelessly to provide what I believe to be an excellent publication on democracy. Finally, without the insight, guidance and experience from Professor Ken I. Kersch, director of the Clough Center at Boston College, we would not have been able to present such a publication.

We at the Clough journal hope that this

first issue will be both edifying and encouraging for the future of democracy in the world today and that it will help create new understanding of democracy. We hope that this work will continue open dialogue on democracy and that undergraduate students across the globe will continue to offer their submissions and share their talent and perspective.

It is my hope that this seminal issue will begin a long and successful tradition of dialogue for the advancement of democracy at the Clough Journal. May our work at the journal help us live to Shaw’s admonition that we create the democracy we deserve.

Sincerely,



Glen Persson
Editor-In-Chief

TABLE OF CONTENTS

4

1 Mission Statement

2 Staff

DOMESTIC

6 Have the Courts Gone Too Far?
Patrick Cassidy

14 The New American Governance
Richard Mitchell

20 The State of American Anti-Statism
Patrick Cassidy

DEVELOPING DEMOCRACY

26 From Bread Basket to Basket Case
The Tragedy of Zimbabwe under ZANU-PF
Stanton Abramson

March
2010

The Clough Journal Issue I



34 The Eviscerating Effects of International
Organizations on Democracy

Sindi Lee

42 Indian Consultationalism

The Variance of Regional and Religious Stability

Chandi Saxena

COMPARATIVE

52 The Latest Changes in the British Constitution

Matthew Karambelas

Middle Eastern Democratization

58 Paths to change & the current situation in Saudi Arabia

Kelly Della Tezza

65 Call for Submissions

Have the Courts Gone Too Far?

An Analysis of the Contemporary American Judiciary through Tocqueville's Lens

By Patrick Cassidy

March
2010



From John Marshall to John Roberts, the American judiciary has enjoyed a powerful position in the country's political arena. This influence has waxed and waned in strength, pursued different goals, and transformed its ideology over the course of the past two centuries. When Alexis de Tocqueville studied American democracy, the role of the courts struck him as vital to the health of the country. He claimed that, "in the hands of seven federal justices rest ceaselessly the peace, the prosperity, the very existence of the Union."¹ By mitigating democracy's dangerous proclivities, the courts of Tocqueville's time preserved unity, ensured a long-term vision, and fortified both government and private property against the passionate whims of popular opinion. Today's judiciary, however, is vastly different. Open to innovative claims of justice, protecting minority rights, and legislating from the bench, American judges have become "agents of egalitarianism."² Whereas the court Tocqueville witnessed tempered the dangers of democracy, today's judiciary often extends the reach of government and threatens the values it once sought to protect.

Tocqueville greatly admired democracy, but in it he also saw many perils. What he appreciated in America were the institutions, good fortunes, and mores that mitigated these ill effects. The judiciary was one of the institutions that guarded against several of democracy's most fatal flaws. One of the weaknesses the courts countered was the decentralization and variation of laws. In a federal government, individual states have their own constitutions, laws, and courts. Democratic citizens cherish the idea of local government, but without a degree of unity, the nation itself will vanish. Tocqueville wondered how a nation can "subsist when its fundamental laws can be interpreted and applied in twenty four [now fifty] different manners at

once."³ Under the leadership of Chief Justice Marshall, the Supreme Court augmented the power of the federal government vis-à-vis the states by ruling that federal laws and federal court decisions restrict state governments and courts.⁴ Such judgments ensured laws would be "correlative and homogeneous" throughout the nation.⁵

The value of a uniform jurisprudence goes beyond consistency among states. It allows courts to impel township and local leaders to comply with directives from national government.⁶ It also instills respect for the rule of law by giving the legislation moral force. And paradoxically, federal courts strengthen the inherent weakness of national authority while ensuring that this power will not fall to the tyranny of popular opinion.⁷ Tocqueville notes, "an elective power that is not subject to a judicial power sooner or later escapes from all control or is destroyed."⁸

Here the Frenchman alludes to control over the passions of public opinion. Perhaps his most salient objection to democracy is the fact that government is so prone to being captured by the passions of the people.⁹ The threats of tyranny of the majority are twofold: the fervor of public sentiment and its unenlightened shortsightedness. Citizens in a democracy struggle to make unemotional decisions on public policy.¹⁰ They act in their immediate interests and often disregard long-term and minority concerns. This lack of forethought stems from the fact that democracies can "only obtain truth from experience, and [the danger is that] many peoples cannot await the results of their errors without perishing."¹¹ The courts, however, provide "one of the most powerful barriers that has ever been raised against the tyranny of political assemblies."¹²

American lawyers play a special role in



this barrier to the lapses of democracy.¹³ Working in the courts, they are drawn to “habits of order” and have “a certain taste for forms... which naturally renders them strongly opposed to the revolutionary spirit and unreflective passions of democracy.”¹⁴ This reverence for tradition is strengthened because ordinary citizens see the attorney as one of their own. Lawyers form a privileged class that “secretly scorns the government of the people” but at the same time, comes from the people and thus have their trust.¹⁵ Tocqueville concludes his discussion on how courts thwart the tyranny of the majority with this pithy reflection: “To the democratic instincts [of the people, courts] secretly oppose their aristocratic penchants; to their love of novelty, their superstitious respect for what is old; to the immensity of their designs, their narrow views; to their scorn for rules, their taste for forms; and to their enthusiasm, their habit of proceeding slowly.”¹⁶ In other words, the judiciary foils democratic passions for originality, disorder, and impulsiveness with its underlying aristocratic values.

Judges are able to take on this role because many of them, including the nine on the bench of the Supreme Court, are politically insulated from the caprices of the people. The judicial appointment process ensures substantial security compared to officials in other branches. In addition, because justices of the Court are irremovable, save for rare circumstances, and have fixed salaries, they are independent of the other branches. It is this advantage that leads to yet another means by which the judiciary checks democracy’s faults. Courts have the ability to ensure a balance of power between the three branches. Whereas James Madison thought ambition would be enough to counter ambition, Tocqueville notes how courts could help in this process. The “executive power appeals [to the courts] to resist the encroachments of the

legislative body; [and] the legislature, to defend itself against the undertakings of the executive power.”¹⁷

These advantages make clear that American courts enjoy great political power. They also raise the question, however, of how such a national, aristocratic, and politically isolated force took hold in a democracy. Tocqueville answers this by explaining how courts do not enter “onto the political stage with a bang” but act in an “obscure debate and over a particular application” and thereby hide their importance from the public.¹⁸ There are three ways in which courts obscure their power. First, the judiciary serves as an arbiter between two parties in a dispute. The traditional A v. B structure of the courtroom, however, can easily be transformed into an area more representative of the floor of the legislature. All laws affect individual interests and therefore can be reviewed by the courts. To be sure, *Marbury* sued Madison, but clearly this case would have ramifications that extended beyond these two men. Similarly, courts must decide particular cases, not the validity of general principles. As Tocqueville notes, however, a judge may announce general principles in “deciding a particular question...[and] he remains in the natural circle of his action.”¹⁹ Of course, as anyone who has read a Supreme Court case knows, the *dicta* spewed by the justices can go on *ad nauseam*. Using the case at hand as a pretense, justices legislate from the bench and create law with the crack of their gavels. Finally, the judiciary can only act when a case is brought to its attention. Tocqueville explains that “in its nature, judicial power is without action [and] for it to move, one must put it into motion.”²⁰ From the founding, however, this restriction has posed no real threat to the power of the judiciary. Any current salient political issues can soon be converted into judicial questions.²¹



These characteristics, while vital to the preservation of democracy, are also found in the courts of other countries where judges lack the political prowess of American courts. The prominence of the judiciary in America then comes from something else: its ability to “found decisions on the *Constitution* rather than on the *laws*.”²² Simply stated, the justices of America have the ability to declare laws unconstitutional, thereby rendering them impotent. When drafting the Constitution, this prerogative was not self-evident. Debates between the Federalists and Anti-federalists over judicial review marked the Constitutional Convention and ratification process. Ultimately the document did not enumerate judicial review as one of the powers of the American court system; it took a strategically brilliant opinion written by Chief Justice Marshall to establish this faculty. In perhaps the most prominent example of how the Court intrudes into politics, the Court struck down federal law. Purportedly exercising judicial restraint by claiming that a provision of the Judiciary Act of 1789 unconstitutionally gave the Court jurisdiction over *mandamus* decisions, Marshall seized for the Court the power that Tocqueville so revered.

Without a doubt, Tocqueville admired the wisdom of Marshall and respected the power of the courts. The changes American society has undergone since Tocqueville’s time, however, require a new analysis of the role of courts in democracies. The goals of establishing uniformity and authority of the federal government and courts, protecting the country from the tyranny of the majority, and ensuring stable balance of power among the branches, between the states, and between the government and private contracts had to undergo transformations. The jurisprudence of Marshall gradually evolved toward an interest in economic rights through 1930s, when it came to an abrupt halt.

The New Deal allowed legislatures, not courts, to determine the reasonableness of economic regulation.²³ The Constitutional Revolution of 1937 presented the courts with a choice of generally deferring to legislatures or finding new, non-economic, substantive areas to review. Justice William O. Douglas advocated that this new style of intervention be on the side of the powerless, calling for strict scrutiny in matters of state adherence to the Bill of Rights, the defense of the political process, and minority rights.²⁴ The Court thus embraced “plural equality,” protecting the disadvantaged.²⁵ This group would include criminals, the institutionalized, racial minorities, and to a degree, women. With the rise of the Burger Court in the mid-twentieth century, the Court advanced Douglas’s style and developed public law litigation, hearing cases on free speech, civil rights, rights of the accused, religious freedom, and eventually institutional reform.²⁶

As the federal courts established this new niche, they transformed from a barrier to the excesses of democracy to an “agent of egalitarianism.”²⁷ Demanding total justice, Americans favor “hyperindividualism,” an idea that the courts have welcomed.²⁸ Courts attempt to ensure the rights of all, making frequent intrusions into administrative process.²⁹ By doing so, they engage in what Richard Stewart calls, “a self-contradictory attempt and central planning through litigation.”³⁰ New courts frequently go “beyond the wrong presented to them to sweepingly reorganize a complex service of government so that the wrong can be dealt with—in the Court’s mind, at least—at its root.”³¹

Contrasted with those systems that are more hierarchical and less participatory and formal, the style of this new American legal process, what Robert Kagan calls “adversarial



legalism,” is unpredictable and fluid.³² Its defining features are formal legal contestation and litigant activism, meaning that the parties involved have private, opposing interests and their actions drive the cases.³³ This unpredictable system, with its activist judges and lawyers, allows for new claims of justice that have wide-reaching effects.³⁴ As a part of the government that has distinct independence, the American court system allows for minority communities to react to their government through a responsive and productive avenue. With the positives of adversarial legalism, however, come negatives such as costliness, possible delays, and inconsistent rulings.³⁵

These changes in American litigation moderate the courts’ ability to safeguard democracy. Protecting against the decentralization and variation of laws, the Court has threatened the essential democratic ideals of local control and federalism. Court decisions on school desegregation, for instance, while perhaps necessary to overcome racism in the country, took control from local school boards. There is a precarious balance between national uniformity and local government that in recent decades, federal courts have come close to tipping. While the moral force courts place behind legislation will instill respect for the rule of law, moving law out of the reach of citizens could make them less inclined to follow it. The ability of the courts to infuse dispassionate reason and long-term visions into the government by protecting the law from popular opinion has also been abused. Now, with law extending to every area of life, the courtroom is open to any individual. Extending the notion of democracy as a government open and responsive to its citizenry invites extreme claims of justice. Outrageous tort suits like the infamous McDonald’s coffee burn exemplify this. Often judges will render decisions that counter popular opinion in favor of the interests

of specific groups. While this can be beneficial, as when the courts protect minorities or children, it can also be abused by groups with powerful litigants and lobbyists seeking to exclude countervailing voices. In these ways, the new role of courts is foreign to democracy.

Tocqueville notes how American citizens have a love for novelty and immensity of designs, but a scorn for rules.³⁶ These values seem to have migrated into the chambers of American judges. Abram Chayes explains the new public law judge as a man who takes an active role in litigation. Fashioning innovative, equitable remedies, he passes “beyond even the role of legislator and becomes a policy planner and manager.”³⁷ The role that Judge Jack Weinstein played in the infamous Agent Orange case exemplifies this new role of the judge. Again, this may be beneficial to the country, but can also be exploited and misused, such as in the case of *Missouri v. Jenkins*, when a district judge decided to levy taxes to create magnet schools. The focused nature of a lawsuit is not an efficient way to make policy. Judges do not consider costs of the remedies they impose, they fashion piecemeal decisions that are hard to reverse, and specific cases are often not representative of the policy questions at hand.³⁸ The danger is that there is no sign of impending quiescence from the court. The tradition of respecting precedent ensures the longevity of an expanded definition of standing and new applications of due process and equal protection. The growing role of government in general necessitates court supervision, and the rise of public interest law firms that use courts to pursue their political agendas shows no sign of decreasing.³⁹

There is a justifiable debate on the merits of this new public law model. Those like Chayes feel that it enhances the virtues of democracy, in the sense that it opens avenues for government



responsiveness to groups who are politically underrepresented or completely voiceless, such as the mentally institutionalized. There are also dangers to public law litigation, aside from the costs Kagan explains. With a new brand of court activism, a country founded on freedom now feels constrained by the “arbitrary rule of unreachable authorities.”⁴⁰ For many, the virtues of aristocracy that Tocqueville saw preserved by the American court system have been abused. Politically insulated judges use their power excessively, people and groups affected by legal decisions find themselves excluded from the courtroom, and democratic legislatures fall captive to the man in the black robe. In this way, rather than countering the arbitrariness of democratic rule, the courts themselves have become an albatross on the idea of freedom. Tocqueville was right when he remarked, “there is almost no political question in the United States that is not resolved sooner or later into a judicial question.”⁴¹ Whether this is healthy or harmful in contemporary America has not yet been decided.

Endnotes

1. Alexis de Tocqueville, *Democracy in America*. (Chicago, IL: University of Chicago Press, Ltd., 2000) I.I.8, 142.
2. Melnick, R. Shep. *Class Lectures. Democracy in America*. (Boston College, Chestnut Hill, MA.), 5 November 2008.
3. Alexis de Tocqueville, *Democracy in America*. I.I.8, 132.
4. The cases of *Martin v. Hunter’s Lessee*, *Cohens v. Virginia*, *McCulloch v. Maryland*, *Gibbons v. Ogden*, *New Jersey v. Wilson* established this federal supremacy.
5. Alexis de Tocqueville, *Democracy in America*. I.I.8, 132.
6. *Ibid.* I.I.5, 70.
7. *Ibid.* I.I.8, 131.
8. *Ibid.* I.I.5, 70.
9. *Ibid.* I.I.7-8, I.II.1.
10. *Ibid.* I.I.5.
11. *Ibid.* I.II.5, 216.
12. *Ibid.* I.I.6, 98.
13. *Ibid.* I.II.8, 251.
14. *Ibid.* I.II.8, 252.
15. *Ibid.* I.II.8, 252.
16. *Ibid.* I.II.8, 256.
17. *Ibid.* I.I.8, 142.
18. *Ibid.* I.I.6, 97.
19. *Ibid.* I.I.6, 94.
20. *Ibid.* I.I.6, 94.
21. The cases of *Marbury v. Madison*, *McCulloch v. Maryland*, *Gibbons v. Ogden*, *Dred Scott v. Sandford*, *Plessy v. Ferguson*, *Korematsu v. United States*, *Brown v. Board of Education*, *Mapp v. Ohio*, *Roe v. Wade*, *U.S. v. Nixon*, and *Rasul v. Bush* are only a sampling of the Court’s continual intrusion into the prominent political issues of its time.
22. Alexis de Tocqueville, *Democracy in America*. I.I.6, 95.
23. Martin Shapiro, “The Supreme Court from Early Burger to Early Rehnquist,” (Washington, D.C.: AEI Press, 1990).
24. R. Shep Melnick, *Democracy in America*



- (Chestnut Hill, MA, 2008).
25. Lawrence M. Friedman, "The Legal System," (New York, NY: Public Affairs, 2008.) 70.
 26. Thomas Burke, *Lawyers, Lawsuits, and Legal Rights: The Battle over Litigation in*
 27. *American Society* (Los Angeles, CA: University of California Press, 2002) 8.
 28. R. Shep Melnick, *Democracy in America* (Chestnut Hill, MA, 2008).
 29. Robert A. Kagan. "Adversarial Legalism," in Landy and Levin, (Baltimore, MD: The Johns Hopkins University Press, 1995) 107.
 30. Robert A. Kagan. "Adversarial Legalism," 90.
 31. *Ibid.* 105.
 32. Nathan Glazer, "Towards an Imperial Judiciary?" (1975), 117.
 33. Thomas Burke, *Lawyers, Lawsuits, and Legal Rights* .13-14.
 34. Robert A. Kagan, *Adversarial Legalism: The American Way of Law.* (Cambridge, MA: Harvard University Press, 2001) 9.
 35. *Ibid.* 3.
 36. *Ibid.* 30.
 37. Alexis de Tocqueville, *Democracy in America*. I.II.8, 256.
 38. Robert A. Kagan, *Adversarial Legalism*. 132.
 39. Donald Horowitz, *The Courts and Social Policy* (Washington: Brookings Institution, 1977).
 40. Prison reform cases exemplify the neglect on the part of the courts of considering costs. It seems beneficial to build new jails and treat prisoners more humanely, but judges are not required to find resources for such unfunded mandates of improvement. The allocation of funds among projects of public interest is best done in the legislature where more parties affected can deliberate. The definition of equal educational opportunity from *Brown* shows the piecemeal nature of remedies. Courts moved from remedies such as freedom of choice, to busing, to magnet schools to implement its decision. But with each step, it went further down a path of no return. Finally, one of the most amusing cases of how interest groups use atypical cases to achieve general policy is *District of Columbia v. Heller*. The Cato Institute discovered Dick Heller, a security guard working in a federal courthouse building who was only allowed to carry a firearm for his work. He wanted to right to keep the gun when he went home, offering himself and his family the same protection he provided for federal justices. Perhaps this left the Court more sympathetic to his argument because it eventually ruled in his favor. Heller's case is completely different from a drug dealer bringing suit on Second Amendment grounds, but the justices still base their decision on the specific cases they hear. Ken I. Kersch, *Constitutional Law* (Chestnut Hill, MA, 2008).
 41. Nathan Glazer, "Towards an Imperial Judiciary?" (1975), 111-120.
 42. *Ibid.* (1975), 122.
 43. Alexis de Tocqueville, *Democracy in America*. I.II.8, 257.



