

**HUMAN RIGHTS RESEARCH AND EDUCATION: BETWEEN
EMPATHY AND DETACHMENT**

Dr. Christine Monaghan

**MIGRATION AS A TOOL FOR DEVELOPMENT: THE CASE OF
MIGRANT WOMEN IN SENEGAL**

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**THE FAILURES OF TITLE VII: INEQUALITY, INJUSTICE, AND
SILENCE IN SEXUAL HARASSMENT LITIGATION**

Trudy Wurm

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The Journal of Politics & International Affairs at New York University is a student-run publication that provides a forum for outstanding student work on relevant, thought-provoking topics in the domestic and international landscape, including research in political science, economics, history, and regional studies.

We believe that the student theses published biannually in the Journal—chosen and edited rigorously by our editorial staff—are legitimate and valuable examples of the intellectual growth of politically-minded students and writers at New York University.

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A NOTE FROM THE EDITORS

Once a semester, our Journal publishes the most excellent submissions from student writers across the University. The pieces consistently reflect the unique perspectives held by NYU students on the most salient events of our times, as well as previously examined issues that require a new critical lens.

This edition of the Journal features an original piece written by Dr. Christine Monaghan, a postdoctoral fellow at NYU whose concentration in human rights affords her the unique perspective on data gathering that she shares in these pages. Dr. Monaghan refers to her research as “bricks in walls” that lay the foundation for change in the field of human rights. We view our fellow students’ work through the same lens—bricks in walls of policy, development, and the betterment of the world. This semester, we are publishing analyses of female labor migration in Senegal, China’s counterfeit phone industry, United States hate crime legislation, and Title VII’s shortcomings in the United States. We hope you enjoy reading these brilliant student pieces as much as we enjoyed selecting, discussing, and editing them.

To keep up with the Journal or get involved, we hope you will follow us on our website (jpianyu.org), Twitter, Facebook, and Instagram. As always, we encourage you to send us your incredible research, papers, and theses. We will be waiting to see what you write next.

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NOTES ON CONTRIBUTORS

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Christine Monaghan is a postdoctoral fellow in the International Education program at NYU's Steinhardt School of Culture, Education, and Human Development and the Research Officer at Watchlist on Children and Armed Conflict. Her teaching and research focuses on three main areas: the impact on children of attacks on schools and hospitals in situations of armed conflict; globalization and refugee education; and the contemporary historical development and implementation of human rights education programming.

ANNA BACHAN

Anna holds a Bachelor of Arts degree from the NYU Global Liberal Studies department, with a concentration in Politics, Rights, and Development and minors in French and Public Policy & Management. During her undergraduate studies, her passion for social science research led her to pursue several fieldwork trips in Africa where she mainly focused on the intersection between migration, development, and women's rights. After graduation, Anna was accepted to the Princeton in Africa Fellowship and as such, she currently works as a research assistant at the African School of Economics in Cotonou, Benin (West Africa).

FORD DEIHL

Ford is a senior in the Business and Political Economy program at NYU Stern with a minor in Computer Science. He is particularly interested in cross-border business, finance, and technology. He has had the opportunity to visit over 25 different countries across three continents in the last two years. Ford currently works in the Wealth Management division of Morgan Stanley. When he is not studying or working he enjoys being outdoors, cooking, and playing billiards. You can reach Ford at ford.deihl@stern.nyu.edu.

ZOÉ MACIAS

Zoé Macias is a senior in the Business and Political Economy program at NYU Stern. She is particularly interested in FinTech and closing the financial literacy gap. Zoé has had the opportunity to live in and travel to over thirty countries across four continents. After graduation, she will join Mizuho Securities in Equity Capital Markets. When not at her desk, Zoé can be found in the kitchen making something delicious. She also loves walking her dog, Kozmo, in Central Park and crafting the aesthetic of her apartment.

REBECCA MALZ

Rebecca is a senior at NYU Stern studying Business and Political Economy with a minor in History. She has spent the past three years studying in New York, Shanghai, and London, resulting in an unconventional academic journey, and equipping her with the ability to examine and analyze current events through a lens that is both global and interdisciplinary. Rebecca hopes to enter the field of public policy after graduation, with a focus on capacity-building and economic development.

AFRAZ KHAN

Afraz Khan is a recent graduate from New York University where he attained his Bachelors in International Relations. During his college years, he was heavily involved in a variety of community outreach and engagement efforts through his work as the president of the Muslim Students Association and through his time working in Washington D.C. and Argentina. In this past year, he coordinated several programs, public forums and rallies uniting thousands of students and community members to tackle issues of police brutality, Islamophobia, and the deportation of undocumented students. He currently works at the Manhattan Borough President's office as a Community Board Coordinator, engaging with local residents on issues from affordable housing and tenant harassment to homelessness and food deserts. Through his own experience as a South Asian Muslim in America, Afraz hopes to continue advocating for equity for all minorities.

TRUDY WURM

Trudy Wurm recently returned home to Saint Louis to attend Washington University School of Law in Saint Louis, Missouri. Trudy attended the Gallatin School at New York University for her undergraduate degree, studying political and feminist theory. Her professional and personal interest lies in giving strength to marginalized voices and communities primarily through electoral politics and law. While at NYU, Trudy worked at Hillary For America, Secretary Hillary Clinton's presidential campaign and was the editor-in-chief of New York University's Journal of Politics and International Affairs, where her love of grammar and the Oxford comma truly came alive. In her spare time, Trudy enjoys learning about, making, and drinking coffee and voraciously listening to both hip-hop and NPR.

HUMAN RIGHTS RESEARCH AND EDUCATION: BETWEEN EMPATHY AND DETACHMENT

DR. CHRISTINE MONAGHAN

Dr. Christine Monaghan is the Research Officer at Watchlist on Children and Armed Conflict, an organization dedicated to protecting the rights of children in zones of armed conflict. She is also a postdoctoral fellow at New York University. In an original piece written for the Journal of Politics & International Affairs, Dr. Monaghan reflects on her experiences as a human rights researcher and educator.

For the past several years, I have held concurrent positions as a human rights researcher and educator. As the research officer at Watchlist on Children and Armed Conflict, an international network of non-governmental organizations (NGO), I conduct field-based research on grave violations of children's rights in situations of armed conflict, with a particular focus on attacks on schools and hospitals and denial of humanitarian access. As a postdoctoral fellow at New York University (NYU), I teach courses on the theory and practice of human rights education. Both prompt me to reflect often on how to document and talk about violence and suffering that are cause and effect of rights violations—that is, how to navigate between empathy and detachment in fields that require precise data on traumatic human experience.

Sometimes I have felt like a story-taker, dropping in to refugee camps in Kenya and Uganda, to classrooms in Ethiopia and hospitals in Afghanistan, searching for the ones who can tell me about when they were forced to flee, how they were prevented from going to school, who looted the medical supplies. When I find them, I ask questions that can help me gather information for the report I am preparing. Sometimes, oftentimes, they share other information too, information that is more important to their experience than my research. “*Yes the school was closed in March, but in May they burned my village—I don’t know who from my family is still alive. They turned back the convoys carrying food so we fled, but here they haven’t given us any tents and it rains constantly.*” I scribble notes while maintaining eye contact and listening, knowing I will likely not be able to help them find their families or secure a proper shelter. I will tell them I am sorry, that I will share with them the published report. I will report what they have told me to the relevant United Nations (UN) agency or international non-governmental organization (INGO) or NGO, knowing it’s likely no action will be taken, and that I will never know one way or the other.

I have also felt, sometimes, that I have pulled stories from students or guest speakers that are important for “educational moments,” but halted too abruptly when the class period ends. “*When I was in seventh grade, a boy pulled off my headscarf and the teacher didn’t say anything,*” a student said in a high school human rights class. On another day in the same class, a student said, “*When I was 11, I watched the Revolutionary Guard shoot and kill my father.*” Shortly after, the bell rang and the students carried on to math or social studies or lunch. I went to my office or home, wondering if it was right, appropriate, responsible, or disrespectful to create a classroom environment where students felt comfortable enough to talk openly about “rights violations” they had experienced, but with seldom—if any—time to discuss their experiences at length, let alone discuss if and how these experiences ever were or should be addressed or how they felt recounting them.

I have been on the one hand relieved and on the other disappointed, bordering on dismayed, at my propensity for detachment. Relieved because early on, when I was first researching and teaching about rights, I was overwhelmed with empathy, haunted by what I had seen and heard, troubled by how little my research or teaching could actually do. And disappointed because I have learned over time to curtail the depth of my emotions, so much so that my human rights work has seemingly required I be less human—that I hold back anger, sadness, frustration, even despair—so I can get the facts about what happened, write about it, or facilitate a lesson about it, and in doing so contribute in the ways that I can to changing the contexts in which it happened in the first place.

So I tell myself this: Reports I have published are bricks in walls built by numerous UN agencies and civil society organizations that make concrete patterns of rights violations that would otherwise remain fragmentary—mere pebbles. Calls for justice and accountability that can lead to direct action in the form of sanctions or tribunals or diplomatic pressure are amplified as more bricks are laid. And students’ increased knowledge, not only of human rights declarations, conventions, and treaties, but of the scope of rights violations, in their own communities and those far away, can also lead to direct action through, for example, the exercise of their own rights—to vote in upcoming elections, call or write letters to their elected representatives, or participate in protests. So I am reconciled to continue asking empathic questions, eliciting emotional responses, and listening with detachment. Because while I will remain uncertain about the process, I am not uncertain of the outcome, no matter how limited or inadequate it can sometimes seem.

MIGRATION AS A TOOL FOR DEVELOPMENT: THE CASE OF MIGRANT WOMEN IN SENEGAL

ANNA BACHAN

Through a case study on Senegal, this paper analyzes the complexities of a system in which labor migration is controlled, produced and understood, and in which gender relations are both constructed and followed. Ultimately, the goal is to demonstrate how the migration experience and subsequent return of women to their home countries leads to positive social and economic change at household, community, and national levels. However, in order to make this change possible, adequate institutional frameworks and programs must be put in place to support women prior to, during, and after their migration experience. Subsequently, the paper analyses programs initiated by government bodies, non-governmental organizations, and multilateral institutions in Senegal to uncover their strengths and deficiencies. It then proposes recommendations for how diverse actors in the field of Migration and Development (M&D) in Senegal, and globally, can better integrate the gender approach into their programs to more practically and effectively empower and protect migrant women as agents of development.

Introduction

The number of women migrating internationally and independently for employment opportunities has dramatically increased in the past decade, especially for low-skilled labor in the service industry. This article examines the relationship between Migration and Development (M&D) and the gender dimension, and ultimately aims to highlight the potential of female labor migration as a force for social and economic change in the developing world.

Much of the existing research on the topic of M&D has focused on migrants' economic impact in their home countries, such as that of remittances (moneys sent home by migrants) and foreign investment. It has also predominately focused on top-down approaches to development via governmental or international initiatives, which aim to either increase the gains of labor migration or hamper it. This discussion has also tended to ignore the gender dimension of M&D, despite the recent increase in rates of women taking part in international migration flows.

This paper aims to address these gaps and provide a novel perspective on the relationship between gender, migration, and development. For labor migration to contribute to development, it must be approached distinctly from other types of migration, supported by actors in government and NGO sectors. Additionally, it must also be recognized internationally as a positive phenomenon with potential to catalyze radical transformation in developing countries ripe for development and upward change.

This article is divided into three sections. Part one is an explanation of the migration-development-gender nexus. The case study contains part two, a summary of the current situation in Senegal pertaining

to migrant women and their rights. Part three examines the efficacy of current programs and provides recommendations for future improvement. Finally, the research in this paper is not comprehensive of all actors in M&D nor their general attitudes towards migrant women in Senegal; it aims to instead reflect on a global scale the extreme complexity and multi-layered reality of women's rights and international labor migration in Senegal.

The Field of Migration and Development (M&D)

International labor migration has become an intrinsic feature of the ever-expanding world economy. For example, African migrants traveling by boat through the Mediterranean Sea to search for employment in Europe have been at the forefront of international political discourse and media debates. More often than not, the problem is that in Western politics and media coverage, international migration is simplified—the lines between *voluntary migration* (for labor, higher standards of living, family reunification, etc.) and *forced migration* (due to political persecution, civil conflict, natural disasters, etc...) as well as their causes and implications are often blurred. Most debates also ignore the gender dimension, omitting the nuances of female migration as compared to those of men (or children).

On the part of practitioners and policy makers, this simplification and lack of contextualization has resulted in problematic management and control of migratory flows. The dominant discourse on labor migration in the vast majority of Western countries has also been overwhelmingly negative. Most stem from fear of migrants as national security threats and of the economic implications of migrants flooding local labor markets. In the past decade, researchers have undoubtedly focused on the 'migrant crisis' of industrialized migrant-receiving countries. Seldom mentioned by actors in the Western world is the opposite side of this global transfer of human capital—as experienced by migrant-sending countries. Migrant-sending or origin countries are doubly affected by labor emigration as they both gain and lose valuable human, cultural, social, and financial capital.

The Role of Women in Migration and Development

The booming demand for service work (among other low-skilled labor) in industrialized nations has given women from developing countries more opportunities than ever before to seek employment overseas. As women now account for over 50% of international labor migrants, the feminization of international labor migration is not only characterized by rising numbers, but also by women seeking jobs abroad independently of their husbands.¹ Despite these trends, M&D research and policy remains largely gender-blind: not only are migrant women ignored, their impact has been devalued time and time again. Meanwhile, they have become powerful and independent generators of income, and unique agents of development and social change in their communities and countries of origin.

To narrow down implications and make concrete resolutions, it is imperative to ask how development affects women and how that effect is measured. Globally accepted indicators include the Human Development Index (HDI), the Gender Development Index (GDI) and the Gender Inequality Index (GII). The HDI was created by the United Nations to emphasize that people and their capabilities, rather than economic growth alone, are the ultimate criteria for assessing national development.² The HDI assesses life expectancy, literacy rate, number of years of schooling, and standard of living by gross national income per capita.³ The GDI assesses gender gaps by accounting for disparities between women and men in three basic dimensions of human development: health, knowledge, and living standards

1 Piper, 4

2 "Human Development Index"

3 Ibid.

(with the same component indicators as in the HDI).⁴ Lastly, the GII reflects gender-based inequalities in reproductive health, measured by maternal mortality and birth rate; empowerment, measured by share of female parliamentary seats and attainment in secondary and higher education; and economic activity, measured by female labor market participation rate.⁵

M&D through the Gender Lens

In many countries, women are not legally considered equals. Women do not have the same property rights as men, the same rights to employment, the same rights of association, mobility, or religious liberty.⁶ All too often, women are treated as “instruments for the ends of others...as reproducers, caregivers, sexual outlets, and agents of a household’s general prosperity”.⁷ These factors determine the gendered division of labor (in both migrant sending and receiving countries) and the subsequent rates of male and female migration abroad. Most research, policy, and programs in M&D lack gender contextualization and mainstreaming. However, viewing and evaluating the migration-development nexus through a gender lens uncovers key questions that remain unanswered.

When assessing development for women, considering only the economic perspective is problematic. The reciprocal relationship between M&D aligns more comprehensively with the capabilities approach to human development, which views female development as a subset of human rights.⁸ Most propagated by Amartya Sen, this approach focuses on women’s agency, expanding women’s decision-making power and ability to choose free from violence, retribution or fear.⁹ It also aims to increase women’s economic role, education level, and generally expand her role in influencing and informing society.¹⁰

Above all, thinking critically about the migration-development nexus through a gender lens reinforces the fact that women play significant role as actors in both migratory and development processes. Rather than being passive recipients of aid or dependents of their spouses, they are autonomous beings with the agency to make their own choices. Subsequently, migration cannot be categorized as simply an improvement or erosion of a woman’s position in society, but rather as a catalyst for restructured power and social asymmetries.¹¹ Exposure to new ideas abroad and employment outside the household and home country has shown to substantially increase a woman’s sense of agency and autonomy—even in countries where women have limited access to resources and lack decision-making power at household, community, and national levels.¹²

The benefits of female migration are apparent but not automatic. Primarily, there exists a massive inadequacy at the government level to protect migrant women’s rights, create legal avenues for migration, and facilitate migrants’ full economic and social participation in both host and origin countries. In order for the government to enact these measures, the country must have functional institutions and be ripe for change. Only after that can migration have the potential to be a long-term instrument for promoting development and equal gender roles in society.

In many developing countries, the issue then is the lack of female representation at the government level. According to a UN Women study in 2016, women account for only 22.8% of

4 “Gender Development Index”

5 Human Development Report 2016 UNDP

6 Nussbaum, 1

7 Ibid.

8 Nussbaum, 4

9 Ibid.

10 Ibid.

11 Piper, 25

12 Ibid.

national parliamentarians, serving in eleven parliaments as Heads of State and in nine as Heads of Government.¹³ Developing countries with patriarchial systems put women at risk of becoming the victims of discriminatory migration policies and programs.¹⁴ Country gender dynamics are also represented at national levels by scholars, policy-makers, and media outlets—and can result in discriminatory policies, gender-blind strategies and projects, and misleading data and statistics. Though government participation in M&D is crucial, the lack of women at top levels can be combatted through decentralization, bottom-up, and community-oriented development strategies that empower female migrants. Focusing on small-scale actors, including non-governmental organizations and civil society, can give women more of a voice in implementing development initiatives, policies, and programs targeting migrants.

As this article emphasizes, there is an immediate need to bridge the areas of “gender and migration” with “gender and development”.¹⁵ In promoting gender equality, only women from these developing countries, equipped with knowledge, and backed up by international organizations and other women abroad, can convince local communities and authorities to accept the positive impact on overall development of investing in women’s socioeconomic status.¹⁶ Gender mainstreaming the migration-development nexus is a prerequisite for organizations to create innovative and effective strategies to empower female migrants both socially and economically.

Case Study – Migrant Women in Senegal

Rationale

This article addresses several important research questions. First, how do migrant women’s roles in the development of their home countries compare to those of men? How are migrant women viewed by government representatives and organizations in their home countries as agents of change or as ‘vulnerable’ workers? If M&D research is gender-blind, how is female migration reflected in the policies and programs aimed at improving migrant workers’ situations? Do these serve men better than women? And lastly, if migrant women are not adequately supported by either the government, non-governmental organizations (NGO’s), multilateral organizations, or the civil society in their countries, which of these actors is responsible for providing them with protection and support?

Instead of simply approaching the “female migrant” as a subject of study in anthropological terms, this paper analyzes the complexities of the system in which migration is controlled, produced, and understood, and in which gender relations are both constructed and followed.¹⁷ Through a case study on Senegal, it takes apart internal sociocultural and economic factors including education, religion, and political participation, as well as societal norms and ethnic and linguistic differences. It then scrutinizes the role of government institutions, national NGO’s, and other civil society organizations. Lastly, it analyzes stakeholders in the broader realm of M&D: international NGO’s, multilateral institutions (i.e. the United Nations), and solidarity groups. In conclusion, the paper aims to make sense of how this system can be revised and remodeled to better empower migrant women while eliminating the negative social repercussions of migration.

13 “Facts and Figures: Leadership and Political Participation.”

14 Ibid.

15 Piper, 10

16 “Migration and Development: Perspectives from the South”, 27

17 Andersson, 12

Methodology

Figure: Map of Senegal locating visited areas

The data for my case study was collected through an ethnographic methodological approach: a combination of participant observation with fieldwork and semi-structured interviews with representatives of organizations (directors and staff), government authorities, and migrant men and women. The organizations included national NGOs, international NGOs, and multilateral institutions in several locations around Senegal (see figure). Additional information was also gathered during a summer internship with two Senegalese NGOs. The New York University (NYU) Institutional Review Board (IRB) exempted this study from needing formal approval for international human subjects research.

Migration in Senegal: Background & Context

In the past two decades, Senegal has been in the throes of a major socioeconomic crisis. The crisis is partially due to desertification, which has devastated the agricultural sector and 70% of the population employed by it. Another cause was the major economic recession catalyzed by the devaluation of the national currency (CFA) in 1994.¹⁸ Senegal's booming population, which has quadrupled since the 1960s, is yet another factor. Currently, over half the population (61%) is under the age of 24.¹⁹ A young population and weak private sector have had a profound impact on the labor market – rapidly expanding the informal sector, which employs one out of every two Senegalese, a majority of whom are women and teenagers.²⁰ Combined, these factors have resulted in major job instability, an unemployment rate of 14%, and, ultimately, a high rate of emigration in search of job opportunities.²¹

¹⁸ Ibid, 77.

¹⁹ Ibid, 33.

²⁰ Ibid, 77.

²¹ "Senegal Unemployment Rate 1994-2017."

In regards to mobility, Senegal has historically been a major player for emigration and immigration flows. After colonization, it was a destination for African migrants seeking work in the groundnut, fishing, and mining industries.²² Since the 1970s, however, it has become a country of emigration and transit for African immigrants trying to reach Europe and the US.²³ Most migrants from Senegal come from the capital city of Dakar, but are increasingly moving from rural areas in search of employment.²⁴ As a large part of the population migrates for work, this creates a mass influx of capital in the form of remittances from the diaspora. In 2015, the estimated yearly total of migrant remittances surpassed 1.6 billion US dollars, ranking Senegal as the fourth-highest remittance recipient in West Africa.²⁵

The government in Senegal is democratic, as the country has seen a peaceful transfer of power between four presidents since its independence in 1960.²⁶ Macky Sall, the current president, has pursued a number of immigration-related policies in areas of protection, security, migration and development, diaspora involvement and migrant return and reintegration (to be further discussed in the government analysis).²⁷

Generally, however, international migration has become fully integrated into the fabrics of Senegalese culture and society.²⁸ The international migrant has emerged as a hero, an exemplar of socioeconomic success, and for many has replaced the government bureaucrat as the dominant model of achievement.²⁹ Migration is also driven in part by a post-colonial sentiment that the Senegalese must “go out and fight” to spread knowledge of their country and bring back success in terms of knowledge and capital.³⁰

The majority of low-skilled Senegalese migrants have basic standards of education and skills in trade, commerce, and entrepreneurship; most are willing to take any job they can find abroad. The educated white collar workers, on the contrary, are less willing to migrate unless a job matches their social status and qualifications.³¹ Migrant flexibility explains why emigration from Senegal is predominantly for low-skilled labor. This low-skilled labor migration is also categorized as circular: individuals move to work with the intention of returning as soon possible to support and rejoin their families at home.³² This pattern rests on the basis of a Senegalese community-oriented society where priorities of family and roots dominate. Even abroad, migrant workers remain linked by ties of kinship with the goal of solidarity—whether informally between families or formally within associations.³³

Research found that the desire to migrate among both men and women, and subsequently the culture of migration this creates, is perpetrated primarily through cultural and social norms. The Senegalese *Teranga*, a concept loosely defined as hospitality, reciprocity, and a sense of moral obligation to help those in need no matter the circumstances, is deeply embedded in the culture and moral ethos.³⁴ The

22 Toma, 78

23 Ibid.

24 Ibid, 80.

25 “Enhancing Financial Capability and Inclusion in Senegal”, 27.

26 “Senegal Overview the World Bank.”

27 *Workshop 2015 - Senegal Chapter*, 4

28 Ibid, 81.

29 Ibid.

30 Cisse, 22.

31 Toma, 81.

32 Maggi, Dame et al, 145.

33 Ibid, 146.

34 Dembe, Carretero et al, 33.

Senegalese view their pride and social status as integral to their identities, especially if they are migrants.³⁵

A common occurrence with low-skilled migrant returnees is their tendency to share success stories of migration, high-paying jobs, and good living standards in the “El Dorados” they had found in Europe and elsewhere.³⁶ Migrants reported that speaking of the difficult realities of migration (e.g. long months spent finding jobs and working on the streets, facing abusive employers, or living in constant fear of being caught for fraudulent identity cards) would be deemed culturally unacceptable. This would be perceived as an effort to dissuade others from succeeding and making money, or as refusing to share their newfound wealth and connections. This dichotomy is problematic, as it essentially perpetuates a vicious cycle – creating a glorified image of migration as an easy passage to wealth and higher social status.³⁷

This culture of migration is also perpetuated by cultural factors that stem from polygamy. According to both male and female interviewees, households with multiple wives were pressured to have more children in order to increase the chance that one of them would migrate and bring the family prosperity. A male migrant from Dakar noted this phenomenon was more prevalent in large families, since traditionally the wife with the most children receives most financial support from the husband.

In spite of these pressures, many Senegalese are combatting the culture of migration in Senegal. One such organization is the Project to Support the Promotion of Youth and Women’s Employment (PAPEJF), which aims to create jobs for young men and women in the town of Ziguinchor.³⁸ Due to the decline in the agricultural sector, PAPEJF focuses on training young Senegalese in livestock raising, gardening, fishing and commerce—which are made more attractive through the implementation of novel technologies.³⁹ Director Monsieur Diatta emphasized the importance of retaining young people and productivity in rural areas.

The Feminization of Migration in Senegal

In addition to expanding their presence in education and employment, women in Senegal have become increasingly involved in migratory flows. Professor Dembe Fall from the University of Dakar describes the “rebellion” of female migrants who see migration as an “aspiration for emancipation”.⁴⁰ Fall, along with other academics, points out that female migration in Senegal is not new; for decades, Senegalese women have migrated from rural to urban areas. International migration to Europe, the United States and the Middle East, is the new phenomenon.⁴¹ According to the 2010 UN Report, between 1997 and 2001, females constituted 18.2 percent of the labor-migrant population.⁴² In 2002, this number increased to 25 percent.⁴³ In 2008, the Migration between Africa and Europe (MAFE) survey showed that 65 percent of females migrated internationally compared to 52 percent of males in their migrant sample pool.⁴⁴ The data also showed Senegalese migrant women found employment abroad in the low-skilled sector – primarily temporary or seasonal jobs in the informal economy, such as import-export activities, cleaning, caretaking, tailoring, sewing, or hairdressing.

Senegalese Female migration has also become a transnational phenomenon –women are likely

35 Ibid.

36 Toma, 81.

37 Ibid.

38 Ndiaga Fall Diatta, personal communication.

39 Ibid.

40 Papa Dembe Fall, personal communication.

41 Ibid.

42 “Migration, Remittances and Gender-Responsive Local Development”, 25

43 Toma, 86.

44 Ibid, 87.

to travel between several countries for employment. For example, an association of Wolof hair braiders in New York is known for using their profits made in the US to migrate to France to buy goods and then return to sell them in Senegal.⁴⁵ Professor Doudou Gueye uncovers these complexities and claims it is not uncommon for women to apply for several visas to travel between countries for income generating activities.

Barriers to Migration and Return

Despite the growing feminization of migration, women continue to face significant barriers to migrating to and from Senegal. Women have the constitutional right to travel and apply for passports and visas. However, barriers exist due to gender divisions in social networks and labor markets, differences between ethnic groups, and various social and cultural norms.⁴⁶

Migrant associations and social networks facilitate labor migration. Membership to these bodies (both in Senegal and abroad) is divided by gender, which can impede many women from migrating.⁴⁷ Men's associations regroup around ethnic ties and hometown affiliations, whereas women's groups are multi-ethnic, multi-national, and multi-lingual, anchored in their country of destination rather than of origin.⁴⁸ In Paris, for example, migrant women from Senegal, Guinea and Mali are likely to congregate and form networks despite their differences, while Wolof men from the same village in Senegal would form a tight-knit affinity group. These gender divisions can impede female migration, as it is not as easy for women to connect with others who desire to migrate outside their community or country. Many interviewees claimed the improbability that a woman will connect with a man working abroad to help facilitate her migration (rarely this is seen between family members).⁴⁹

Social acceptance of and attitude towards female migration varies by ethnic group. For the Mandinke and Hal Pulaar, migration is seen as an immoral activity largely associated with prostitution and abandonment of household roles.⁵⁰ However, the Wolof group has begun to accept women's labor migration, as shown by the increasing presence of women in the import-export industry overseas.⁵¹ Historically, the Jola group has promoted seasonal female rural-to-urban migration to Dakar. Around the country, Jola women are recognized for their strength and for "running the household" and thus face fewer constraints as potential labor migrants.⁵²

These attitudes vary considerably from urban to rural areas. Urban areas are more open to change.⁵³ In rural areas, tradition still reserves migration for males, although this attitude is changing.⁵⁴ For instance, Caritas Internationalis (CARITAS), an organization involved in M&D, published household data that showed husbands encouraged their wives to work abroad, claiming they were more "economically efficient" and sent home larger sums of money than men.⁵⁵

After migration, women face obstacles upon return, specifically with social and professional reinsertion. Primarily, they are expected to return to their pre-migratory social roles. Even after working

45 Ibid.

46 Papa Demba Fall, personal communication.

47 Ibid, 90.

48 Ibid, 91.

49 Coumba Fall Venn, personal communication.

50 Ibid, 85.

51 Lambert, 2.

52 Ibid.

53 Toma, 82.

54 Ibid.

55 Rose Sagna, personal communication.

abroad for years and temporarily taking over the role of primary bread winner, women are not automatically relieved of their household duties. Many male interviewees saw migration as a transitory period for their wives.⁵⁶ Rural areas are especially prone to this situation as traditional gender norms are less flexible. In his research, Professor Dembe Fall found that when Senegalese women migrate, they discover a new society, only to return and realize the one they came from had not changed at all. He referred to this dichotomy as the struggle between “tradition and modernity,” and claimed that in order for migration to benefit women, it needs to be accepted by society.

In regards to professional reinsertion, women also face difficulties accessing capital (e.g. credit and land) to engage in entrepreneurial activities upon return. According to the World Bank, only 13 percent of women in Senegal currently use a formal financial product or service.⁵⁷ Data from the UN Capital Development Fund (UNCDF) showed only 10 percent of women in Senegal are considered financially included, and 67 percent of those rely solely on informal services.⁵⁸ Lack of financial education and access to formal financial institutions greatly inhibits ability to accrue credit.⁵⁹ Therefore, even if given a loan, women are unlikely to be granted financial services such as savings accounts, digital payment methods, and insurance.⁶⁰ A vicious cycle begins where banks are unwilling to lend to those without credit and to trust them with other forms of financial assistance.

MAFE data shows that only 34% of return migrants were female, suggesting that return migration is minimal.⁶¹ This could result partially from a major lack of support for them upon return (i.e. social and financial assistance, psychological guidance). Secondly, in migrant-receiving countries, NGOs offer support and assistance for “vulnerable migrants” (which mainly target immigrant women and children). The assistance can take the form of professional development, help finding employment, housing and childcare, and can generally facilitate integration into the host country. Such programs can strongly dissuade migrant women from returning home.⁶²

The Positive Potential of Female Migration

Despite the obstacles described above, evidence shows that female migration is positively affecting Senegalese society well beyond economic contributions such as remittances and investment. Qualitative surveys and case studies of individual women show that their contributions extend beyond the economy. Studies have shown that migration has helped women gain a higher level of self-esteem and an increased ability to renegotiate gender norms.⁶³ Cheikh Babou explores the migration of Wolof hair braiders abroad and its impact on the traditional Wolof household.⁶⁴ His data shows that the majority of husbands were eventually employed by their wives’ hair salons and took over household and childcare tasks, and so their wives could work longer hours. These women in turn contributed significantly to household expenses such as the rent, utilities, and groceries.⁶⁵ Their increased monetary contribution shifted power relations, giving Wolof women a larger voice in decisions about reproductive issues, investment priorities, childcare and

56 Toma, 120.

57 “Enhancing Financial Capability and Inclusion in Senegal”, 38

58 Consumer Behaviors in Senegal: Analysis and Findings.

59 Ibid.

60 Ibid.

61 “MTM i-Map Migration and Development Layer SENEGAL.”

62 Salla Mbaye, personal communication.

63 “Migration, Remittances and Gender-Responsive Local Development”, 25.

64 Babou, 17.

65 Ibid, 12.

work schedules.⁶⁶ Babou concludes with the claim: “Money is gradually displacing nonmaterial sources of prestige and authority, such as blood and gender. While traditional social hierarchies continue to retain much symbolic significance, honor and self-worth are increasingly defined by people’s ability to accumulate money and satisfy economic needs.”⁶⁷

In Senegal, it is evident that gender power dynamics and roles are changing at the household level. Several Wolof female interviewees insisted on having financial independence but also remaining faithful to traditional and Muslim values of respect and loyalty to the husband. To explain such balancing act, one woman referred to a Wolof proverb *ñaariloxooy takk tubëy; ñaari loxooy takk sër*, or, “it takes two hands to tie pants, and it takes two hands to tie a wrap”. She claimed this quote illustrates how Wolof women integrate their newfound social and economic position into existing gender roles.⁶⁸

In another interview, Madame V, had returned to Dakar after 40 years as the head of *Femmes Africa Solidarité*, an NGO which supports and promotes women in government roles, peace building, and conflict management.⁶⁹ When I inquired about her decision to return, Madame V claimed she felt a strong pull to return and join the struggle for gender equality in her home country: “We need to educate the women of tomorrow about the concept of gender and not fall back on the clichés of feminism. We cannot fight for gender parity by focusing only on the professional agenda, but must reconcile the professional with the domestic role of the woman in Senegalese society.”⁷⁰ As Madame V suggested, the feminist agenda in Senegal seems to uphold that economic and social empowerment and domestic responsibilities (and traditional gender norms) go hand in hand. This more gradual approach to women’s rights is also strategic in gaining acceptance from the male population.

In Senegal, men are increasingly involved in the fight for women’s rights and accepting their migration as a path to success. Several male interviewees noted that Senegalese women are driven and have high goals. A young man in Dakar noted, “One thing we’ve noticed is that women work better than men. In Senegal, they are harder workers than men. Men spend too much time partying, drinking, wasting money. Women are more family minded.”⁷¹

On a larger scale, migrant women are increasingly seen as role models, as they change perceptions about the role of women in the workplace.⁷² Interview with CARITAS staff showed that migrant women who return to their original communities are viewed in a different light.⁷³ Since women return wearing nicer clothing and more material possessions, they are associated with a higher social status. Another staff member reported that returning migrant women have the power to change mentalities, particularly if they can reinsert themselves professionally and engage in productive activities upon return.⁷⁴ If these women successfully started their own businesses upon return, they would exemplify success for other women in the community.⁷⁵ Many interviewees emphasized that migrant women motivated younger generations to pursue entrepreneurship and dissuaded them from the idea that migration is the only path to success.⁷⁶

A migration specialist from the IOM also agreed that migrant women were models of success for

66 Ibid, 12.

67 Ibid, 18.

68 Ibid, 19.

69 Coumba Fall Venn, personal communication.

70 Ibid.

71 University student in Dakar, personal communication.

72 Toma, 86.

73 Rose Sagna, personal communication.

74 Jacques Niouky, personal communication.

75 Ibid.

76 Ibid.

future generations due to their ability to travel independently and acquire resources.⁷⁷ Through the IOM, I connected with one woman who, after years of working in France, imported a large van to Senegal and started her own transportation business in her village.⁷⁸ Another woman I spoke to had worked in France and imported sewing machines back to Senegal to create jobs for women in her village.⁷⁹ These examples all illustrate how migrant women bring positive change to their communities.

However, while these economic and social changes are profitable for individual women and their families, they occur mostly at the micro-level. Contribution to large scale social and economic development requires a critical change in mentalities to accept migration as a possibility for women's empowerment.⁸⁰ In order to extract changes from the micro-level to benefit society and the economy at large, certain institutions and structures need to be in place. The government, NGOs, and both international and local institutions are key to empowering migrant women and translating their development potential onto a national scale. To assess the current situation in Senegal, I will analyze existing institutions and their programs that work with migrant women. My goals are to identify such programs, disclose their strengths and deficiencies in addressing the needs of migrant women, and finally to suggest recommendations for future improvement.

