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VOLUME XV

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POLITICAL INSTABILITY ON THE PROBABILITY OF
SOVEREIGN DEFAULT**

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Pay Back: Examining the Effect of Political Instability on the Probability of Sovereign Default

MARY JANE AJODAH

Governments have encountered difficulties paying off their external debts for centuries, sometimes repaying less than full value or defaulting outright on their obligations. Creditors have few viable enforcement mechanisms for collecting outstanding payments. When making lending decisions, creditors consider a host of political, economic, and social factors that may lead to a higher likelihood of debtor non-compliance or default. This study seeks to examine the impact of democratization and leader turnover as sources of political risk leading to sovereign default from the 19th century to the present day, using the largest available record of 70 countries. 25 logistic regression models are used to test regime type, leader turnover, and democratization as predictors of default. The results of this study suggest that non-democratic countries are more likely to enter default, and recent leader change in autocracies, but not democracies, significantly increases the likelihood of default. The strength of these political indicators is dampened when conducting more extensive analyses with a broader range of economic indicators. Recent democratization is also shown to be a significant predictor of default, even when controlling for sophisticated economic indicators. This study helps to fill in empirical gaps in the sovereign debt literature, particularly regarding the link between democratization and default, and can be a useful analytical tool for policymakers and investors interested in predicting and mitigating future debt crises.

Introduction

“No purchaser of a sovereign debt instrument today does so in the hope and expectation that when the debt matures the borrower will have the money to repay it. The purchaser does so in the hope and expectation that when the instrument matures the borrower will be able to borrow the money from somebody else in order to repay it. This is a crucial distinction. If by sovereign creditworthiness we mean that a sovereign is expected to be able to generate enough revenue from taxes or other sources to repay its debts as they fall due, then most countries are utterly insolvent.”

-Lee Buchheit, CGSH (Salmon).

The global financial crisis of 2008 and the subsequent Eurozone crisis have led to a resurgence of public interest in sovereign debt sustainability and potential for default. Though sovereign debt crises have traditionally been associated with emerging market economies (Das, Papaioannou, Trebesch 6), developed nations have recently realized their own vulnerabilities. In March 2012, Greece became the first advanced economy to complete a distressed sovereign debt restructuring since 1950. The €200 billion (\$266 billion) deal proved to be the largest in history, highlighting the dangers of high debt-to-GDP ratios and unsustainable borrowing (Forelle).

The mechanism of issuing external debt to finance stimulus, budget deficits, and war dates back to the genesis of political sovereignty, where Greece again proved the first defaulter on its obligations to the Temple of Delos in 4 BC (Kennedy, Simon, and Petrakis). While the fundamental purposes of borrowing and consequences of default remain the same throughout the centuries, recent trends in borrowing urge a reexamination of default predictors and the choices that constrain governments when making financing decisions.

Question Proposed

This paper adopts a distinction made by prior research between a nation's ability to pay and its willingness to do so. The primary aim of this study is to examine two aspects of political risk that may impact the probability of sovereign default: recent leader change and the process of democratization. This paper will examine whether democracies or autocracies are more likely to default on their external debts, and if the likelihood of default increases when a new leader comes to power. I then look at the process of democratization using Polity IV scores to derive the regime trend over a five-year interval. I hypothesize the following:

H1: Non-democratic countries are more likely to default on their external debts than democracies.

H2: Leadership change in autocracies will increase the probability of default, while leadership change in democracies will not affect the probability of sovereign default.

H3: The probability of sovereign default increases when a nation transitions from a non-democratic ruling regime to a democratic regime.

Together, these hypotheses aim to provide an empirical test for theories of the drivers of default, using recently released datasets to expand on prior studies of instability.

Theoretical Arguments

Literature Review

Past studies examining the linkage between political risk and sovereign default are generally rooted in the theoretical model of international borrowing equilibrium proposed by Eaton and Gersovitz in 1981. They posit that external debt is a consumption-smoothing tool for borrowers in periods of low income, to be repaid in periods of high income. The model assumes defaulters are permanently locked out from capital markets, and lenders have complete information regarding borrower characteristics and preferences. “One particular attribute of all borrowers is that they are inherently dishonest in that they will default if it is to their benefit”(290). This quote is representative of their key assertion--default is not a purely technical event driven by inability to pay, but exists as an outcome of a broader utility function. Tomz (2007) more succinctly captures the argument, writing:

“[Governments] can cut public spending, increase taxes on citizens, sell state-owned assets, and commandeer foreign exchange from private exporters. [In the case of default]...this almost never implies that the government is penniless. Rather, it signals a lack of political will to elevate the foreign debt over other concerns.” (15)

Continued scholarship has attempted to refine the parameters of the Eaton/Gersovitz models, examining the factors that drive default as a choice and attempting to account for the realistic moral hazard issues of debtor punishment. This study builds upon prior research examining the domestic characteristics of a nation that may lead to higher likelihood of choosing default. Two strands of literature, one examining regime characteristics/institutional factors and the other focusing on traditional metrics of political instability as predictors of default will be studied in tandem to provide grounding for the hypotheses of this study. The first hypothesis this study seeks to test constitutes the baseline for the subsequent analyses:

H1: Non-democratic countries are more likely to default on their external debts than democracies.

The primary thrust of the theoretical literature agrees with this assertion, but empirical tests conducted to date have presented contradictory conclusions depending on the sample selected. This study aims to use the broadest historical sample size available to evaluate this hypothesis, deriving relevant controls from the theoretical arguments. The “democratic advantage” in raising sovereign debt and mechanisms for credible commitment present in democracies (but not autocracies) form the main theoretical basis for H1.

Schultz and Weingast (2003), building upon the seminal work of North and Weingast (1989), examine games of protracted international competition, of which external debt repayment serves as an example. They contend that two key features of democracies drive repayment: legislative assemblies that control national spending, and elections that sanction leaders who default, by removing them from office (12).

Liberal governments maintain a “democratic advantage” in obtaining international credit over their illiberal counterparts because creditors have stronger faith that these institutional features will lead to repayment. Since autocrats are less beholden to their domestic citizenry and have more concentrated control over national spending than representative democracies, the incentive to default is greater and should be evidenced in the empirical record. Autocracies also have a greater ability to marshal natural resource and nationalized industry wealth for self-preservation, diminishing consequences of default. It will be important to control for wealth, total debt burden, and the presence of resources that can provide an alternate source of sustenance in the analyses.

McGillivray and Smith (2003, 2008) and Fearon (1990, 1994) come to similar conclusions: in theory, democracies should default less than autocracies. McGillivray and Smith outline a theory of leader specific punishment as applied to sovereign debt interactions, an idea elaborating upon Fearon’s “audience costs” through Selectorate Theory and winning coalition size. They posit that the ease of leader removal is a determinant of the probability of default. In democracies, a sovereign can be easily punished for default by removal in the next election, whereas for autocracies, leader removal due to the loss of access of credit is hard. International creditors are aware of the political risk inherent in lending to autocracies, and thus provide more favorable terms of lending to democracies. Market perceptions of risk are reflected in sovereign bond indices/the cost of borrowing, feeding into a virtuous cycle of sorts for lending to democratic countries. Thus, favorable lending conditions and incentives for repayment should be reflected in a lower rate of default for democracies.

Summary Table of Key Theoretical Arguments

Mechanism	Democracy	Autocracy
Resource allocation decisions	Decentralized	Centralized
Ease of removing leader	Easy	Difficult
Creditor Perception of Risk	Favorable (credible commitment to repay)	Uncertain

Yet, prior empirical studies examining the incidence of default have sometimes come to different conclusions. Verma (2002) finds that democracies default more on their debts, within a set of 30 developing countries from 1975-1995. Using a probit analysis that accounts for structural (economic) variables and multiple political variables to construct a definition of liberal democracy, Verma defines the model:

$$P_d = F(Z) = \frac{1}{\sqrt{(2\pi)}} \int_{-\infty}^{+\infty} e^{(-u^2/2)} du = h(z) \dots(1)$$

Though Verma comes to the opposite conclusion, the statistical model defined is a useful starting point

for the analyses of this paper, which will consider a broader dataset while retaining some of the control variables indexed in *Z*.

Alichi (2008) also finds that democracies are more likely to default on their debts, but is inconclusive about the robustness of the results, as significance was not found in every model. He argues primarily that older generations of citizens in a democracy are more likely to choose default, while younger generations prefer repayment. Rijckeghem and Weder (2009) use a non-parametric technique to examine regime type and political institutions in an explanation of defaults. They find a decreased likelihood of default for democracies when a parliamentary system is in place, given strong economic fundamentals, while for autocracies duration of leader tenure and overall stability are the key factors. Stasavage (2003) argues that representative democracy can create a credible commitment to repay debt, contrasting the records of France and Great Britain from 1688-1789.

Evidently, there is a discontinuity between the consensus in theory and lack of cohesive findings in empirical studies. While this study aims to add to the empirical studies conducted thus far, it is beyond the scope of this paper to examine each purported mechanism within regime type that can drive default. For my second hypothesis, I have chosen to specifically look at leader turnover as a mechanism for default within democracies and autocracies.

H2: Leadership change in autocracies will increase the probability of default, while leadership change in democracies will not affect the probability of sovereign default.

The discussion of theory above noted the idea that ease of leader removal leads to a lower likelihood of default—leaders will not default if they know they will be deposed because of it. This hypothesis takes a closer look at the relationship between leader turnover and the onset of default. I examine if a recent leader change has preceded defaults for different regime types. I look at whether a new leader has come to power within the last 2 years, and then within more restrictive sets (whether a leader has come to power within the last year and the last quarter).

Reputational arguments figure most prominently in arguments about the impact of leader change on sovereign default. Shea and Post (2013) argue that new leaders that come to power in irregular ways are more likely to default on their debts early on in their tenure. These leaders are not connected with the prior regime and do not feel like they need to maintain the prior regime's reputation for repayment with creditors. Irregular entry will be a more common occurrence in dictatorships than functioning democracies, and thus a recent leader change in an autocracy should lead to higher probability of default. Whereas in a democracy, new leader entry probably has little explanatory power for default, as the national reputation is not "reset" when a new leader enters office.

Dhillon and Sjostrom (2009) look at leader incentives among democratically elected leaders and dictators. They argue that the "ego-rent" of staying in office incentivizes leaders in democratic systems, while dictators repay if they value their individual reputation among lenders. Foley-Fischer (2012) refutes the above claims, finding no evidence for reputational theory in his empirical study of the timing of sovereign default over the terms of office for elected leaders. He finds that there is no clear pattern as to when leaders choose to default, based on a sample of 36 democracies from 1975-2005. He also suggests that elected leaders who default may be more likely to be re-elected. As the study only looks at elected

leaders, it will be relevant to compare the incidence of default when a democrat is newly instated against the autocratic analogue in the following analyses. To round out a picture of political risk and default, the final hypothesis examines regime transition:

H3: The probability of sovereign default increases when a nation transitions from a non-democratic ruling regime to a democratic regime.

The relationship between democratization and sovereign default has not been extensively studied in the literature, and is an area to which this study hopes to contribute the most.

From the discussion above, it at first seems counterintuitive to suggest that a regime moving from autocracy to democracy would be more likely to default on its debts. Democratization is perceived as a move towards favorable investment conditions and greater stability within a nation. This paper has proposed that democracies are less likely to default, and recent leader change within democracies should have no impact on the probability of sovereign default. The nascent democracy should want to signal its reliability to creditors through repayment.

However, the unique conditions inherent in a major regime change can significantly alter default preferences. Studies, in both academia and within private sector banking institutions, note a higher level of default risk when countries transition to a competitive electoral system (Vaaler, Schrage, and Block 2005). They argue that there is a heightened sense of short-term opportunism among leaders competing in a new democratic system. Drawing from Political Business Cycle Theory, the authors posit that these leaders will prefer to adopt an expansionary fiscal policy to satisfy the domestic electorate in the short-term, fearing both deposal and a reversion to autocracy. As the effects of default are generally felt over a longer time horizon, having the money that would have been used to pay off creditors freed up suits their myopic purposes. They argue that the effect is clearly stronger for left-wing governments.

The doctrine of odious debt, first proposed by legal theorist Alexander Sack in 1927, also can provide a theoretical basis for H3. Odious debt is defined as the debt incurred to prop up a despotic regime; this debt is not used to benefit the broader public good. Transitioning democracies can attempt to repudiate these “illegitimate” debts, but the lack of established legal procedure can lead to creditor retaliation in higher borrowing costs or exclusion from markets (Shafter 280).

Naturally, a move toward autocracy will not have as strong an effect according to this line of thought, as a newly instated autocrat can pursue a more idiosyncratic approach to repayment and doesn't face as large a leader survival threat (from the domestic electorate, at least). The reputational argument—autocrats do not identify with the prior regime—still holds, suggesting that there can be a higher risk of default for both types of regime change. When testing this hypothesis against the empirical evidence, it will be important to control for the presence of crises that generally accompany major regime shifts, and to also examine whether democratization or autocratization has a stronger effect on the onset of default.

Problems of potential endogeneity and measurement for these concepts will be addressed in the Empirical Design, which describes the analyses undertaken to test the theories laid out in this section.

Case Study: Democratization & Default in Uruguay (1987)

The example of Uruguay's default in 1987 can provide a real-world view of theory translated to practice. Ruled by an extraordinarily repressive right-wing military dictatorship from 1973 to 1984, Uruguay

transitioned to civilian democracy in 1985 with liberal Colorado party candidate Julio Maria Sanguinetti (Blake 9). Throughout the 20th century, Uruguay had been widely regarded as the most democratic Latin American country, and a “Switzerland of South America”; thus, the process of democratization after Cold War era military dictatorship was seen more as a restoration of past modes of governance rather than a move to uncharted territory.

The failure of import substitution industrialization in the mid-1950s and 1960s led to an increased strain on the economy and a more authoritarian approach to rule by consecutive Colorado governments. The military elite grew in influence as political power brokers, as the economic situation deteriorated, and were widely represented in the extant democratic structure before completely taking control of the government in 1973.

The Uruguay Council for National Security (COSENA) saw economic improvement as the clear mandate of its rule. Within a totalitarian framework, the COSENA managed to lower inflation and impose a new neo-liberal economic framework. Among the most important developments: restrictions on the exchange rate and the banking sector were lifted, import tariffs were lowered, social spending was cut, and state owned enterprises were divested (Hudson and Meditz). Uruguay was effectively opened to international markets, and experienced initial improvements in its economic situation in the years immediately following the military takeover.

Despite this promising start, the COSENA eliminated the crawling peg for its exchange rate in 1982. Begun in 1978, the crawling peg allowed the peso to slowly devalue to an appropriate exchange rate without causing massive economic instability. By eliminating the crawling peg system prematurely, the peso collapsed. This currency crisis, in conjunction with a government bailout of private banks, led to a major increase in external debt (sevenfold increase from 1973 to 1984, about US \$3bn) (Ibid).

As the economic situation deteriorated, the military (which lacked a “strongman,” a la Pinochet) was increasingly viewed as weak and illegitimate. Domestic and international pressure influenced a gradual democratization of Uruguay, which was achieved fairly peacefully in 1984 elections. In terms of Polity IV scores, the nation moved from a score of -7 in 1984 to 9 in 1985. In the analyses of this study, this shift in Polity score (more than 5 points) would be coded “1”, a recent democratization, for each of the years 1985-1990 (which fall within a five year interval following the shift).

The civilian government under Sanguinetti clearly inherited the consequences of COSENA economic policy, and it is useful to examine their economic policy and default in 1987 in light of theoretical arguments presented above. The new democratic government had two primary aims: trade liberalization and long-term economic stimulus, meant to increase real wages for workers and bring in more money for exporters (Blake 10). In keeping with Political Business Cycle Theory mentioned in the review, the recently democratized government first sought to satisfy their broad base of support, and faced the threat of the National Party and Broad Front (the second and third largest parties, respectively), both of which refused to participate in the nascent coalition structure proposed on the eve of democracy (CONAPRO). A reversion to autocracy was unlikely in this case, given the strong international pressure (and Uruguay’s pressing need for market access).

Economic stabilization measures occurred on both fiscal and monetary fronts. Hoping to develop a stronger export market for beef, wool, and apparel, the Sanguinetti regime lowered the exchange rate of the peso, devaluing the currency relative to the dollar and benefitting exporters that ultimately received

more money for their goods sold internationally.

While exports and GDP grew in the years following civilian democracy, currency market interventions contributed to rising inflation and a return to economic stagnation. Uruguay entered default on its external debts in 1987, and entered amenable restructuring proceedings in 1988. Owing to this default and a lack of improvement in general economic conditions, the National Party easily defeated the Colorado party in 1989 elections.

This case study demonstrates the choices made by a new democracy that inherited a heavy external debt burden from a prior autocratic regime. Facing challenges from other nascent political parties, the Colorado Party under Sanguinetti attempted to satisfy a broad domestic electorate (exporters and labor), at the expense of its external creditors. This anecdotally supports the idea that a recent democratization can lead to default. Though default is not the sole contributor to the 1989 loss, this case also does demonstrate an instance where the domestic electorate removed a defaulting government.

Empirical Design

In order to empirically test the theoretical arguments, it is necessary to compile a dataset on external sovereign default records, regime type, leadership change, and regime change along with relevant control variables.

Data Description

Dependent Variables: Default/Restructuring

Reinhart and Rogoff compiled the most complete and up to date dataset on incidence of sovereign default (2009, updated for 2010). Covering 70 countries from 1800-2010, they examine the disaggregated record of default for domestic and external debt, along with currency, banking, and inflation crises by year. The key variable this study uses is for external debt default (binary). The data codes any event of full repudiation or partial restructuring as an external debt default ("1"). The country is coded as "1" for each year that it remains in default without resolution. This study uses the dataset to create a new variable noting the onset of default.

Das, Papaioannou, and Trebesch (updated 2012) and Cruces and Trebesch (2011) provide more granularity to the historical record with datasets detailing the month and size of restructurings in the post war period. The Das, Papaioannou, and Trebesch dataset documents restructurings completed with the Paris Club (bilateral government creditors, see *Moral Hazard: Creditor Coordination*) from 1950-2010. The data set includes a binary variable indicating whether a nation was considered a Heavily Indebted Poor Country. This study converts the month/year format into quarter/year for the 88 countries and 430 cases of default in the dataset.

Cruces and Trebesch fill in the restructurings done with commercial creditors (banks and bondholders) from 1970-2010, listing the amount of debt affected and the face value reduction for 68 countries (168 cases).

The combination of insight from the 1950-2010 official sector restructurings and the 1970-2010 private sector restructurings can provide a full picture of modern patterns of default, and World Bank economic control variables are more readily available for that span of time.

Independent Variables: Regime Type/Change and Leader Change

For the independent variable to determine the regime type of a nation and provide a measure of regime shifts, this study uses data from the Polity IV project. Polity IV data assigns each of the 167 countries in its dataset an annual score from -10 to 10 based on the characteristics of its governing authority. A country with a score of -10 is a hereditary monarchy and a country with a score of 10 is a consolidated democracy according to this metric, with autocracies in the range of (-10 to -6) and democracies in the range of (6 to 10). This study reconfigures the spectrum (-10 to 10) in a new continuous variable (0 to 1) to aid in analyses.

This study uses the polity data to create new variables for democratization and autocratization respectively, measuring regime shift for nations on a temporal (5 year) basis. If a nation had a positive change of 5 or more in their polity score over the course of 5 years, for example, this variable notes them as a democratizing country. If a nation had a negative change of 5 or more in their polity score, the variable would note them as an autocratizing country. The unit of analysis for Polity IV data is nation-year, for 167 countries spanning 1800-2012. This study draws the data across quarters to assist in comparison with more granular data on dates of default and leader change.

Leader Turnover

The Archigos leader dataset provides the dates and conditions of entry and exit for leaders in 188 countries over the period 1875-2008. I have recoded the months/years of entry into their respective quarters/years. This study uses the base dataset to create a dummy variable that indicates whether a new leader entry occurred within the prior 2 years, 1 year, and 1 quarter for each country observation. This provides valuable insight as to the cause and effect relationship between leader deposal and default during the analysis portion of this paper.

Selected Control Variables

- Total (Domestic plus External) Gross Central Government Debt (% of GDP)
- GDP Per Capita (Historical/Modern)
- Exports of goods and services (% of GDP)
- GDP (Historical/Modern)
- Coups
- Inflation Crises
- Currency Crises

Method

This study is primarily concerned with the “decision point” of default—when a nation goes from a state of non-default to default. The dependent variable, onset of default, is dichotomous: $y \in \{0,1\}$. To analyze my hypotheses, twenty-five logistic regression models are used: the analyses are broken up into three sections, corresponding to each hypothesis stated. I use Stata 13 statistical software to run the regressions. Within each section, I segment the models by the designation “historical” and “modern.” Historical models begin in 1800 and have fewer available controls. Modern models include instability and financial data only available after the postwar period (beginning c.1950-1960).

My unit of analysis is country-year-quarter. I use this unit of analysis as leader turnover can be analyzed

on a quarterly basis (I have converted dates of leader entry and exit to their corresponding quarter-years). For models where leader turnover is not included as a variable, I have confirmed that the results maintain the same significance and degree of strength by collapsing the dataset and using a country year unit of analysis.

Each model is run for a binary dependent variable coded for the onset of default on external debts. A stylized cross-section of data is provided below for illustration.

COUNTRY	YEAR	QUARTER	SD EXTERNAL	ONSET DEFAULT	DEBT TO GDP RATIO	Δ POLITY (5 YEAR)	DEMOCRATIZED	Δ RECENT LEADER (2 YEARS)
ARGENTINA	2000	4	0	0	45.6	1	0	1
ARGENTINA	2001	1	1	1	54.0	1	0	1
ARGENTINA	2001	2	1	0	54.0	1	0	1
ARGENTINA	2001	3	1	0	54.0	1	0	1
ARGENTINA	2001	4	1	0	54.0	1	0	1

Results

Part 1: Effect of Regime Type (H1)

H1: Non-democratic countries are more likely to default on their external debts than democracies.
Historical

First, I examine the historical record from 1800-present, with the onset of default as a dependent variable, and regime type and historical economic controls for wealth as independent variables. The paucity of data available for this period means there are fewer economic controls available for this analysis that would be on parity with modern data. This set of models provides a basic, broader historical perspective on default, as all data within the model dates back to the 19th century.

Equations: Historical Models (1800-2010)

Model 1: Basic: No Controls

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Regime Type}) + \epsilon$$

Model 2: Economic Controls

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Regime Type}) + \beta_2(\ln \text{ GDP Per Capita}) + \beta_3(\ln \text{ GDP}) + \epsilon$$

Model 3: Economic Controls (Includes Interaction Variable)

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Regime Type}) + \beta_2(\ln \text{ GDP Per Capita}) + \beta_3(\ln \text{ GDP}) + \beta_4(\text{Interaction Variable (Regime Type * ln GDP Per Capita)}) + \epsilon$$

Table 1: Historical Model (1800-2010)
Effect of Regime Type on the Onset of External Default

ONSET OF DEFAULT	MODEL 1	MODEL 2	MODEL 3
	BASIC CONTROLS: NO	ECONOMIC CONTROLS	ECONOMIC CONTROLS (INTERACTION VAR.)
REGIME TYPE	-.569** (0.200)	-.658* (.299)	.897 (3.131)
LN GDP PER CAPITA		-.311* (.139)	-.000111 (0.0000716)
LN GDP		.0719 (.0580)	.117* (.0567)
REGIME TYPE* LN GDP PC			-.168 (.398)
CONSTANT	04.967*** (0.114)	-3.200*** (.900)	-5.813*** (.580)
NUMBER OF OBS.	39433	26536	26536
ONSET OF DEFAULT = 1	207	134	134
CHI 2	9.85	20.40	20.40
PROB > CHI 2	.0041	.0001	.0001

Effects are significantly different from zero at 90% (*), 95% (**), 99% (***) confidence.

Standard Errors in Parentheses. Similar levels of predictive power and significance at collapsed country-year unit of analysis.

In the first two models, less democratic regimes are shown to be more likely to default; Model 2 also suggests that countries with lower GDP Per Capita are more likely to default. All three models are shown to be statistically significant, given the values of the Chi 2 and Prob > Chi 2 ratios. All Prob > Chi 2 values fall below the critical threshold of .01, meaning there is a very low probability of obtaining the Chi 2 statistic if there was no effect of the independent variables on the dependent variable (Onset of Default). The null hypothesis (Ho: Regime Type has no impact on the Onset of Default) can be rejected.

Determining the strength of the effects requires conversion of the coefficients from log odds to odds ratios, a more intuitive form of interpretation. The odds ratio will be used to interpret this and subsequent logistic regression results. It is defined as the probability of the event (Onset of Default) divided by the probability of the nonevent. If the odds ratio =2, for example, it means that it is twice as likely that an event occurs with a one unit change in the (continuous) independent variable. If the odds ratio is less than one, (OR =0.02, for example), this means that the odds of the event happening for a one unit

increase in the independent variable is less likely, ($1/0.02 = 50$ times less likely for a one unit increase in the independent variable).

For Model 1, the most broad and basic analysis comparing regime type and the onset of default, the odds ratio for regime type is 0.57. This means for every one unit increase in the independent variable (Regime Type) that provides a scaled measure of autocracy to democracy, it is $1/0.57 = 1.75$ times less likely that a nation will enter default. This result is significant at the 95% confidence level.

While this result supports the hypothesis that less democratic countries are more likely to default than democracies, the introduction of economic variables dilutes the confidence level in the results. For Model Two, which considers Regime Type, GDP Per Capita, and GDP independently, a one unit increase in Regime Type (more democratic) leads to a nation being 1.92 times less likely to enter default. This result is only significant at the 90% confidence level.

In Model 3, which creates an interaction variable between Regime Type and GDP Per Capita, the interaction variable is not observed to be significant. This suggests that the differential effects of wealth are not a driving mechanism of default.

I then examine the predictive margins results for Model 2 to gain a better substantive understanding of the logistic regression model. I specifically look at countries designated as the “purest” autocracies (“0” on the continuous Regime Type score) and democracies (“1” on the continuous Regime Type score). The predictive margins command considers the mean value of the other independent variables (GDP and GDP per capita here), and gives a basic sense of the probability of default for autocracies and democracies at a mean income level. I used this command for Model 2, and found that there was a .7% chance of default for autocracies in a year, while an otherwise comparably wealthy democracy had a .4% chance of default. These numbers are within the ballpark rates observed in the preliminary findings, and provide more clarity as to how frequently these phenomena may play out in reality.

These results provide a promising baseline for H1 and are in accord with theoretical arguments. However, many economic indicators are unavailable for this analysis, and even within the historical GDP and GDP Per Capita datasets, values are missing for the very earliest cases of default. A modern model can provide more insight as to the relationship between regime type and default, and whether there are more relevant factors driving the decisions of policymakers.

Modern Model (1960-2010)

Within this set of models, I use updated World Bank data for all economic indicators, restricting the set to the post war period. I am particularly interested in controlling for the total debt levels of nations, and the access to funds “external” to tax revenue, such as export income and national reserves.

Selected Equations: Modern Model (1960-2010)

Model 6: Expanded Economic Controls

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Regime Type}) + \beta_2(\ln \text{ GDP Per Capita}) + \beta_3(\ln \text{ GDP}) + \beta_4(\ln \text{ Total Debt (\% of GDP)}) + \beta_5(\ln \text{ Exports (\% of GDP)}) + \beta_6(\ln \text{ Reserves}) + \epsilon$$

Model 7: Expanded Economic Controls (Interaction of Regime Type and GDP PC)

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Regime Type}) + \beta_2(\ln \text{ GDP Per Capita}) + \beta_3(\ln \text{ GDP}) + \beta_4(\ln \text{ Total Debt (\% of GDP)}) + \beta_5(\ln \text{ Exports (\% of GDP)}) + \beta_6(\ln \text{ Reserves}) + \beta_7(\text{Interaction Variable: Regime Type} * \ln \text{ GDP Per Capita}) + \epsilon$$

Model 8: Expanded Economic Controls (Interaction of Regime Type and Total Debt)

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Regime Type}) + \beta_2(\ln \text{ GDP Per Capita}) + \beta_3(\ln \text{ GDP}) + \beta_4(\ln \text{ Total Debt (\% of GDP)}) + \beta_5(\ln \text{ Exports (\% of GDP)}) + \beta_6(\ln \text{ Reserves}) + \beta_7(\text{Interaction Variable: Regime Type} * \ln \text{ Total Debt (\% of GDP)}) + \epsilon$$

Table 2: Modern Model (1960-2010)

ONSET OF DEFAULT	MODEL 4	MODEL 5	MODEL 6	MODEL 7	MODEL 8
	1960-2010: NO CONTROLS	1960-2010: BASIC CONTROLS	1960-2010: EXPANDED CONTROLS	1960-2010: INTERACTION VARIABLE	1960-2010: INTERACTION VARIABLE
REGIME TYPE	-0.957*** (0.286)	-0.213 (0.364)	-0.140 (0.416)	-0.897 (2.095)	0.896 (1.784)
LN GDP PER CAPITA		-0.303* (.118)	-0.253 (0.156)	-.000245* (0.000124)	-.000202** (0.0000771)
LN GDP		-0.0367 (0.0747)	0.147 (0.218)	0.394 (0.229)	0.376 (0.231)
LN TOTAL DEBT (% OF GDP)			0.480** (0.147)	0.480** (0.153)	0.611 (0.329)
LN EXPORTS (% OF GDP)			-0.279 (0.276)	-0.113 (0.275)	-0.0933 (0.267)
LN RESERVES			-0.260 (0.182)	-0.389* (0.188)	-0.368* (0.187)
REGIME TYPE* LN GDP PC				0.143 (0.302)	
REGIME TYPE * LN TOTAL DEBT (% OF GDP)					-0.219 (0.463)

CONSTANT	-4.493*** (0.188)	-1.852 (1.379)	-1.931 (2.502)	-6.997* (2.994)	-7.622* (3.028)
NUMBER OF OBS,	13952	12850	9660	9660	9660
ONSET OF DEFAULT = 1	88	82	64	64	64
CHI 2	11.02	24.69	36.60	36.16	50.74
PROB > CHI 2	0.0009	0.0000	0.0000	0.0000	0.0000

Effects are significantly different from zero at 90% (*), 95% (**), 99% (***) confidence.

Standard Errors in Parentheses. Similar levels of predictive power and significance at collapsed country-year unit of analysis.

For Model 4, comparing only regime type and the onset of default from 1960-2010, the results state that for every one unit increase in the independent variable (Regime Type) that provides a scaled measure of autocracy to democracy, it is 2.63 times less likely that a nation will enter default. This result is significant at the 99% confidence level, and is a much stronger effect than in the historical model.

However, regime type is not shown to be significant in Model 5, where basic economic controls are added. GDP Per Capita is shown to be significant at the 90% confidence level, and the results simply suggest that poorer countries are more likely to default. In Model 6, Total Debt is the only independent variable with significant positive effects, at the 95% confidence level, suggesting that a high debt burden is a more robust predictor for the onset of default. In Model 7, I created an interaction variable between Regime Type and GDP Per Capita. The interaction variable remains insignificant, and again, Total Debt is shown as the most impactful variable in the model, at a 95% confidence level. In Model 8, I interact Regime Type with Total Debt, and do not get a significant result. This suggests that the differential effects of wealth and debt burden among regimes are not the primary driving mechanisms of default in this model.

I then examine these results using predictive margins. With this expanded set of economic indicators taken at their means, I find that the likelihood of default for autocracies is .6%, while a comparable democracy has a .5% chance of default. The gap between the two types of regimes has narrowed from the historical period predictive margins analysis, in line with the finding that economic factors are more significant in this analysis. Still, autocracies evidence a higher rate of default than democracies.

Part 2: Effect of Leader Turnover (H2)

H2: Leadership change in autocracies will increase the probability of default, while leadership change in democracies will not affect the probability of sovereign default.

Historical

The following models are similarly segmented into historical and modern periods. I split the Regime Type variable into two dummy variables for Autocracy and Democracy. I then interact these variables with a leader turnover variable, examining whether recent leader entry within the last 2 years, 1 year, and 1 quarter preceded a default for each set of regimes (autocracy/democracy) individually. Since the Reinhart Rogoff Data is yearly in nature, I use the Cruces Trebesch (1970-2010) and Das Papaioannou Trebesch (1950-2010) quarterly data to see if recent leader change preceded default on a quarterly basis, necessarily restricting the quarterly set to the postwar period. In the interest of space, only the result tables for recent leader change in the past 2 years are presented in the body of the paper.