 Works Cited

Burke, Thomas, F. Lawyers, Lawsuits, and Legal Rights: The Battle over Litigation in American Society. Los Angeles, CA: University of California Press, 2002.

Chayes, Abram. "The Role of the Judge in Public Law Litigation," Harvard Law Review. 1976.

Friedman, Lawrence M. "The Legal System," in Shuck and Wilson, eds. Understanding America. New York, NY: Public Affairs, 2008.

Glazer, Nathan. "Towards an Imperial Judiciary?" The Public Interest. Vol. 41, 1975. pp.104-123.

Horowitz, Donald. The Courts and Social Policy. Washington: Brookings Institution, 1977.

Kagan, Robert. "Adversarial Legalism," in Landy and Levin, eds. The New Politics of Policymaking. Baltimore, MD: The Johns Hopkins University Press, 1995.

Kagan, Robert A. Adversarial Legalism: The American Way of Law. Cambridge, MA: Harvard University Press, 2001.

Kersch, Ken I. Class Lectures. Constitutional Law. Boston College, Chestnut Hill, MA., 13 November 2008.

Melnick, R. Shep. Class Lectures. Democracy in America. Boston College, Chestnut Hill, MA., 5 November 2008.

Shapiro, Martin. "The Supreme Court from Early Burger to Early Rehnquist," in King, ed. The New American Political System. Washington, D. C.: AEI Press, 1990.

Tocqueville, Alexis de. Mansfield, Harvey C. and Winthrop, Delba, ed. Democracy in America. Chicago, IL: University of Chicago Press, Ltd., 2000.



The New American Governance

By Richard Mitchell

March
2010



The executive and legislative branches of the United States Federal Government often make drastic changes in policy that coincide with the ebb and flow of the election cycle. The judiciary, by contrast, long stood for continuity and security, an institution unaltered by public whims. Under the Warren Court, however, the judiciary deviated from this role, discarding its pretense of adherence to the tradition of precedence in constitutional law. More than ever before, the Court admitted it had been *wrong* in the past. As precedent after precedent fell before the newly ascendant judiciary, criticism erupted from all sides. Suddenly, the Constitution was mutable, federalism dead, and the Court a supra-legislature. The Warren Court did not merely bring revolutionary changes in terms of its decisions, as the Hughes Court did during the New Deal period, but also drew criticism and provoked controversy by fundamentally redefining American governance.

The idea of federalism lies at the heart of American democracy. Fearing tyranny from afar, the writers of the Constitution enumerated only the powers they felt were absolutely necessary to a functional national government. Under the leadership of John Marshall, the Court expanded governmental power, and in some sense the Warren Court continued that philosophy. The crucial difference between the two, however, is that the Marshall Court's actions were absolutely necessary to the functioning of the government. In order for government to function properly, the Marshall Court deemed expansion as necessary. In contrast, the expansions of federal power under the Warren Court merely engineered society from the bench. The Marshall Court's rulings on decisions such as, *Gibbons v Ogden*, or *McCulloch v Maryland*, granted the national government necessary power. The decisions of the Warren Court do not meet the same standards.

Under the Marshall Court, expansion of the federal powers of intervention required an issue of practical governance; under the Warren Court, expansion of the federal government required only an issue of fairness.

An additional contrast can be drawn between the activism of the Warren Court and its predecessors. Whereas the Marshall Court expanded the federal government, the interceding Courts restricted its power, especially with regard to social engineering, a cause championed by the Warren Court. As Archibald Cox writes, "interference with...a sovereign state was thought justifiable only in cases of absolute necessity."¹ While the legislature sought to expand the role of the federal government with the Civil Rights Act of 1875, the Court restricted progress by promoting federalism. The national legislature made similar efforts through the Keating-Owen Act of 1916, but again the Court fought against change. Even during the Great Depression, the Court allowed expansion in the federal government only when necessary. After the Revolution of 1937, opposition to federal expansion continued in such cases as *Colegrove v Green*, in which the Court decided against allowing the federal government to tamper with state legislative districts.

Not until the Warren Court did the federal government gain the license to expand state governance. Federal expansion first targeted state legislation in the area of contraceptives. In *Griswold v Connecticut*, the Court invalidated the state legislation regulating the distribution of contraceptives with tenuous constitutional backing. In the words of the dissent of Justice Black, "if any broad, unlimited power to hold laws unconstitutional... is vested in this Court by the Ninth Amendment... [it] has been bestowed on the Court by the Court."² The Court went further in demanding the obedience of the state



governments to federal prerogatives even when its best justification was only loosely based on the Constitution, and more on its own convictions. In *South Carolina v Katzenbach*, the Court upheld a law forcing states to clear electoral processes with a Washington, D.C. district. According to Justice Black's dissent, the section in question "so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless."³ Both of these cases devalue the basic constitutional conception of federalism. The Warren Court's judicial activism, moving towards an unchecked federal government, led the way for other rulings, such as the Burger Court's *Roe v Wade*. The dissenting opinion of Justice White in *Roe* implicitly states that the decision violated the basic tenets of federalism.⁴ In essence, the Warren Court not only discarded federalism for its tenure, but also contributed to its degradation.

While the gap between state and federal government shrank under the Warren Court, so too did the separation between individuals and the federal government. In two closely related cases, *Heart of Atlanta Motel v US* and *Katzenbach v McClung*, the federal government gained power at the expense of both the state and the individual. The Court's logic in regulating individual acts of discrimination can best be characterized as dubious. In *McClung*, the Court relied on the transportation of food across state lines to justify federal interference in a controversially broad construction of the commerce clause. The decision in *Heart of Atlanta Motel* required a broad reading of the commerce clause as well. Regardless of whether the Court's interpretation of the commerce clause was correct, the federal government obtained the power to interfere more directly in the conduct of citizens than ever before.

The Warren Court did not merely change American governance in terms of the relationship between the federal government and the states and individuals, but also oversaw the system of checks and balances provided by the Constitution. As the judicial body in a tripartite system of government, previous courts limited their actions to judicial review, rather than judicial activism. These two practices are fundamentally different, but the Warren Court subsumed both legislative and judicial responsibilities. The Warren Court altered the system of checks and balances by redefining political questions and embracing substantive due process.

In order to attain legislative powers, the Court first had to justify its ability to make judgments about political questions. The Court in *Baker v Carr* achieved this by ruling that the reapportionment of legislatures was justifiable. The Court used the redefinition of political questions to expand their power in areas where Congress failed to act, essentially operating as lawmakers. As Nathan Glazer wrote, "the justification in these and many other cases is that the legislature and executive won't act."⁵ This type of judicial lawmaking tends to ignore valid considerations of the democratic process, such as voter interests and financial viability. Aside from bypassing democratic procedure, judicial activism violates the constitutional doctrine of checks and balances. For example, it is unlikely that Congress could have passed a law legalizing abortion, but the Court effectively did so with its decision in *Roe v Wade*. Rather than focusing on case law, the Court reads its own version of history into the case and molds limited legal reasoning to its purposes. Justice Rehnquist noted in his dissent that anti-abortion laws were active when the 14th Amendment was passed. As such, the Courts based its decision in *Roe* on questionable history, made possible only by the Courts activist redefinition of justiciability.



The Court additionally extended its power to assess the wisdom of laws passed by state and federal legislatures. As the Court abandoned its defense of laissez-faire economics, it also appeared to discard substantive due process, but this was not the case. Many of the Court's critiques involved substantive due process, whereby the Court could judge the wisdom of the law. Therefore, many applauded its departure from the scene of constitutional jurisprudence.

Then the Warren Court incorporated the Bill of Rights into decisions involving the states. Although incorporation predated the Warren Court, it came into practice under the Warren Court in cases such as *Griswold v Connecticut*. Critics believe that the Warren Court revived the concept of substantive due process, specifically with regards to voting, minorities, and personal rights. Warren Court apologists argue that footnote four of *Carolene Products* restrained substantive due process, but the footnote is not case law and none of the decisions actually cite the footnote.⁶ Furthermore, even if footnote four was the basis of the Court's reasoning, criticism of the Court's usurpation of the role of the legislature would still hold true. Substantive due process allows the Court to judge the wisdom of a law, rather than its constitutionality, as Justice Harlan stated when dissenting to the infamous *Lochner* case, "Whether or not this be wise legislation it is not the province of the court to inquire." Judging the wisdom of a law is a power delegated constitutionally to the legislature, not the courts. In the dissent to *Roe v Wade*, Justice Rehnquist echoed the sentiments of Justice Harlan, "the adoption of the compelling state interest standard will inevitably require this Court to examine the legislative policies and pass on the wisdom of these policies..."⁷ The resurrection of substantive due process that occurred largely during the Warren Court, survives to the present and represents the first step on the path to the

judiciary acting as a supra-legislature.

The Warren Court, even while expanding the power of the Court in relation to the other branches of the federal government, diminished its prestige. The Court traditionally maintained doctrinal continuity, for prior to Warren's appointments, the Court avoided overturning precedents with few exceptions. According to Lucas Powe, the Court overturned eighty-eight cases prior to Warren. During his tenure as Chief Justice, forty-five were overturned "in virtually all constitutional areas save those settled by the New Deal."⁸ Powe writes that the Warren Court "was engaged in a fundamental discarding of older law"⁹ Because precedent anchors the Court's constitutional authority, the pre-Warren Court repeatedly validated their prior decisions, thereby strengthening the belief they were the unerring arbiters of constitutional truth. By abruptly overturning many decisions, including an unparalleled seven in one term, the Warren Court did serious damage to its stature. In admitting the fallibility of its predecessors, the Warren Court highlighted the fallibility of the institution of the Supreme Court itself.

The Warren Court eroded its constituency not only through reversal of precedent, but also by defending minority groups. Coming from the conformist 1950s, the Court's decision to support periphery groups certainly damaged their public support. The Court's almost unwavering aid to the cause of the accused—in cases such as *Miranda v Arizona* and *Brandenburg v Ohio*—proved extremely controversial. The Court expanded support for not only the accused, but also consumers of pornography and contraceptives, atheists and abortionists, in *Mapp v Ohio*, *Griswold v Connecticut*, *Engle v Vitale*, and *Roe v Wade*, respectively. By taking stances on such controversial issues that favored marginalized groups, the Court undermined



support and called into question the validity of its rulings.

The substance of the Warren Court's decisions created controversy with regard to the redistribution, reconstruction, and reinvention of American governmental power. The Warren Court drastically altered relationships in all levels of government. The Warren Court enabled the federal government to severely restrict the freedom of both individuals and states. After the tenure of the Warren Court, judicial activism became the new norm. By seizing legislative authority in the defense of marginal groups, the Court undermined its prestige. The Court's actions—both legislative and judicial—overturned an inordinate number of precedents, devaluing its claim as the highest authority on the Constitution. Regardless of whether its decisions were just, the Warren Court's redefinition of American Democracy cannot escape criticism or controversy.

Endnotes

1. Glazer, Nathan. Towards an Imperial Judiciary? *Public Interest*, 41 (1975: Fall) p.112
2. *Griswold v Connecticut*. No. 496. Supreme Ct. of the U.S. 7 June 1965.
3. *South Carolina v Katzenbach*. No. 22. Supreme Ct. of the U.S. 7 March 1966.
4. *Roe v Wade*. No. 70-18. Supreme Ct. of the U.S. 22 January 1973
5. Glazer, Nathan. Towards an Imperial Judiciary? *Public Interest*, 41 (1975: Fall) p. 118
6. *United States v Carolene Products Co.*, No. 640. Supreme Ct. of the U.S. 25 April 1938.
7. *Roe v Wade*, No. 70-18. Supreme Ct. of the U.S. 22 January 1973.
8. Powe, Lucas. *The Warren Court and American Politics*. p.486.
9. *Ibid.*, p. 485







The State of American Anti-Statism

By Patrick Cassidy

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The maxim “the government governs best which governs least” is often attributed to Thomas Jefferson, author of the Declaration of Independence and a chief architect of the singularly American ideology. Prior to the founding of the United States, and to Jefferson’s remark, however, Americans strongly distrusted centralized authority, and envisioned a nation wherein people could live freely and equally. The tenets of the American ideology were at the time newly arrived on the stage of modern political philosophy, and ever since Alexis de Tocqueville coined the term “American exceptionalism,” the philosophy of the United States has been readily accepted as unique. Many of today’s leading scholars echo de Tocqueville in noting that one of the central principles of the “American Creed” is the liberal tradition that focuses on individual rights and limits centralized authority. Using de Tocqueville as their guide, political scientists Seymour Martin Lipset and Samuel Huntington have built a theory of this “anti-power” ethos and explore its endurance and impact on American society and politics.

Over a century and a half before the Revolutionary War, the pilgrims left England with a desire to escape persecution and attain religious freedom. As de Tocqueville notes, however, their philosophy “was not only a religious doctrine; it also blended at several points with the most absolute democratic and republican theories.”¹ The non-hierarchical focus of Protestantism reflected and reinforced the colonists’ distrust of central authority. In place of concentrated power, Lipset explains, both early and contemporary Americans favor congregational structures that value egalitarianism and individualism.² This wariness of concentrated power evolved into an ideology that was passed down to subsequent generations as a national habit.³

Protestant religion harmonized with other aspects of liberal republicanism as well. Their focus on voluntary religion facilitated the rise of free associations.⁴ Their respect for moralism and freedom allowed for seamless rule of law.⁵ The doctrine of “self-interest well understood” brought Americans “to aid each other and [disposed] them willingly to sacrifice part of their time and their wealth to the good of the state.”⁶

In addition to these religious stimulants to the anti-power ethic, from the time of settlement, early Americans developed their own political structure. With the British king content to keep dissent distant, he would either appoint a local governor or concede land to one man or company. This allowed the English emigrants to “form themselves into a political society... and to govern themselves in everything that was not contrary to [British] law.”⁷ Thus, when the Revolutionary War ended in 1783 and the veneer of monarchical rule was lifted, the United States already had a political structure in place that supported its ideology of liberty, egalitarianism, individualism, and popular governance. De Tocqueville noted this natural shift stating, “The great advantage of the Americans is to have arrived at democracy without having to suffer democratic revolutions, and to be born equal instead of becoming so.”⁸ James Madison recognized this preexisting political system, and remarked that in Europe power granted charters to liberty, unlike in America where liberty granted charters to power.⁹ This chiasmus is not only powerful rhetorically, but is the linchpin of American democracy. It creates a barrier to the ideas of state that arose in fifteenth and sixteenth century Europe by forbidding the creation of a centralized power. In place of this centralization, Americans value dispersed power, individual freedoms, and above all, equality.