Results: Program Analysis and Evaluation

Non-Governmental Organization (NGO) Sector

In Senegal, 178 NGOs are involved in M&D initiatives, two of which are CARITAS and Femmes Éducation Culture Santé et Développement en Afrique (FECSDA).⁸¹ CARITAS is a catholic relief NGO which partners with local and international organizations and government agencies. Their program "Point of Assistance for Refugees and Migrants" or *P.A.R.I.*, was created to assist refugees and economic migrants to return home, with immediate support for basic needs, and seed funding for small business projects.⁸²

Since its inception, *P.A.R.I.* has assisted over a dozen migrant women with voluntary return from Germany and Belgium, all of whom started businesses in commerce, tailoring, laundry services and beauty.⁸³ The program also reached its primary goal of encouraging entrepreneurship and voluntary return for women. However, CARITAS staff also spotted its weaknesses and claimed the program lacked funding and coordination with government and international organizations. They complained that the untrained (often unpaid) staff members in regional offices failed to monitor returned migrants and the migrants' use of grant funds, which often resulted in often incomplete and unreliable data.⁸⁴ Subsequently, the program did not train migrants. Upon completing background checks, grants were given for migrants to return, assuming they were proficient in a certain skill and knew how to manage a business. In more than a few instances, staff noticed that migrants lied about having prior experience in order to secure the funds.⁸⁵

Femmes Education Culture Santé et Développement en Afrique, or FECSDA, is an NGO

77 Salla Mbaye, personal communication.

78 Ibid.

79 Professor Doudou Gueye, personal communication.

80 Ibid.

81 *Workshop 2015 - Senegal Chapter*"

82 Jacques Niouky, personal communication.

83 Ibid.

84 Ibid.

85 Ibid.

which supports Senegalese women in domains of education, culture, health and development.⁸⁶ FECSDA hosted a two-week entrepreneurship training workshop for migrant women who had all recently returned from several African and European countries.⁸⁷ The workshop presented topics on business and financial management (i.e. bank accounts, credit and loans) and staged debates about the role of women in the Senegalese workplace.⁸⁸ The goal was to educate and support women, and eventually to give them grants to start their own small businesses. Post workshop, the participants signed a waiver promising to keep to their initial business plan and agreeing to be monitored on a monthly basis for the next year.⁸⁹ Most business proposals were for hairdresser salons, tailoring businesses or import-export commercial activities.⁹⁰

After interviewing both staff and participants, I would conclude that the workshop was successful overall in bringing together women and creating a safe space to discuss shared difficulties they faced.⁹¹ Many women felt the workshop taught them new entrepreneurial skills and gave them the chance to share their feelings about return and reintegration to Senegal.⁹² They also felt they had developed close relationships with others in the group that would be beneficial in the future. FECSDA staff felt the program's main downfall was its Monitoring and Evaluation system. As women started businesses in their hometowns outside of Dakar, home of FECSDA's only office, staff were obliged to travel for monitoring purposes, which in some cases led to failed businesses as productivity and accountability could not be sustained.⁹³

The above analysis sheds light on a greater deficiency of M&D programs in the NGO sector. Out of over twenty NGO programs analyzed, only three, including *P.A.R.I.* and the FECSDA workshop, targeted migrant women specifically. A number of NGO's also lacked efficient Monitoring and Evaluation practices to accurately evaluate program success. Programs such as those organized by CARITAS and FECSDA only require follow up for twelve months, while monitoring practices lack regularity, standardization, and comprehensive reporting. As a result, migrants often spent their grant money or returned to the countries in which they worked. NGOs also lacked systems to gather feedback from the beneficiaries (i.e. migrant women) of their programs. Feedback loops are essential in order to evaluate and improve services to ensure they genuinely meet the migrants' needs.

Another deficiency across the board was the lack of rigorous training programs. Women often lack the skills and experience in entrepreneurship and financial management, leading to inefficient management, ultimately causing their endeavors to fail. Lastly, the majority of NGO programs focused only on the economic needs of migrant women, ignoring comprehensive social and psychological support for social reintegration back into families, households and communities.

International Organizations and Multilateral Institutions (MI) Sector

International organizations, UN agencies and other institutions such as the World Bank, the ILO, and the European Union, also play crucial roles in M&D programs in Senegal. This analysis focuses on the Office of the High Commissioner for Human Rights (OHCHR) and the International Organization for Migration (IOM).

The OHCHR protects and promotes the rights of migrant women.⁹⁴ The migration chief at the

86 FECSDA and Ibrahima Niang, personal communication.

87 Ibid.

88 Ibid.

89 Ibid.

90 Ibid.

91 Ibid.

92 Ibid.

93 Ibid.

94 *Committee on the Elimination of Discrimination against Women- OHCHR*

OHCHR claimed migrant women's labor in Senegal is vastly undervalued, underpaid and de-skilled.⁹⁵ In addition, migrant women often face abuse from employers especially in the service industry in which most jobs are found. To combat these issues, the OHCHR protects women's rights throughout the migration process, since this way is crucial to empowering them and ensuring a stable reintegration upon their return home.⁹⁶ The OHCHR also aims to uphold international labor migration law through investigative reports, advocacy efforts, and dissemination of information to migrants about their rights.⁹⁷ Additionally, one of their main functions is to critique and publish government policy and practice in regards to M&D.

One such report performed in May of 2016 analyzes and critiques the government's policies in regards to female migration and development.⁹⁸ Several government shortcomings were revealed, such as its failure to comply or implement the internationally recognized "Convention on Rights of Migrant Workers" at the regional and local levels. Furthermore, the OHCHR claimed the government had not only failed to disseminate information about eligibility requirements for voluntary return and reintegration programs, but also to hold relevant ministries accountable.⁹⁹ The OHCHR urged the government to "adopt, implement and provide the necessary funds for a comprehensive policy on the migration of labor, in line with the Convention and in a gender-sensitive manner".¹⁰⁰ OHCHR also recommended the government to establish a "centralized database to collect quantitative and qualitative migration-related statistics and information".¹⁰¹ Though comprehensive and informative, OHCHR's report was majorly uncommented on by the Senegalese government.

The International Organization for Migration (IOM) is the largest international organization in the field of migration aimed at "promoting humane and orderly migration for the benefit of all".¹⁰² IOM aims to maximize the positive relationship between migration and development by recognizing that "nearly half of the world's migrants are now women, IOM also takes into account the opportunities and challenges that this presents for migration and development activities, and presents a gender-specific focus for all remittance projects".¹⁰³ IOM's approach involves various services "tailored to the needs of governments, aimed at transferring skills and knowledge acquired by migrants abroad to their country of origin...Recent program focus has been placed on the facilitation of remittances—the private financial transfers of migrants—and the development impact that they can have on communities and countries of origin".¹⁰⁴

IOM's program *RMTS* or "Reintegration from Morocco, Tunisia and Senegal", ran from 2015-2016 and assisted voluntary return of Moroccan, Tunisian and Senegalese migrant workers to their home countries.¹⁰⁵ *RMTS* worked with governments in both countries of origin and destination to prepare, assist, and eventually give grants for migrants to start businesses upon return home.¹⁰⁶

Despite assisting over 1,612 migrants, only one woman returned from Belgium, twenty from

95 Claire Boyer, personal communication.

96 Ibid.

97 *Committee on the Elimination of Discrimination against Women - OHCHR*

98 Ibid.

99 Ibid.

100 Ibid.

101 Ibid.

102 "About IOM"

103 "IOM – Migration and Development"

104 Ibid.

105 *Reintegration Morocco-Tunisia-Senegal*.

106 Ibid.

Morocco, one from Egypt, one from Norway, one from Spain and twenty from Niger.¹⁰⁷ IOM staff cited various program weaknesses. Firstly, the bureaucratic nature of the request and demand for voluntary return (i.e. lengthy background checks and dozens of forms) prolonged the process substantially and caused a vast majority of migrants to abandon their applications.¹⁰⁸ Staff also felt that giving migrants grants instead of loans lowered their motivations to use the money to start successful businesses in order to pay them back.¹⁰⁹ As a result, in a number of cases returnees had used the grant money to migrate again.

IOM staff also mentioned that female migrants were weary to return because of pressures to financially facilitate the migration of their friends and family.¹¹⁰ IOM staff developed “offices of transit” to provide free housing, food, water, medical attention, psychological assessments and other services and stay for up to a month. This effort is aimed at combatting family pressures and support returning women to readjust for professional and familial reintegration.

This analysis proves advocacies such as OHCHR’s report are ineffective. Although OHCHR’s report was informative on a global scale, it did not have major impact nor did it exert significant pressure on the government to change its practices and policies in the M&D sector. Subsequently, the report sheds light on a disconnect between international multilateral institutions and the local population they aim to serve. UN agencies, notorious for bringing in Western specialists to consult local staff for short term contracts, contribute to this disconnect.¹¹¹ Since specialists only spend short time periods, they often stay in the headquarters and “expatriate bubble(s)” which may prevent them from interacting with their program’s groundwork. Multilateral institutions directed by powerful countries in the West tend to reflect goals and realities of Westernized notions of human rights, financial inclusion, and gender equality. International consultants, while undoubtedly necessary to advise on crucial issues, may advocate certain initiatives without considering the specific cultural and social norms of the country they are working in.

Government Sector

Though government is discussed extensively in this paper, it is important to understand its role in M&D. Key government stakeholders in Senegal include the Ministry of the Interior, for immigration and border control, and the Ministry of Foreign Affairs and Senegalese Abroad, for foreign and diaspora relations, assistance to migrants while abroad and upon return.¹¹² Additionally, the Ministry of Economy, Finance and Planning is in charge of developing a national migration policy, facilitating research on M&D issues, and producing reports and data.¹¹³ Current policies include bilateral agreements that dictate provisions on entry and residence between Senegal and host countries, such as France, Gabon, Mauritania, Morocco and Spain.¹¹⁴ The policies most endorsed by the international community have focused on limiting clandestine or illegal migration, tightening border controls, and encouraging return migration.¹¹⁵

Government programs which have targeted migrant women include *Fonds d’Appui à l’Investissement des Sénégalais de l’Extérieur* (FAISE) and Help of Migrants (HOM). The most publicized is FAISE, or the “Investment Support Fund for Senegalese Abroad.” Its primary goal is to attract nationals

107 Salla Mbaye, personal communication.

108 Ibid.

109 Ibid.

110 Ibid.

111 "Module 5: Multilateral & Bilateral Organizations."

112 Ibid.

113 Ibid.

114 Ibid, 6.

115 Ibid, 12.

residing abroad to invest into businesses, mutual savings and microcredit institutions in Senegal.¹¹⁶ Since its creation, FAISE has funded over 122 projects and provided over 600 million CFA (1 million USD) to assist members of the Senegalese diaspora in developing businesses abroad in sectors such as livestock farming, fishing, handicrafts, sanitation, and information and communication technologies.¹¹⁷ FAISE also contributes around \$9,000 yearly to migrant returnees to help them start their own businesses in Senegal.¹¹⁸ Many interviewees attributed FAISE's success to the fact that a majority of grant recipients have been women in the diaspora, who are "better" at managing the grants and businesses.¹¹⁹ However, FAISE has provided only financial assistance to diaspora or returning migrant women – which, as previously discussed, can have a negative impact if not matched with social and psychological support.

HOM is a free online platform, created by the ARD regional development office of Sédhiou. HOM aims to connect migrants abroad with migrant associations and development projects in their localities of origin, to facilitate partnerships and their productive investment at home.¹²⁰ HOM also supports local and regional authorities, promotes decentralized development planning, and connects diaspora with technical and financial resources abroad with local entrepreneurs in Senegal.¹²¹

HOM staff felt the program was successful in promoting entrepreneurship, channeling investment and remittances, and promoting knowledge exchange between diaspora and locals. The program has also successfully monitored the projects, as most businesses started by diaspora and locals become financially independent within three to five months. HOM staff claimed the program's largest weakness was the gender imbalance—as only one out of every ten migrants assisted was female.¹²² There was mistrust between local authorities, migrants, migrant associations and NGO's.¹²³ Since the technological approach was relatively unfamiliar, it took time to convince authorities, migrants and migrant associations of the platform's effectiveness. The staff felt that it was especially difficult for women to trust and understand the platform because of their lack of experience with technology and inability to speak French.¹²⁴

In general, of central concern to government involvement is its failure to define a precise M&D policy. It has been criticized internationally for failing to realize, or perhaps ignoring the fact that migration can be beneficial to national development in ways other than migrant remittances.¹²⁵ Additionally, the Superior Council of Senegalese Abroad, which aimed to foster dialogue between the Senegalese diaspora and migrants with the national government, was suspended in 2013. As a result, Senegalese nationals currently working abroad have limited legal protection.¹²⁶

It is problematic that government efforts such as FAISE and HOM have thus far focused on the diaspora investment, rather than on supporting temporary migrant workers and facilitating their return home. Another major issue is the lack of decentralization and trust between national and local authorities.¹²⁷ Monsieur Diaw, the mayor of Louga (a town in Northern Senegal) claimed that more than

116 Ibid, 11.

117 "FAISE : 122 projets de Sénégalais"

118 Ibid.

119 "Helping returnees turn a profit in Senegal."

120 "Le Help Office for Migrants (HOM) de Sédhiou en deux mots",

121 Ibid.

122 Lamine Ba, personal communication.

123 Ibid.

124 Ibid.

125 "Senegal Overview The World Bank."

126 Ibid, 12.

127 "Senegal Overview The World Bank."

50 percent of government employees at the local and regional levels had only basic levels of education.¹²⁸ Lacking an understanding of migration and its impact on local development, or perhaps ignorant to non-monetary rewards, local authorities have failed to follow migration regulations, keep track of data and assist in development projects sponsored or facilitated by migrants.¹²⁹

Future Recommendations: M&D in Senegal and Globally

A set of future recommendations for program improvement in M&D can be drawn from this case study. For the NGO sector gender specific and standardized data recording is needed. Consequently, NGOs should integrate feedback loops with program participants (migrant women in this case), to ensure program sustainability. Independent development management consultants should be brought in to build bridges and ensure actors in the field of M&D regularly meet the needs of program participants. This would be especially valuable for international multilateral organizations (such as UN agencies), whose programs may lack local contextualization. Such consultants can also ensure policies and programs provide equal treatment for male and female labor migrants.

As mentioned previously, organizations must also recognize that for women in developing countries, the domestic agenda cannot be easily replaced. For this reason, they should focus on reconciling the domestic agenda with larger social and economic roles. M&D actors should also employ grassroots approaches that involve migrants from program outset to completion. Organizations should readjust the focus on social assistance in and economic assistance, especially for reintegration and professional reinsertion. To combat the lack of funding, they should find alternative sources of capital, such as Corporate Social Responsibility, and partner with corporations interested in migrant labor in exchange for their support for programs to facilitate temporary labor exchanges.

Additionally, the role of the civil society is fundamental. In this case, it is made up of migrants, diaspora members and their associations. In the future, it would be beneficial for Senegalese migrant women (returnees and diaspora) to form associations based in their communities of origin and connect with migrant women groups across West Africa for mutual assistance and solidarity. If such groups existed, women could migrate and return home more easily, and would be more confident in asserting their role in social and economic domains in society. Women in the diaspora could also create online platforms to share information and mentoring advice for women at home; such as the exchange of entrepreneurial skills, financial capital or loans for women to start businesses at home, or even dissuade them from the need to migrate in the first place.

Despite prioritizing NGO, multilateral organization and civil society efforts, this paper uncovers the essential role of the government in M&D initiatives. Though micro level and grassroots are beneficial, it is *necessary* to go beyond them to enact public policies that eliminate women's obstacles to gain autonomy and mobility. Several recommendations for government engagement include a policy focus on return migration, extracting the social resources of migration, and creating bilateral temporary labor migration agreements with other countries. In general, the government needs to enact equitable policies that eliminate women's obstacles to migration and empower them during the migration process and upon their return home. These policies should also regulate and ensure safe and legal migration for female labor migrants and combat irregular and clandestine migration.

In addition, the government should recognize that remittances are not the only avenue for development. They could create an online service for diaspora to contribute to development in diverse ways: by investing in public projects, sharing their skills, mentorship, ideas, and social connections to benefit Senegalese citizens. This type of platform would be beneficial in building trust between authorities

¹²⁸ Badara Diaw, personal communication.

¹²⁹ Ibid.

and migrants, and would promote return migration as a strategy for development. The state should ensure that more accurate records about migrants are maintained, acknowledge rising female migratory flows and manage them in direct cooperation with migrant-receiving countries. National authorities should also ensure local authorities are trained and certified prior to taking their positions.

There exists a massive disconnect between sectors of M&D, both in practice and policy. Emphasis must be placed upon cooperation between the government, NGO (both local and national) and multilateral institutions. Local and national authorities need to build trust with migrant associations. The dissemination of data, results, knowledge, and resources among sectors is crucial to the improvement the position of migrant women in Senegal. Sharing results from successful projects would encourage collaboration.

Most concerning is the lack of data on migrant women in Senegal; incomplete or vetted, gender blind and rarely distributed online for public use. The problem is there is a lack of information sharing, as NGOs, government, or other, record their own data sets as the baseline for evaluating the success of its individual program. There is no central database for them to share data and results, which leads to misunderstanding and mistrust between sectors.

The staff at the OCHCR for example complained that NGO's in Senegal only write reports to disseminate their findings to donors in order to secure further grant capital, rather than sharing them with other actors in the field. Sharing information in this case would combat some NGO tendencies to alter reports (skewing to more positive outcomes than those actually recorded) to give the impression of program success. In addition, without the sharing of data, the Senegalese government will be unable to create sound policies that reflect the realities of international labor migration in the country.

Across the board, programs' objectives were oversimplified and generalized: they were not gender specific and assumed migrant women as having the same ethnicity, language and religion (despite the fact that attitudes and obstacles towards migration are largely dependent on these). Therefore, reintegration programs particularly, must consider cultural and ethnic differences to ensure sustainable impact.

Lastly, as we have seen, the programs analyzed focused on economic over social assistance, and prioritized financial over social, cultural, and human capital. In my interviews, it seemed organizations either lacked resources or were skeptical that social assistance would actually translate into change outside of the household. It is apparent that these actors have either not realized, or choose to ignore, what Amartya Sen and other economists have repeatedly proven: that empowering women socially also helps countries develop economically.

Conclusion

The future of the gender – migration – development nexus depends on the country. This study notes, ethnic, religious, linguistic, and historical differences determine how migration is perceived by the local population and managed by society. This development cannot be understood solely through quantitized data and quantifiable evidence. Analyzing the migration-development-gender nexus requires a micro-level and community based approach and continuous contact with female members of society, who in some countries are ignored by policy makers and researchers alike. While economic impact can be extracted from quantitative data and surveys, measuring social impact is incredibly challenging. Case studies such as this one serve as evidence that in many countries economic data tends to be unavailable or outdated. Both do not occur overnight, yet, social changes are subtler and thus more difficult to recognize and evaluate. It can take decades for social change to diffuse from the individual to the family, to the community, and finally to the national level.

This analysis also highlighted why grassroots and bottom up approaches are most successful at empowering migrant women. These women have potential to be strong agents of change, but they need support from the government, from national and international organizations, and from other women in Senegal and the diaspora abroad. In order to advance their status in developing countries, they need to be

at the center of program and policy creation. The top-down approach (which involves government actors and the elite in developing countries) will continue to be unsuccessful. Without implicating women from the grassroots and giving them a productive role in society, gender equality cannot exist. In patriarchal societies, social changes brought by migrant women can easily evaporate into thin air. Thus, the importance of social assistance, solidarity, and community involvement, must be advocated by both men and women involved in organizations which aim to promote gender equality.

While focused on Senegal, the outcomes of this research have global implications. Migration has been recognized as a path to socioeconomic empowerment around the world. Obstructing, devaluing, and restricting mobility for women is not limited to Senegal or West Africa. It exists around the world and is handled differently in each country. Nevertheless, the key recommendations in this paper are transferrable. Migrant-sending countries in the developing world would undoubtedly benefit from refocusing to a grassroots and community oriented development approach that targets migrant women's social, cultural and human capital (over economic ones). However these programs must be backed up by government practice and policy, through encouraging "return migration", legally protecting migrant women's rights and facilitating skill and knowledge transfer through exchange platforms.

By fostering solidarity through the establishment of women's groups, the government can help build entrepreneurs. Through such policies and practices, countries could contribute to their economic growth while simultaneously empowering women in both economic and social domains in their society. Future research would benefit by focusing on bilateral agreements and policies for temporary labor contracts between migrant-sending and migrant-receiving countries and on encouraging return migration and entrepreneurship for migrant women abroad.

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THE DECLINE OF THE SHANZHAI PHONE INDUSTRY: A POLITICAL ECONOMY ANALYSIS

FORD DEIHL, ZOÉ MACIAS, & REBECCA MALZ

Mals et al. (2016) investigates the pressures both the government and the domestic cell phone industry have placed on the counterfeit (Shanzhai) cell phone industry in China. The research question is two-fold and is as follows: (1) Why has the government changed its approach toward Intellectual Property Rights (IPR's) in the Shanzhai market? and (2) How have government and domestic firms contributed to the decline of the Shanzhai industry? By examining the government's motivations on whether to enforce IPR's, we find that the government values economic growth over the potential labor unrest that would result from shutting down these illegal firms. Our evidence shows that the government's crackdowns on the Shanzhai cell phone industry are correlated with an increase in trademark applications and a decrease in trademark offences. Domestic firms such as Huawei have impacted the demand for Shanzhai products by creating brand value that differentiates them from their illegal imitations. This leads to consumers viewing Shanzhai phones and real phones as imperfect substitutes.

Hypotheses

- 1) The government has changed its approach towards the enforcement of IPR's in the Shanzhai market because the benefit of collecting tax revenue from these firms operating in a legal context outweighs the cost of increasing temporary unemployment from shutting down the industry.
- 2) The government has increased the number of raids and prosecutions to deter Shanzhai firms from continuing to operate illegally, pushing them to legitimize. Domestic firms have increased their brand awareness efforts to deter consumers from purchasing Shanzhai phones.

Background

“Shanzhai” as a phrase commonly means something distant from official control.¹ Its meaning has evolved over the course of Chinese history, but today it is most widely used to describe China's counterfeit sector. Most Shanzhai companies are located in the Pearl River Delta (PRD) in the province of Guangdong, mostly in the city of Shenzhen, shown in Figure 1.

¹ Chinese *Shanzhai* Handset Market Research Report. Report. Sino-MR, 2013.



Figure 1: Map of Guangdong Province²

Shenzhen is a former fishing village in the southern area of China, adjacent to Hong Kong and Macau. Deng Xiaoping created the first Special Economic Zone (SEZ) in Shenzhen in 1979; the area has since grown into a major manufacturing and economic hub, with the Shanzhai industry as a key component.³ In 2013, the city and its suburbs produced a GDP of ¥1.4 trillion, not far behind Beijing's ¥1.9 trillion.⁴ Today, Shenzhen is known as the "Silicon Valley of Hardware."⁵

Our paper will focus on the mobile phone subsector of the Shanzhai industry. Shanzhai phones can range from counterfeit to "reworked" legal phones that infringe on IPR's to varying degrees (see

2 Source: Guangdong. 2016. Image. & Guangdong Province Map. 2016. Image.Screen Shot 2017-11-12 at 2.05.40 PM.png

3 Pengfei, Zhang. 2009. "Shanzhai And Shenzhen". IEEE Solid-State Circuits Magazine.

4"Shanghai (Shanghai) City Information." China's City' Economic Data. 2013.

5 Bland, Ben. "Shenzhen, China, a Silicon Valley of Hardware." Financial Times, May 3, 2016.

Figure 2). Our paper does not distinguish between the different types of Shanzhai handsets, but rather uses “Shanzhai” to refer to the unofficial mobile phone industry and its products as a whole.

Type	Description
White Brand	Provided by companies with a mobile phone license, but the license is purchased from a legal holder and the phone through official testing.
Counterfeits	1. Clone - looks exactly like branded phones with the brand logo printed on the phone 2. Imitation - looks exactly like the branded phones with different logos printed on them, ex. Hiphone v. iPhone 3. Fake - has the brand logo printed on them even though the brand does not have a similar or identical product
Indigenous Innovation	Indigenous innovative mobile phones with many unique features, such as the dual SIM card reader.
Rework	Recycles the repaired main board of the leading brand and replaces the outer shell.

Figure 2: Category of Shanzhai mobile phones.⁶

The Shanzhai phone industry originated as a result of a 1999 government reform introducing the mobile phone manufacturing license system.⁷ The system created large barriers to entry, causing many manufacturers to operate unofficially. Due to a lack of government enforcement of the license system, unlicensed manufacturers continued to operate without consequence. Moreover, these manufacturers kept up with current designs and technology trends by infringing on the IPR's of internationally competitive brands such as Nokia and Apple.⁸ The government failed to protect these international corporations' IPRs', giving rise to the current Shanzhai handset market.

Shanzhai phone manufacturers are typically decentralized and small-scale, with 10 to 20 workers on average. However, “by using a numerous number of suppliers, they achieved the economy of scale even with a small amount of capital.”^{9,10} Furthermore, Shanzhai manufacturers are able to produce with low costs by avoiding official product testing and China's value-added-tax, as well as by maintaining low research and development (R&D), promotional, and overhead costs.¹¹ As a result, most Shanzhai phones

6 Hu, Wan and Zhu 2011.

7 Chinese *Shanzhai* Handset Market Research Report 2013

8 Pengfei 2009

9 Liu, Xuefeng, Yuying Xie, and Mangui Wu. "How Latecomers Innovate through Technology Modularization: Evidence from China's *Shanzhai* Industry." *Innovation: Management, Policy, and Practice* 17, no. 2 (February 03, 2015): 266-80. doi:10.1080/14479338.2015.1039636.

10 Analysis of China's *Shanzhai* Electronic Products. Report. Beijing: Samsung Economic Research Institute, 2010.

11 Hu, Jin-Li, Hsiang Tzu Wan, and Hang Zhu. 2011. "The Business Model Of A *Shanzhai* Mobile Phone Firm In China". *Australian Journal Of Business And Management Research* 1 (3): 52-62.

are sold on average for around ¥600, whereas legal domestic and international phones are sold for an average of ¥1760 in China.^{12,13} This price advantage helped fill demand for low-priced phones, particularly in rural China.¹⁴ As a result, the Shanzhai industry had captured 30% of the Chinese mobile market by 2008.¹⁵ As shown in Figure 3, the industry experienced extensive growth, with sales of Shanzhai handsets increasing from 45 million in 2005 to 245 million in 2012.

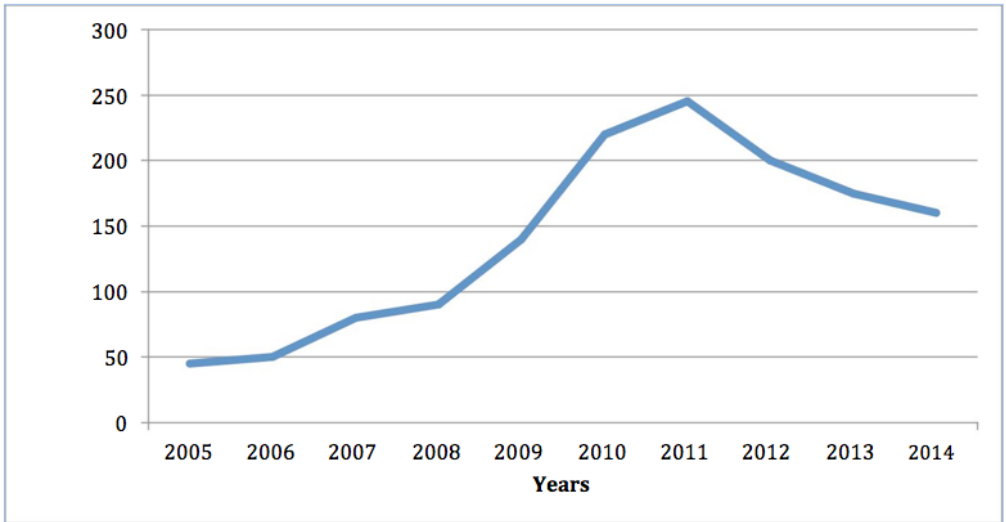


Figure 3: Shipment of Shanzhai handsets in China¹⁶

However, since 2011, the shipment of Shanzhai phones has declined, and by 2014 it had decreased by 35 percent to 160 million. This paper will investigate the role of two key actors, the government and domestic companies, in the fall of the Shanzhai phone industry.

Methodology

In the first part of this paper we analyze the government's regulatory perspective and use cost-benefit analysis to depict their policy motives. More specifically, we compare the marginal benefit of tax revenue and marginal cost of unemployment in a closed system to understand the effects of the government supporting or dismantling the Shanzhai handset market. To do so, we set up an equation to weigh the cost and benefit of each approach:

12 Chinese *Shanzhai* Handset Market Research Report 2013

13 Horwitz, Josh. "Average Selling Price of a Smartphone, China and India." Atlas. September 07, 2015.

14 Wang, Xin Yuan. "Chinese Low-end Smartphone Market: The Era of '*Shanzhai*' Has Passed, Budget Smartphones Dominate." Global Social Media Impact Study. May 06, 2015.

15 Hsiang Kao, Hung and Jen-Fang Lee. 2010. "An Investigation Into The Key Elements Of The Chinese *Shanzhai* Model: Alternative Path To Growth, Cross-Specialization Partnership, And Opportunistic Niche Infiltration". *PICMET 2010 Technology Management For Global Economic Growth*. doi:978-1-890843-21-2.

16 Wang, Kevin. 2010. "China Gray-Market Cell Phone Shipments Slow In 2011". IHS Technology.

$$\begin{array}{c} \text{Marginal Benefit} = \text{Marginal Cost} \\ \downarrow \qquad \qquad \downarrow \\ \text{Tax Revenue} = \text{Unemployment} \end{array}$$

We narrow our cost-benefit analysis to tax revenue and unemployment because the government legitimizes itself through its economic success. By increasing tax revenue, the government can reinvest that money into infrastructure and other forms of development in order to further grow the Guangdong province. In contrast, a rise in unemployment is a sign of an economic failure as demonstrated by worker unrest and social instability. These two factors represent the trade-off between development and stability, or action and non-action by the government.

Our data sets focus on the rise, peak, and decline of the Shanzhai phone market from 2009 to 2014. We use the number of Shanzhai phone shipments within this time period to approximate the possible tax revenue and the average price of a Shanzhai phone in 2012 to obtain the total revenue for the Shanzhai market. We then use the industry's 25% tax rate to estimate the amount of tax revenue the government could be making if these firms were "operating legally."

After establishing why the government has changed its approach towards the Shanzhai industry, we move on to analyze its new approach and its effects. We first gather qualitative evidence on the government's involvement and increase in crackdowns.

Then, we look at various court statistics from the Supreme People's Court and Chinese provincial courts throughout the country in order to determine if the government has increased its efforts to prosecute Intellectual Property Rights (IPR) cases. We also collect data on the number of new applications for trademarks in the Guangdong Province to analyze how Shanzhai firms have responded to the government's industry crackdowns. After collecting these primary and secondary sources, we compare the decrease of legal action to determine the effectiveness of the government's approach.

Lastly, we examine the efforts made by large domestic firms, such as Huawei, to increase brand awareness while simultaneously decreasing the demand for Shanzhai products. We use the microeconomic theory of perfect and imperfect substitutes as a lens to analyze the decline of the Shanzhai industry and the rise of the domestic brands. Huawei's financial statements will give us insight into the success of various efforts to increase brand awareness and differentiate themselves from Shanzhai counterparts. In addition to our primary sources, we find third party reports on the effectiveness of Huawei's branding efforts.

Government Motivations

The Chinese government values the Shanzhai industry for the social stability it offers in employing millions of workers; however, it balances that stability with the loss in tax revenue it would receive if these firms were producing legally sold mobile phones.

Shenzhen is the nation's first special economic zone (SEZ) – an area where laws surrounding business and trade differ from the rest of a country – and thus it has grown into a major manufacturing and economic hub, which is why the Chinese government places a high priority on its development.¹⁷ The Shanzhai industry encouraged the development of the city due to the industry's high growth rate in the

¹⁷ Pengfei 2009

late 2000s. The area continues to be a focus of development as China moves forward with its “Made in China 2025” plan, which aims to overhaul and optimize the Chinese economy so that it is innovation-driven by the year 2025.¹⁸ A large part of this plan involves strengthening the innovative environment in Shenzhen, as evidenced by Premier Li’s visit in October 2016 to manufacturing firms in the city.¹⁹ He toured several firms, praising their innovation and telling them, “the future of ‘Made in China 2025’ is in their hands.”²⁰

According to a report by the global market research firm iSupply, the domestic counterfeit phone market produced an average of 151 million phones per year since 2006, reaching a height of 245 million phones in 2011.²¹ The South China Morning Post estimates that there are 20,000 to 25,000 Shanzhai firms operating in Shenzhen, where most production is centered.²² Given that each firm employs about 10 to 20 workers, we estimate that there are 200,000 to 500,000 employees just in Shenzhen.²³

Based on the size of the market and China’s focus on the development of its technology sector, there is clear government interest in encouraging rather than discouraging growth.

A good measure of that growth is the potential tax revenue that stands to be gained from these firms producing legally manufactured cell phones that do not violate the IPR of foreign or domestic companies. This money could be spent on infrastructure projects in and around Shenzhen, from housing developments to new highways, to encourage more businesses to come to the region and to further the economic development of the area. This increase in tax revenue, therefore, can serve as a proxy measure of the overall growth and development as this revenue is not only a reinvestment into the community, but also a measure of the increased GDP of the province.

Based on 2012 figures, in which 200 million Shanzhai phones were produced that sold for ¥600 each, there should have been taxable revenue of ¥127.8 billion, a number which could have been included in China’s GDP.²⁴ It should be noted that this price of ¥600 is actually lower than the price point which could be expected for a legally produced phone, because the stigma of poor quality associated with a Shanzhai phone typically decreases its value. At the 25 percent tax rate of an average manufacturing firm, there would be another ¥32 billion which the Chinese government could dedicate to development projects.²⁵ While this figure may seem small in the context of China’s GDP, it would be significant for the region.

However, two possible consequences of this mass shutdown of firms would be (1) social unrest, exemplified through worker protests and/or (2) a mass outflow of workers due to the huge percentage of migrants. The province of Guangdong is already facing the largest concentration of worker protests in the

18 Kennedy, Scott. "Made in China 2025." Center for Strategic and International Studies. June 1, 2015

19 "Premier Li Encourages ‘Made in China 2025’ in Shenzhen." The State Council for the People's Republic of China. October 13, 2016.

20 Ibid.

21 Wang, 2010

22 "China's Copycat Manufacturers Are Now Pushing The Boundaries Of Innovation." 2015. South China Morning Post.

23 Liu, Xuefeng, Yuying Xie, and Mangui Wu 2015

24 Wang 2010

25 Shira, Dezan. "Tax Incentives for High-tech Companies in China - China Briefing News." China Briefing News. September 28, 2015. Accessed December 4, 2016.

country. Between August 2015 and February 2016 there were over 280 labor protests in the province, while in 2013 there was less than a total of 100 protests in the entire country.²⁶ Thus, social stability is a serious threat that the government is facing in the region already, and a massive layoff would further add to this.

The second effect of a government crackdown on the operation of Shanzhai firms would be a mass outflow of workers resulting in a shock to the labor market. By shutting down hundreds, or even thousands of firms, the government would be drastically cutting the demand for labor and increasing unemployment. Given that much of the manufacturing of Shanzhai phones is centered in the Pearl River Delta (PRD) and Shenzhen, this effect would be concentrated in that region. There are about 9 million residents of Shenzhen and over 70 percent of are migrant workers, meaning that their household registration permits (hukou) differ regionally within China.²⁷ In the event of a mass crackdown, the non-hukou residents would be forced to return to their registered location, mostly rural areas with less economic opportunity.²⁸ The mass outflow of workers would also stunt the growth of the city that relies on migrant workers to populate it.

A mass crackdown would hinder the government from achieving its goals of maintaining stability and growth. Instead, the government should encourage legitimization of Shanzhai firms, thereby keeping this developing sector employed and gaining tax revenue at the same time. The government has started to increase its crackdowns on the Shanzhai industry and we believe that its goal is to transition Shanzhai manufacturing firms into legal firms and have them adhere to stricter Intellectual Property Law. Our predictions and estimates of tax revenue and worker unrest help to justify why the government has taken action.