Selected Equations: Historical Model

Model 9: Set of Autocracies

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Autocracy}) + \beta_2(\text{Recent Leader Change}) + \beta_3(\text{Autocracy} * \text{Recent Leader Change}) + \epsilon$$

Model 10: Set of Autocracies: Economic Controls

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Autocracy}) + \beta_2(\text{Recent Leader Change}) + \beta_3(\text{Autocracy} * \text{Recent Leader Change}) + \beta_4(\ln \text{ GDP Per Capita}) + \beta_5(\ln \text{ GDP}) + \epsilon$$

Model 11: Set of Democracies

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Democracy}) + \beta_2(\text{Recent Leader Change}) + \beta_3(\text{Democracy} * \text{Recent Leader Change}) + \epsilon$$

Model 12: Set of Democracies: Economic Controls

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Democracy}) + \beta_2(\text{Recent Leader Change}) + \beta_3(\text{Democracy} * \text{Recent Leader Change}) + \beta_4(\ln \text{ GDP Per Capita}) + \beta_5(\ln \text{ GDP}) + \epsilon$$

Table 4: Historical(1800-2008)

The Effect of Leader Turnover (Past 2 Years) on the Onset of Default Set of Democracies

ONSET OF DEFAULT	MODEL 11 (DEM)	MODEL 12 (DEM)
	BASIC: NO CONTROLS	ECONOMIC CONTROLS
AUTOCRACY		
DEMOCRACY	-0.522 (0.331)	0.0622 (0.417)

REGIME TYPE (SCALE)	0.0635 (0.370)	-0.537 (0.494)
RECENT LEADER CHANGE (PAST 2 YEARS)	0.443* (0.177)	0.433 (0.221)
DEMOCRACY * RECENT LEADER CHANGE (2 YEARS)	-0.547 (0.358)	-0.663 (0.399)
LN GDP PER CAPITA		-3.05 (0.141)
LN GDP		0.0780 (0.0583)
CONSTANT	-5.206*** (0.140)	-3.450*** (0.950)
NUMBER OF OBS.	39433	26536
ONSET OF DEFAULT = 1	207	134
CHI 2	22.46	25.27
PROB > CHI 2	0.0002	0.0003

Table 5: Modern (1960-2008)
The Effect of Leader Turnover (Past 2 Years) on the Onset of Default Set of Autocracies

ONSET OF DEFAULT	MODEL 13 (AUT)	MODEL 14 (AUT)	MODEL 15 (AUT)
	BASIC: NO CONTROLS	ECONOMIC CONTROLS	MIXED CONTROLS
AUTOCRACY	-0.905* (0.419)	-1.273* (0.577)	-0.462 (0.698)
DEMOCRACY			

REGIME TYPE (SCALE)	-1.733*** (0.502)	-1.045 (0.626)	-0.0475 (0.799)
RECENT LEADER CHANGE (PAST 2 YEARS)	0.210 (0.269)	0.0782 (0.285)	-0.178 (0.368)
AUTOCRACY * RECENT LEADER CHANGE (PAST 2 YEARS)	0.843 (0.470)	1.071 (0.675)	0.859 (0.731)
LN GDP PER CAPITA		-0.267 (0.157)	-0.222 (0.228)
LN GDP		0.131 (0.219)	0.382 (0.272)
LN TOTAL DEBT (% OF GDP)		0.468** (0.145)	0.429* (0.198)
LN EXPORTS (% OF GDP)		-0.248 (0.277)	0.106 (0.390)
LN RESERVES		-0.214 (0.183)	-0.554* (0.232)
COUPS			0.180 (0.552)
INFLATION CRISIS			1.200** (0.397)
CURRENCY CRISIS			0.395 (0.321)
CONSTANT	-3.907*** (0.400)	-1.732 (2.517)	-3.010 (3.597)
NUMBER OF OBS.	13952	9660	4927
ONSET OF DEFAULT = 1	88	64	45
CHI 2	21.08	43.17	49.43
PROB > CHI 2	0.0003	0.0000	0.0000

OEffects are significantly different from zero at 90% (*), 95% (**), 99% (***) confidence.
Standard Errors in Parentheses.

Both models suggest that countries in the middle of the regime type spectrum (i.e. anocracies) are more

likely to default than “pure” democracies or autocracies, in line with the preliminary findings. The strong predictive power of the historical model is lost when looking at the set of modern cases; again, Total Debt retains significance across all models, and the presence of an inflation crisis (binary) is strongly covariate with the onset of default. The results are similar for models that consider leader change within the past year and past quarter. These results appear to detract from the validity of H2.

However, running a joint significance test that looks at the summed effect of leader change in autocracies and leader change independent of regime type helps provide clarity to the results. The joint effect of leader change in autocracies and leader change independent of regime type is positive and significant at the 95% confidence interval for Model 14, while this is not true for a similar joint significance test run for the set of democracies (Model 17). This suggests that there is some predictive value, (albeit reduced) in the mechanism of leader change within autocracies, even with modern indicators.

Part 3: Effect of Democratization (H3)

H3: The probability of sovereign default increases when a nation transitions from a non-democratic ruling regime to a democratic regime.

In this section, I examine whether democratization has a significant impact on the onset of default. The primary independent variable is coded to reflect whether a nation has experienced a regime shift towards democracy over the preceding 5 years. Democratization is defined by a change of +5 points on the Polity IV scale within the 5 years prior to each observation. Autocratization is defined by a change of -5 points on the Polity IV scale. As before, I first examine the broad historical trend (1800-2010), and then add updated economic and political instability indicators (~1960-2010).

Equation: Historical Model

Model 19: Basic: No Controls

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Democratization}) + \beta_2(\text{Autocratization}) + \epsilon$$

Model 20: Economic Controls

$$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Democratization}) + \beta_2(\text{Autocratization}) + \beta_3(\ln \text{ GDP Per Capita}) + \beta_4(\ln \text{ GDP}) + \epsilon$$

Table 7: Historical (1800-2010)

The Effect of Democratization (Past 5 Years) on the Onset of Default

ONSET OF DEFAULT	MODEL 19	MODEL 20
	BASIC: NO CONTROLS	ECONOMIC CONTROLS

REGIME TYPE	-0.778*** (0.214)	-1.018** (0.321)
DEMOCRATIZATION (PAST 5 YEARS)	1.075*** (0.216)	1.184*** (0.245)
AUTOCRATIZATION (PAST 5 YEARS)	-0.298 0.419	-0.178 (0.429)
LN GDP PER CAPITA		-0.229 (0.144)
LN GDP		0.0661 (0.0596)
CONSTANT	-4.954*** (0.118)	-3.722*** (0.920)
NUMBER OF OBSERVATIONS	39433	26536
ONSET OF DEFAULT = 1	39433	26536
CHI 2	28.84	39.69
PROB > CHI 2		

Effects are significantly different from zero at 90% (*), 95% (**), 99% (***) confidence.

Standard Errors in Parentheses. Similar levels of predictive power and significance at collapsed country-year unit of analysis.

The results of Model 19 show a strong and highly significant relationship between democratization and default. The odds ratio results state that a nation is 2.93 times more likely to enter default if it has democratized within the past 5 years. This is significant at the 99% confidence level. The results for autocratization are not significant, suggesting that regime instability in and of itself is not driving default, but that there is a political explanation. Significance for democratization at the 99% confidence level remains even with the addition of economic indicators: controlling for GDP Per Capita and GDP, the results state that nations that have democratized within the past 5 years are 3.26 times more likely to enter default.

I then look at the predictive margins results (Model 20) for a more substantive understanding of the results. At mean levels of wealth, nations that have experienced a democratization within the past 5 years have a 1.3% rate of default, as compared to .4% for those that have not. Again, it is salient to examine this result in conjunction with the modern period.

Selected Equations: Modern Model (1960-2008)

Model 23: Economic Controls (Expanded)

$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Democratization}) + \beta_2(\text{Autocratization}) + \beta_3(\ln$

GDP Per Capita) + β_4 (ln GDP) + β_5 (ln Total Debt (% of GDP)) + β_6 (ln Exports (% of GDP)) + β_7 (ln Reserves) + ϵ

Model 24: Mixed Controls

$L(\text{Onset Default}) = \ln(o) = \ln(p/1-p) = \beta_0 + \beta_1(\text{Democratization}) + \beta_2(\text{Autocratization}) + \beta_3$ (ln GDP Per Capita) + β_4 (ln GDP) + β_5 (Recent Leader Change (2 Years)) + β_6 (ln Total Debt (% of GDP)) + β_7 (Coups) + ϵ

Table 8: Modern (1960-2008)

The Effect of Democratization (Past 5 Years) on the Onset of Default

ONSENT OF DEFAULT	MODEL 16 (DEM)	MODEL 17 (DEM)	MODEL 18 (DEM)
	BASIC: NO CONTROLS	ECONOMIC CONTROLS	MIXED CONTROLS
AUTOCRACY			
DEMOCRACY	-0.164 (0.521)	-0.432 (0.533)	-0.585 (0.636)
REGIME TYPE (SCALE)	-0.672 (0.618)	0.510 (0.711)	0.996 (0.854)
RECENT LEADER CHANGE (PAST 2 YEARS)	0.689* (0.288)	0.481 (0.374)	0.168 (0.430)
DEMOCRACY RECENT LEADER CHANGE (PAST 2 YEARS)	-0.504 (0.454)	-0.409 (0.521)	-0.398 (0.645)
LN GDP PER CAPITA		-0.258 (0.157)	-0.187 (0.228)
LN GDP		0.147 (0.221)	0.378 (0.274)
LN TOTAL DEBT (% GDP)		0.519*** (0.151)	0.433* (0.197)
LN EXPORTS (% OF GDP)		-0.275 (0.282)	0.0710 (0.387)
LN RESERVES		-0.241 (0.184)	-0.556* (0.233)
COUPS			0.324 (0.559)

INFLATION CRISIS			1.278** (0.403)
CURRENCY CRISIS			0.391 (0.326)
CONSTANT	-4.737*** (0.234)	-2.740 (2.545)	-3.568 (3.560)
NUMBER OF OBS.	13952	9660	4927
ONSET OF DEFAULT = 1	88	64	45
CHI 2	17.52	40.02	50.18
PROB > CHI 2	0.0015	0.0000	0.0000

Effects are significantly different from zero at 90% (*), 95% (**), 99% (***) confidence.
Standard Errors in Parentheses.

Models 21-24 show democratization having a significant impact on the onset of default, even when controlling for multiple economic indicators that reduced the independent variables in Parts 1 and 2 (Regime Type, Leader Turnover) to insignificance. Model 21 shows that countries were 3.53 times more likely to enter default if they democratized within the 5 years prior. This result is significant at the 99% confidence level. Controlling for economic factors, including total debt burden in Model 22, nations are 2.44 times more likely to default if they experienced a democratization (significant at the 95% confidence level). In all models, autocratization is an insignificant predictor of default. As more indicators are included in the model, the effects of democratization remain significant, except for Model 25. Democratization lies slightly outside of the range of significance ($P > |z| = 0.09$) when controlling for the effect of concurrent crises and other forms of political instability.

Looking at predictive margins results, I find the result has stayed roughly similar to that observed in the historical analysis. Nations that have experienced a democratization within the past 5 years have a 1.0% rate of default, as compared to .4% for those in a comparable financial situation that have not democratized.

Conclusion

While theories for regime type and leader turnover are supported in the historical quantitative analysis, the addition of sophisticated economic indicators reduces their significance as predictive variables. Democratization, however, remains a significant independent variable in successively complex models of default. Recently democratized nations are shown to be roughly 3 times more likely to default on their external debts as compared to nations that have not undergone the same process. Autocratization is not shown to have a similar effect, suggesting that political preferences, rather than solely instability, are driving default preferences.

Further research can examine the mechanisms inherent in democratization, perhaps examining whether defaults were full repudiations or partial restructurings. This can parse out whether new democrats chose

to default due to their perception of the debt as illegitimate, or if they defaulted primarily in order to pursue an expansionary fiscal policy.

As nations continue to rely on external debt to fund their operations, an understanding of political drivers of default is crucial for policymakers, investors, and financial institutions with a stake in sovereign debt instruments. This study augments prior research in the sovereign debt literature, clarifying a key aspect of political risk.

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BRAZIL'S INTERNET DEVELOPMENT PLANS POST-2013 GLOBAL SURVEILLANCE DISCLOSURES

NATASHA BABAZADEH

On June 6, 2013, The Guardian, a British daily newspaper, and the Washington Post, an American daily newspaper, revealed one of the most significant national security leaks in U.S. history. Edward Snowden, former technical assistant for the CIA and employee of the defense contractor Booz Allen Hamilton, disclosed numerous top-secret documents from the U.S. National Security Agency (NSA) and its international partners to the public. According to American journalist Glenn Greenwald, the disclosures revealed that the NSA had established a data collection center in Brasilia, Brazil's capital. The center allowed the NSA to systematically tap into the local telecommunication network and intercept all forms of communication and the private user data of millions of citizens, including that of President Dilma Rousseff and her top aides. This revelation, among others, sparked an international debate regarding the right to privacy, user data protection, and access to information. Brazil recognizes the right to privacy and data protection through several provisions and principles outlined in their Federal Constitution, Civic Code, and various laws and regulations that address particular relationships, sectors, and professional activities. However, these regulations are oftentimes contradictory and irresolute. The Marco Civil da Internet bill was established in 2011 to develop a better framework—similar to the European Union's model—that would enhance protection of privacy and data security. Nonetheless, the bill was placed on standby and didn't receive constitutional urgency until after the 2013 global surveillance disclosures. Consequently, the bill acquired additional, controversial measures, and President Rousseff proposed a four-point plan to develop greater Internet independence and counteract any form of secret surveillance. This thesis discusses the development of privacy and data protection laws in Brazil, prior to and after the 2013 global surveillance disclosures. It analyzes the effectiveness and application of these laws before the disclosures, and explores the hypothetical outcome and implications of President Rousseff's proposed Internet development plans, particularly the new and improved Marco Civil da Internet bill. Furthermore, the thesis examines the true socio-political incentives for the Brazilian government to initiate such proposals. Once the pros and cons of the prospective legislation and propositions are taken into consideration, this thesis argues for the most plausible solution to better secure the right to privacy and data protection, maintain peaceful U.S.-Brazil relations, and ensure freedom of and access to information on the Internet.

Introduction: 2013 Global Surveillance Disclosures

The Guardian and Washington Post revealed one of the most significant national security leaks in the United States' history on June 6, 2013. Edward Snowden, former technical assistant for the CIA and employee of the defense contractor Booz Allen Hamilton, disclosed numerous top-secret documents of the U.S. National Security Agency (NSA) and its international partners to the public. Founded in 1952, the NSA is the U.S.'s chief signals intelligence agency and the largest of the country's myriad intelligence organizations. It is supposed to maintain a strict focus on overseas surveillance, not only specializing in phone and Internet interception, but also code making and code breaking.¹

In addition to the NSA's federal documents, Snowden's cache reportedly contained thousands of intelligence files from the exclusive "Five Eyes" Network. The "Five Eyes" refer to an Anglophonic intelligence alliance comprising of the United States, Australia, Canada, New Zealand, and the United Kingdom. These countries are bound by the multilateral UKUSA Agreement—The United Kingdom, United States of America Agreement—that establishes joint cooperation in signals intelligence among the five nations.² Together, they co-operate and share the costs of intelligence-gathering infrastructure, resulting in supra-national intelligence organization acting above the laws of their own countries.³

Snowden's documents revealed that the NSA had direct access to the data of major U.S. technology companies such as Google, Facebook, Microsoft, Yahoo and Apple, often without individualized warrants.⁴ The documents also provided information on the NSA's mass-interception of data from fiber-optic cables—the backbone of global phone and Internet networks—as well as its work to undermine the security standards upon which the Internet, commerce, and banking rely.⁵

As a component of a previously undisclosed program called "Prism," NSA officials were permitted to collect material including search history, email content, file transfers, and live chats directly from the servers of these U.S. companies.⁶ Many companies strongly denied their affiliation with or awareness of NSA espionage. Several documents provided evidence of the NSA funneling millions of dollars to "Prism providers," as well as confirmation that certain companies, such as Microsoft, had assisted the NSA in circumventing its users' encryption.⁷

Snowden claimed to have leaked the documents to launch a global debate on the appropriate limits of NSA surveillance, stating, "I cannot in good conscience allow the U.S. government to destroy privacy, Internet freedom, and basic liberties for people around the world with this massive surveillance machine

1 "About NSA." National Security Agency, Central Security Service. N.p., n.d. Web. 05 Nov. 2013. <<http://www.nsa.gov/about/index.shtml>>.

2 Cox, James (December 2012). "Canada and the Five Eyes Intelligence Community." Canadian Defense and Foreign Affairs Institute. <<http://www.cdfai.org/PDF/Canada%20and%20the%20Five%20Eyes%20Intelligence%20Community.pdf>>

3 Ball, James. "US and UK Struck Secret Deal to Allow NSA to 'unmask' Britons' Personal Data." The Guardian. Guardian News and Media, 21 Nov. 2013. Web.

4 Section 702, H.R. 6304 (110th): FISA Amendment Act of 2008

5 "The NSA Files." Guardian News and Media, n.d. Web. 16 Nov. 2013.

6 "NSA Prism Program Slides." Theguardian.com. Guardian News and Media, 01 Nov. 2013. Web. <<http://www.theguardian.com/world/interactive/2013/nov/01/prism-slides-nsa-document>>.

7 Id.

they're secretly building."⁸ He argued that domestic and foreign citizens should be informed of the lack of transparency in government, unequal pardon, and overpowering executive powers that rule the world in which they live. In order to maximize impact, Snowden left the U.S. to avoid legal retribution and reached out to Glenn Greenwald of *The Guardian* and several other journalists to reveal his most significant and pertinent discoveries to the world.

Since Snowden's disclosure of the NSA's classified documents in July 2013, a global debate has evidently been launched, with many domestic and international citizens displeased. The revelations have raised a series of questions with regard to the security of private information, trustworthiness in the technology sector, and the quality of the laws and oversight that keep the NSA in check. While many have argued that Snowden has jeopardized the lives of American citizens and U.S. national security by showing the world its surveillance capabilities, others have deemed him a hero, condemning NSA programs for compromising human rights and violating the privacy of millions.

The violation of individual privacy rights in particular has raised international concerns. The U.S. institutionalizes several legal concepts in its privacy laws, from the establishment of the Fourth Amendment in the Bill of Rights to the Federal Tort Claims Act (FTCA). With regard to electronic privacy, Sections 1809 and 1810 of the Foreign Intelligence Surveillance Act (FISA) impose criminal and civil sanctions respectively on unauthorized surveillance activities. If an individual is discovered having "disclosed and used information obtained under color of law by electronic surveillance, knowing or having reason to know what the information was obtained through electronic surveillance not authorized by this chapter," he or she is civilly liable for the criminal offense.⁹

The U.S. Foreign Intelligence Surveillance Court, authorized under the FISA, was established to oversee requests for surveillance warrants against individuals. The NSA and other agencies, such as the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA), utilize the court to request surveillance warrants against suspected individuals domestically and internationally.¹⁰ Nevertheless, the majority of these individuals do not receive any notification of this surveillance nor the ability to address why they are being watched.

According to Eric Lichtblau of *The New York Times*, "Since major changes in legislation and greater judicial oversight of intelligence operations were instituted six years ago, [FISC or the FISA court] has quietly become almost a parallel Supreme Court, serving as the ultimate arbiter on surveillance issues and delivering opinions that will most likely shape intelligence practices for years to come."¹¹ While FISC largely controls the regulation of surveillance practices, the FISA courts were initially responsible for

8 Greenwald, Glenn, Ewen MacAskill, and Laura Poitras. "Edward Snowden: The Whistleblower behind the NSA Surveillance Revelations." *The Guardian*. Guardian News and Media, 10 June 2013. Web.

9 50 U.S. Code § 1809 – Criminal Sanctions; 50 U.S. Code § 1810 – Civil Liability

10 Cohen, David B.; Wells, John Wilson (2004). *American National Security and Civil Liberties in an Era of Terrorism*. New York City: Palgrave Macmillan. P. 34. Print.

11 Lichtblau, Eric. "In Secret, Court Vastly Broadens Powers of N.S.A." *The New York Times*. *The New York Times*, 06 July 2013. Web. <http://www.nytimes.com/2013/07/07/us/in-secret-court-vastly-broadens-powers-of-nsa.html?pagewanted=1&_r=0>.

authorizing the collection of all phone data from Verizon business customers.¹²

However, considering the 2013 global surveillance disclosures, Snowden's actions revealed that FISC did not provide the NSA with a warrant to search U.S. citizens' data.¹³ The NSA had used a "back door" in surveillance law to perform the searches on domestic communications. A detail of Section 702 of FISA allows the NSA to search communications of foreign targets—non-U.S. citizens located outside the U.S. at the point of collection—without warrants.¹⁴ Any U.S. citizens that are in direct contact with such foreign targets can also be subjected to surveillance without a warrant, thus enabling domestic surveillance as well. Intelligence agencies openly acknowledge that purely domestic communications are oftentimes inadvertently swept into their databases. They call this "incidental collection."¹⁵

The disclosures also revealed that the FISC utilizes a "special needs" doctrine established in 1989 that exploits a loophole in the Fourth Amendment's requirement of a warrant for searches and seizures.¹⁶ The "special needs" doctrine was initially implemented for the drug testing of railway workers, justified by supposedly minimal intrusion of privacy in order to combat public danger.¹⁷ Applying the concept more broadly, according to a former intelligence officer, FISA judges ruled that "the NSA's collection and examination of Americans' communications data to track possible terrorists does not run afoul of the Fourth Amendment."¹⁸ This vague and broad legal interpretation has been used to justify airport screenings and drunk driving checkpoints, but most pertinently it has enabled the secret collection of civilian communications in pursuit of terrorism leads and to ensure national security.

Later, in 2008, a case regarding emails possibly containing information connected to Iran's nuclear program expanded the definition of foreign intelligence gathering to include anything related to "weapons of mass destruction."¹⁹ These subtle changes in the definition of privacy laws have provided intelligence officials wider access to data and communications. In this regard, the FISC legitimated NSA secret surveillance activities. Sections 1809 and 1810 of FISA cannot address a privacy violation within these broad criteria.

Similarly, since a tort based in common law would allow an aggrieved party to bring a lawsuit against an individual who unlawfully intrudes physically or electronically in private affairs and/or discloses their private information, the FTCA seems to offer an impractical approach as well. On March 27, 2013, the Supreme Court ruled in *Millbrook v. United States* that the waiver of sovereign immunity created by the "law enforcement proviso" in the Federal Tort Claims Act extends to actions of law enforcement

12 "Verizon Forced to Hand over Telephone Data – Full Court Ruling." *Theguardian.com*. Guardian News and Media, 05 June 2013. Web. <<http://www.theguardian.com/world/interactive/2013/jun/06/verizon-telephone-data-court-order>>.

13 Ackerman, Spencer, and James Ball. "NSA Performed Warrantless Searches on Americans' Calls and Emails – Clapper." *The Guardian*. Guardian News and Media, 02 Apr. 2014. Web.

14 Section 702, H.R. 6304 (110th); FISA Amendment Act of 2008

15 Ackerman, Spencer, and James Ball. "NSA Loophole Allows Warrantless Search for US Citizens' Emails and Phone Calls." *The Guardian*. Guardian News and Media, 10 Aug. 2013. Web.

16 U.S. Constitution, Amendment IV.

17 U.S. Constitution, Amendment IV.

18 "Surveillance Court 'secret' Rulings Slaughter Fourth Amendment to Help NSA Spy." *Network World*. N.p., n.d. Web. <<http://www.networkworld.com/community/blog/surveillance-court-secret-rulings-slaughter-fourth-amendment-help-nsa-spy>>.

19 50 USC sec. 1801(e)(1)

officers that arise within the scope of their employment, regardless of whether the officers are facilitating investigative or law enforcement activities.²⁰ So the FTCA now allows an individual to file suit against a federal employee acting within the scope of his or her official duties.²¹ In other words, one may still be able to seek recourse for privacy violations even if there is a warrant or some other form of federal authorization. It is important to note, though, that an individual can only file suit against a federal officer that has committed a tortious act within the scope of their employment, whereas the U.S. government and its agencies are not subject to civil liability. By this logic, one could arguably sue an NSA employee for invasive surveillance practices, but not the NSA itself.

Communications interception and wiretapping by the NSA fall under the category of intrusion of solitude and seclusion in the FTCA. Intrusion upon seclusion occurs when a perpetrator, in this case employees of the NSA, intentionally intrudes physically, electronically, or by some other means upon the private space and solitude of a person, or the private affairs and concerns of that person.²² Examples may include hacking into an individual's computer, secretly viewing or recording private information by video camera, or tapping personal phone lines and eavesdropping. In order to file a claim against such actions, the targeted individual first has to demonstrate some form of personal injury inflicted by the NSA employee. It's important to note that federal contractors, which much of the NSA's workforce is comprised of, are beyond the reach of the FTCA. Secondly, the claimant must provide evidence that the employee was acting within the scope of his or her official duties within the NSA, either negligently or intentionally. Lastly, there needs to be proof of a link between the negligent actions of the NSA employee and the injury that has been inflicted on the claimant.²³ If all three of these requirements are proven and sound, then there is a justiciable case to be argued.

While Snowden's disclosures provided evidence of NSA espionage on domestic and foreign citizens, specific information regarding the surveillance of a single individual and their personal data would be difficult to obtain. Whether or not the NSA has gathered intelligence in a manner that has negatively impacted or "injured" a individual is unclear. Even if certain information were to be leaked to the press, defaming the individual or causing them harm, the injured party would have a difficult time persuading the press to disclose their sources. Lastly, to pinpoint one federal officer within the NSA responsible for conducting surveillance on the injured party is realistically impossible. Intelligence gathering is a collective effort within the NSA. Thus, using the FTCA to file a suit for privacy infringement against any particular NSA federal officer is impractical. It has become increasingly difficult to decipher what exactly an individual's right to privacy entails and whether or not it has been violated, and if domestic citizens are unable to address these privacy infringements, then foreign individuals have even less potential recourse.

Many countries, such as those in the European Union (EU) as well as Brazil, also recognize their citizens' right to privacy. It was this mutual recognition that fostered an international discussion of the limitations to national security activities that violate individual rights. The 2013 global surveillance disclosures revealed

20 569 U.S. ____ (2013)

21 28 U.S. Code § 1346 (b)

22 "The Right to Privacy." CSE334: Introduction to Multimedia Systems. SUNY Stony Brook. Archived from the original on May 14, 2012. Retrieved October 17, 2013.

23 "Doing Business with the House." Federal Tort Claims Act · House.gov. N.p., n.d. Web. <<http://www.house.gov/content/vendors/leases/tort.php>>.

that the NSA had intruded into the private lives of not only domestic and foreign nationals, but also 35 individual world leaders, including German Chancellor Angela Merkel and Brazilian President Dilma Rousseff.

On September 24, 2013, President Rousseff addressed the NSA's surveillance programs at the United Nations General Assembly. In response to the United States' claims that the programs were utilized to ensure national security and to provide protection to U.S. citizens as a part of its counter-terrorism strategy, Rousseff declared:

Tampering in such a manner in the affairs of other countries is a breach of international law and is an affront of the principles that must guide the relations among them, especially among friendly nations. A sovereign nation can never establish itself to the detriment of another sovereign nation. The right to safety of citizens of one country can never be guaranteed by violating the fundamental rights of citizens of another country.²⁴

President Rousseff not only recognized the right to privacy in the U.S. and Brazil, but also invoked international law in her statement, arguing for privacy as a fundamental human right, and completely changing the discourse of the controversial debate. However, for the purpose of this thesis, we will remain within the confines of the right to privacy addressed solely within the principal countries, the U.S. and Brazil.

According to American journalist Glenn Greenwald, who, along with Laura Poitras, was given the confidential NSA documents by Edward Snowden, the NSA has established a data collection center in Brasilia, Brazil's capital. This center allowed the NSA to systematically tap into the local telecommunication network and intercept all forms of communication from millions of citizens, including President Rousseff and her top aides.²⁵

A special branch of the NSA, called "Follow the Money," was also shown to monitor international payments and credit card transactions that were then stored as collected data in the NSA's financial databank "Tractin." This branch allowed the NSA to hack into the network of Brazil's state-owned Petrobras oil company.²⁶

The NSA's alliance with the Communications Security Establishment Canada (CSEC)—the Canadian government's national cryptologic agency—enabled it to use their Olympia program to map the communications of Brazil's Mines and Energy Ministry and to target the metadata of phone calls and emails to and from it.²⁷

In the U.S., these actions would require a warrant from FISC, but the NSA was not prohibited by national standards to obtain one to wiretap foreigners. The disclosures of the NSA's lack of acquiescence

24 Borger, Julian. "Brazilian President: US Surveillance a 'Breach of International Law'" *The Guardian*. N.p., 24 Sept. 2013. Web. <<http://www.theguardian.com/world/2013/sep/24/brazil-president-un-speech-nsa-surveillance>>

25 "EUA Espionaram Milhões De E-mails E Ligações De Brasileiros." *O Globo*. N.p., n.d. Web. <<http://oglobo.globo.com/mundo/eua-espionaram-milhoes-de-mails-ligacoes-de-brasileiros-8940934>>.

26 "NSA Documents Show United States Spied Brazilian Oil Giant." *Fantástico*. N.p., n.d. Web. <<http://g1.globo.com/fantastico/noticia/2013/09/nsa-documents-show-united-states-spied-brazilian-oil-giant.html>>.

27 "Ministério De Minas E Energia Está Na Mira De Espiões Americanos E Canadenses." *Fantástico*. N.p., n.d. Web. <<http://g1.globo.com/fantastico/noticia/2013/10/ministerio-das-minas-e-energia-esta-na-mira-de-espioes-americanos-e-canadenses.html>>.

to President Rousseff's declared "international law" left her infuriated, leading Rousseff to call off a planned visit to President Obama in the United States, and to propose several domestic measures intended to combat any form of espionage.

In efforts to develop a more regulated system, and in order to secure consumer privacy and data protection similarly to the EU, Brazilian legislators drafted the Marco Civil da Internet bill in 2011. In general of terms, the bill attempted to create a Data Protection Authority to delineate and regulate sensitive personal data, to require the permission of data subjects to obtain, process, and transfer any of their data, and to inform subjects of data leaks by those in charge of handling and transferring the data. Until 2013, the passing and debating of the bill stalled because other legislative matters held priority.

The 2013 global surveillance disclosures and allegations that the NSA had conducted espionage on Brazilian President Dilma Rousseff brought the Marco Civil da Internet bill back into the forefront of political discussion. President Rousseff declared the bill a constitutional urgency, and several new provisions and amendments were added to develop more Internet independence and to counteract foreign espionage.²⁸

The prospective policies captured international attention and initiated a debate on the future state of the Internet and cyber-security through its application. If the bill were to pass, it would largely conflict with privacy rights in Brazil—what it originally intended to protect—as well as with global trade and international access to information.

Overview of Data Protection and Privacy Laws in Brazil

The right to privacy and the right to data protection in the digital age are closely linked to one another. While privacy as a human right and as a right acknowledged by individual states has been debated and redefined for centuries, its application to the modern dimension of cyber-security poses new challenges. For the sake of this thesis, the right to privacy will not be discussed or debated as a human right, but assumed as a legal right acknowledged within both the United States and Brazil, as well as several other mentioned countries.

Privacy is our right to keep a sphere around us, which includes any and all aspects that are a part of us, such as our body, home, property, thoughts, and for the purpose of this thesis, our personal data. Personal data does not have a universally recognized definition. Still, it has been discussed in U.S. privacy law as "personally identifiable information," and in the EU directive 95/46/EC as "information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, psychological, mental, economic, cultural or social identity."²⁹

In Brazil there is no legal definition of personal data. However, through Brazilian principles and provisions, it has been understood to include that any particular information related to the individual,

28 "Internet Constitution" Becomes Priority for Brazilian Government." ZDNet. N.p., n.d. Web. <<http://www.zdnet.com/internet-constitution-becomes-priority-for-brazilian-government-7000017839/>>.

29 "Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data." Eur Lex. N.p., n.d. Web. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>>.

including name, age, sex, profession, address, as well as personal communications are to be private. The most noteworthy examples include personal e-mails, messaging, call logs, and data related to the technological sphere, specifically the use of the Internet.

Prior to the 2013 global surveillance disclosure, Brazil's recognition of the right to privacy and data protection was based on general principles and provisions. There has never been a specific statutory regulation governing data transfers and specific data-protection authority. There are certain laws that address treatment and safeguarding of documents and information that have privacy implications handled by governmental entities and bodies.