In granting a charter to power, the Founders had a conviction “that power is evil, a necessity perhaps but an evil necessity; [and] that it must be controlled.” Huntington contends that they built the government from the bottom up, restricting the growth of power “in every way compatible with a minimum of civil order.”¹⁰ De Tocqueville agrees with this analysis and notes how in America, the “township had been organized before the county, the county before the state, and the state before the Union.”¹¹ As the ideology of popular sovereignty spread outward and upward, Americans became further inclined to rely on the people for power.¹² Thus, as Huntington concludes, when the fundamental law of the Constitution formalized the limitations on concentrated power, it already had a firm basis of anti-statist ideology on which to build.¹³

The Constitution codified and sanctioned the liberalism that has come to dominate American politics for much of the past two and a half centuries. Without democracy, there would be no American Creed. As Hans Kohn states, the American Constitution is America’s “supreme symbol and manifestation. It is so intimately welded with the national existence itself that the two have become inseparable.”¹⁴ While the liberal, anti-power philosophies enshrined in the Constitution caught the attention of de Tocqueville, he was more impressed with the overwhelming support they received from the political, cultural, and social structures America had in place. Both de Tocqueville and Lipset note features like the instability of laws, the frequency of elections, the bicameralism and decentralization within legislative bodies, the focus on federalism and localism, and the lack of administrative centralization as manifestations of this support.¹⁵ These principles, now accepted as inherent to American government, have facilitated the development of the American Creed. As Lipset argues, however, over time

America’s unique political institutions have undergone further changes such as popular elections of senators, expanded suffrage, new procedures for nominating presidential candidates, and an increased reliance on state and local referenda that have augmented the anti-statist sentiment.¹⁶ With this analysis, Lipset finds that the distrust of government de Tocqueville saw in the nineteenth century developed and solidified as America progressed.

With such emphasis on weakening centralized authority, especially in the executive branch, many thought American democracy would lack power to govern efficiently.¹⁷ While de Tocqueville notes the difficulties democracies face, his analysis of associations leads him to marvel at the power democracy can supply. Comparing America with his native France, he states, “Everywhere that, at the head of a new undertaking, you see the government in France...count on it that you will perceive an association in the United States.”¹⁸ Keeping with their aversion to statism, instead of appealing to a centralized source of power, Americans look to form associations. Lipset also acknowledges the power of modern associations, or special interest groups and lobbyists.¹⁹ Associations not only impede the growth of an autocratic state, but they also guard against its opposite, the introverted individualism that arises from equality. As de Tocqueville notes, anti-statism gives Americans a strong allegiance to rights, but with contributions to local government and other political and civic associations, Americans also orient themselves in relation to their community, with attention to the common good.²⁰ These associations maintain order for the republic without the heavy hand of government.

Equipped with the individualism that comes from guaranteed rights and the collective assurance that comes from associations,



Americans are reluctant to rely on distant sources of goodwill. Eschewing the eighteenth century European notion of *noblesse oblige*, Americans choose not to take a passive role in determining their future.²¹ From these notions grew profound social effects of decentralization that could not be overshadowed by the political aspects. Rejecting the principle of a strong and distant state or a reliance on powerful nobles, and instead participating in government, Americans feel a connection to their country. As de Tocqueville says, Americans are “glorified in the glory of the nation.”²² Individualism coexists with patriotism, associations meet their goals, and the dogma of sovereignty of people becomes a reality as the American Creed takes action. For Americans, the institutional checks on power articulated by James Madison in *The Federalist Papers* are not enough. They move beyond this towards social means, such as political parties, the press, and free associations.

The congruence of the religious, political and social realms of society support Huntington’s contention that the various elements of the Creed converge with a ringing condemnation of statism.²³ De Tocqueville likewise consents that in America, “the hand that directs the social machine vanishes at each instant.”²⁴ The citizens in America “owe nothing to anyone, they expect...nothing from anyone...[and] they willingly fancy that their whole destiny is in their hands...”²⁵ Armed with localism and association, however, democracy is no less powerful than other regimes. In fact, de Tocqueville notes that no centralized authority “would ever be in a state to suffice for the innumerable multitude of small undertakings that American citizens execute everyday with the aid of association.”²⁶

One cannot doubt the popularity of the anti-statism ethos in America nor the effects of the resulting liberal democracy that grow from it.

Differences do emerge, however, in looking at the forcefulness and danger of popular sovereignty. De Tocqueville was fascinated with the power of democracy – the multitude of associations and the wide participation in political life. What worried him, however, were the threats of tyranny of the majority, and specifically its monopolization of thought.²⁷ The preoccupation with limiting authoritarian statism leaves Americans open to the power and caprices of populism. De Tocqueville cites Thomas Jefferson’s concern not of a centralized monarchical state, but of the oppressive dangers tyranny poses to the majority. Jefferson states in a letter to Madison that the executive was “scarcely the principle object of my jealousy. The tyranny of the legislature [which the majority can capture], is the most formidable dread at present...”²⁸ The constraints on tyranny give de Tocqueville some solace, but the potential harmful effects, especially in the social realm, leave him mightily concerned.²⁹

While de Tocqueville considers this potential tyranny, Huntington retorts that the American government is not strong enough and he identifies the gravest danger of the anti-power ethos as the discrepancy between American ideals and institutions, or what he calls the “IvI gap.” Because the core of the Creed is centered on an aversion to statism, government is inherently weak. As conditions in the country fall short of American ideals, people become dissatisfied with their political leadership. The paradox is that a government cannot be effective in any policy implementation – good or bad – without power. The anti-power ethos that is central to the American Creed, therefore, is actually the very aspect that inhibits the government from meeting society’s goals, needs, and wants.³⁰ De Tocqueville sees the clout of local government and associations as a way to bridge this gap, but even he notes the tendency of “democratic institutions [to] awaken and flatter the passion



for equality without ever being able to satisfy it entirely.”³¹ For Huntington, however, unlike de Tocqueville, ultimately the government is too restricted to meet the ideals of the American people.

There is little doubt that de Tocqueville would concur with the assertions of both Huntington and Lipset that American democracy has an aversion to statism. In place of the concentration of power in this government, de Tocqueville marveled at the power of the people. In local government and in the multitude of political and civil associations, the strength of diffuse power struck the Frenchman. Americans, with their absence of governmental centralization, do not fret over the details of “social orderliness.” In place of this efficiency they value a force that is “less regulated, less enlightened, [and] less skillful, but a hundred times greater than Europe.”³² Nowhere do men make more of an effort to create social well-being in all areas of life – from schools, to churches, to infrastructure. De Tocqueville compares the democratic participation that stems from American anti-statism with areas in Europe where men are “indifferent to the destiny of the place [they] inhabit” and “where the greatest changes come about in [the] country without [popular] concurrence.”³³ He notes the power of the American Republic, but carefully delineates between its popular source in America and the monarchical or aristocratic source of power in Europe.³⁴

De Tocqueville’s focus on the diffusion of power across local governments and associations leads him to discover American aversion to statism. Later scholars such as Huntington and Lipset took this anti-power sentiment as a starting point and laid out further theories on causes and consequences of the American Creed. Their works follow the pattern of de Tocqueville, but

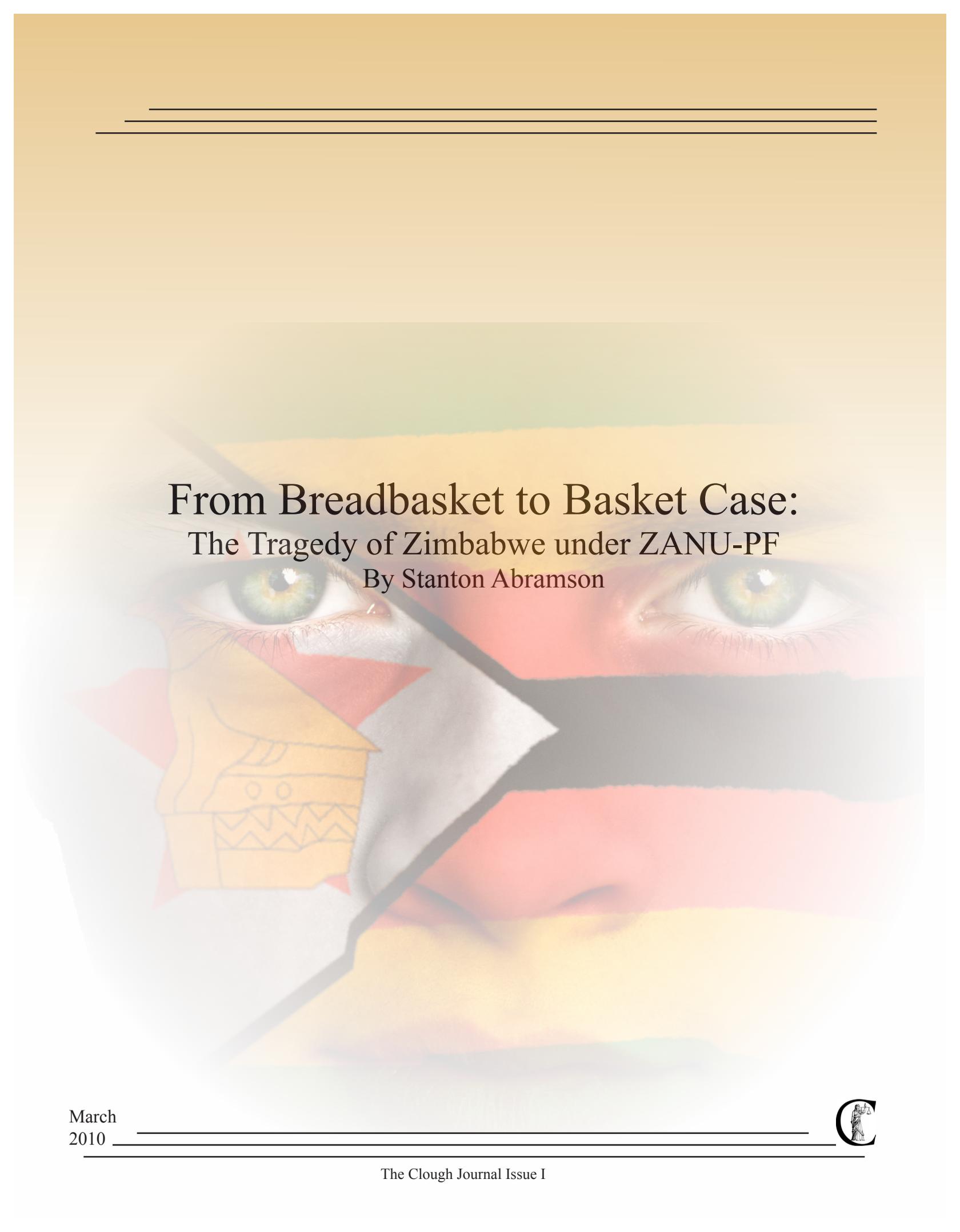
with the luxury of hindsight, they depart from him in a number of ways. When de Tocqueville hypothesizes about a rise of statism in America, his prophetic musings lead him to ask whether “public administration in the end [will] direct all the industries” that were formerly left to individuals and associations.³⁵ As Americans for the past century have increased their welfare state, come to see rights as conferred by the Constitution and not as restrained by it, and debated control issues such as universal health care and centralized management of education, one wonders if his forecast was accurate. Despite this possible movement toward statism, however, Huntington and Lipset would assert the main tenets of the American Creed have endured. The debates over the size of government date back to the rivalry between Hamilton and Jefferson in the late eighteenth century, and because of the incongruities with America’s ideology and reality, they will endure for centuries to come.



Endnotes

1. De Tocqueville, Alexis. *Democracy in America*. (Chicago, IL: University of Chicago Press, Ltd., 2000) I.I.2, 32.
2. Lipset, Seymour Martin. *American Exceptionalism: A Double-Edged Sword*. (New York, NY : W. W. Norton & Company, 1996) 61.
3. Huntington, Samuel. *American Politics: The Promise of Disharmony*. (Cambridge, MA: Belknap Press, 1981) 34.
4. Lipset, Seymour Martin. *American Exceptionalism: A Double-Edged Sword*. (New York, NY : W. W. Norton & Company, 1996) 61.
5. De Tocqueville, Alexis. *Democracy in America*. (Chicago, IL: University of Chicago Press, Ltd., 2000) I.I.2, 43.
6. Lipset, Seymour Martin. *American Exceptionalism: A Double-Edged Sword*. (New York, NY : W. W. Norton & Company, 1996) 68.
7. De Tocqueville, Alexis. *Democracy in America*. (Chicago, IL: University of Chicago Press, Ltd., 2000) II.II.8, 502.
8. *Ibid.* I.I.2, 36.
9. *Ibid.* II.II.3, 485.
10. Huntington, Samuel. *American Politics: The Promise of Disharmony*. (Cambridge, MA: Belknap Press, 1981) 34.
11. *Ibid.* 95.
12. De Tocqueville, Alexis. *Democracy in America*. (Chicago, IL: University of Chicago Press, Ltd., 2000) I.I.2, 41.
13. *Ibid.* I.I.4, 54; II.II.4.
14. Huntington, Samuel. *American Politics: The Promise of Disharmony*. (Cambridge, MA: Belknap Press, 1981) 14.
15. *Ibid.* 31.
16. Lipset, Seymour Martin. *American Exceptionalism: A Double-Edged Sword*. (New York, NY : W. W. Norton & Company, 1996) 40, 43.
17. De Tocqueville, Alexis. *Democracy in America*. (Chicago, IL: University of Chicago Press, Ltd., 2000) I.I.5 80; I.II.5, 193.
18. Lipset, Seymour Martin. *American Exceptionalism: A Double-Edged Sword*. (New York, NY : W. W. Norton & Company, 1996) 40.
19. De Tocqueville, Alexis. *Democracy in America*. (Chicago, IL: University of Chicago Press, Ltd., 2000) I.II.7, 248.
20. *Ibid.* II.II.5 489
21. Lipset, Seymour Martin. *American Exceptionalism: A Double-Edged Sword*. (New York, NY : W. W. Norton & Company, 1996) 44.
22. De Tocqueville, Alexis. *Democracy in America*. (Chicago, IL: University of Chicago Press, Ltd., 2000) II.II.4; I.II.4.
23. Lipset, Seymour Martin. *American Exceptionalism: A Double-Edged Sword*. (New York, NY : W. W. Norton & Company, 1996) 35.
24. De Tocqueville, Alexis. *Democracy in America*. (Chicago, IL: University of Chicago Press, Ltd., 2000) I.I.5, 90.
25. Huntington, Samuel. *American Politics: The Promise of Disharmony*. (Cambridge, MA: Belknap Press, 1981) 33.
26. De Tocqueville, Alexis. *Democracy in America*. (Chicago, IL: University of Chicago Press, Ltd., 2000) I.I.5, 67.
27. *Ibid.* II.II.2, 484.
28. *Ibid.* II.II.5, 491.
29. *Ibid.* I.II.7, 244.
30. *Ibid.* I.II.7, 249.
31. *Ibid.* I.II.7; I.II.4; II.II.5, 489.
32. Huntington, Samuel. *American Politics: The Promise of Disharmony*. (Cambridge, MA: Belknap Press, 1981) 39.
33. De Tocqueville, Alexis. *Democracy in America*. (Chicago, IL: University of Chicago Press, Ltd., 2000) I.II.5, 189.
34. *Ibid.* I.I.5, 87-88.
35. *Ibid.* I.I.5, 88.
36. *Ibid.* I.II.5, 194.
37. *Ibid.* II.II.5, 491.





From Breadbasket to Basket Case: The Tragedy of Zimbabwe under ZANU-PF

By Stanton Abramson

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Zimbabwe's crushing descent into economic upheaval and fiscal hyperinflation signaled the failure of the once successful African state to develop a modern, robust economy. The post-colonial state experienced early economic successes after independence from the Rhodesian minority rule in 1980 due to unsustainable investment in social services by then prime minister and now president Robert Mugabe and his liberation Zimbabwe African National Union – Patriotic Front (ZANU-PF). Yet, state over-reliance on taxation and international investment to subsidise an ambitious welfarist programme, unaccompanied by sustained economic growth, quickly led Zimbabwe into economic stagnation. The West's developmentalist model inflicted further damage on the state's service delivery and worsened Zimbabwe's governance crisis. Scholarly literature attributes responsibility for the country's collapse to both a ZANU governance crisis and the ripples of colonial legacy. Brian Raftopoulos, a leading Zimbabwean scholar and activist, differentiates this as "either a radical nationalist redistributive project carried out as historical redress in the face of neo-liberal orthodoxy, or a breakdown of the norms of liberal governance through the machinations of an authoritarian political figure."¹ While Zimbabwe's complex colonial and settler legacy posed formidable reconciliation challenges, the new ZANU regime exploited the colonial past to mask its own state failure. E.A. Brett, Brian Raftopoulos and Ian Phimister's state failure and discourse of human rights and democratisation theories offer convincing arguments for identifying Zimbabwe's dramatic political shortcomings and intransigence and receive greater credence than Sam Moyo and Paris Yeros' one-track neo-colonial "imperialist aggression" argument when analyzing Zimbabwe's economic and political instability.