Impact Of Government Action On The Shanzhai Industry

The government has taken steps to decrease the number of counterfeit handsets in the market, through a two-pronged attack on the industry. The first involves confiscating phones and shutting down warehouses, which we will analyze through news articles and headline cases. The second way of dismantling the industry is through apparent increases in intellectual property protections; we measured this through various Supreme People's Court (SPC) statistics and trademark applications. We conclude that the government crackdowns have had a significant impact on decreasing the number of handsets and it has pushed many companies to become fully legal. We use a combination of Shenzhen trademark statistics and Guangdong province patent applications as evidence for our conclusion.

Headline Examples

We will outline some headline cases that highlight the pressure the government is exerting on the industry. There have been several examples of the government cracking down on Shanzhai phone manufacturers, specifically those producing iPhones. As the articles show, there is a progression of increasing government involvement in dismantling the industry; it starts with general crackdowns on the industry and moves to target Shanzhai specifically around 2011.

26 Denyer, Simon. 2016. "Strikes And Workers' Protests Multiply In China, Testing Party Authority". Washington Post.

27 Pengfei 2009

28 Hu, Xiaochu. 2012. "China's Rural-to-Urban Migrants: In Search of Fortune, Happiness, and Independence". Migration Policy Institute.

Starting in 2008 reports show the government taking action against counterfeiting in large-scale crackdowns and manufacturing raids. For example, in 2010 the State Administration for Industry and Commerce reported that it had shut down over 6,000 trademark violation cases – firms, manufactures etc. – totaling about \$120 million in goods.²⁹ The government also reports that the value of the counterfeit goods taken out of the market is far higher than it was in previous years and that they will continue this upward trend.³⁰ However, many of the goods were not Shanzhai handsets, rather clothing or other electronics. It is not until several years after when the number of Shanzhai handsets reaches its peak (Figure 3) that there is an increase in government action specifically directed at this industry.

In 2011, there is an uptick in the number of reported Shanzhai crackdowns, beginning with the arrests of five individuals for making and distributing fake iPhones.³¹ The officials confiscated approximately 200 phones.³² This is a small portion of the industry. But this crackdown demonstrated that most of the business in the fake cell phone market had moved out of the marketplace and into online forums, so it was harder for the government to track. Additionally, this raid was one of the first major crackdowns and at the beginning of the timeline. Furthermore, in 2011 officials also found that there were twenty-two fake Apple stores operating in the city of Kunming, and presumably hundreds more across the country.³³

In July 2015, police raided a Beijing-based firm that was manufacturing and distributing fake iPhones on a massive scale.³⁴ The police estimated that the company had made over 41,000 fake phones and hundreds of thousands of other cell phone parts.³⁵ The officials estimated the firm had sold counterfeit goods worth over \$19 million in 2015 alone.³⁶ This case was one of the largest crackdowns ever made by the police. Additionally, they found that the firm had international distributors, resulting, resulting in the government issuing a public report stating that it would step up current measures to ensure that counterfeit and low-quality goods are not exported to Africa, the Middle East, and Latin America. The government argued that it wanted to make sure that only quality brands are exported and represent the Chinese economy well. Additionally, the report stated that greater restrictions would be set up along borders to ensure that quality goods are leaving the country. Finally, the report stated that, “The Ministry of Commerce also called on economic and commercial counselors in more than 140 countries to create specialized teams to protect the interests of Chinese brands.”³⁷ Given the larger scale of crackdowns, in relation to those in 2011 and years prior, the government has increased pressure on the Shanzhai industry.

Measuring Impact

Statistics on IPR cases in China’s court system show the government’s impact on the industry from another perspective. The SPC annual reports give a thorough breakdown to the number and types

29 Bo, Qiu. 2010. “Campaign Busts Brand Copycats In 6,000 Cases”. ChinaDaily.

30 Bo. 2010

31 Takada, Kazunori. 2011. “Fake Iphone Ring Busted In China: Report”. Reuters.

32 Ibid.

33 Chew, Jonathan. 2015. “Huge Apple Iphone Counterfeit Operation Shut Down In China”. Fortune.

34 Jie, Yang. 2015. “Chinese Firm Made Fake iPhones Worth \$19.4 Million, Police Say”. Wall Street Journal.

35 Ibid.

36 Ibid.

37 Salvacion, Manny. 2015. “China Vows To Prevent Counterfeits From Being Exported Abroad”. Yibada.

of cases taken by the Chinese courts at provincial as well as appellate levels.

The 2015 report adds several elements to the IPR protection framework as well as setting new standards in trademark, copyright, and patent law. These changes include clarifications in law and are geared more towards upholding existing copyrights and protecting their owners.³⁸ The annual report showed that Chinese patent owners won a larger percentage of cases than any other country in the world. The Court reports that patent owners have a success rate of about 68 percent; the next highest country is Germany at 66 percent.³⁹

In January 2016, the SPC published a report stating its plans to make 2016 the strongest year for anti-counterfeit and IPR protections so far.⁴⁰ It outlined seven areas in which efforts should be strengthened, the relevant sections are below:

1. Fighting online infringement and piracy as well as the countering the development of poor quality products⁴¹
2. Promote E-Commerce regulations, Unfair Competition Law, Pharmaceutical Administration Law, Copyright Law and Patent Law⁴²
3. Increased attention in the Yangtze River Delta, Beijing-Tianjin-Hebei, and Pearl River Delta⁴³
4. Promote industry self-regulation and media supervision⁴⁴
5. Encourage whistle-blowing and highlighting scandals on the internet⁴⁵

Court Statistics

Our analysis of court statistics and trademark applications supports our media findings and also shows that many Shanzhai firms could be come full-fledged legal companies.

As seen in Figure 4, the number of Shanzhai units shipped domestically decreased as the number of new IPR cases taken by the SPC increased. These are IPR cases taken against Shanzhai firms and are often prosecuted by the government.

38 China Law and Practice. 2016. "The SPC's 2015 IP Report Sets New Standards". 2016. China Law And Practice".

39 Ibid.

40 Xingguang, Jiang. 2016. "China's Fight Against On IPR Infringement, Fake Goods". Supreme People's Court

41 Ibid.

42 Ibid.

43 Ibid.

44 Ibid.

45 Ibid.

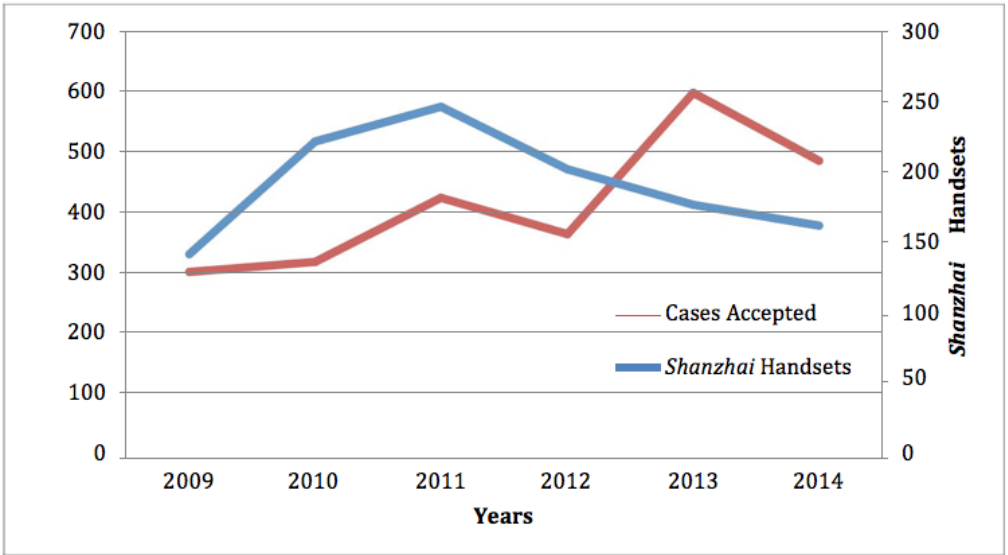


Figure 4: New SPC IPR cases accepted v. Shanzhai handsets⁴⁶

In addition to the number of new SPC cases taken per term, the overall number of IPR infringement cases across China in all courts has increased, as Figure 5 illustrates.

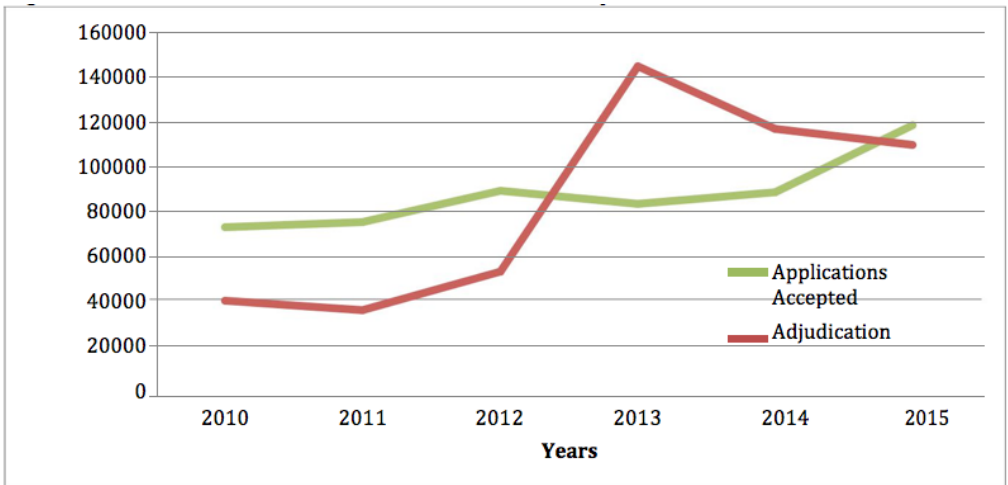


Figure 5: Total number of trademark cases reviewed and adjudicated⁴⁷

⁴⁶ Wang 2010 & China Industry and Commerce Press. "Annual Development Report On China's Trademark Strategy", (2009-2014).

⁴⁷ China Industry and Commerce Press. "Annual Development Report On China's Trademark Strategy", (2010-2015).

The number of government prosecutions of IPR violations across the country has been increasing since 2009 (as seen in Figure 6). This provides evidence that these prosecutions are not only shutting down Shanzhai firms but also creating disincentives for new firms entering the market. In addition, the SPC reports identify continued legal action as one of the strategies to shutting down the industry.

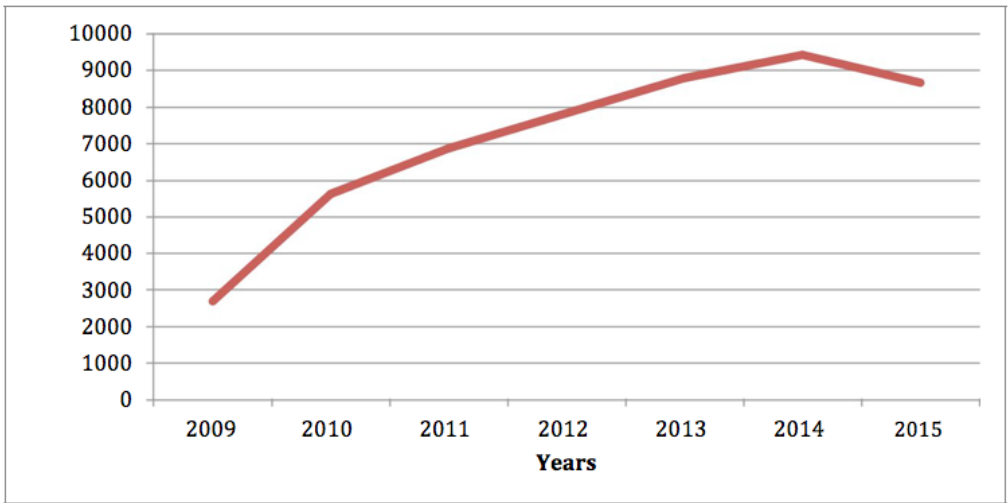


Figure 6: Total number of prosecutions and criminal suspects in violations of trademarks, patents, copyrights and trade secrets⁴⁸

Figures 4 - 6 show a clear increase in legal action, both in the number of cases and the number of prosecutions of IPR infringement. This corresponds with an increase in the number of trademark applications in Shenzhen as seen in Figure 7. The number of applications remained fairly steady until 2013, when we see a more rapid increase and by 2015 the number of applications has more than doubled. This relationship shows that because of the increase in legal action, counterfeit firms are starting to push for trademark protections and legitimization, effectively leaving the illegal market. Firms find it easier and more cost-effective in the long run to legitimize than to face the costs associated with operating as an illegal firm. If caught the counterfeit companies could face not only large fines and confiscation of materials, but also imprisonment.

⁴⁸ China Industry and Commerce Press. "Annual Development Report On China's Trademark Strategy", (2009-2015). [Graph interpolated for year 2012]

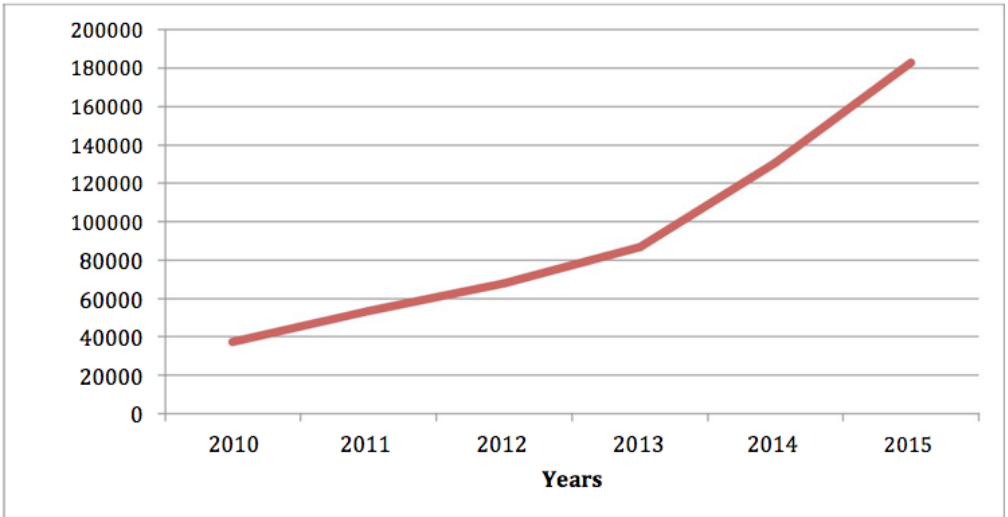


Figure 7: Domestic trademark applications filed in Shenzhen⁴⁹

Furthermore, not only have the trademark applications increased in Shenzhen, but the trademark offenses have also decreased in the same time frame, as seen in Figure 8. This further supports that existing Shanzhai companies are legitimizing through applying for trademarks.

⁴⁹ China Industry and Commerce Press. "Annual Development Report On China's Trademark Strategy", (2010-2015).

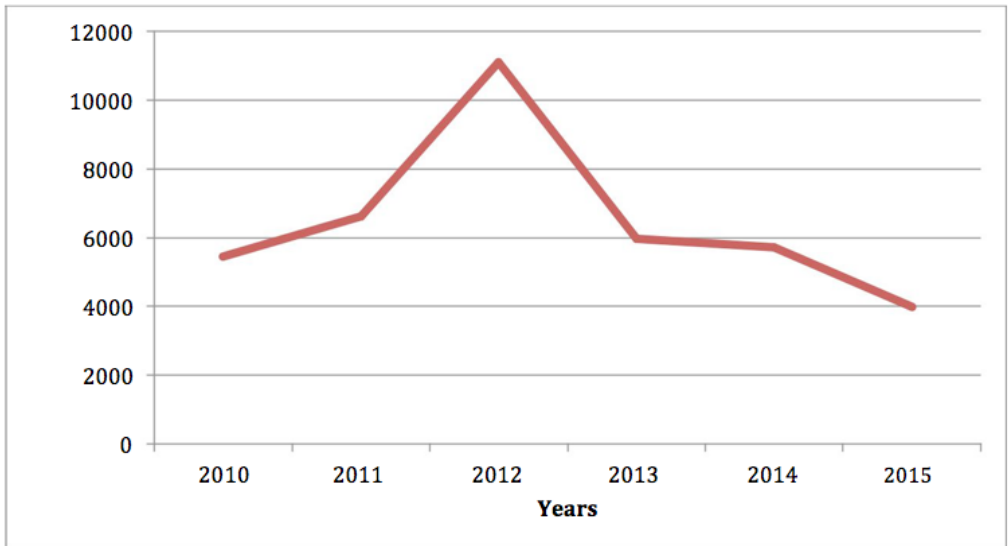


Figure 8: Trademark offenses (infringement and counterfeiting) investigated in Guangdong⁵⁰

In sum, the government's crackdowns have had a significant impact on decreasing the number of Shanzhai counterfeiters through raids as well as increased legal measures. In recent years this had the effect of making more companies legitimize and file for trademarks themselves. We found that the number of legitimate companies may increase significantly in the coming years. Some of these companies could compete with Huawei or Xiaomi. Therefore, government action could contribute to the creation of key domestic firms and the strengthening of the IPR protections for current firms.

Impact Of Domestic Companies On The Shanzhai Industry

Many domestic companies such as Huawei and Xiaomi originally started in the Shanzhai industry but have grown to become leading domestic firms in China.⁵¹ In most developed countries, their status would give them heavy bargaining power to lobby the government to increase IPR. However, we have not found evidence of a bottom-up approach by domestic firms. Nonetheless, these domestic companies care about the threat the Shanzhai industry poses to them and have found alternative strategies through building brand consciousness.

⁵⁰ China Industry and Commerce Press. "Annual Development Report On China's Trademark Strategy", (2010-2015).

⁵¹ Van Egmond, Alex. 2015. "Away From The *Shanzhai*-Route: Intellectual Property Rights In China" 2 (3): 56-62

Creating an Imperfect Substitute:*Theory:*

A perfect substitute refers to a product that can be easily replaced by an identical product without any sacrifice in utility or enjoyment. An imperfect substitute refers to a product that cannot be replaced by a similar product. As seen in Figure 9 on the following page, unlike perfect substitutes, imperfect substitutes do not produce a linear utility function or constant marginal rate of substitution. Therefore, for perfect substitutes, an increase in the price of X also increases the demand of Y, but for imperfect substitutes, if the price of X increases, the demand for good X may decrease but will not be completely substituted by good Y.⁵²

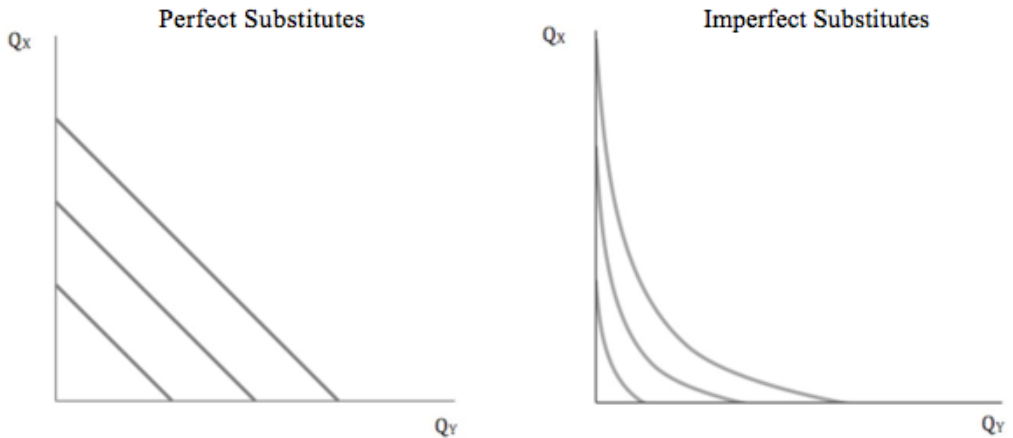


Figure 9: Indifference curves for perfect and imperfect substitutes

Economists would view two identical phones by different producers as perfect substitutes. If one of these phones is cheaper than the other, the theory suggests that the cheaper phone will be consumed. This was the case in China in 2008, when Shanzhai phones made up more than 30 percent of the market while market share for international brands decreased to 50 percent (down from 90 percent in 2000) and domestic brands made up less than 20 percent of the market.⁵³ Since Shanzhai phones were identical and cheaper than their real counterparts, they were perceived as perfect substitutes and held a considerable portion of the market.

⁵² "Substitute". 2016. Investopedia.

⁵³ Hsiang Kao and Lee 2010

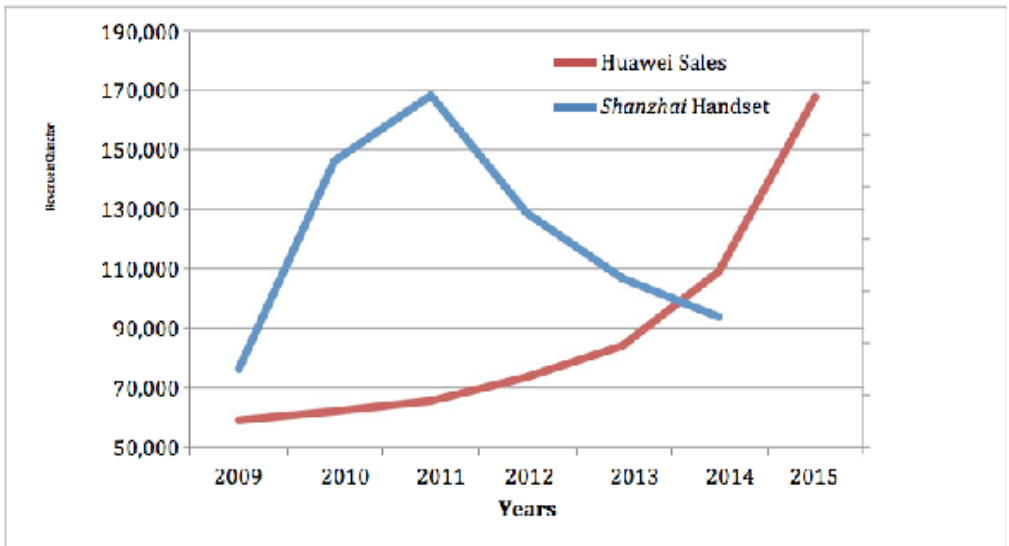


Figure 10: Trends in sale revenue for Huawei and Shanzhai handset shipments in China⁵⁴

However, as seen in Figure 10, the shipment of Shanzhai phones has decreased since 2011 while the sales for domestic brands has increased because the products have become imperfect substitutes in the mind of the average Chinese consumer. In other words, despite the products being physically identical and Shanzhai phones less expensive, consumers prefer the real brand to the counterfeit brand. This is due to the domestic companies' efforts to increase brand awareness and preserve their brand image, which has attached a social stigma to the concept of owning a Shanzhai phone.

Case Analysis of Huawei: Building a Brand

The concept of branding to Chinese companies has only recently become important. Because most companies were previously state-owned and there was no competition for market share, they did not worry about branding because they knew their products would sell.⁵⁵ Now, as China has become more of an open market economy and introduced more foreign competition, domestic companies have had to re-strategize.⁵⁶

Nonetheless, domestic brands such as Huawei have been committed to increasing their brand awareness and their efforts have been effective. In 2015, Huawei was one of the only two Chinese companies to earn a spot on the Interbrand's Best Global Brands report, with the other being Lenovo.⁵⁷ As seen in Figure 11, mainly through advertising and sponsorships, Huawei has aggressively increased their brand awareness both domestically and internationally since 2012. By 2015, 76 percent of people globally

⁵⁴ Huawei, Annual Report. (2009-2015) & Wang 2010, [Graph adjusted for range]

⁵⁵ Wilson, Karl. 2016. "Companies Wake Up To The Benefit Of Brands". China Daily.

⁵⁶ Ibid.

⁵⁷ Ibid.

were familiar with Huawei while 97 percent of people in China knew the brand.

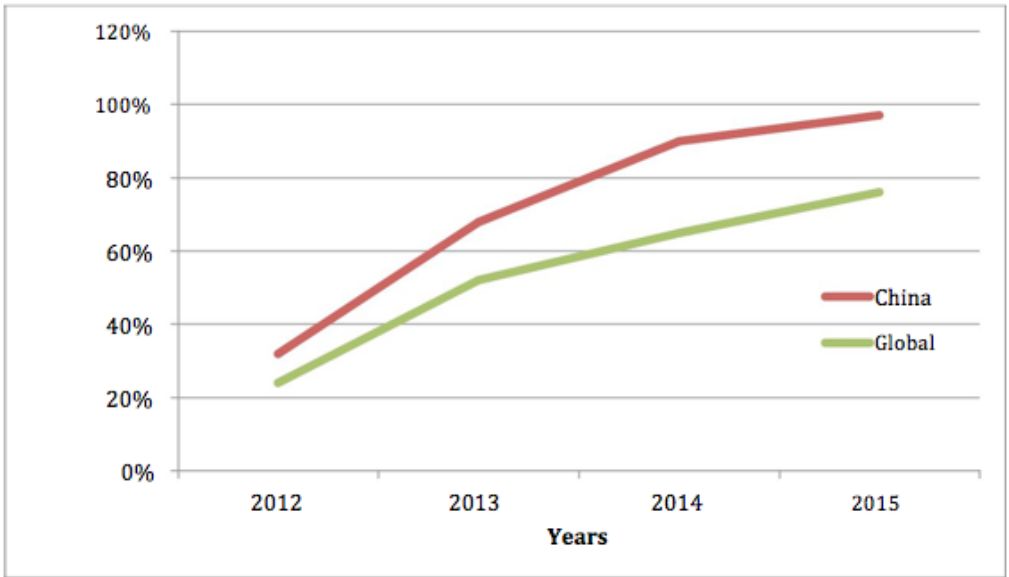


Figure 11: Trends in Huawei’s international and domestic brand awareness⁵⁸

The Net Promoter Score (NPS is a Key Performance Indicator (KPI) which ranges from -100 to 100, measures the likelihood a consumer will recommend a brand and is used to gauge brand loyalty. Huawei’s NPS improved from -24 in 2013 to 47 in 2015. Following increased branding efforts, Huawei’s NPS exponentially grew in a span of two years, improving its reputation.

Huawei has not only increased its brand awareness, but it has also redefined itself as a “value creator”, through investment in R&D. As seen in Figure 12, the company has increased its R&D expenditure, effectively tripling it in the last five years.

⁵⁸ Huawei, Annual Report. (2012-2015)

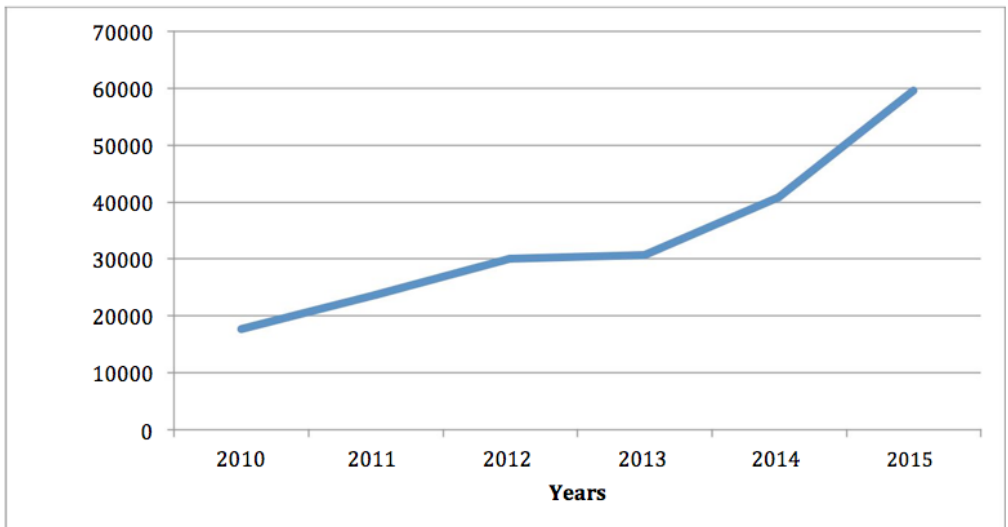


Figure 12: Trends in Huawei's research and development expenditure⁵⁹

To put its expenditure into perspective, Figure 13 shows Huawei's R&D expenditure in comparison to other global tech companies in 2014. Huawei invested about \$600 million more in R&D than Apple in 2014, having invested \$1 billion more by 2015.⁶⁰ Figure 13 also shows that "relative to overall revenue, Huawei is actually spending more on R&D (14.2 percent of revenue) than Microsoft (12 percent) and Amazon (10.4 percent), and isn't far behind Google (14.9 percent)."⁶¹

⁵⁹ Huawei, Annual Report. (2010-2015)

⁶⁰ Bastin, Mike. 2016. "Huawei Showing The Way Forward For Chinese Brands". *China Daily*.

⁶¹ Truong, Alice. 2015. "Huawei'S R&D Spend Is Massive Even By The Standards Of American Tech Giants".

Quartz.

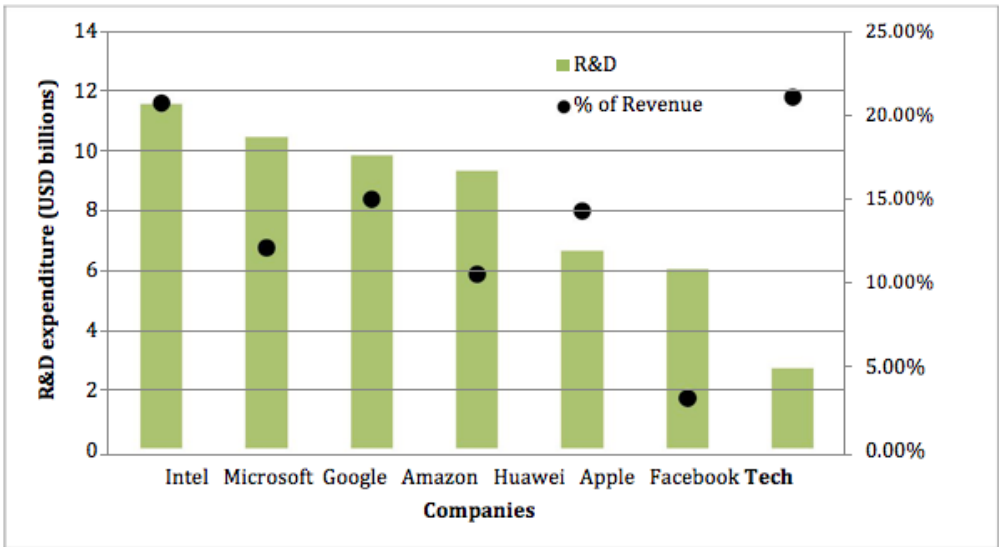


Figure 13: R&D expenditure (total and percent of revenue) of tech companies in 2014⁶²

Huawei is intensely investing in R&D because it wants to change its image from a low-end copycat brand to a high-end “value creator” that can compete with international companies such as Apple and Samsung.⁶³ Their efforts have led to the success of products like the Honor brand phones,⁶⁴ which are made with higher quality materials and marketed as a luxury good. Due to these efforts, Huawei has “earned a reputation as one of the most dynamic, fastest growing, innovative global technology companies today.”⁶⁵

Huawei has also reshaped its brand image by understanding “that the mobile market is now all about the customer service experience and no longer just a telecoms commodity.”⁶⁶ Huawei has taken a “user-centric approach [that] focuses not only on availability, but also on key factors such as accessibility, integrity, retainability and ultimately a customer’s emotional experience.” By taking this approach and personalizing the experience, Huawei has differentiated itself from other low-cost mobile producers, effectively strengthening its reputation.

Moreover, Huawei has attempted to preserve its brand by directly countering the Shanzhai industry. Since Shanzhai products are known to break easily, produce excessive radiation, and catch fire, Huawei fears that their brand image could be affected if consumers believe counterfeit products are

⁶² Truong 2015

⁶³ Wilson 2016

⁶⁴ Trenholm, Richard. 2014. “Huawei Reboots Its Image With New Honor Brand”. CNET.

⁶⁵ “Case Study: Huawei’s Global Brand Strategy”. 2016. Branding Business. Accessed December 10.

⁶⁶ Skilton, Mark. 2016. “How China’s Huawei Is Taking On Samsung And Apple”. *The Conversation*.

authentic Huawei's.⁶⁷ As a solution, Huawei encourages consumers to bring their phones to Huawei stores to verify if they are real.⁶⁸ Similarly, other domestic firms like Xiaomi have set up online platforms where customers can use phone codes to check the product's authenticity.⁶⁹

Huawei has made efforts to increase its brand awareness as well as to redefine and preserve its brand. The company has become the "third largest mobile phone producer in the world, with an impressive share of 8.7 percent in the global smartphone market in the first quarter of 2016."⁷⁰ The company believes that its branding strategies have directly contributed to its increase in sales.⁷¹ Although Huawei's main branding objective is to "ramp up competition against premium rivals Apple and Samsung", its branding appears to be affecting sales for the Shanzhai market as well.⁷²

We believe domestic firms like Huawei have differentiated themselves from Shanzhai phones by creating a brand that Shanzhai producers cannot replicate. In doing so, domestic firms have transformed the market by changing the perception of counterfeit phones as perfect substitutes, increasing demand for authentic phones and decreasing demand for the Shanzhai industry. The overall decrease in domestic smartphone prices and the growth of affluent consumers could also have helped contribute to the switch in demand.⁷³ Huawei may be only one of the first influential brands in China but we believe they have begun a trend for non-counterfeit companies to increase their brand awareness and compete against global competitors in order to capture more of the Chinese market, effectively reducing Shanzhai's market share.

Evaluation

Given that the industry we are studying operates illegally, it was difficult to find multiple sources in order to verify the numbers we found. For example, our primary source for measuring the size of the Shanzhai market was from the market research firm iSupply, which belongs to the internationally renowned company Information Handling Services (IHS). Although this is a highly reputable source that is quoted in a large percentage of our other cited sources, there is no clear information about how the data was collected. Our analysis would benefit from more diverse data sets. We suggest that more primary research be done on the number of Shanzhai units sold in the marketplace and on online forums. More current data is needed to show where the market has moved and if it has in fact slowed down.

The data we collected from the SPC and lower courts could be inaccurate due to government incentive programs and payment structuring. We are unable to find third party sources for the number of cases handled by the Chinese court system. Without further information on payment structures and incentive programs, we are unable to determine whether these would skew the data positively or negatively. While the SPC takes more IPR cases each year and this could show that it is putting more weight on these cases and spending more time deciding them, we do not know if the SPC is simply taking on a larger

67 United Nations Office of Drugs and Crime., 2016. *The Illicit Trafficking Of Counterfeit Goods And Transnational Organized Crime*. Vienna: United Nations Office of Drugs and Crime.

68 Salaam, Dar es. 2016. "Huawei Counters Bogus Handsets". *The Citizen*.

69 Soo, Zen. 2015. "Attack Of The Clones: Xiaomi And Samsung Biggest Victims Of China's Market For Fake Smartphones". *South China Morning Post*.

70 Bastin, Mike. 2016. "Huawei Showing The Way Forward For Chinese Brands". *China Daily*.

71 Joseph, Kezia. 2016. "Huawei Claims Brand Awareness Boosts Revenues". *Mobile Today*.

72 Goovaerts, Diana. 2016. "Huawei Aims To Boost Consumer Awareness With Brand Plan". *Wireless Week*.

73 O'Neill, Michael. 2013. "Sun Setting On China's Shan Zhai Phones". *Weber Shandwick Asia Pacific*.

caseload each year, which would thereby skew the percentage of IPR cases from the total caseload.

Another limitation on our analysis is the limited time frame, as there are only a few years of data collection on the Shanzhai industry. This limited us from doing any further statistical analysis, or even interpreting trend lines because our graphs typically span 4 to 5 years. With more detailed data or a longer time frame, this analysis could have further clarified the influence that Huawei and the government have had on the Shanzhai industry.

A drastic increase in exports to the Middle East and Africa indicates that the Shanzhai industry is pivoting towards those regions. Incomes are typically lower in these regions, so the low price point of the average Shanzhai phone still fills an important gap in the market. While the data suggests a decreased demand for Shanzhai phones, the new expansion to Africa and the Middle East could reverse this trend in the new few years. Further analysis should be done in the future to study how this expansion has affected and will continue to affect the market.