In Brazil's Constitution, adopted on October 5th, 1988, privacy is addressed in Section 5 alongside numerous other provisions concerning human rights. Within 78 entries, privacy and data protection are mentioned in the following:

IV: "the expression of thought is free, and anonymity is forbidden."

X: "the privacy, private life, honor and image of persons are inviolable, and the right to compensation for property or moral damages resulting from their violations is ensured."

XI: "the home is the inviolable refuge of the individual, and no one may enter therein without the consent of the dweller, except in the event of flagrante delicto or disaster, or to give help, or, during the day, by court order."

XII: "the secrecy of correspondence and of telegraphic, data and telephone communications is inviolable, except, in the latter case, by court order, in the cases and in the manner prescribed by law for the purposes of criminal investigation or criminal procedural finding of facts."

LXXII: "habeas data shall be granted to ensure the knowledge of information related the person of the petitioner, contained in records or data banks of government agencies or of agencies of a public character; and for the correction of data, when the petitioner does not prefer to do so through a confidential process, either judicial or administrative."³⁰

Brazil was the first country to introduce and enforce the right to an effective remedy, "habeas data." The literal translation from Latin is "that you [the data subject] have the data."³¹ In Brazil, this constitutional remedy is designed to protect the image privacy, honor, and freedom of information of persons by means of an individual complaint presented to Brazil's constitutional court. A Brazilian citizen has the right to file a judicial complaint requesting access to personal data, as well as the ability to correct or delete any of the information the organization is holding regarding them. Furthermore, all citizens can seek these actions against manual or automated data registers.

In the Brazilian Civil Code, privacy is protected under the Personality Rights chapter. It is included in the following articles:

Article 11: "Except as provided by law, personality rights are inalienable, can neither be renounced and nor undergo voluntary restraint."

Article 12: "One may be required to stop the threat or injury to the right of personality, and claim

30 Constituicao of Brazil, 5 October 1988, Web 27 Feb. 2014 Available at: <http://refworld.org/docid/4c4820bf2.html>

31 "White & Case LLP - Publications - From Habeas Data Action to Omnibus Data Protection: The Latin American Privacy (R)Evolution." White & Case LLP - Publications - From Habeas Data Action to Omnibus Data Protection: The Latin American Privacy (R)Evolution. N.p., n.d.

damages, without prejudice of other penalties provided by law.”

Article 20: “Except as permitted or necessary to the administration of justice or the maintenance of public order, the disclosure of writings, transmission of the word, or publication, display or use of the image of a person may be prohibited in response to his or her demand and without prejudice to compensation if a damage is caused to honor, good reputation or respectability, or if there was commercial use.”

Article 21: “The private life of the natural person is inviolable, and the judge, attending the applicant’s request, may take the necessary measures to prevent or terminate action to the contrary to this standard.”³²

The provision of Article 5 of the Federal Constitution stated earlier is largely reflected in the Civil Code, especially under Article 21. While specifying the inviolability of the private lives of individuals, it assures that measures can be taken to prevent and terminate any violation of the plaintiff’s privacy through the judiciary.

The combined application of the aforementioned provisions and principles within the Constitution and Brazilian Civil Code implies that a victim of privacy or data protection violation may request the court to issue substantive measures aimed at preventing, and more realistically, terminating any such violations, as well as assigning compensation when necessary.³³ Furthermore, the country’s legislative approach is characterized by the notion that any such established provisions and principles of data protection are contained in legislation devoted to consumers’ protection, for instance the Consumer’s Protection Code of 1990.

Within the Consumer’s Protection Code of 1990, consumers’ databases held by banks, credit agencies, and other companies are regulated in a non-exhaustively. A consumer has the right to access their personal information in an objective manner. Otherwise, the information is protected from the reach of others.³⁴ The European Union’s legislation on data protection—the Data Protection Directive—differs significantly from Brazil’s in that the processing of personal data relating to an individual requires the consent of the data subject. Brazilian legislation does not request this consent from the data subject, but the data subject does have the power to use his or her consent to retrieve all available personal data from both the government and telecoms companies.

With regard to electronic surveillance, wiretapping is addressed in Brazil’s Wiretap Law of 1996, a direct implementation of Article 5 in Brazil’s Constitution. Wiretapping is only possible in criminal investigations. A judicial order is necessary and is considered only if reasonable evidence of a crime has been discovered. Furthermore, illegal wiretapping is punishable with two to five years in prison and consequent fines.³⁵ Lastly, Brazil is a signatory to the International Covenant on Civil and Political Rights

³² Wheless, Joseph. *The Civil Code of Brazil*. N.p.: Thomas Law Book, 1920. Print.

Available at: <https://archive.org/details/civilcodebrazil00whelgoog>

³³ De Conti, Rafael, and Davide M. Parrilli. *Data Protection Law in Brazil: An Overview*. Rep. N.p., n.d. Web.

<https://www.decontilaw.com/Artigos/Data%20Protection%20Law%20in%20Brazil_DMP_100312_RDC_110312_forDCLO.pdf>.

³⁴ "COMPLYING WITH BRAZIL'S CONSUMER PROTECTION CODE.": International Law Firm, Attorneys, Diaz Reus. N.p., n.d. Web. <<http://www.diazreus.com/news-articles-brazilian-consumer-protection-code.html>>.

³⁵ Costa, Luis. *A Brief Analysis of Data Protection Law in Brazil*. Tech. N.p.: n.p., n.d. Print.

(ICCPR), recognizing the right to privacy under Article 17, and the American Convention on Human Rights (ACHR), which grants the right to privacy in Article 11. The terms are as follows:

1. "Everyone has the right to have his honor respected and his dignity recognized."
2. "No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation."
3. "Everyone has the right to protection of the law against such interference or attacks"³⁶

It is important to note that Article 5, Section 3 of the Brazilian Constitution declares, "International human rights treaties and conventions which are approved in each house of the national congress, in two rounds of voting, by three fifths of the votes of the respective members shall be equivalent to constitutional amendments." While both treaties were signed prior to the establishment of this provision in the constitution, the standard still applies, as seen in a case of detention for debt in 2008. The Supreme Court in Brazil ruled that the ACHR, despite not having constitutional status such as those treaties signed after the establishment of Article 5, had a "supra-legal" standing, implying that it would be regarded with strict compliance to national legislation.³⁷ Additionally, Brazil abides by both the standards of the Inter-American Court on Human Rights and the United Nations Human Rights Council. Such acknowledgment signifies that any privacy violations may be brought before these organizations.

Despite the number of provisions, treaties, and principles of the right to privacy recognized by Brazil, a general data protection framework is still lacking, especially considering the fact that most of their terms are contradictory and irresolute. For instance, the Brazilian national policy on access to governmental information gives individuals the right to obtain information of general or individual concern. Nonetheless, individual privacy limits this right, because of "the inviolable intimacy, private life, and honor and image of people."³⁸

According to the Federal Constitution of Brazil, "every citizen is granted the right to receive, from public entities, information of his/her personal interest, or of general or collective interest, which shall be provided on the terms established in the law."³⁹ The Constitution also determines that in situations where secrecy is required for the purpose of a secure state or society, access to such information may still be denied. They have established the Commission for the Verification and Analysis of Secret Information, a specific new body composed of ministers that maintain the task of verifying the possibility, necessity, and adequacy of disclosure concerning what would be considered personal data of a top secret nature.⁴⁰

Moreover, Brazilian national administrative policy on the safeguarding of confidential data, information, documents, and materials considers more than just data whose unrestricted access could pose a risk for the security of Brazilian state or society as "secret documents." They also respect these standards in the case of any data's secrecy may be required to preserve an individual's privacy, intimacy, honor, or image.⁴¹ On the basis of this risk, access to this kind of information is restricted. It is classified as thus according to

36 Organization of American States, 1969. . American Convention on Human Rights. Web. 26 Feb. 2014 Available at: <http://www.Cidh.oas.org/basicos/English/basic3.american%20convention.htm>

37 Costa, Luis. A Brief Analysis of Data Protection Law in Brazil. Tech. N.p.: n.p., n.d. Print.

38 Federal Law No. 8,159, January 8, 1991, Chapter 1, Article 4

39 Brazilian Constitution, Title 2, Chapter 1, Article 5, XXXIII

40 "IV. Governance Issues." Privacy International. N.p., n.d. Web. Jan. 2014. <https://www.privacyinternational.org/reports/brazil/iv-governance-issues#footnote2_gu8rmjl>.

41 Id.

specific rules and provided only on a “need-to-know” basis. These contradictory and limited terms provide a narrow basis for the establishment of an effective right to privacy and data protection law. While they recognize these rights through principle and provisions, the possibility of assertive recourse is lacking, and oftentimes the right to information and transparency of the government are at stake in the process.

According to Brazilian privacy and data protection experts Evy Cynthia Marques, Santos Neto, and Montgomery Advogados, since appropriate legislation pertaining to privacy and data protection rights is lacking, Brazilian companies do not pay as much attention to the risks as European organizations do.⁴² Now that the volume of data being transferred internationally has increased significantly, these rights need to be taken more seriously. Furthermore, Brazilian companies particularly need to start paying more attention to such risks, because issues may arise from data transfers abroad, such as interception.⁴³

The Brazilian Internet Bill of Rights, also known as Marco Civil da Internet, was drafted in 2011 in order to remedy the lack of privacy and data protection enforcement. The bill was drafted by the Ministry of Justice, in partnership with the Center for Technology and Society of the Law School at the Fundação Getulio Vargas. The conception of the Marco Civil da Internet was largely influenced by an editorial written by Professor Ronaldo Lemos published on May 22, 2007. It established the necessity for a Brazilian Internet civil regulatory framework and provided similar guidelines to what is now presented in the Marco Civil.⁴⁴ In its first drafting, more than 800 substantive contributions were received, including e-mails, comments, references and alternative drafts.

Following this initial round of discussion, the draft was then published for public comments throughout a collaborative process that took place between April 8 and May 30, 2010. On August 24, 2011, the bill was approved by the Executive Government in Brazil and sent to Congress by President Dilma Rousseff with the help of the Justice, Science & Technology, Planning, and Communications Ministries. Congress received and processed the draft bill under docket number 2126/2011. The bill was scheduled to be voted on several times in November 2012, but was held off due to other legislative priorities.⁴⁵

The Marco Civil da Internet aims to establish regulations and guarantee rights and duties for using the Internet in Brazil. Furthermore, it seeks to protect privacy rights, net neutrality, safe harbors for Internet service providers, and increased transparency. Within its provisions, the bill covers the following concepts:

Article 3: Privacy protection principle is stressed.

Article 7, I: The context of criminal investigations or procedures is recognized.

Article 7, IV: The right to clear privacy policies is guaranteed.

Article 8: The right to privacy and the right to freedom of expression are grouped together, although there may be some contradictions, as prerequisites for free exercise over the Internet.

Article 18: The judges determine the secrecy concerning personal data disclosed in a judicial

42 “Data Protection and Privacy Laws,” *Financier Worldwide*, Annual Review. December 2013.

<http://www.financierworldwide.com/AnnualReviews/AR_DataProtection_326jpm.pdf>.

43 *Id.*

44 “Artigo: Internet Brasileira Precisa De Marco Regulatório Civil.” - 22/05/2007. N.p., n.d. Web. 05 Mar. 2014.

<<http://tecnologia.uol.com.br/ultmot/2007/05/22/ult4213u98.jhtm>>.

45 “Civil Rights Framework for Internet in Brazil | FGV DIREITO RIO.” Civil Rights Framework for

Internet in Brazil | FGV DIREITO RIO. N.p., n.d. Web. 05 Mar. 2014. <<http://direitorio.fgv.br/civilrightsframeworkforinternet>>.

procedure.⁴⁶

The bill was established in order to develop a more regulated system, similar to the European Union's model. First, it creates a Data Protection Authority, which is a supervisory authority for data protection. The bill also delineates and regulates sensitive personal data, providing clearer specifications. It requires the permission of the data subject to obtain, process, and transfer any of their data, and lastly, those in charge of the data handling and transferring are obligated to inform the data subjects of any data leaks.

It was not until the 2013 global surveillance disclosures and the allegations of NSA espionage on foreign leaders and citizens that the passing of the Marco Civil da Internet became a priority for the Brazilian Government. President Dilma Rousseff affirmed the action during her speech at the 68th Session of the United Nations General Assembly on September 24, 2013. She also proposed additional amendments to the bill in accordance with her four-point plan to counteract the NSA and all other forms of foreign espionage. This initiated a debate on the future state of the Internet, the right to privacy, and the access to information.

Brazil's Surveillance Response and Internet Development Proposal

Rousseff's first proposal to combat the NSA's surveillance programs was to encourage the United Nations to "play a leading role in the effort to regulate the conduct of states with regard to these technologies."⁴⁷ She called for the establishment of an international framework—one that would oversee a new global legal system—governing Internet use to extend human rights to the digital sphere. The new Internet would be guided only by technical and ethical criteria, rendering it inadmissible to restrictions for a political, commercial, religious or any other purpose. Rousseff argued, "The time is ripe to create the conditions to prevent cyberspace from being used as a weapon of war, through espionage, sabotage and attacks against systems and infrastructure of other countries."⁴⁸ As of now, Germany, Brazil, and nineteen other countries have sponsored a UN resolution against spying on electronic communications, but results are still forthcoming.

Additionally, President Rousseff announced measures to particularly protect the privacy of Brazilian citizens. These measures include:

- Increasing domestic Internet bandwidth production
- Increasing international internet connectivity
- Encouraging domestic content production
- Encouraging use of domestically produced network equipment⁴⁹

Although these measures were explicitly stated to counteract NSA surveillance, it is important to note that they have also been successful for existing Brazilian private-sector initiatives, ongoing for several years now. In this regard, Brazil's plans for Internet development were not wholly initiated by the NSA's

46 Governo Brasileiro, 2011. Projeto de lei – estabelece princípios, garantias, direitos y deveres para o uso da Internet no Brasil. Available at: http://www.planalto.gov.br/ccivil_03/Projetos/PL/2011/msg326-24ago2011.htm

47 Barbara, Vanessa. "Have a Nice Day, N.S.A." *The New York Times*. N.p., 26 Sept. 2013. Web. <http://www.nytimes.com/2013/09/27/opinion/have-a-nice-day-nsa.html?_r=0>.

48 Id.

49 Woodcock, Bill. "On Internet, Brazil Is Beating US at Its Own Game." *Al Jazeera*. N.p., 20 Sept. 2013. Web. <<http://america.aljazeera.com/articles/2013/9/20/brazil-internet-dilmarousseffnsa.html>>.

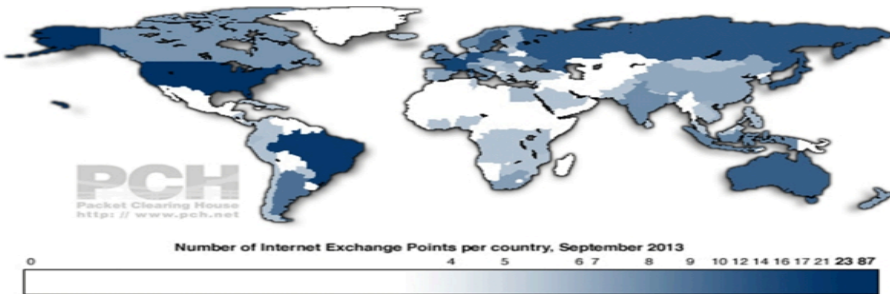
espionage, but rather by other economic and developmental incentives as well.⁵⁰

The NSA's espionage capabilities are primarily due to the large number of countries that depend on infrastructure and communication routes running through the United States. It could be possible that the U.S. government purposefully organized and structured communication routes in this way in order to retain a disproportionate control over the Internet. Since the Internet is almost entirely comprised of private commercial networks rather than state-owned entities, the government's control stems from incentivizing or punishing these networks through regulations. It is important to note that the U.S. government, or any other country's government, cannot compel the private sector to invest in and develop the Internet, so "the residual centrality of the United States is a result of the combined momentum of many companies competing to build Internet infrastructure there over several decades."⁵¹ Still, the centrality mentioned is waning as companies begin to expand to global markets and encounter new international competitors.

Studies from the Packet Clearing House (PCH) provide data showing that Europe has exceeded the United States in Internet bandwidth production and routing centrality. The growth rate percentage in Latin America is beginning to surpass any other region, largely thanks to Brazil's efforts.⁵²

Increasing Domestic Bandwidth

The first of Rousseff's four-point plan is continuing to increase domestic Internet bandwidth in Brazil as portrayed by the Packet Clearing House. Brazil's primary Internet governance organization is Comitê Gestor da Internet no Brasil (CGI).⁵³ In 2004, CGI began delegating officials to inspect operations of successful Internet exchange points (IXPs) and their governing policies worldwide. Internet exchange points are locations of Internet bandwidth production. They operate by a single entity that works to facilitate the exchange of Internet traffic. Once it acquired the information, the CGI then devised an assertive program of IXP construction. Initially Brazil contained only a single IXP in 2004. Thanks to CGI's efforts they now maintain 23 IXPs, becoming second to the United States with 87 IXPs. Of the approximate 200 hundred countries worldwide, not even half of them produce any domestic, let alone international, Internet bandwidth.⁵⁴



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50 Id.

51 Id.

52 "Internet Exchange Point Growth." Packet Clearing House. N.p., 19 Dec. 2013. Web. <<https://prefix.pch.net/applications/ixpdir/summary/growth-region/?sort1=bandwidth>>.

53 CGI.br - Comitê Gestor Da Internet No Brasil. N.p., 19 Dec. 2013. Web. <<http://cgi.br/>>.

54 See Footnote 50

By studying and subsequently adopting operations of successful IXP developments, Brazil has produced more Internet bandwidth faster than any other country, leading them to control three-fourths of Internet bandwidth in Latin America. As a result, compared to the United States 10 percent growth in bandwidth production, Brazil was able to generate a 77 percent “year-over-year” increase, placing Brazil in seventh place on the global scale, right before the U.S.⁵⁵ This data demonstrates Brazil’s trajectory to overcome the United States, utilizing successful practices the U.S. itself developed and advocated. By this understanding, Rousseff’s first proposal is not so much a prediction, but more so an established project facilitating its main objective. In developing domestic Internet bandwidth, Brazil will be able to secure one component in ensuring the independence and autonomy of Brazilian communications transfers.

Increasing International Internet Connectivity

The second of Rousseff’s four-point plan maintains that Brazil must increase international Internet connectivity, at least within three independent areas of development. The first area includes intercontinental undersea fiber cables that will link Brazil to the U.S., Europe, and Africa. None of them have fully been built, but the cables have adopted the names of the South Atlantic Express, WASACE, the Telebras cable, BRICS cable, and the Seabras-1. These five international cables also join the six existing cables that already connect Brazil with the rest of Latin America, the Caribbean, and other parts of the world.

The first of the five cables, the South Atlantic Express (SAEx), was initiated in 2010 and is expected to operate sometime in 2014. SAEx is a proposed consortium cable system linking South Africa and Angola to Brazil with onward connectivity to the United States through the existing GlobeNet cable system.

In April 2011, the Bank of China announced its interest and willingness to fund the BRICS cable, along with the Industrial Development Corporation of South America and Brazil’s Oil. There is an estimated cost of \$3 billion to complete the project. The primary purpose of its creation was to establish a link between BRICS—Brazil, Russia, India, China and South Africa—without reliance on the United States and other traditional northern hemisphere hubs. Once functioning, the cable will also reduce latency and bandwidth costs normally associated with the distance and Internet traffic that would have to first travel through the U.S.⁵⁶

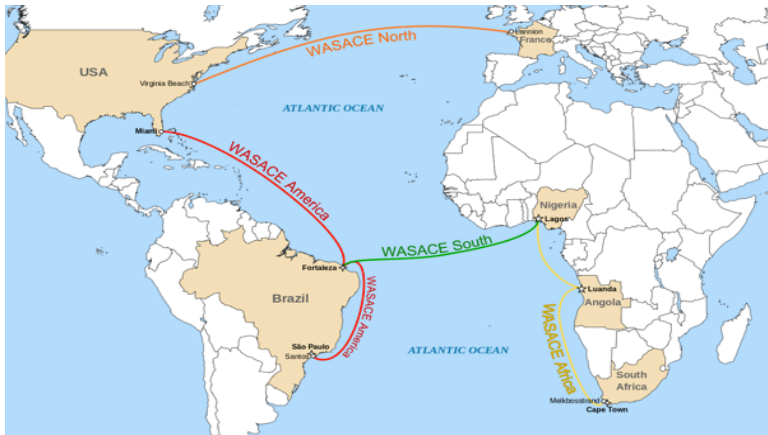


⁵⁵ See Footnote 48

⁵⁶ McLeod, Duncan. "16Tbit/s SAEx Cable Deal Signed." Tech Central. N.p., 25 Oct. 2012. Web. <<http://www.techcentral.co.za/16tbits-saex-cable-deal-signed/35811/>>.

⁵⁷ "SAEx Submarine Cable to Bring Broadband to Coastal Cities." Submarine Telecoms Forum. N.p., n.d. Web.

The second cable, WASACE, consists of four submarine communications cables linking four continents: France to the U.S. (WASACE North), Brazil to Nigeria (WASACE South), Brazil to North America (WASACE America), and Angola to South Africa (WASACE Africa). The WASACE South cable was scheduled for completion in 2014, prior to the FIFA World Cup in June of that summer. The project is headed by WASACE Cable Company Worldwide Holding, which was originally formed to meet the increasing needs of the developing markets in the Global South.⁵⁸



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The third cable, unnamed, was signed by Brazil's state-controlled telecoms company Telebras in a memorandum of understanding (MOU) with Spanish broadband submarine communications provider IslaLink. Their agreement, signed in December 2011, was for the deployment of a fiber optics undersea cable linking South America and Europe, which was also scheduled for a 2014 delivery. The cable is estimated to cost 900 million dollars once completed and will ideally be utilized to reduce latency in regional communications, since data within Latin America today requires traveling long distances prior to reaching its final destination.⁶⁰

The fourth cable, BRICS, will link Brazil with the United States, Russia, China, India, and South Africa at an estimated cost of one billion dollars. The cable was announced in March 2012, and its delivery is expected sometime towards the end of 2015. It will also interconnect with regional and other continental cable systems for improved global coverage, and it has immediate access to 21 African countries, while, in turn, those African countries receive access to BRICS economies. Making up 45 percent of the world's population and 25 percent of the world's GDP, BRICS is working towards decentralizing the Internet

58 "Subsea World News - WASACE Seeks Cable System Supplier for Atlantic Basin Project." Subsea World News - WASACE Seeks Cable System Supplier for Atlantic Basin Project. N.p., n.d. Web. <<http://subseaworldnews.com/2012/05/09/wasace-seeks-cable-system-supplier-for-atlantic-basin-project/>>.

59 "WASACE (cable System)." Wikipedia. Wikimedia Foundation, 16 Feb. 2014. Web.

60 Ozores, Pedro. "Telebras Inks MOU with Spanish IslaLink for South America-Europe Undersea Cable." BNAmericas. N.p., 3 Sept. 2012. Web. <<http://www.bnamericas.com/news/telecommunications/telebras-inks-mou-with-spanish-isalink-for-south-america-europe-undersea-cable>>.

from the U.S.⁶¹



The fifth and final cable, the Seabras-1, is a new 10,500 km fiber optic cable that will connect New York to Sao Paulo, Brazil directly, with a branching unit in Fortaleza. The plan was announced in March 2012, and its delivery is expected sometime in 2014. After its completion, the cable will provide an additional 32 terabytes per second (tbps) of capacity between the United States and Brazil.



63

All five new cables are private sector efforts and were initiated sometime within the last few years.

61 "BRICS Cable." BRICS Cable. N.p., 19 Dec. 2013. Web. <<http://www.bricscable.com/>>

62 Pascali, Umberto. "The BRICS "Independent Internet" Cable. In Defiance of the "US-Centric Internet"." Global Research. N.p., 17 Sept. 2013. Web. <<http://www.globalresearch.ca/the-brics-independent-internet-in-defiance-of-the-us-centric-internet/>>.

63 "Seaborn Networks." Seaborn Networks. N.p., n.d. Web. <<http://www.seabornnetworks.com/>>.

The cables will allow Brazil to exchange traffic directly with other fast-growing markets in the Southern Hemisphere and their BRICS cohort, providing lower latency and cost, and higher capacity paths without crossing through U.S. territory. Regardless of whether the cables cross through the U.S., there is no guarantee that this measure can fully prevent the NSA from tapping into its cables. Nonetheless, communications interception will not undermine the tremendous value the cables offer to Brazil. Additionally, the NSA would most likely have to pay a significant sum of money for new intelligence gathering developments in order to facilitate further espionage.

Undersea fiber optic cables aside, the second area of development is in Brazilian-owned satellites. The Brazilian company Visiona Tecnologia Espacial S.A., a joint venture between Telebras and Brazilian aerospace giant Emraer, has contracted with French Italian Thales Alenia to build Brazil's first "Geostationary Defense and Strategic Communications satellite (SGDC)." The satellite will be the first of its kind dedicated to strategic communications for the Ministry of Defense, as well as the deployment of broadband services for the Ministry of Telecommunications. It is scheduled to launch in 2016 by an Arian 5 from Europe's Spaceport in Kourou, the Guiana Space Center.

Operating satellites ultimately will not protect Brazilians from foreign surveillance or ensure their privacy, but it will provide Brazil with a greater degree of autonomy. The independent satellites will reduce Brazil's current dependency on satellite bandwidth from other countries, making it more cost-effective as well. SGDC will for the first time be able to provide more than 1,800 isolated rural communities with communication services.⁶⁴ Henceforth, the Brazilian space agency is planning to further increase their country's participation in manufacturing satellites in order to yield more beneficial autonomous results.

The third and final area of development consists of private overland fiber cable systems. These cable systems will primarily link Brazil to each of its South American neighbors. On a much smaller scale, the overland fiber cables follow a pattern very similar to the private-sector underwater cables. Land fiber cables extend to land-locked countries such as Bolivia and Paraguay that would otherwise be unable to support the underwater cables, which has become their sole form of connectivity.⁶⁵ Since the overland fiber cables remain within South America and between sovereign territories, it will become much more difficult for them to be tapped. Therefore, the cable systems' establishment is likely to provide a more effective protection of privacy that President Rousseff seeks between Brazil and its neighboring countries.

Encouraging Domestic Content Production

The establishment of underwater and overland fiber optic cables will come to no avail if Internet users decide to engage in services under foreign jurisdictions that do not protect their privacy. When Brazilian users create e-mail accounts or social networking profiles, their data is stored on servers within the United States and thereby becomes accessible to the NSA. Thus, the development of domestic content alternatives and its encouraged use could allow Brazilian citizens' communications to remain largely inaccessible to U.S. surveillance. Data will then be stored on hard disks in data centers in Rio de Janeiro and Sao Paulo instead of Redmond, Washington D.C., and Portland.

64 Estrada, Isabel. "Brazil Plans to Launch a Geostationary Satellite - GOES - That Would Connect All the Country's Defense and Security Organizations and Allow for More Secure Communications among Them." *Dialogo Americas*. N.p., 22 July 2011. Web. <http://dialogo-americas.com/en_GB/articles/rmisa/features/regional_news/2011/07/22/aa-brazil-geostationary-satellite>.

65 Woodcock, Bill. "On Internet, Brazil Is Beating US at Its Own Game." *Al Jazeera*. N.p., 20 Sept. 2013. Web. <<http://america.aljazeera.com/articles/2013/9/20/brazil-internet-dilmarousseffnsa.html>>.

Internet users tend to follow modern global trends though, so it would be incredibly difficult to limit populations to only domestically produced content. What is more likely to occur is a decrease in the cost of domestic Internet traffic routing that “through infrastructural initiatives like IXPs and fiber-optic cable systems will create a strong economic incentive for all content providers, foreign and domestic to host Brazilian users’ data within Brazil and thus within Brazilian regulatory jurisdiction.”⁶⁶ Not completely abandoning the idea of a complete establishment of domestic content, this approach seems to be the primary direction the Brazilian government is taking.

The government is working toward a common understanding with the European Union on data privacy, balancing standards of protection for user’s PII, personally identifiable information. Brazil is hoping to enforce the development of data servers domestically—as implemented in the Marco Civil da Internet—from any companies that attempt to provide services to Brazilians, subjecting them to national privacy regulations. The Brazilian public postal service, Correios, has been asked to provide a no-cost encrypted email system to the public within a year.⁶⁷ If implemented, the utilization of Brazilian governmental key escrow, a form of strong encryption, would deny access of foreign intelligence agencies while still allowing Brazilian law enforcement access.

Encouraging Use of Domestically Produced Network Equipment

The fourth and final point of President Rousseff’s proposal is to encourage domestic and foreign private sector network operators in Brazil to use only Brazilian telecommunication equipment in their networks. The equipment would be Brazilian designed and produced, addressing the fear that any technological back doors become installed in internationally sourced equipment, which would make it significantly easier for foreign intelligence agencies to wiretap. Short term suppliers of equipment for Brazilian government networks will most likely be Datacom and Padtec, which are based in Rio Grande do Sul and Sao Paulo.

Similar to Brazil’s satellite development to increase Internet bandwidth, Rousseff’s last proposal follows a well-established pattern of using high tariffs to supersede foreign imports with domestic products.⁶⁸ While this strategy has worked in the past within the automotive and aerospace sectors, it has still created significant friction with network-equipment producers on an international level. Different from other sectors, the value of computer-networking and information technologies is determined by the relationship of its products and users. Normally, these products become entirely dependent on seamless interoperability between them and equipment made by other companies. Hence, the profit that network equipment providers such as Datacom and Padtec acquire from Brazil’s government would eventually hurt them in the long run, as they try to expand into international markets.⁶⁹

Brazilian governmental protectionism will lead to suspicion from other governments. They may consider that their network exclusivity in Brazil is due to the incorporation of some technological back door that will enable Brazilian government agencies to access specific communications systems of the government in question. These problems have similarly occurred to Chinese-produced Huawei and ZTE, telecoms

66 Id.

67 "Track and Trace." Correios. N.p., n.d. Web. <<http://www.correios.com/eng/sys/trackingTrace/default.cfm>>.

68 Lattimore, Ralph, and Przemyslaw Kowalski. "Brazil: Selected Trade Issues." Organization for Economic Cooperation and Development. OECD, 28 July 2008. Web. <[http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=tad/tc/wp\(2007\)18/final](http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=tad/tc/wp(2007)18/final)>.

69 Woodcock, Bill. "On Internet, Brazil Is Beating US at Its Own Game." Al Jazeera. N.p., 20 Sept. 2013. Web. <<http://america.aljazeera.com/articles/2013/9/20/brazil-internet-dilmarousseffnsa.html>>.

companies from Shenzhen that have been banned from many countries.

Brazilian Internet Users

As these plans continue to unfold, domestically produced content and services will initiate more communication within the country at a faster and cheaper rate, while offering a higher level of privacy. Only the Brazilian government will fully be able to inspect Brazilian users' data. While President Rousseff broadcasts her four-point plan to counteract secret surveillance from the NSA, her policies are not speculative. They are part of a clear trajectory that has been in the making for nearly a decade. The 2013 global surveillance disclosures simply pushed these plans to the forefront of Brazil's legislative development addendum.

Domestic and International Implications of the Rousseff Proposal and Marco Civil Legislation

There are more than 86 million Internet users in Brazil and since telephone services are expensive and patchy, social networks are hugely popular. In terms of individual Facebook users, Latin American use is second only to the U.S. Brazil is also home to the second-largest number of Twitter users—yet another U.S.-based social media company. According to journalist Bruce Douglas from BBC News, “With the social media market in the U.S. and Europe close to saturation point, China’s internet users limited in their freedoms, and India’s digital revolution still in its infancy, Brazil is set to play an increasingly important role in shaping the global rules governing social media users’ data.”⁷⁰ With the new Internet bill in debate, U.S. companies, which play the leading role in social media production, fall to the mercy of one of their largest consumer domains. Furthermore, Rousseff’s proposed legislation could also set a precedent for other countries to follow, even those with less regard for freedom of speech.

Brazil’s open debate on their Internet development plans and legislative efforts demonstrate how the NSA leaks not only buffeted the Obama administration, but also jeopardized American Internet companies on a global scale. For instance, the European Union is considering rescinding data-sharing agreements with the U.S., and India is contemplating a plan to ban government officials from using email services from U.S.-based firms like Google and Yahoo Inc.⁷¹ The Internet bill aside, Brazil is forcing its federal employees to discontinue use of Microsoft Outlook.