Brett offers impressive evidence that Mugabe's post-colonial state adopted an authoritarian demeanour that subverted human rights and the rule of the Constitution, which led to the debilitating land seizures of the late 1990's. Brett's conclusion that "the economic crisis was associated with and exacerbated by intense conflict over political control and resource allocation, and a shift to military or authoritarian rule" accurately summarises the power consolidation that characterised the early Mugabe years.² Rather than pursuing free elections, competitive economic markets, and a merit-based civil service, the Zimbabwean state preferred a highly interventionist economic policy that exhausted the state's coffers and left the young country at the mercy of the international community, a situation that was worsened by the 1991 launch of the Economic Structural Adjustment Programme (ESAP).³ Before Zimbabwe's failed adoption of the West's potent developmentalist regimen, the state vastly misallocated resources and subsidised inefficient industries as part of a classic statist model. As Brett notes, ZANU inherited a European-controlled private sector whereby "large-scale agricultural, commercial, industrial and financial capital interests" posed a significant challenge to national reconciliation due to disparities of economic participation and employment opportunity.⁴ The state's attempts at true reconciliation were minimal. Instead, Moyo and Yeros find that, shut out from the private sector, "the black petty bourgeoisie was to redirect its accumulation strategies through the state and, moreover, resort to the instrumentalization of ethnicity."⁵ With most of the black middle class confined to the public sector, the state developed a new cadre of consumers through employment in the civil service and bureaucracy—all paid with dwindling cash reserves from exports, taxation on exports and domestic production. This support



of the black middle class, as well as advances in educational and health appropriations expanded service delivery and bolstered widespread popularity for the liberation party, though it was inherently unsustainable since money from the private sector remained largely out of the government's reach. During the 1980s, ZANU's political monopoly in Harare did not immediately threaten Zimbabwe's institutions of democracy – they held elections at regular intervals and “the ZANU-PF regime did not need to engage in destabilising economic transfers and political manipulation” to retain power.⁶

Yet, diminishing economic activity towards the end of the 1980s signified that the protectionist statist policies pursued by ZANU since independence no longer served the state. Brett holds ZANU leadership accountable for its actions. As the stewards of economic planning, he says, ZANU must take responsibility for the dismal economic picture in which Zimbabwe found itself at its tenth anniversary – “protectionism had suppressed exports and led to a shortage of foreign exchange, growing state spending had led to a fiscal deficit and credit rationing, and controls over foreign and domestic investment had repressed formal sector jobs and produced rising unemployment.”⁷ Into this context, the introduction of the ESAP in 1991 worsened the economic situation. Under the ESAP programme, Zimbabwe's already unfavourable terms of trade grew worse, the fiscal deficit expanded, a social spending crash placed schools and hospitals in a vulnerable position, unemployment soared and the intended economic growth never materialised.⁸ Brett particularly blames the regime for not compensating or protecting the few large-scale, black agricultural schemes that took off during the 1980s. ZANU failure to successfully look out for the black middle class resulted in the opposition Movement for Democratic Change's

(MDC) debut in the 2000 election. While Zimbabwe enjoyed a significant jump in output and exports, the government proved inept in reducing the “social and economic costs...that had discredited neo-liberal policy theory and undermined political support for the regime.”⁹ As a result of ESAP liberalisations that reduced patronage and led to increasingly vocal trade union organisation and civil service discontent, ZANU faced pressures from ESAP opponents who would soon threaten the liberation party's dominance. As Brett sees it, the state's failure to deal with reconciliation in a sustainable way resulted in the economic meltdown that now has the country reeling.

Raftopoulos and Phimister approach the Zimbabwean economic meltdown through another lens--that of failed democratisation, constitutionalism and human rights protections. The democratisation and human rights approach to the Zimbabwe crisis focuses on “the unresolved processes of primitive accumulation, nation-state formation, and democratisation” where land redistribution questions collide with the rule of law and the sanctity of constitutionalism.¹⁰ The authors broach the problematic nature of Zimbabwe's unresolved liberation-era disputes by explaining the breakdown of the ZANU liberation consensus through the rise of the labour movement and the MDC, a political opposition with an alternative national perspective to the phenomenon of postcolonial development in the context of globalisation. The establishment of the MDC in 1999 as a post-national coalition of trade unionists, students, whites, civil society, NGOs and industrialists in the midst of Zimbabwe's economic meltdown led ZANU to increasingly turn to authoritarianism to retain power. Raftopoulos and Phimister view Zimbabwe's economic meltdown as the logical result of “the complementary dynamics of domestic tyranny and developmental collapse” whereby ZANU



attempted to reconfigure the liberation consensus while eliminating dissent and closing democratic spaces.¹¹ ZANU's monopoly on governmental bodies facilitated this process. As the MDC capitalised on cumulative popular frustration with ZANU rule, "the labour movement skilfully articulated the linkages between the crisis and the broader problems of democratisation."¹² Raftopoulos and Phimister demonstrate that the MDC's rural and urban activity rehabilitated elements of democracy and civic rights long absent from ZANU's selective narrative of the liberation agenda. Viewed in conjunction with Brett's argument of the failure of the state in ZANU's hands, Raftopoulos and Phimister offer a comprehensive lens for Zimbabwe's economic and democratic meltdown.

Brett chronicles the regime's dissent into populism while the liberation consensus evaporated, and as the widespread use of favouritism to win elections proliferated, especially within once-loyal ZANU constituencies like the war veterans (whom the state could no longer afford to pacify with pensions). Brett's approach mirrors that of Raftopoulos and Phimister with a highly critical denunciation of state failure. Poorly developed governmental checks and balances, where they even existed, allowed Zimbabwe to abandon any credence of stewardship of the economy as angry civil war veterans gained preferential treatment and the state ordered white-owned farms transferred to black loyalists. The angry and militant sentiment among the war veterans presented a direct challenge to the regime over their impoverishment and banishment to the informal economy. Mugabe's subsequent payout to pacify and appease this segment of society "signalled a decisive shift...towards greater reliance on the coercive capacity of this stratum."¹³ Rather than exposing the war veterans as an irresponsible, single-issue land repossession

movement with no long-term answer to the economic questions facing the country, Mugabe and his regime chose to conciliate. While the currency collapsed, Zimbabwe completed "a classic circle by producing populist transfers that led to an economic crisis that increased the threats to the regime and the temptation to resort to even more unsustainable expedients."¹⁴ Mugabe increasingly relied upon channelling the colonial experience, imperialism and neo-colonialism "to justify the forcible expropriation of expatriate assets...to small-scale settlers and key members of the political and bureaucratic elite,"¹⁵ but it was ZANU's poor enforcement of democratic principles that allowed this argument to be made.

Moyo and Yeros present a distinctly different approach to Zimbabwe's economic meltdown which focuses intensely on *the neo-colonial situation* where unresolved agrarian questions and the presence of a hostile and racist white settler population propels "the failure of juridically independent states to complete the national democratic revolution."¹⁶ For Moyo and Yeros, understanding Zimbabwe's economic meltdown must begin with a firm grasp of neo-colonialism whereby capital accumulation strategies favoured white settlers and the direct and indirect power exerted by whites over the black population defined participation in both the Rhodesian and Zimbabwean economies. Moyo and Yeros voice strong opposition to the neo-colonial transition, arguing, "formal power had not been ceded to a black petty bourgeoisie alone; instead, the aspiring black bourgeoisie would share power with the established white-settler capital."¹⁷ The Lancaster House principle of "willing-buyer, willing-seller" protected the white agro-industrial complex from forced divestment, but conflict between whites and blacks marred Mugabe's spirit of reconciliation. Internal power struggles between the old



Rhodesian colonial black elite and the exiled liberation movement, in addition to the use of ethnicity to advance class interests and suppress dissent in the 1983-87 Matabeleland massacres, only fractured the country and weakened the enthusiasm for reconciliation. Moyo and Yeros offer insights into neo-colonialism, but they do not hold Mugabe accountable for his perversion of ethnic differences to drive a wedge into the economy. Unlike Moyo and Yeros, however, Brett refuses to present himself as an apologist for Robert Mugabe – he maintains that Zimbabwe remained distracted from accumulating international investment due to a shift to authoritarian rule, clientalism, misguided land reform and powerful renegade war veterans. Moyo and Yeros acknowledge that Zimbabwe’s “racial divisions are utilized not to entrench national unity but to consolidate class domination and exploitation” without specifically assigning responsibility to ZANU. Not surprisingly, Moyo and Yeros pronounce the structural adjustment process a failure of the “imperial repertoire” to understand Zimbabwe’s particular needs, and view the re-emergence of the land question in the 1990s as a direct result of widespread dissatisfaction toward the ESAP’s rapid de-industrialisation, de-urbanisation and crashing rural farm incomes. Without formally renouncing the “willing-buyer, willing-seller” method, ZANU leadership passed “a series of constitutional amendments...that hereafter would enable the state to designate and acquire land compulsorily.”¹⁸ As Zimbabwe emerged from the ESAP, a new racial lens took hold of the state, in which “nationalism would be animated by more pronounced class contradictions, but also...by the possibility of a cross-class nationalist alliance on land.”¹⁹ The neo-colonial argument regarding the failure of the Zimbabwean economy is valid in that it defines one issue faced by a state moving toward a full

democracy, but it does not take individual actors and state culpability into account.

Moyo and Yeros’ outlandish suggestion that “imperialism continues to exercise its financial power deliberately to isolate Zimbabwe and smother the process of agrarian reform” ignores every misstep taken by ZANU and Mugabe and shamefully whitewashes a twenty-nine year record of state mismanagement and primitive accumulation.²⁰ Fortunately, Raftopoulos and Phimister offer a powerful rebuttal that exposes deep flaws in the latter’s approach. Raftopoulos and Phimister’s fundamental academic disagreement with Moyo and Yeros criticises their narrow reading of the anti-colonial struggle, evasion of authoritarian politics and minimisation of the central role of the state in land occupations and violence. Moyo and Yeros’ dangerous historiography stands upon a staunch defense of Mugabe’s record whereby unprecedented hyperinflation that puts Weimer Germany to shame, mismanaged parastatals, chaotic land redistribution and sham elections should not elicit international condemnation or protest. Additionally, Raftopoulos dismisses the central *raison d’être* of Moyo and Yeros’ Marxist argument as a mask for authoritarianism and anti-democratisation: “Much of the anger of this embattled nationalism is channelled against the citizens of our states, and the nationalism that presents itself as the nation’s shield is often the suffocating embrace of murderous regimes.”²¹ The emergence of the MDC counters the propaganda monopoly enjoyed by ZANU; the opposition raises awareness of human rights abuses and offers criticism of the corruption and undemocratic structures inherent to the state.

Zimbabwe’s land disputes never ceased after independence, but the state increasingly turned to land occupations instead of the official land acquisition model in the post-ESAP



period due to increasing demand from semi-proletarian households. The cumbersome land redistribution process fostered newfound zeal for land occupation even among the country's capitalist class. Because of this, Zimbabwe abandoned the Lancaster House provisions by 2000 in favour of radical, compulsory acquisition in which productive and fertile farmland became sprawling squatter camps. The coalition of war veterans and rural peasants seized land, forcibly evicted white farmers and black agricultural labourers and converted the newly barren pastures to informal settlements. State support for these seizures resulted in a lost opportunity for ZANU to solidify rule of law and maintain a sustainable, equitable government. The settling of prime agricultural land "produced a disastrous decline in food and export production and a further intensification of the economic crisis."²² While the regime located the Zimbabwean crisis squarely in the land question, the tremendous cache of expropriated land did not deter the country's rural impoverishment and economic slump. Rather, Mugabe's rule witnessed a reproduction of labour "characterised by rising food prices and decreasing real wage levels from the late 1980s through the 1990s."²³ ZANU control left the country more vulnerable than at any moment since independence as food scarcity and prices dramatically increased while wage levels rapidly eroded. The state overwhelmingly failed to provide for economic development, and instead resorted to land seizures justified in divisive, radical nationalist rhetoric that sent the Zimbabwe dollar crashing 74 per cent in just one day.²⁴ With few strongly opposing it, the regime undertook dangerous devices to appease its base of supporters and inevitably worsened the economic meltdown and prolonged the crisis.

While urban membership in trade unions was once "chronically fragmented and subsumed during the war," post-ESAP

trade unionism organised cohesively through paralysing national strikes.²⁵ Organised labour "not only concerted demands for collective bargaining but also national mobilization against the 'one-party' state."²⁶ A moderated labour movement coalition in coordination with civil society emerged after structural adjustment with a compelling programme seeking social dialogue and good governance. ZANU's once legitimate and popular rule increasingly relied upon petty populism in the face of the MDC's desire for a discourse of democratisation that pledged to develop the economy in means that extended beyond entitlements to anti-imperialist rhetoric. State failure wrought egregious and embarrassing human rights violations that quickly soured the international reputation of the liberation party. Moyo and Yeros find that "national elections were manipulated and civil society subjected to violence, resulting in over a hundred politically related deaths between 2000 and 2002,"²⁷ offering legitimacy to Brett's state failure and Raftopoulos and Phimister's incomplete democratisation arguments. Brett notes how the violation of democratisation was carried out as the regime terrorised rural constituencies to intimidate MDC supporters into returning the ruling party to power, employing the bureaucracy of the state's maize marketing monopoly to threaten rural access to food and manipulate the vote.²⁸ Yet, the outbreak of violence provided a crucial opportunity for the emerging opposition to offer a campaign of human rights discourse. The MDC's promise of enshrined civil liberties and constitutionalism demonstrated its strongest possible response yet to ZANU propaganda.

More than 29 years since its independence, Zimbabwe stands "derailed by a series of interdependent political and economic crises that have reduced the country to destitution."²⁹ Moyo and Yeros' attribution of economic



problems to the legacy of colonial inequality does not sufficiently explain the country's collapse. Rather, as Raftopoulos and Phimister state, the Zimbabwean state no longer holds free and fair elections or boasts a merit-based bureaucracy – two prerequisites for entrance into the international economy of the twenty-first century. Zimbabwe missed a period of global economic growth due to a harsh international economic context including a sanctions regimen, but Mugabe's adversarial approach and ZANU intransigence brought on and perpetuated the inhospitable investment atmosphere under which the meltdown reached epic proportions. Ultimately, decades of ineffective political leadership and overwhelming state failure to respond to the aftermath of the ESAP programme best explain Zimbabwe's collapse from Africa's breadbasket to a desperate basket case.

Endnotes

1. B. Raftopoulos, 'The Zimbabwean Crisis and the Challenges for the Left,' *Journal of Southern African Studies*, 32 (2006), p. 203
2. E.A. Brett, 'State Failure and Success in Zimbabwe and Uganda: The Logic of Political Decay and Reconstruction in Africa,' Working paper no 78, Crisis States Research Centre, (London, 2006), p. 2
3. Brett, 'State Failure and Success in Zimbabwe and Uganda,' p. 15
4. Brett, 'State Failure and Success in Zimbabwe and Uganda,' p. 14
5. S. Moyo and P. Yeros, 'Land Occupations and Land Reform: Towards the National Democratic Revolution in Zimbabwe' in Sam Moyo and Paris Yeros (eds.) *The Resurgence of Rural Movements in Africa, Asia and Latin America* (London, 2005), p. 172
6. Brett, 'State Failure and Success in Zimbabwe and Uganda,' p. 15
7. *Ibid.* p. 15
8. *Ibid.* p. 15
9. *Ibid.* p. 15
10. Raftopoulos, 'The Zimbabwean Crisis and the Challenges for the Left,' p. 210
11. B. Raftopoulos and I. Phimister, 'Zimbabwe Now: The Political Economy of Crisis and Coercion,' *Historical Materialism*, 12 (2004), p. 356
12. Raftopoulos and Phimister, 'Zimbabwe Now: The Political Economy of Crisis and Coercion,' p. 359
13. *Ibid.* p. 360
14. Brett, 'State Failure and Success in Zimbabwe and Uganda,' p. 16
15. *Ibid.* p. 16
16. Moyo and Yeros, 'Land Occupations and Land Reform,' p. 166
17. *Ibid.* p. 171
18. *Ibid.* p. 176
19. *Ibid.* p. 177
20. *Ibid.* p. 194
21. Raftopoulos, 'The Zimbabwean Crisis and the Challenges for the Left,' p. 219
22. Brett, 'State Failure and Success in Zimbabwe and Uganda,' p. 16
23. Raftopoulos and Phimister, 'Zimbabwe Now: The Political Economy of Crisis and Coercion,' p. 371
24. Moyo and Yeros, 'Land Occupations and Land Reform,' p. 187
25. *Ibid.* p. 178
26. *Ibid.* p. 180
27. *Ibid.* p. 188
28. Brett, 'State Failure and Success in Zimbabwe and Uganda,' p. 17
- 29.