Conclusion

The Shanzhai phone market appears to be declining due to both government legal action and brand-building. We are reluctant to claim that one of these factors outweighs the other in terms of effectiveness, as both the domestic companies and the government have large vested interests in the Shanzhai industry's decline.

Overall, we found the government has been effective in controlling and reducing the supply of the Shanzhai handsets. We can examine the government's approach through the case study of Shenzhen. The government's "Made in China 2025" initiative shows that it plans to encourage more innovative growth in Shenzhen. The government has an interest in preserving the innovative techniques used in Shanzhai handsets and thus should encourage firms to legitimize. The tax revenue that could be gained from legal production is an additional incentive for the government as that money can be used for developing the province, however, the potential labor unrest that would result from a mass shutdown of firms would be a concern in the short run. If the government gave the firms incentives to legalize, unemployment and social instability would not be an issue.

In the second section, we discuss the government's action of raids and crackdowns, as well as prosecutions and legal action. Although the government may take precautions against labor unrest, the amount of prosecutions and court cases involving IPR has increased significantly in the last five years. As a result, in Shenzhen and Guangdong, we identified an increase in applications for trademarks, patents, and copyright protections, while also observing a decrease in trademark infringement. Therefore, we conclude that many Shanzhai companies have begun to legitimize.

Finally, we discuss the role of key domestic brands in China and their influence on the industry. These brands have shifted the demand away from Shanzhai handsets by building a brand image and marketing strategy, thus increasing overall brand awareness. We find that brand awareness made the Shanzhai handsets imperfect substitutes for the phones produced by these domestic firms, shrinking the demand for Shanzhai. We find that the role of these domestic brands is only growing in importance, as each year more companies enter the Chinese cell phone market. The post-Shanzhai manufacturers appear to be a natural solution to the government tradeoff. Therefore, the government could further incentivize the manufacturers to legalize in the future.

Given the unique market power that the government has and how integrated the counterfeit market is in the industry, it is unlikely that the tradeoff and push towards development would happen the

same way in another economy.

Appendix

Table for Figure 3 – IHS Number of Shanzhai units shipped domestically

Year	Unit (in millions)
2005	45
2006	50
2007	80
2008	90
2009	140
2010	220
2011	245
2012	200
2013	175
2014	160

Table for Figure 4 – SPC Number of new IPR cases per term

Year	New cases
2009	297
2010	313
2011	420
2012	359
2013	584
2014	481

Table for Figure 5 – Number of applications accepted and concluded for the SPC per term

Year	Applications accepted	Adjudication
2010	72253	39220
2011	74520	35043
2012	88440	52504
2013	82614	144182
2014	87772	115931
2015	117684	108915

Table for Figure 6 – SPC Prosecuted violations of trademarks, patents, copyrights and trade secrets and other criminal suspects

Year	Prosecutions of IPR infringement
2009	2695
2010	5642
2011	6870
2012	[interpolation]
2013	8802
2014	9427
2015	8664

Table for Figure 7 – Number of new trademark applications per year

Year	Applications
2010	37232
2011	53658
2012	67888
2013	86950
2014	130806
2015	182916

Table for Figure 8 – Number of reported trademark offences in Guangdong

Year	Guangdong trademark offences
2010	5448
2011	6630
2012	11096
2013	5965
2014	5719
2015	3974

Table for Figure 10 – Trends in sale revenue for Huawei and Shanzhai handset shipments in China

Year	Huawei Sales Revenue in China
2009	59038
2010	62143
2011	65565
2012	73579
2013	84017
2014	108881
2015	167690

Table for Figure 11 – Trends in Huawei's international and domestic brand awareness

Year	Brand Awareness (China)	Brand Awareness (Global)
2012	32%	24%
2013	68%	52%
2014	90%	65%
2015	97%	76%

Table for Figure 12 – Trends in Huawei’s research and development expenditure

Year	Huawei R&D Expenditure
2010	17653
2011	23696
2012	30090
2013	30672
2014	40845
2015	59607

Table for Figure 13 – R&D expenditure (total and percent of revenue) of tech companies in 2014

Company	R&D	% of revenue (billions)
Intel	11.54	20.65%
Microsoft	10.41	11.99%
Google	9.8	14.90%
Amazon	9.28	10.42%
Huawei	6.6	14.19%
Apple	6	3.00%
Facebook	2.67	21.00%

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THE DETERMINANTS OF STATE HATE CRIME LEGISLATION

AFRAZ KHAN

Although hate- and bias -motivated crimes have occurred for centuries in the United States, widespread recognition and codification into law is still in development. There is immense variation in hate crime legislation across all 50 states and the District of Columbia, including, but not limited to, the categories of people protected against hate crimes, provisions enhancing penalties for hate crime perpetrators, and legislation establishing data collection methods to track and report hate crimes. Though studies recognize the inconsistencies between state laws, there is minimal research explaining the factors that influence the existence of such laws. This study seeks to analyze whether a state's racial, political, socioeconomic, educational, and law enforcement-related attributes impact that state's likelihood to enact hate crime legislation. The results suggest wealthy states with Democratic-controlled state legislatures and high rates of international immigrants are more likely to possess hate crime legislation. Ultimately, the political will of a state plays a primary role in its ability to recognize hate crimes and respond to them effectively.

Introduction

In the month following November 9th, 2016, the day the United States elected a new president, the Southern Poverty Law Center reported 1,094 bias-related incidents occurring nationwide, a significant spike compared to the same time last year. 315 of these incidents were anti-immigrant, 221 were anti-black, 109 were anti-LGBT, and 45 were anti-woman.¹ Although hate-motivated behavior is not new, its widespread recognition and codification into law is still in development. As of 2014, 22 states lacked legislation classifying 'gender' as a protected category and crimes based on gender bias as hate crimes. 18 states lacked legislation protecting people on the basis of sexual orientation.² Without legislation that properly identifies crimes based on their motives, states are failing to recognize trends in crimes against different groups of people.

For this thesis, I explored what factors impact the existence and passage of hate crime legislation. More specifically, I examined a variety of political, racial, and socioeconomic variables to study whether states with certain attributes are more likely to possess or pass into law hate crime legislation. I found that states with Democratically-controlled state legislatures, higher per capita income, and larger rates of international immigrants will have more expansive hate crime legislation. Ultimately, political control has the most substantive impact. I also found that states that go from a Republican-controlled or split

1 Southern Poverty Law Center "Hatewatch"

2 Anti-Defamation League "2014 State Hate Crime Statutes"

legislature, to a Democratically-controlled legislature, will lead to an addition of 1.35 hate crime categories in legislation (the categories are defined later in the paper).

Since there have been only 38 changes recorded with regards to a state adding or removing hate crime-related legislation over the course of 11 years, my thesis seeks to deepen knowledge not only on the attributes of states that enact or repeal legislation, but also on the attributes of states that possess many hate crime-related laws. Some preliminary questions I asked included: is a state with a Democratic-controlled state legislature more likely to possess hate crime legislation, or enact hate crime legislation? Do states with higher levels of educational attainment have higher levels of hate crime legislation? Does a state's proportion of females or proportion of racial minorities have any impact?

Key Concepts:

Hate Crime

In 1990, the United States Federal Government passed the Hate Crime Statistics Act, mandating the collection and report of "hate crime" data. At the time, "hate crimes" were defined as "crimes committed against a victim because of their race, religion, disability, sexual orientation, or ethnicity." The purpose of this act was to collect data "about crimes that manifest evidence of prejudice" based on a certain identity of a person.³ The federal definition of a "hate crime" has transformed over time; in 2009, President Obama signed the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, expanding the federal definition of hate crimes.⁴ Today, the Federal Bureau of Investigation defines a hate crime as a "criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity."

However, the federal definition of a hate crime differs greatly from state definitions. As recorded in Abt Associates Inc's "Study of Literature and Legislation on Hate Crime in America" conducted for the Department of Justice, there is a large amount of state variability in "the specification of 'protected groups,' or identifiable sets of people whose traits are legally defined as targets of hate crime motivation (e.g. race, religion, sexual orientation)."⁵ States also vary in their definition of what range of crimes are covered under the category of hate crimes. Thus, my research acknowledges the differences in state definitions of hate crimes by examining the variability in state hate crime provisions.

Significance of the Question: Improving Accuracy of Hate Crime Statistics

There is great variability in what is considered a "hate crime" in the United States. A crime committed against someone because of their gender could be recorded as a hate crime in California, but not in Alabama, as California recognizes gender as a protected group whereas Alabama does not. Once a crime is classified as a hate crime, some states provide compensation to the victim e.g. legal services, financial support, and enhanced penalties for the perpetrator. The crime also provides the city, state and federal government with a greater understanding of crimes taking place against specific segments of the population.⁶ The unfortunate reality is that a victim's case would be handled in completely different ways based on the location of the incident. This issue of varying state crime legislation is important to

3 Federal Bureau of Investigation "2010 Hate Crime Statistics"

4 Department of Justice "Hate Crime Laws"

5 Abt Associates Inc "Study of Literature and Legislation on Hate Crime in America"

6 Goldstein, K. "The Case for Hate Crime Statutes"

recognize because the trends in certain categories—e.g. income levels, educational attainment, international immigration rates—can potentially demonstrate how some states have more resources to address hate crimes compared to others.

The FBI's annual Hate Crime Statistics Report reveals how many local, state and federal agencies are participating in collecting, analyzing and reporting incidents of hate crime.⁷ These reporting methods are often only implemented if states pass legislation mandating data collection methods for compiling hate crimes, and police training requirements to ensure law enforcement personnel are equipped to assess and accurately determine the nature of the crime.⁸ Although Georgia has one law enforcement agency for approximately every 24,390 state residents and California has one law enforcement agency for approximately every 82,644 state residents⁹, California has 208 agencies submitting hate crime incident reports whereas Georgia only has four. This discrepancy is a direct effect of the existence—or lack thereof—of state legislation on data collection and police trainings.¹⁰ The deficit of reports then fails to give local, state and federal officials an accurate idea of the types of crimes being committed, and against which specific groups. The FBI recognizes the huge disparity in the number of agencies participating from state to state, and even discourages users from utilizing agency-oriented hate crime statistics “to evaluate locales or the effectiveness of their law enforcement agencies.”¹¹

Additionally, hate crime legislation is extremely important to me given that I am a Muslim-American. Per the FBI's 2015 Hate Crime Statistics Report, there was a 67 percent surge in hate crimes reported against Muslims from 2014 to 2015.¹² To understand the current condition of our country and what protections and policies need to be implemented to protect vulnerable groups like American Muslims, legislation needs to be present to ensure such crimes are being recorded and reported.

Background

Literature Review

Understanding the critical role of legislation in accurately identifying hate crime trends, one must further examine the discrepancies in state legislation, along with the trends that have arisen within new types of legislation. According to Abt Associates Inc's “Study of Literature and Legislation on Hate Crime in America,” there are five primary ways in which hate crime legislation exists differently within each of the 50 states. They are “(1) the specification of “protected groups,” or identifiable sets of people whose traits are legally defined as targets of hate crime motivation (e.g., race, religion, sexual orientation); (2) whether and how they address criminal penalties and civil remedies; (3) the range of crimes covered; (4) whether the statutes contain hate crime reporting requirements; and (5) whether they require training of law enforcement personnel to support improved prevention, response, and recording of hate crimes.”¹³ Given the vast amount of variation, little research has been done to assess how these differences emerged and what factors affect the existence or nonexistence of specific statutes within each state.

7 Federal Bureau of Investigation “2015 Hate Crime Statistics Report”

8 Foley, C. & Smith, A. “State Statutes Governing Hate Crimes.”

9 FBI “2014 Crime in the United States” Table 77 – Full-time Law Enforcement Employees

10 FBI “2014 Crime in the United States” Table 12 – Agency Hate Crime Reporting by State

11 FBI “Uniform Crime Reporting Statistics: Their Proper Use

12 FBI “2015 Hate Crime Statistics”

13 Abt Associates Inc “Study of Literature and Legislation on Hate Crime in America”

Another key finding made by Abt Associates Inc. was the three areas in which hate crime legislation all states were developing. There is an increasing number of state statutes expanding the number of ‘protected groups’, specifically groups defined by disability, gender, and sexual orientation. There is also more legislation focused on providing penalty enhancements for hate-motivated crimes, and on ensuring data collection is being enforced across agencies. With these three trends in mind, my research determining what factors impact the passage of such legislation becomes extremely relevant, as it can indicate how states may be similarly transforming with their new laws.

Figure 1 is a 2014 map by the Movement Advancement Project clearly highlighting the disparity in state hate crime legislation regarding gender identity and sexual orientation. Indicators impacting these differences in law need to be studied.¹⁴

Lastly, Figure 2 is a map I created utilizing data from the Anti-Defamation League’s 2014 report on the number of hate crime-related provisions (‘categories’ as referred to in the map key) covered under each state’s laws. This data further exemplifies the current research done in tracking the variability of state legislation.

¹⁴ Movement Advancement Project “2014 Equality Map”

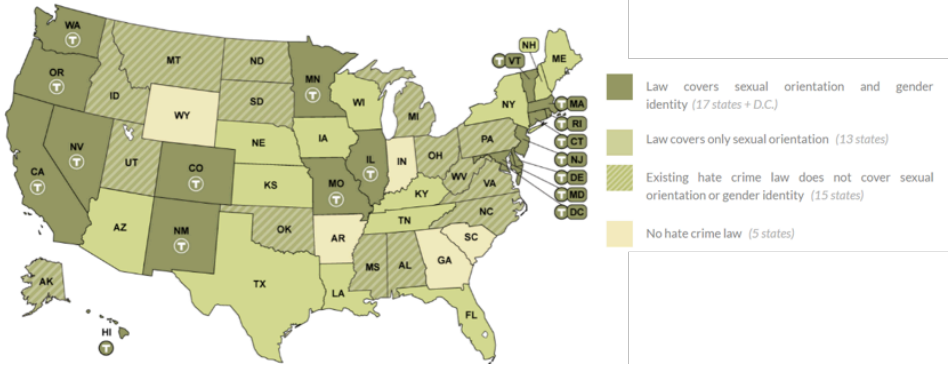


Figure 1

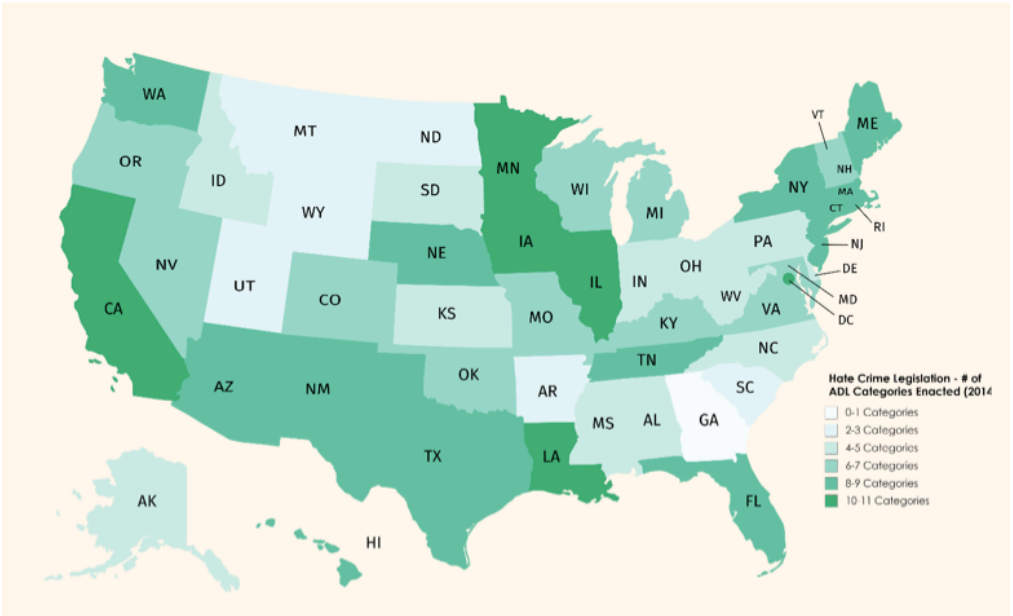


Figure 2

Theory and Intuition

Based on the research conducted so far on state hate crime legislation, there is little evidence on which factors within a state actively affect the existence and creation of hate crime legislation. In the assessment of my dependent variable provided by the Anti-Defamation League, there are six areas I believe will display trends in legislation.

Racial Composition

States that have more racially diverse populations are likely to have larger minority groups. In 2014, the FBI reported that of the 5,462 single-bias incidents recorded, 47 percent were racially motivated.¹⁵ As the racial diversity within a state increases over time and racial minorities make up a larger part of the population, there is a greater likelihood that the hate crime legislation will be more expansive. The reasoning being, if a state's general population has more interaction with a minority racial group, then that state is likely to be more conscious of the needs and issues facing such a group. Hate crime-related legislation would assist in substantively tracking attacks against the group, potentially leading to that group receiving more support and resources.

Additionally, Blacks are the largest racial minority within the U.S. and have had the longest history as victims of bias- and hate -related incidents. To study Blacks and African Americans as a separate factor could potentially shed light on how hate crime legislation in a specific state expands.

Another major aspect influencing racial composition would be migration levels. With more international immigrants coming into a specific state, the population will become more diversified, making it more conducive for legislation to be passed. As of 2010, Mexico, India, the Philippines, China, and Vietnam were the top five countries from which immigrants were coming to the U.S.¹⁶ Such immigrants would be both in the racial and ethnic minority in the U.S. State populations that interact with such groups will have a greater awareness of their issues and hate crime legislation can be a direct result of a state seeking to track and respond to xenophobia- and racist-motivated crimes directed at such groups.

Gender Composition

Increased diversity within a state's gender composition can encourage legislation designed to protect citizens of various gender identities and support victims of gender-based hate crimes. A 2012 report indicated that 26 percent of hate crimes were perceived by the victim to be motivated by a bias towards their gender.¹⁷ With more women in a state, the likelihood of witnessing a crime against someone because of their gender can lead to more legislation protecting groups based on gender; the same can be said for men. With more women and individuals who do not conform to the gender binary, legislation will be created to protect these groups.

Average Income

The Anti-Defamation League measures provisions, including "civil services," meaning victim compensation. States with family income levels that drop may be more likely to pass legislation to financially and legally support victims of hate crimes who do not have the resources to undergo a legal

15 FBI "2015 Hate Crime Statistics"

16 Migration Policy Institute "The Top Sending Countries of Immigrants in Australia, Canada and the United States"

17 US Department of Justice "Hate Crime Victimization, 2004-2012 – Statistical Tables"

proceeding. However, as income levels rise, state hate crime legislation may remain stagnant, as there may not be any need to modify or add legislation. In principle, a hate crime occurs because of an individual being associated with a group, and in all state and federal provisions enacted so far, no law recognizes biases towards one's socioeconomic class as the motivating factor for committing a hate crime.

Education Levels

Highly educated populations could have been better exposed to the realities facing minority groups and had more interactions with people of diverse backgrounds. In areas like rural America, where residents are less likely to interact with someone of a different religion or race, institutions of higher education can help facilitate the interaction among individuals living in rural America and a variety of racial, religious, and ethnic groups. As education levels rise within a state, their population may be more receptive to the needs and concerns of a minority group and will have legislation passed to better protect them.

Crime and Law Enforcement Levels

If general crime levels increase, states will want to ensure that such levels are being controlled. Many crimes motivated by hate may not be legally defined as "hate crimes" in certain states. However, if crime levels rise, states may be more likely to pass legislation to increase penalties for perpetrators of hate crimes and enhance police trainings. Data collection methods may also be implemented to better track trends in types of crimes.

Additionally, a state with a larger number of law enforcement employees in proportion to their population may have more encounters with a variety of hate crimes including hate- and bias-motivated crimes. As a state's number of law enforcement employees increases, there is a greater likelihood that experiences with such crimes would lead to hate crime legislation being enacted to control the levels of those crimes and track the rate of said crimes.

Political Parties within the State Legislature, Election Years and Political Affiliation

Democrats tend to better represent minority groups and their views. As indicated in a Gallup research poll, Democrats are the most racially diverse party, with four in 10 Democrats identifying as someone other than non-Hispanic white.¹⁸ It is likely that as a state legislature becomes more Democratic or becomes Democrat-controlled, the views of minority groups and those most commonly victimized because of their race or ethnicity are better represented and hate crime legislation provisions are expanded.

The other aspect of politics is the role of election years. In the year following the election of a state governor, a variety of legislation—including those addressing hate crimes—will likely be enacted. Governors who win an election are likely to do so based on campaign promises they make to the general population. Given that the clear majority of states have minimal hate crime legislation, it is feasible to believe that governors will make promises in this area and enact legislation in the year after they are elected.

Lastly, there is value in studying the political ideologies of the residents of each state. Historically, in states with populations that hold more conservative views, fewer rights are granted to minority groups. Per a Pew Research Center study, of 44 percent of whites surveyed, the largest proportion identified as

¹⁸ Gallup "Democrats Racially Diverse; Republicans Mostly White"

holding some form of conservative views. Federal statistics tell us that anti-white incidents only made up 10.5 percent of all hate crimes reported in 2015, whereas 48.4 percent of hate crimes were perpetrated by whites.¹⁹ In the context of hate crime legislation, it is likely that states with a higher proportion of residents holding conservative views will have fairly minimal hate crime legislation because whites, who are relatively likely to identify as conservative, are not as heavily victimized as other racial groups.

Hypotheses

Based on what I have provided as the factors impacting the existence and enactment of state hate crime legislation, I will be making the following hypotheses.

Racial Composition

- Hypothesis 1: An increase in the proportion of non-whites in a state will lead to more expansive hate crime legislation.
- Hypothesis 2: An increase in the proportion of international immigrants for any given year will lead to more expansive hate crime legislation.
- Hypothesis 3: An increase in the proportion of Blacks and African Americans in a state will lead to more expansive hate crime legislation.

Gender Composition

- Hypothesis 4: An increase in the proportion of women in a state will lead to more expansive hate crime legislation.

Average Income

- Hypothesis 5: An increase in the income per capita in a state will not lead to more expansive hate crime legislation.

Education Levels

- Hypothesis 6: An increase in the proportion of the population that possesses a bachelor's degree or higher will lead to more expansive hate crime legislation.

Crime and Law Enforcement Levels

- Hypothesis 7: An increase in a state's violent crime rate per state will lead to more expansive hate crime legislation.
- Hypothesis 8: An increase in the number of law enforcement employees per state will lead to more expansive hate crime legislation.

Political Parties within the State Legislature and Election Years

- Hypothesis 9: A state legislature that is or becomes Democratic-controlled (as opposed to split or Republican-controlled) will lead to more expansive hate crime legislation.
- Hypothesis 10: In the year following the election year of the state governor, there will be an expansion of hate crime legislation.

¹⁹ Pew Research Center "Survey of Ideological Views"

- Hypothesis 11: An increase in the proportion of state residents who identify as “conservative” will lead to a decrease in hate crime legislation.

Data Description

Independent Variables:

There are precisely 11 independent variables present within this thesis that are being observed to assess if they impact the expansion of hate crime legislation. These variables are being measured across 50 states and the District of Columbia over the course of 11 years. I have provided details on each of these variables below.

Racial Composition – Proportion of Non-Whites

U.S. Census data on the “Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for the United States, States, and Counties” from 2000-2015 was utilized to build this variable. After having acquired data on all 50 states and D.C., I summed the columns on race that were non- “white” and divided them over the total population. These columns included “Black or African American,” “American Indian or Alaska Native,” “Asian,” “Native Hawaiian or Other Pacific Islander,” and “two or more races.” It is important to note that the U.S. Census defines “Hispanic origin” as the following: “[it] can be viewed as the heritage, nationality, lineage, or country of birth of the person or the person’s parents or ancestors before arriving in the United States. People who identify as Hispanic, Latino, or Spanish may be any race.”²⁰ Due to such a definition, I was unable to determine the proportion of Hispanics in a population as they could be classified under any race.

Racial Composition – Proportion of African Americans and Blacks

In creating an independent variable through the U.S. Census that specifically measures the proportion of African Americans and Blacks, I can study if the existence of one specific racial group impacts the passage and existence of legislation.

Racial Composition – Proportion of International Immigration

The U.S. Census data tables detailing “population, population change, and estimated components of population change” were utilized to build this variable. I acquired the number of international immigrants into each state and divided this by the total state population to acquire the proportion of the population that had internationally immigrated that year.

Gender Composition – Proportion of Women

U.S. Census data on the “Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for the United States, States, and Counties” from 2000-2015 was utilized to acquire this variable. It tells us the proportion of the population that identify as female over the total population.

Average Income – Per Capita Income (PCI)

The PCI for each state was acquired through data provided by the Bureau of Economic Analysis. The PCI is calculated as the total personal income divided by the total midyear population of that state.

²⁰ US Census “Definition: Hispanic Origin”

To adjust for population sizes within each state, I took the logarithm of this variable to ensure a more balanced distribution across all 50 states and D.C. All dollar estimates are in September 2016 dollars and are not adjusted for inflation.

Education Level – Bachelor’s or More

To measure educational attainment, I looked at three sources of data: The National Center for Education Statistics (NCES), the U.S. Census’ American Community Survey (ACS) and the U.S. Census’ Annual Capital Expenditures Survey (ACES). Unfortunately, the data from NCES covered the years 2000, 2005-2008 and 2011-2014 with several years missing in between. The ACES provided data from only 2000 to 2006. The most comprehensive data was acquired through the ACS and spanned from 2006-2014. In the ACS data, estimates are made in March of every year to determine what percent of the population that is 25 years or older holds a bachelor’s degree or more.

Crime and Law Enforcement Levels – Violent Crime Rate

The Uniform Crime Reporting (UCR) Statistics database was utilized to build this variable. The violent crime rate measures the number of violent crimes that occur per every 100,000 of the population. The violent crime rate provided encompasses murder, legacy rape, revised rape, robbery and aggravated assault. To clarify, “legacy rape” is defined as “the carnal knowledge of a female forcibly and against her will. Rapes by force and attempts or assaults to rape, regardless of the age of the victim, are included.” “Revised rape” is defined as “penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Attempts or assaults to commit rape are also included.”²¹

Crime and Law Enforcement Levels - Proportion of Law Enforcement Employees

The FBI’s UCR Tool provides information on the total number of law enforcement employees. I created a variable that would provide the number of law enforcement employees per every 10,000 of the population.

Politics - Dominant Party Within State Legislature

The National Conference of State Legislatures provides a record of whether a state’s legislature is split, Democratic-controlled, or Republican-controlled. Nebraska is the one exception in that its state legislature is unicameral and nonpartisan, and thus is classified in the data as “N/A.”²² In coding this into a numerical variable, I set “0” equal to split, “1” equal to a Democratic-controlled state legislature and “-1” equal to a Republican-controlled state legislature.

Politics - Year After Election Year

Ballotpedia offers yearly information on the different state governor elections taking place. Utilizing this data, I created a variable that tracks the year following an election year in a state. To make this a numeric variable, I coded “1” as the year after a state governor election occurs with all other years being coded as “0.”

²¹ Uniform Crime Reporting “UCR Offense Statistics”

²² Official Nebraska Government Website “Nebraska Unicameral”

Politics – Proportion of Conservatives

To obtain the proportion of conservatives per state, I utilized Gallup Analytics' annual "Political Views & Party Affiliations" poll.²³ Annual data sheets were available with all 50 states and D.C. However, data exists only from 2008 and onwards. Due to my dependent variable lasting from 2003-2014, I chose to separate this variable and run regressions both with and without this variable present.

Dependent Variables:

The dependent variable in this thesis is a result of a compilation of data provided by the Anti-Defamation League (ADL). Beginning from 2003-2014, the ADL has released several reports tracking the amount of hate crime legislation that covers 11 categories that they have established. My usage of this data relies upon the ADL's judgement as to whether a state's legislation adequately encompasses a specific category.

To create a "sum" variable that encompasses all 11 categories, I transformed each category into a numerical format. A state that has legislation in a specific year that the ADL determines sufficiently encompasses a category will be classified as a "1." A state lacking sufficient legislation in a specific category in a specific year is classified as a "0." After coding for 0s and 1s across all 11 categories for all 50 states and D.C. over the course of 12 years, I summed the number of 0s and 1s in each year for each state to create a "sum" variable that ranges from 0 to 11.

The 11 categories are as follows:

1. **Penalty Enhancement** - A state has legislation that increases the penalty for a perpetrator convicted of a hate crime.
2. **Protected Category: Race, Religion, Ethnicity** - A state has legislation that classifies a hate- or bias-related incident as a hate crime if it occurs because of prejudice towards one's race, religion or ethnicity. The ADL has chosen to group race, religion, and ethnicity into one category when tracking state legislation.
3. **Protected Category: Sexual Orientation** - A state has legislation that classifies a hate- or bias-related incident as a hate crime if it occurs because of prejudice towards one's sexual orientation.
4. **Protected Category: Gender & Gender Identity** - A state has legislation that classifies a hate- or bias-related incident as a hate crime if it occurs because of prejudice towards one's gender. Although the ADL tracks gender and gender identity as two separate categories, I decided it would be more efficient in tracking gender-related legislation by grouping the two categories together. The overwhelming majority of states either had no legislation covering either gender or gender identity, legislation covering gender or legislation covering both gender and gender identity. Colorado is the only state to have legislation covering gender identity but not gender.
5. **Protected Category: Disability** - A state has legislation that classifies a hate- or bias-related incident as a hate crime if it occurs because of prejudice towards one's disability or disabilities.
6. **Protected Category: Political Affiliation** - A state has legislation that classifies a hate- or bias-related incident as a hate crime if it occurs because of prejudice towards one's political affiliation.
7. **Protected Category: Age** - A state has legislation that classifies a hate- or bias-related incident as a hate crime if it occurs because of prejudice towards one's age.

23 Gallup "Analytics Table – Proportion of Conservatives"

- 8. **Civil Action** - A state has legislation that provides financial assistance and reimbursements to hate crime victims for costs associated with the crime. Such legislation is also meant to encourage victim cooperation and participation in the criminal justice system.²⁴
- 9. **Data Collection** - A state has legislation that develops institutions and systems through state and local agencies are given the appropriate resources and are required to track and report hate crimes.
- 10. **Police Training** - A state has legislation through which mandatory workshops and trainings are provided to law enforcement officials on how to accurately assess, handle and respond to a hate crime.
- 11. **Institutional Vandalism** - A state has legislation that tracks any hate- or bias-related actions that target places of worship.

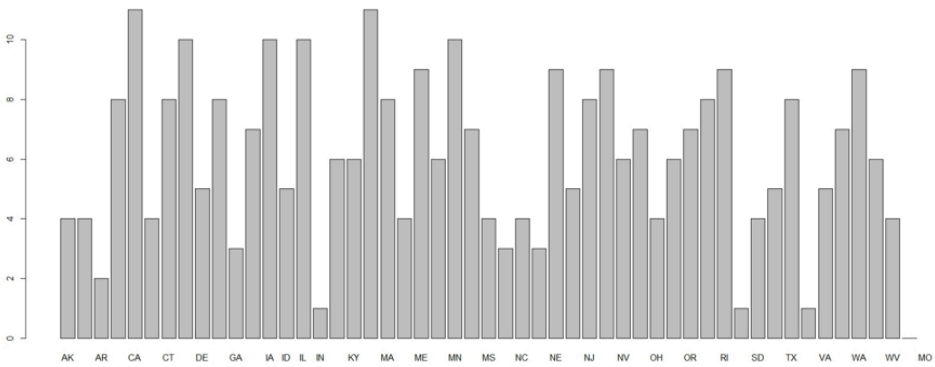


Figure 3.1

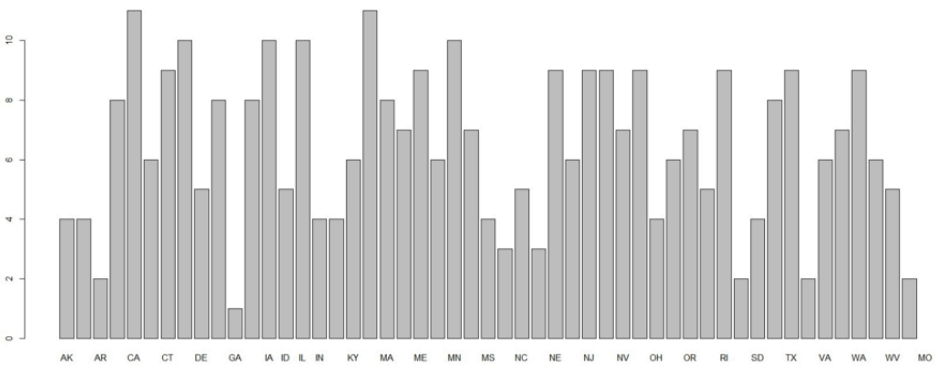


Figure 3.2

24 Department of Justice “Victim Compensation Grant Program”

To exemplify a comparison in how the independent variable has changed over time, Figure 3.1 is a 2003 bar plot displaying the 50 states and D.C. on the x-axis and the number of ADL categories (out of 11) on the y-axis. Figure 3.2 is a bar plot with 2014 data on the same ADL categories. Apart from California and Louisiana, both of which possess legislation covering all 11 categories, there is much work to be done across the United States in achieving uniform hate crime legislation.

The primary reason for summing all 11 categories into one variable is that only 38 changes, in which a state's hate crime legislation encompassed additional categories or decreased the number of categories, were recorded over the course of 12 years. In other words, there were only 38 instances where, in any of the 11 categories, the value went from 0 to 1 or from 1 to 0. Given the low number of changes and the large number of observations, it was not statistically appropriate to measure the change as its own variable, as most of the observations would then not be considered. In utilizing a "sum" variable, all categories for each state for each year are recorded.

The ADL released annual reports tracking what state legislation covered which categories in 2003, 2004, 2008, 2011, 2012, and 2014. Unfortunately, this has led to a few gaps in the data compiled. For example, Colorado enacted legislation that protected groups on the basis on sexual orientation, gender and disability between 2005 and 2008. Due to the missing years of data, it is unknown in exactly which year that data was enacted, but it is known that the legislation did not exist in 2004 and existed in 2008. For the years in which it is unknown whether legislation encompassed a certain category, I left those observations blank and in my "sum" variable, those states in those years are not considered. Fortunately, the overwhelming majority of legislation across all states and D.C. remains relatively similar over the course of the 12 years studied. In the years for which data is missing, the legislation usually remains the same before and after those gaps.

Control Variables & Fixed Effects:

The main control variable included in this study is population. It is necessary to control for population given the large population differences amongst all the states and D.C. To do this, I took the logarithm of each state's population in each year. The data for this variable is coming from the U.S. Census.

Additionally, I will be running my analyses with fixed effects for U.S. regions. The U.S. Census Bureau has divided the 50 states and D.C. into four regions: The Northeast (1), the Midwest (2), the South (3) and the West (4).²⁵ The number corresponding to each region is how that region will be coded. The purpose for running fixed effects is to consider institutional and societal differences that have historically existed within different parts of the U.S. Although the South may contain a large proportion of non-white people, the long history of slavery in the South bore discriminatory policies that have systematically oppressed African Americans, among other populations. In this case, the proportion of non-white people will have little impact on whether a state expands its hate crime legislation because of pre-existing laws and institutions that were initially designed in favor of one racial group.

Methodology

Empirical Design:

To measure the impact of state factors on the existence and passage of hate crime legislation, I

²⁵ US Census "Census Regions and Divisions of the United States"

will be conducting a primary analysis (Part I) along with some supplemental analyses (Part 2). The primary part of my analysis uses an Ordinary Least-Squares (OLS) regression to measure the impact of factors on the “sum” variable. I will run an OLS regression both with and without fixed effects for U.S. regions.

As a supplement, I will be taking each of the 11 categories defined by the Anti-Defamation League and setting them as the dependent variable. I will then run OLS regressions with each of the 11 categories on the same independent variables. Through this analysis, I can study what specific factors impact legislation in a specific category e.g. data collection methods.