While the Marco Civil da Internet bill had been discussed several years earlier, it was placed on hold in order to address other priorities at the time. At the end of October 2013, however, President Rousseff applied the phrase “constitutional urgency” to the new legislation on Internet use, prioritizing its considerations above all other parliamentary business. The bill provides measures that would work towards protecting users’ privacy, while maintaining their right to free speech. It would also prohibit Internet Service Providers (ISPs) from discriminating between different types of content. Though at first glance the bill is sound, President Rousseff has incorporated several additional amendments to the bill that may ultimately lead to the establishment of a substandard version of the Internet, to the detriment of American and other foreign companies.

70 Douglas, Bruce. "Brazil Debates Internet Law in Wake of NSA Scandal." BBC News. BBC, 11 Dec. 2013. Web. <<http://www.bbc.co.uk/news/technology-24899396>>.

71 "Brazil Legislators Bear Down on Internet Bill." The Wall Street Journal. Dow Jones & Company, n.d. Web. <<http://online.wsj.com/news/articles/SB10001424052702304868404579194290325348688>>.

The data localization amendment in particular requires that all Internet companies operating in Brazil store copies of personal information on their Brazilian clients in databases within the country. If successful, the firms that provide cloud services would then become subjected to local privacy laws. It seems logical that Brazil and other countries are beginning to search for ways to become independent of the U.S. infrastructure after the 2013 global surveillance disclosures. The NSA primarily retrieves its data by invading telecommunications systems via the American companies that have access to their systems, and the development of data centers within Brazil would initially cut off the NSA from retrieving information in this way, developing a more secure system. However, closing one door does not officially impede the NSA's espionage capabilities. Presumably they would simply explore alternate options or develop new means to achieve the same ends. It is highly likely that even with the establishment of this Internet bill, the NSA and its foreign counterparts will find an alternative method of intercepting and retrieving any and all Brazilian data, regardless of where it is stored.

Additionally, the amendment, if enacted, would drive up the costs for any companies that already operate in Brazil, as well as impede local innovation. The director of the Institute of Technology and Society in Rio de Janeiro and one of the architects of the Marco Civil, Rohaldo Lemos claimed that, "This forced local data storage will make Internet companies flee from Brazil. Brazilian Internet users will have a second-class service compared to Americans or Europeans. Websites offering services to Brazilians will have to worry about building data centers in Brazil."⁷² Moreover, data storage in Brazil is far more costly than in neighboring countries and the United States.

Once Brazil's Internet bill has been enacted, companies like Google, Microsoft, Facebook, Twitter, Yahoo, and Apple will need to open costly data centers within Brazil in order to continue running their services there. Exercising data localization could cost U.S. companies millions, even billions of dollars. In order to lessen tensions, Google has submitted testimony to a U.S. Senate subcommittee asking the government to exercise more transparency in its surveillance practices. Suggesting a more transparent future does not guarantee that the NSA or other powers will cease to intercept communications. Continuing, nor will it stop Brazil from debating their Internet bill and advancing their infrastructure outside of U.S. jurisdiction.

Currently, in order for the bill to pass, it must first go through the Chamber of Deputies. Afterwards, it will go to the Senate where a final vote will be cast. With regard to the data-storage measure, the bill would prove useful in giving the Brazilian government more control over handling its citizen's data.

According to Brazilian and foreign technology companies, proceeding with this initiative could also hamper Internet industry growth in Brazil, especially since it has become a top market for social media platforms like YouTube, Facebook, Twitter, and Instagram. Presently, Brazil is ranked sixth with regard to the number of Internet users in the world, surpassed only by China, the U.S., Japan, India, and Russia according to research firm comScore, an internet technology company that measures daily Internet interactions, provides insights, and recommends actions for companies to maximize digital investments.⁷³ So the impact would be rather large, especially if Brazil decided to pursue the development of domestic content, services, and data servers provided in President Rousseff's four point plan.

Furthermore, according to an analyst at research firm Frost & Sullivan, the local data-storage requirement could add costs, in some cases "entirely for compliance," for the numerous companies in Brazil that depend on services from providers that currently use data centers in regions outside of Brazil, such as those in California.⁷⁴

Presently, Brazil is the most expensive country in South America in terms of capital expenditures and operational fees for data-center operators. Requiring that Internet service providers build and maintain data

72 Douglas, Bruce. "Brazil Debates Internet Law in Wake of NSA Scandal." BBC News. BBC, 11 Dec. 2013. Web. <<http://www.bbc.co.uk/news/technology-24899396>>.

73 "About Us - ComScore, Inc." ComScore, Inc. N.p., n.d. Web. <http://www.comscore.com/About_comScore>.

74 "Brazil Legislators Bear Down on Internet Bill." The Wall Street Journal. Dow Jones & Company, n.d. Web. <<http://online.wsj.com/news/articles/SB10001424052702304868404579194290325348688>>.

centers in Brazil would undercut expenditure and operational fees that could be utilized elsewhere. For instance, Google is already working to build a data center in Chile, and is financing another center in Finland that has cost over \$1 billion so far. In order to build a data center in Brazil, it would cost approximately \$61 million. Comparing other regions in the world, it would cost \$51 million to build a data center in Chile and \$43 million to build one in the U.S. Once the data centers have been established, the cost of monthly operations, including utilities, would also need to be taken into consideration. On average, it would cost \$950,000 a month to maintain operations in Brazil, compared with \$710,000 in Chile and \$510,000 in the U.S. according to a government-commissioned study by the Wall Street Journal.⁷⁵

Besides the costs, legal risks could also become an issue for companies like Google and Facebook if they do not comply with the new data-storage legislation. These companies have established operations and made substantial investments in Brazil. So regardless of whether Brazil follows through on the new data center requirements, the companies will likely not choose to halt their services in Brazil, and they will be subjected to the new Brazilian Internet laws.

Nevertheless, it is not very clear how such data center laws could enforce compliance by foreign companies that are utilized by Brazilians, especially when these companies have no physical assets in Brazil. Director of Google's Law Enforcement and Information Security, Richard Salgado, stated in the company's U.S. Senate testimony that, if Brazil passes the law, "Google and other companies that don't comply could be barred from doing business in one of the world's most significant markets or be obligated to pay hundreds of millions of dollars in fines."⁷⁶

While the measures would take steps to prevent foreign espionage on Brazilian citizens, they would do little to protect the privacy of Brazilian users. The global policy director at the Information Technology Industry Council, [ITI], Mari Medrano, argued that ensuring data security is not prioritized by the location of data, but by how effectively the data is being secured.

Many organizations representing the world's major technology firms protested Brazil's Internet bill by sending letters to members of Brazil's Congress in October 2013, noting there may be potential harm to both Brazilian and foreign companies. Asking Internet companies to store copies of all information on their citizens is neither technically feasible, according to ITI, nor does it seem to be the right solution. With regard to information gathering and exchanging processes for the purpose of law enforcement, Medrano claimed, "ITI would encourage the U.S. and Brazilian government to work together to improve and streamline the mutual legal assistance treaty to address concerns over jurisdiction of data."

Moving Forward

In spite of the arguments raised for and against the passage of the Marco Civil da Internet bill and other proponents addressed in President Rousseff's four-point policy, Brazil will most likely establish itself as a leading player in the Global Multi-stakeholder Meeting on the Future of Internet Governance. The meeting will be held in São Paulo on April 23-24, 2014, and the Brazilian legislature will likely pass the bill into law within the following few months. Enactment of both the Marco Civil da Internet and the Data Protection bill will significantly impact the state of the Internet and of global trade.

While it seems that Brazilian President Dilma Rousseff is determined to see the Internet development plans succeed, she is still eager to end a diplomatic crisis with Washington over the NSA secret surveillance revelations. She encouraged President Barack Obama's administration to make a full and public disclosure

75 "Equinix to Build New Data Center in Melbourne." The Wall Street Journal. Dow Jones & Company, n.d. Web. <<http://online.wsj.com/article/PR-CO-20140122-914577.html>>.

76 "Brazil Legislators Bear Down on Internet Bill." The Wall Street Journal. Dow Jones & Company, n.d. Web. <<http://online.wsj.com/news/articles/SB10001424052702304868404579194290325348688>>.

following the NSA leak regarding the extent of its spying in Brazil. However, Obama has not apologized for NSA spying on Brazil or on other allies. The 2013 global surveillance disclosures were unsettling on a global scale and were a huge threat to privacy and data protection, especially in Brazil. Since Brazil had previously recognized these rights, Brazilian officials took it upon themselves to address the issue by not only prioritizing the passing of the Marco Civil da Internet and the Data Protection Bill, but also taking further measures to increase their country's Internet independence.

As it stands, while a Brazilian citizen has the right to obtain governmental information of general or individual concern, the individual's privacy rights limit this access.⁷⁷ According to the Brazilian Constitution, "every citizen is granted the right to receive, from public entities, information of his/her personal interest, or of general or collective interest, which shall be provided on the terms establish in the law."⁷⁸ However, the Constitution also clarifies that in situations where secrecy is required for the purpose of a secure state or society, access to such information may be denied. A specific body, the Commission for the Verification and Analysis of Secret Information, was purposely established to govern such exceptions and verify the necessity of disclosure concerning personal data of a top-secret nature.⁷⁹

In order to remedy the lack of privacy and data protection enforcement, especially with regard to the Internet, the federal government drafted the Brazilian Internet Bill of Rights in 2011—the Marco Civil da Internet. President Rousseff proposed her four-point plan to counteract espionage, which included measures to increase domestic bandwidth, increase international Internet connectivity, encourage domestic content production, and encourage use of domestically produced network equipment. These measures were intended to help prevent further violations of privacy rights from domestic and foreign entities. However, they are also motivated by benefit to Brazil's economy, Internet independence, and autonomy.

Brazil's plan to increase domestic Internet bandwidth allows Brazilians to have greater control over Internet traffic. The more Internet exchange points (IXPs) they develop, the closer they become to ensuring the independence and autonomy of Brazilian communications transfers.

Rousseff's second point of increasing international Internet connectivity pertains to three areas of development: underwater fiber optic cables, Brazilian owned satellites, and private overland fiber cable systems. The five new underwater fiber optic cables will allow Brazil to exchange traffic directly with other fast-growing markets in the Southern Hemisphere and with their BRICS cohort, providing lower latency and costs, and higher capacity paths that do not need to cross through U.S. territory. The development of Brazilian-owned satellites will reduce Brazil's current dependency on satellite bandwidth from other countries, thus making it more cost-effective as well. Lastly, the private overland fiber cable systems will primarily link Brazil to each of its South American neighbors. The cables extend to land-locked countries such as Bolivia and Paraguay that would otherwise be unable to support the underwater cables—their sole form of connectivity—and will make it more difficult for them to be tapped due to their location. Thus, their establishment will provide more effective protection of privacy between Brazil and neighboring countries.

Rousseff's third point encourages domestic content production. When Brazilian users create email

77 Federal Law No. 8,159, January 8, 1991, Chapter 1, Article 4

78 Brazilian Constitution, Title 2, Chapter 1, Article 5, XXXIII

79 "IV. Governance Issues." Privacy International. N.p., n.d. Web. <https://www.privacyinternational.org/reports/brazil/iv-governance-issues#footnote3_ow0mcm7>.

accounts through Google or make Facebook profiles, their data is stored on servers within the U.S., making it available to agencies such as the NSA, but the development of domestic content alternatives and its encouraged use allow Brazilian citizens' communications and data to remain within national infrastructure.

Lastly, the fourth point encourages domestic and foreign private-sector network operators in Brazil to only use Brazilian telecommunication equipment in their networks, further enhancing Brazil's autonomy and making it much more difficult for data to be intercepted. In sum, the implementation of these proposals will initiate a cycle of domestically produced content within the country at a faster and cheaper rate. Most importantly, it will offer a higher level of privacy than was established prior to the 2013 global surveillance disclosures. Only the Brazilian government will fully be able to inspect Brazilian users' data without foreign espionage.

The argument has been made that establishing the use of data content and domestically produced network equipment will to a large extent close Brazilian citizens off from the rest of the world. It is said that these measures would violate the individual's right of access to information using Facebook or Google. These criticisms are false. Brazil is merely encouraging domestic content and network equipment; they are not completely banning Brazilian citizens from accessing foreign services. Thus, Brazilian citizens will have the option to utilize the network of their choice, at their own risk. If President Rousseff's four-point proposal is enacted, the country will benefit tremendously from its measures. It will allow them greater Internet independence and autonomy, while providing them with greater cost-effective services, thus, boosting their economy.

However, although the measures could bring significant benefits to Brazil, one should ask whether the proposals actually serve the purposes for which they were intended. Does President Rousseff's four-point plan actually stop foreign intelligence agencies from gathering private data of Brazilian citizens? No, it does not. While some measures, such as developing domestic servers and overland, private fiber-optic cables, will provide a greater obstacle to NSA operatives to intercept communications, they do not guarantee complete immunity from such agencies' practices and espionage.

Moving forward, alongside President Rousseff's four-point proposal, the Marco Civil da Internet bill was also reintroduced and re-written to include several new amendments. While the bill in its totality is also beneficial to Brazil, one of its newest amendments, data localization, has proven complicated and controversial. The establishment of local data storage centers will detrimentally affect the finances of any and all companies who provide services in Brazil, including: Facebook, Microsoft, Google, and Twitter. With regard to securing privacy, data localization will not only cease to enhance any form of protection of this right, it will allow any hacker to know exactly where to look for information regarding Brazilian citizens. Regardless of where the data is located, the NSA and other foreign signals intelligence organizations can develop new methods to achieve any of their intended goals, even if encryption is involved. Not only does the new amendment seem counterproductive, but also it will cost U.S. and foreign companies billions of dollars and subject them to demanding local privacy laws.

It is highly likely that data localization in Brazil will make Internet companies flee the country, thus, subjecting Brazilians to second-class service compared to that offered Americans or Europeans. There are more than 86 million Internet users in Brazil, so either way these Internet service companies will pay the price for the actions of the NSA, regardless of whether they are willing participants in their surveillance practices. The optimal approach would be to remove this amendment, since it neither enhances privacy in

Brazil nor develops its Internet and data autonomy, but still push the original version of the bill.

The Marco Civil da Internet will most definitely develop a more regulated system, similar to the European Union's model by creating a Data Protection Authority, delineating and regulating sensitive personal data, providing clearer specifications, requiring consent of the data subject to obtain, process, and transfer any of their data, and lastly, requiring those in charge of data handling and transferring to inform data subjects of data leaks. Without the data localization amendment that financially handicaps some of the world's largest corporations, Brazil can benefit tremendously from the measures of the bill, though perhaps not in terms of privacy rights. While a better framework is established to address privacy rights violations domestically, the bill will not secure Brazilians against surveillance by agencies like the NSA.

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Reform, Inequality and Protest in the Chilean Education System

Elizabeth Maguire

Beginning in 2011 and continuing for almost two years, students, teachers, and their supporters in Chile staged a series of demonstrations against the government demanding changes and reform to the education system. These protests, which ranged from pillow fights and sit-ins to marches and violent clashes with police and military forces, have been the largest in Chile's history since its return to democracy in 1990. The protestors are responding to massive inequalities in the Chilean education system and in Chilean society as a whole, demanding more public spending on higher education and an end to the neoliberal approach to education which has exacerbated Chile's already significant socioeconomic inequality.

With the exception of Augusto Pinochet's neoliberal regime in the 1980s, which privatized education according to Milton Friedman's model, education has been viewed as a social right in Chile since the 19th century. Since the country's return to democracy, no significant effort has been made to overhaul this privatized system. The failure of Pinochet's reforms to significantly change or equalize society, as well as the established precedent of free and state-subsidized education set by leaders such as Salvador Allende, have caused unrest among students in Chile today, as they view the education system as both a cause and representation of wider issues of economic inequality and stratification. This paper will explore the historical reasons why students and the Chilean public have not accepted Pinochet's neoliberal view of education, and why education itself has become the key issue of debate and protest in the much larger recent pushback against neoliberalism in Chilean society.

The history of the Chilean education system dates back to the mid 19th century, when Chile became the first Latin American country to establish a system of public education in 1842. This system expanded rapidly, and by 1974, Chilean education had become the "envy of Latin America"¹ with impressive enrollment ratios for a developing country in both primary and secondary education. Throughout this period, the Ministry of Education made all decisions regarding education, including the curriculum, infrastructure, goals, programs, personnel, finance and administration.² The system was entirely public, free, and controlled by a highly centralized state bureaucracy. Teachers were public employees with government salaries, and each school received an incremental budget based on previous allocations, size and enrollment. The government paid for up to 80 percent of the schools' budgetary needs.³ The Ministry of Education owned and managed the schools of over two million elementary and secondary school students, approved and trained their teachers, and certified every degree and class in Chile. With the exception of Cuba, in the 1970s the state played a

1 Gauri, Varun. *School Choice in Chile: Two Decades of Educational Reform*. Pittsburgh, PA: U of Pittsburgh, 1999. Print. 15

2 Van Der Wal, Aleida. "Decentralization of Education in Chile: A Case of Institutionalized Class Segregation." Thesis. Leiden University, 2007. Web. 30 Apr. 2014. <<http://download.ei-ie.org/docs/IRISDocuments/EI%20Campaigns/EFAIDS%20Programme/2008-00011-01-E.pdf>>. 14.

3 Rios, Alejandro. "The Crisis of Education in Chile." Latin American Research Institute, 27 Sept. 2012. Web. 30 Apr. 2014. <<http://www.laricanada.ca/node/57>>.

greater role in Chile's economy than it did in the economy of any other country in Latin America, and the education system was no exception.⁴

The tertiary education system operated in a similar way to the primary and secondary education systems—all universities were free of charge and funded by the state. Admission was selective and was based on standardized test scores and secondary school grades. There were eight public universities in Chile in 1973 with an enrollment of approximately 190,000 students.⁵ New schools could only be established through certification and accreditation by the state, but after accreditation each school was legally recognized as a self-governing body with no administrative dependence on the government.⁶

Salvador Allende, the last Chilean president before the dictatorship of Augusto Pinochet, attempted to implement his own plan of education reform, called the Escuela Nacional Unificada (ENU) or National Unified School. By 1970, state funding and public support of the educational system allowed for most children in Chile to enroll in public primary school, and the vast majority of them continued on to secondary education.⁷ This put an immense strain on the education system as greater opportunities led to increased demand for higher levels of education. Allende's proposed solution was the National Unified School, which would provide standardized education for all students from first grade through secondary school. The goals of this program were democratization of education through expansion, increased local participation, and the equalization of educational opportunities. The National Unified School would be supported by the values of socialism and democracy, and therefore entirely different from the traditional school, which was historically rooted in capitalism and an "instrument at the service of the internal monopolistic bourgeois and imperialistic domination."⁸

Allende's proposal was met with fear and protest from many in the middle and upper classes, who believed that this new school would result in the "totalitarian indoctrination" of their children.⁹ They were afraid that schooling could be used to indoctrinate children into an official ideology based on the Russian or Cuban model.¹⁰ Their objections did not regard the democratic and socialized nature of the school itself. Rather, they came from the lessons of socialist and communist ideology they believed the ENU would promote, as well as the fear of total abolition of private education, particularly within the upper class.

Opposition newspaper, *El Mercurio*, inflamed protests,¹¹ despite assurances from Allende and

4 Farrell, Joseph P. *The National Unified School in Allende's Chile: The Role of Education in the Destruction of a Revolution*. Vancouver: U of British Columbia in Association with the Centre for Research on Latin America and the Caribbean, York U, 1986. Print. 47.

5 Brunner, José Joaquín. *Higher Education in Chile: 1980-1990*. Santiago: FLASCO Programa Chile, 1992, 9.

6 *Ibid*, 3

7 Farrell, Joseph P. *The National Unified School in Allende's Chile: The Role of Education in the Destruction of a Revolution*, 37.

8 *Ibid*, 97.

9 *Ibid*, 174.

10 *Ibid*, 80.

11 Farrell makes the claim here that *El Mercurio* had received vast sums of money from US intelligence to spread this message. Evidence for this claim can be found in the Staff Report "Covert Action in Chile 1963-1973", released by the US Department of State in 1975, and in Peter Kornbluh's book, "The Pinochet File" (2003).

his ministers that indoctrination was not their objective.¹² The failure of the National Unified School demonstrates the importance of education in Chilean society and the history of protest and political action over this issue. With an expanding availability of educational opportunities across the country, the debate over education came to impact almost every member of Chilean society. When Allende proposed abolishing private education entirely and placed every Chilean child in a socialist-minded standardized school, he was met with widespread resistance. Farrell makes the argument that this was the greatest mistake of the Allende regime, that it was this single issue that was able to “unite divergent opposition groups and alienate a significant number of marginal middle-class supporters of the regime.”¹³ As will be discussed later, modern protests over education in Chile had a similar effect on the government of Sebastian Piñera.

Despite some opposition, the Chilean public generally accepted the idea that the state had an obligation to pay for and manage a nonsectarian, public system of education in the period before the government of Augusto Pinochet. The bureaucratically controlled education system widened access to primary and secondary education for much of the Chilean population, turning education into an issue that impacted large groups in society. This was demonstrated in the early 1970s when large numbers of people in the upper and middle classes rebelled against Allende’s proposed establishment of a National Unified School and the end of private education, uniting otherwise disparate objections to his government under a single cause. Education played a key role in Chilean political protest even before the imposition of the 1980 reform.

On September 11, 1987, Augusto Pinochet gave a speech outlining his ideologies concerning the education system in Chile. According to Pinochet, parents in Chile had “the possibility to choose the school they consider best for their children, but also have the opportunity to participate with local authorities in the educational process.”¹⁴ This ideology of school choice echoes the words of economist Milton Friedman, who believed that empowering parents to choose the school their children attend would lead to increased efficiency and quality of the education system. This belief was based on the idea that the market approach could be applied to the public sector, and that “competitive private enterprise is likely to be far more efficient in meeting consumer demands than...nationalized enterprises.”¹⁵

If parents could express their views about schools by withdrawing their child from one and sending them to another, schools would be forced to compete with each other, improving quality and efficiency in order to keep students enrolled. Teachers would have an incentive to be better at their jobs and parents would be able to pull their children out of underperforming public schools and, as informed consumers, decide on the best educational environment for them. More localized control was thought to allow the public to allocate resources more efficiently based on what was needed in their community. In theory, this would lead to greater responsiveness to the public’s demands, improved decision making for parents, and improved quality and efficiency in the school system overall.¹⁶ In broad terms, neoliberal reformers saw

¹² Ibid, 170.

¹³ Ibid, 2.

¹⁴ Van Der Wal, Aleida. "Decentralization of Education in Chile". 17

¹⁵ Friedman, Milton. *The Role of Government in Education. University of Texas, 1998*. Web. 20 Apr. 2014. <<https://webSPACE.utexas.edu/hcleaver/www/357L/FriedmanRoleOfGovtEducation1955.htm>>.

¹⁶ Parry, Taryn Rounds. "Achieving Balance in Decentralization: A Case Study of Education Decentralization in Chile." *World Development* 25.2 (1997): 211-25. *ScienceDirect*. Web. 20 Apr. 2014. 211.

the public sector as wasteful, inefficient, and unproductive, with no incentives to improve, while the private sector was considered to be efficient, effective and responsive to rapid changes.¹⁷ These policies, proposed by Friedman and later enacted by Pinochet, were based on a neoliberal economic theory of privatization and market supremacy, and were meant to increase access to quality educational opportunities across Chilean society. Although many countries in Latin America adopted Friedman's ideologies in the 1970s and 1980s, reforms to the Chilean education system represented an almost textbook application of his principles.

Several years after Pinochet's military coup in 1973, the dictator passed a sweeping bill of education reform in 1980, initiating unprecedented changes to the system and ideology of Chilean schools. The 1980 reform's most significant change was the imposition of the voucher system, whereby each school received a state subsidy based on the number of students and their attendance. If the student changed schools, the voucher and the right of the school to receive a subsidy from the state changed as well.¹⁸ Each student was therefore transformed into a packet of money that schools were expected to compete over in order to receive funding from the government. The Ministry of Education transferred their power from a centralized system to the municipalities, decentralizing the states' role in education and localizing control over schools. Although the central government maintained safety regulations and minimum standards, the municipal governments made the majority of decisions regarding the operation of schools including the dress code, the curriculum, salaries, the daily schedule, and the employment of teachers.¹⁹

These reforms were also marked by a strong push toward the private sector as the government deregulated the accreditation process and allowed the entry of large numbers of private schools into the system at all levels. In addition to the establishment of new schools, voucher schools were allowed to operate as for-profit institutions, and about 70 percent of them chose to do so.²⁰ About 90 percent of these private subsidized schools were partially funded through co-payments from parents.²¹ Many municipal schools also began asking parents to pay fees and make purchases to supplement the money received from government vouchers. Private and public schools were now expected to compete for students on an equal basis.²² Increased opportunities for the establishment of new private schools resulted in a massive shift from the public to the private sector. About 1,000 new private schools were created in 10 years, while enrollment in these schools grew from 14 percent of total enrollment to 30 percent in the same time period.²³ Gains for private schools came at the expense of municipal schools, which found themselves unable to compete.

17 Brunner, José Joaquín. *Higher Education in Chile: 1980-1990*, 12.

18 Van Der Wal, Aleida. "Decentralization of Education in Chile". 14.

19 Parry, Taryn Rounds. "Achieving Balance in Decentralization: A Case Study of Education Decentralization in Chile." 217.

20 Mizala, Alejandra, and Florencia Torche. "Bringing the Schools Back In: The Stratification of Educational Achievement in the Chilean Voucher System." *International Journal of Educational Development* 32.1 (2012): 132-44. Print. 133.

21 Contreras, Dante, Paulina Sepúlveda, and Sebastián Bustos. "When Schools Are the Ones That Choose: The Effects of Screening in Chile*." *Social Science Quarterly* 91.5 (2010): 1349-368. Print. 960

22 Unlike other countries that use the voucher system, such as Sweden, the Netherlands and Belgium, however, Chilean private schools had the ability to select their students and decide whom they wanted to enroll. The impact of this is extensively explored in the research of Contreras, et al and will be discussed briefly in this paper.

23 Gauri, Varun. *School Choice in Chile: Two Decades of Educational Reform*. 2

At the university level, the military government directly intervened in the affairs of higher education, imposing tight control over universities and invalidating their powers of self-government.²⁴ All universities began to charge tuition fees as state support of public education dropped from 100 percent in 1980 to only 33.4 percent in 1990.²⁵ Schools that received some public funding maintained their selective access based on test scores and grades, but those who were entirely private admitted students regardless of school performance and simply on the basis of whether or not they could pay the full tuition fees.²⁶ A government-financed student loan scheme was introduced to help students pay for their education.

The university system was diversified with the establishment of vocational, two-year schools and the expansion of new private institutions. The number of universities in Chile went from eight to 310 as a result of these reforms, and enrollment increased from 190,000 to 250,000.²⁷ Teachers and professors became private sector employees rather than civil servants, enabling universities to differentiate salaries and compete for faculty. All of these changes from the university level to the primary and secondary levels, were passed from the top down without consulting teachers or students.

Several studies have been published since 1980 detailing the impact of these reforms on the Chilean education system. Although there were some successes achieved, in general, the reforms did not achieve Friedman and Pinochet's stated goals of creating a more equal society—in fact, the 1980 reform exacerbated socioeconomic inequalities and created a more stratified system of education.

However, the 1980 reform did cause an increase in the general level of education across Chile. As the number of schools and enrolled students swelled, access to education was expanded—especially at the university level. As educational opportunities at the primary and secondary level increased or maintained their impressive numbers from the 1960s and 1970s, demand for higher levels of education increased as well. This increased demand for higher education was met with the creation of new private universities. Schools began to open across the country and universities were no longer concentrated in the Santiago Metropolitan region.²⁸ This increased regional dispersion further enlarged access opportunities to higher education across the country. The 1980 reforms enabled a "...doubling of enrollments in higher education, primarily through a rapid increase in the number of private, non-university institutions."²⁹ However, this expansion was funded not by the state but rather by the private sector through tuition paid by students and their families.

Despite the benefits of the expansion of educational opportunities, there were also several negative effects and consequences of the 1980 reform. Many of the ideas that were meant to increase equality, such as school choice, municipalization, and privatization, created greater inequality and exacerbated pre-existing socioeconomic inequalities. There are many reasons for the failure of the 1980 reform to equalize society, but the primary cause was that the reforms came out of a profound misunderstanding of the way that people, especially the lower classes, would actually behave in practice, as opposed to how they were

24 Brunner, José Joaquín and Guillermo Briones. *Higher Education in Chile: Effects of the 1980 Reform*. Santiago, Chile: Facultad Latinoamericana De Ciencias Sociales, 1992. Print. 2.

25 Ibid, 22.

26 Brunner, José Joaquín. *Higher Education in Chile: 1980-1990*, 10

27 Ibid, 9

28 De Wit, Hans. *Higher Education in Latin America: The International Dimension*. Washington, D.C.: World Bank, 2005. Print. 150.

29 Brunner, José Joaquín and Guillermo Briones. *Higher Education in Chile: Effects of the 1980 Reform*. 22.

expected and predicted to behave based on the market ideology of Friedman and the Chicago School.

One of the major flaws in the school choice model was the fact that private institutions were allowed to choose which students they wanted to enroll, while public schools were not. Public schools were therefore forced to accept all students, while private subsidized schools were allowed to select students in accordance with their educational objectives.³⁰ If the market system of education is driven by competition, schools might be led to select certain students to minimize costs and retain enrollment in order to continue receiving voucher-based government subsidies. Evidence found by Contreras, Sepúlveda and Bustos indicates that selection methods are widespread among private schools, especially those with high socioeconomic profiles. The study found (that) “if the objective of schools is to improve their absolute performance in standardized tests, they could...be expected to choose better-skilled students with higher social capital, since this would allow costs to be reduced while increasing competitiveness.”³¹ By allowing municipal public and private subsidized schools to compete with each other on unfair terms, the 1980 reform increased educational inequalities. The best and wealthiest students were chosen by elite private schools, which received more government funding and more money from parents. On the other hand, students who were the most difficult to educate (i.e. those with low socioeconomic status, developmental disabilities, etc.) were only able to attend schools with higher drop out rates and lower levels of voucher-based funding. The study concluded that the competition and unequal admission processes between public and private institutions undermined the belief that the voucher system would lead to better a quality of schools.

Other studies found that the method of school choice was flawed because students and their parents were not actually able to make fully informed decisions about which school to send their children to. Contreras, et al found that the main reasons behind school choice for most families were proximity to the student’s home or parent’s workplace.³² Families living in poverty and rural areas were especially limited in their ability to become sophisticated consumers of education. People were able to “choose” only if they had financial resources and had achieved a certain level of education. Lower socio-economic groups, who make up 45 percent of the Chilean population, in general did not have the necessary resources, income, education, or available information to make use of the system of school choice, while many of their children simply remained in the municipal public schools.³³ The 1980 reform caused public sector enrollment to drop from 78 percent in 1981 to 50 percent in 2004, mostly because of the migration of students of higher socioeconomic status to the private-voucher sector.³⁴ The Chilean voucher system gave rise to greater school stratification as each individual school became more socioeconomically homogeneous. Middle and upper class students with financial and informational resources migrated to the private sector while the lower class students remained in the municipal schools, lacking the necessary resources to choose the school best fitting for them.

Not only did the 1980 reform cause Chilean schools to become more stratified, it also failed to increase the level of quality in the education system. The distribution of educational achievement among schools

30 Contreras, Dante, Paulina Sepúlveda, and Sebastián Bustos. "When Schools Are the Ones That Choose", 958.

31 Ibid, 972

32 Ibid, 972

33 Van Der Wal, Aleida. "Decentralization of Education in Chile". 34.

34 Mizala, Alejandra, and Florencia Torche. "Bringing the Schools Back In". 132.

was found by many studies to simply mirror the socioeconomic resources of their student bodies.³⁵ Even though overall access was expanded, benefits received by this expansion were concentrated in the middle and upper income groups, while the poorest levels of society did not benefit from the changes. The gap between the highest scores in Spanish tests between private schools and high-risk municipal schools widened in the period between 1982 and 1988, with the spread between the highest and lowest scores increasing by 34 percent over the same period.³⁶ These figures indicate that while performance of students in rural areas and students from poorer families declined, the performance of wealthier students improved. Increased competition between schools caused grade inflation and the spending of scarce resources on non-educational activities. Overall, there is no evidence that the quality of the Chilean education system increased in this period, and, in fact, many studies suggest an overall decline and increase in inequality.