The Eviscerating Effects of International Organizations on Democracy

By Sindi Lee



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The days of isolationism are over. “Dealing with today’s challenges—from ensuring that deadly weapons do not fall into dangerous hands to...holding war criminals to account before competent courts—requires broad, deep, and sustained global cooperation” (Annan 2005, 64). International organizations (IOs) operate as the superstructure behind this cooperation by organizing debate amongst the members of the international community, enacting binding laws (or resolutions), and even deploying peacekeeping troops. Yet as these organizations grow in power and take on the qualities of sovereign states, so do fears that the undemocratic nature of IOs poses a threat not only to the development of domestic democracies but also to the very civil liberties they champion. Although rich literature has developed around this issue, it remains to be evaluated whether the degree of democratic consolidation affects the extent to which democracy is eviscerated. This paper suggests that the less a democracy is consolidated and institutionalized (i.e. flawed democracies, hybrid regimes, and autocracies), the more negatively and profoundly IOs will affect domestic democracy and civil liberties.

DOMESTIC DEMOCRACIES WEAKENED

The evisceration of domestic democracies and of civil liberties is hardly an unexpected trend, one accelerated by the demands of international counter-terrorist activities. As the Cold War ended and initiated a new era of cooperation and multilateralism, scholars warned that the undemocratic nature of international organizations could undermine democracy. At its core, democracy is “a system of popular control over governmental policies and decisions” (Dahl 1999, 20). There is an inherent tradeoff between the extent of popular

control and the scope of a government, as such, large governments with the power to affect important issues offer fewer opportunities for civic participation and vice versa. The same logic extends to international organizations, which sit at the extreme end of this spectrum. Although collective action offers solutions to universal problems, it weakens the traditional principle of state sovereignty and offers little room for domestic civic participation. “Opportunities available to the ordinary citizen to participate effectively in the decisions... diminish to the vanishing point” (Dahl 1999, 22).

Even indirect participation is difficult in this system. In the case of the United Nations, arguably the most powerful and most prestigious of the international organizations today, membership in the Security Council, the main decision-making body of the UN, reflects “the world of 1945, not that of the twenty-first century” and is highly undemocratic (Annan 2005, 73). The body is composed of 5 permanent members—China, France, Russia, the United Kingdom, and the United States—and of 10 non-permanent members, elected every two years by the General Assembly. In effect, less than 92% percent of all UN members do not vote on the most pressing international matters of the day, and by extension, neither do their citizens.

Therefore, the expansion of IO legislative authority has serious implications for domestic democracies. Legislation passed in global governance institutions where politicians are immune to popular pressure become binding agreements that must be upheld at state levels. In a world where the definition of international issues is continuously expanding, the rights of citizens to debate, to challenge, and to self-determination are becoming increasingly endangered. Some scholars, such as Robert



O. Keohane, however, argue that because IOs possess few fiscal or enforcement powers of their own, the need for money and military resources forces multilateral institutions to be "...accountable to its member states and thus indirectly accountable to publics in the democracies among them" (Keohane 2007, 5). Disregarding the earlier point that some countries are not even included in the decision-making process, weaker members cannot afford to make large scale contributions and in fact, are oftentimes motivated to membership by the promise of aid, grants, and other financial benefits¹. The list of top UN financial contributors for the three year period between 2002-2004 illustrates this point.

This table (Table 1) suggests that not only are the top financial contributors generally regarded as among the most powerful and wealthiest countries in the world, they are also considered to be full or consolidated democracies. Italy, ranked at number 30 on the Economist's index of countries from most to least democratic,

is the weakest of the democracies on this list. This suggests that consolidated democracies have the greatest abilities to conform IO activities to their own preferences (presumably also the preferences of their constituents) and thus to preserve constituent participation in a democratic process.

This point was further evident in the controversial events surrounding the passage of UN Resolution 1373. Resolution 1373 requires "member states [to] take extraordinary measures to monitor and intercept the international system for financing terrorist attacks" (Scheppelle 2006, 353). When Mexico claimed that it could not, in accordance with its constitutionalist principles, automatically freeze the assets of suspected terrorist groups without judicial review or proof, the Counterterrorism Committee (CTC) pressured Mexico to comply with UN mandates.² Though it strongly opposed the measure and was not a large player in the decision-making, "after several reports attempting resistance... Mexico found a way to freeze assets without having to

Top Ten Providers of Assessed Contributions to United Nations Budgets and of Voluntary Contributions to United Nations Funds, Programmes and Agencies, including the standing Peacebuilding Fund (In U.S. Dollars)

	Country	3 Year Total	Average	2004	2003	2002
1	US	11,398,068,755	3,799,356,252	4,227,135,223	3,955,255,610	3,215,677,922
2	Japan	5,446,093,994	1,815,364,665	1,853,003,700	1,897,577,533	1,695,512,762
3	UK	3,438,243,909	1,146,081,303	1,432,995,162	1,165,535,746	839,713,001
4	Germany	2,385,870,903	795,290,301	921,302,377	742,676,715	721,891,811
5	Netherlands	2,238,024,996	746,008,332	888,452,772	708,329,199	641,243,025
6	Italy	1,839,285,165	613,095,055	694,425,775	634,591,700	510,267,690
7	Norway	1,775,543,922	591,847,974	659,404,140	630,764,396	485,375,386
8	France	1,698,551,891	566,183,964	644,471,409	477,039,715	577,040,768
9	Sweden	1,648,155,264	549,385,088	692,951,315	571,305,208	383,898,741
10	Canada	1,609,678,170	536,559,390	688,419,581	562,344,746	358,913,843

[Source: United Nations]* Table 1



show any individualized proof to a domestic judge” (Scheppelle 2006, 367). In doing so, the CTC has shown a willingness to disregard basic constitutional principles—private property rights as well as the presumption of innocence—in order to enforce international security laws. These actions suggest that as long as the UN is neither accountable to popular controls nor held responsible to member states equally, it will continue to impose legislation antithetical to the governing philosophies of certain states (usually weak and unconsolidated democracies) and as such eviscerate domestic democracy in those states.

Perhaps unimagined by pre-9/11 scholars, this deficit of democracy in IOs has also been manipulated by international governments with Machiavellian skill in recent years. With shocking revelations of intelligence fraud in Iraq, of brutal mistreatment of foreign prisoners in Guantanamo, and of attempts to control and manipulate the media, public opinion in many countries has turned against measures designed to curtail civil liberties in the name of national security. As a result, some governments have attempted to circumvent the democratic levers of public pressure by passing civil liberty constraints at the international level. Termed policy laundering, this practice makes “use of foreign and international forums as an indirect means of adopting policies that might not win direct approval through domestic political processes” (Hayes 15).

In 2002, for instance, the United States was supposed to have been in the process of negotiating a secret terror treaty with the European Union (Norton-Taylor). In this case, a non-member nation (the United States) attempted to use a regional organization (EU) to enact policies not likely to win the approval of EU member states’ constituents. Leaked

documents indicate the treaty would have made extradition for both the US and EU easier by refusing to grant political immunity and fast-tracking the judicial process. This case illustrates that the public can rarely check, or even have knowledge of, legislation that takes place in IOs, making them a venue through which democracy can be circumvented

The practice of policy laundering, while certainly a quick and easy method of enacting legislation, is likely to have a negative impact on global democratic progress, particularly for developing democracies. First, as an alternative to the slow, cumbersome processes endemic to democracies, policy laundering appeals tremendously to the leaders of developing democracies. Studies suggest that in yet unconsolidated democracies, leaders often seek to escape full democratic accountability, and international practices of circumventing domestic democracies will seem like a legitimate and easy method of evading accountability, weakening already unstable political cultures, trust, and a sense of official accountability to constituents (Snyder 2000). In countries where the constituents themselves have yet to develop a strong sense of entitlement to responsible government behavior, the problem will be compounded even further and democratic progress stalled. In consolidated democracies however, the abuse of policy laundering is likely to be checked by both strong independent media outlets and by constituents with a strong sense of democratic and civic duty.

Secondly, the practice is a hypocritical one likely to contribute to the delegitimization of the democracy promotion agenda of Western nations. The 2008 Economist Intelligence Unit’s Index of Democracy indicates that “spread [as well as maturation] of democracy has come to a halt” and in part attributes this



halt to “a combination of double standards in foreign policy” such as policy laundering (1-2). While Western nations extol the virtues of democracy and criticize nations for denying its citizens to the right to democracy, they seek to circumvent the very levers of democracy, leaving developing democracies “troubled and confused” (Annan).

EVISCERATION OF CIVIL LIBERTIES IN THE NAME OF COUNTER-TERRORISM

The constraints on civil liberties that followed in the wake of the War on Terror is indicative of the notion that IOs can jeopardize constitutionalism. It is one of the first examples to suggest “expanded international governance is not always toward increased constitutional entrenchment” (Scheppelle 2006). Measures designed to bolster security have been used as a blanket excuse to violate civil liberties. Freedom of speech has been significantly curtailed, and questionable tactics such as racial/ethnic profiling, suspension of habeas corpus, and harassment of journalists have been increasingly employed. In several consolidated democracies, these measures have had little measurable effect on the security of the nations. Pundits in the United Kingdom, for instance, point out that the arrests to conviction ratio is disproportionately high, suggesting that the arrests are often unfounded (Hayes 38). In practice, these measures have encouraged terrorists to drive outsider groups into the arms of radicals, exacerbating, not solving the issue of terrorism. The inefficacy of these measures combined with high profile reports on the cruelties and violence associated with civil liberty abuse has reduced support for measures curtailing civil liberties in the name of national security.

In democracies that rank higher on the Economist Intelligence Unit’s Index

of Democracy such as Germany and the Netherlands (13th and 3rd most democratic in 2008, respectively), public resistance to such legislation has been so high that they have found it difficult to respond to the European Union’s call for “sharper tools and better intelligence-sharing in the war on terror” (Hayes 4). The level of resistance, made possible by strongly ingrained democratic cultures and independent media, has largely checked the degree of infringement in these nations. In France, for instance, “the role of media in keeping a critical eye on the authorities remains pivotal to scrutiny of the civil liberties implications of French security policy” (Hayes 35).

As the level of consolidation decreases however, so too does the ability to check civil rights infringement, and as a result, “flawed democracies” experience rampant violations of civil rights and breakdown of the rule of law. Broader international mandates to curtail civil liberties as well as opportunities to seek legislation unlikely to be approved at federal levels have offered these leaders further chances to escape full democratic accountability as well as a license to do as they please. In Colombia for instance, the war on terror has been used to suppress regional dissent and political opposition. Two major insurgency groups, wholly unrelated to international terrorism, the Revolutionary Armed Forces of Columbia (FARC) and the National Liberation Army (ELA) have been categorized as terrorist groups. President Alvaro Uribe’s position that Colombia does not negotiate with terrorists has led to an uncompromisingly violent approach to these organizations, and political opponents have been subject to arbitrary detentions and searches under these laws. The Legislative Act No. 2 2003 grants judicial powers to the military, allowing the military to place



suspected terrorists under arrest (Hayes 44). The government enacted severe punishments for dissidents as well as restricted the definition of legal media sources to government officials. As a result, the government has developed a strong hold on the media and has created a severe information deficit. The stranglehold on media in the name of security helps to account for why resistance to civil liberty infringement has been low despite the fact that levels of abuse are quite high. Combined with low political participation and low political culture, the populus plays a limited role in resistance.

Usage of laws to escape democratic accountability and to pursue longstanding agendas is even more evident and rampant in hybrid and autocratic regimes. For instance, as a hybrid regime, Russia has placed restrictions on media (to the point where it has backed contract style murders of journalists) and “tried to convince the international community that its operation in Chechnya is a contribution to the international campaign against terrorism” (Hayes 39). This exposes a fundamental flaw in the types of legislation being passed at the international level—an ease with which separatist and dissident groups can be classified as terrorists and as threats to national and international security. Many governments have adopted counter-terrorist measures approved at the IO level and then used these measures to crack down on dissenting separatist groups. The Chinese autocratic regime illustrates this point well. Obsessed with a One China policy that seeks to maintain Chinese territorial integrity, China has used the pretext of counter-terrorism to “crack down on ethnic Uighurs, most of whom are Muslims [and] oppose Chinese rule in the oil-rich Xinjiang Uighur Autonomous Region, in the west of China. Tens of thousands of Uighurs are reported to have been detained over the last three years as

suspected “separatists, terrorists or religious extremists” (Hayes 23-24). In the case of China, as well as Russia, broad and vague calls for counter-terrorism measures have given these states democratic cover and the illusion of legitimacy.

CONCLUSION

The exploitation of counter-terrorism mandates has troublesome implications for the growth and maturation of autocracies and in particular, developing democracies. A lack of oversight over the broad mandates of IOs will eventually lead to a delegitimation of IOs as these effects (i.e. restriction of freedom of speech, gag orders on the media, discrimination against ethnic minorities, etc.) run counter to the goals of most international organizations and are in fact the very scenarios IOs seek to prevent. For these reasons international organizations must seek to democratize and to perform checks on the enforcement of their own legislation. Otherwise, hypocrisy and inefficacy will surely result in delegitimation and consequently, an inability to foster democratic growth and progress.



Works Cited

Annan, Kofi. "In Larger Freedom: Decision Time at the UN." Foreign Affairs 84.3 (2005): 63-74.

---. "Farewell Speech." The Truman Presidential Museum and Library. Independence, Missouri. 11 Dec. 2006.

Arendt, Hannah. The Human Condition. Chicago: University of Chicago Press, 1958

Dahl, Robert A. "Can International Organizations Be Democratic? A Skeptic's View." Democracy's Edges. Eds. Casiano Hacker-Cordn and Ian Shapiro. New York: Cambridge University Press, 1999. 19-36.

"2008 Economist Intelligence Unit's Index of Democracy." The Economist Online. 2008. The Economist Newspaper Limited. 10 May 2009 <<http://graphics.eiu.com/PDF/Democracy%20Index%202008.pdf>>.

Hayes, Ben and Aidan White. Journalism, Civil Liberties, and the War on Terrorism. Belgium: International Federation of Journalists, 2005.

Keohane, Robert O., Stephen Macedo, and Andrew Moravcsik. "Democracy Enhancing Multilateralism." International Law and Justice Working Papers 2007/4.

Norton-Taylor, Richard. "Europe-US Terror Treaty Plan Raises Rights Fears." The Guardian Online. 3 Dec. 2002. Guardian News and Media Limited. 10 May 2009 <<http://www.guardian.co.uk/world/2002/sep/03/usa.humanrights>>.

Scheppele, Kim. "The Migration of Anti-constitutional Ideas: the Post-9/11 Globalization of Public Law and the International State of Emergency." Ed. Sujit Choudhry. The Migration of Constitutional Ideas. Toronto: University of Toronto, 2006.

Snyder, Jack. From Voting to Violence: Democratization

and Nationalist Conflict. New York: W.W. Norton and Company, 2000.

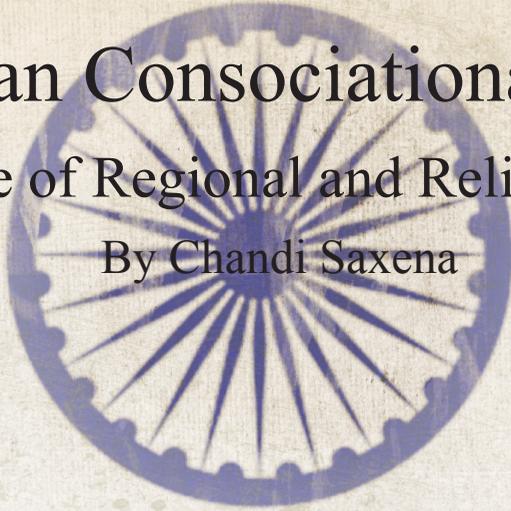
(Endnotes)

1 Furthermore, embryonic democracies are oftentimes weak and financially incapable of contributing funds due to high political instability, domestic unrest, and increased possibility of war.

2 Which as a flawed democracy and financially weak state exercises fairly feeble influence over the UN.







Indian Consociationalism:
The Variance of Regional and Religious Stability
By Chandi Saxena

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After gaining its independence in 1947, India faced the challenge of maintaining a stable democracy with an array of diverse religious, linguistic, caste, ethnic, and regional groups spread across its territory. Since then, India has successfully used consociationalism as a solution to its religious and regional conflicts. The obvious question, therefore, is why consociationalism soothed regional conflict while it failed to do so in the case of religious conflicts. Why when religious riots occur relatively frequently do regional riots rarely occur?

This variance in the effectiveness of consociationalism is important because raises the conditions under which the strategy functions well in democracies, as well as the factors that lead to conflict. The case-study of India's political structure recommends certain applications of consociational theory in similar nations, such as Iraq, Afghanistan or Rwanda. These nation's governments are searching for systems with which to develop their nations democratically in the face of ethnic conflict. This paper will demonstrate that structural conditions such as the size of groups involved, as well as their relative power and the nature of their dispersion in the population, determine the effect of consociationalism.