This analysis can demonstrate how state trends impact specific provisions of hate crime legislation and thus offer more insight into how states can become better suited to adopt more expansive hate crime legislation. I will be discussing some of the results below and providing tables for each of these regressions in the appendix.

Part I. Ordinary Least-Squares with “sum” variable

In measuring the impact of state factors on the number of categories covered by legislation per state per year, I am creating several models to study the various effects of independent variables.

Model 1 and Model 1’ measure 9 independent variables with a control variable for the population. Model 1’ includes the fixed effects for U.S. region.

Model 1:

Sum of 11 hate crime categories = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 1’:

Sum of 11 hate crime categories = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

*

Model 2 incorporates the proportion of conservatives in each state. Due to the variable covering only from years 2008-2014, it is being placed in a separate model with the 9 independent variables and control variable above. Model 2’ adds fixed effects for U.S. regions.

Model 2:

Sum of 11 hate crime categories = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \beta_{11}(\text{Proportion of Conservatives}) + \epsilon$

Model 2':

Sum of 11 hate crime categories = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \beta_{11}(\text{Proportion of Conservatives}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

*

To study the effects of Blacks as a racial group, Model 3 switches the variable measuring the proportion of non-whites in a state with the variable that measures the proportion of Blacks and African Americans. Model 3' adds fixed effects for regions.

Model 3:

Sum of 11 hate crime categories = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Blacks and African Americans}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 3':

Sum of 11 hate crime categories = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Blacks and African Americans}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

*

Model 4 incorporates the variable measuring the proportion of conservatives into Model 3 that measures the impact of Blacks as a racial group. Model 4' adds fixed effects for U.S. regions.

Model 4:

Sum of 11 hate crime categories = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Blacks and African Americans}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \beta_{11}(\text{Proportion of Conservatives}) + \epsilon$

Model 4':

Sum of 11 hate crime categories = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Blacks and African Americans}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \beta_{11}(\text{Proportion of Conservatives}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

Part II: OLS Regressions on ADL Categories

For part II of my analysis, I am taking each of the 11 categories as defined by the ADL and setting them as the dependent variable to the same variables applied in Model 1 of Part 1.

Model 5:

ADL Category – Penalty Enhancement = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 5':

ADL Category – Penalty Enhancement = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

Model 6:

ADL Category – Protected Group: Race, Religion, Ethnicity = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 6':

ADL Category – Protected Group: Race, Religion, Ethnicity = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

Model 7:

ADL Category – Protected Group: Sexual Orientation = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 7':

ADL Category – Protected Group: Sexual Orientation = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

Model 8:

ADL Category – Protected Group: Gender = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 8':

ADL Category – Protected Group: Gender = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

Model 9:

ADL Category – Protected Group: Disability = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 9':

ADL Category – Protected Group: Disability = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

Model 10:

ADL Category – Protected Group: Political Affiliation = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 10':

ADL Category – Protected Group: Political Affiliation = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

Model 11:

ADL Category – Protected Group: Age = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 11':

ADL Category – Protected Group: Age = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

Model 12:

ADL Category – Civil Action = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 12':

ADL Category – Civil Action = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

Model 13:

ADL Category – Data Collection Methods = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 13':

ADL Category – Data Collection Methods = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

Model 14:

ADL Category – Police Training = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 14':

ADL Category – Police Training = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \epsilon$

Model 15:

ADL Category – Institutional Vandalism = $\alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \epsilon$

Model 15':
$$\text{ADL Category} - \text{Institutional Vandalism} = \alpha + \beta_1(\text{Logged Total Population}) + \beta_2(\text{Logged Per Capita Income}) + \beta_3(\text{Year After Governor Election}) + \beta_4(\text{Proportion of Non-Whites}) + \beta_5(\text{Bachelors or more}) + \beta_6(\text{Proportion of Law Enforcement Employees}) + \beta_7(\text{Proportion of Females}) + \beta_8(\text{Proportion of International Immigrants}) + \beta_9(\text{Dominant Party Within State Legislature}) + \beta_{10}(\text{Violent Crime Rate}) + \text{Fixed Effects}(\text{Region}) + \varepsilon$$
Results and Analysis

In examining Part 1 of the analysis in which an OLS regression was run with the “sum” variable, the results suggest that an upward or downward trend in specific state factors significantly impacts the number of ADL categories a state will cover through its hate crime legislation.

In Model 1 (shown in Figure 4), there are four factor variables, along with the control variable, for the population that have some degree of statistical significance in their impact on the total number of ADL categories covered, as shown in the table below. Both the control variable (the logged population) and the logged per capita income had a positive impact on the total number of statistically significant ADL categories, the logged population being at the 99 percent confidence level and the logged per capita income at the 90 percent confidence level.

In regards to the proportion of non-whites, the proportion of international immigrants, and the dominant political party in the state legislature, each of these three factors significantly impacted the “sum” variable at the 99 percent confidence level. We learn that a 10-percentage point increase in the proportion of non-whites leads to a decrease of .34 ADL categories covered by state hate crime legislation. A 1-percentage point increase in the proportion of international immigrants leads to an increase of 3.96 ADL categories covered. It is important to note that most states had an annual proportional increase of international immigrants of around .001. Lastly, a democratic-dominated state legislature will yield an additional 1.34 ADL categories covered by legislation.

	<i>Dependent variable:</i>
	Sum of ADL Categories
Logged Population	0.716*** (0.131)
Logged PCI	2.359** (1.046)
Post-Election Year	0.126 (0.256)
Proportion of Non-Whites	-3.455*** (1.026)
Bachelors or More	0.716 (3.748)
Law Enforcement Employees	-0.024 (0.018)
Proportion of Females	-0.785 (16.877)
Int'l Immigration	396.411*** (107.678)
State Legislature	1.349*** (0.129)
Violent Crime	0.001 (0.001)
Constant	-29.216** (14.307)
Observations	407
R ²	0.410
Adjusted R ²	0.395
Residual Std. Error	2.134 (df = 396)
F Statistic	27.508*** (df = 10; 396)
Note:	* p<0.1; ** p<0.05; *** p<0.01

Figure 4

This table ultimately concludes that rich, highly populated, Democratic-controlled states with relatively higher rates of international immigration will have more expansive hate crime legislation compared to states with other attributes. The influence of conflict between a state's proportion of non-whites and proportion of international immigrants on hate crime legislation is uncertain.

In looking at Model 1', the fixed effects did not have a statistically significant impact on the total number of ADL categories covered. The only change in the significance of factors is that the proportion of non-whites seems to now only impact state hate crime legislation at the 90 percent confidence level.

In Model 2 (shown in Figure 5) which includes the proportion of conservatives, the same four factor variables along with the factor variable continue to have an impact on the "sum" variable of some varying degree of statistical significance.

<i>Dependent variable:</i>	
Sum of ADL Categories	
Logged Population	0.795*** (0.150)
Logged PCI	2.298* (1.223)
Post-Election Year	0.073 (0.305)
Proportion of Non-Whites	-2.817** (1.104)
Bachelors or More	-3.716 (4.244)
Law Enforcement Employees	-0.018 (0.019)
Proportion of Females	-10.504 (19.029)
Int'l Immigration	274.691** (123.388)
State Legislature	1.219*** (0.150)
Violent Crime	0.0004 (0.001)
Conservatives	-8.924** (3.821)
Constant	-20.801 (17.162)
Observations	333
R ²	0.396
Adjusted R ²	0.376
Residual Std. Error	2.143 (df = 321)
F Statistic	19.171*** (df = 11; 321)
Note:	*p<0.1; **p<0.05; ***p<0.01

Figure 5

Here, the logged population and the dominant party in the state legislature both have positive impacts of statistical significance at the 99 percent confidence level. The proportion of non-whites, the proportion of international immigrants and the proportion of individuals who are conservative are all impactful only at the 90 percent confidence level. In examining the substantive effects, we notice that for every 1-percent point increase in the proportion of Conservatives, there are .08 fewer ADL categories of legislation. The proportion of non-whites continues to have a negative impact on the “sum” variable of ADL categories, and in this case, we see a 1-percentage point increase in the proportion of non-whites yielding .02 fewer ADL categories of legislation. In running fixed effects on Model 2, there were no regions that had a statistically significant impact.

In Model 3' (shown in Figure 6) where the variable representing the proportion of non-whites is swapped with a variable representing specifically the proportion of Blacks and African Americans in a state, our results including fixed effects shows 6 factor variables having some statistically significant impact on the “sum” variable along with the control variable for the population.

The control variable, which is the logged population, positively impacts the “sum” variable of ADL categories at the 99 percent confidence level. Although the proportion of Blacks, the proportion of females, and the dominant party in the state legislature all impact the “sum” variable at the 99 percent confidence level, the proportion of Blacks negatively impacts the “sum” variable while the latter two factors positively influence it. Lastly, at the 90 percent confidence level the violent crime rate (VcrimeR) and the fixed effects for the South, which is represented as Region 2, both positively impact the dependent variable.

	Sum of ADL Categories
Logged Population	0.740 ^{***} (0.134)
Logged PCI	3.258 ^{***} (1.177)
Post-Election Year	0.135 (0.244)
Proportion of Blacks	-11.643 ^{***} (1.955)
Bachelors or More	-1.927 (3.878)
Law Enforcement Employees	-0.009 (0.017)
Proportion of Females	97.302 ^{***} (29.769)
Int'l Immigration	294.159 ^{***} (102.754)
State Legislature	1.177 ^{***} (0.129)
Violent Crime	0.002 ^{**} (0.001)
Factor-Region:Midwest	0.859 ^{**} (0.432)
Factor-Region:South	0.380 (0.482)
Factor-Region:West	0.470 (0.542)
Constant	-88.636 ^{***} (22.993)
Observations	407
R ²	0.469
Adjusted R ²	0.451
Residual Std. Error	2.032 (df = 393)
F Statistic	26.674 ^{***} (df = 13; 393)
Note:	* p<0.1; ** p<0.05; *** p<0.01

Figure 6

In regards to substantive effects, for every 1-percentage point increase in the proportion of Blacks and African Americans in a state’s population, there is a drop of .12 in ADL categories covered by legislation. Institutionally speaking, states that have held histories of slavery may naturally have laws in place that, regardless of how large a minority group exists in the population, legislation will not be favorable to them. As the proportion of international immigrants goes up by 1-percentage point, there is an increase of 2.94 ADL categories covered in legislation. A Democrat-controlled state legislature will

have 1.18 more ADL categories covered. Unique substantive impacts include the violent crime rate and the proportion of females. As the violent crime rate increases by 100 for every 100,000 individuals of a population, there is a 0.19 increase in the number of ADL categories covered through legislation. As the proportion of females goes up by 1-percentage point, we see an increase of .973 ADL categories.

Model 4 includes the swap of the racial variable to look at just the proportion of Blacks and African Americans and the variable measuring the proportion of conservatives, the statistical significance of the impact of the proportion of international immigrants, the violent crime rate and the logged per capita income drops. In Model 4', fixed effects have no statistically significant impact.

To briefly mention the results of the second part of the analysis, I noticed that a Democrat-controlled state legislature was statistically significant in the increase from '0' to '1' (going from non-existent to existent) in each of the 11 categories, excluding institutional vandalism. A state's PCI was also significant at some level for most of the 11 categories measured. We noticed in Part 1 that an increase in the proportion of non-whites continuously yielded a decrease in the total number of ADL categories covered. The same can be said about the impact of a rise in the proportion of non-whites on the existence of each individual category. A final point to mention is the number of law enforcement employees per every 10,000 of the population did have a statistically significant impact on the implementation of data collection methods and police trainings, the two ADL categories tied to the tracking of hate crimes.

Hypothesis Testing: Results

In assessing the strength of our hypotheses in accordance with Model 1, the following can be noted:

Racial Composition

- **Hypothesis 1:** An increase in the proportion of non-whites in a state will lead to more expansive hate crime legislation. The null hypothesis is rejected, but not in favor of the alternative hypothesis. The increase in the proportion of non-whites had a statistically significant negative impact on the number of ADL categories covered through legislation.
- **Hypothesis 2:** An increase in the proportion of international immigrants for any given year will lead to more expansive hate crime legislation. The alternative hypothesis can be accepted. An increase in the proportion of international immigrants had a statistically significant impact.
- **Hypothesis 3:** An increase in the proportion of Blacks and African Americans in a state will lead to more expansive hate crime legislation. Based on Model 3, the null hypothesis can be rejected but not in favor of the alternative hypothesis. The increase in the proportion of Blacks and African Americans had a statistically significant negative impact on the number of ADL categories covered through legislation.

Gender Composition

- **Hypothesis 4:** An increase in the proportion of women in a state will lead to more expansive hate crime legislation. Based on Model 1, the null hypothesis cannot be rejected. Based on Model 3', the alternative hypothesis can be accepted. An increase in the proportion of females had a statistically significant impact.

Average Income

- **Hypothesis 5:** An increase in the income per capita in a state will not lead to more expansive hate crime legislation. The alternative hypothesis can be accepted. An increase in the proportion of international immigrants had a statistically significant impact.

Education Levels

- **Hypothesis 6:** An increase in the proportion of the population that possesses a bachelor's degree or higher will lead to more expansive hate crime legislation. The null hypothesis cannot be rejected.

Crime and Law Enforcement Levels

- **Hypothesis 7:** An increase in a state's violent crime rate per state will lead to more expansive hate crime legislation. Based on Model 1, the null hypothesis cannot be rejected. Based on Model 3', the alternative hypothesis can be accepted. An increase in the proportion of females had a statistically significant impact.
- **Hypothesis 8:** An increase in the number of law enforcement employees per every 10,000 of the population per state will lead to more expansive hate crime legislation. The null hypothesis cannot be rejected.

Political Parties within the State Legislature and Election Years

- **Hypothesis 9:** A state legislature that is or becomes Democrat-controlled (as opposed to split or Republican-controlled) will lead to more expansive hate crime legislation. The alternative hypothesis can be accepted. A Democrat-controlled state legislature had a statistically significant impact.
- **Hypothesis 10:** In the year following the election year of the state governor, there will be an expansion of hate crime legislation. The null hypothesis cannot be rejected.
- **Hypothesis 11:** An increase in the proportion of state residents who identify as "conservative" or "very conservative" will lead to a decrease in hate crime legislation. Based on Model 3, the alternative hypothesis can be accepted. A state with a higher proportion of people who identify as "conservative" or "very conservative" had a statistically significant negative impact.

Conclusion

The purpose of this thesis was to assess what state factors impact the existence of state hate crime legislation. Based on these results, it is evident that a variety of political, socioeconomic, racial and other factors are significant in impacting the types of provisions covered in a specific state's hate crime legislation. Although factors like PCI and what party controls the state legislature are more likely to be associated with more expansive legislation, other variables, including the proportion of international immigrants and the proportion of Blacks and African Americans, indicate societal conditions also play a role in such legislation. With such information, we can better assess which states have conditions potentially conducive towards expansion of their hate crime provisions.

In most of the regressions that were run, the dominant political party in the state legislature remained statistically significant to some degree in regards to how many ADL categories were covered. This indicates that the actual assessment of, tracking of, and response to hate crimes on a state and local level is specifically tied to political will. In terms of a state legislature's party affiliation, a variety of evidence indicates that Republican-controlled state legislatures are more likely to put their state populations at risk by not implementing legislation that effectively tracks crimes against groups because of their religion,

gender, sexual orientation, disability status etc. The issue is not whether hate crimes exist, but whether politicians are willing to step beyond partisan lines to enact legislation so their governments can become more receptive to the needs of and challenges faced by the most commonly victimized groups.

Another major takeaway is, for the most part, the violent crime rate and the number of employed enforcement is not significant in expanding legislation in a state. The reality is that even if law enforcement agencies are witnessing more crimes, until there are institutional policies in play to inform how certain crimes should be interpreted as hate crimes, trends of bias- and hate-related events against specific groups will continue unnoticed.

Due to the nature of this research, and the fact that few other projects that have assessed the impact of similar state factors, I hope this can serve as encouragement for groups like the Anti-Defamation League and the Southern Poverty Law Center to keep a more detailed record of legislation enacted annually from state-to-state so that more trends in how hate crime legislation is expanding can be tracked. This paper can serve as a reference to show how certain trends within states that have not previously been tracked are now providing a great deal of information on the type of legislation that state will pass.

Ultimately, I hope this research can be a driving factor for federal and state governments as well as other organizations to study the factors that impact hate crime legislation so that more uniform and expansive policies can be applied nation-wide to track crimes targeting populations because of their identity and provide support to said populations.

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Appendix

Model 1:

```
lm(formula = sum ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawemppercl0K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR + factor(Region), data = HCMASER)

Residuals:
    Min       1Q   Median       3Q      Max
-5.8622 -1.3920  0.1109  1.2361  7.2573

Coefficients:
              Estimate Std. Error t value      Pr(>|t|)
(Intercept) -45.3908372  22.4718005  -2.020    0.044072 *
logripopu     0.6516208   0.1384365   4.707    0.00000349 ***
logriecon     2.3992704   1.2195192   1.967    0.049841 *
governlag     0.1319183   0.2534424   0.521    0.603004
addrace      -2.3308736   1.1230205  -2.076    0.038586 *
BachandmoreACS -1.6663091   4.0290044  -0.414    0.679408
lawemppercl0K -0.0172699   0.0177539  -0.973    0.331281
femaleperc    32.5231578   28.4685523   1.142    0.253973
Intimigratep  401.5240806  109.2669085  3.675    0.000271 ***
Legiscontrol   1.2911209   0.1342632   9.616 < 0.0000000000000002 ***
VcrimeR       0.0009881   0.0009595   1.030    0.303720
factor(Region)2  0.5640991   0.4478629   1.260    0.208585
factor(Region)3 -0.6596643   0.4722585  -1.397    0.163253
factor(Region)4  0.2785673   0.5730826   0.486    0.627177
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.11 on 393 degrees of freedom
(424 observations deleted due to missingness)
Multiple R-squared:  0.4271, Adjusted R-squared:  0.4081
F-statistic: 22.54 on 13 and 393 DF, p-value: < 0.00000000000000022
```

Model 1':

```
lm(formula = sum ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawemppercl0K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR + factor(Region), data = HCMASER)

Residuals:
    Min       1Q   Median       3Q      Max
-5.8622 -1.3920  0.1109  1.2361  7.2573

Coefficients:
              Estimate Std. Error t value      Pr(>|t|)
(Intercept) -45.3908372  22.4718005  -2.020    0.044072 *
logripopu     0.6516208   0.1384365   4.707    0.00000349 ***
logriecon     2.3992704   1.2195192   1.967    0.049841 *
governlag     0.1319183   0.2534424   0.521    0.603004
addrace      -2.3308736   1.1230205  -2.076    0.038586 *
BachandmoreACS -1.6663091   4.0290044  -0.414    0.679408
lawemppercl0K -0.0172699   0.0177539  -0.973    0.331281
femaleperc    32.5231578   28.4685523   1.142    0.253973
Intimigratep  401.5240806  109.2669085  3.675    0.000271 ***
Legiscontrol   1.2911209   0.1342632   9.616 < 0.0000000000000002 ***
VcrimeR       0.0009881   0.0009595   1.030    0.303720
factor(Region)2  0.5640991   0.4478629   1.260    0.208585
factor(Region)3 -0.6596643   0.4722585  -1.397    0.163253
factor(Region)4  0.2785673   0.5730826   0.486    0.627177
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.11 on 393 degrees of freedom
(424 observations deleted due to missingness)
Multiple R-squared:  0.4271, Adjusted R-squared:  0.4081
F-statistic: 22.54 on 13 and 393 DF, p-value: < 0.00000000000000022
```

Model 2:

```
lm(formula = sum ~ logripopu + logriecon + governlag + addrace +
  BachandmoreACS + lawempper10K + femaleperc + Intimigratp +
  Legiscontrol + VcrimeR + Conservativeor, data = HCMaster)

Residuals:
    Min       1Q   Median       3Q      Max
-5.3049 -1.5695 -0.1041  1.3724  7.1638

Coefficients:
              Estimate Std. Error t value Pr(>|t|)
(Intercept) -20.8011366  17.1618880  -1.212   0.2264
logripopu    0.7953966   0.1497305   5.312 0.00000020289242097 ***
logriecon    2.2978259   1.2234825   1.878   0.0613 .
governlag    0.0729980   0.3050529   0.239   0.8110
addrace     -2.8171136   1.1037833  -2.552   0.0112 *
BachandmoreACS -3.7162445   4.2436102  -0.876   0.3818
lawempper10K -0.0176488   0.0191982  -0.919   0.3586
femaleperc  -10.5041722   19.0292430  -0.552   0.5813
Intimigratp  274.6911498  123.3881682   2.226   0.0267 *
Legiscontrol  1.2190219   0.1497027   8.143 0.00000000000000864 ***
VcrimeR      0.0003571   0.0011055   0.323   0.7469
Conservativeor -8.9242397   3.8212090  -2.335   0.0201 *
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.143 on 321 degrees of freedom
(498 observations deleted due to missingness)
Multiple R-squared:  0.3965, Adjusted R-squared:  0.3758
F-statistic: 19.17 on 11 and 321 DF, p-value: < 0.00000000000000022
```

Model 2':

```
lm(formula = sum ~ logripopu + logriecon + governlag + addrace +
  BachandmoreACS + lawempper10K + femaleperc + Intimigratp +
  Legiscontrol + VcrimeR + Conservativeor + factor(Region),
  data = HCMaster)

Residuals:
    Min       1Q   Median       3Q      Max
-5.9110 -1.5230  0.0728  1.2836  7.0441

Coefficients:
              Estimate Std. Error t value Pr(>|t|)
(Intercept) -39.7187537  28.5481197  -1.391   0.1651
logripopu    0.7307195   0.1582643   4.617 0.000005656340977 ***
logriecon    2.3521660   1.5135164   1.554   0.1212
governlag    0.1098445   0.3024072   0.363   0.7167
addrace     -1.7416941   1.1955128  -1.457   0.1461
BachandmoreACS -6.0752437   4.5192740  -1.344   0.1798
lawempper10K -0.0095919   0.0193083  -0.497   0.6197
femaleperc    27.1333167   34.1100158   0.795   0.4269
Intimigratp  279.4488619  124.3148787   2.248   0.0253 *
Legiscontrol  1.1567096   0.1529064   7.565 0.0000000000000421 ***
VcrimeR      0.0007135   0.0011124   0.641   0.5218
Conservativeor -7.5300427   3.9236854  -1.919   0.0559 .
factor(Region)2  0.4185949   0.4962862   0.843   0.3996
factor(Region)3 -0.8026496   0.5158907  -1.556   0.1207
factor(Region)4  0.2550276   0.6632081   0.385   0.7008
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.122 on 318 degrees of freedom
(498 observations deleted due to missingness)
Multiple R-squared:  0.4136, Adjusted R-squared:  0.3878
F-statistic: 16.02 on 14 and 318 DF, p-value: < 0.00000000000000022
```

Model 3:

```
lm(formula = sum ~ logripopu + logriecon + governlag + Blackperc +
    BachandmoreACS + lawempperc10K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR, data = HCMASTER)

Residuals:
    Min       1Q   Median       3Q      Max
-5.4107 -1.4601  0.1923  1.1232  7.9278

Coefficients:
            Estimate Std. Error t value      Pr(>|t|)
(Intercept) -78.9879137   15.5751325   -5.071 0.00000060783729 ***
logripopu    0.8257413    0.1259674    6.555 0.00000000017352 ***
logriecon    3.1055896    1.0059696    3.087   0.00216 **
governlag    0.1362771    0.2446347    0.557   0.57780
Blackperc   -11.6435901    1.6374314   -7.111 0.00000000000542 ***
BachandmoreACS -2.5666195    3.6183688   -0.709   0.47854
lawempperc10K -0.0076591    0.0170568   -0.449   0.65365
femaleperc   80.2288571    20.0585521    4.000 0.00007567276071 ***
Intimigratep 251.3221977    100.5762228    2.499   0.01286 *
Legiscontrol  1.1450339    0.1245904    9.190 < 0.0000000000000002 ***
VcrimeR      0.0019182    0.0009278    2.067   0.03934 *
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.038 on 396 degrees of freedom
(424 observations deleted due to missingness)
Multiple R-squared:  0.4617, Adjusted R-squared:  0.4481
F-statistic: 33.97 on 10 and 396 DF, p-value: < 0.00000000000000022
```

Model 3':

```
lm(formula = sum ~ logripopu + logriecon + governlag + Blackperc +
    BachandmoreACS + lawempperc10K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR + factor(Region), data = HCMASTER)

Residuals:
    Min       1Q   Median       3Q      Max
-5.7213 -1.3980  0.1633  1.1613  8.0538

Coefficients:
            Estimate Std. Error t value      Pr(>|t|)
(Intercept) -88.6360090   22.9930833   -3.855   0.000135 ***
logripopu    0.7401131    0.1337875    5.532 0.00000005789 ***
logriecon    3.2580361    1.1773016    2.767   0.005918 **
governlag    0.1350150    0.2439959    0.553   0.580339
Blackperc   -11.6431335    1.9552731   -5.955 0.00000000578 ***
BachandmoreACS -1.9265490    3.8776008   -0.497   0.619579
lawempperc10K -0.0086640    0.0171196   -0.506   0.613079
femaleperc   97.3016285    29.7689621    3.269   0.001176 **
Intimigratep 294.1589983   102.7536876    2.863   0.004425 **
Legiscontrol  1.1774524    0.1289322    9.132 < 0.0000000000000002 ***
VcrimeR      0.0019213    0.0009364    2.052   0.040842 *
factor(Region)2 0.8585025    0.4316239    1.989   0.047393 *
factor(Region)3 0.3800907    0.4816344    0.789   0.430489
factor(Region)4 0.4701719    0.5415165    0.868   0.385787
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.032 on 393 degrees of freedom
(424 observations deleted due to missingness)
Multiple R-squared:  0.4687, Adjusted R-squared:  0.4512
F-statistic: 26.67 on 13 and 393 DF, p-value: < 0.00000000000000022
```

Model 4:

```
lm(formula = sum ~ logripopu + logriecon + governlag + Blackperc +
  BachandmoreACS + lawemppercl0K + femaleperc + Intimigratp +
  Legiscontrol + VcrimeR + Conservativeor, data = HCMASTER)

Residuals:
    Min       1Q   Median       3Q      Max
-5.4439 -1.5089  0.0639  1.1465  7.6767

Coefficients:
              Estimate Std. Error t value      Pr(>|t|)
(Intercept)  -73.271692   18.734429   -3.911    0.000112 ***
logripopu     0.856270    0.144241    5.936  0.00000000755789 ***
logriecon     3.172126    1.181421    2.685    0.007630 **
governlag     0.125325    0.293264    0.427    0.669415
Blackperc    -10.705438    1.841511   -5.813  0.00000001477447 ***
BachandmoreACS -5.203505    4.083676   -1.274    0.203507
lawemppercl0K -0.004110    0.018617   -0.221    0.825415
femaleperc    70.939980    23.259868    3.050    0.002480 **
Intimigratp  182.107962   113.340062    1.607    0.109095
Legiscontrol   1.069266    0.145501    7.349  0.00000000000167 ***
VcrimeR       0.001869    0.001098    1.701    0.089848 .
Conservativeor -4.840312    3.713555   -1.303    0.193366
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.059 on 321 degrees of freedom
(498 observations deleted due to missingness)
Multiple R-squared:  0.4429, Adjusted R-squared:  0.4238
F-statistic: 23.2 on 11 and 321 DF, p-value: < 0.00000000000000022
```

Model 4':

```
lm(formula = sum ~ logripopu + logriecon + governlag + Blackperc +
  BachandmoreACS + lawemppercl0K + femaleperc + Intimigratp +
  Legiscontrol + VcrimeR + Conservativeor + factor(Region),
  data = HCMASTER)

Residuals:
    Min       1Q   Median       3Q      Max
-5.7563 -1.5132  0.1054  1.1654  7.6985

Coefficients:
              Estimate Std. Error t value      Pr(>|t|)
(Intercept)  -87.799807   29.689898   -2.957    0.00334 **
logripopu     0.776110    0.153482    5.057  0.00000072198962 ***
logriecon     3.486699    1.488569    2.342    0.01978 *
governlag     0.137202    0.293360    0.468    0.64033
Blackperc    -10.347201    2.191224   -4.722  0.00000350598293 ***
BachandmoreACS -5.507530    4.378969   -1.258    0.20941
lawemppercl0K -0.003735    0.018739   -0.199    0.84215
femaleperc    94.462715    36.290930    2.603    0.00968 **
Intimigratp  211.595392   115.809209    1.827    0.06862 .
Legiscontrol   1.077465    0.148227    7.269  0.00000000000283 ***
VcrimeR       0.001860    0.001107    1.680    0.09389 .
Conservativeor -4.521242    3.842783   -1.177    0.24025
factor(Region)2  0.733410    0.483711    1.516    0.13046
factor(Region)3  0.181615    0.535443    0.339    0.73469
factor(Region)4  0.552437    0.636490    0.868    0.38608
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 2.058 on 318 degrees of freedom
(498 observations deleted due to missingness)
Multiple R-squared:  0.4484, Adjusted R-squared:  0.4241
F-statistic: 18.46 on 14 and 318 DF, p-value: < 0.0000000000000002:
```

Model 5:

```
lm(formula = Penalty ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawemppercl0K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR, data = HCMASTER)
```

```
Residuals:
    Min      1Q  Median      3Q      Max
-0.87143 -0.02471  0.07747  0.15062  0.34582
```

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	3.94351136	1.81980618	2.167	0.030789 *
logripopu	0.01507571	0.01695601	0.889	0.374447
logriecon	-0.17652103	0.13421960	-1.315	0.189162
governlag	0.00995835	0.03239634	0.307	0.758696
addrace	-0.20036014	0.12563306	-1.595	0.111498
BachandmoreACS	1.38128601	0.47637153	2.900	0.003930 **
lawemppercl0K	-0.00123550	0.00225035	-0.549	0.583274
femaleperc	-3.42202583	2.15702769	-1.586	0.113378
Intimigratep	27.61139383	13.73691195	2.010	0.045060 *
Legiscontrol	0.06339188	0.01646216	3.851	0.000136 ***
VcrimeR	-0.00008921	0.00011998	-0.744	0.457569

```
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1
```

```
Residual standard error: 0.2826 on 426 degrees of freedom
(394 observations deleted due to missingness)
Multiple R-squared:  0.1226, Adjusted R-squared:  0.102
F-statistic: 5.951 on 10 and 426 DF, p-value: 0.00000001867
```

Model 5':

```
lm(formula = Penalty ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawemppercl0K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR + factor(Region), data = HCMASTER)
```

```
Residuals:
    Min      1Q  Median      3Q      Max
-0.89875 -0.02000  0.07634  0.15315  0.35198
```

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	6.24566158	2.92436622	2.136	0.033275 *
logripopu	0.01704753	0.01802939	0.946	0.344922
logriecon	-0.27827404	0.15825150	-1.758	0.079398 .
governlag	0.00909978	0.03243791	0.281	0.779209
addrace	-0.14312614	0.13835742	-1.034	0.301509
BachandmoreACS	1.52804667	0.51539950	2.965	0.003200 **
lawemppercl0K	-0.00092291	0.00228832	-0.403	0.686922
femaleperc	-5.97960262	3.73199413	-1.602	0.109846
Intimigratep	29.40966625	14.13845578	2.080	0.038116 *
Legiscontrol	0.06691018	0.01728435	3.871	0.000125 ***
VcrimeR	-0.00006163	0.00012220	-0.504	0.614285
factor(Region)2	-0.00394035	0.05725963	-0.069	0.945169
factor(Region)3	-0.03813597	0.05911342	-0.645	0.519191
factor(Region)4	-0.07332179	0.07406331	-0.990	0.322746

```
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1
```

```
Residual standard error: 0.2829 on 423 degrees of freedom
(394 observations deleted due to missingness)
Multiple R-squared:  0.127, Adjusted R-squared:  0.1002
F-statistic: 4.735 on 13 and 423 DF, p-value: 0.0000001097
```

Model 6:

```
lm(formula = RRE ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawemppercl0K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR, data = HCMASTER)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.92691	-0.01671	0.08642	0.17441	0.31614

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-4.816886861	1.938118290	-2.485	0.013325 *
logripopu	0.013669006	0.018033270	0.758	0.448877
logriecon	0.525842097	0.143239368	3.671	0.000272 ***
governlag	0.008379232	0.034480104	0.243	0.808110
addrace	-0.185984815	0.133298991	-1.395	0.163669
BachandmoreACS	-0.467548483	0.507965834	-0.920	0.357867
lawemppercl0K	-0.002488882	0.002423321	-1.027	0.304978
femaleperc	0.262946595	2.299261364	0.114	0.909005
Intimigratep	8.642250152	14.593637340	0.592	0.554036
Legiscontrol	0.086309206	0.017456500	4.944	0.0000011 ***
VcrimeR	0.000009975	0.000127981	0.078	0.937915

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.3005 on 426 degrees of freedom

(394 observations deleted due to missingness)

Multiple R-squared: 0.1312, Adjusted R-squared: 0.1108

F-statistic: 6.433 on 10 and 426 DF, p-value: 0.00000002953

Model 6':

```
lm(formula = RRE ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawemppercl0K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR + factor(Region), data = HCMASTER)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.91617	-0.02503	0.08526	0.17054	0.34262

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-4.67514307	3.11214756	-1.502	0.134
logripopu	0.00739884	0.01911532	0.387	0.699
logriecon	0.47679973	0.16896442	2.822	0.005 **
governlag	0.00850237	0.03441062	0.247	0.805
addrace	-0.12052485	0.14650102	-0.823	0.411
BachandmoreACS	-0.42821594	0.54848889	-0.781	0.435
lawemppercl0K	-0.00217800	0.00245213	-0.888	0.375
femaleperc	1.07557564	3.96188566	0.271	0.786
Intimigratep	12.81698723	14.97421720	0.856	0.393
Legiscontrol	0.08868305	0.01832352	4.840	0.00000182 ***
VcrimeR	0.00003761	0.00013010	0.289	0.773
factor(Region)2	0.07443475	0.06077327	1.225	0.221
factor(Region)3	-0.01941654	0.06271436	-0.310	0.757
factor(Region)4	-0.00270632	0.07876123	-0.034	0.973

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.2998 on 423 degrees of freedom

(394 observations deleted due to missingness)

Multiple R-squared: 0.1413, Adjusted R-squared: 0.1149

F-statistic: 5.354 on 13 and 423 DF, p-value: 0.00000005906

Model 7:

```
lm(formula = Sexual ~ logripopu + logriecon + governlag + addrace +
  BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
  Legiscontrol + VcrimeR, data = HCMASTER)
```

```
Residuals:
  Min      1Q  Median      3Q      Max
-0.82361 -0.29023 -0.05216  0.30055  0.96044
```

```
Coefficients:
              Estimate Std. Error t value      Pr(>|t|)
(Intercept)  -1.6379770  2.5194375  -0.650    0.515960
logripopu     0.0312840  0.0232125   1.348    0.178474
logriecon     0.0320617  0.1839700   0.174    0.861732
governlag    -0.0062903  0.0446832  -0.141    0.888114
addrace      -0.9197348  0.1709869  -5.379    0.000000125 ***
BachandmoreACS 2.1887152  0.6578627   3.327    0.000955 ***
lawempper10K  0.0093121  0.0031105   2.994    0.002918 **
femaleperc    0.8939835  2.9817180   0.300    0.764462
Intimigratep 76.0256931 18.6802617   4.070    0.000056215 ***
Legiscontrol  0.2106851  0.0224575   9.382 < 0.0000000000000002 ***
VcrimeR      0.0002427  0.0001656   1.465    0.143535
---
```

```
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1
```

```
Residual standard error: 0.3843 on 420 degrees of freedom
(400 observations deleted due to missingness)
Multiple R-squared:  0.4054, Adjusted R-squared:  0.3912
F-statistic: 28.64 on 10 and 420 DF,  p-value: < 0.00000000000000022
```