As a result of the 1980 reform, wealthier students attended better schools and poorer students attended underperforming schools in greater numbers. This was particularly significant in the already incredibly unequal Chilean society. Even though Pinochet's reforms promised freedom of choice, poor students were denied the availability of information and access to options, aside from poor public schools in their respective neighborhoods. Middle and upper class students were able to migrate to private voucher schools, which had the ability to choose which students they wanted to enroll. Socioeconomic segregation of schools led to a widening discrepancy in achievement. School choice and privatization actually increased and institutionalized inequalities as the achievement gap between municipal and public schools widened. Even though neoliberal reforms increased the quantity of students, they did not increase the quality of education and only intensified social inequalities in education and in society as a whole.

The Chilean government has invested some resources in improving quality and equity of educational outcomes since the return to democracy in 1990. Between 1990 and 1996, spending on education almost doubled.³⁷ A new curriculum introduced in 1996 gave schools greater freedom in structuring study plans and programs, and gave teachers more autonomy in designing their program of study. In 1998, the government invested in a few projects aimed at improving the quality of higher education in Chile, targeting areas such as staff training, textbook distribution, facilities, and curricular redesign, including a reform to link a new university entrance exam to the primary and secondary school curriculum.³⁸ The Concertación government increased public funding for education, but also fostered the expansion of the private sector. Between 1990 and 2008, the quantity of public schools was reduced to 7.1 percent, while 95.9 percent of all schools were either for-profit and private,³⁹ indicating little systematic change to the system of privatization.

With the return to democracy in 1990, some minor changes were made to the Chilean education system, but as a whole, the neoliberal, privatized model established by Pinochet persisted into the 21st century. Today, there still exists significant differences in educational investment per student between different municipalities and the public and private sector. The education system in Chile today continues

35 Ibid, 139.

36 Prawda, Juan. "Educational Decentralization in Latin America: Lessons Learned." *International Journal of Educational Development* 13.3 (1993): 253-64. Print. 258.

37 Cox, Cristián. "Education Reform in Chile: Context, Content and Implementation." *PREAL* No. 8 (1997). Print.

38 De Wit, Hans. *Higher Education in Latin America: The International Dimension*. 151

39 Cabalin, Cristian. "Neoliberal Education and Student Movements in Chile: Inequalities and Malaise." *Policy Futures in Education* 10.2 (2012): 219. Print. 222.

to approximate a national choice model more closely than any other system in the world, and most of the key elements of the neoliberal design still exist.⁴⁰ Since reforms after the return to democracy did not address the underlying problems faced by the education system in Chile created by the 1980 reforms, similar problems that existed continue to persist today. This has led Chilean students and supporters to turn to civil disobedience to protest persistent systematic inequalities in education.

In May 2006, a series of protests began that would set a precedent for the Chilean Winter of 2011. Secondary school students, called “Penguins” for their black and white uniforms, went on strike in first major Chilean education movement since the 1990 return to democracy.⁴¹ They demanded a new curriculum, free public transportation, and the abolition of university entrance fees and exam fees. In the long run, they wanted centralized control over the education system rather than administration by local municipalities, which they believed led to inequality.⁴² These protestors placed the problems with the educational system “...in the center of the national discussion”.⁴³ In May 2006, 368 articles were published in Chilean newspapers on education. By June, there were 961.⁴⁴ The government responded by trying to increase student participation in government, but did little in the way of actual reform. Since the Penguin protests, representatives of secondary school students have had a chair in the national Advisory Council for the President, and students are often interviewed to give their opinion on education. These protests, although initially spontaneous, generated public criticism towards neoliberal educational policies, created a space for student participation in the government, and set the stage for the Chilean Winter and much of what would happen as a result.

Giorgio Jackson, one of the main student leaders of the Chilean Winter protests, spoke to the BBC in 2014 upon his election into Chilean congress, outlining the reasons and motivation behind his student protest movement:

Our story is about being born in the last years of the Pinochet dictatorship. We were raised in democracy, and that immediately changes your expectations about what democracy is...for people who are now in their 60s and 70s, the transition from dictatorship to democracy was a huge achievement in itself. They're happy with that. But our generation wants to push the limits and take things further forward. We don't feel comfortable with the status quo.⁴⁵

The Chilean Winter protests began in May of 2011 in the context of several other youth protests around the world, including the Arab Spring and the 15-M Movement in Spain. They reached their height around August, with over 120,000 students marching on Santiago every two weeks. Early on, the main concerns of the protestors were the high cost of tuition and other fees that most students were paying on

40 Gauri, Varun. *School Choice in Chile: Two Decades of Educational Reform*, 2

41 Cabalin, Cristian. "Neoliberal Education and Student Movements in Chile: Inequalities and Malaise." 219.

42 Van Der Wal, Aleida. "Decentralization of Education in Chile". 26.

43 Rios, Alejandro. "The Crisis of Education in Chile."

44 Cabalin, Cristian. "Neoliberal Education and Student Movements in Chile: Inequalities and Malaise." 224.

45 Long, Gideon. "Chile's Student Leaders Come of Age." BBC News. N.p., 11 Mar. 2014. Web. 19 Mar. 2014.

<<http://www.bbc.com/news/world-latin-america-26525140>>.

overpriced loans in order to afford a college education.⁴⁶ However, the protests soon grew to represent much broader ideals as students—a new generation of Chileans raised in the period following the return to democracy—began to challenge the system, which had existed since they were children. Calling on the historical precedent of a universal right to public education advocated most recently by Salvador Allende, these students were making claims for reform with their nation's history of providing free education to all members of society in mind.

In 2012, the National Confederation of Chilean Students (CONFECH) issued their proposal and a list of demands. They wanted to create a new national system of education which was “public, free, autonomous, democratic, pluralistic, intercultural and of excellence.”⁴⁷ They also called for a progressive increase in public expenditure on education, with a goal of reaching 6 percent of the country's GDP (compared to 4.2 percent, the current expenditure and the lowest out of all OECD countries), the creation of new public institutions, demunicipalization, and eradication of the profit motive in education.⁴⁸ These demands rejected the privatized and municipalized nature of the current system, and called upon a socialist precedent of universal access to free public education. The students challenged the neoliberal approach to education as a market good, and their movement came to represent a much more widespread dissatisfaction in Chilean society with the neoliberal system established by the Pinochet's dictatorship and the failure of subsequent democratic governments to change the status quo.

The student protest movement received strong support from many different areas of Chilean society. By allying themselves with workers and indigenous minorities, the students made their movement significant to other factions in Chilean society. However, even without these alliances, their complaints and the problems they saw in the current system clearly resonated with the public. Polls showed that 80 percent of the population supported the students in their efforts, while President Sebastián Piñera suffered a drop in approval ratings from 44 percent to around 26 percent as the protests intensified.⁴⁹ Piñera's reactions to the protests included police brutality, the resignations of several Ministers of Education, and a rejection of the students' claims to free education. Such reactions consequently alienated him from the Chilean public and garnered further disapproval of the regime, while increasing support from the students.

It is difficult to remark upon the true impact of the Chilean student movement, since the current government under Michelle Bachelet had only been in power for a few months at the time of this paper's writing. Piñera passed minor reforms such as lowering student loan interest rates and increasing scholarships, but no significant changes to the educational system were made under his regime. However, the achievements of the student protestors can be seen not only in Piñera's failure to garner public support and Bachelet's re-election, but also through the election of two of its main leaders, Giorgio Jackson and Camila Vallejo, into the National Congress of Chile in 2013. Vallejo said that her election was a “necessary step to make sure the demands of the street are heard,”⁵⁰ indicating that the goals of the student movement could be achieved by working within the system.

There are many reasons why education might be such a crucial issue and therefore representative

46 Cabalin, Cristian. "Neoliberal Education and Student Movements in Chile: Inequalities and Malaise." 224.

47 Rios, Alejandro. "The Crisis of Education in Chile."

48 Ibid.

49 Cabalin, Cristian. "Neoliberal Education and Student Movements in Chile: Inequalities and Malaise." 225.

50 Long, Gideon. "Chile's Student Leaders Come of Age."

of wider disapproval of neoliberal policies in modern Chilean society. Despite the failures of the 1980 reform, access to education at all levels widened. Particularly at the university level, education became an issue that affected all levels of society, rather than exclusively the elites and upper middle class. Students are a notoriously easy group to mobilize and politicize, as they are young and have a fundamental desire for change.⁵¹ In the Chilean case, equally significant is what Giorgio Jackson put into words—that this generation has come of age in a post-Pinochet era, and a simple return to democratic values is no longer enough for them; they want a fundamental overhaul of the system, and will no longer accept piecemeal reform. Education has the potential to act as an equalizer for opportunity, but when educational policies exacerbate societal inequalities and reinforce socioeconomic divisions, it becomes a problem that impacts everyone—particularly in a country like Chile, with almost universal access to education. Education becomes an issue that is linked to the struggles of every group in society, and therefore becomes representative of wider issues and disputes.

Neoliberalism was not successful in turning education into a commodity because Pinochet's reforms failed to truly address socioeconomic inequalities in Chilean society. The 1980 reform contributed to deepening of socioeconomic divisions as neoliberal policies of privatization and municipalization left the lower classes neglected and unable to benefit from most of its policies. This exclusion, paired with a historical precedent in Chile of access to free education since the 19th century and the failure of democratic governments since the 1990s to enact real change, provided the impetus for the Chilean Winter student movement. These student protestors, who received wide support from the Chilean population continue to represent a wider pushback against neoliberal market ideology to ultimately prove the weakening of neoliberalism's foothold in Chilean society.

51 For more on this, see: Eckstein, Susan, and Garretón Merino Manuel A. *Power and Popular Protest: Latin American Social Movements*. Berkeley: University of California Press, 2001.

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The Cuban Propaganda Machine

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This article is part of a longer thesis about the Post-Castro Era in Cuba, titled "Economic Reforms, Propaganda, and Political Dissidence: Framework for the Post-Castro Era in Cuba." The objective of the thesis is to explore the economic, social, and political mechanisms in Cuba that have enabled the Castro regime to maintain its control of power for over half of a century, despite the collapse of communist regimes in the late 20th century and the modern day revolutions such as the Arab Spring that have challenged authoritarian regimes in the early 21st century. The thesis discusses three major frameworks through which to understand the stamina of the Castro government: economics, propaganda, and political dissidence. The contributing research includes an array of scholarly articles, first-hand accounts, in-person interviews, government statistics, and economic data. This is the chapter on propaganda.

Images associated with Cuba often illustrate old cars, decaying colonial mansions, or the waving finger of Fidel Castro during one of his famously long speeches. Equally significant to Cuban imagery, however, are the various symbols of government propaganda that color the island that sits just 90 miles south of Florida's shore. When the Castro regime took power in 1959 it used the tools of traditional advertising to reinforce the new communist cultural and political values that would come to define the island for over five decades. The billboards and ads for casinos and rum companies that once colored the skyline of Havana changed to political messages like "Socialism or Death!," inculcating the new values of the regime. While the message may have changed, the goal of the advertising remained the same: promote consumption. Before 1959, consumption in Cuba was of capitalist goods. During the Castro Era consumption was of Revolutionary ideals. This chapter discusses economic reforms and how the success of Cuban propaganda allowed the Castro regime to fit these reforms into a socialist framework. This section provides a broader perspective on the political dissidence laid out below, as we can contrast—and often note similarities between—forms of dissidence and official government rhetoric.

First, a clarification must be made. While advertising authorities Katherine Toland Frith and Barbara Muller argue that advertising does not exist in communist regimes, the Cuban example clearly challenges this assertion. The authors indicate that "in a pure communist system . . . advertising would not be allowed" because Frith and Mueller understand advertising as an industry that exists inasmuch as it profits the producer monetarily.¹ The Cuban propaganda machine demonstrates that advertising can, in fact,

¹Frith, Katherine Toland and Barbara Mueller. *Advertising and Societies: Global Issues*. New York: Peter Lang, 2011.

achieve a broader definition of marketing.

3.1: Alberto Korda, Photographer of the revolution

Alberto Korda, often hailed as the official photographer of the Cuban Revolution, exemplifies the power of Cuban propaganda. His most renowned photograph is *Guerrillero Heroico* (“Heroic Guerrilla Fighter”), whose subject is the revolutionary Ernesto “Che” Guevara. The image is the most reproduced photo in history.² Nevertheless, the size of its reproduction does not signal the success of Cuba’s propaganda initiative; rather, the photo’s implied message of revolutionary ideals that rendered it successful. In a documentary that focuses on *Guerrillero Heroico* and its transformation into a commercial product, many interviewees comment on the success of the “Heroic Guerrilla Fighter.” One interviewee, a member of Korda’s team, considers the photo an integral factor in the success of the revolution, declaring that there was “a feeling that if we had not [published the photograph], the revolution would not have existed.” Despite the apparent exaggeration by this interviewee, many others are more realistic in their explanation of how the photograph helped “one individual [to become] symbolic of political ideology and [of] change” because “people have taken [the photo] as a symbol, as a symbol for freedom, as a symbol for world class struggle” (Lopez). The “Heroic Guerrilla Fighter” powerfully linked the cause of the Cuban Revolution to one that was universally identifiable.

Guerrillero Heroico (1960)



As the film *Chevolution* ironically notes, the original symbol of the Cuban communist struggle against an imperialist and capitalist power became a tool for commercial and retail purposes. The face of Guevara is often found plastered on T-shirts and other merchandise. While the connotation of revolution may remain, the commercialization of his face and the intrinsic support for a capitalist system of consumerism

²Lopez, Luis, and Trisha Ziff, dirs. *Chevolution*. Red Envelope Entertainment, 2008. Film.

were certainly not the intentions of Korda or Guevara. What is most interesting, then, is the distortion of advertising messaging in distinct contexts. While Korda undoubtedly published the image of “Che” in an attempt to advertise the revolution to the Cuban people (indeed, the picture was circulated en masse in 1960 throughout Havana), the image ironically attained commercial value when it was exported to capitalist countries.

Korda was a propagandist for the Cuban Revolution who illustrated the shifts in Cuban politics. In the photo, Fidel in Washington, Korda documents Fidel Castro in front of the Abraham Lincoln Memorial in Washington, D.C. during his visit to the United States. Korda’s presence with Fidel in this moment implies that the photographer could testify to the events that took place after 1959. Because photographs cannot be transformed after publication photography is the most powerful tool of testimony. Although the Cuban public would have already heard Fidel’s speeches in the U.S., they would not have been able to experience this personal detail of his visit were it not for Korda.



Fidel en Washington (1959)

Nevertheless, it is important to recognize that photography is, in fact, a form of art because it both captures a specific moment in history and presents it along a particular agenda. In this case, Fidel in Washington illustrates that the Cuban leader has paid homage to one of the most renowned and respected presidents in the United States. Fidel tilts his head upward toward Lincoln and removes his iconic beret in

an act of respect. In comparison with the monument, Fidel is minuscule; as a result of this size difference, he appears to be a young and humble leader who aspires to achieve grand transformations like those that Lincoln achieved in his era. Political agendas aside, the very fact that Fidel was able to travel to the United States, stand next to the statue of Lincoln, and advocate the Cuban Revolution abroad places Fidel in a global context. Korda's Fidel en Washington not only serves as a testimony of post-1959 events, but also intrinsically legitimizes the movement. As a form of advertising, Korda's photo serves as an example of subtle messaging through the use of multiple signifiers.

A more overtly propagandistic image from Korda is *Miliciana* (1962). In this photograph we see the face of a young female militant—apparently within a mass of people—dressed in a uniform with a rifle in hand. Her eyes glare forward, emanating confidence and displaying conviction for the Cuban Revolution and the communist regime. Korda published her faith in the revolution is an example for the Cuban people.

Rather than extensively interpreting this image, we synthesize it with our earlier discussion of the revolutionary “Che” Guevara, who wrote extensively about the importance of involving the entirety of Cuban society in the cause of revolution. The illustration of someone young in Korda's photo—and furthermore, a girl with dark skin (which has historically signaled oppression and the inequality of opportunity in Latin America)—reinforces the fact that the leaders of the revolution mobilized various facets of Cuban society. This young militant projects the future of the country. The weapon that she proudly clutches reflects the message of the revolutionaries: violence is the only means to achieve revolution.

When Guevara wrote about guerrilla warfare, he proclaimed that the tactic requires “a true nobility, the nobility of the end at which they aim; and it becomes clear that we are not speaking of a distorted means of reaching an end,” thereby justifying the militant mentality that this young girl represents.³ *Miliciana* suggests that militancy is less controversial if used in the name of a just cause.



MILICIANA (1962)

3.2: Silvio Rodriguez, Songster of the Revolution

Like Korda used photography, another artist, Silvio Rodriguez, used music to spread revolutionary propaganda. Rodriguez is part of the “Nueva Trova” musical movement that rejected old ideals in favor of new ones. Rodriguez and his colleagues aimed to create a socially and politically conscious movement, established themselves in a regional context, and

³Guevara, Ernesto “Che.” *General Principles of Guerrilla Warfare.* “Che Lives.

reflected the realities of Latin America in their lyrics.⁴ Rodriguez, like Korda, confirmed the events of the revolution and qualified them as positive developments, ultimately propagating the politics of the communist regime.

For instance, in his piece “Rabo de Nube” (1979), or “Tornado” in English, Rodriguez uses a metaphor to express satisfaction with the revolution's social transformation. The same way the revolution inverted the social order, Rodriguez flipped the connotation of tornado from negative to positive. Rodriguez eases social anxiety from the drastic transformation by suggesting a negative can become positive. The tornado is a metaphor for Fidel Castro, whom Rodriguez wholeheartedly supported in the early years of the revolution. His songs show how powerful music can be for propaganda. The people memorized his lyrics, singing the songs at home and on the streets, internalizing their message.

3.3: Billboards of the Revolution

As advertising authority Marshall McLuhan writes, “The medium is the message.” This sentiment captures the essence of the Cuban propaganda enterprise— one that has made use of various media to project communist propaganda. Perhaps the most visible medium for propaganda, however, is the billboard.

While an individual in a capitalist society is accustomed to the use of billboard space for commercial advertisement, the Castro regime has replaced all remnants of capitalist advertising with pro-socialist rhetoric. This helps the government maintain a strong hold on the narrative of Cuban history. Murals and the billboards are significant because they are highly visible in the streets of Cuban cities.

Once again, we can return to the example of Guevara as a vehicle for advertising the revolution. More so than Fidel, Guevara symbolizes the root of the revolution and the legitimization of a socialist society. Several posters invoke his godlike status by using a slogan that begins with “From your example” and ends with a range of phrases, like “we make a people” or “communism exists.” In the poster shown below, the latter copy has been chosen. Under the bold text, in all capital letters, the billboard reads, “UNTIL VICTORY ALWAYS,” a catchphrase often seen in Cuban propaganda posters. In fact, the imagery and text in these posters are often recycled and serve as tools to reinforce the messaging in creative and seemingly original ways.

Of course, the most obvious example of propaganda via billboard is the face of Guevara, which is always portrayed in the otherworldly gaze that photographer Alberto Korda so poignantly captured in 1960. Because this is a drawing, the creator is able to manipulate the image and alter the placement of the iconic revolutionary red star. Despite the minuscule scale of the symbol of Guevara's beret, the billboard amplifies the beret from Guevara's forehead. In this way, the star appears like a symbolic third eye of eternal wisdom that Guevara has projected upon the gazer of the poster: the Cuban citizen. His image is thus inspiring, inclusive, and motivational. Like the celebrity endorsement in a capitalist society, Guevara's positive qualities are transferred to the product that he is selling: communism. The poster's

⁴ Rodriguez, Silvio. “Silvio Rodriguez Sings of the Special Period.” *The Cuba Reader*

Ed. Aviva Chomsky, Barry Carr, and Pamela Maria Smorkaloff. 3rd ed. Durham: Duke University Press, 2003. 599-603. Print.



text reinforces this sentiment and implicitly supports the Castro regime's political agenda, thus serving its ultimate purpose of advertisement for the government's policies.

While the Che advertising in Cuba is nearly ubiquitously positive, negative advertising is certainly an aspect of Cuban propaganda as well. Just as Cuban advertisers use the face of Guevara as an easy point of recognition for the audience, they use familiar faces of politicians or historical figures as negative signifiers. While the demonized caricature of U.S. President Richard Nixon may be the most famous piece produced by the Cubans (shown below), the more contemporary uses of U.S. President George W. Bush may be more fruitful for modern-day discussion.

The picture that I took during my trip to Cuba captures two distinct billboards, both of which depict President George W. Bush alongside distinct—yet equally disparaging—copies. In the billboard on the left, the capitalized font translates to “THE ASSASSIN,” with the letter L (in the Spanish version) substituted with a handgun that has been turned 90 degrees counterclockwise. The face of President Bush is popped right alongside, clearly attributing the title of “assassin” to the American president. The face that Bush makes in the image is remarkably similar to the famous caricature of Nixon (above left). The propagandists subliminally link the two adversaries of the Cuban Revolution and suggest the continuity of anti-Cuban sentiment among American presidents. The juxtaposition of Bush with Luis Posada Carriles, a Cuban-born CIA agent, emphasizes this point⁵. By placing the two figures side-by-side, the poster suggests that Bush, like Carriles, actively tries to subvert the Castro regime and is responsible for the deaths of Cuban citizens (hence labeling him an assassin). The fire that erupts behind Bush's snarky face is an allusion to violence, and, less overtly but equally intentionally, a connotation to the devil and his hellish abode.

In the billboard to the right, Bush is portrayed again, this time with a seemingly unapologetic frown against a stark red background. The text alongside his face translates to: “Anyone who gives refuge to a terrorist is a TERRORIST.” This is a possible reference to U.S. immigration policy toward Cuban exiles, which offers citizenship to all Cubans who manage to set foot on American soil, regardless of their criminal

⁵ Luis Posada Carriles has been labeled a terrorist among many Latin Americans for his involvement in the 1976 bombing of a Cuban airliner, the Bay of Pigs Invasion, and the Iran-Contra Affair.



or political background. Indeed, Fidel, in an expression of disgust, has used the term “gusano,” or worm, to refer to Cuban exiles. Perhaps most interesting to note, however, is the choice of the word “terrorist” as a description of President Bush. Here, Bush, who espoused the “War on Terror” and a tirade on the “Axis of Evil,” has ironically been labeled with the very descriptor he so disparagingly used. The Cuban propagandists alter the meaning of the term “terrorist” for a local sensibility to continually turn Cuban opinion against the United States.

It is fascinating to compare these anti-American ads in Cuba with the negative advertising that exists in certain capitalist societies. In both cases, a competing product is presented and subsequently denigrated and ridiculed, either with implicit or explicit favoritism toward the advertiser’s product. Again, we see how Cuban propaganda is a form of advertising that broadens the traditional definition of advertising, an industry typically driven primarily by profits.

Like the advertising industry, the Cuban propagandists gauge the social and political pulses of the time. In a recent trip to Cuba, for instance, I witnessed a decrease in anti-American and negative billboards, a trend most likely due to the change in presidential leadership in the United States. While President Bush was a harsh critic of Cuba’s government, President Obama has taken a less aggressive tone in his rhetoric and policy.⁶ Many Cubans are also sympathetic to President Obama’s symbolism as a multi-racial figure.⁷ These two factors undoubtedly made it difficult for Cuba’s propagandists to sustain anti-American messaging; instead, they ostensibly substituted pro-Venezuelan billboards, as shown below in the images that depict the friendship of Fidel Castro and the late-president of Venezuela, Hugo Chavez. In the first

6 Lee, Brianna. “U.S.-Cuba Relations.” Council on Foreign Relations. Last modified

February 26, 2014. Accessed April 4, 2014. <http://www.cfr.org/cuba/us-cuba-relations/p11113>.

7 Baucells Ramos, Nelson. Interview by Michael Maisel. Havana, Cuba. March 20, 2013.

image on the left below, the copy translates to “Reality of the dream of friendship, cooperation, and integration;” in the tiled image of Hugo Chavez on the right, the text reads, “Best Friend.”

Also underpinning the Cuban government’s ability to adapt to changing realities is a message plastered on several billboards and walls: “The changes in Cuba are for MORE SOCIALISM.” This language is new; in a trip to Cuba in 2009, before Raul’s economic reforms had begun in earnest, I did not witness such messaging. The Cuban government has woven economic and social change into the official medium of



political storytelling. By authoritatively recognizing and promoting economic reforms, Cuban propaganda casts away any doubt that these reforms are a challenge to the century-long socialist legacy of the Castro regime.

The hegemony of opinion that the Castro regime has managed to achieve through propaganda is impressive. As the aforementioned examples illustrate, the Cuban propaganda machine is robust in its use of photographers, singers, and billboards alike.

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Women, Labor, and Neoliberal Capitalism

Informal Economy in Latin America: The Case of Chile and Mexico

LETICIA PFEFFER

The gender gap disparity highlights the differences in outcomes that men and women achieve in the labor market. Although significant progress has been made in development economics and social policy to empower women and increase their participation in economic and political life, no country has achieved gender equality. Gender segregation in economic activity continues to plague informal and formal labor markets worldwide. Women are highly inclined to work in low-productivity, low-wage occupations that are historically reserved for them, as well as unpaid family employment, informal work, small-scale agricultural farming, or less-profitable businesses. Women in the developing world who engage in informal employment represent and epitomize some of the world's most marginalized, underrepresented, and economically and socially incapacitated groups of people. These women are victims of the economic, political, and social structures of globalization that overlap at the local, national, and international levels. Neoliberal economic and social policies have constrained women and locked them into the most precarious and lowest paid forms of informal work. Today, an analysis of the factors that contributed to Latin America's neoliberal economic policies and globalized market capitalism can account for a rise in this system. These factors that determine the rise of informality explain structures that have subjugated poor women to the bottom of the development pyramid, and reasons these women work in the most precarious jobs today. This thesis compares the political contexts in Chile and Mexico in order to evaluate the development of the informal economy, the factors responsible for its expansion, and its effects on women and society. The gender-specific effects of gender-neutral structural adjustment programs and the constraints they face as informal workers in the labor force and household are also surveyed. Neoliberal economists view free trade as an "engine of growth" that benefits developed and developing economies equally, diminishes the income gap, and allows developing countries to integrate into the global economy. Neoliberal adjustment reforms however failed to address the structural factors underlying social problems, such as gender inequality and rising unemployment. Disadvantaged groups within the integrated global economy continue to inhabit marginal positions. As informality has escalated, government institutions have been unable to respond to the needs of millions of women and men with unstable jobs, severely impacting their day-to-day lives.

The Informal Economy: A Theoretical Perspective

Defining the Informal Economy

The informal economy is a global phenomenon that involves industries such as manufacturing, services, and commerce, as well as various jobs incomes. A street vendor in Mexico, a basket weaver in Thailand, or a sweatshop worker in China all illustrate the multiplicity of actors, agents, and activities that encompass the informal economy.

The informal economy is classified as a share of the global workforce and its associated economic activities and enterprises that fall outside of state regulation, taxation, and protection. Such a system of organization diverges from traditional units of production in economic theory—firms or corporations—and is not included in the Gross Domestic Product of a country. Informal activities thus correspond to low levels of human capital, productivity, and investment, as well as low-quality, unstable employment lacking social protection and representation (Leon 2004).

Although the size, dynamics, and nature of the informal economy have shifted since the mid-twentieth century due to accelerated globalization, the informal economy continues to comprise the following types of work: self-employment, wage employment, and microenterprises.

Since the rise of the informal sector in the 1960s, the population within this economic bracket has been expansively linked to poverty. Informal workers have low incomes, low human capital (skills), low levels of education, and no legal representation (Leon 2004). Though this type of work is often considered a last resort, the informal economy accounts for a considerable percentage of economic activity in developing countries, and in some cases represents a larger segment than the formal economy. It is estimated that more than 70 percent of workers in the developing world hold a job in informal work, accounting for more than 30 percent of GDP outside of the formal economy. Sub-Saharan Africa represents the region with the highest percentage of informal employment, at 72 percent, and Benin has the highest informal employment levels in the world, at 93 percent. Informal employment in Asia represents 65 percent of the workforce, and in Latin America 51 percent (Leon 2004: 23).

In light of the expansion of this economic phenomenon, explanations for its recent rapid growth and existence must be sought, analyzed, and dissected. The widespread presence of informal work worldwide may be regarded as a problematic obstacle to integration of all individuals in the global economy, as well as to achieving sustainable economic development and poverty alleviation (Heintz 2012). It constitutes an important share of the workforce and global economy and is closely linked to poverty and inequality (ILO, de Medina 2012). The informal sector also serves as a much larger source of employment for women than for men at the lower rung of the sector, a phenomenon marked by poverty and vulnerability.

A gendered analytical approach is essential to understanding the multi-layered issues that contribute to gender gaps in society. Gender, age, ethnicity, and social class contribute just as much to informal occupations and activities as do skill and education levels. We can therefore safely expand the “feminization of poverty” to include the “feminization of informality”—constraints that inevitably situate and lock women into the most precarious, unstable, and lowest paid forms of informal work.

Most research on the informal economy does not incorporate a gendered lens. Developing countries lack the resources and means to account for the hundreds of millions of women working in unpredictable informal occupations in their national records and statistics. Furthermore, a large percentage of women engage in domestic work, which further facilitates unreliable data and estimates. While many women

face political, economic, and social constraints in both the formal and informal sector, without accurate research and figures, the most vulnerable women will continue to remain on the periphery of modern society. In order to understand and analyze the rise, dynamics, and nature of the informal economy through a gendered framework, the political, historical, and economic history that led to and characterizes the era of globalization must be highlighted.

Theoretical Foundation

The study of informality in developing nations began in the 1960s as a result of visible ‘modern gaps’ that contributed to mass poverty and structural unemployment. Rural to urban migration during this period created a huge stress on formal occupations that could not keep pace with the jump in population and lack of formative skills.

Multiple theories attempt to classify the informal economy according to a singular interpretation that often only focuses on one element or contributing factor. A central point of contention between different theoretical perspectives is the extent to which a person chooses informal work—whether it is a voluntary choice or rather the result of institutional and economic constraints. Debate regarding the informal economy can be divided into four schools of thought: the Dualist School (1972), the Structuralist School (1989), the Legalist School (1989), and the Voluntarist School (2004).

The four leading schools of thought characterize the informal economy either on the basis of institutional constraints that workers face to enter the formal workforce, or as a choice that seems preferable to formal work. Yet, each theory focuses on a single segment of the informal sector, without accounting for the different types of informal employment and workers. It should be noted that all sorts of informal workers experience different constraints and opportunities to pursue formal work. By synthesizing all four schools of thought to include all forms of informal work, all institutional barriers, risks, and forms of exploitation can be considered.

Conceptual Framework of Participating Agents

More recently, the International Labor Organization (ILO) and Women in Informal Employment: Globalizing and Organizing (WIEGO), a global research policy network, expanded the meaning of the informal economy. Their aim is to encompass informality, as it is exhibited in labor markets in developed, developing, and transitional economies, in order to better represent all forms of informal employment.

The ILO provides the most comprehensive data to date, from 2011, that examines the informal economy in 47 developing countries where it differentiates between employment in the informal sector and informal employment. Both refer to different facets of informality. The first category—an enterprise-based concept—concerns the workers in informal microenterprises, because they are “unregistered, small, have unregistered employees and/or they do not maintain a complete set of accounts.” The second category, a job-based concept, applies to all individuals who do not possess social or legal protection, such as employment benefits or recognition (ILO, de Medina 2012: Annex 2). Informal employment transcends the informal sector, because it is inclusive of work in the formal sector, informal sector, and households. Furthermore, because all workers who are employed in the informal sector engage in informal employment, this second grouping must be discussed further.

Informal workers—those employed within the category of informal employment—as synthesized by the

WIEGO, may be grouped into seven different constituencies:

- Employers in informal enterprises who hire others
- Employees in informal enterprises, formal enterprises or a household (i.e. informal wage worker: “regular”)
- Own account workers of an individual/family business who do not hire others
- Members of informal producer cooperatives
- Casual or day laborers that have no fixed employer and sell their labor on a daily/seasonal basis (i.e. informal wage worker: “casual”)
- Industrial outworkers/homeworkers who sub-contract their work and/or produce from their homes
- Unpaid contributing family worker

The seven classifications of informal workers are situated from highest earnings, highest autonomy, and lowest risk to the inverse, which is lowest earnings, lowest autonomy, highest risk. The International Classification of Status in Employment (ICSE-93) defines an individual’s status in employment around the level of risk and autonomy that a worker experiences. Risk is measured with regards to job uncertainty and earnings, and autonomy classifies the authority that a worker has over his or her own activities, the enterprise, and other workers (Heintz 2012).