Background

It is important to define significant terms to avoid confusion before analyzing India's diversity. Notable political scientist with an expertise in nationalist studies, Jack Snyder, defines nationalism as:

“the doctrine that a people who see themselves as distinct in their culture, history, institutions, or principles should rule themselves in a political system that expresses and protects those distinctive characteristics.”¹

This definition is broad enough to include nationalism in which the group does not wish for secession or complete autonomy but rather just the management of internal affairs in an ethnofederal structure. Ethnic conflict is often a result of the clash of the nationalisms of two or more groups. This includes religious, cultural, and linguistic groups, and therefore includes both regional and religious-based diversity in India. A consociation is defined by the American Heritage Dictionary as “a political arrangement in which various groups... share power according to an agreed

formula or mechanism.”² Arend Lijphart, a political scientist with an expertise in comparative democratic institutions, presents a model of consociationalism, which includes four common characteristics:

“(1) grand coalition governments that include representatives of all major linguistic and religious groups, (2) cultural autonomy for these groups, (3) proportionality in political representation and civil service appointments, and (4) a minority veto with regard to vital minority rights and autonomy.”³

The presence of multiple characteristics from the ones shown above makes a country more consociational, but not all four characteristics are necessary for a country to be consociational. Characteristics such as having a coalition government or political autonomy for minority groups enable a state to establish a power-sharing system between its majority and minority groups. India's system of power-sharing displays many of the characteristics identified by Lijphart in his model of consociationalism.

Lijphart describes the representation of a grand coalition in Indian politics via the cabinet system, where the Congress Party is balanced into Rajni Kothari's (notable political scientist specializing in political systems of India) “party of consensus” by “parties of pressure,” minor parties that surround and enable the Congress Party's centrist stance. Lijphart also argues that the system becomes consociational as the Congress Party itself develops a system of intraparty democracy to incorporate the different sections of society its members represent. The ethnofederal nature of India's democracy is constructed of states divided linguistically into autonomous cultural subunits that develop respective cultures, with the center maintaining a very strong presence, especially in times of crises when the center has intervened into state matters.⁴ The Constitution of India also grants power to regional authorities to “establish and administer educational institutions.” The government also allows and organizes *panchayats*, local village heads, to govern their villages.⁵ Minority veto has also been applied to alleviate regional tensions, as in 1965, when Hindi was not made the exclusive official language of the nation because southern non-Hindi speaking regions did not approve of the policy.⁶

Consociationalism additionally affects religious matters in India. The Constitution of India grants “freedom to manage religious affairs” as well as “freedom to attend religious instruction,” which can



be established and organized privately.⁷ Religious authorities also have a say in separate personal laws, such as the 1955 Hindu Marriages Act, the 1956 Hindu Succession (inheritance) Act, the 1937 Muslim Personal Law (Shariat) Application Act, the 1939 Dissolution of Muslim Marriages Act, the 1986 Muslim Women (Protection of Right on Divorce) Act, and the 1872 Indian Christian Marriage Act, all of which provide a degree of political autonomy to minority groups by having each group's cultural values dictate its separate law. The Muslim acts were enacted according to the wishes of the Muslim Personal Law Board, while the Christian acts were approved by the Roman Catholic Church. The minority veto provision was also invoked in the mid-1980s, when the Muslim community was able to veto the decision of the Supreme Court regarding divorce law.⁸

The major difference between the systems for the two types of diversities is that while regional cultures generally reside within a set territory, religious groups in general are more interspersed in the population. Some notable exceptions such as Punjab, where most of the Sikhs reside (although there is a large proportion of Sikhs in Delhi) and Kashmir, where Muslims make up the majority of the state, exist, but are less common. Another difference is the relative size of the two types of groups. Regional groups range from containing 0.05% to 16% of the country's population, whereas religious groups are 80.5% Hindu, 13.1% Muslim, 2.31% Christian, 0.74% Sikhs.⁹ The disparity

in the effectiveness of the consociational systems might be explained by these differences in the structural characteristics of the regional and religious groups.

Theory

Size of Groups

Civil conflict depends on the size of the groups involved relative to the area in which they are distributed. If the two groups are both large enough in their respective areas to be politically salient¹⁰, the odds of the groups mobilizing and eventually entering into a conflict are high. In a democracy, even smaller groups can decide the election as swing voters, and therefore their political salience is important. When a group is much smaller than the other groups and is consequently not politically salient, conflict will not result. Furthermore, if both groups are equally large or much smaller than another existing large group, and both are needed to win an election, it is possible that elites have the incentive to group them together and build inter-group ties and civic nationalism between these two groups in order to win elections. In sum, the relative size of the groups relates to whether they are politically salient and whether conflict results between them.

In India's ethnofederal system, regional groups are generally not large enough to be politically salient. Each cultural group (state) is of a roughly similar size, save the smaller Eastern states. Therefore, it is more difficult and less beneficial for elites to find a single

State	Hindu %	Muslim %	Others %	Muslim-Hindu Ratio	Riots per 10 Million	Killed per 10 Million
Himachal Pradesh	95.9	1.7	2.4	0.018	0.000	0.000
Punjab	34.5	1.2	64.3	0.035	0.000	0.000
Kerala	57.3	23.3	19.4	0.407	0.014	0.023
Haryana	89.2	4.6	6.2	0.052	0.016	0.031
Tamil Nadu	88.7	5.5	5.8	0.062	0.014	0.033
Orissa	94.7	1.8	3.5	0.019	0.025	0.067
West Bengal	74.7	23.6	1.7	0.316	0.019	0.107
Rajasthan	89.1	8.0	2.9	0.090	0.018	0.143
Bihar	82.4	14.8	2.8	0.180	0.031	0.162
Madhya Pradesh	92.8	5.0	2.2	0.054	0.016	0.286
Andhra Pradesh	89.1	8.9	2.0	0.100	0.020	0.331
Uttar Pradesh	81.7	17.3	1.0	0.212	0.049	0.524
Karnataka	85.4	11.6	3.0	0.136	0.107	0.547
Maharashtra	81.1	9.7	9.2	0.120	0.040	1.337
Gujarat	89.5	8.7	1.8	0.097	0.231	1.780

Fig. 1: Hindu-Muslim Violence in selected states in the 1990's.



group politically salient enough to help them win the federal level elections. On the state level, since most of the states contain only one dominant cultural group, elites seek votes from the dominant group. There have been notable exceptions when states, such as Punjab and Kashmir, have asked for greater representation or secession, but the central government's dominance and interference thwarted their success.¹¹ Each single state (Punjab, Kashmir) is not large enough to mobilize a significant percentage of the national population to become politically salient. Furthermore, these two cases can also be attributed to religious differences, since Punjab consists most of the country's Sikh population, and Kashmir is dominantly Muslim. In other words, the lack of a "core ethnic region," as defined by political scientist Henry Hale, at the federal level leads to state survival by avoiding the challenge of a single region claiming power over the center. Security threats are alleviated since no one group is significantly bigger than the others to pose a credible threat, making cooperative agreements more credible since renegeing by one single group is a losing strategy.

As far as the religious groups are concerned, Hindus do make up a large majority of the population. However, Muslims are not so small a group as to lack political saliency; the power-sharing system, along with the drawing of the district lines, gives Muslims considerable power in elections as swing voters. For example, the Congress Party in India protects Muslim interests, and it promotes its constituency base by gerrymandering districts to enable Muslims to become swing voters. William Vanderbok, distinguished political scientist specializing in South Asian studies and ASPAC President, analyzes how a 1% increase in the Muslim population in a district generated a 0.15% increase in party mobilization for the Congress Party at the national level.¹² In this case, successful gerrymandering compels elites to mobilize a minority in the population. This is especially important for countries such as India that have multiple parties and coalition governments, where garnering votes from minorities can lead to the accumulation of seats in the Parliament.

Relative Power and Dispersion of Group

The relative power and dispersion of the groups present can also indicate whether consociationalism will alleviate or worsen ethnic tensions. James Fearon, a political scientist specializing in ethnic conflict at Stanford University, developed

a realist theory explaining the rationalist causes of war as an outcome of the following factors:

"(1) anarchy; (2) expected benefits greater than expected costs; (3) rational preventive war; (4) rational miscalculation due to lack of information; and (5) rational miscalculation or disagreement about relative power."¹³

Barry Posen, a security studies expert at MIT, applies Fearon's realist theory to the situation of ethnic conflicts, and concludes that groups predict future behavior via their historical record. This theory is harder to apply to the case of India due to the presence of both peaceful and conflicting histories between both groups. Most importantly, he presents the idea of the two groups having different degrees of power due to their "relative rate of state formation," which presents a "window of vulnerability and opportunity"¹⁴ to the better-established group to prevent the other group from gaining more power.¹⁵ Therefore, if groups are close in their relative level of power and development, the chance of conflict between them is lower than for groups where there is a gap in power, especially if conditions present a window of opportunity.

In the case of India, most regional groups tend to have about the same amount of power due to their fairly similar size and proportional representation at the federal level. In the case of religious groups, on the other hand, Hindus seem to have more power by sheer size, in addition to the development of Hindu nationalism through communal activities and the airing of Hindu epics such as Ramayana, Mahabharata, and Chanakya on television.¹⁶ Hindus, on the other hand, perceive Muslims as gaining disproportional representation politically through the power-sharing system and the ethnofederal drawing of district lines. Applying Posen's model, Hindus recognize a window of opportunity and vulnerability to prevent Muslims from gaining more power in the future.

The dispersion of a group is also important in terms of whether the powerful groups will have good ties within the consociational system. When a minority group is concentrated in one particular area, the odds of secession become high.¹⁷ However, when several ethnic groups exist, the groups' contained territories do not lead to secession due to a combination of factors. These include the spread of the federal government's focus regarding conflicts throughout the country and the presence of a strong central state, as is the case in India.



The dispersion of Hindus and Muslims throughout the country is also important, since the lack of a Muslim state inhibits self-governance, and their interspersed within the population next to Hindus raises security concerns. When a minority is concentrated in one single area, it is harder for local majorities to attack them, and easier for the minority to move in an emergency to a surrounding country. However, when the minority group is dispersed within the population, Posen discusses how the lack of such an alternative worsens the security dilemma and makes an offensive strategy seem more appealing than a defensive one.

Alternative Explanations

Political scientists point to alternative explanations for the nationalist conflicts in India. Ashutosh Varshney, a specialist in ethnic studies in South Asia, for instance, points to the existence of “civil society” in preventing riots in some areas, while its absence promotes riots in others.¹⁸ While his argument is convincing, it is more important to understand why civil society is formed and persists in certain states, and why it dissolves in others. Furthermore, the data section demonstrates how one of the states with the best history of an inclusive civil society between the Hindus and Muslims, Uttar Pradesh, also had the fewest riots in the 1990s with 0.524 people killed per 10 Million.¹⁹

Other scholars point to historic relations between groups. The classic Ancient Hatreds theory, which characterizes violent conflicts between groups as legendary and even innate. However, both violent and strong diplomatic types of histories are present in the case of both regional and religious groups in India. Regional groups have had a history of warfare during the rule of the Rajput princes, and they have shown cooperation and unity during the fight for independence in the late nineteenth and early twentieth centuries. In religious groups, Muslim leaders ruled a predominantly Hindu India for 800 years, but there is also the existence of peaceful history between the two groups, as well as the presence of a “composite culture,” in which Hindus and Muslims have borrowed traditions from each other. Therefore, which history of the group’s relations is emphasized in the media or used by elites depends instead on structural factors as to whether Hindus and Muslims are separate voting blocks or an inclusive block.

Data

It is difficult to obtain data on regional conflicts since they occur so rarely in India. The theoretical analysis regarding their absence along with the Indian ethnofederalist system provides a good contrast with the relative perseverance of religious riots varied across different states of India. Figure 1 summarizes the Hindu-Muslim violence in 15 select states of India. The Muslim-Hindu ratio is compared to the number of riots and deaths in each state in the 1990’s (Fig. 1) to evaluate the significance of the relative sizes of the groups to whether riots will occur locally. The results are plotted as a graph of the number of riots per 10 million people and the number of people killed versus the Muslim-Hindu ratio in Figure 2. As the graph illustrates, at a very low Muslim-Hindu ratio (or at the points where the Muslim population was too small to be politically salient to be mobilized by elites and large enough to separate a distinct identity), riots rarely occurred. Similarly, when Muslim-Hindu ratios were very large, both groups were needed to garner enough votes to win the elections, and thus both groups were mobilized collectively. At an intermediate level of a Muslim-Hindu ratio, that of around .1 to .2, Muslims comprised a percentage of the population able to be mobilized separately to swing voters, therefore becoming politically salient. Their identity as a separate group, combined with the elite manipulation of the two groups to compete, led to the security dilemma and riots.

The role of consociationalism can also be analyzed in regard to the conditions under which it promotes or alleviates ethnic tension. This is analyzed in Figure 3, where the variance in the level of consociationalism incorporated into the Indian state over time is compared to the fluctuation in the occurrence of riots. Since there have not been a significant number of regional based riots, the level of violence in the chart effectively identifies religious riots. It compares how in during the period of British rule, when consociationalism was high under the British ‘divide and rule’ policy, the level of violence was high as well. In the Nehruvian era, consociationalism lowered, as efforts were made to increase ties between Hindus and Muslims, and politically their interests were represented collectively in the form of the Congress Party. In later years, consociationalism grew as other parties came into the picture, and competition forced all parties to exploit religious differences in



order to garner votes. Steven Wilkinson describes the chart and counters Lijphart's conclusions²⁰:

"The results show that Congress rule, which is after all Lijphart's central mechanism through which consociationalism is supposed to work, does not have the expected negative relationship during the period of greatest Congress dominance in the 1950s and 1960s. Congress rule is positively related to the level of riots over the whole 1950-95 period and only becomes insignificant (column 2) or negatively related (column 3) to the level of riots once we introduce the variables that measure the Muslim percentage in the cabinet and the police, which restricts the observations to the years since 1974 and 1982, respectively. Only in the post-1982 period during which Lijphart sees a weakening of consociationalism does Congress rule in fact have the negative effect on riots that he asserted existed during the Nehru years."²¹

Congressional rule, Lijphart's indicator for consociationalism, did not lead to a low level of violence for the entire 1950-95 period. Consociationalism was consequently not the cause for domestic peace

in India, as conflicts did occur at a "high" level of violence even during Congress' rule. Instead, consociationalism can increase religious tensions by mobilizing both groups as separate entities in which each group perceives the other as having more representation, thereby leading to the security dilemma, where the smallest spark quickly develops into a riot.

Conclusions and Recommendations

The prevalence of riots in India and in other democracies depends on the structural conditions of the system. In an ethnofederal consociational system, the existence of several groups of comparable size and power that are locally dispersed can lead to the spread of conflict throughout the country, thereby alleviating ethnic tensions and preventing state collapse. In such a case, it is necessary to have a strong central presence, as in India, to avoid the risk of secession. In the case of fewer groups, in which one group clearly represents the majority population, and the groups are dispersed throughout the nation, the consociational dual power system tends to increase ethnic tensions by worsening the security dilemma and favoring minorities. This leads to a window of opportunity or

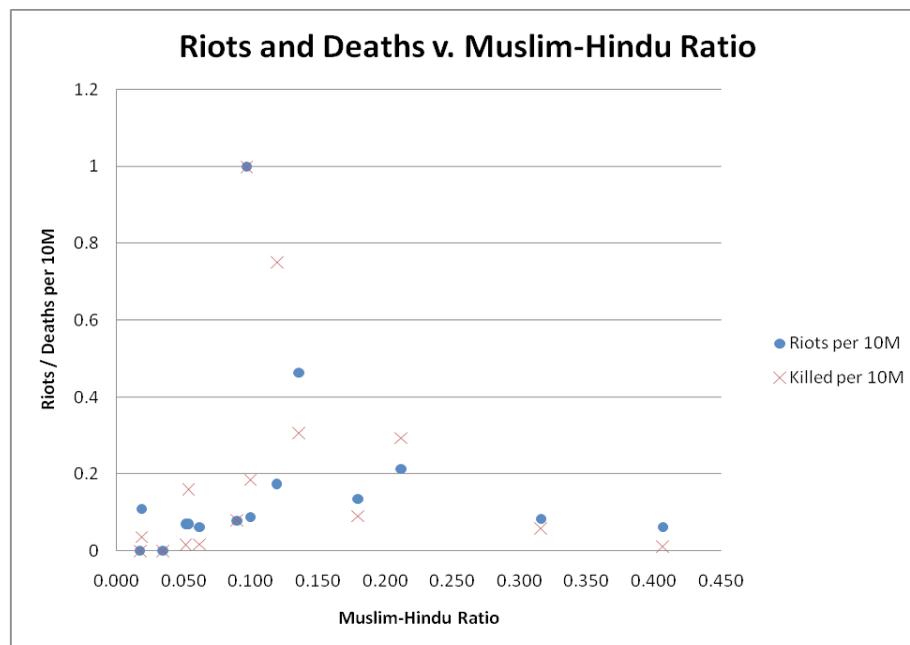


Fig. 2: Occurance of riots versus Muslim-Hindu Ratio in 15 states during the 1990's.

vulnerability for the majority power to start a riot.