Model 7':

```
lm(formula = Sexual ~ logripopu + logriecon + governlag + addrace +
  BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
  Legiscontrol + VcrimeR + factor(Region), data = HCMASTER)
```

```
Residuals:
  Min      1Q  Median      3Q      Max
-0.73964 -0.30983 -0.04381  0.31715  0.96737
```

```
Coefficients:
              Estimate Std. Error t value      Pr(>|t|)
(Intercept)  -7.1123595  3.9505955  -1.800    0.072532 .
logripopu     0.0203955  0.0245517   0.831    0.406608
logriecon     0.1425535  0.2130958   0.669    0.503889
governlag    -0.0061079  0.0442698  -0.138    0.890330
addrace      -0.7777141  0.1866817  -4.166  0.0000377015502391 ***
BachandmoreACS 1.5125221  0.7062881   2.142    0.032812 *
lawempper10K  0.0103405  0.0031218   3.312    0.001006 **
femaleperc    9.9289028  5.0545326   1.964    0.050153 .
Intimigratep 72.9972116 19.0633879   3.829    0.000148 ***
Legiscontrol  0.1943387  0.0234951   8.271  0.0000000000000018 ***
VcrimeR      0.0002707  0.0001667   1.624    0.105214
factor(Region)2  0.0877475  0.0790446   1.110    0.267595
factor(Region)3 -0.1055174  0.0822252  -1.283    0.200109
factor(Region)4  0.1182707  0.1006045   1.176    0.240425
---
```

```
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1
```

```
Residual standard error: 0.3806 on 417 degrees of freedom
(400 observations deleted due to missingness)
Multiple R-squared:  0.4209, Adjusted R-squared:  0.4029
F-statistic: 23.32 on 13 and 417 DF,  p-value: < 0.00000000000000022
```

Model 8:

```
lm(formula = Gender ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR, data = HCMaster)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.90062	-0.38457	0.06327	0.35887	0.84810

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-3.2113365	2.9484344	-1.089	0.27671
logripopu	0.0315990	0.0271705	1.163	0.24550
logriecon	0.6181031	0.2165440	2.854	0.00453 **
governlag	0.0099068	0.0523406	0.189	0.84997
addrace	0.3913310	0.2006642	1.950	0.05182 .
BachandmoreACS	-0.2431129	0.7725124	-0.315	0.75314
lawempper10K	-0.0072333	0.0036377	-1.988	0.04741 *
femaleperc	-5.9478420	3.4968672	-1.701	0.08970 .
Intimigratep	-2.8691376	21.9044746	-0.131	0.89585
Legiscontrol	0.2001904	0.0262576	7.624	0.000000000000166 ***
VcrimeR	-0.0001481	0.0001965	-0.754	0.45128

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.4502 on 419 degrees of freedom
(401 observations deleted due to missingness)

Multiple R-squared: 0.203, Adjusted R-squared: 0.184

F-statistic: 10.67 on 10 and 419 DF, p-value: 0.000000000000003478

Model 8':

```
lm(formula = Gender ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR + factor(Region), data = HCMaster)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.89209	-0.36336	0.06702	0.34875	0.86475

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	9.26722952938	4.61100272627	2.010	0.045097 *
logripopu	0.06081443913	0.02856312843	2.129	0.033831 *
logriecon	0.10218351200	0.25051897915	0.408	0.683566
governlag	0.00526113861	0.05148742872	0.102	0.918661
addrace	0.70528770765	0.21759994138	3.241	0.001286 **
BachandmoreACS	0.18743579250	0.82443224571	0.227	0.820262
lawempper10K	-0.00562035934	0.00362462411	-1.551	0.121757
femaleperc	-20.67364957120	5.86877195511	-3.523	0.000475 ***
Intimigratep	-6.15193859813	22.21110272575	-0.277	0.781936
Legiscontrol	0.20584911404	0.02725151348	7.554	0.000000000000271 ***
VcrimeR	-0.00000001316	0.00019662475	0.000	0.999947
factor(Region)2	-0.21847197355	0.09161280848	-2.385	0.017539 *
factor(Region)3	-0.30611075102	0.09557641740	-3.203	0.001466 **
factor(Region)4	-0.45190067368	0.11758680737	-3.843	0.000140 ***

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.4428 on 416 degrees of freedom
(401 observations deleted due to missingness)

Multiple R-squared: 0.2347, Adjusted R-squared: 0.2108

F-statistic: 9.815 on 13 and 416 DF, p-value: < 0.00000000000000022

Model 9:

```
lm(formula = Disability ~ logripopu + logriecon + governlag +
  addrace + BachandmoreACS + lawemppercl0K + femaleperc + Intimigratep +
  Legiscontrol + VcrimeR, data = HCMASTER)
```

```
Residuals:
  Min       1Q   Median       3Q      Max
-1.10192 -0.31909 -0.00398  0.33937  0.87660
```

```
Coefficients:
            Estimate Std. Error t value      Pr(>|t|)
(Intercept) -2.4332673  2.6938480  -0.903    0.36690
logripopu    0.0049753  0.0248104   0.201    0.84116
logriecon    0.5053403  0.1967705   2.568    0.01057 *
governlag   -0.0068083  0.0476597  -0.143    0.88648
addrace     -0.4499449  0.1836256  -2.450    0.01468 *
BachandmoreACS 1.0757298  0.7010208   1.535    0.12566
lawemppercl0K 0.0094855  0.0033018   2.873    0.00427 **
femaleperc  -6.4280422  3.1865094  -2.017    0.04430 *
Intimigratep 42.9182277  20.0190995   2.144    0.03262 *
Legiscontrol  0.1751780  0.0240757   7.276 0.00000000000171 ***
VcrimeR      0.0006689  0.0001770   3.779 0.00018 ***
```

```
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1
```

```
Residual standard error: 0.4117 on 419 degrees of freedom
(401 observations deleted due to missingness)
Multiple R-squared:  0.3192, Adjusted R-squared:  0.3029
F-statistic: 19.64 on 10 and 419 DF, p-value: < 0.00000000000000022
```

Model 9':

```
lm(formula = Disability ~ logripopu + logriecon + governlag +
  addrace + BachandmoreACS + lawemppercl0K + femaleperc + Intimigratep +
  Legiscontrol + VcrimeR + factor(Region), data = HCMASTER)
```

```
Residuals:
  Min       1Q   Median       3Q      Max
-0.89919 -0.29957 -0.03699  0.34345  0.97229
```

```
Coefficients:
            Estimate Std. Error t value      Pr(>|t|)
(Intercept)  8.5995929  4.1067978   2.094    0.036866 *
logripopu    0.0430443  0.0254766   1.690    0.091861 .
logriecon    0.0019787  0.2217977   0.009    0.992886
governlag   -0.0107798  0.0458946  -0.235    0.814415
addrace     0.0159078  0.1946521   0.082    0.934905
BachandmoreACS 0.8944873  0.7304853   1.225    0.221452
lawemppercl0K 0.0122710  0.0032195   3.811    0.000159 ***
femaleperc  -18.4141962  5.2485837  -3.508    0.000500 ***
Intimigratep 27.9893427  19.8518216   1.410    0.159313
Legiscontrol  0.1614069  0.0244535   6.601 0.000000000125 ***
VcrimeR      0.0008646  0.0001737   4.978 0.000000941076 ***
factor(Region)2 -0.3305340  0.0822910  -4.017 0.000070048924 ***
factor(Region)3 -0.4970847  0.0855113  -5.813 0.000000012225 ***
factor(Region)4 -0.4887785  0.1048282  -4.663 0.000004211596 ***
```

```
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1
```

```
Residual standard error: 0.3964 on 416 degrees of freedom
(401 observations deleted due to missingness)
Multiple R-squared:  0.3735, Adjusted R-squared:  0.3539
F-statistic: 19.07 on 13 and 416 DF, p-value: < 0.00000000000000022
```

Model 10:

```
lm(formula = Political ~ logripopu + logriecon + governlaq +
  addrace + BachandmoreACS + lawempperc10K + femaleperc + Intimigratep +
  Legiscontrol + VcrimeR, data = HCMaster)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.39203	-0.14959	-0.06064	0.05206	1.05872

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-3.39338241	1.72571858	-1.966	0.04990 *
logripopu	0.11162705	0.01610709	6.930	0.0000000000155626 ***
logriecon	0.50508698	0.12699477	3.977	0.0000818854810857 ***
governlaq	0.00180615	0.03064213	0.059	0.95302
addrace	-0.15998361	0.11918105	-1.342	0.18019
BachandmoreACS	-2.75305094	0.45227895	-6.087	0.0000000025625689 ***
lawempperc10K	0.00157429	0.00213668	0.737	0.46165
femaleperc	-5.34558172	2.05124613	-2.606	0.00948 **
Intimigratep	-32.61478734	13.03475699	-2.502	0.01272 *
Legiscontrol	0.12658713	0.01560773	8.111	0.0000000000000054 ***
VcrimeR	-0.00009694	0.00011402	-0.850	0.39570

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.2683 on 427 degrees of freedom

(393 observations deleted due to missingness)

Multiple R-squared: 0.2231, Adjusted R-squared: 0.2049

F-statistic: 12.26 on 10 and 427 DF, p-value: < 0.00000000000000022

Model 10':

```
lm(formula = Political ~ logripopu + logriecon + governlaq +
  addrace + BachandmoreACS + lawempperc10K + femaleperc + Intimigratep +
  Legiscontrol + VcrimeR + factor(Region), data = HCMaster)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.44614	-0.15259	-0.04931	0.05833	1.05663

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-6.9401938	2.7162118	-2.555	0.01096 *
logripopu	0.0900757	0.0168206	5.355	0.000000140491356165 ***
logriecon	0.6181664	0.1467486	4.212	0.000030881479260497 ***
governlaq	0.0035074	0.0301363	0.116	0.90740
addrace	-0.2471723	0.1289266	-1.917	0.05589 .
BachandmoreACS	-2.6267919	0.4797849	-5.475	0.000000075085141643 ***
lawempperc10K	0.0009087	0.0021341	0.426	0.67047
femaleperc	-0.3690039	3.4781497	-0.106	0.91556
Intimigratep	-21.4830914	13.1744252	-1.631	0.10370
Legiscontrol	0.1352176	0.0161241	8.386	0.000000000000000752 ***
VcrimeR	-0.0001294	0.0001141	-1.135	0.25717
factor(Region)2	0.2185456	0.0533714	4.095	0.000050611079885056 ***
factor(Region)3	0.1575197	0.0551414	2.857	0.00449 **
factor(Region)4	0.1645700	0.0689435	2.387	0.01742 *

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.2638 on 424 degrees of freedom

(393 observations deleted due to missingness)

Multiple R-squared: 0.2543, Adjusted R-squared: 0.2314

F-statistic: 11.12 on 13 and 424 DF, p-value: < 0.00000000000000022

Model 11:

```
lm(formula = Aqe ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawemppercl0K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR, data = HCMaster)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.43145	-0.26801	-0.18521	-0.03997	0.95440

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	2.8056082	2.7371217	1.025	0.30594
logripopu	0.0092757	0.0256218	0.362	0.71751
logriecon	-0.1324783	0.2012580	-0.658	0.51073
governlag	-0.0035067	0.0487273	-0.072	0.94266
addrace	0.1677988	0.1883951	0.891	0.37361
BachandmoreACS	0.2455097	0.7156728	0.343	0.73173
lawemppercl0K	-0.0026285	0.0033857	-0.776	0.43798
femaleperc	-2.5897986	3.2476108	-0.797	0.42564
Intimigratep	38.8509425	20.6465312	1.882	0.06056
Legiscontrol	0.0776395	0.0247300	3.139	0.00181 **
VcrimeR	-0.0002315	0.0001805	-1.283	0.20029

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.4245 on 424 degrees of freedom
(396 observations deleted due to missingness)

Multiple R-squared: 0.05284, Adjusted R-squared: 0.0305
F-statistic: 2.365 on 10 and 424 DF, p-value: 0.009921

Model 11':

```
lm(formula = Aqe ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawemppercl0K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR + factor(Region), data = HCMaster)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.53514	-0.27739	-0.14700	0.07525	1.04454

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	8.71906583	4.25602033	2.049	0.04112 *
logripopu	0.01223762	0.02647106	0.462	0.64410
logriecon	-0.50119187	0.22968720	-2.182	0.02966 *
governlag	-0.00803688	0.04737554	-0.170	0.86537
addrace	0.55623862	0.20164916	2.758	0.00606 **
BachandmoreACS	0.27734549	0.75080199	0.369	0.71202
lawemppercl0K	-0.00012716	0.00334230	-0.038	0.96967
femaleperc	-6.75381853	5.46216267	-1.236	0.21697
Intimigratep	41.12536622	20.63508950	1.993	0.04691 *
Legiscontrol	0.07716565	0.02523258	3.058	0.00237 **
VcrimeR	-0.00008077	0.00017849	-0.453	0.65112
factor(Region)2	0.00710345	0.08389342	0.085	0.93256
factor(Region)3	-0.29330688	0.08638361	-3.395	0.00075 ***
factor(Region)4	-0.24667346	0.10813856	-2.281	0.02304 *

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.4127 on 421 degrees of freedom
(396 observations deleted due to missingness)

Multiple R-squared: 0.1114, Adjusted R-squared: 0.08394
F-statistic: 4.059 on 13 and 421 DF, p-value: 0.00000259

Model 12:

```
lm(formula = Civil ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR, data = HCMASTER)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.9689	-0.3768	0.1114	0.3436	0.7634

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-7.6657633	2.7813095	-2.756	0.00610 **
logripopu	0.1975890	0.0259445	7.616	0.000000000000172 ***
logriecon	0.4848547	0.2046001	2.370	0.01825 *
governlag	0.0217070	0.0493168	0.440	0.66005
addrace	-1.1242950	0.1913182	-5.877	0.000000008484248 ***
BachandmoreACS	-0.5549047	0.7268165	-0.763	0.44561
lawempper10K	-0.0014267	0.0034384	-0.415	0.67842
femaleperc	1.1442556	3.2960533	0.347	0.72864
Intimigratep	13.4546832	20.9899064	0.641	0.52186
Legiscontrol	0.0843999	0.0251433	3.357	0.00086 ***
VcrimeR	-0.0001720	0.0001833	-0.938	0.34865

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.4313 on 424 degrees of freedom

(396 observations deleted due to missingness)

Multiple R-squared: 0.2429, Adjusted R-squared: 0.2251

F-statistic: 13.61 on 10 and 424 DF, p-value: < 0.00000000000000022

Model 12':

```
lm(formula = Data ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR, data = HCMASTER)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.9516	-0.3317	0.0146	0.3026	0.9392

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-5.14060201	2.65845061	-1.934	0.05382 .
logripopu	0.11179235	0.02467988	4.530	0.00000770326490 ***
logriecon	0.40051906	0.19462861	2.058	0.04022 *
governlag	0.01959258	0.04713786	0.416	0.67788
addrace	-0.59595005	0.19400737	-3.072	0.00227 **
BachandmoreACS	-2.30997685	0.69930034	-3.303	0.00104 **
lawempper10K	-0.02156772	0.00325806	-6.620	0.00000000010979 ***
femaleperc	1.66448363	3.14896402	0.529	0.59737
Intimigratep	146.07560708	20.27996520	7.203	0.00000000000274 ***
Legiscontrol	0.15513814	0.02396473	6.474	0.00000000026682 ***
VcrimeR	0.00005045	0.00017662	0.286	0.77530

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.4089 on 421 degrees of freedom

(399 observations deleted due to missingness)

Multiple R-squared: 0.3385, Adjusted R-squared: 0.3228

F-statistic: 21.55 on 10 and 421 DF, p-value: < 0.00000000000000022

Model 13:

```
lm(formula = Data ~ logripopu + logriecon + governlag + addrace +
  BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
  Legiscontrol + VcrimeR, data = HCMASTER)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.9516	-0.3317	0.0146	0.3026	0.9392

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-5.14060201	2.65845061	-1.934	0.05382 .
logripopu	0.11179235	0.02467988	4.530	0.00000770326490 ***
logriecon	0.40051906	0.19462861	2.058	0.04022 *
governlag	0.01959258	0.04713786	0.416	0.67788
addrace	-0.59595005	0.19400737	-3.072	0.00227 **
BachandmoreACS	-2.30997685	0.69930034	-3.303	0.00104 **
lawempper10K	-0.02156772	0.00325806	-6.620	0.00000000010979 ***
femaleperc	1.66448363	3.14896402	0.529	0.59737
Intimigratep	146.07560708	20.27996520	7.203	0.00000000000274 ***
Legiscontrol	0.15513814	0.02396473	6.474	0.00000000026682 ***
VcrimeR	0.00005045	0.00017662	0.286	0.77530

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.4089 on 421 degrees of freedom
(399 observations deleted due to missingness)
Multiple R-squared: 0.3385, Adjusted R-squared: 0.3228
F-statistic: 21.55 on 10 and 421 DF, p-value: < 0.00000000000000022

Model 13':

```
lm(formula = Data ~ logripopu + logriecon + governlag + addrace +
  BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
  Legiscontrol + VcrimeR + factor(Region), data = HCMASTER)
```

Residuals:

Min	1Q	Median	3Q	Max
-1.00046	-0.31182	0.00439	0.32279	0.90490

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-17.31370374	4.16374910	-4.158	0.0000389394196 ***
logripopu	0.09639410	0.02573254	3.746	0.000205 ***
logriecon	0.85649789	0.22507082	3.805	0.000163 ***
governlag	0.02374614	0.04637866	0.512	0.608917
addrace	-0.73519398	0.21102798	-3.484	0.000546 ***
BachandmoreACS	-3.24339272	0.74045302	-4.380	0.0000150027137 ***
lawempper10K	-0.02209809	0.00325605	-6.787	0.0000000000394 ***
femaleperc	17.02238006	5.31391177	3.203	0.001462 **
Intimigratep	138.16667477	20.43844028	6.760	0.0000000000465 ***
Legiscontrol	0.13191231	0.02483985	5.311	0.0000001779944 ***
VcrimeR	-0.00003508	0.00017660	-0.199	0.842631
factor(Region)2	0.07656691	0.08166235	0.938	0.348990
factor(Region)3	0.09108183	0.08493236	1.072	0.284157
factor(Region)4	0.35892370	0.10517726	3.413	0.000706 ***

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.4022 on 418 degrees of freedom
(399 observations deleted due to missingness)
Multiple R-squared: 0.3646, Adjusted R-squared: 0.3448
F-statistic: 18.45 on 13 and 418 DF, p-value: < 0.00000000000000022

Model 14:

```
lm(formula = Police ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR, data = HCMASTER)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.7994	-0.3148	-0.0809	0.2578	1.1740

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-4.02347973	2.53519117	-1.587	0.113248
logripopu	0.09539925	0.02366406	4.031	0.000065765026940 ***
logriecon	0.22298282	0.18631527	1.197	0.232053
governlag	0.03093510	0.04512415	0.686	0.493369
addrace	-0.67253549	0.17463293	-3.851	0.000136 ***
BachandmoreACS	0.47808008	0.66275453	0.721	0.471091
lawempper10K	-0.00765402	0.00317118	-2.414	0.016219 *
femaleperc	1.24451779	3.01022287	0.413	0.679501
Intimigratep	54.66538157	19.21304137	2.845	0.004654 **
Legiscontrol	0.17198634	0.02296397	7.489	0.000000000000407 ***
VcrimeR	-0.00004026	0.00016786	-0.240	0.810544

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.3934 on 423 degrees of freedom

(397 observations deleted due to missingness)

Multiple R-squared: 0.2712, Adjusted R-squared: 0.254

F-statistic: 15.74 on 10 and 423 DF, p-value: < 0.000000000000000022

Model 14':

```
lm(formula = Police ~ logripopu + logriecon + governlag + addrace +
    BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
    Legiscontrol + VcrimeR + factor(Region), data = HCMASTER)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.7578	-0.2663	-0.0855	0.2171	1.1564

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-25.1113101	3.8566181	-6.511	0.0000000002131 ***
logripopu	0.0518163	0.0238705	2.171	0.03051 *
logriecon	0.9701569	0.2081544	4.661	0.0000042371702 ***
governlag	0.0348431	0.0428558	0.813	0.41666
addrace	-0.9132824	0.1829112	-4.993	0.0000008729048 ***
BachandmoreACS	-0.8123944	0.6798373	-1.195	0.23277
lawempper10K	-0.0091433	0.0030702	-2.978	0.00307 **
femaleperc	28.8718369	4.9359880	5.849	0.0000000099415 ***
Intimigratep	53.7234389	18.7244448	2.869	0.00432 **
Legiscontrol	0.1461513	0.0229114	6.379	0.0000000004712 ***
VcrimeR	-0.0001773	0.0001619	-1.095	0.27415
factor(Region)2	0.3316804	0.0762998	4.347	0.0000173299089 ***
factor(Region)3	0.2498585	0.0790012	3.163	0.00168 **
factor(Region)4	0.6738606	0.0986815	6.829	0.0000000000302 ***

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.3736 on 420 degrees of freedom

(397 observations deleted due to missingness)

Multiple R-squared: 0.3475, Adjusted R-squared: 0.3273

F-statistic: 17.21 on 13 and 420 DF, p-value: < 0.000000000000000022

Model 15:

```
lm(formula = Institution ~ logripopu + logriecon + governlaq +
  addrace + BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
  Legiscontrol + VcrimeR, data = HCMASTER)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.73751	-0.13064	0.00923	0.21021	0.54536

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-3.1497152	1.8583412	-1.695	0.090820 .
logripopu	0.1037118	0.0173406	5.981	0.00000000469 ***
logriecon	-0.4586787	0.1367131	-3.355	0.000864 ***
governlaq	-0.0048635	0.0329897	-0.147	0.882865
addrace	0.5811674	0.1281699	4.534	0.00000751118 ***
BachandmoreACS	0.9655816	0.4865154	1.985	0.047817 *
lawempper10K	0.0013074	0.0023007	0.568	0.570171
femaleperc	13.3346169	2.2054210	6.046	0.00000000323 ***
Intimigratep	14.7600898	14.0236964	1.053	0.293159
Legiscontrol	-0.0088025	0.0167622	-0.525	0.599758
VcrimeR	0.0002099	0.0001227	1.711	0.087814 .

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.289 on 428 degrees of freedom

(392 observations deleted due to missingness)

Multiple R-squared: 0.4061, Adjusted R-squared: 0.3923

F-statistic: 29.27 on 10 and 428 DF, p-value: < 0.00000000000000022

Model 15':

```
lm(formula = Institution ~ logripopu + logriecon + governlag +
  addrace + BachandmoreACS + lawempper10K + femaleperc + Intimigratep +
  Legiscontrol + VcrimeR + factor(Region), data = HCMASTER)
```

Residuals:

Min	1Q	Median	3Q	Max
-0.81281	-0.12183	-0.00394	0.19736	0.49538

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-18.2823044	2.7777163	-6.582	0.000000000137 ***
logripopu	0.0683635	0.0171979	3.975	0.000082655710 ***
logriecon	-0.0154045	0.1500586	-0.103	0.9183
governlag	-0.0025922	0.0308120	-0.084	0.9330
addrace	0.6060513	0.1317441	4.600	0.000005577982 ***
BachandmoreACS	-0.1870303	0.4902054	-0.382	0.7030
lawempper10K	0.0018556	0.0021822	0.850	0.3956
femaleperc	35.2250935	3.5549868	9.909	< 0.000000000000002 ***
Intimigratep	14.4242080	13.4604821	1.072	0.2845
Legiscontrol	-0.0331707	0.0164489	-2.017	0.0444 *
VcrimeR	0.0001714	0.0001166	1.470	0.1422
factor(Region)2	0.2860916	0.0545837	5.241	0.000000251654 ***
factor(Region)3	0.0375887	0.0563907	0.667	0.5054
factor(Region)4	0.4421114	0.0705081	6.270	0.000000000887 ***

Signif. codes: 0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

Residual standard error: 0.2698 on 425 degrees of freedom

(392 observations deleted due to missingness)

Multiple R-squared: 0.4859, Adjusted R-squared: 0.4702

F-statistic: 30.9 on 13 and 425 DF, p-value: < 0.00000000000000022

THE FAILURES OF TITLE VII: INEQUALITY, INJUSTICE, AND SILENCE IN SEXUAL HARASSMENT LITIGATION

TRUDY WURM

This paper examines the failures of sexual harassment litigation through the legal avenue of Title VII and evaluates the evolving legal theory and laws with regard to sexual harassment. Specifically, this essay will examine signpost cases in Title VII through analyzing the contributions of four feminist legal theorists, Catherine MacKinnon, Drucilla Cornell, Vicky Schultz, and Anita Bernstein. Finally, this essay will argue for legal actions and interventions regarding Title VII through legally redefining sexual harassment, specifying criteria to determine culpability of harassment, and streamlining the process of making a sexual harassment claim with the Equal Employment Opportunity Commission.

*“Silence can be a plan
rigorously executed
the blueprint to a life
It is a presence
it has a history a form
Do not confuse it
with any kind of absence”
-Adrienne Rich*

Introduction

In 1977, feminist legal scholar and activist Catherine MacKinnon published a radical text titled *Sexual Harassment of Working Women*, irrevocably changing the American justice system. In this benchmark work, MacKinnon successfully argued that the pervasive sexual harassment of women by men in the workplace directly falls under Title VII of the 1964 Civil Rights Act as a form of discrimination. MacKinnon, along with other feminist activists of her generation, created the legal recourse for sexual harassment as discrimination through Court precedent.

Following the prima facie case (a case in which MacKinnon was co-counsel), a series of harassment lawsuits created touchstone developments of sexual harassment litigation under Title VII. These cases first established a way to prosecute sexual harassment, seek compensation for damages, encourage the recognition of sexist environments, and bring to light unreported harassment.

However, Title VII was not an overnight success. Instead, sexual harassment litigation assumed and propagated a gender binary rooted in heteronormativity, focused on economic compensation and redress while failing to consider the true humiliation of the complainant evidenced in their experience. Further, it served to create paternalistic and sexually repressive legal norms, and adjudicated harassment cases using convoluted and detrimental criterion.

Title VII fails to accomplish its original purpose: to end discrimination in the workplace. As a matter of fact, Title VII and its corresponding litigation explicitly fail to protect the majority of Americans. Employment discrimination complainants are not winning their cases as much as other complainants by a large margin: “During the period 1979 through 2006, employment discrimination plaintiffs won approximately 15 percent of their cases litigated in the federal courts, whereas plaintiffs suing for other causes won 51 percent of their cases” (Gregory 282).

The 15 percent statistic that Gregory references accounts only for sexual harassment cases that were litigated. In actuality, it has been estimated that one in three women have been harassed at work (Vagianos). In 2015, only 6,822 complaints of sexual harassment at work made it to the Equal Employment Opportunity Commission, the government agency that was created to combat workplace discrimination (Equal Employment Opportunity Commission). Of the claims brought to the EEOC, the agency dismissed 3,770, which is over half, citing “no reasonable cause to believe that discrimination occurred” (Equal Employment Opportunity Commission). Of the remaining complaints, 1,690 cases gave up (Equal Employment Opportunity Commission). Only 2.1 percent of all cases had positive economic benefits after filing their formal complaint with the Equal Employment Opportunity Commission. Over 25 percent of cases filed and accepted by the Commission had their charges closed for administrative reasons, which include: “failure to locate charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, closed due to the outcome of related litigation which establishes a precedent that makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits or having resolved the issue, no statutory jurisdiction” (Equal Employment Opportunity Commission). Most importantly, though, only twenty cases of the complaints went to trial through the Equal Employment Opportunity Commission. Thus, in 2015, the chance that a complaint filed through the Equal Employment Opportunity Commission would also be filed in the American legal system was 0.2 percent.

Current Title VII litigation does not protect the majority of American workers. Sexual harassment lawsuits are disproportionately lost; when they are won, the redress is merely economic. Therefore, we need to rethink the law itself and expand it to include a more comprehensive view of inequality in the workplace. Since MacKinnon, other feminist legal theorists have considered ways to reconstruct Title VII litigation. Drucilla Cornell, Vicky Schultz, and Anita Bernstein theorize different ways to reconfigure sexual harassment litigation, addressing the larger cultural issues that are premised in ongoing unequal relations. Drucilla Cornell argues that Title VII codifies heteronormative sexual identities and gender orientations. Further, she argues that due to the repressive environment in which women are raised and in which they work, the failure of the legal system to acknowledge self-respect is at heart a failure of civil rights, thereby demanding a cultural change. Anita Bernstein suggests replacing the “reasonableness person standard” with a “respectful person standard” in the adjudication of workplace harassment lawsuits. Legal scholar Vicky Schultz advocates for the de-emphasis of the harm caused by the sexual aspect of sexual harassment, attempting to broaden litigation to account for all types of harassment at the workplace.

In the “Theoretical Frameworks” section, I analyze and critique major theoretical works that contribute to modern sexual harassment litigation. These works include the Civil Rights Act of 1964, Catherine MacKinnon’s *Sexual Harassment of Working Women*, feminist legal theorist Drucilla Cornell’s *The Imaginary Domain*, feminist legal theorist Vicky Schultz’s “Reconceptualizing Sexual Harassment”, and feminist legal theorist Anita Bernstein’s “Treating Sexual Harassment with Respect”. In the “Examination of Legal Cases Before the Supreme Court” section, I examine eight legal cases that act as signposts of Title VII litigation through the lenses of the feminist legal theorists. I thus examine the creation and trajectory of sexual harassment litigation in the American justice system. I further show how this legal trajectory.

Unfortunately, several studies have shown that the annual EEOC charge filings severely underrepresent the actual number of sexual harassment cases in the workplace. For example, “One survey reported that 60 percent of women in management positions have experienced some form of sexual harassment during their work lives, but only 14 percent of these women have reported the harassment and less than 1 percent have filed a charge or commenced legal actions” (Gregory 132). Gregory posits, “If all of these women formally charged their employers with sexual harassment, the annual EEOC filings would number in the hundreds of thousands” (Gregory 132).

The 15 percent statistic that Gregory references accounts only for sexual harassment cases that were litigated. In actuality, it has been estimated that one in three women have been harassed at work (Vagianos). In 2015, only 6,822 complaints of sexual harassment at work made it to the Equal Employment Opportunity Commission, the government agency that was created to combat workplace discrimination (Equal Employment Opportunity Commission). Of the claims brought to the EEOC, the agency dismissed 3,770, which is over half, citing “no reasonable cause to believe that discrimination occurred” (Equal Employment Opportunity Commission). Of the remaining complaints, 1,690 cases gave up (Equal Employment Opportunity Commission). Only 2.1 percent of all cases had positive economic benefits after filing their formal complaint with the Equal Employment Opportunity Commission. Over 25 percent of cases filed and accepted by the Commission had their charges closed for administrative reasons, which include: “failure to locate charging party, charging party failed to respond to EEOC communications, charging party refused to accept full relief, closed due to the outcome of related litigation which establishes a precedent that makes further processing of the charge futile, charging party requests withdrawal of a charge without receiving benefits or having resolved the issue, no statutory jurisdiction” (Equal Employment Opportunity Commission). Most importantly, though, only twenty cases of the complaints went to trial through the Equal Employment Opportunity Commission. Thus, in 2015, the chance that a silences complainants, represses and disavows sexuality, protects only a limited amount of people, and finally, prioritizes heterosexual normativity over true equality. In the “Conclusion” section, I explore how the trajectory of this litigation might change. I argue the law should streamline the formal process to register and litigate a complaint of sexual harassment as argued by Schultz; the definitions and guidelines of sexual harassment must be refined potentially through using Bernstein’s respectful person standard; and finally, the law needs to allow for sexual agency, as Cornell argues.

Sexual harassment litigation through Title VII cannot and should not endure as it is currently written. The specifics speak for themselves: to reiterate, one in three women have been harassed at work, yet in 2015, only 6,812 complaints were filed at the EEOC. Millions of incidents of harassment and discrimination therefore are never prosecuted—they are neglected by the American justice system. Of those complaints that are registered, only 0.2 percent are carried out in Court—these complainants, too, are mostly failed by the American justice system. The relative success of Title VII must be problematized.

Americans are not truly protected from harassment by our legal system. Title VII's failures must be addressed and redressed. The law itself must be redefined or harassment litigation should be redesigned. The trajectory of this litigation must change; if not, national inequality, in and outside of work, will proliferate.

Theoretical Framework

1964 Civil Rights Act

Title VII begins with the 1964 Civil Rights Act. The Civil Rights Act of 1964 is a monumental piece of legislation signed into law under the Johnson administration, originally called for under the Kennedy administration. It prohibits discrimination on the basis of sex, gender, race, and national origin. Importantly, the Civil Rights Act specifically designated sex as a protected class.¹ As Social Policy asserts, "While court cases and laws such as the Civil Rights Acts of 1957 and 1960 and the Equal Pay Act of 1963 offered some workplace rights and equal pay laws for minorities and women, President Lyndon Johnson's (1908–1973) project, the Civil Rights Act of 1964, was the first to provide strong legal protection against workplace discrimination" (Social Policy: Essential Primary Sources). Title VII of the Bill specifically states:

It shall be an unlawful employment practice for an employer—to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. (Title VII.)

Ignoring the blatant use of male pronouns and insinuation of patriarchal power, Title VII sought to protect employees against workplace discrimination in hopes of ending racial and gender prejudice in the working world. Working within the American capitalist structure, Title VII allowed victims to sue companies who "usually have deeper pockets" instead of individual harassers (Saguy 30). Title VII attempted to ensure legal action against discrimination of protected classes using the force of a government agency, the Equal Employment Opportunity Commission. By including the category of sex, Title VII added the specification of gender as a protected class (Dirksen). However, the term "sexual harassment" is noticeably omitted. Until approximately ten years later, Title VII was not directly used to legally fight workplace sexual harassment. To be clear, Title VII, at its inception, was not devised to prosecute workplace sexual harassment cases.

¹ The Titles under the act, as amended, include: Title I, Voting Rights; Title II, Injunctive Relief Against Discrimination in Places of Public Accommodation; Title III, Desegregation of Public Facilities; Title IV, Desegregation of Public Education; Title V, Commission on Civil Rights; Title VI, Nondiscrimination in Federally Assisted Programs; Title VII, Equal Employment Opportunity; Title VIII, Registration and Voting Statistics; Title IX, Intervention and Procedure after Removal in Civil Rights Cases; Title X, Establishment Of Community Relations Service; and Title XI, Miscellaneous. (Civil Rights Act of 1964)

Sexual Harassment of Working Women, Catherine MacKinnon

MacKinnon's goal in writing the *Sexual Harassment of Working Women* in 1977 was to radically change the American legal system by creating an avenue to protect women from sexual harassment. In the preface, MacKinnon says, "I hope to bring to the law something of the reality of women's lives" (MacKinnon xii). The reality MacKinnon was alluding to, of course, was the systemic sexual harassment of working women. In the broadest sense, MacKinnon defines sexual harassment as "the unwanted imposition of sexual requirements in the context of a relationship of unequal power. Central to the concept is the use of power derived from one social sphere to lever benefits or impose deprivations in another" (MacKinnon 1). MacKinnon's early definition is not based solely on sex/gender, focusing instead on the commodification of power through the act of harassment. However, she does not neglect the issue of gender entirely, writing, "American society legitimizes male sexual dominance of women and employer's control of workers" (MacKinnon 1).