More specifically, employers of microenterprises may face barriers in the formal economy, such as legal registration and taxation, but have the ability to choose between sectors depending on their preferences. Own-account operators, on the other hand, are excluded from the formal economy but still have authority over their work. Informal employees, casual day laborers and industrial outworkers may be exploited by employers and contractors, and do not have social and legal protection. Unpaid contributing family workers, the most capitalized group, also lack access to state benefits but are neither recognized for their work within the family nor financially remunerated (Chen 2012).

Employment status, the place or type of work, and the necessary resources for production are the key elements that influence the degree of insecurity in a job. Therefore, we may further divide informal employment into two different groupings based on the form of employment—self-employment and wage-employment (Chen 2007). Self-employment includes workers in small and unregulated enterprises:

- Employers
- Own Account Operators
- Unpaid Family Workers
- Members of Informal Producers’ Cooperatives

Wage-employment includes workers in unregulated and unprotected jobs, without formal contracts and social protection in informal or formal firms or households:

- Employees (of informal enterprises; domestic workers)
- Casual or day laborers
- Industrial outworkers/homeworkers

Despite the high numbers of women employed in the informal sector, we observe that a high proportion of men comprise the top segments of informal work (low risk and high pay), while women largely comprise the bottom segments (high risk and low pay) (Chen 2007). While this alone contributes to the gender gap depicted in the graph, additional segmentation between men and women within a certain grouping of

informal work further amplifies the gender wage gap. Figure 3.1 below depicts the gender segmentation of all types of informal employment as well as the level of risk and of poverty.



Figure 3.1 WIEGO Model of Informal Employment: Hierarchy of Earnings & Poverty Risk by Employment Status and Sex
 Source: WIEGO Working Paper N.1: "Women in Informal Employment: Globalizing and Organizing" by Martha Alter Chen, 2012

Informality in Latin America – Macroeconomic Effects

The informal economy is linked to the formal sector. "It produces for, trades with, distributes for and provides services to the formal economy," (Chen 2007: 5). Although low in productivity, informal work certainly generates output and demand. However, informal activity prevents the most efficient use of resources and productivity improvements. In other words, an economy with a large informal sector and high index of informal-type jobs operates below its output potential, negatively impacts economic growth rates, and causes sluggish growth in the long-term (Leon 2004). In addition, high rates of informality signify lower per capita incomes, a meager purchasing power, and a diminished aggregate demand in the economy.

Economic growth in Latin America since the late 1980s has not been strong enough to provide sufficient formal job opportunities for the growing labor supply. The upshot of informality in the region has served as an alternative channel by which Latin Americans can seek to earn a living—at a grave social cost (Patroni 2002).

In Latin America and the Caribbean, an estimated 130 million workers are employed in conditions of informality (Panorama Laboral 2013: 13). This figure amounts to 47.7 percent of the total workforce, 31 percent of which work in the informal sector, 11.7 percent of which work in conditions of informality

in the formal sector, and 5.1 percent of which work as unpaid family workers (Panorama Laboral 2013: 63). Informal employment in Latin America has absorbed workers that are, as a whole, less educated and more impoverished. Sixty-three percent of workers in the informal sector have only completed a primary education, while 47 percent of workers have completed secondary schooling and 72 percent live in poverty. Furthermore, workers in informality disproportionately represent youth 14 to 24 years old (56 percent) and women (58 percent)—compared to 48 percent of men (Panorama Laboral 2013: 63; Chen 2010).

Just as poverty is feminized, the informal labor force is as well. These jobs develop certain attributes, such as “low pay, drudgery, uncertainty, and precariousness” identified as “women’s work” (Chen 2012: 7). The increase in female labor supply channeled into informal work can be characterized by three significant circumstances: 1) the rise of girls attending and completing primary and secondary schooling in the last three decades; 2) stark economic crises in Latin American countries that resulted in rising poverty and forced women to pursue paid work—the “additional worker effect”; and 3) rising unemployment rates that caused a decrease in formal employment and an increase in informal work (Freije 2001). Because women have experienced higher levels of unemployment, they are structurally pressured to pursue informal work. Unemployment rates for the region as a whole indicate that the unemployment rate was 1.35 times greater for women than for men in 2013. 7.6 percent for women versus 5.6 percent for men (Panorama Laboral 2013: 15). Moreover, the dual time burden that women face prompts female workers to pursue flexible working conditions—hours on the job—in order to balance their work in the labor market and in the household (Freije 2001).

Neoliberalism, Gender, and Informal Work: The Case of Chile and Mexico

In the 1970s, high unemployment and inflation rates worldwide threatened the geo-power politics and market capitalism that defined the international order. In order to prevent an economic slump similar to that of the 1930s, world powers turned to neoliberalism as the dominant economic ideology in restructuring international relations and state affairs. This economic doctrine was the tool perceived to “construct the right blend of state, market, and democratic institutions to guarantee peace, inclusion, well-being, and stability” (Harvey 2005: Introduction).

The neoliberal framework is marked by trade liberalization, privatization, and deregulation of markets in order to foster economic growth. Government policies involve drastic cuts to government spending (especially welfare programs), tax reform, and high interest rates (Thacker 1999). New tax codes benefit returns on investment instead of wages by providing substantial tax breaks to large businesses (Harvey 2007). Inevitably, this theory bridged economic and political policy when it was implemented and indoctrinated worldwide. Neoliberal theory became the driving economic force in states from Soviet Russia to Sweden to developing economies (Harvey 2005: Introduction).

Neoliberalism buttresses human development, specifically the improvement of living standards, by creating jobs, reducing inflation, increasing foreign investment, and cultivating entrepreneurship. By assuming that the market will always clear—goods and services supplied and goods and services demanded ultimately reaching equilibrium through price stabilization—all social relations are thus situated within the marketplace. Harvey states: “the social good will be maximized by maximizing the reach and frequency of market transactions,” (Harvey 2005: Introduction). Advocates of neoliberalism viewed fascism, communism, and autocracy—those regimes that historically promoted rights of the collective over the

individual—as the biggest threats to international peace and democracy. Proponents of neoliberal theory insisted that any and all forms of state intervention infringed on individual liberties and freedom (Harvey 2007).

Those who advocated neoliberal thought alluded to fundamental human rights, such as human dignity, equality, and individual freedoms with the publication of such declarations as The Right to Development. The international community recognized that states possessed the right to economic self-determination as a “comprehensive economic, social, cultural and political process,” (DRD, Annex). On December 4, 1986, the Declaration on the Right to Development was ratified by the United Nations General Assembly, defining development as an, “Inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized” (DRD, Article 1.1).

Given the political environment at the time, neoliberalism became the hallmark of capitalism and the safeguard of democratic sovereignty. Neoliberal ideology, when implemented, pervades all aspects of society, including the media, education, corporate business, and even international financial institutions such as the International Monetary Fund (IMF), The World Bank, and the World Trade Organization (WTO). These international institutions, which are the chief regulators of global finance and trade, became the agents of neoliberalism through structural adjustment programs meant to aid countries with debt repayments. David Harvey (2007) critically suggests that the process by which this economic doctrine was implemented was a “creative destruction,” whereby prior traditional institutions were challenged. Ultimately, neoliberalism caused a total structural shift in labor, social welfare, technology, and even social interactions (Harvey 2007).

In the documentary, *The Shock Doctrine: The rise of disaster capitalism*, Naomi Klein employs the term “shock therapy” to describe how neoliberal economic policies have been implemented around the world. An economic shock is defined as an unpredictable or sudden event that affects the economy either positively or negatively (Klein 2007). For instance, a recession or crisis can be the product of an economic shock that causes productivity to fall and unemployment to rise. In essence, neo-shocks are employed in order to stabilize economies and foster growth in an extremely expeditious and efficient manner. Shock therapy is naturally a response to government policies in which nationalization of industries and protectionist trade systems are deemed the root triggers of economic and monetary chaos, social problems, and political unrest (Everingham 1998). If the market cannot reach balance on its own, high inflation and unemployment are natural causes.

One of the fathers of neoliberal theory, Milton Friedman, was a strong proponent of introducing shocks into developing, nationalized economies. As Klein explains, “Friedman believed that when the economy is highly distorted, the only way to reach that prelapsarian state was to deliberately inflict painful shock. Only “bitter medicine” could clear those distortions and bad patterns out of the way (Klein 2007: 50).

In his first book, *Capitalism and Freedom*, Friedman characterized free markets as inherent to globalization, and placed emphasis on the free market as a “perfect scientific system” (Klein 2007: 53). As such, a free market allows for free prices and free consumer choices based on those prices (i.e. inherent economic liberties). Friedman imagined and idealized a world characterized by “uncontaminated capitalism,” where prices on goods and services are never fixed, minimum wages cannot be regulated by the state, and

education would never lie in the hands of the state (Klein 2007: 53).

The nationalization and subsidization of vital industries, increased taxation, and state-implemented protectionist trade policies that characterized Latin American economies from the 1940s to the 1980s were viewed as the source of all of these countries' economic misfortunes, including rising unemployment and accelerating inflation. Neoliberals argued that state intervention in markets had created price distortions and misallocation of resources, which diminished economic growth (Kay 1993). Before neoliberal capitalism became mainstream economic ideology, Latin American states promoted the domestic production of industrialized goods through Import Substitution Industrialization (ISI). At the time, dependency theory, developed by Raúl Prebisch and popularized among Latin American economists, emphasized that the world's economic system was divided into a periphery of poor, developing countries that provide manufactured goods, natural resources, and cheap labor to the core of wealthy industrialized countries. The UN Economic Commission for Latin America subsequently endorsed ISI in order for peripheral countries to become self-sufficient, and to avoid declining terms of trade (Biglaiser 2002). ISI policies allowed the state to lead economic development by actively intervening in its economy in order to avoid or control market failures.

Comparatively, neoliberal structural reforms moved states entirely away from ISI to an outwardly oriented model of economic development. Neoliberal economists viewed free trade as an "engine of growth" that would benefit developed and developing economies equally, diminish the income gap, and allow developing countries to integrate into the world economy (Kay 1993: 694). However, the neoliberal doctrine did not foster the economic growth of Latin American economies as expected. Global growth rates are estimated at 3.5 percent in the 1960s and 2.4 percent in the 1970s, but at a diminishing 1.4 percent, 1.1 percent, and below 1 percent aggregate growth rate since the 1980s—proving that neoliberalism has not stimulated developing economies and strengthened the global economy (Harvey 2007: 34).

These reforms failed to address the structural factors underlying social problems such as gender inequality and rising unemployment. The social costs have been especially detrimental, and marked by increasing social inequality among the most impotent groups of people, namely the poor, women, and youth. Deregulation of labor markets increased foreign investment, but created an astronomical number of temporary, low-wage, unprotected jobs, and a loss of funding for social welfare programs. New labor codes allowed for part-time contracts, restrictions on the right to strike, and exposure to exploitative working conditions. Government programs that previously protected workers—such as the right to pension, welfare and national healthcare—were discontinued (Harvey 2007).

Neoliberal policies implemented in Latin America were the principal causes of the rise of informal work. Between 1950 and 1980, during the ISI period, 60 percent of the total jobs created were in the formal jobs sector. However, since 1990, 70 percent of the total jobs generated in Latin America have fallen under the category of informal employment, due to low levels of employment opportunities in the formal sector, and job creation in sectors that are low in productivity and have a high distribution of informal characteristics (Patroni 2002: 211). The structural adjustment programs that were streamlined by neoliberal economists only focused on macroeconomic growth in terms of GDP and foreign investment. An insufficient degree of formal job creation forced workers to earn a living through self-employment or informal microenterprises (Patroni 2002).

Small industries and informal businesses suffered drastically, causing unemployment to rise. Furthermore,

food costs increased, and access to health care and education became less accessible, so poverty rates rose exponentially (Babb 29). These negative byproducts of structural adjustment led to a large supply of low-wage female workers who had no option but to seek alternative sources of income. The responsibilities that women faced in the household as social services were cut and income decreases intensified, causing a longer working day for women (Babb 1996).

The contemporary neoliberal era of capitalism, also known as globalization, has altered the flow of structures and resources and enabled a globalized system of finance, production, trade, and, communication. However, disadvantaged groups within the structure of an integrated world economy continue to inhabit a marginal position, engaging in assembly-line work and facing short life expectancies. Restructuring and internationalization of economic production has modified labor dynamics to become “random, flexible, and [have] contingent schedules, [and] has segmented and disorganized masses of people,” (Huesca 2006: 139). Informality has escalated, and government institutions have been unable to answer the needs of millions of women and men living day-to-day.

Country Study 1

Chile: Chicago ‘Shock’ Economics, Revolution, and Informality

Neoliberal Shock Economics

During the Cold War (1947-1991), United States hegemony feared the spread of communism and Marxism in Latin American countries, and were especially afraid of socialist governments such as Salvador Allende’s Socialist Party in Chile (1970-1973). In an attempt to spread free-market ideals, the United States provided foreign aid to Latin American countries and created economic programs to push its own foreign policy agenda. A 1955 effort known as “Project Chile,” resulted in an agreement between the University of Chicago and the Universidad Católica in Chile (Biglaiser 2002). Chilean students were given scholarships to study economics at the graduate-level at the University of Chicago in order to learn the importance of the free market for economic development. When the so-called Chicago Boys returned to Chile, they rejected growing political instability, high debt, and expansive state intervention in the country as ‘evils’ of socialism and ISI, instead favoring neoliberal economics, such as trade liberalization, privatization and deregulation (Biglaiser 2002).

In 1973, the military junta of Augusto Pinochet (1973-1989) forcefully overthrew elected socialist president Allende with the help of the CIA and U.S. Secretary of State Henry Kissinger (Harvey 2007). The new regime, influenced by the Chicago Boys, quickly reduced tariffs and altered economic policy, abandoning ISI to instead pursue foreign investment (Tinsman 2000). Undoubtedly, these neoliberal policies were implemented in the form of economic shocks. In this manner, the Chicago Boys and Pinochet’s military regime implemented massive institutional changes that opened the economy to foreign competition via free trade, and increased foreign investment and privatization of public assets. The regime drastically curtailed social spending, reduced opportunities for organized labor activity, banned the right to strike, dismissed Congress, and restricted any form of social opposition (Montecinos 1997). Thus, neo-shocks in Chile entailed a sudden release of price and currency controls in order to foment the following: a withdrawal of state subsidies, rapid trade liberalization, and the creation of a dominant private sector. In the long-term, it was believed that such shocks would create long-run equilibrium, new

market opportunities, and new technologies, innovations, and skills.

While all other Latin American countries in the mid-1970s continued to pursue state-led development, Chile was the first to adopt neoliberal capitalism. Initially, these neo-shocks did not create the economic growth that was expected. In 1973, the same year that neoliberal policies were first executed, real GDP declined by 6.55 percent. By 1975, real GDP declined by 12.72 percent (see figure 4.1). A decade later, soaring inflation rates, declining terms of trade, and tariffs raised up to 35 percent led to the economic crisis of 1982 (Teichman 2004). Real GDP once again decreased by a staggering 11.72 percent, and the state was forced to intervene and assume the debts of five banks (Teichman 2004).

Chile was on the verge of economic collapse, as illustrated in figure 4.1, and faced growing political unrest. However, Pinochet, the Chicago Boys, technocrats, and multilateral officials from the IMF and World Bank actualized a second round of shocks: further tariff reductions, drastic cuts in government expenditures, and privatization of all companies in 1985—including telecommunications, steel and airlines (Teichman 2004). Consequently, overall sustained growth rates from the mid-1980s to the mid-1990s in Chile, as well as the continuation of neoliberal doctrine—even during the country's transition to democracy in 1990—signaled to free market idealists that neoliberalism had triumphed (Teichman 2004). As a result, Chile became the example for neoliberalism that several Latin American countries quickly followed.

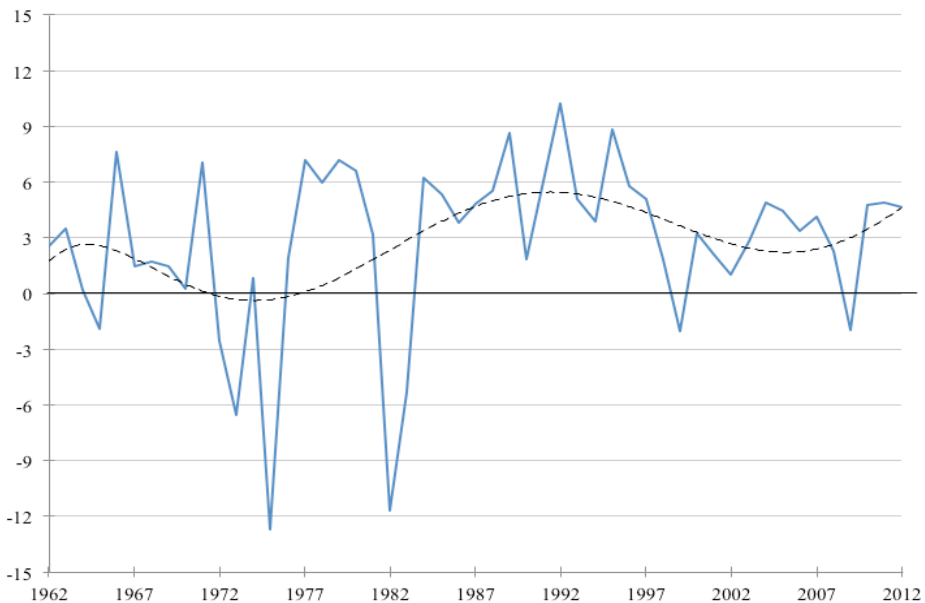


Figure 4.1 Chile's Real GDP Growth: 1962-2012 (dashed line: polynomial trend)

Source: World Bank Data

The Rise of Informality

Given the evolving model of *laissez-faire* economics and shock therapy in Chile, informal activities that increased in size and scope must be analyzed parallel to the neoliberal capitalist framework. Instead of fashioning a social, political, and economic system that promoted equity, the neoliberal structure marked by political transition and military rule produced grave changes in the lives of millions of workers ridden by increasing unemployment and poverty. Although a thorough investigation and sufficient data on the determinants of magnified informality and its social implications for women in Chile are minimal, important patterns can be traced.

In general terms, the periods of Chilean economic crisis in 1973, 1975, and 1982—due to rising inflation and economic adjustment which produced severe cutbacks in public services—caused three distinct effects: the decline in formal jobs, the informalization of jobs that were previously formal due to labor deregulation, and the increase in precarious forms of self and wage-employment as a last resort (Chen 2012). While the implementation of neo-shocks did not generate adequate formal employment opportunities, competitive pressures for export growth drove labor costs down, which inflated the demand for informal versus formal labor conditions (Heintz 2012). Informal workers earned significantly lower wages than workers in the formal sector, and during this period poverty rates soared, as unemployment affected one third of the labor force (Montecinos 1997).

Economic restructuring led to a highly disproportionate income distribution in Chilean society, yet the state only adopted a “minimal safety net” targeted at pregnant women, children, and segments of the poor in order to mitigate the growing levels of poverty. This safety net provided individual subsidies and emergency employment programs to people who lacked social security coverage. However, it left out many groups of people and did not provide the sufficient resources to counterbalance the decline in wages, escalating unemployment, and terminating social programs. Between 1974 and 1989, per capita social spending declined 30 percent in health, 25 percent in education, and 32 percent in housing (Montecinos 1997: 227).

One of the central governmental policies that displaced tens of thousands of workers from the agricultural sector to the informal sector was the privatization of communal lands where *campesino* peasants farmed. Between 1964 and 1973, Pinochet’s administration seized 9,861,516 hectares of land from *campesinos* and administered it to large-scale agricultural producers. Companies such as Dole and Standard Fruit, who possessed the capital and resources to produce a profitable cash crop for export (Tinsman 2000: 148). The agricultural sector was thereby transformed from a mixed economy of peasant cultivation on communal land, private plantations, and state-owned farms, to a modernized and highly engineered agribusiness. As a result, Chilean exports such as grapes, apples, and peaches aggregated almost half a billion dollars—which evidences Chile’s economic “miracle” (Tinsman 2000).

In the process, *campesino* farmers’ loss of land forced both men and women to either become *wageworkers* for the foreign corporations that came to dominate Chilean agricultural production, or migrate to cities in search of work in the industrial sector. Neoliberal economic restructuring could not keep pace with the upshot of labor supply and population growth, nor generate sufficient formal employment opportunities, such as in the manufacturing industry. Deposed rural agricultural workers relegated to working informal sector jobs, such as domestic service, trading, or casual work (Arizpe 1997). In this instance, workers chose informal work as a last resort and survived on low incomes, irregular wages, or

self-employment. Institutional barriers, labor market discrimination, and personal characteristics further amplified the demand-led market structure.

The Case of Temporeras

In the case of rural female campesinas, these women acquired temporary or seasonal jobs as informal wagedworkers in the export agricultural sector—known as temporeras—because corporations such as Dole favored employing women (Tinsman 2000). Dole, for example, recruited large groups of women to toil in the orchards and package fruit due to the gender stereotype that female workers have nimble fingers and are even-tempered. In the mid-1960s and 1970s, women represented 10 percent of the wage-earning agricultural labor force. By the mid-1980s, women accounted for 40 percent of Chile’s temporary agricultural workers (Tinsman 2000: 151). Even so, the jobs that women performed in orchards and vineyards were highly insecure, characterized by seasonal work that only lasted three to six months at a wage of 1 dollar per day (Tinsman 2000: 149).

Employers easily contracted low-capital, expendable labor under conditions that paralleled work in the informal sector—typified by temporary contracts, paltry wages, and subcontracting (Patroni 2002). As a result, labor market conditions deteriorated and augmented the rise of unemployment, job insecurity, declining wages, and greater informality. The percentage of campesinos living in poverty also skyrocketed. “Campesinos built makeshift squatter settlements without potable water or electricity on the hills that peered over into the recently privatized and fenced orchard,” (Tinsman 2000: 149).

The agricultural labor market’s flexibility—a flexibility similar to that of the manufacturing industry—caused a transition to highly abusive informal work. Apart from the precarious and low-wage nature of agricultural wage labor, women experienced sexual harassment, exposure to toxic gases and pesticides, employment termination if pregnant, and compulsory 16-hour work days (Tinsman 2000). The extreme economic vulnerability that women faced sometimes forced them to resort to prostitution during seasonal unemployment. The rise of women in informal wage employment in Chile, as highlighted in the agricultural industry, also exacerbated the dual burden phenomenon. Heidi Tinsman describes the consequences on household dynamics:

[Women] returned from work to additional daily labors of cooking and cleaning. Children went unattended while mothers worked. Relationships with male family members became tense and combative because of poverty, women’s need to work, and the reality that husbands and wives rarely saw each other. Such conflict, in turn, contributed to increases in male home-abandonment and female-headed households. (2000: 151)

As a result, the exponential rise of women in the labor force—defined as informal wage-employment in the formal agricultural sector—transformed gender relations in the domestic sphere. Specific to temporeras, the essence of “rural manhood” changed as rural women came to dominate a place in the agricultural sector (Tinsman 2000: 160). As unemployment rates rose drastically for male campesinos, women began to challenge the composition of the patriarchal household as they supported their families and became more active in the community.

Although women were highly exploited under unstable working conditions, they also began to exercise higher agency in their communities between 1973 and 1990. Women became less economically and socially dependent on men and expanded their role from the domestic sphere by forming self-help groups

in health, housing, and producer cooperatives to feed their families. Additionally, *temporeras* formed grassroots organizations to activate a movement against female labor exploitation in the form of lack of daycare, forced pregnancy tests, sexual harassment, low wages, and outrageous working hours (Tinsman 2000). Their organized presence also increased women's political agency in Chile. *Temporeras* denounced human rights abuses under Pinochet and his abusive economic model of gendered labor inequality. Through the *temporera* movement, the notion of gender equality surfaced in Chile as a social ideal. Moreover, when the Chilean government transitioned to a democratic state under the Aylwin (1990-1994) and Frei (1994-2000) administrations, *temporeras* demanded economic justice and gender equality as central platforms of rebuilding democracy (Tinsman 2000).

Contemporary Effects on Women in Informality

Since Pinochet's regime paved the way for neoliberal economic development, the transformation of working conditions, gender relations, and rise of informality continue to affect women. The massive incorporation of female workers into informal labor markets has caused a growing presence of female laborers in the service sector, which grew at a higher rate than total employment in the 1990s (Patroni 2002). In 2013, 44 percent of total women in the labor force worked in the service industry versus 16.4 percent of men. Labor markets are also highly segregated by gender in other sectors. As a percentage of total women in the labor force, 5.6 percent work in agriculture, fishing and mines, and 8.7 percent work in manufacturing, as compared to 18.5 percent and 13.5 percent of men (Panorama Laboral 2013). Furthermore, informal wage-employment nearly doubled from 1990 to 2000, but has not fostered improvements in the status or welfare of women. Workers in informal employment earn significantly lower wages than formal workers, and women are the most vulnerable, exemplified by the fact that 36 percent of female-led households lived in poverty in 2000 (Amuedo-Dorantes 2004: 348). Although the overall rate of female participation in the informal labor force is difficult to measure and has resulted in a gap in data and analysis, women constitute a higher percentage of self-employed and wage-employed informal workers. 75.9 percent of women compared to 69.3 percent of men (See Figure 4.2).



Figure 4.2 Informal Employment in Chile: Men vs. Women

Though neoliberal shock therapy was supposed to provide ideal solutions for development, Chile's rapid economic growth and international competitiveness ultimately marginalized the country's most vulnerable groups of people—those who generally work in informal employment and are the heads of their households. The political system has not incorporated any effective protection of women in order to foster higher levels of female economic autonomy and political agency.

Country Study 2

Mexico: NAFTA, Maquiladoras and Informality

Neoliberalism & NAFTA

Import substitution industrialization in Mexico served as the development model for more than forty years (1940-1981), whereby business firms were state-dependent and import-competing. ISI policies were maintained through a protectionist coalition between business and state interests, which overpowered any attempt to open the Mexican economy to foreign markets (Thacker 1999). Before Miguel de la Madrid (1982-1988) took office and began to restructure the state towards a neoliberal action plan of capitalist accumulation, President Jose Lopez Portillo (1976-1982) nationalized the private banking sector and President Luis Echeverria (1970-1976) instituted an economic strategy of shared development that allocated public spending toward national industry and working-class sectors (Morton 2003; Thacker 1999). Mexico led economic development and reduced dependency on foreign imports by nationalizing vital industries, increasing taxation, and implementing protectionist trade policies.

Deemed the era of the “Mexican Miracle,” the period of ISI development experienced annual economic growth at an average rate of 6 percent or higher—specifically 6.1 percent from 1950-1960, 6.5 percent from 1960-1970, and 6.7 percent from 1970-1980 (Santaella 1998: 3). During this time, rapid population growth and urbanization of major cities also served to change the structure of the Mexican economy, which became more industrialized and service oriented. The industrial and service sectors, respectively, increased their dividend in GDP from 29.2 percent and 34.6 percent in 1960 to 55.3 percent and 57.2 percent in 1980, while the agricultural sector decreased from 15.5 percent in 1960 to 9 percent in 1980 (Santaella 1998: 8). However, the industries created were neither exposed to foreign markets nor internationally competitive, and were largely inefficient. The share of international trade (exports plus imports) was an inadequate 22 percent from 1960-1970 (Santaella 1998: 32). Furthermore, the major source of funding for national industries during the 40 years of ISI growth came from foreign borrowing, and not through domestic sources of revenue such as taxes.

Although sustained economic growth was constant until 1981, by 1976 the Mexican economy began to experience financial stress. The peso devaluated almost 100 percent, which doubled the real foreign debt and the real costs of imported capital goods (Morton 2003). As a result, Mexican products lost their competitive nature, and national industries weakened. The diminished economic potency of Mexican production laid the foundation for a structural transition from ISI to export-led development in the mid-1970s, and culminated in a complete socioeconomic, political, and ideological shift after the financial crisis in 1982. The root causes of the crisis were domestic: expansionary monetary and social policy, a reliance on oil exports as the main source of government revenue, an uncompetitive manufacturing industry, and

a capital-based growth model that could not generate adequate employment opportunities (Morton 2003).

As a reaction to the financial turmoil of Mexican markets, the government began the transition towards neoliberal capitalism in 1985 in conformity with the neoliberal structural changes that were emerging in the global political economy of the time. Most states, including Chile, experienced neoliberal reform in conjunction with political revolution. However, Mexico transformed its structures of production within the established social and political fabric, thus considered a “passive revolution” (Morton 2003: 632). The transition toward a neoliberal model for development signaled a decrease in public spending, privatization of state-owned enterprises, control of the fiscal deficit, low interest rates to encourage foreign capital, and a reduction of sectors oriented around domestic production and consumption.

Under de la Madrid’s direction, the first institutional change that set the stage for an absolute neoliberal economic agenda was the creation of a free trade coalition to manage the modernization of the economy. Despite economic solidarity pacts that began in 1987 as a collaboration between the government, private sector, and labor representatives to promote privatization, free trade, and labor deregulation, Mexico’s business sector excluded medium and small-sized firms (Thacker 1999: 61). Trade policymaking between the government and firms favored business elites who were already internationally positioned and who would most benefit from trade reform (Thacker 1999). The following measure taken toward neoliberal reform was the privatization of the *ejidos*—indigenous community property rights of certain land sanctioned under the Mexican constitution (Harvey 2007). Mandated under President Carlos Salinas de Gortari (1988–1994), this legislation had a similar effect as in the case of Chilean *campesinos*, in that many agricultural workers were forced to migrate to cities in search of employment.

The neoliberal development model became wholly institutionalized when Mexico became a signatory of the North American Free Trade Agreement (NAFTA) in 1993. Neoliberalism has thus become equated with the term, *Salinismo*. The plan behind NAFTA was to remove investment barriers and initiate a free trade agreement between Mexico, the United States, and Canada, thus eliminating tariffs on exports. With regards to Mexico, the glamorized purpose of NAFTA was to overcome economic instability by becoming a significant export market, encouraging foreign investment, and boosting investor confidence—both domestic and foreign—in Mexico’s newfound purported credit stability (Thacker 1999). The Texas Centers for Border Economic and Enterprise Development, in a preliminary document on the benefits of NAFTA for industrial activity stated:

NAFTA will promote industrial cooperation, business alliances, joint investments and production-sharing across national boundaries as the vehicle for promoting North American competitiveness in an increasingly competitive global economy. NAFTA will formalize the process of economic integration that has silently been taking place between Mexico and the U.S. for sometime under the *Maquiladora* Program and other industrial activities. (Patrick 1994: 1)

In the short-term, Mexico experienced modest levels of economic growth and low levels of inflation. Between 1991 and 1994, GDP increased by 3.57 percent and reached 4.7 percent in 1994, with an inflation rate of only 7.05 percent (Thacker 1999: 73). Furthermore, between 1991 and 1993, foreign investment totaled 54 billion dollars (Thacker 1999: 76). ECLAC, the Economic Commission for Latin America, pointed to NAFTA as a successful instance of economic integration through its export-driven manufacturing of goods, as 90 percent of exports were manufactured products (Wise 2006). Nonetheless, Mexico’s productivity and growth output neither achieved sustained economic expansion nor created new

employment opportunities for Mexico's growing workforce. The peso crisis of 1994 caused the economy to contract to a level of -5.8 percent in 1995 and inflation to increase by an estimated 50 percent (Thacker 1999: 78).

President Ernesto Zedillo (1994-2000), who took office in 1994, further increased austerity measures, decreased public spending, and raised domestic interest rates (Thacker 1999). Since then, GDP has hovered around the 5 percent benchmark (See Figure 4.3). Arguably, neoliberal expansionary policies are strongly correlated with the growth slowdown of the Mexican economy in the long-term. Yet, the broader repercussions of NAFTA on the Mexican political economy must be examined beyond GDP, foreign investment, and export levels. The depth and scope of Mexico's post-1994 crisis, the informalization of jobs, and the resulting detrimental social conditions on the poor, especially women, has been called into question regarding the political viability of institutionalizing neoliberal economic reform in Mexico since 1982.