Even within such a consociational system, however, the degree of local mobilization of the group on the state level matters. When the minority population is much smaller than the majority population, it is too small a group to present any significant voting block to elites and is therefore not politically salient. When the minority population is too large as compared to the majority, the two are treated as a collective group, since neither group alone can garner enough elite votes to win the election. When the minority-majority ratio is intermediate, which is 0.1 to 0.2 for the case of Muslims and Hindus in India, minorities become swing voters and are mobilized independent of the majority; the elites grant benefits to the constituency, which worsens the dual power scenario and the security dilemma and leads to conflict.

Therefore, while consociationalism is a good solution for countries with many localized groups of equal relative power, it can worsen ethnic relations in the case of a few groups dispersed throughout the population, especially if one group is clearly the majority, while other groups are being allowed dual power. For example, were the United States to establish consociationalism and provide cultural autonomy to African Americans, Hispanics, and other minorities, ethnic violence would probably escalate instead of decreasing. This would especially be the case if minorities, due to the careful drawing of district lines (or gerrymandering), were to be critical swing voters for elections. In such cases, the state should instead

try to draw broader district lines such that the votes of the majority and minority need to be collectively taken in order to win the elections; for India, this minority-majority ratio would be around .3 to .4. Furthermore, instead of setting up consociational dual power systems, in such cases, a uniformity of law should be the priority. Instead of having separate personal laws for each religion, such as India’s Hindu Marriages Act and the Muslim Shariat Act, a universal law which takes values from each religion should be enacted to encourage civil political values in the citizenry, while welcoming them to practice religious values privately. Building civic or territorial nationalism in such a case is critical to avoid ethnic nationalism of the different groups, and therefore to avoid riots and conflicts.

	“Responsible Government” (1919-47)	Nehruvian Era (1947-66)	Post-Nehru (1967-95)
Yearly average of deaths in Hindu-Muslim riots (per 10 million)	3.5	0.7	3.3
Level of Violence	High	Low	High
Status	Consociational	Nonconsociational “ranked” state	Increasingly consociational

Fig. 3: Variance of Consociationalism with Level of religious violence



Resources

- Brass, Paul R. "The Gujarat Pogrom of 2002." *Items & Issues*. 4.1 (2002): 1+.
- "Census of India 2001." 2001. *Census of India*. 16 Apr. 2007 <<http://www.censusindia.net/>>.
- "Constitution of India." *Ministry of Law and Justice*. 20 Jan. 2006. Government of India. 2 May 2007 <<http://indiacode.nic.in/coiweb/welcome.html>>.
- Fearon, James D. "Rationalist Explanations for War." *International Organization* 49.3 (1994): 379-414.
- Hale, Henry E. "Divided We Stand: Institutional Sources of Ethnofederal State Survival and Collapse." *World Politics* 56.2 (2004): 165-193.
- Hale, Henry E. "The Makeup and Breakup of Ethnofederal States: Why Russia Survives where the USSR Fell." *Perspectives on Politics* 3.1 (2005): 58.
- Lake, David A. and Donald Rothchild. "Containing Fear: The Origins and Management of Ethnic Conflict." *International Security* 21.2 (1996): 41-75.
- Lijphart, Arend. "The Puzzle of Indian Democracy: A Consociational Interpretation." *American Political Science Review* 90.2 (1996): 258-268.
- Posen, Barry R. "The Security Dilemma and Ethnic Conflict." *Survival* 35.1 (1993): 27-47.
- Posner, Daniel N. "The Political Salience of Cultural Difference: Why Chewas and Tumbukas Are Allies in Zambia and Adversaries in Malawi." *American Political Science Review* 98.4 (2004): 529-545.
- Radnitz, Scott. "Working with the warlords: designing an ethnofederal system for Afghanistan." *Regional & Federal Studies* 14.4 (2004): 513-537.
- Rudolph, Susanne H. and Lloyd I. Rudolph. "Modern Hate." *The New Republic* 208.12(1993): 24-29.
- Snyder, Jack. *From Voting to Violence: Democratization and Nationalist Conflict*. New York: W.W. Norton & Company, 2000
- "Three Major Religions in every State, 1991." *Census Data Online*. 1991. Census of India. 16 Apr. 2007 <<http://www.censusindia.net/cendat/index.html>>.
- Vanderbok, William G. "The Tiger Triumphant: The Mobilization and Alignment of the Indian Electorate." *British Journal of Political Science* 20 (1990): 237-261.
- Varshney, Ashutosh. "Ethnic Conflict and Civil Society: India and Beyond." *World Politics* 53.3 (2001): 362-398.
- Varshney, Ashutosh, and Steven Wilkinson. *Varshney-Wilkinson Dataset on Hindu-Muslim Violence in India, 1950-1995, Version 2*. Cambridge, MA: Harvard University Press, WCFIA [producer], 2004. Ann Arbor, MI: Inter-university Consortium for Political Science Research [distributor], 17 February 2007.
- Varshney, Ashutosh. "Understanding Gujarat Violence." *Items & Issues*. 4.1 (2002): 1-5.
- Wilkinson, Steven I. *Votes and Violence: Electoral Competition and Ethnic Riots in India*. New York: Cambridge University Press, 2004.



Endnotes

1. Snyder, Jack. *From Voting to Violence: Democratization and Nationalist Conflict*. New York: W.W. Norton & Company, 2000, 23.
2. “consociation.” *The American Heritage® Dictionary of the English Language*, Fourth Edition. Houghton Mifflin Company, 2004. 03 Nov. 2007. <Dictionary.com <http://dictionary.reference.com/browse/consociation>>.
3. Lijphart, Arend. “The Puzzle of Indian Democracy: A Consociational Interpretation.” *American Political Science Review* 90.2 (1996): 258.
4. Lijphart, 260.
5. “Constitution of India.” Ministry of Law and Justice. 20 Jan. 2006. *Government of India*. 2 May 2007 < <http://indiacode.nic.in/coiweb/welcome.html>>.
6. Lijphart, 262.
7. Constitution.
8. Lijphart, 261.
9. Census 2001.
10. A group is politically salient if it is a group that elites need to garner support from in order for them to rule.
11. Lijphart, 260.
12. Vanderbok, William G. “The Tiger Triumphant: The Mobilization and Alignment of the Indian Electorate.” *British Journal of Political Science* 20 (1990): 237-261.
13. Fearon, James D. “Rationalist Explanations for War.” *International Organization* 49.3 (1994): 381.
14. The group that is more developed views the high rate of development of the less developed group as a threat, and understands that in the future, the less developed group may become more developed than the receding power. The currently more developed group consequently has an incentive to preemptively attack the less developed group, as a potential conflict in the future would favor the developing group, but in the present, the more developed group still has an advantage. The more developed group has a “window of opportunity” in which to preemptively attack the less developed group, before it can overtake the receding power.
15. Posen, 28-34.
16. Rudolph, Susanne H. and Lloyd I. Rudolph. “ModernHate.” *The New Republic* 208.12(1993): 26.
17. Hale, Henry E. “Divided We Stand: Institutional Sources of Ethnofederal State Survival and Collapse.” *World Politics* 56.2 (2004): 172.
18. Varshney, Ashutosh. “Ethnic Conflict and Civil Society: India and Beyond.” *World Politics* 53.3 (2001): 362.
19. From data compiled from Wilkinson, Steven I. *Votes and Violence: Electoral Competition and Ethnic Riots in India*. New York: Cambridge University Press, 2004, 88 and 1991 Census of India. Also see Appendix.
20. Lijphart, 258.
21. Wilkinson, 132.





The Latest Changes in the British Constitution

By Matthew Karambelas

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The constitution of the United Kingdom, although not codified and not completely written, has changed in the past four decades. Powers of institutions have shifted and the structures of those institutions have changed. The British constitution has developed over time from an amalgam of historical events and government actions. Major constitutional changes in the U.K. in recent years include: the supremacy of the law of the European courts, an increase in the role and importance of British judges in the government, the reform and the rise in significance of the House of Lords, the insertion of fundamental law by certain Acts of Parliament (especially the Human Rights Act 1998 and the Constitutional Reform Act 2005), changes in the electoral system, and devolution of government power to Wales and Scotland.

The British system of government is a parliamentary democracy, called the Westminster model. There are two houses of parliament, the House of Commons and the House of Lords. The House of Commons is made up of elected officials from each constituency in the country. The members in the House of Lords are not elected, and some are hereditary peers. Presently most of the Lords are appointed because they are experts in a certain field, and their role is to review legislation passed in the House of Commons.

Public sentiment is often the driving force behind constitutional change in the British system. The 1960's marked the U.K.'s decline as a world power in wake of the dissolution of the British empire. This political and military change was joined by rampant cultural and social changes- in these uncertain times, the public came to doubt their government. This popular anxiety led to calls for a clear definition of the government's power and role in society.

British politicians echoed this discontent and called for a change in government, under a new constitutional order.¹

Constitutional changes have since taken place in the U.K., but in ways that these original reformers likely did not foresee. The constitution was not formally codified nor drastically altered, in fact, one of the largest changes took place without constitutionalism in mind. That change was the U.K.'s decision to join the European Economic Community. Anthony King, in his book *The British Constitution*, states that with regard to the European Union and the UK constitutional structure, "No single development in recent times has done more to alter the basic shape of that structure".²

By the time the United Kingdom joined the European Community, the European Court of Justice had already established the supremacy of the laws of the European Economic Community (now a part of the European Union) over any laws of the individual European countries. In a case in Italy about the government take over of an energy company, the European Court of Justice stated that "The transfer by the states from their domestic legal system to the Community legal system of the rights and obligations arising under the [EEC] treaty carries with it a permanent limitation of their sovereign rights".³

The House of Lords judiciary confirmed this supremacy when they effectively nullified the Merchant Shipping Act of 1988 on the grounds that it was adverse to an EEC law already in place. In citing the *Regina v. Secretary of State for Transport Ex Parte: Factortame Ltd. and Others* case, Lord Slynn of Hadley stated that "I, therefore, conclude that the United Kingdom's breach of its Community obligations by imposing and applying the conditions of nationality, domicile and residence in and pursuant to the Merchant Shipping Act 1988 was a sufficiently



serious breach so as to entitle the respondents to compensation for damage directly caused by that breach”.⁴

Along with these decisions came a structural and functional change in the government. The role of the British courts previously was to solely construe the meaning of Acts of Parliament, never to apply any kind of constitutional judicial review. Now, the courts have the role of enforcing European Union court decisions.⁵ In addition, in the famous European Court of Justice *Simmenthal* case of 1978, the British courts had been given the authority of hearing cases involving the government against individual British citizens who claimed rights under the European Community.⁶ The most significant result of the United Kingdom’s European Community membership was the creation of new power in the British courts to check both the acts passed by Parliament and the actions of the executive government if they came into conflict with European Community Law.

British judges have become increasingly more independent in their decision making process as well. They have loosened themselves from the shackles of strict obedience to precedent. In a statement to the House of Lords in 1966, head of the law lords Lord Gardiner stated that sticking by precedent completely may lead to wrong judgments, and therefore the courts must rule against precedent in cases that warrant it. Additionally, the courts have been paying more attention to the original intent of the legislators instead of only looking at the text of an act of parliament. This was the result of the *Pepper v. Hart* case where the court allowed the observation of statements made by MP’s or Ministers.⁷ An example of this would be looking at Hansard, the record of British Parliamentary debates. Before this case, it would have been considered adverse to Parliamentary privilege

to do such a thing.⁸ Thus the courts now have more avenues to let them rule whichever way they want to rule on a case. The trend here is that British judges are wielding more and more power in the British constitutional system, and are using their imagination to make waves in the government.

Significant reforms to the House of Lords have been a noteworthy aspect of constitutional change in recent years. These reforms to the House of Lords have lent the House increased legitimacy and redefined their role in the government. Subsequently, their awareness of their legitimacy has caused a desire for them to rise up from their slumber to being more assertive.⁹ They have increasingly protested legislation from the House of Commons. The Blair government enjoyed having none of their bills defeated in the House of Lords from 1997 to 2005, and now the Lords defeat 35% of legislation from the Commons, more than half of which are ultimately defeated by the government.¹⁰

In addition to taking more initiative in the legislative process, the House of Lords has also taken initiative in the area of constitutional reform. They have formed a Select Committee on the Constitution in 2001 following the Wakeham Commission’s suggestion that the House of Lords should take a role in the protection of the British constitution.¹¹ For example, the House of Lords has started to act as sort of a guardian of civil liberties.¹² This reinvented House of Lords has brought with it considerable change as the entire nature of the British Legislature has been redefined.

Certain Acts of Parliament have also been a cause for constitutional change. Traditionally it has been difficult to inject any kind of fundamental law into the British constitution. Scholar Sir Leslie Scarman, in a work titled “English Law



– the New Dimension” in 1974 argued that it is because of the sovereignty of Parliament that makes it hard to achieve a deeply entrenched form of fundamental law.¹³ The sovereignty of the body technically provides Parliament with a way to undo any laws which it passes. However, although there is no official way to establish constitutional law in Britain, Parliament can and does pass acts of higher legal importance. These are supported by deep political entrenchment, which paves the way for essentially embedded constitutional laws.¹⁴ Examples of these acts of higher legal importance, among many others, are the Constitutional Reform Act 2005, and the Human Rights Act 1998.

The legislature and judiciary of the House of Lords was officially separated with the passage of the Constitutional Reform Act 2005, changing the structure of the government. Although there was some de facto separation between the two before the act, an important aspect of the legislation was its transfer of power to new positions. It removed the judicial powers from the Lord Chancellor and created a Lord Chief Justice.¹⁵ Furthermore, the Lord Chancellor had been stripped of his authority to appoint judges to the court with that power now given to a selection commission. The act states “If there is a vacancy in one of the offices... the Lord Chancellor must convene a selection commission for the selection of a person to be recommended”.¹⁶

The Human Rights Act passed by Parliament in 1998 guaranteed British citizens the same protections established by the European Convention on Human Rights, and gave courts the power to apply the rulings of the European Court of Human Rights to British law.¹⁷ This gave the courts the authority to examine the actions of the government if they appeared to be in conflict with individual rights. Although the

act does not say that the rights of the Convention are applicable to all British law, it is understood that the courts have a duty to apply those rights to all laws that are compatible in meaning to the Convention rights.¹⁸

Electoral reforms and referendums have caused a constitutional change as well. Referendums do not have a binding effect on the government and are just used to gauge the views of the people. This is what referendums mean in a legal sense, but in a constitutional sense they can be quite important. They tend to take place when parties have deep divisions within themselves and when an area of profound importance is about to be decided upon.¹⁹ This new development gives the people who vote in the referendums a significant voice in constitutional matters because it puts enormous political pressure on the government to act with the result of the referendum.

The structure and power of the government itself could even change with a referendum or change in the electoral system. If there was ever a referendum held in the UK and the voters voted for proportional representation, it is possible that the Liberal Democrats, a third party, would effectively be the most powerful force in both houses of Parliament.²⁰ In other words, a change in the electoral system would result in the constitutional change of party structure, breaking up the two party system and giving a minor third party essentially the most power.

The process of devolution in the United Kingdom has brought about significant change to the British constitution. With respect to Wales, the Government of Wales Act 2006 formed the current Welsh Assembly. The act also provided for the possibility of more legislative power in the future for the Assembly. However, the act itself is more of a symbolic constitutional change



than a substantive one, as it says “This Part does not affect the power of the Parliament of the United Kingdom to make laws for Wales”.²¹ Furthermore, the assembly does not have the authority of primary legislation, which belongs to Parliament.

With respect to Scotland, the advocacy for devolution started earlier, with the victories of the Scottish National Party in Westminster in 1974. With the Conservative Party in the majority between 1979 and 1997, the issue of devolution was not supported or advanced, but came back strong when the Labour Party took over with Tony Blair in 1997.²² The Scottish Parliament was created under the Scotland Act 1998. Although this body does not have complete independence, it is more powerful than the one in Wales. Since it is a parliament and not a national assembly which is restricted by Westminster legislation, the Scottish Parliament has more law-making abilities (ibid). Its powers include mainly domestic fields, such as economic and housing development, education, health, environment, and transportation.

The lack of a formal written document to stand as a constitution makes British constitutional change somewhat difficult to quantify. That said, the British constitution is very much alive and has seen significant change in recent years. Examples of these ways are European court decisions, judgments by British judges, acts passed by the House of Commons, assertions by the House of Lords, the deference of powers to the lands of Scotland and Wales, and the implementation of referendums. The fusion of these alterations has changed the British constitution, and the trends of constitutional change make this period of time especially interesting to witness.