She goes on to clarify that this harassment of women is not biological or natural, but exists from a social context (MacKinnon 2). At the time of writing, the American legal system, ignored the confluence of harassment as a social issue, judging women workers in one of two ways: either based "in terms of their 'humanity,' which has meant characteristics women share with men, or in terms of their womanhood, which has meant their uniqueness" (MacKinnon 3). These two standards do not overlap; in the law, women are either considered "as human" or "as woman", but not both (MacKinnon 3). The legal needs of women as both female and human, when separated, are ignored (MacKinnon 3). When women have been legally defined "as women", they can suffer from "protective laws" that shield women from work stress, but exclude them from job benefits (MacKinnon 3). When women are legally defined "as humans," such as in insurance plans, their female needs are not protected; in many cases decided by the Supreme Court, companies with insurance plans that cover every work disability, including disabilities unique to men such as erectile dysfunction, but did not cover pregnancy, are not considered legal discrimination (MacKinnon 3). As MacKinnon notes, women are subjugated to the patriarchal hegemony, and their needs are spliced between their dual status as "female" or "human". MacKinnon outlines two different concepts of discrimination: the "differences" approach and the "inequality" approach, which are logistical concerns that underlie discrimination cases (MacKinnon 4). MacKinnon describes the origins of this theory:

Applied, to sex, the two approaches flow from two underlying visions of the reality of sex in American society. The first approach envisions the sexes as socially as well as biologically different from one another, but calls impermissible or "arbitrary" those distinctions or classifications that are found preconceived and/or inaccurate. The second approach understands the sexes to be not simply socially differentiated but socially unequal. In this broader view, all practices which subordinate women to men are prohibited. The differences approach, in its sensitivity to disparity and similarity, can be a useful corrective to sexism; both women and men can be damaged by sexism, although usually it is women who are. The inequality approach, by contrast, sees women's situation as a structural problem of enforced inferiority that needs to be radically altered. (MacKinnon 4-5)

These different approaches are the foundation for her legal theory of sexual harassment as discrimination. The two approaches, the inequality approach and the differences approach, are examples of discrimination

that are covered under Title VII as well as the Equal Protection Clause of the Fourteenth Amendment² (MacKinnon 6). Under the inequality approach, sexual harassment disadvantages women because of their gender, to their detriment in the workplace (MacKinnon 6). Under the differences approach, sexual harassment becomes sex discrimination *per se*³—the practice injures one group because of their gender in a neutral employment sphere (MacKinnon 6). MacKinnon posits Title VII as the best avenue to litigate against sexual harassment as both types of discrimination are explicitly explained and protected against.

MacKinnon launches her argument by describing the experience of women at work. She argues that because of tokenism, vertical segregation, and horizontal segregation, which are all forces that lead to women's income and economic inequality, women as a whole are discriminated against and are not equal in the field of work. Due to the fact that women are unequal at work, the sexual harassment of women, who are already universally disadvantaged, serves to keep women in these unequal positions and reinforces women's inferior status (MacKinnon 10).

Women are systemically disadvantaged at work, both through vertical and horizontal stratification. MacKinnon's horizontal stratification theory evidences itself through the segregation of women into specific jobs, or occupational categories as a whole, that must be filled by women because of their gender⁴ (MacKinnon 10). Women are bound to these jobs that are typically at the bottom of the socioeconomic spectrum—primarily due to their sex and implicit sexuality (MacKinnon 10). MacKinnon's vertical stratification theory evidences itself through the proliferation of male superordinates, with men in the position of "hiring, firing, supervising, and promoting of women" (MacKinnon 12). Simply put, women work as men's workplace subordinates—either with inferior work, through horizontal stratification, or at inferior positions at the same work, through vertical stratification (MacKinnon 13). Sexual harassment in the workplace, where women are already socially inferior fortifies the social inequality of women by reinforcing their inferiority based on their sex.

MacKinnon then clarifies her legal theory, aiming to protect women as a protected class against sexual harassment, by describing the experience of sexual harassment. She states the experience centers around three main events of the sexual harassment: "the advance, the response, and the employment consequence"⁵ (MacKinnon 31). In terms of legal recourse, MacKinnon argues the advance distinguishes

2 Title VII states:

"a) It shall be an unlawful employment practice for an employer—

1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's...sex...; or:
2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's...sex" (Title VII)

3 *Per se*, a Latin phrase for "through itself" is used in a legal sense to mean that without referring to anything else (like the defendant's intent for an action), something must be accepted because it is inherent.

4 These jobs include teachers, secretaries, typists, file clerks, receptionists, waitresses, nurses, bank tellers, telephone operators, factory workers, sales clerks, beauticians, and housekeepers (MacKinnon 10).

5 The questions surrounding the advance revolve around the line between a sexual advance and a friendly gesture. The questions surrounding the response are how a woman, given the attendant risks, should explicitly reject the advances. And the questions around the employment consequence involve stipulating whether job benefits should be shown to categorize the actions as discrimination (MacKinnon 31).

between a good lawsuit and a less good lawsuit; the response sets a “standard of proof”; and the employment consequence “draws a line between a legal claim and no claim at all” (MacKinnon 32).

Most significantly, MacKinnon divides sexual harassment into two different forms: *quid pro quo* and *condition of work*. MacKinnon defines *quid pro quo*⁶ as a category “by the more or less explicit exchange: the woman must comply sexually or forfeit an employee benefit” (MacKinnon 32). MacKinnon describes three possible scenarios of *quid pro quo* harassment:

In situation one, the injurious nexus is between the imposition of the sexual requirement and the employment retaliation following upon its rejection... Situation two... requires [inquiry] into the impact of compliance. Even less is known about women who comply than those who refuse. But there is little to suggest that women who meet sexual conditions receive job benefits... The “other side” of sexual harassment is commonly thought to be raised by situation three, in which women who comply with sexual conditions are advantaged in employment over men or over women who refuse. Despite the indications that few benefits redound to the woman who accedes, much folklore exists about the woman who “slept her way to the top” or the academic professional woman who “got her degree on her back” (MacKinnon 33-37).

The second claim, described by Raymond Gregory, a civil rights theorist, is the hostile work environment harassment, where the victim and employee work in an environment “that is replete with sexual innuendo, intimidation, or other form of harassing conduct that are sufficiently severe or persuasive to alter the terms and conditions of a woman’s employment” (Gregory 131). The “condition of work” type of harassment, as MacKinnon explains, is less clear but more pervasive (MacKinnon 41). This division and explicit definition, particularly of the hostile work environment, tend to muddle court legal theory. Even MacKinnon, the creator of this definition, admits that the definition is unclear.

MacKinnon also describes the acceptance or compliance of a woman who was sexually harassed. Originally and definitively, MacKinnon asserts “the victim’s active cooperation with, or submission to this [sexual harassment] behavior is relatively irrelevant to its occurrence” (MacKinnon 43). As exemplified in this section, concepts like compliance and consent are obfuscated. Through detailing a cocktail waitress’s experience of sexual harassment, MacKinnon calls attention to tolerance or “playing along” with sexual harassment as noncompliance, not consent (MacKinnon 44).⁷ Explicit rejection, while proving sexual advances are unwanted, can also be dangerous for the women victims, as rejection might call forth retaliation by the sexual harasser (MacKinnon 46).

MacKinnon then delves into legal cases to fully document and explore the implications of sexual harassment in American jurisprudence. Through describing and summarizing various cases, MacKinnon highlights the socially created, systemic character of gender status being significantly disadvantaged first in the working world, then second in the American legal field. In each of the cases, it becomes clear that court precedent penalizes women for their deviation from a male standard, as they are not properly protected in a “woman standard” nor in a “human standard” (MacKinnon 145).

The Supreme Court professes that it adjudicates on the premise of being sex- (and gender-) neutral (MacKinnon 145). However, sex cannot be adjudicated neutrally in the Court, as aforementioned,

6 At the time of writing, *quid pro quo* lawsuits were the only successful suits for sexual harassment.

7 Consent or sexual harassment being welcome is problematized in *Meritor Savings Bank v. Vinson*.

and as MacKinnon asserts, “the relationship of sexuality to gender is the critical link in the argument that sexual harassment is sexual discrimination” (MacKinnon 151). Both gender and sex are incredibly complex—MacKinnon distinguishes three dimensions of gender: “physical characteristics, gender identification, and sex role behavior” (MacKinnon 151). Cataloging and elaborating on different parts of gender highlight MacKinnon’s radical feminist view that gender is a social construct (MacKinnon 154). MacKinnon even concedes that “socially, as well as biologically, gender is not as rigidly dimorphic as it is commonly rigid gender dimorphic that further perpetrates the sexual harassment and social inequality of women (MacKinnon 156). Moreover, as MacKinnon argues, the law internalizes gender discrimination and conventional role expectations which thereby enforces traditional male/female norms, furthering social inequality (MacKinnon 158). At its core, before MacKinnon’s intervention, the law treated women as separate but equal.

Finally, MacKinnon returns to her two approaches: the “differences” approach and the “inequality” approach (MacKinnon 195). Through the inequality approach, it is clear that sexual harassment of working women is employment discrimination based on gender: women are harassed because they are women (MacKinnon 174). This is supported through the tradition of exchanging sex for survival, which assures women’s economic dependence and inferiority – through the expressed male role of sex pattern of coercive sex toward women, and through women being defined by their sexuality and as such, the violations against women are abuses of women (MacKinnon 174). The differences approach, or how to tell sexual harassment happens because one is a woman rather than to a person who just happens to be a woman, evidences itself through the extreme disparate treatment of women: “Sexual harassment limits women in a way men are not limited. It deprives them of opportunities that are available to male employees without sexual conditions” (MacKinnon 193).

Harassment, including sexual harassment, is about maintaining one’s own power and subverting others’. While sexuality is not unique to women, MacKinnon aptly notes that when “one gender is victim to a practice as to which the treatment of sexes can be compared, the practice can be considered sex-based” (MacKinnon 193). Sexual harassment, which thwarts women’s economic and social power, is thus sex-based discrimination, which is protected under Title VII of the Civil Rights Act. MacKinnon argued there is a reason why sexual harassment episodes appear commonplace: it is due to the social and economic inequality of women (MacKinnon 219). Women’s subordination, social, economic, and otherwise are naturalized, even in the legal sphere (MacKinnon 220). This disparity is socially constructed and MacKinnon argues that discrimination law “exists to remedy such disparities” (MacKinnon 220). Protecting women from sexual harassment through the legal avenue of Title VII would thus “guarantee an equality that begins to comprehend womanhood as distinct and fully human,” suturing categories that were separate through previous legal precedent (MacKinnon 221).

The Imaginary Domain, Drucilla Cornell

Almost twenty years after *Sexual Harassment of Working Women*, in her book *The Imaginary Domain*, feminist legal scholar Drucilla Cornell argues women are not equal in the law, evidenced primarily through sexual harassment litigation, and there is therefore a need for legal intervention. Using a psychoanalytic framework, Cornell insists on a “minimum degree of individuation” that she deems are “necessary for the equivalent chance to transform... into individuated beings who can participate in a public and political life as equal citizens” (Cornell 4). She argues that to fully be an “individuated being,” one must have the possibility to evolve as a person, being free to explore and imagine all aspects of

ourselves, including our sexuality. These minimum conditions are:

- 1) Bodily integrity,
- 2) Access to symbolic forms sufficient to achieve linguistic skills permitting the differentiation of oneself from others, and
- 3) The protection of the imaginary domain itself, which allow everyone a chance of freedom and a freedom to transform oneself (Cornell 4, 5).

Cornell takes issue with MacKinnon and her framework. She contends with MacKinnon's argument that "femininity is nothing but the production of woman as 'fuckees,'" which led to this formal equality that she deems unacceptable (Cornell 21). Cornell contends MacKinnon's framework presents sexual harassment as a universal truth for women, continuing the damaging cycle of subordination, and thus, "reinscribing the very gender identities [and encodes "the wounds of femininity"] she is seeking to contest" (Cornell 22, 24). Cornell states that MacKinnon's position is that we are "women" because we "have sex in and through the structures of heterosexual domination"; she goes on to argue that MacKinnon does not allow for the "minimum conditions of individuation," and thus, her theory prioritizes heterosexual normativity over true equality (Cornell 23).

However, Cornell, like MacKinnon, describes the importance of sex in her theory of equality. Sex is basic to who we are (Cornell 6). Sex and sexuality are unique to each individual and their personality (Cornell 6). Cornell argues that humans are, by nature, "sexuate beings", and as such, sexuate beings comprise both "lives of pleasure as well as reproduction" (Cornell 7). Finally, sex is an internalized identity, which includes the "assumption of personae imposed by the gender divide" (Cornell 7). As Cornell argues, to deny human beings their sexuality, which includes the critical aspects of sex—identifying all humans as sexuate beings, that humans have sexual relations, that sex is an internalized identity, "and the assumption of a personae imposed by the gender divide"—is to deny them "a part of their identity" (Cornell 7, 8). Here, Cornell's argument is not just centered on the female gender, unlike Catherine MacKinnon's theories. Cornell's argument protects and leaves open all possibilities of sex and sexuality, and the denial of sex, thus including the queer community in legal protection.

This legal protection, for Cornell, extends to sexual privacy, or what she has dubbed the "imaginary domain". This domain is a psychic space in which sexuate beings are allowed a freedom that is tied to "who we are and who we wish to be as sexuate beings" (Cornell 8). Cornell's theory of the imaginary domain is rooted in self-respect; primarily, it is where we have the ability to imagine, and thus, become fully human (Cornell 9). She is building on John Rawls' theory of self-respect as a primary good, but also radically altering it by transposing his theory to her concept of the imaginary domain⁸ (Cornell 9). As a result of naturalized over-sexualized work environments, women have been "systemically denied" the Aristotelian principle, or the capability of living their best life, a eudemonia that includes being a sexuate being (Cornell 187, 212). Cornell identifies a "fundamental abuse of power" with sexual relations imposed

⁸ Rawls explains the importance of self-respect: "When we feel that our plans are of little value, we cannot pursue them with pleasure or take delight in their execution. Nor plagued by failure and self-doubt can we continue in our endeavors. It is clear then why self-respect is a primary good. Without it, nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them. All desire and activity becomes empty and vain, and we sink into apathy and cynicism" (Rawls 440).

on women both immediately in the present, and historically, abuses of power by their male counterparts that follow women to the workplace (Cornell 226). Further, due to the repressive environment in which women are both raised and work, the ignoring of self-respect by the legal system is a failure of freedoms. Self-respect functions as an expectation that each one of us would, could, and will demand for ourselves to be treated as equal citizens (Cornell 9). To have self-respect would allow Americans of all sexes the expression of sexual imaginary (Cornell 9). Cornell argues when Americans are not allowed to express their sexuality, they are degraded; they are similarly degraded when they are defined by their sex, or when it is treated as “antithetical to equal personhood and citizenship” (Cornell 10).

The current framework of sexual harassment, in Cornell’s analysis, proliferates a formal division of the public character of women—a division that denotes bad girls from good girls. Basing sexual harassment claims on variations of “unwelcomeness” encourages both the public and the court to police the complainant’s behavior, whether it is provocative or virginal⁹ (Cornell 191). The bad girl (a mistress, whore, fantasy object, etc.) is abject in her desirability (Cornell 191). When “bad girls” claim sexual harassment, the court does not consider the advances unwelcome, the bad girl is perceived as tempting men and inviting their sexuality. Good girls, on the other hand, are virginal and motherly—they are not desired in a sexual manner. When “good girls” claim sexual harassment, the court does not consider the advances as unwelcome, because it is perceived that the good girl would not be desired (Cornell 192). Title VII litigation, and the frameworks of harassment by MacKinnon, disallow credibility by disallowing sexual freedom (Cornell 193). As Cornell argues, MacKinnon’s theories do not allow for sexual agency of the complainant, by ignoring or explicitly disavowing women as sexual beings.

Cornell asks, “How do we both endorse sexual freedom and at the same time recognize the legitimacy of feminist claims for equal citizenship?” (Cornell 169). Instead of stifling sexual freedom in and outside of work, Cornell wanted to allow for the possibility for every person to be sexually free, even while at work, while still allowing for the possibility for self-respect. Primarily, Cornell accomplishes this task through redefining sexual harassment. She defines sexual harassment as a phenomenon that consists of:

- a) Unilaterally imposed sexual requirements in the context of equal power, or
- b) The creation and perpetuation of a work environment which enforces sexual shame by reducing individuals to projected stereotypes or objectified fantasies of their “sex” so as to undermine the primary good of their self-respect, or
- c) Employment-related retaliation against a subordinate employee, or, in the case of a university, a student, for a consensually mutually desired sexual relationship (Cornell 170).

Her definition allows for the protection of the imaginary domain and consequently allows for the chance of sexual freedom. Part A revises the current legal definition of *quid pro quo* sexual harassment, a definition largely contrived by MacKinnon (Cornell 171). Part B replaces the standard for sexual harassment of a hostile and abusive work environment, another construct originally identified by McKinnon, by replacing a fault-based tort scheme with a more equality-driven analysis (Cornell 171). Denying self-respect, or the possibility of self-respect, sequesters sexual freedom (Cornell 185). Part C replaces *per se* rules to allow for

9 This theory of “unwelcomeness” stems from Justice Rehnquist’s opinion in *Meritor Savings Bank v. Vinson* (*Meritor Savings Bank v. Vinson*).

more sexual freedom by focusing solely on “the wrong abuse of power” (Cornell 173).

“Reconceptualizing Sexual Harassment”, Vicky Schultz

Feminist legal scholar Vicky Schultz, similar to Drucilla Cornell, problematizes sexual harassment litigation in her article “Reconceptualizing Sexual Harassment”. Published by the *Yale Law Journal*, her article focuses on the “desire-dominance paradigm”, a paradigm that places male-female sexual advances at the center of harassment litigation, where “a male supervisor’s sexual advances on a less powerful, female subordinate represent the quintessential form of harassment” (Schultz 1686). This paradigm excludes other types of harassment that men and women suffer from at work, while privileging sexual conduct (Schultz 1686). Hyper-focusing on the sexual aspects of harassment is problematic, as Schultz notes, because harassment consists of actions that are performed to regulate and propagate differences. Schultz argues that the law, as it currently exists, omits gendered harassment while only focusing on harassment of a sexual nature (Schultz 1689). As such, Schultz argues for a more holistic view of harassment, expanding Title VII to protect more Americans legally.

Schultz maintains Title VII law focuses on harassment that is top-down and male-female (Schultz 1699). She is critical of MacKinnon, writing that MacKinnon’s book and theories further “conflated sexual exploitation and gender inequality” (Schultz 1705). Schultz goes as far as to claim that MacKinnon considered gender and sexuality as coextensive, which leads to a failure of the courts: a failure of standards that stem from an “overly narrow, sexualized perspective” (Schultz 1705, 1711). Schultz identifies this failure of the courts as disaggregation, dividing sexual harassing conduct and non-sexual harassing conduct as separate claims, which denies comprehensiveness of the complainant’s experience (Schultz 1711). Disaggregation weakens the complainant’s case, and in turn, weakens Title VII as a protectionary legal avenue (Schultz 1720). Disaggregation allows nonsexual treatment, which the complainant may yet consider harassment, to evade legal liability.

Schultz asserts that the “unwelcome” aspect of Title VII creates sexual paternalism in the law. Similar to Cornell’s theory of good versus bad girls, this tenet of “unwelcomeness” creates a division between good and bad victims (Schultz 1729). To be seen as a good victim, women have to “purify” themselves—emulating images of virginity and chastity (Schultz 1732). This requirement does two things: it forces victims to conform to sexist, classist, and racist ways, and it discourages victims that do not attain the virginal standard from coming forward.

Vicky Schultz’s solution to this paradigm is another paradigm: a competence-centered paradigm. As aforementioned, harassment is an action that reclaims “favored lines of work and work competence” that is threatened by difference (Schultz 1755). The competence-centered paradigm grants litigation to address harassment that denigrates one’s competence on the job, taking into account sex, gender, and other types of difference. A competence-centered account creates a more holistic understanding of all types of harassment. This paradigm includes sexual harassment, as it is often “designed to undermine a woman’s outward image of competence and sense of self-confidence as a worker” (Schultz 1766). Discrimination, in and out of the workplace, discredits competence. The current sexual desire-dominance paradigm proliferates discrimination, while a competence-centered approach encompasses all types of harassment, broadening Title VII litigation and thereby protecting more Americans.

In Schultz’s view, harassment law has moved away from its purpose, failing as it fails to protect workers from *all* types of workplace discrimination. In order to implement her solution of the competence-centered account of litigation, the justice system must accomplish several tasks. Courts should move

away from the disaggregation of harassment along sexual lines, primarily for hostile work environment claims; instead, Courts should take into account all forms of harassment that create discriminatory work environments (Schultz 1798). As such, Schultz's second recommendation is for Courts to explicitly consider all harassment challenges (Schultz 1799). Thirdly, Courts should streamline the "elements of a cause of action" (Schultz 1799). The numerous obstacles that complainants must withstand in order for a sexual harassment claim to move forward often serves to prevent those suffering from harassment from taking legal action. Streamlining and simplifying causes of action would encourage more victims to come forward. Further, the Court should deemphasize the focus on the sexual aspect of harassment, and instead inquire into whether the harassment at issue "embodies gender-based expectations for the workers of work involved" (Schultz 1800). Finally, Schultz avers that courts "should examine the record for structural indicia of gender inequality at work" (Schultz 1800). Explicitly discussing gender dynamics and the privilege of masculinity in the American justice system can help break down male-dominated spaces by raising awareness that these spaces exist. Feminists, legal scholars, and activists created Title VII litigation, and Schultz calls for these groups to take the lead once again (Schultz 1805).

"Treating Sexual Harassment with Respect", Anita Bernstein

Feminist legal scholar Anita Bernstein examines the privileging of gender hierarchy, economic inefficiency, lack of free speech, and misplaced pluralism that exists in current Title VII litigation (Bernstein 447). Bernstein finds fault with the current standards that exist for sexual harassment lawsuits, particularly the term "hostile work environment". Without clear and objective standards, Bernstein asserts that both juries and men and women in the workplace remain unguided (Bernstein 449). In the haphazard reality of Title VII protection, men and women, through sexual harassment, endure disrespect; both hostile work environment sexual harassment and quid pro quo sexual harassment are types of disrespect (Bernstein 450). As such, Bernstein argues that sexual harassment complaints should "refer to respect," or create a "standard of a respectful person" instead of a standard of the reasonable person (Bernstein 450). Focusing on a respect standard, Bernstein claims, would give "shape to a problem whose outlines have been blurred and contested" (Bernstein 450).

The respectful person standard would replace the reasonable person standard. Similar to Cornell, Bernstein aims for people in a workplace to exist in such a way that recognizes another person's inherent worth (Bernstein 452). Additionally, Bernstein, like Cornell, wants respect to have legal recognition, which would benefit Title VII doctrine. Reason has historically alienated categorical Others—those who have been deemed as lacking reason were denigrated; reason has also been historically understood in conflict with emotion and with sex. Ostensibly having or not having reason has created inequality both in American jurisprudence and daily life (Bernstein 460). Further, the reasonable person standard creates a genderless and emotionless victim (Bernstein 465). This standard explicitly avoids gender, racial, and class hierarchy. The original purpose of Title VII was to eliminate discrimination in the workplace; to this end, avoiding topics of gender, race, and class is directly detrimental to the cause. As such, and most importantly, the reasonable person standard eliminates political and historical postures and group identity (Bernstein 469).

Bernstein builds on philosopher Immanuel Kant's theories of respect. Kant argued that human beings, due to the outgrowth of reason, "possess intrinsic value and are entitled to respect" (Bernstein 483). Kant's association of reason with respect supports the respectful person as a legal standard; it does not oppose current legal doctrine. And much like Drucilla Cornell's theory of the imaginary domain, Bernstein's theory of respect, building on Stephen Darwall's theory of "recognition respect," is based on

“the acknowledgement that another person is a free, separate, unique, and independent human being” (Bernstein 484). Bernstein’s respectful person standard falls into the recognition respect category (Bernstein 485).

Bernstein’s respectful person has certain duties he or she must fulfill.¹⁰ The respectful person, regarding sexual harassment specifically, must refrain from the following actions: exploiting others, humiliating others, or engaging in “conduct that rejects or denies the personhood and self-conception of another” (Bernstein 487). These are specific actions useful in assessing if a sexual harassment defendant has violated the respectful person standard. Recognizing respect as a legal standard forces Title VII law to truly attempt to end discrimination in the workplace, democratizing both the private and public sector by amplifying employer liability, weakening defendant’s justifications of disrespect, and fixing the law/fact divide, where Courts question and divide the “facts” of sexual harassment cases and the “law” of sexual harassment cases.

Examination of Legal Cases Before the Supreme Court

A. *Corne and DeVane v. Bausch & Lomb*

The 1975 case *Corne and DeVane v. Bausch & Lomb* is the first reported lawsuit of a sexual harassment claim under Title VII.¹¹ The plaintiffs Jane Corne and Geneva DeVane filed charges of employment discrimination with the E.E.O.C. against defendants on October 12, 1973 (*Corne and DeVane v. Bausch & Lomb*). The plaintiffs alleged that while working in a clerical capacity for defendant Bausch and Lomb, Inc., they were subjected repeatedly to verbal and physical sexual advances by Leon Price, a supervisory employee of the company. Since these actions were directed toward not only the two plaintiffs, but also other employees of the female sex, the actions of the defendant were explicitly illegal, violating Title VII. According to this case’s Brief for Appellants, the women faced “the choice of putting up with being manhandled, or being out of work” (*Corne and DeVane v. Bausch & Lomb*). The plaintiffs were forced into making that choice: the sexual harassment of Price was so intense that both plaintiffs had to resign from their jobs (*Corne and DeVane v. Bausch & Lomb*). Furthermore, at this company and while under the supervision of the defendant, women who were “sexually compliant received enhanced employment status” (MacKinnon 61). The defendant filed a motion to dismiss the complaint, reasoning the plaintiffs “failed to exhaust their state remedies” and the “complaint failed to state a claim for relief for violation of Title VII” (Schupp, Windham, and Draughn 240). The plaintiffs sought to hold the employer liable because its administrative personnel “knew or should have known of defendant Price’s conduct toward female employees” (*Corne and DeVane v. Bausch & Lomb*).

Ultimately, District Court Judge Frey determined there was no right to relief under Title VII, since “nothing in the complaint alleges nor can it be construed that the conduct complained of was company directed policy which deprived women of employment opportunities,” there was no Title VII protection (*Corne and DeVane v. Bausch & Lomb*). Judge Frey even warned, “[a]n outgrowth of holding such

10 This is similar to American citizenship rights and duties, such as serving on a jury, supporting and abiding by the Constitution, participating in the democratic process, and so on.

11 In Catherine MacKinnon’s book, *Sexual Harassment of Working Women*, the history of Title VII and its first case of sexual harassment is made clear: Although *Barnes v. Train* (Costle) “was decided in 1974 by the federal district court... it was not first reported until several years later. The original adjudication was thus not widely known until after its reversal on appeal in 1977” (MacKinnon 60).

activity to be actionable under Title VII would be a potential federal lawsuit every time any employee made amorous or sexually oriented advances toward another. The only sure way an employer could avoid such charges would be to have employees who were asexual” (*Corne and DeVane v. Bausch & Lomb*). This quotation exemplifies the sexually repressive nature of the American judicial system.

Judge Frey’s ruling at the Arizona District Court that Title VII is not a suitable legal route of sexual harassment litigation highlights the importance of legal precedence. Because Judge Frey of the Arizona District Court ruled that Title VII is not a suitable legal route of sexual harassment litigation, this case, though lost, highlights the importance of legal precedence. The court held sexual advantages were of a “personal urge,” not an employment or discrimination issue. This case underlines the public’s awareness and understanding of sexual harassment in the work place—personal, but not illegal.

This case exemplifies Vicki Schultz’s theories of sexual harassment as a means of maintaining masculine competence and patriarchy. In this case, Judge Frey ruled that the “[sexual harassment] conduct had no relationship to the nature of the employment” (*Corne and DeVane v. Bausch & Lomb*). In actuality, the harassment suffered by Corne and DeVane was directly related to the nature of their employment. The harassment “denigrated women’s performance or ability to master the job”, isolated them “from the social networks that confer a sense of belonging”, and engaged in “taunting.... Designed to remind women that they are different and out of place” (Schultz 1683). The harassment the plaintiffs suffered had everything to do with their difference. Even though this case was unsuccessful in setting sexual harassment litigation precedent, the legal focus of solely sexual aspects of harassment set a cultural precedent of discrimination—mainly, that sexual discrimination should be the focus of litigation, and that the importance of masculine competence and authority should be left out.

B. Williams v. Saxbe

In a lawsuit brought forward the next year, *Williams v. Saxbe* created legal precedence of sex discrimination. This discrimination, specifically, was defined as quid pro quo sexual harassment under Title VII. Diane Williams brought suit against the Justice Department on the matter of quid pro quo sexual advances. MacKinnon defines quid pro quo as a category “by the more or less explicit exchange: the woman must comply sexually or forfeit an employee benefit” (MacKinnon 32). MacKinnon describes three possible scenarios of quid pro quo harassment:

In situation one, the injurious nexus is between the imposition of the sexual requirement and the employment retaliation following upon its rejection... Situation two... requires inquire into the impact of compliance. Even less is known about women who comply than those who refuse. But there is little to suggest that women who meet sexual conditions receive job benefits... The “other side” of sexual harassment is commonly thought to be raised by situation three, in which women who comply with sexual conditions are advantaged in employment over men or over women who refuse. Despite the indications that few benefits redound to the woman who accedes, much folklore exists about the woman who “slept her way to the top” or the academic professional woman who “got her degree on her back” (MacKinnon 33-37).

According to MacKinnon, Williams brought suit of quid pro quo harassment which fell under the umbrella of the first scenario—Williams declined the sexual advance of her supervisor and was thus fired. The plaintiff alleged that she was humiliated and terminated for rejecting the sexual advances of her

male supervisor, Harvey Brinson, with whom she had a good working relationship until the abnegation (McKinnon 63).

Williams first brought her case to an administrative tribunal, which decided there was no evidence of “causal relationship” between the rejection of “her supervisor’s sexual advances” and her termination (MacKinnon 63). The Court found that “at the agency level,” the government “made no attempt to show an absence of discrimination, but rather, the onus appeared to have been placed on the plaintiff to affirmatively prove sex discrimination” (*Williams v. Saxbe*). The Court remanded the case to the agency for more hearings. Upon the second hearing, the Hearing Examiner found the agency did not meet the burden of proof, nor did it establish the absence of sexual harassment.

Ultimately, Judge Charles R. Richey held the “retaliatory actions of the male supervisor was taken because the female employee declined his sexual advances,” which constituted sex discrimination under Title VII (Schupp, Windham, and Draughn 242). Judge Richey also ruled on the matter of the constitution of a protected class: “The conduct of the plaintiff’s supervisor created an artificial barrier to employment which was placed before one gender and not the other, despite the fact that both genders were similarly situated” (*Williams v. Saxbe*). Although the Hearing Examiner recommended that since Williams was wrongfully terminated, she should be reinstated with back pay, or payment for the work she could have done had she not been fired, the Judge did not grant back pay.

In the decision, it is stated the “Court can do no more than issue a declaration that the defendants violated 42 U.S.C. § 2000e-16(a), since the parties have not addressed what specific relief is appropriate and lawful under the circumstances. The Court will therefore issue an order disposing of the motions and requiring the parties to submit memoranda on the question of remedies” (*Williams v. Saxbe*). This case set a legal precedent for quid pro quo sexual harassment litigation under Title VII. The underlying problem of quid pro quo sexual harassment, however, is thus: at this point in time, if sexual harassment at the workplace was endured, but there was no exchange of goods positive or negative, the victim would have no legal repercussion. Thus, what is illegal is the economic exchange that stems from the harassment, not the harassment itself.

This landmark case set many legal precedents. However, as Anita Bernstein notes, the topic of humiliation is not explicitly addressed in those precedents. In the background section of the Court opinion, Diane Williams asserted that the defendant engaged in “a continuing pattern and practice of harassment and humiliation of her,” which included “unwarranted reprimands, refusal to inform her of matters for the performance of her responsibilities, refusal to consider her proposals and recommendations, and refusal to recognize her as a competent professional in her field” (*Saxbe v. Williams*). The topic of humiliation cannot be found in the court opinion. The Supreme Court has treated humiliation in sexual harassment lawsuits as an implicit consequence of harassment (Bernstein 489). Humiliating another person, either through sexual or nonsexual means, is harassment. According to Anita Bernstein’s respectful person standard, humiliation violates the first negative duty: the act of humiliation engenders “a feeling of indignity and self-rejection in the human object so treated” (Bernstein 489). Humiliation also denies another person dignity and personhood (Bernstein 490). Under Bernstein’s respectful person standard theory, humiliation is an aspect of harassment and therefore discrimination as stipulated by the Civil Rights Act. If *Williams v. Saxbe* had created a humiliation-as-discrimination precedent, the trajectory of Title VII litigation would have been much different, perhaps even protecting more people against harassment instances.

C. Heelan v. Johns-Manville Corp

Heelan v. Johns-Manville Corp. is the prima facie case, or the establishment case, of sexual harassment as sex discrimination. In 1978, Mary Heelan brought suit claiming that the denial of sexual advancements of her supervisor, Joseph Consigli, resulted in her employment termination (*Heelan v. Johns-Manville*). It is important to note that as stated in the case's opinion memorandum, the case is based largely upon the court's view of the credibility of the witnesses, even though much of the testimony was conflicting (*Heelan v. Johns-Manville*). As a senior secretary to Cosigli, Heelan's work was consistently excellent; she even rose as an acting facilities manager by a matter of months. Within a year, she was officially promoted to that job. Beginning in April 1972, Consigli made several sexual advances toward Heelan—all of which were denied. As the opinion states, "During the last few months of her employment Consigli's sexual advances became more frequent, occurring as often as once a week. The final demand came on April 23, 1974" (*Heelan v. Johns-Manville*). Heelan withstood two full years of sexual harassment before being terminated. During that time, Heelan sought advice and assistance from her coworker, which the court found as satisfactory evidence.

In order to litigate and recover a Title VII claim, an area of law of recent vintage, the complainant must allege and establish that submission to the sexual suggestion constituted a term or condition of employment. In Mary Heelan's case, this clearly was so. This case determined the concept of employer policy. What was determined in this case that is different than in cases prior is the concept of employer policy. As of this 1978 Title VII litigation, it is no longer necessary to prove the sexual harassment directly violated a company-directed policy. Instead, "the employer is responsible for the discriminatory acts of its agents" (*Heelan v. Johns-Manville*). This case demonstrates the influence of an economic structure over Title VII, rather than one built around civil equality. Again, as aforementioned, holding the employer responsible instead of an individual increases the amount of monetary compensation—they simply have more to give.

Heelan v. Johns-Manville also established the essential importance of the plaintiff's (the woman's) credibility, which the judge called "worthiness of belief", and the importance of considering whether the harassment was welcome (*Heelan v. Johns-Manville*). The "worthiness of belief" and "welcomeness" factor in this prima facie case creates problematic court precedent. The "welcomeness" factor acts as a magnifying glass upon the sexuality of the complainant in these cases, which, in turn, exaggerates the sexual character of the complainant.

This causal sequence creates a deeply conservative sexual paternalism in Title VII case law (Schultz 1729). Schultz's concept of this conservative sexual paternalism proliferates Drucilla Cornell's concept of the good versus bad girl. As found in this case, it is the "identification of the woman as evil that makes the mistress or the conceptual yes-sayer such a discredited figure in her claim of sexual harassment" (Cornell 226). Title VII uses paternalistic sexual policing of the complainants for surface-level equality, creating a subversive precedent that impedes true legal equality.

D. Meritor Savings Bank v. Vinson

Meritor Savings Bank v. Vinson (1986) set an integral precedent as to what the court can recognize as sexual harassment and therefore gender-based discrimination. Mechelle Vinson's case against Meritor Savings Bank was brought to the Supreme Court of the United States of America in 1986, offering the Court its first opportunity to rule on issues involving corporate sexual harassment litigation under Title VII. Plaintiff Mechelle Vinson accused Sidney Taylor of sexual harassment while working at Meritor

Savings Bank. As opposed to previous “quid pro quo” sexual harassment, *Meritor Savings Bank v. Vinson* shed light upon another major component of sexual harassment litigation: the hostile environment.

Vinson worked at Meritor Savings bank for four years, as a teller and an assistant branch manager (Gregory 128). Vinson brought legal action against the bank and her supervisor, Sidney Taylor, claiming that “during her four years at the bank, Taylor had continuously subjected her to acts of sexual harassment” (128). Almost as soon as Vinson began working as a teller at the bank, Taylor made sexual advances (128). Vinson alleged the sexual demands made by Taylor persisted despite her denial, and were so frequent and so aggressive that refusal was simply not an option (128). The demands for sex were made “both during and after business hours” (129). These sexual encounters included fondling, exposing himself to her, and even rape (129).