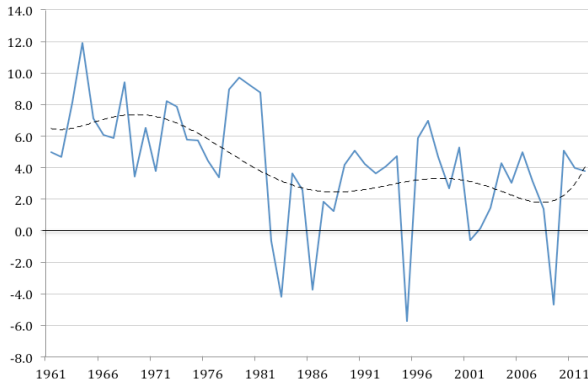


Figure 4.3 Mexico's Real GDP Growth: 1961-2012 (dashed line: polynomial trend). Source: World Bank Data

The Case of Maquiladoras

With the ratification of NAFTA came several structural changes in the Mexican economy. Resources were reallocated from sectors such as commerce and construction, that focused on the domestic market, to industries such as oil, manufacturing, and automobiles, which would allow Mexico to integrate into global markets (Santaella 1998). Mexican manufacturing, especially via maquiladoras, was deemed crucial to fostering economic growth in Mexico and opening new markets to foreign investment—particularly U.S. business interests. Maquiladoras are typically American-owned but Mexico-based factories that import machinery, equipment, raw materials, component parts and tools duty free into Mexico, and then assemble and export the finished products under favorable terms of trade. As sites of offshore production, maquiladoras function as assembly lines for foreign business that owns branch plants in Mexico (Patrick 1994). This export-led industrialization model is powered by foreign investment, technology, and transnational capital.

The maquiladora program began in 1965 when Mexico instituted the Border Industrialization Program (BIP) as a method of tackling rising unemployment along the northern border. However, between 1979 and 1985, the number of maquiladoras increased by 40 percent and the size of the maquila labor force doubled

(Morton 2003: 639). The maquiladora sector eventually became Mexico's primary development strategy and still plays the same role today (Huesca 2006). Between 1982 and 2004, exports from maquiladoras multiplied 26 times, and totaled half of all manufactured exports at 87,548 million dollars (Wise 2006: 34). Currently, almost three-fourths of industrial production corresponds to the manufacturing industry, particularly the maquiladora export-driven industry (Leon 2004). The NAFTA model of economic integration has intensified commercial ties between Mexico and the United States, driven by foreign financial capital and offshore production.

Despite a shift toward globalized methods of production, maquiladoras serve as prototypes for and laboratories of neoliberal capitalism and globalization, because the shared model of production does not bring equally apportioned profits to the United States and Mexico (Huesca 2006: 132). Net profits move out of the country while the Mexican labor market has been restructured to accommodate foreign businesses that exploit a cheap workforce to reduce production costs (Wise 2006). Manufacturing jobs are highly unstable because the subcontracted work of maquiladoras is directly linked to the global production system—it expands during periods of economic growth and contracts during an economic downturn. Opposing the traditional Mexican industry of the ISI era, maquiladora industry pays lower wages, employs non-skilled and low capital labor, does not allow union participation, and hires a proportionally higher percentage of women than men (Kopinak 1995).

Described as a “laboratory for deregulation,” the maquiladora industry lacks permanent tax regulations and does not enforce labor laws, which has allowed firms to create informal employment job standards (Kopinak 1995: 33). The practice of *concertación* establishes labor norms through protection contracts that represent workers without their knowledge or consent, under circumstances that are beneficial to the business (Huesca 2006: 135). As a way to avoid formal obligations to laborers, international corporations can reduce labor costs as much as possible, maximize profits, and sell competitive products in international markets (Heintz 2012). Much as in the restructuring of the agricultural sector in Chile, economic growth and industrialization as a result of maquiladoras accompany an exponential rise in informal wage-employment within the formal sector.

When the labor market and Mexican industry was restructured and modernized, women, specifically poor, working-class women, were funneled into the most unfavorable types of employment. Advertisements for maquiladora job opportunities since the 1980s often use the tagline “Personal Feminino” in front of factories (Kopinak 1995: 41). Given gender stereotypes, it was assumed that a female temperament would better suit unskilled factory work (Kopinak 32). In this case, statistical discrimination works in favor of female workers, therefore an unskilled production workforce is associated with female personnel. In the early 1990s, 80 percent or more of the maquiladora labor force was composed of young women (Kopinak 1995: 31). Thus, the maquiladora systems of production have essentially become feminized. A 1990 case study conducted in Nogales, the 6th largest maquiladora center located on Mexico's northern border, highlights the fact that institutional models of discrimination subordinate women in the maquiladoras:

While four-fifths of all workers held jobs ranked as low-skilled, men were more likely to have medium- and high-skilled jobs (25 percent) than women (10 percent). This was because men gained more skill with seniority whereas women did not. At the lowest level of seniority (0-9 months), about the same proportion of men (10 percent) as women (12 percent) had medium- and high-skilled jobs, whereas at the highest level of seniority (33 or more months) men were more likely (41 percent) to have medium- or high-skilled jobs

than women (18 percent). (Kopinak 1995: 42)

The dual labor market differentiates between female, unskilled work (manual labor including textiles, machinery, sports equipment) and male, medium to high-skilled work (supervisors or managers; mechanics, technicians, or engineers). The internal labor market structure of maquiladoras does not provide women with training comparable to men's, impeding them from moving up the ranks. In the Nogales maquiladoras, women received an average of 8 days of training, versus 22 days of training for men (Kopinak 1995).

All these factors combined, one can safely assume that female employment in the maquiladora industry has not corresponded to greater social, economic or political agency in Mexico. Female segmentation into informal employment as industrial outworkers in maquiladoras has only served to further subordinate women within a system that stratifies the gender inequity of the workforce. Women's inferior position in the household is also reinforced at their jobs, as women are relegated to perform unskilled labor that is the most poorly paid. Comprehensively, the female-dominated maquiladora labor force is linked to policy, household dynamics, and the structure of the labor market. Since a relatively high proportion of women are industrial outworkers while men represent a higher proportion of informal employers, we must examine the rise of informality in Mexico as a whole.

The Rise of Informality

Before the structural shift towards neoliberal capitalism was initiated, one of the formidable functions of the state was to act as an employer; as a last resort, in several nationalized industries if unemployment rates were high. However, after 1982, the public sector greatly diminished and the labor market became fully exposed to laissez-faire, supply and demand economics. The financial crisis of 1982 and 1994-1995 largely contributed to the growth of the informal economy and resulting informal employment in Mexico, as well as the substantial decrease in formal employment and rise in unemployment (Leon 2004). Between 1987 and 1994, while levels of output and productivity remained strong, formal unemployment continued to rise. In 1995, unemployment rose from 819,132 persons in 1993 to 1,773,439 persons in 1995 (Leon 2004: 31). Three significant factors may be held responsible: 1) lower levels of GDP growth as compared to the era of ISI, 2) the rise in productivity in the formal sector, in particular the manufacturing industry due in large part to the technological progress from trade reform and the internationalization of Mexican markets, and 3) the rise in the unemployed labor force searching for paid work (Leon 2004).

Limited growth since the mid-1990s has been unevenly distributed, at the expense of rising inequality and rising poverty for the most vulnerable groups of society. The GINI coefficient, which measures income inequality where perfect equality equals 0 and perfect inequality equals 1, reveals the upward trend of inequity in Mexico. The coefficient increased from 0.46 to 0.51 from 1984 to 1994 (GINI Index, World Bank). In 2012, the poverty headcount ratio at the national poverty line of 1.25 dollars per day or less was 52.3 percent of the population (World Bank Data). Meanwhile, the proportion of total income by the top 10 percent of the population increased from 34.26 percent to 41.24 percent in 1994 (Thacker 1999: 76). As social inequality has augmented substantially, the increasing labor force that cannot find jobs in the formal sector resorts to working in informal employment conditions.

Thus, the structural disequilibrium of the job market demonstrated a lack of new formal job creation and opportunities. The structural capacity of the economy has therefore been unable to generate jobs in the formal sector; and continues to experience high levels of unemployment. In 2004, the official

unemployment rate was 3.7 percent. However, if accounting for people who worked 15 hours or less, the figure rose to 7.7 percent. Furthermore, if it became inclusive of those working less than 35 hours per week, the figure rose even more drastically to 22.5 percent. In 2011, the percentage of men and women employed in the formal sector was a meager 62.6 percent for men and 37.4 percent for women (Leon 2004: 31).

As described, with the rise of the manufacturing industry and maquiladoras, capital was substituted for unskilled, cheap labor that contributed to the creation of informal jobs. In the case of growing self-employment in microenterprises, the insertion of Mexican businesses in international markets placed medium and small firms at a disadvantage. Because they do not possess the resource capacity to enjoy the benefits of globalization, such microenterprises have resorted to forming producer cooperatives or serving as subcontractors that operate in the informal sector as a result (Leon 2004).

Furthermore, production in the informal sector is closely related to the economic cycle. In 1995, production in the informal sector decreased to almost three times that of the official GDP rate of 5.8 percent, as illustrated in Figures 4.4 and 4.5. Likewise, when the economy recuperated between 1997 and 2002, the informal sector grew by 20 percent (Leon 2004: 34). Like the formal economy, the informal economy was greatly affected by the crisis—although more so—but when recuperated, opportunities for work in the informal sector also rose drastically.

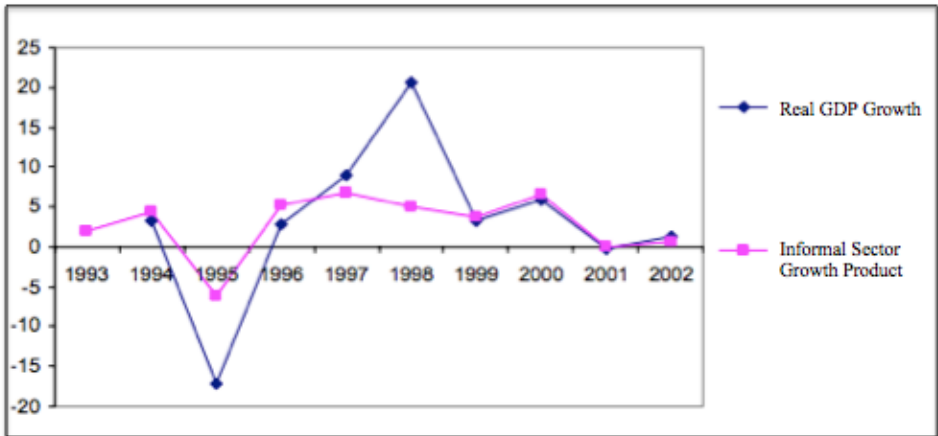


Figure 4.4 Mexico's Real GDP Growth vs. Informal Sector Growth Product: 1994-2002

Source: INEGI (Instituto Nacional de Estadística y Geografía)

Contemporary Effects on Women in Informality

Workers in informal employment are as a whole distinguished by low human capital levels, low education completion rates, and without any access to credit or social security—essentially workers who view informality as a last resort. On average, workers in informal employment have received 6.8 years of schooling. However, the gap increases when comparing men to women: 7.0 versus 6.6 years, as of 2003 (Leon 2004: 31). Furthermore, informal employment is associated with high poverty levels. The average median income per day in the informal sector, as a percentage of the minimum wage in Mexico between 1995 and 2003 (an estimated 42 pesos a day) was 3.0 percent for men and 1.6 percent for women (Leon 2004).

In 2009, the total percentage of persons in informal employment in Mexico was 53.7 percent. Specifically, persons employed in the informal sector represented 34.1 percent of informal labor, and persons in informal employment in the formal sector represented 20.2 percent of informal labor (ILO, de Medina 2012). However, estimates vary. The OECD Employment Outlook of 2013 determined that more than 60 percent of employment in Mexico is informal. Women and men are also highly occupationally segmented within different sectors of informality. As Figure 4.5 highlights, women constitute 73.7 percent of the workforce in trade, 53.7 percent in manufacturing, and 46.6 percent in services. Men only represent the majority of informal workers in construction, at 79.6 percent, and transportation, at 62.0 percent. More specifically, Table 4.1 shows that women perform a much higher portion of work for family members and domestic work employed by households.



Figure 4.5 Women and Men in the Informal Economy in Mexico, 2009; Statistical Picture

Source: ILO: Country-specific tables and charts (http://laborsta.ilo.org/informal_economy_E.html)

elections and the exchange rate has been made in the past. The effects of exchange rates on different interest groups and their subsequent effect on elections have been treated intensely by Frieden [1991], Frieden et al. [2009] and Broz and Frieden [2001]. Other studies show that currency depreciation can be politically costly since it signals that a government has a low commitment to the exchange rate and is weak on the economy. Not surprisingly, Bernhard [2002] finds that currency devaluations have a negative effect

Status in employment	Total	Women	Men
Employers, own-account workers and MPCs*	35.5	36.6	34.7
<i>Owners of informal sector enterprises</i>	35.5	36.6	34.7
Contributing family workers	8.8	13.6	5.0
Employees	55.6	49.8	60.3
<i>Formal sector employees</i>	25.5	22.3	28.1
<i>Informal sector employees</i>	21.2	9.3	30.9
<i>Domestic workers employed by households</i>	8.9	18.2	1.3
Total	100.0	100.0	100.0

*members of producer cooperatives

Table 4.1 Informal Employment by Status in Mexico: Men vs. Women, 2009: Statistical Picture

Source: ILO: Country-specific tables and charts (http://laborsta.ilo.org/informal_economy_E.html)

Moreover, women on average spend 468 minutes a day performing unpaid work, unlike men who only spend 113 minutes per day (See Figure 4.6). By examining the workday, a comparative analysis between the income of men and women highlights the inequities that exist in the formal sector, in informal employment, and in the household. The proportion of women who work less than 15 hours a week is three times that of men, and these women earn 40 percent of the income that men receive for the same amount of hours worked. Additionally, 29.6 percent of women worked for free, versus 7.5 percent of men in 2003.

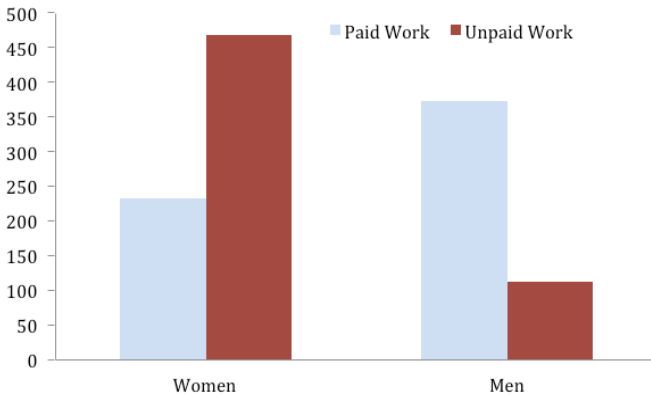


Figure 4.6 Paid vs. Unpaid Work in Mexico: Average Minutes per Day

Source: OECD, Gender Data Portal, 2014

The wage gap between men and women indicates that the structural adjustment programs undertaken in Mexico have exacerbated the dual time burden phenomenon for women. Women have heavier

responsibilities at home when public spending cutbacks affect social services and health care benefits. Household income drops as well, causing a rise in unemployment and informality. The rise in the female labor force should have signaled greater economic autonomy and social mobility, yet research done on intra-household dynamics suggests otherwise. Kathryn Kopinak (1995) found that women workers—such as maquiladora laborers—neither gained greater control over household finance nor reduced their burden of household work. Florence Babb (1996), however, observed that women did experience greater respect from their husbands. Because social structures are interrelated, family relations, gender relations in the labor market, and state policies affect and determine the place of women in society.

Conclusion

The interplay between technology, social and political institutions, and certain gender-specific factors such as education level and work experience all determine gender differences in the formal and informal labor markets. These disparities are amplified in the allocation of time use, differences in human and physical (capital) gains, market failures and institutional constraints. Labor market discrimination limits women's opportunities, affects their economic status, and directly lowers their productivity and remuneration for work. On a global scale, women face socialized barriers that prevent them from completing and/or pursuing higher education, and thus from entering certain high-skilled occupations while earning the same wages as men.

Higher skills and education levels—which are related to higher income and stable employment—are out of reach for the majority of women living in poverty. Their access to equal job opportunities is impeded by political, economic, and social constraints. Furthermore, the socialization of gender roles influences discriminatory attitudes and inhibits women from pursuing and working on the same playing field as men. Women in developing and developed economies alike experience high levels of discrimination and increased barriers to succeed. Unequal access to resources and training further constrains women, leaving them behind.

Insubordinate gender roles in the household parallel unequal gender relations in the labor force, whether formal or informal, and vice versa. In effect, the earning and occupational differences between men and women are propagated by the social and economic roles to which women are told to conform. These differences serve to reinforce cultural perceptions of female inferiority in terms of competence, taste, economic responsibility, and function in the household. In doing so, these conventional gender roles hinder a woman's ability to advance her human rights and to access resources and opportunities that would aid the movement towards equal representation in the formal labor force. Ultimately, this renders a vicious cycle where women represent a disproportionate amount of people living in poverty, lacking the proper tools to overcome this economic situation.

Yet, structural constraints that limit a woman's agency to pursue formal and regulated work represent a formidable barrier to comprehensive growth. A country's level of development poses a strong correlation with diminished gender gaps between women and men. Furthermore, a country's level of economic competitiveness is directly related to the caliber of its workforce, in terms of skills and education. For this reason, an economy with a large informal sector and high index of informal jobs operates below its output potential, negatively impacts its economic growth rates, and causes sluggish long-term growth. The

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On the most fundamental level, the high levels of women in informality poses a gender problem, manifested by economic conditions and the structure of government. To change the subordinated position of women in society, gender discrimination must first be understood in the context of the changes the economy undergoes and the role that women play in this process. The legal and institutional frameworks that prevent equal economic participation must be restructured using a gendered lens. By mainstreaming a gendered approach to development, women's engagement and participation in society, as well as the state itself, will improve. Although several countries take actions or implement specific strategies for the economic inclusion of women in formal networks, few have developed a comprehensive and integrated approach to halt the expansion of informality. Policy responses continue to be uncoordinated, gender blind, and limited to certain categories of workers.

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Producing Soldiers for the Next War: Ethnically Divided Education in Post- Dayton Bosnia and Herzegovina

Thomas Schoenfelder

This paper explores how ethno-national sentiment in Bosnia and Herzegovina has been shaped by ethnically divided government institutions created by the Dayton Peace Accords. Institution building is now recognized as a necessary part of any post-conflict period, and a study of the successes and challenges in the Balkans offers useful advice for international policy makers. This paper examines the influence of institutions on ethno-national sentiment. By using similar phenomena in other Balkan states and generational differences in Bosnia as comparison points, the paper ultimately concludes that the Bosnian education system does not give students the necessary skills to function in a multi-ethnic society. Instead, it is used as an ideological tool in the country's ethno-politics. It creates a youth population that exhibits uniquely strong negative attitudes towards members of other ethno-national groups and has

Introduction

During the 68th Session of the United Nations General Assembly, the Minister of Foreign Affairs for Bosnia, Zlatko Lagumdžija, delivered a speech at New York University.¹ In his address, he focused on the “way forward” for Bosnia. He reflected that “the current education system is a time bomb.” It is designed for a “segregated society” and is “producing the soldiers for the new wars,” referring to the ethno-nationalist ideals that the system instills in students. Despite this internal recognition and increasing pressure from international organizations, the issue goes unaddressed.

Nearly 20 years after the Dayton Peace Accords were signed, Bosnia and Herzegovina² (BiH) continues to be run by nationalist parties that prefer maintaining the status quo to enacting democratic reforms. In 2009, the European Court of Human Rights mandated that BiH change the way it conducts national elections to include minority candidates.³ Despite numerous warnings from the UN Security Council⁴ and the European Union (EU), which cut Bosnia's Instrument for Pre-Accession (IPA) funding by 54 percent in October of 2013,⁵ BiH has failed to implement the ruling. Meanwhile, other states in the Western Balkans, guided by the aspirations and pressure to join the EU, have reformed their governments and economies to

1 Dr. Zlato Lagumdžija. Seminar: “Post-Dayton Bosnia and Herzegovina and the Way Forward,” New York University Center for European and Mediterranean Studies: 9/25/2013.

2 For brevity, Bosnia and Herzegovina, the internationally recognized sovereign state, will throughout this paper often be referred to simply as Bosnia or by its Serbo-Croatian-Bosnian-Montenegrin acronym, BiH.

3 Case of Sejdić and Finci v. Bosnia and Herzegovina; applications nos. 27996/06 & 34836/06

4 UNSC press releases SC/11009 (5/14/2013) and SC/11173 (11/12/2013)

5 Croft, Adrian. “EU to Cut funding to Bosnia as constitutional row blocks EU path.” Reuters, 10/10/2013

align with EU requirements.⁶

A study Bosnia's institutions goes far beyond the borders of the small European state. The issues facing Bosnia's multi-ethnic society often mirror the cultural clashes and civil wars that organizations like the UN are called to prevent.⁷ An analysis of the successes and failures of the attempt to create a cohesive, multi-ethnic state in Bosnia can guide international policy makers in how to approach both current and future peacekeeping and state building operations. This paper will look beyond the goal of eliminating ethnic violence (also known as peacemaking), to the state-building mission that is integral to building a lasting peace, which is referred to as peacebuilding. Although the United States and others have learned peacebuilding and state-building are necessary after military action, the ideas behind the process still require much development.

Despite being ranked by Transparency International,⁸ the World Bank,⁹ and the Economist Intelligence Unit¹⁰ as one of the most corrupt states in Europe,¹¹ Bosnia is rarely covered by international news outlets. There is no fiscal meltdown, no riots in the streets, and no earth-shattering political scandals. As far as many are concerned, the Dayton Accords ended the ethnic conflict of the 1990s and Bosnia has returned to normal. Furthermore, problems in Europe are often overlooked in favor of high-profile issues in the Middle East, South America, and Africa. Although Europe is regarded today as the birthplace of Western civilization, the champion of human rights, and the continent that is challenging centuries-old conventions by strengthening the European Union, it is no stranger to nationalism and discrimination. Today however, Europe is hardly thought of as a place where ethno-nationalism exists.

It does exist, at least, in Bosnia and Herzegovina, where ethnically divided government institutions created by the Dayton Peace Accords have paralyzed the country. The institutionalization of ethno-national tensions¹² has prevented the state from taking significant steps forward. It devolves significant power to three constituent groups defined by the Dayton Accords: Bosniaks,¹³ Bosnian-Croats, and

6 Slovenia joined the EU in 2004, Croatia joined in 2013, Serbia and Kosovo entered into an agreement in April 2013 that has moved Serbia into open accession negotiations and Kosovo into formal Stability and Association Agreement Association negotiations.

7 Today there are risks or instances of ethnic violence erupting into civil war in various areas of the globe. Terrorist attacks in Nigeria against the Christian and Animist South seek to provoke a reaction against the predominantly Muslim North. Kurds both in Iraq and across the Middle East call for the creation of their own state, separate from those of their Arab neighbors. Sudan, despite being divided in two by the United Nations, continues to be plagued by ethnic violence with no end in sight.

8 Transparency International, "Corruptions Perception Index 2013," 12/3/2013. Bosnia was given a score of 42/100 (lower = more corruption). It ranked 72/177 (1st place = least corrupt).

9 World Bank Group, "World Governance Indicators, 2013 Update." More positive scores correlate with better-governed states. All of Bosnia's scores were negative.

10 Economist Intelligence Unit, "Risk of Social Unrest in 2014," 11/18/2013. Bosnia was ranked as "Very High Risk." The only other European country in this category was Greece. Both of these countries experienced large protests in 2013.

11 For an overview of which states scored below Bosnia, see Appendix A. Many of the countries that scored lower than BiH faced large-scale protests throughout 2012 and 2013. These comparisons excluded Russia and countries in the Caucasus for purposes of defining "Europe."

12 I borrow the term "ethno-nationalism" from Karin Dyrstad who defines the term in "After Ethnic Civil War: Ethno-Nationalism in the Western Balkans" as allegiance to an ethnic group, as opposed to allegiance to a state. For more, see my literature review.

13 The term "Bosniak" is used as the ethnic identifier for Bosnian Muslims.

Bosnian-Serbs. The three ethnic groups take advantage of divided institutions to preserve their culture, but the ethnic focus of their policies, especially in education, only breeds more ethno-nationalism. These ethnic parties have taken Bosnia hostage by allowing ethno-nationalist politics to supersede substantive government work. Furthermore, there is considerable evidence that these ethnically divided institutions, specifically education, may actually be increasing ethno-nationalist sentiment amongst Bosnian youth.

This paper seeks to analyze how these decentralized, ethnically divided, and ill-functioning institutions shape nationalism in post-Dayton Bosnia. The ethnically divided institutions of BiH have likely had an effect in shaping the views of the Bosnian people, establishing ethnic division as the norm. In this paper I explore how these divided institutions, at the national, entity, and canton-level, shape ethno-nationalism and influence individuals. I will approach this question through the lens of the education system, which maintains separate schools and separate curricula for the three constituent groups. My research will look at the effects of the post-Dayton education system on youth, using national movements in neighboring states and differences in youth and adult attitudes as a source of comparison for my research.

Literature Review

Finding a precise definition for nationalism is a challenge in itself. Karin Dyrstad¹⁴ in her article “After Ethnic Civil War: Ethno-nationalism in the Western Balkans” begins by distinguishing two types of nationalist loyalties: loyalty to a nation-state or loyalty to a nation and/or group. She clarifies that in Bosnia the driving force is “ethno-nationalism,” which she defines as “a desire to keep the (ethnic) nation homogeneous and separated from other groups, where the loyalty to the group is stronger than loyalty to the state.”¹⁵ She goes on to argue that although nationalism has risen in the western Balkans as a whole between 1989 and 2003 (pre and post conflict dates), it is Bosnia that has seen the largest increase in ethno-nationalist sentiments. Despite thoroughly explaining nationalist theory in Bosnia, Dyrstad does not delve into the reasons behind such movements.

One explanation of this rise in ethno-nationalism is offered by Hannes Grandits¹⁶ who explains the historical context behind ethno-nationalism in the Balkans:

During times of war, revolt, and organized violence, loyalties generally ‘narrowed’ down, i.e. people tended to be compelled by the warring parties to clearly ‘take sides.’ This was usually accompanied by a thorough reevaluation of confessional antagonisms.¹⁷

These religious loyalties have grown to essentially mirror the same divisions now occupied by the ethno-nationalist realm. In response to the wars of the 1990s and the perception of a continuing threat, Bosnians from all sides are compelled to rally around their ethno-national identities. Furthermore, the idea of politicians playing off this “rally around the flag effect” is not a new concept. As Grandits states, “frequently, these earlier conflicts were often strategically ‘used’ by political activists to advocate the ‘nationalization’ of what had often been multi-confessional regions.”¹⁸ The powerful socio-political role once occupied by

14 Dyrstad, Karin. "After Ethnic Civil War: Ethno-Nationalism in the Western Balkans." *Journal Of Peace Research* 49, no. 6 (November 2012): 817-831.

15 *Ibid.* p. 818

16 Grandits, Hannes, Nathalie Clayer, and Robert Pichler. *Conflicting Loyalties in the Balkans: The Great Powers, the Ottoman Empire, and Nation-Building*. London: I.B. Tauris, 2011.

17 *Ibid.* p. 7

18 *Ibid.* p. 8

the church has now been usurped by the state, making a frighteningly close comparison to the efforts by today's Bosnian politicians to divide and devolve institutions along ethno-national lines.

Safia Swimelar¹⁹ in her article "Education in Post-war Bosnia: The Nexus of Societal Security, Identity and Nationalism" attempts to explain the changing levels of nationalism by illustrating how the fracturing of Bosnia's education curricula by the three constituent ethnicities in BiH—Serbs, Croats, and Bosniak Muslims—has created a security threat. Swimelar recognizes that ethnically divided education helps to "reinforce societal cohesion and distinctiveness, and to ensure that society reproduces itself correctly."²⁰ However, she goes further and identifies the risks associated with such a practice. She draws attention to the fact that all three groups have a fear of "assimilation and the loss of national identity"²¹ that could possibly occur under a uniform curriculum. As a result of these fears, children educated in this biased system have "limited opportunities to interact with and learn about their co-citizens, which presents potential problems for each group's sense of security and wider security of the Bosnian state."²²

In order to understand if this separation of children of different ethno-national groups has an effect at the individual level, Gordana Bozic²³ developed the contact hypothesis. She asserts "bringing children and youth into intimate and frequent contact may reduce intolerance and lead to better intergroup understanding."²⁴ Janine Clark²⁵ in her study "Bosnia's Success Story? Brčko District and the 'View from Below'" also looks to the contact hypothesis to explain the lack of trust shown by her interviewees in Brčko despite interethnic schooling. She argues that more must be done beyond schooling and that opportunities for extracurricular interethnic contact must be explored to foster a multiethnic Bosnian society.²⁶

The contact hypothesis serves an important role in highlighting one of the largest faults of the educational situation in BiH: the lack of interethnic contact. Students are presented with negative evaluations of other ethnic groups from their ethnicity-specific curriculum and have no way of challenging these assumptions. In her writing, Swimelar highlights the possible positive effects of more contact on interethnic trust when an interviewee states:

When I started having contact with Croats through the Youth Centre, I realized that they also suffered during the war and that there are Croat children who, like me, lost their mothers. So my views of them have changed. I now have trust in Croats because I have contact with them.²⁷

Swimelar argues that the mono-ethnic curricula and textbooks are "erasing 'others' from a child's imagination."²⁸ Literature units often exclude authors of a different ethnicity, making no references to neighboring cultures. This trend is not limited to one or two ethnic groups. In an analysis of Bosniak

19 Swimelar, Safia. "Education in Post-war Bosnia: The Nexus of Societal Security, Identity and Nationalism." *Ethnopolitics* 12, no. 2 (June 2013): 161-182.

20 *Ibid.* p. 166

21 *Ibid.* p. 174

22 *Ibid.* p. 175

23 Bozic, Gordana. "Reeducating the Hearts of Bosnian Students: An Essay on Some Aspects of Education in Bosnia and Herzegovina." *East European Politics & Societies* 20, no. 2 (Spring 2006): 319-342.

24 *Ibid.* p.325

25 Clark, Janine Natalya. "Bosnia's Success Story? Brčko District and the 'View from Below.'" *International Peacekeeping* 17, no. 1 (February 2010): 67-79.

26 *Ibid.* p.73-74

27 Swimelar, 2012. p.172

28 *Ibid.* p.171

textbooks, Lidija Kolouh-Westin finds that “patriotic feelings, nationalism, loyalty and high moral standards are values that are clearly and affectively stressed.”²⁹ These separate analyses by Swimelar and Kolouh-Westin show the divisiveness of the mono-ethnic curricula presented to Bosnian students. Without the interethnic contact provided by integrated schooling, students have no possibilities to question the assertions presented by their mono-ethnic curricula.

In “Possibilities for Social Cohesion in Education: Bosnia-Herzegovina,”³⁰ Kelly Hill further explores the role of education in the post-conflict state. She argues that schools are often complicit in deepening conflicts by providing a means for dominant groups to reproduce their values and attitudes in a formal setting.³¹ This institutional reinforcement of the dominant group’s ideology indoctrinates students entering the system and embeds a division between those within the dominant group and those without. This problem is compounded in post-war Bosnia, where the Dayton Accords solidified wartime land holdings. This created a country where most areas are ethnically homogenous, strengthening Hill’s dominant groups’ abilities to perpetuate their ideologies.

Hill counters that schools should work to provide a sense of normalcy for all students and even go further by fostering healing and reconciliation between affected groups.³² Specifically, education should facilitate a dialogue between those with different perspectives and backgrounds. She emphasizes that although such education initiatives need to be implemented with a goal of “global social cohesion,” they must be implemented by local authorities to ensure efficacy.³³ Hill’s argument supports the ideas of the contact hypothesis by advocating for increased interaction between students of different ethno-national groups. She also approaches the issue from an educational point of view by arguing for an education system that would give students the ability to critically view both their own and others’ culture.

Vedrana Spajic-Vrkas³⁴ further develops the importance of education as a tool for national transition in “Visions, Provision, and Reality: Political changes and Education for Democratic Citizenship in Croatia.” She argues that proper post-conflict education prepares young people for active and responsible citizenship. Additionally, she classifies education as a tool for facilitating social change by providing a space for dialogue and partnership for all parties.³⁵ Despite these hopeful directions for education, Paula Pickering argues that the Bosnian political party system discourages such inter-ethnic cooperation.³⁶ Ethno-national parties stimulate their ethnic base because they have little chance of attracting voters from other political parties (also based along ethno-national lines). Ethno-national bases make it particularly difficult for parties to compromise with other ethno-national parties. Constituents may fear that their interests are being betrayed

29 Kolouh-Westin, Lidija. “Bosnia and Herzegovina and its Tripartite Education System.” *Democracy in Textbooks and Student Minds*. Eds. Holger Daun, Penny Enslin, Lidija Kolouh-Westin, Dijana Plut. Hauppauge, New York: Nova Science Publishers, 2002. 25-45. Print. p.501

30 Hill, Kelly. “Possibilities for Social Cohesion in Education: Bosnia-Herzegovina.” *Peabody Journal of Education*, 86:2 (April 2011): 155-170.