Endnotes

1. See Anthony King, *The British Constitution* (2007).
2. Ibid.
3. See *Flaminio Costa v. ENEL*, European Court of Justice (1964).
4. See Lord Slynn of Hadley, Speech to House of Lords (1999).
5. See Anthony King, *The British Constitution* (2007).
6. Ibid.
7. See Charlotte Littleboy and Richard Kelly, Parliamentary Paper, House of Commons (2005).
8. Ibid.
9. See Meg Russel, “Is the House of Lords Already Reformed?” (2003).
10. See Robert Hazell, “The Continuing Dynamism of Constitutional Reform” (2007).
11. Ibid.
12. See Meg Russel, “Is the House of Lords Already Reformed?” (2003).
13. See Lord Scarman, 1974 cited in Anthony King, *The British Constitution*, (2007).
14. See Anthony King, *The British Constitution*, (2007).
15. See Rodney Brazier, *Constitutional Reform: Reshaping the British Political System*, (2008).
16. See Constitutional Reform Act, (2005).
17. See Murray Hunt, “The Horizontal Effect of the Human Rights Act,” (1998).
18. Ibid.
19. See Rodney Brazier, *Constitutional Reform: Reshaping the British Political System*, (2008).
20. See Robert Hazell, “The Continuing Dynamism of Constitutional Reform” (2007).
21. See Government of Wales Act, (2006).
22. See Anthony King, *The British Constitution*, (2007).





Middle Eastern Democratization:
Paths to change & the current situation in
Saudi Arabia
By Kelly Dalla Tezza

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The road to democratization in the Middle East has proven to be both difficult and treacherous, and yet the West continues to strongly encourage the nations of the Middle East to undertake such a journey in order to promote lasting, long-term peace, both within the region and globally. This journey to modernization, democratization, and liberalization has been challenged by the presence in the region of Islam, and its misinterpretation by groups with a destructive, violent, and ultra-conservative agenda. As Salman Rushdie has asserted, “the restoration of religion to the sphere of the personal, its depoliticization, is the nettle that all Muslim societies must grasp in order to become modern.”¹ The states of the Middle East have developed a negative attitude toward Western powers and their agendas, especially since the end of the Ottoman Empire. This has set Islam, inevitably entangled in the political entities of the region, on a path contrary to modernization, a creation of the West. Some states in the Middle East, however, have the potential to democratize, and the current governments of Saudi Arabia and Jordan will be analyzed in this paper in order to demonstrate that potential.

Democratic systems are lacking in the Middle East due to the way the region’s governmental systems were formed. Because the Middle East is mainly made up of desert landscapes, it was necessary to have a strong centralized system in order to build requirements for society such as irrigation and transportation infrastructure. This societal foundation led to a process of political despotism based on organization and authority without tolerance and diversity, since it meant survival for the residents of the tough desert conditions. This political despotism is a construct in Middle Eastern society that is cultural, habitual, and therefore hard to shed. The presence of oil has also contributed

to the lack of democratic state structures in the Middle East, where oil companies are state-run, which engenders a large, powerful government body. It is said that “oil is an obstacle to democracy in every developing society,” because when the government does not depend on taxes for state revenue, “it loses any incentive to respond to the people.”² The presence of many different ethnic and religious groups contributes to sectarianism and fractionalization, which sharply divide the population and make it extremely hard to exist as a minority in safety, thus resulting in heightened levels of defensive violence.

Another reason why the nations of the Middle East have had a hard time adapting to the ideals of democracy is because many are oil-producing *rentier* states. These states have no motivation to respond to the will of the people because the government is not dependent upon their tax dollars. In *rentier* states, oil revenues tend to strengthen the government, in which there can be tremendous mismanagement, corruption, and opaqueness, while the oil revenues are used to “buy off” the population. The money is given to the people in order to keep them quiet and is, in effect, a bribe against a revolt. People are given health care, homes, life-long jobs with the state, and huge subsidies on a wide variety of products, but are not required to pay taxes. The people in these kinds of states thus have a great deal to lose economically if they begin to push for democratization.

Another issue that arises with the *rentier* states stems from the American dependence on oil. In an effort to promote the stability of the Middle East, the United States over the years has supported authoritarian regimes, which it views as “a collection of gas stations,”³ merely because they keep the oil flowing. It was the prevailing American attitude that:

They [in the Middle East] could do



whatever they wanted ‘out back’... treat their women however they wanted, they could write about America in their newspapers however they wanted, and they could preach intolerance of other religions all they wanted – just keep their pumps open and prices low and be nice to the Israelis.⁴

This attitude of the American government has only encouraged the *rentier* states to continue their form of government, and now that the population growth has become exponential and the governments cannot keep up with the subsidies, the governments will be facing an entirely new problem.

In 2002, prominent Arab scholars published the Arab Human Development Report in conjunction with the United Nations Development Program to highlight the severe concerns about the lack of democracy and proper education in the Middle East, despite its abundance of wealth due to oil revenue. In the coming years, “the Arab world will have to overcome its poverty – which is not a poverty of resources, but a ‘poverty of capabilities and poverty of opportunities’”, the report says.⁵ One issue is that even though these oil-producing nations have high per capita income, their GDP and productivity are extremely low. Much of this dearth of productivity can be attributed to the heavily bureaucratized governments that have formed as a result of guaranteeing every citizen a life-long job with the government, even as the population is expanding exponentially. Another cause is that women are an unused and undervalued resource, sidelined from the workforce. This is not only a societal issue, but a cultural, religious, and political one as well. The low productivity can also be attributed to the lack of a modern educational system, worsened by the absence of reliable internet connectivity and scarcity of reading material.

Because the “mullahs [have] a monopoly on religious practice and education,” many forms of education have become radicalized, leading to a decline in intellectualism and scholarship in the Arab world.⁶ There are about sixty-five million illiterate Arabs, most of whom are female. Because of this “freedom deficit,” about half of young Arabs have a desire to emigrate, seeing their homes as characterized by a lack of human rights and liberties, a shortage of quality education, and restriction of the freedom to speak and innovate.⁷ A new strategy must be developed to reshape the governments of the Middle East in a way that they are able to utilize their oil revenues to promote modern education and stable occupation for all without using subsidies.

Previously, the United States had supported the authoritarian regimes on the condition that they continue to provide oil. Washington has since changed its stance, aggressively pushing for unconditional democracy in the Middle East. This push does not take into account exactly what democratic elections would yield in these countries. Because of an overwhelming anti-Western sentiment, many radical Islamist groups have become popular among the people because such a sentiment is the primary pillar of their ideology. On the other hand, many regimes have welcomed the assistance of the United States because the security and protection it provides is necessary to protect the sovereignty of their nations from other states in the region that have hegemonic goals. While the popularity of the governments has fallen, the popularity of radical Islamist groups has risen. The United States in its push for elections has enabled many radical Islamists to come to power. This is possible because in states which severely oppress those who attempt to form political parties, “the only space for people to congregate without harassment by the



secret police [is] the mosque.”⁸ While every aspiring political opposition group was quickly shut down by the government, Islamist groups had an untouchable congregation space. This has allowed the Islamists to become “fairly well organized and popular,”⁹ and they have gained power in countries in which the United States has forced elections.

One country experiencing many such obstacles to democracy is Saudi Arabia, the protector of the two holiest cities of Islam. Saudi Arabia’s role as the protector of Mecca and Medina makes it difficult to reform because “if you meddle with that culture, you are meddling with the legitimacy of the system.”¹⁰ Saudi Arabia is an oil-producing *rentier* state, which removes the al-Saud family from the responsibility to listen to the concerns of its people. It is a state with an extremely high rate of unemployment, especially for females, ninety-six percent of whom are currently unemployed. Saudi Arabia relies on expatriate labor, where foreigners make up eighty percent of the workforce due to the *mudir* syndrome. Saudi citizens believe that it is embarrassing to take low-level or manual labor jobs, and as a result would rather be unemployed than staff their own oil industry. With so many unemployed, underrepresented men in the cities of Saudi Arabia, radicalism is bred. This syndrome, along with many of the problems of Saudi Arabia can easily be rooted out by reforming the educational system, which can be used “to spread different values, human values.”¹¹

Contemporary moderate Islamists in Saudi Arabia “contend that without opening the mosque and the school – the two strongholds of official Wahhabism – to moderate thinking, the battle for reform and the struggle against extremism cannot be won.”¹² About fifty percent of the curriculum in Saudi Arabia is devoted to

religious teachings that encourage recitation and memorization, rather than analytical and critical thinking, or modern skills such as the ability to use a computer. The educational system, if reformed, would be a tool to foment ideas of tolerance and equality by promoting a more mainstream version of Islam and reducing its substantial hold over the curriculum. In addition, it can be used to root out the *mudir* syndrome by both emphasizing the value of any job and helping Saudi citizens acquire skills that are valued in the modern-day workplace. Today in Saudi Arabia, there is growing pressure from the population for the al-Saud family to open up the country to societal and political modernization. King Abdullah seems to be taking this movement into account, as he has eased restrictions on the Shia population and is constructing eight cities in a part of Saudi Arabia that is currently desert. Emulating many of India’s reforms, King Abdullah is also trying to further develop computer and cell phone technology. Despite these reforms, the educational improvements necessary for democratization are not in the works.

There are four main approaches as to how to bring the Saudi government closer to democracy, including the consolidation of the *Shura* and municipal councils, the expansion of civil society, the promotion of educational reform, and the advocacy of gender equality.¹³ If these reforms are seriously considered by the al-Saud family and by the population, Saudi Arabia will be able to come much closer to democracy. With regard to the *Shura* council, though it was recently expanded in size and given more power, further reforms still need to be made. It is important to transform it into an elected body, even if this process begins incrementally, having half of its members elected rather than appointed by the king and the royal family.¹⁴ It would also be crucial to allow the *Shura* council



some oversight to evaluate other sectors of the government.¹⁵ These reforms seem natural, but every increase in power by the council is a relative loss in power by the royal family.

Another reform measure that must be undertaken is the expansion of the private sector. Nongovernmental organizations have been legalized, but government hold on these organizations has been relatively strong when compared to other countries. It is important to ease the restrictions on the legalization of new organizations to “enhance popular participation in public matters and enable them to inject more elements of moderation into society.”¹⁶ In addition, it is important that Islamic charity organizations are not hindered, even though some of these organizations can be of a radical form.

Education is one of the most important areas to reform, but it has been difficult because of the strong hold of the conservative Wahhabi clergy over the educational system. Two crucial reforms that can be achieved in the short run are the elimination of extremist doctrine from the curriculum and education for teachers to promote moderation.¹⁷ Even though these two reforms would not have immediate short-term effects, they are important in order to set the tone of educational reform so that the Wahhabi clerics realize that education belongs to modernity and not to conservative religious teachings. Finally, it is imperative that the Saudi government advocate for gender equality. Currently, most women are illiterate and unemployed because of the tight restrictions that the government has imposed upon them. Domestic violence and human trafficking are two issues that must be addressed by the government as these are two blatant abuses of the rights of women. “Fatwas that talk about keeping women covered” are an example of the power that the religious clerics have that must be taken away by the royal family,

because social life should not be under the strict control of religion.¹⁸

Unlike Saudi Arabia’s historic image as a conservative and oppressive regime, the country of Jordan is characterized by a cycle of liberation and deliberation. Kings Hussein and Abdullah have both implemented many reform measures, simply to later rescind them. This cycle has developed due to several different factors. First, Jordan is disadvantageously located, bordering both Israel and the West Bank. Due to this location, “about half the population is of Palestinian lineage,” making many of the residents of the nation feel highly underrepresented.¹⁹ This makes Jordanian relations with Israel and Palestine a highly contested issue, especially when Jordan chose to recognize Israel as a sovereign nation in 1994, effectively severing ties with the Arab League. The Palestinians who fled to Jordan following the Israeli occupation of the West Bank “felt that they were treated unfairly and remained estranged from the Jordanian system.”²⁰ While the Palestinian Liberation Organization (PLO) conducted many operations from within Jordan, specifically from within Palestinian refugee camps, King Hussein carried out the attacks of Black September in 1970. Approximately 5,000 Palestinians were killed in the refugee camps, and the PLO was effectively pushed out of Jordan. These interests are quite conflicting, and Hussein “began to see the difficulties of simultaneously accommodating a shift towards negotiations with Israel and increased political opening.”²¹

In addition its unfortunate geographic position, Jordan lacks the resources necessary to sustain a successful economy, namely oil and water. This has held its government structure quite accountable to the wishes of the population, since the regime depends on



tax dollars rather than oil revenue. Currently, deteriorating conditions on its borders, a lack of tangible economic success, and an extremely unpopular foreign policy erode “the regime’s traditional support base,” which is important because making the regime recognize how the people are unsatisfied with policy is an important transitional step to establishing democracy.²² The country’s lack of natural resources and regional allies has forced Jordan to reach out to countries overseas, such as the United States and Britain, for financial aid, leaving its economy “weak and aid-dependent.”²³ However, this dependent relationship has caused the Jordanian government at least to appear to be making steps in the direction of democratization. This has led to a cycle of liberation and deliberation based upon the most recent requirements needed to receive aid from Western countries. The reforms are made simply “to silence critics of [Jordan’s] economic and foreign policies,” rather than to move the country toward democracy.²⁴ This leaves a wide opportunity for external actors to support reform measures within Jordan. All donors of Jordanian aid need to be held responsible for holding Jordan to a high standard in earning its aid through democratic reform measures. Jordan is extremely reliant upon foreign aid to survive, and donors such as the United States need to request real reform efforts from the government to establish a consistent movement in the direction of a liberal democracy.

King Abdullah has instituted many important educational reform measures, such as requiring students to study technical subjects in all grades, mandating computers in every classroom, and requiring uncensored access to the Internet in every school. The educational reforms have spurred some minor political reforms, as they come hand in hand. The king established a 20% quota for women within the municipal governments and re-legalized political parties.

Many of the political reforms were rolled back, however, to maintain stability within the nation, as King Abdullah banned public gatherings and the right to appeal misdemeanor charges. Jordan has a less hindered road to democracy than the other nations of the Middle East, and this path can be easily utilized by countries contributing aid in order to achieve a pro-Western, democratic nation.

The contemporary political situation of the Middle East is extremely precarious, and although Western powers, specifically the United States, strongly advocate democracy in the region, many countries would not necessarily benefit from the institution of a liberal democracy, especially at this point in time. The regimes of the Middle East are characterized by oppressive dictators, a lack of accountability to the people because of subsidy bribes, and a historical resentment of the West and its institutions. Moderate Muslims must also be encouraged to speak out against the radicals in order to bring the religion into the mainstream. The examples of Saudi Arabia and Jordan demonstrate that different countries have different abilities to adapt to and to develop the qualities necessary for a liberal democracy, and Western nations must recognize that they have a great deal of power in economic leverage to guide the democratization of the Middle East.



Endnotes

1. Rushdie, Salman. "Yes, This Is About Islam." *New York Times*, November 2, 2001.
2. Ignatieff, Michael. "Iranian Lessons." *The New York Times*, July 17, 2006.
3. Friedman, Thomas. "Brave, Young, and Muslim." *The New York Times*, March 3 2005.
4. Ibid.
5. Friedman, Thomas. "Arabs at the Crossroads." *The New York Times*, July 3, 2002.
6. Friedman, Thomas. "Breaking the Circle." *The New York Times*, November 16, 2001.
7. Friedman, Thomas. "Arabs at the Crossroads." *The New York Times*, July 3, 2002.
8. Ibrahim, Saad Eddin. "Islam Can Vote, If We Let It." *The New York Times*, May 21, 2005.
9. Ibid.
10. MacFarquhar, Neil. "Saudi Reformers: Seeking Rights, Paying a Price." *The New York Times*, June 9, 2005.
11. Ibid.
12. Ottaway, Marina and Julia Choucair-Vizoso, *Beyond the Façade: Political Reform in the Arab World*. (Washington, D.C.: United Book Press, 2008), 195.
13. Ibid., 205.
14. Ibid.
15. Ibid.
16. Ibid., 206.
17. Ibid., 207.
18. MacFarquhar, Neil. "Saudi Reformers: Seeking Rights, Paying a Price." *The New York Times*, June 9, 2005.
19. Lucas, Russell. "Deliberalization in Jordan." *The Journal of Democracy*, (January 2003).
20. Ottaway, Marina and Julia Choucair-Vizoso. *Beyond the Façade: Political Reform in the Arab World*. (Washington, D.C.: United Book Press, 2008), 49.
21. Lucas, Russell. "Deliberalization in Jordan." *The Journal of Democracy*, (January 2003).
22. Ottaway, Marina and Julia Choucair-Vizoso. *Beyond the Façade: Political Reform in the Arab World*. (Washington, D.C.: United Book Press, 2008), 63.
23. Lucas, Russell. "Deliberalization in Jordan." *The Journal of Democracy*, (January 2003).
24. Ibid.



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