The Supreme Court addressed three major questions in this case:

- 1) Is sexual harassment a form of sex discrimination barred by Title VII?;
- 2) Is an employer liable to a female worker for an offensive work environment created by her supervisor’s acts of misconduct?;
- 3) Does a Title VII violation occur when a sexual relationship between an employee and her supervisor is “voluntary? (129).

As an answer to question one, the Supreme Court quoted an opinion from the court of appeals: “Sexual harassment which creates a hostile or offensive environment of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or women run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets” (129). As established by Justice Rehnquist in his opinion, “For sexual harassment to be actionable, it must be sufficiently severe or pervasive ‘to alter the conditions of [the victim’s] employment and create an abusive working environment’” (*Meritor Savings Bank v. Vinson*). Instead of economic loss being the sole actionable claim tied to sexual harassment, discrimination “severe or pervasive” enough to change one’s working conditions was understood as actionable, broadening the Supreme Court’s understanding of the scope of gender-based discrimination.

The Supreme Court also answered the second inquiry—the employer is liable to a female worker for an offensive work environment created by her supervisor’s acts of misconduct (*Meritor Savings Bank v. Vinson*). Since the company employs the supervisor and delegates the supervisor’s authority, the supervisor, in turn, acts as an agent of the company when exercising said authority (Gregory 130). The Supreme Court acknowledged there might be cases where a supervisor is not acting as an agent of its employer, and therefore, the court must determine in each case whether the “harassing supervisor actually acted as an agent of his employer, thus rendering it liable for his harassment” (Gregory 130).

In addressing the Supreme Court addressed the third question, it opined that it is not about whether the complainant participated in sexual acts, but instead, whether the conduct was unwelcome. Raymond Gregory astutely identifies the three principles decided in this case by the Supreme Court:

First, to be actionable, an abusive or hostile environment claim must affect the terms and conditions of the claimant’s working conditions. Second, the harassment must be “sufficiently severe or

persuasive” to have been the cause of that change in working conditions. And, third, the harassing conduct must have been unwelcome to the victim of harassment. (Gregory 130)

After this Supreme Court hearing in 1986, lower courts created two distinct categories of sexual harassment. The first is the abusive treatment of an employee that “would not occur but for the fact that she is a woman,” usually entailing sexual acts in return for employment benefits or under threats of adverse employment action (Gregory 130). This form is primarily quid pro quo harassment. The second form is the hostile work environment harassment, where the victim and employee works in an environment “that is replete with sexual innuendo, intimidation, or other form of harassing conduct that are sufficiently severe or persuasive to alter the terms and conditions of a woman’s employment” (Gregory 131).

Bernstein argues this case created confusing precedent by the Court using ambiguous and enigmatic terms such as “sufficiently severe or hostile” (*Meritor Savings Bank v. Vinson*). Legal or judicial criteria to determine the sufficiency of the severity or hostility of the harassment do not exist. There are no exact conditions. Her solution to this confusion is the respectful person standard, which included judicial criterions (Bernstein 499). This criterion includes avoidability, which resembles the pervasiveness factor; emphasizing questions of proportionality (Bernstein 499). This criterion “conveys what is desirable about doctrinal attention to pervasiveness—that is, the chance to weigh and to measure the wrongness of workplace action—while at the same time rescuing what is desirable about the idea of reasonableness” (Bernstein 499). As this criterion is similar to reasonableness and pervasiveness, it eases the transition of the standards. Using specific criteria to determine culpability is in accordance with the objectivity of the justice system and counteracts the abstrusity of these terms.

E. The Anita Hill Case and Civil Rights Act of 1991

The Anita Hill case drew attention to sexual harassment that goes unreported. To properly consider several aspects of this particular case, we must first examine its background and the events which led up to it.

Anita Hill was born in Lone Tree, Oklahoma to a family of 16. She attended Oklahoma State University and then went on to Yale Law School. After graduating from Yale Law School, Hill became an attorney-advisor to Clarence Thomas at the United States Department of Education, also called ED (Hill). Thomas was promoted and became the Chairman of the United States Equal Employment Opportunity Commission, also called the EEOC, in 1982. Anita Hill followed her direct boss to the EEOC and served as his special assistant. By the time Anita Hill was serving under Clarence Thomas at the EEOC, however, several Supreme Court cases have been enacted to create legal precedence of sex discrimination through invoking a failure to comply with Title VII standards. In 1983, Hill was admitted to a local D.C. hospital due to stress-related stomach problems. Following those hospitalizations, Anita Hill quit her job in mid-1983, left Washington D.C., and accepted a position as a law professor focusing on civil rights at Oral Roberts University back home in Tulsa, Oklahoma (Totenberg).

On July 1, 1991, Clarence Thomas was nominated by President George H.W. Bush to become a Supreme Court Justice. Although Thomas had just two years on the federal bench, the early hearings had little controversy. Toward the end of the early hearings, on October 6th, 1991, NPR correspondent Nina Totenberg broke the story that a law professor named Anita Hill, a woman who worked with Thomas for over two years, had accused him of sexual harassment via an affidavit filed with the Senate Judiciary Committee, led by then-Senator Joe Biden (Totenberg). Anita Hill was then brought forward to testify

against Thomas in a day-long session for the Senate Judiciary Committee on the United States Senate floor. Of the 100 United States Senators at the time, only two were women. The Senate Judiciary Committee was composed entirely of white males.

On October 11th, Anita Hill testified in front of the Committee, describing her experience of being sexually harassed by Clarence Thomas when she worked for him. Hill brought up certain, explicit instances of harassment that were uncovered in her FBI affidavit, detailing her job from 1981-1983. However, Republicans questioned Hill's credibility. Some Republican senators suggested matters of underlying motives, honesty, and even mental stability, in the hearings and in various media (Cochran 174). The presumption of innocence, or of truth, was not given to Hill (Morrison 52). Demands for certain humiliating recollections were made of Hill. For example, during Senator Biden's interrogation, he brought up the specific incident of the Coke can: where Thomas suggested to his office that someone put their pubic hair on his can of Coke. He asked her about the incident five different times. In Anita Hill's book, *Speaking Truth To Power*, while discussing this line of questioning in Chapter Eight, she emphasizes the pain and the violence of this intrusion on a public scale. She recounts the repeated experience of undergoing trauma.

During the hearing on October 11th, 1991, the term "sexual harassment" was uttered to Anita Hill, by Anita Hill, or in front of Anita Hill, 273 times. "Penis" was said six times, "pubic hair" twelve times, and "sex" was said 71 times (Miller). Not only did Hill undergo trauma during the two and a half years she was sexually harassed by Thomas, and the trauma afterwards, she had to relive these experiences when giving a statement to the FBI, during interviews before she testified, the hearings themselves, and in her everyday life afterwards. The institutionalized violence was perpetuated against Hill by her boss, Clarence Thomas, the American media, "fourteen white men in grey suits" or the Senate Judiciary Committee, and by many others after (Hill Collins 216).

Two days after Anita Hill's hearing, on October 13th, 1991, Clarence Thomas responded to her allegations in the same room. Of the events during and leading up to the hearing, Clarence Thomas invoked race in a radical way.

...This is a circus. It's a national disgrace. And from my standpoint, as a black American, it is a high-tech lynching for uppity blacks who in any way deign to think for themselves, to do for themselves, to have different ideas, and it is a message that unless you kowtow to an old order, this is what will happen to you. You will be lynched, destroyed, caricatured by a committee of the U.S. Senate rather than hung from a tree. (Miller)

After Hill's testimony, Thomas deflected her allegations, instead comparing alleged sexual assault and the pursuance of its validity to a murderous, racist practice rooted in historical violence and racist shame. Years after the hearings, Anita Hill describes his comments as her having a gender and him a race.

The intersection of race and gender calls for analysis. Patricia Hill Collins claims that both institutionalized rape and lynching, although different expressions, serve the same type of social control that aids the "new racism" (Hill Collins 21). She conceptualizes "new racism" as a pervasive discrimination in the post-Civil Rights era, stemming from different, gendered, and sexualized experiences about race, and promoted and reproduced through mass media (Hill Collins 7). In addition, Hill Collins' new racism is historical, wielding racist language of the past using new or different forms. The new racism is not ahistorical—it is a juxtaposition of the old and new (Hill Collins 54).

Thomas' strategy of privileging of a racialized identity over a gendered one was successful. The all-white Senate Judiciary Committee did not want to be seen as racist; he brought up the specific incident of the Coke can, where Thomas suggested to his office that someone put their pubic hair on his can of Coke. He asked her about the incident on five separate occasions. In Anita Hill's book, *Speaking Truth To Power*, while discussing this line of questioning in Chapter Eight, she emphasizes the pain and trauma instigated by the Courts and the violence of this intrusion on a public scale. She recounts the repeated experience of undergoing trauma.

The Anita Hill case nonetheless brought much needed attention to sexual harassment cases. The Anita Hill "case" could be thought of as an incredibly successful Public Service Announcement. The public's attention to Anita Hill's experience cannot all be due to political spectacle. There is something very productive and honest about a situation where a woman takes control of her circumstance, simply by saying, "This happens everywhere, this happened to me, and this is very wrong." Immediately after these hearings, women—albeit primarily white women—began to achieve newfound political success. 1992, the year after the Supreme Court hearings with Anita Hill, was dubbed "Year of the Woman" because of the successes for women in national politics; for example, 24 new women were elected to the United States House of Representatives and five to the Senate (Malcolm). It is widely believed many women ran for office as a direct consequence of watching the hearings. In addition, and in Anita Hill's own words, "the silence has been broken" about sexual harassment (Cochran 175). After the hearings, the number of sexual harassment charges filed with the EEOC under Title VII increased from 6,883 in 1991 to 10,532 in 1992 (Gregory 131). Although most cases still go unreported, the public's awareness of sexual harassment was heightened. The American mass media played a large role in this case, allowing the American people to analyze sexual harassment cases that go unseen (Saguy 73). The Anita Hill case raised public consciousness of sexual harassment with the help of the media.

A year after the Anita Hill case, the United States Government passed the Civil Rights Act of 1991. The Anita Hill Hearings "probably speeded passage of the previously gridlocked Civil Rights Act of 1991 and may have thwarted a veto by President Bush, who had opposed earlier versions" (Cochran 176). "This Act has brought important changes to sexual harassment litigation, including providing the victim with the possibility of compensatory and punitive damages and jury trials" (Pelliciotti 1). The Civil Rights Act of 1991 "authorized compensatory and punitive damages for victims of discrimination prohibited by Title VII, raising the prospect of a larger monetary judgments" (Cochran 126). Under the 1964 Civil Rights Act, only equitable remedies in employment discrimination cases were available, typically declaratory judgments, injunctions, and back pay (Cochran 130). This is problematic for many reasons. First, victims of sexual harassment typically do not want their jobs back. Second, back pay was "crimped by plaintiff's obligation to mitigate damages by seeking other work" (Cochran 130). Simply put, the 1991 Civil Rights Act added remedies of compensatory and "punitive damages in instances of intentional employment discrimination" (Cochran 130). Also, the Act added a provision that either party could obtain a jury trial on demand (131). Cochran details, "Plaintiffs are usually the ones who seek jury trials, reasoning that juries are more likely to favor employee-plaintiffs' claims, while judges are more likely to be sympathetic to employer-defendants" (131). The 1991 Civil Rights Act added greater economic benefits of lawsuits and improved the odds of complainants prevailing (131). What is missing is the personal and emotional recompensation through Title VII. Economic benefit is valuable when cases are won, but when they are lost, Title VII is quite damning in this particular structure.

F. Harris v. Forklift Systems Inc.

Harris V. Forklift Systems, Inc. (1993) adds emotional and personal benefit to Title VII. This case demonstrated the complainant does not need to prove concrete psychological harm to establish a Title VII violation in a sexual harassment case.

Teresa Harris worked as a manager for Forklift Systems for two years. The president of the company, Charles Hardy, insulted and badgered her with “unwanted sexual innuendos” (Gregory 137), Hardy also heckled Harris with sexist comments in the presence of others, saying, “You’re a woman, what do you know?” among other such jabs (Gregory 138). Harris confronted Hardy on multiple occasions, asking him to stop. Despite promising to desist, Hardy did not.

The trial court denied Harris’ lawsuit, claiming that although Hardy’s comments were offensive, they did not “seriously affect” Harris’s psychological well-being (Gregory 138). Justice O’Connor writes, “The United States District Court for the Middle District of Tennessee, adopting the report and recommendation of the Magistrate, found this to be “a close case,” but held that Hardy’s conduct did not create an abusive environment” (*Harris v. Forklift Systems*).

The Supreme Court of the United States reversed the trial court’s judgment. This was their second time discussing sexual harassment, seven years after their ruling in *Vinson* (Gregory 138). Justice Sandra Day O’Connor writes, “Title VII comes into play before the harassing conduct leads to a nervous breakdown” (Gregory 133). On the opinion in *Vinson*, Justice O’Connor concedes:

[the opinion was a] mere utterance of an...epithet which engenders offensive feelings in an employee... [and it] does not sufficiently affect the conditions of employment to implicate Title VII. Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII’s purview (*Harris v. Forklift Systems*).

Writing for a unanimous court, O’Connor reasons “[a] discriminatory abusive environment, even one that does not seriously affect employees’ psychological well-being, can and often will detract from employees’ job performance, discourage employees from remaining on the job, or keep them from advancing in their careers” (*Harris v. Forklift*). Justice O’Connor concludes that concrete psychological harm, such as hospitalization due to an emotional breakdown, is “an element Title VII does not require” (*Harris v. Forklift*). Although psychological harm is certainly a factor in sexual harassment cases, it is not the only factor. The statute is not limited to such conduct (*Harris v. Forklift*).

Other factors O’Connor highlighted include “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance” (*Harris v. Forklift*). This ruling was the first to explicitly work outside of economic systems: in the category of hostile environment sexual harassment, behavior needs not tangible economic consequences (Saguy 34).

Another important aspect of *Harris v. Forklift Systems*, as Cornell aptly identifies, is the creation of precedent using two different legal standards, an objective and subjective one. While attempting to create a middle path of psychological damages suffered, the Supreme Court muddled the legal definitions and understanding of reasonable person standards. Such damages included those that exist in open-ended terms like “hostile” and “abusive” (Cornell 176). As many legal feminist theorists address, the reasonableness standard used by the court is inherently gendered, appealing to male reason (Cornell

176). Therefore, this male standard in sexual harassment litigation identifies the type of harassment males would find reasonably abusive or reasonably hostile. Cornell highlights, “there is extensive evidence that women and men in our culture do indeed view sexual advances differently” (Cornell 177). Even when Title VII litigation trajectory opens court precedent to middle-grounds, using the reasonableness standard still creates asymmetry in our culture, which is primarily based not due to only gender-difference, but also the allowance (and dis-allowance) of sexual behavior (Cornell 177).

What a reasonable woman might describe as abusive sexual harassment might not match with what a reasonable man might identify as sexual harassment behavior. Their perspectives can diverge. Justice O’Connor, in the court opinion, identifies that there cannot be a test that is “mathematically precise” for what constitutes or creates sexual harassment and an abusive environment (Cornell 198). In Justice Scalia’s dissent, he identifies a clear “lack of certitude” in sexual harassment cases (*Harris v. Forklift Systems*). O’Connor created a subjective reasonable person standard through the creation of this middle-path, despite its existence in a system operating in objectivity. The lack of clear standards “shows that the problem of how to address the question of the relationship between equality and perspective has not been resolved” (Cornell 200).

Cornell expounds this problem through her theory of self-respect. Instead of focusing on standards that consider the validity of womens’ accounts of their experiences, the court should concentrate on behavior that undermined equality, by considering the allowance of self-respect (Cornell 200). The focus would “shift from the woman to the workplace,” thus establishing an “objective and reasonable” standard (Cornell 201). Such aspect of litigation would, at the same time, be singular and broad. There is no uniformity in a reasonable man or reasonable woman standard—as humans, our perspectives differ (Cornell 202). Using a standard based on self-respect would not only allow the objectivity needed. It also opens space for our imaginary domain by identifying the needs of the individual, and maintains objective consideration of the accounts of what happened.

Vicky Schultz avers the Supreme Court missed a clear opportunity to expand the legal understanding of hostile work environment harassment, exemplifying her theory of disaggregation (Schultz 1683). The Court’s application of the standards established in *Meritor Savings Bank v. Vinson* was too focused on the sexual nature of harassment, thus ignoring the nonsexual conduct. This nonsexual harassment Harris suffered included “denying Harris a car, car allowance, office, and annual review” (Schultz 1711). Because such harassment was not sexual, such instances were not factored into Harris’ hostile work environment claim. Despite the extremity of the harassment Harris experienced, the Court did not warrant such claims—taking only certain aspects of harassment into consideration. Title VII was intended to dismantle discrimination and inequality; the clear failure of harassment litigation through this avenue is evidenced in this case.

G. Oncale v. Sundowner Offshore Services

Oncale v. Sundowner Offshore Services (1998) established that “same-sex” sex discrimination, including sexual harassment, is actionable under Title VII (Levy and Paludi 27). This case mirrored the progress (and the beginnings of the acceptance) of the LGBTQ movement in the late 1990s.

Joseph Oncale worked in an eight-man crew at Sundowner Offshore Services on a Chevron U.S.A. Inc. oil platform in the Gulf of Mexico. As Justice Scalia writes for a unanimous Supreme Court decision, “[o]n several occasions, Oncale was forcibly subjected to sex-related, humiliating actions against him by [his coworkers] in the presence of the rest of the crew. [Other coworkers] also physically assaulted

Oncale in a sexual manner, and [one] threatened him with rape” (*Oncale V. Sundowner Offshore Services*).

Sequentially, Oncale filed a complaint against Sundowner in the United States District Court for the Eastern District of Louisiana, alleging he was discriminated against in his employment because of his sex (*Oncale V. Sundowner Offshore Services*). The District Court held that Oncale had no cause of action under Title VII for harassment by male co-workers because he, himself, is a male. Supreme Court Justice Antonin Scalia reasoned:

We see no justification in the statutory language or our precedents for a categorical rule excluding same-sex harassment claims from the coverage of Title VII. As some courts have observed, male-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII. But statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed. (*Oncale V. Sundowner Offshore Services*)

The Court also issued a caveat: “Its recognition of employer liability for same-sex harassment was not intended to transform Title VII into a “general civility code for the American workplace” (*Oncale V. Sundowner Offshore Services*).

Some scholars have suggested that Title VII does not address genuine but innocuous differences in the ways men and women routinely interact with members of the opposite sex (Gregory 244). Gregory asks, “Following the Supreme Court’s *Oncale* decision, several other issues arose in same-sex sexual harassment cases. May sexual commentary provide the basis for a same-sex harassment claim? Can obscene expressions or anatomical references, uttered by men while conversing with one another, rise to a level of same-sex harassment?” (Gregory 245). As the lines of sexuality and gender began to blur, the idea of individuality and respect is severely neglected. To reiterate Scalia’s point, Title VII was not meant to be a general civility code for the American workplace (*Oncale V. Sundowner Offshore Services*); yet despite its beginnings, Title VII is turning into just that. To that end, the idea of workplace civility cannot be reduced to only issues of sexuality. Title VII must be expanded to include all types of civility.

Drucilla Cornell’s theories of equality through self-respect, while perhaps exacerbating Justice Scalia’s fear of Title VII becoming a civility code, protects gays and lesbians from sexual harassment.¹² Every individual is a sexuate being, and according to Cornell, needs to have his or her individuality protected through law. Violations of self-respect are not accorded by the gender identity or sexual orientation of the perpetrator, thus expanding Title VII to truly protect not just women but many different types of Americans.

Vicky Schultz uses *Oncale v. Sundowner Offshore Services* case to prove the potentiality of the Supreme Court to accept her new approach proposed in her article. This case shows the Court’s willingness to consider broader classes of harassment. In the case, the Court held that “nothing in Title VII necessarily bars a claim of discrimination ‘because of ... sex’ merely because the plaintiff and the defendant are of the same sex” (*Oncale v. Sundowner Offshore Services*). As Schultz notes, sexual harassment is rooted in a broader

12 The Imaginary Domain was published in 1995, three years before the Supreme Court decided this case. Cornell criticizes the prior court precedent: “Courts are violating the degradation prohibition by implicitly devaluing gays and lesbians as less than persons because of their “sex”” (Cornell 214).

pattern of discrimination based on difference. *Oncala v. Sundowner Offshore Services* embodies such concept. Thus, *Oncala v. Sundowner Offshore Services* set legal precedent for broader protections for “women and the least powerful men” to work as equals (Schultz 1805).

H. Faragher v. City of Boca Raton

Faragher *V.* City Of Boca Raton (1998) delineates the circumstances that employers will be held liable for acts of sexual harassment carried out by their supervisory personnel. Beth Faragher worked as part time lifeguard for five years as at the Boca Raton Parks and Recreation Department. She brought action against Terry, Gordon, Silverman, and the City of Boca Raton, claiming her two immediate supervisors created “a sexually hostile atmosphere...by subjecting her and other female lifeguards to “uninvited and offensive touching” and “lewd remarks”” (Gregory 142).

Like the Harris case, Faragher also alleged her supervisors frequently-made sexist comments “about women generally as well as about Faragher specifically” (Gregory 142). The Supreme Court notes, “Faragher did not complain to higher management about Terry or Silverman”. Although she spoke of their behavior to Gordon, she did not regard these discussions as formal complaints to a supervisor—rather conversations with a person she held in high esteem” (*Faragher V. City of Boca Raton*). Faragher sought a judgement against the city, “asserting that Terry and Silverman were agents of the City, and that their conduct amounted to discrimination in the “terms, conditions, and privileges” of her employment” (*Faragher V. City of Boca Raton*).

Regarding their job positions, the United States District Court for the Southern District of Florida investigated Terry and Silverman’s duties and supervisors in the Marine Safety Division of the City of Boca Raton. Terry had the authority to hire “new lifeguards...to supervise all aspects of the lifeguards’ work assignments, to engage in counseling, to deliver oral reprimands, and to make a record of any such discipline” (*Faragher V. City of Boca Raton*). Silverman and Gordon “were responsible for making the lifeguards’ daily assignments, and for supervising their work and fitness training” (*Faragher V. City of Boca Raton*). It is important to note the City of Boca Raton had adopted a sexual harassment policy: in February 1986, the City Manager addressed the new sexual harassment policy in a memorandum (*Faragher V. City of Boca Raton*). Further, in May 1990, the “the City revised the policy and reissued a statement of it” (*Faragher V. City of Boca Raton*). However, equally as important to note, the Supreme Court found the City “failed to disseminate its policy among employees of the Marine Safety Section, with the result that Terry, Silverman, Gordon, and many lifeguards were unaware of it” (*Faragher V. City of Boca Raton*).

The Supreme Court ultimately decided that “[a]n employer is not ‘automatically’ liable for harassment by a supervisor who creates the requisite degree of discrimination” (*Faragher V. City of Boca Raton*). The idea of “requisite degree of discrimination” is problematic—having a degree of discrimination that is legally acceptable is distressing in the very least. However, the court offered two basic alternatives—“one being to require proof of some affirmative invocation of that authority by the harassing supervisor, the other to recognize an affirmative defense to liability in some circumstances, even when a supervisor has created the actionable environment” (*Faragher v. City of Boca Raton*). Here, the Supreme Court ruling protects companies, saving them potential capital.

The *Faragher v. City of Boca Raton* case, as Vicky Schultz notes, creates another hindrance for harassment complainants. In order to prove hostility, the complainant must provide and prove two elements: 1) the harassment is “sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment” (*Meritor Savings Bank v. Vinson*), and 2) “the employer is responsible

legally for the challenged misconduct” (Schultz 1716). In addition, fixating on solely sexual aspects of harassment allows not only the individual defendant, but also their companies legally liable. Employers should be held accountable for all forms of discrimination at their offices, not only sexual. The legal precedent set by *Faragher v. City of Boca Raton* was that the “requisite degree of discrimination” allows companies to evade legal responsibility of company-wide discrimination, particularly when the sexual aspects of the harassment do not grant the “requisite degree,” but when non-sexual and sexual harassment does fulfill the requirement.

I. Pollard v. E.I. DuPont De Nemours & Co.

Pollard v. E.I. DuPont De Nemours & Co. (2001) establishes front-pay in sexual harassment suits. Regarding front-pay, a Circuit Court judge said, “Front pay is ... simply compensation for the post-judgment effects of past discrimination... It is awarded to effectuate fully the ‘make whole’ purposes of Title VII” (*Pollard v. E. I. DuPont de Nemours & Co.*). In *Pollard v. E.I. Du Pont DeNemours & Co.*, Sharon Pollard successfully sued her former employer, as she claimed she was subjected to a hostile work environment based on her sex under Title VII. The District Court found that Pollard was “subjected to co-worker sexual harassment of which her supervisors were aware, and that the harassment resulted in a medical leave of absence for psychological assistance and her eventual dismissal for refusing to return to the same hostile work environment” (*Pollard v. E. I. DuPont de Nemours & Co.*). The District Court awarded her \$300,000 in compensatory damages, which is “the maximum permitted under 42 U. S. C. §1981a(b)(3)” (*Pollard v. E. I. DuPont de Nemours & Co.*).

However, the District Court also found the compensation insufficient, as front-pay, or “compensation for lost future income that would have been earned at the plaintiff’s original job but for the discrimination,” was not yet a legal remedy (Cochran 130). The issue presented for review by Supreme Court is “whether front pay constitutes an element of “compensatory damages” under 42 U. S. C. §1981a and thus is subject to the statutory damages cap imposed by that section” (*Pollard v. E. I. DuPont de Nemours & Co.*). To reiterate, the Civil Rights Act of 1991 expanded equitable remedies available to complainants “by permitting, for the first time, the recovery of compensatory and punitive damages” (*Pollard v. E. I. DuPont de Nemours & Co.*).

Women are systemically considered “less than” men in all walks of life; to wit, employment discrimination complainants win 45 percent fewer cases than others. Therefore, there is very little financial incentive to address sexual harassment, and great amount to be gained by sweeping it under the rug. When Title VII is actually exercised, there is only a small possibility of economic gain.

Money is transferrable—it can be lost, but it can also be repaid. Respect, on the other hand, including self-respect, is non-transferrable and cannot be re-earned once lost. Anita Bernstein, similarly to Cornell, argues these attempts of economic compensation is a quasi-apology for harassment suffered (Bernstein 488). Cornell writes, “Many of us have learned to survive in degrading circumstances. What we will never know is how much psychic energy has been drained away from our creativity in the course of our efforts to find self-worth in spite of our degradation” (Cornell 211). Due to the repressive environment in which women are both raised and work, the ignoring of self-respect by the legal system is a failure of freedom yielded to us all via the U.S. Constitution. The energy spent combating constant micro- and macro-aggressions of degradation in and out of the workplace causes an intellectual deficit of attaining a *true eudemonia*. For the Imaginary Domain to exist in court in a very real way would be to assuage harassment victims’ fears of blame and injustice. Hard-won battles have been brutally fought in the courts

for an economic compensation of damages. However, this economic compensation cannot atone for lost self-respect. In fact, Cornell states there is no compensation for the loss of self-respect; focusing on economic compensation minimizes the trauma of sexual harassment.

Conclusion

Title VII was initially created to prohibit employers from discriminating against employees on the basis of sex, race, color, national origin, and religion—not to compensate victims who have undergone harassment. Though compensation became the norm after Mackinnon’s groundbreaking work, such was not the original intent of the Act. Following touchstone developments of sexual harassment litigation under Title VII, signpost cases forged a path to prosecuting sexual harassment, seeking compensation for damages, establishing recognition of sexist environments, and even bringing to light sexual harassment that goes unreported. Economic compensation from the guilty, though helpful after the fact, does not protect victims from actually experiencing harassment.

Thus, after analyzing the trajectory of sexual harassment litigation in the American justice system, I maintain that Title VII’s failures must be addressed and redressed. It is crucial the law itself must be redefined or harassment litigation should be redesignated to another legal avenue. The trajectory of this litigation must change: the formal process to register and litigate a complaint of sexual harassment must be streamlined, as Schultz argues; the definitions and guidelines of sexual harassment must be refined, adding more specificity, potentially through using Bernstein’s respectful person standard; and finally, the law needs to allow for sexual agency, as Cornell contends.

Firstly, according to Vicky Schultz, streamlining the formal legal process of filing a sexual harassment lawsuit will plausibly increase the number of reports or complaints of sexual harassment in the workplace. As evidenced by Figure A, the current process for a cause of action is complex and multifaceted. If the potential outcomes of sexual harassment complaints become more favorable to the complainant, others will be encouraged to come forward with their own complaints.

Secondly, the current definitions of sexual harassment would benefit from greater specificity. To reiterate, the Equal Employment Opportunity Commission currently identifies that harassment becomes unlawful when “1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive”¹³ (Equal Employment Opportunity Commission). Defining harassment needs to be both explicit and simple, not vague and complicated. The terms we use to refer to and describe hostile work environments are not clear or objective, misleading both complainants, juries, and men and women in the workplace (Bernstein 449). Since both hostile work environment sexual harassment and quid pro quo sexual harassment are forms of disrespect, sexual harassment complaints should “refer to respect,” or create a “standard of a respectful person,” instead of a standard of the reasonable person (Bernstein 450). As Cornell asserts, degradation is not reasonable by definition; yet “degraded we have been” (Cornell 236). And, truly, is it not eminently *reasonable* that a person in power should harness any means available to him, no matter how distasteful, demeaning, or disrespectful to

13 The Equal Employment Opportunity Commission also identifies that “offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance” (Equal Employment Opportunity Commission).

others, to maintain his own power? Using a standard of a respectful person would place the onus on behalf of the guilty party (both the individual defendant and their company) by discarding the idea of a “reasonable person”. Under this standard, a respectful employer “has a nondelegable duty to maintain an attitude of responsiveness and attention” and to proactively prevent sexual harassment in their workplace (Bernstein 495). Also, this new standard provides clarity for complainants by not having them question if their experience of harassment is *reasonable*, and but instead encourages them to focus on the clear loss of *respect*. Finally, the respectful person standard clarifies the adjudication of these lawsuits. Instead of questioning whether complainants were reasonable in their considerations of their harassment suffered, a notion that is incredibly subjective, judges can consider whether the defendant behaved as a respectful person, asking if the defendant regarded “the complainant as a person, self-propelled and unique, with a range of potential reactions to sex-based conduct in the workplace” (Bernstein 501). Using the respectful person standard expands Title VII, protecting more Americans in the workplace.

The final standard in Title VII litigation that must be redressed is the idea of welcomeness, also known as the common law doctrine, *Volenti non fit injuria* (“to a willing person, injury is not done”). *Quid pro quo* harassment doctrine is partially grounded in whether the harassment was welcome by the victim. Welcomeness polices the complainant’s sexual agency, and forces female complainants into stereotypical roles by creating tropes of licentious “bad girls” and chaste “good girls” (Cornell 191).¹⁴ Cornell advocates replacing the idea of “unwelcome” or “unwarranted” sexual harassment with “unilaterally imposed” (Cornell 190). Imposing oneself unilaterally on another is to treat the other as less than an equal person (Cornell 195). Changing the standard to consider whether the harassment was unilaterally imposed still directs Courts to investigate whether the sexual relationship was desired by both parties or was imposed upon the other party and not mutual (Cornell 195). This standard accounts for situations where complainants were forced to consent to their own harassment, but only under duress, still creating a hostile work environment harassment or a *quid pro quo* harassment. Unilateral imposition need not account for the complainant’s sexuality, sexual agency, and sexual relationships and activities, consequently ridding Court precedent of sexual repression.

The nature of changes made to Title VII ought to encompass the expansion of legal protections for a greater number of working Americans, and that when invoked, it does not jeopardize the fundamental goal of the Civil Rights Act: to end discrimination in the American workplace. At the very least, these measures would provoke increased dialogue in both activist and legal communities about gender equality and the role of the American justice system. In other words, these courts might provide an appropriate space for discussion that is more sensitive to the realities of the workforce. Of course, the working American woman should not settle for “the very least”. We deserve protection to the fullest possible extent that Title VII can protect us. This means we cannot accept the Act as it stands in its comparatively weak state, but must demand, and work toward, the changes proposed in this text. A less subjective, more clearly defined Title VII is a Title VII that could truly end discrimination in the workplace—and not only for women, but, as was the Act’s original purpose, for every working American.

¹⁴ Cornell furthers this theory, stating that investigations into complainant’s sexuality “implicitly incorporates fantasies about women which impose someone else’s imaginary upon women’s self-worth... [asking] whether or not a woman who says she did not welcome sex implicitly wanted it because she drank beer or wore short skirts imposes a view of her that deems her unworthy of personhood, and, thus, of making the claim that she could be sexually harassed” (Cornell 193).

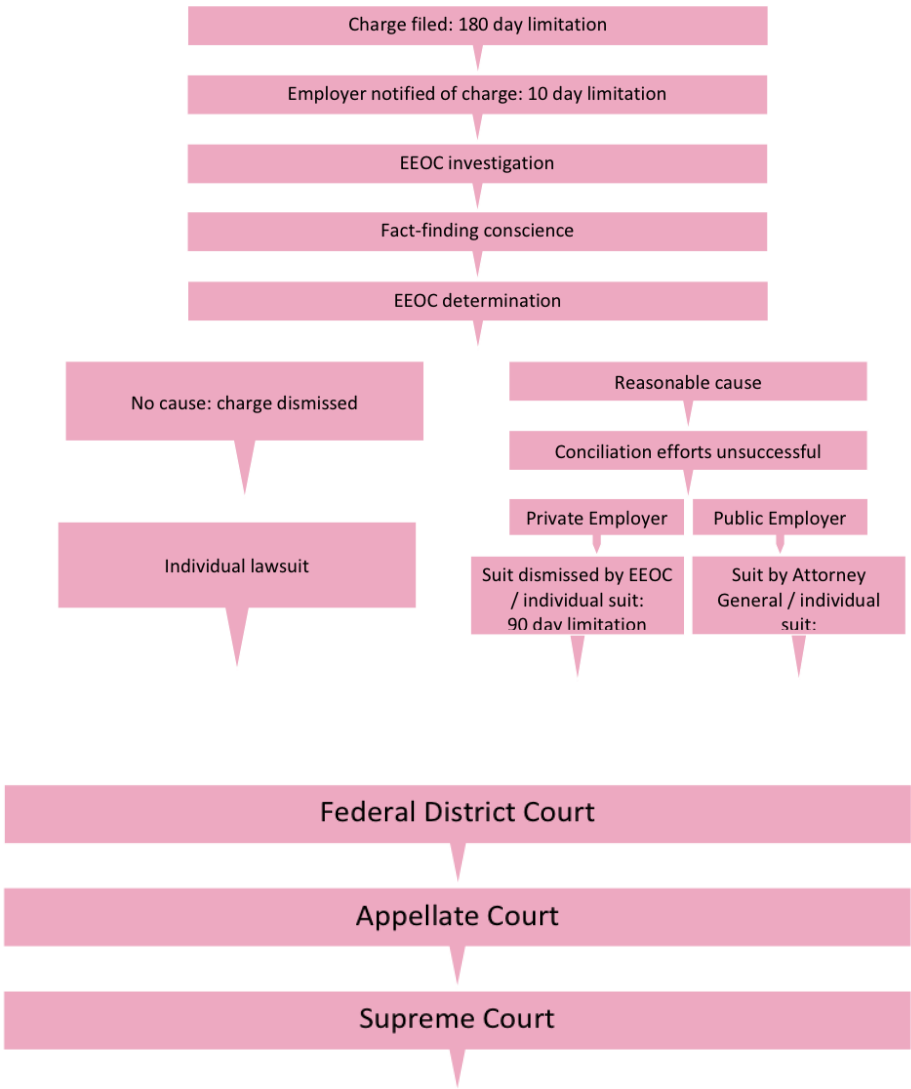


Figure A

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