31 *Ibid.* p. 157

32 *Ibid.* p. 158

33 *Ibid.* p. 159

34 Spajic-Vrkas, Vedrana. “Visions, Provision, and Reality: Political changes and education for democratic citizenship in Croatia.” *Cambridge Journal of Education*, 33:1 (July 2010): 22-51. p. 49

35 *Ibid.* p. 50

36 Pickering, Paula M. “Explaining Support for Non-nationalists Parties in Post-conflict Societies in the Balkans.” *Europe-Asia Studies*, 61:4 (May 2009): 565-91. p. 567

in favor of the interests of other ethno-nationalist groups. Constituents' views are shaped by the ethno-national curricula that develop their societal norms. Through setting the policies that shape these norms, nationalist parties are able to keep themselves in power by indoctrinating their constituents to negatively view other ethno-national groups. These negative views create a false need for ethno-nationalist parties to "protect" the interests of their constituents from those of other groups.

Education has the possibility to serve as a common youth learning experience to unite Bosnians of all ethnic backgrounds.³⁷ Hill remarks that, thus far, such efforts have failed, citing the rollout of civics and peace education to only a small number of schools. However, Hill remarks that these programs have the intention and possibility to increase tolerance, respect, and engagement between ethno-national groups.³⁸ Hill closes with the argument that civic associations, such as parent-teacher associations, are vital to strengthening national civil society.³⁹

Kolouh-Westin lucidly summarizes Bosnia's move in the wrong direction: "in order to create preconditions for stability and peace, BiH needs a state that all citizens and ethnic groups will experience as theirs. Instead a resurrection of nationhood and of new identities based on ethnic labels is appearing in what can be called ethnic nationalism."⁴⁰

The above literature outlines a clear model for the role of education in post-Dayton Bosnia – a model for stability in any state that is moving beyond ethnic conflict. These critiques serve two purposes. The first is to outline the policies for Bosnia and Herzegovina to create an inclusive education system that would forge a post-national Bosnian identity. The second is to create a rubric against which we can measure the current Bosnian education system and its progress moving forward. Bozic's contact hypothesis illustrates the importance of inter-ethnic engagement.

The second goal of educational reforms must be to dilute the current feelings of ethno-nationalism and replace them with support for a united Bosnian identity. To gain support for national reforms, it is imperative that BiH begin to inculcate an electorate that has a strong connection to the state and its institutions. Grandits' "narrowed loyalties" must be counteracted by the Bosnian state to encourage the creation of a diverse Bosnian state.

Methodology

In this paper, I will attempt to isolate the ethno-national trends that result from the unique ethnically divided power-sharing structure of Bosnia and Herzegovina. To accomplish this, I will first outline the different instances of ethno-nationalism in post-Dayton Bosnia. As much as possible, I focus on ethno-nationalism among younger population groups to accurately observe the effects of the post-Dayton institutions. Through an examination of studies on government action, public opinion, and instances of government reform, or a lack thereof, I will attempt to gain a holistic picture of ethno-nationalist sentiment in BiH.

To ensure that these trends are unique to Bosnia, and thus a result of its unique decentralized government structure, the observed trends and actions will be compared with those in other former Yugoslav states such

³⁷ Hill, 2011. p. 163

³⁸ Ibid. p. 164

³⁹ Ibid. p. 165

⁴⁰ Kolouh-Westin, 2004. p. 37

as Serbia, Croatia, Macedonia, Montenegro, and Slovenia. These comparisons will provide a range of observations that will root out larger regional trends occurring in the post-war period.

Finally, and most importantly, I will analyze the differences in ethno-national sentiment across generations within Bosnia and Herzegovina. It is these cross-generational differences that will truly illustrate the effect of the post-war institutions, especially those of the education system. It is important to observe the differences between older generations who experienced the ethnically heterogeneous world of Yugoslavia that extolled pan-Slavism and abhorred ethno-nationalism, and the segregated Bosnia of today, where ethnicity is enshrined as the key factor of identity. The focus is placed on difference as opposed to unity, and there are few opportunities for inter-ethnic contact. This generational separation will also be necessary to analyze the impact of the current education system.

Historical and Political Background

Civil War

From 1992 to 1995, a bloody civil war broke out in Bosnia and Herzegovina as it sought to secede from Yugoslavia. This was precipitated by the dissolution of the Soviet Union in 1991 and the weakening of the Yugoslav government after the death of Marshal Tito in 1980. Yugoslavia was created after World War I and recreated after World War II as a security arrangement to protect its six federal states.⁴¹ As a non-aligned country during the Cold War, the protection offered by the Yugoslav Socialist Republic from both NATO and the Soviet Bloc was the driving force in keeping its member-states free and safe. After the USSR fell, the members of Yugoslavia, starting with the more prosperous Slovenia and then Croatia, began to secede from the Union in order to avoid the redistribution of their wealth under its communist system.

Yugoslavia aimed to unite its constituent states by creating strong central institutions. Its rhetoric focused on the idea of a Yugoslav nation and prohibited ethno-nationalism. Yugoslavia succeeded by banning the means by which ethno-nationalists could spread their message. As an alternative to such identity building, Yugoslavia built a pan-Slavic, Yugoslav identity that focused on the state and not its constituent ethnic groups.

Slovenia was able to secede with only minor bloodshed because it was almost ethnically homogenous and shared a relatively simple border with only one other state, Croatia. When Croatia tried to secede, it encountered backlash from its Serbian minorities. However, Bosnia fared the worst, containing large Serbian and Croatian minorities to the point that the Bosnian Muslims did not even represent a majority within the country. Under Yugoslavia, Bosnia had served as a representative of the ideas behind the state—a melting pot of Slavic cultures where different ethnic groups interacted peacefully with one another. Before the war, Bosnia was a state with great heterogeneity.

Due to its heterogeneity, the war in Bosnia was the bloodiest of the wars of Yugoslav secession. Over 100,000 civilians and military were killed, tens of thousands of women were raped, and over two million were displaced. The vast majority of civilian deaths were on the Bosniak side, due to the crimes against

⁴¹ The six socialist republics that comprised the federal states were Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Serbia, and Macedonia. Yugoslavia also included two autonomous provinces, Vojvodina and Kosovo, both of which fell within the territory of Serbia. For a map of these states, see Appendix B.

humanity⁴² that were perpetrated against them by Serb forces in camps such as Srebrenica, and the UN's arms embargo⁴³ on Yugoslavia that prevented Bosnia, from gaining the weapons necessary to mount a defense against the Serbs.⁴⁴ However, atrocities existed on all sides. The ethnic groups fought each other in every combination, with Serbs and Croats joining forces in some parts of the country to push out Bosniaks, Bosniaks and Serbs working together to relocate Croats, and Croats and Bosniaks fighting against the Serbs.⁴⁵ To account for all the heinous acts that occurred during the war, the UN Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) to prosecute those individuals responsible for serious violations of international humanitarian law.

The war ended in 1995 after NATO lent support to the UN peacekeeping operation in Bosnia. NATO attacked weakened Serb capabilities and forced them to the negotiating table. In December, representatives from the three constituent ethnic groups, the U.S., UK, France, Germany, and Russia signed the Dayton Peace Accords, officially ending the war. The most important facets of Dayton were the recognition of Bosniaks, Croats, and Serbs as the main constituent groups in BiH, and the division of BiH into two "Entities," the Federation of Bosnia and Herzegovina⁴⁶ and the Republika Srpska (RS).⁴⁷

Bosnia under Dayton

The constitution written under the Dayton Accords enshrined three ethnic groups – Croats, Bosniaks, and Serbs – as the building blocks of the new Bosnian state. This guaranteed a high level of rights to each group in order to secure their buy-in to Dayton. These rights have been greatly expanded to include the right to one's own language in areas such as education, despite the fact that experts have argued that Serbian, Croatian, and Bosnian differ less than American and British English.⁴⁸ The languages have been used to create a false sense of difference between the ethno-national groups, making it difficult to encourage integration.

The enshrinement of these ethno-national rights also led to the continued contemplation by Bosnian Croats and Bosnian Serbs of the eventual division of Bosnia into three parts.⁴⁹ Provisions granting a certain level of autonomy to each constituent group have incentivized the different sides to establish close ties with their respective "home states" rather than encouraging cooperation in Sarajevo. These connections persist despite clauses within the Dayton Agreement that oblige Croatia and Serbia to abjure conflict with Bosnia and to aid the international community with its democratization.

The territorial division of Bosnia and Herzegovina under Dayton awarded 49 percent of the land to Republika Srpska (RS), the Serb-controlled entity, and the remaining portion to the joint Bosniak-Croat-controlled entity, the Federation of Bosnia and Herzegovina. This division cemented the territorial gains

42 Crimes against humanity as determined by the International Criminal Tribunal for the former Yugoslavia.

43 S/RES/713 (9/25/1991)

44 Friedman, Francine. *Bosnia and Herzegovina: A Polity on the Brink*. London: Routledge, 2004. p. 42

45 After the Washington Agreement in March 1994, the Croatian and Bosniak forces signed a ceasefire and established the Republic of Bosnia and Herzegovina, which went on to be the basis for the Federation of Bosnia and Herzegovina.

46 In short hand, I will refer to this confusingly named Entity as the Federation.

47 To see the division of BiH into these entities, see Appendix C.

48 Swimelar, 2013. p. 167

49 Friedman, Francine. *Bosnia and Herzegovina: A Polity on the Brink*. London: Routledge, 2004. p. 87

of each side after three years of warfare. The RS snakes around the northern and eastern regions of BiH while the Federation occupies much of central Bosnia and the southwestern Bosnian border. The division devolved considerable power to the Entities, appeasing leaders on all sides who wanted independent states for their ethno-national groups or wanted to join their tracts of land to their “home states.” The constitution grants each Entity:

The right to establish special parallel relationships with neighboring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina...Each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly.⁵⁰

This essentially allows the Entities to conduct their own foreign policy, a power typically reserved for national governments of states, as long as it does not directly conflict with the foreign affairs of BiH as a whole.

Within the Federation the majority of power is further devolved to ten cantons, the equivalent of provinces. While Bosnian Croats and Bosniaks jointly govern the Federation, the idea of ethnically homogenous administration is still pervasive in BiH. The majority of cantons are ethnically homogenous. Within more ethnically mixed cantons, power can be further dissolved down to the municipal level to preserve clean ethnic pockets. In rare cases, such as in Mostar, the fifth largest city in the country, power within cities can even be divided into ethnically homogenous zones. These practices keep power organized around ethnically homogenous groups.

Weak national institutions established under Dayton organize power around ethnic groups. The Presidency of Bosnia and Herzegovina consists of three individuals.⁵¹ Each ethno-national group directly elects a representative to serve a four-year term as a member of the Presidency. Within the Presidency, each member serves two 8-month terms as the Chairman of the Presidency. Furthermore, within the Presidency, each member holds a veto over presidential actions that he or she may view as “destructive of a vital interest” of his or her constituent group. From there, the measure is referred to the parliaments of the respective entity (or a portion of the parliament when considering the Federation) for a two-thirds vote to confirm the use of the veto. This move is referred to as the “ethnic veto.”

The upper house of the Bosnian Parliament, the House of Peoples, also bases its membership on ethnic quotas. Its fifteen members are evenly divided with five representatives given to each constituent ethnicity. Its nine-member quorum even requires three members of each ethnicity to be represented. A version of the ethnic veto also exists in Parliament when a majority of the representatives of one of the constituent groups in either house view something as “destructive of a vital interest.” Avoiding the veto requires a majority of each ethnic group’s present delegates to vote in favor of the legislation.

This system of ethnic vetoes furthers the concept of three distinct groups that live alongside, instead of with, one another in BiH. The idea of looking out for one’s own ethnic group rather than the state as a whole inhibits the development of a nationally focused Bosnian identity. For Bosnia to move forward,

50 Constitution of Bosnia and Herzegovina, Article III, Section 2, parts a and d.

51 The descriptions of the government and electoral structure of BiH reflect the current situation despite the changes that have been mandated by the European Court of Human Rights.

it needs to replace ethno-nationalism with a strong national identity. The lack of progress has led some citizens of BiH to turn against the current democratic model, arguing that there is “less democracy’ today than under the communist regime.”⁵²

The fostering of ethno-national identity instead of a cohesive national identity occurs through the work of various state ministries. Steven Oluic⁵³ argues that an “all-encompassing and shared collective Bosnian civic identity is still absent in Bosnia.” The divisions created at the level of the national government are brought to the citizens through various government functions. The defense sector only became united in 2005, ten years after the Dayton Peace Accords were signed. Oluic states:

Although a united Ministry of Defense has been achieved, the individual soldiers will wear their regimental emblem on their sleeve, which maintains the tradition of their ethnic group therefore manifesting a Bosniak, Croat, or Serb, not Bosnian, identity.⁵⁴

Furthermore, the operational commands of the Bosnian armed forces are divided into ethnically homogenous battalions, making even the defense of the nation as a whole an issue of ethnicity. The Armed Forces of BiH are derived from the organized military forces that took part in the Bosnian Civil War. These forces first became a part of their Entity’s formal military and then a part of the national military.

One of the most unique institutions in Bosnia is the Office of the High Representative (OHR). This international, civilian-run office is tasked with monitoring the implementation of the Dayton Peace Agreement, coordinating the activities of civilian organizations and agencies in Bosnia, and interacting with donors.⁵⁵ To fulfill this mandate, the powers of the High Representative were expanded to give it the ability to expedite progress in BiH by unilaterally passing laws that gave the government the power to remove from office anyone in violation of the legal commitments to implementation outlined in Dayton.⁵⁶ The OHR is also tasked with the supervision of the Brčko District, the only area of Bosnia with a truly multi-ethnic administration. Janine Clark argues that success in Brčko and Bosnia, as a whole, is heavily dependent on the authority of the High Representative and other international actors.⁵⁷ She expresses concern that once these organizations leave Bosnia, the country may cease moving forward.

In the northeast of BiH, there is a canton that exists outside the administrative control of both the Federation and the RS. The area was originally the location of where a thin area of the RS passed between the territory of the Federation and the Bosnian border. Due to the contentiousness of the region, Dayton left it to be decided by tribunal at a later time. However, the tribunal also recognized the disputes regarding the area and instead created the Brčko District, which exists under the administration of the Office of the High Representative for Bosnia and Herzegovina, an institution created by Dayton. Since Brčko exists outside of the framework of the RS and the Federation, it also exists outside of their ethno-politics.

⁵² Bozic, 2006. p. 756

⁵³ Oluic, Steven. *Bosnia and Herzegovina: Identity, Nationalist Landscapes and The Future of The State*. Boulder: East European Monographs, 2007.

⁵⁴ *Ibid.* p. 169

⁵⁵ Dayton Peace Accords, Annex 10: Agreement on Civilian Implementation of the Peace Settlement, Article II.

⁵⁶ Peace Implementation Council, “Bonn Conclusions: Section XI,” 12/10/1997.

⁵⁷ Clark, 2010. p. 70

Brčko is the only part of the country with mixed-ethnicity institutions. It is also home to the only multiethnic police force in the country, which receives the highest popular approval of any institution in the country. Brčko also has multiethnic legislative, executive, and judicial branches of government. Officials there are chosen and elected based on popular vote (and hopefully merit) rather than to fulfill ethnic quotas. The success of multi-ethnic institutions in Brčko provides a proof-of-concept for eventual wider integration throughout all geographic areas and administrative levels of BiH.

Education in post-Dayton BiH

Another sector in which top-down ethno-nationalism occurs is education. As previously mentioned, the constituent groups have used the rights given to them under Dayton to enshrine their right to operate in their respective languages. Language in BiH has been heavily politicized to elevate ethno-national identity. This right has been expanded into the right to be educated in one's native tongue. Before the civil war, the language of all education in Yugoslavia was Serbo-Croatian. Bosnian was a considered dialect within Serbo-Croatian that was widely intelligible. Safia Swimelar argues that Bosnian, Croatian, and Serbian only differ 5 percent in terms of grammar and vocabulary.⁵⁸ This difference is less than that between American and British English. Lidija Kolouh-Westin builds on this argument, contesting that much of the difference is politicized and stems from each ethnic group's desire to curate a set of cultural symbols to differentiate themselves from other groups.⁵⁹ In combination with the high levels of devolution discussed earlier, these policies have led to the creation of separate ethnic curricula and, in many cases, completely separate schools.

The devolved power structure in Bosnia has led to the creation of 14 empowered education ministries in BiH.⁶⁰ There is the national Ministry of Civil Affairs, which has the authority to regulate education. Under that are the Ministries of Education for the Federation and the RS. In the RS, the de facto educational authority rests here. In the Federation, each canton has a separate education ministry where the educational authority lies.⁶¹ The cantons are tasked with establishing education policy, legislation, and content, along with providing secondary and higher education.⁶²

Alongside, but separate, from this entire system exists the Education Department for Brčko. Brčko is the only area in the federation where students of different ethnicities go to school together under the same general curriculum. This measure seems largely successful with a majority of each constituent group supporting the assertion that language of education is irrelevant.⁶³ Brčko once again serves as a proof-of-concept for policies that have been unable to be implemented at the national level in BiH. The success of

58 Swimelar, 2013. p. 167

59 Kolouh-Westin, 2004. p. 496

60 For a flowchart illustrating all 14 ministries, see Appendix D.

61 In total, there are six different curricula in use. The RS uses its own curriculum. The majority of the Federation also has a uniform curriculum. There are three cantons that have their own independent curricula, Tuzla, Zenica-Doboj, and Sarajevo. Additionally, the city of Mostar has its own unique curriculum. Fischer, p. 311

62 Kolouh-Westin, p. 34

63 Clark, 2010. 62 percent of Serbs, 68 percent of Croats, and 75 percent of Bosniaks responded to a 2004 poll and agreed with the statement, "It is entirely irrelevant in what language the classes in schools/universities are being held as long as these languages are very similar. For the same poll conducted in BiH, the highest respondent group had a 56 percent agreement rate.

multi-ethnic schooling in Brčko with wide-ranging support proves its feasibility for the rest of the state.

Outside of Brčko, the individual ethnic groups have created their own curriculum in order to reinforce their ethnic identities. The ethno-national groups have been given full rein to write the curriculum on what are known as “national subjects” – history, national language, geography, literature, arts, music, natural and social science, and sociology. This essentially gives each group the ability to write their own version of history and politics. Students of each group are fed tailor-made curricula (borderline propaganda) to help guide them towards supporting their own ethnicity. Furthermore, these curricula often portray the other constituent groups in a negative light.

More often than not, students receiving an ethnically biased education go to schools that are wholly or mostly segregated. Since many areas of Bosnia became ethnically homogenous after the war, most schools that exist today have to only cater to one ethnic group. In other parts of the country, where people have begun to return from the war, there has been a need to create facilities for the students of ethnicities other than the dominant one. The most common way this is handled in BiH is through what is called two schools-one roof. This system is much more literal and extreme than it sounds. In many cases, students of separate ethnicities will operate on separate bell schedules, use separate entrances, have separate recreational time, and, despite existing in the same structure, will have a completely different staff and administration. The only thing that the two schools will share is the utilities bill.

In some instances, students of multiple ethnicities attend the same schools. In this arrangement, students may eat lunch and participate in recreation together. However, for courses that cover the previously mentioned “national subjects,” students are once again separated based on their ethnic identities so that they can learn the curriculum designed for their ethno-national group. This arrangement provides some interethnic contact that allows students to interact with the other groups they learn about and possibly recognize that they are more than the aliens described in their textbooks.

Despite a state order in 2003 to end the two schools-one roof program and unify the schools within these buildings, there has been little compliance.⁶⁴ Only a small number of schools ended the program during the 2003-2004 school year. A larger number moved to the previously mentioned model where students are only segregated for national subjects. This model serves to eliminate much of the administrative duplicity created by two schools-one roof. In the few regions where integration has occurred, students and parents protested the actions and in some instances responded with violence.⁶⁵

In the article “Possibilities for Social Cohesion in Education: Bosnia-Herzegovina,” Kelly Hill⁶⁶ expresses her disappointment at the lack of progress towards revitalizing the Bosnian education system during the post-war period. She argues one of the main reasons for this is the “lack of accountability and coordination of efforts amongst national leadership.” She continues, “the lack of national [a] plan for education has resulted in political domination of education policy by...[those who] see ‘education as a means of sustaining ideology and similarities.’”⁶⁷ In order for BiH to progress, Hill calls for an effort to build inter-group trust, the end of curricula borrowed from neighboring states such as Serbia and Croatia, and the integration, not just unification, of currently divided schools. Hill argues that simply because schools

64 Bozic, 2006. p. 328

65 Ibid.

66 Hill, 2011. p. 160

67 Ibid.

exist under one roof, they are not integrated. Until there is substantive interaction between ethno-national groups and steps towards significant education reform, Hill sees this simply as unification. Hill cites the Mostar Gymnasium⁶⁸ as an example of successful integration: “At Mostar [Gymnasium], students from two ethnic groups go to school during the same shifts, participate in integrated extracurricular activities, and attend integrated computer science courses.”⁶⁹

Hill’s more specific critiques of the Bosnian education system include condemning the separation of the Serbo-Croatian-Bosnian-Montenegrin language as a tool for isolation, textbooks that victimize and hero-ify ethno-national groups, and the ethno-national divide within the higher education community. Hill states that the current system of text book censorship, in which students are instructed which passages to strike from their books by hand, actually draws “more of the students’ attention to these prohibited words.”⁷⁰ Another issue—the use of textbooks provided by Serbia, with Serbia as the area of reference instead of BiH – is due to lack of funding. Hill argues that students using these “foreign” textbooks are “incorrectly taught that they are citizens of Serbia rather than Bosnia-Herzegovina.”⁷¹

Hill does note one minor success in the realm of higher education. Higher education faced the loss of both physical and social capital during the civil war, with universities and faculties split in two by wartime segregation. Additionally, not only was the Bosnian intellectual community internally divided, it was also isolated from international academia during the war. After the war academics on all sides were able to “[recognize] the need for mutual collaboration and...creat[ed] a national consortium for the academic community.”⁷²

Pilvi Torsti⁷³ places the blame for the current Bosnian system of education on the pre-war period and argues that the BiH education system has seen no major reform since before 1990. Torsti comments that in addition to the poor coordination across governmental levels, a lack of implementation of education laws is one of the primary contributors to the low quality education in BiH. In 2000, a law was passed that prohibited the import of textbooks from other countries to BiH. Despite this, Torsti challenges, “the new textbooks published in the Bosnian Croat and Serb areas were merely copies of the books published in the neighboring countries with new covers and names of Bosnian authors.”⁷⁴ In 2003, BiH took another step towards education reform with the framework Law on Primary and Secondary Education, which advocated for equal opportunity for all and for multiculturalism. However, Torsti also contests that there was little, if any, real improvement to the system after the 2003 framework was passed. Although it may superficially seem like BiH is taking some steps towards reform, its lax posture towards implementation has prevented any major changes from taking hold.

Ethno-national segregation even exists at the most rudimentary levels of culture. In the postwar period, both Bosnian Croats and Bosnian Serbs mainly watch television broadcasted from and read newspapers

68 Ibid. p. 162

69 Hill, 2011. p. 162

70 Ibid. p. 163

71 Ibid.

72 Ibid. p. 167

73 Torsti, Pilvi. “People’s Attitudes Versus Politics: Segregated Education in Post-War Bosnia and Herzegovina.” *Perspectives in Education*, 27:2 (June 2009): 190-198. p. 191

74 Ibid.

originating in their respective “home states.”⁷⁵ These foreign media outlets have allowed ethno-national groups to deliver their versions of both their own stories and stories about “others.”

The structures and challenges outlined above may serve as a way to channel ethno-nationalist sentiment and spread it to a larger audience.

Bosnian Ethno-Nationalism and its Effects

Since the creation of socialist Yugoslavia, the youth movement has been critical to the survival of states within the Balkan Peninsula. The Yugoslav Non-Aligned/Peace Movement was dependent on what Bozic refers to as “youth interest.”⁷⁶ Bozic even goes as far to say that a strong difference from the goals of the youth movement and the goals of the Yugoslav government significantly contributed to the delegitimization of the Yugoslav state. On the contrary, when the youth supported a movement, it was seen as strong and legitimate. As Bozic puts it, “a nation which has such youth should not fear the future.”⁷⁷ This concept is based on the belief that the youth are naturally predisposed to religious/ethnic tolerance. Bozic’s argument is predicated on his belief that, under normal circumstances, a young population will breed tolerance.

However, the current political situation in BiH has failed to attract youth support. Half of survey respondents to the UNDP’s 2006 Early Warning System survey answered that they either would not vote at all or did not know for which party to vote.⁷⁸ Respondents attributed this apathy mostly to a lack of government accountability and a lack of success in reform implementation. Respondents indicated that the current parties in power only cater to narrow ethno-national interests and are not interested in enacting national reforms. However, Bosnians are also skeptical of opposition parties. Multiple young adult respondents expressed similar sentiments that voting did not affect that outcome because all political parties are the same.⁷⁹ A majority of respondents also indicated that they viewed politicians as the main causes for the war and that politicians create ethnic tension in order to remain in power.

Bozic argues that youth tolerance and political acceptance has been undermined by the ethno-national values and norms that penetrate nearly every aspect of Bosnian society, claiming that the youth are most vulnerable to this indoctrination. Schooling, social settings, and social identity in Bosnia are all tied to ethno-national identity. This constant overexposure to ethno-nationalist sentiment conditions Bosnian youth to unconsciously perpetuate ethnic segregation as part of “normal” life in Bosnia. Ethno-national life is further enhanced by other qualities laid out by Bozic such as the homogeneity of (most) cantons and entities within BiH, the institutionalized segregation in government and public life, and a mutual distrust that pervades inter-ethnic relations.⁸⁰

The Bosnian education system works to reinforce geographic homogeneity by failing to provide access to education for all three ethnic groups throughout the entire state. In areas where certain ethnic groups are beginning to return or exist as minority groups, there is a deficiency of schooling opportunities that

75 Kolouh-Westin, 2002. p. 39

76 Bozic, 2006. p. 745

77 Ibid. p. 744

78 Ibid. p. 761

79 Ibid. p. 762

80 Ibid. p. 754

either causes minority students to fall behind, end their education, or learn from the curriculum of the local majority, an experience that may directly discriminate against the minority child. Torsti references a report by the Open Society Foundation from 2007 that found that only 20 percent of Bosniak and 10 percent of Bosnian Croat students in the RS followed their respective ethno-national curricula and that 25 percent of Bosnian Croats in Bosniak-dominated areas used the Bosnian Croatian curriculum.⁸¹ This lack of minority education helps to perpetuate geographic ethnic-homogeneity through a deficiency of opportunity.

Segregation goes beyond language, curriculum, and geography, and is even evident in the alphabet that students learn. The difference in alphabets has also made it more difficult for those displaced during the war to return and for migrants to move across the Inter-Entity Boundary Line. The school system in the Republika Srpska uses the Cyrillic alphabet, mirroring its usage in Serbia, while schools in the Federation promote the Latin alphabet. This makes it nearly impossible for families to either return to their pre-war homes in the other entity or to move to find work there because their children will likely be unable to attend school there without learning a new alphabet. This problem is only reinforced by the lack of ability for children of ethnic groups in minority areas to be educated under their appropriate ethno-national curriculum.⁸² The Dayton Agreement's guarantee of freedom of movement and return of displaced persons is systematically restricted by these educational limitations.

Torsti explores the effect of biased textbooks by assessing the failure to implement the 2006 "Guidelines for Writing and Evaluation of History Textbooks for Primary and Secondary Schools in BiH," which was enacted to reduce the nationalist bent of history textbooks in Bosnia.⁸³ Torsti contests that this failure has allowed an "us versus them" attitude to remain pervasive throughout the education sector. As a result of this attitude, recent Balkan history is published in a divisive way that leaves no room for students to critically analyze their own ethno-national group and portrays those belonging to other groups as alien. History, as one of the so-called "national subjects" is simply fostering ethno-nationalism, in its current biased form. This failure has led to students lacking the knowledge and skills to succeed in a multicultural society.

Furthermore, some of these textbooks disparage BiH in its current form. The focus on ethno-national groups and the lack of focus on creating an identity rooted in the state works against the progress that must be made for BiH to reform and succeed as a united state. One positive aspect Torsti did point to is that new textbooks, printed after the Guidelines were published, made significant progress in correcting these issues. However, new editions of the same textbooks or reprints of already existing books made zero progress and continued their negative language.⁸⁴ Failure to implement basic education reforms has gone so far that in many cases the OHR has had to formally reprimand and sanction whole governmental agencies.⁸⁵

Martina Fischer⁸⁶ cites educational decentralization as a driving factor in the lack coordination of education practices and a standardized curriculum, an issue that characterizes many public policy issues

81 Torsti, 2009. p. 192

82 Kolouh-Westin, 2002. p. 36

83 Ibid. p. 193

84 Ibid. p. 194

85 Fischer, Martina. *Peacebuilding and Civic Society in Bosnia-Herzegovina: Ten Years after Dayton*. Translated by Hillary Crowe. Berlin: Bergh Research Center for Constructive Conflict Management, 2006. p. 303

86 Ibid. p. 300

in BiH today. Fischer argues that the consequences are particularly severe in the education sector where the transfer of authority to lower administrative levels has cemented the ethnic divisions that occurred as a result of the civil war. Fischer defends her theory by expounding on the different group's views on government: "clearly the controversy over checks and balances between different levels of government also has an ethnopolitical sub-context." Fischer explains that Bosniak politicians are typically in favor of strengthening common institutions and moving towards further integrations while their Bosnian Croat and Bosnian Serb counterparts typically lean towards more autonomy and devolution of power. These different ethno-nationalist points of view are reflected in the current education system: the Bosniak curriculum focuses on the idea of statehood while the curricula of Bosnian Serbs and Bosnian Croats focus on their "home states" and undermine the legitimacy of BiH.⁸⁷

Another area where discrimination manifests itself is at the university. Kolouh-Westin finds that Bosnian Croat and Bosnian Serb students look abroad for higher education opportunities.⁸⁸ Spaces within the BiH higher education system are limited and the Bosnian Serbs and Croats already feel a stronger connection to the institutions in their "home states" through their ethno-national schooling. Their curricula in BiH is also very similar to the curricula of students in their "home states," making it a simple transition for them to attend a university across the border. A different issue has emerged in Mostar, where the University of Mostar has been divided in two along Bosniak and Bosnian Croat faculties. Kolouh-Westin deduces that this ethno-national differentiation in education will create exclusive labor markets for each ethno-national group in the long term.⁸⁹

The above factors in BiH have shown an institutional segregation that extends far deeper than the Inter-Entity Boundary Line or the borders between cantons. Differences in education throughout BiH make it possible for only certain ethno-national groups to thrive in many areas. A deficiency in educational options makes it impossible for families to feel at home in regions where their children will be unable to intellectually develop. These differences reinforce homogeneity, which remains the *de facto* rule of the land in BiH. Without correcting or regulating the current devolution of educational authority, the ethnic divisions created by the current system will undoubtedly persist.

Oluic argues that the resultant discrimination and ethno-national divisions have actually created a state of apartheid within Bosnia.⁹⁰ He points out a 2006 survey conducted by Sarajevo's state TV channel BHTV1 found 60 percent of Bosnian citizens were against ethnically mixed marriages, 33 percent did not wish to have neighbors of other ethnicities and 25 percent did not want his/her child to go to school with peers who are not member of the same ethno-national group. Oluic attributes some of the cause for the apartheid regime to the fact that "in many parts of Bosnia, children are growing up in purely mono-ethnic communities, and teachers and parents are teaching them that the other and the different is actually bad."⁹¹ Although it may seem obvious that the divided institutions are having these qualitative effects, the difference in language, curriculum, and alphabet are concrete evidence that illustrates the growing ethno-national divide that is preventing the integration of a unified Bosnian state.

87 *Ibid.* p. 301

88 Kolouh-Westin, 2002. p, 35

89 *Ibid.* p. 36

90 Oluic, 2007. p. 169

91 *Ibid.*

Many of the above studies focused on youth due to the important role they play in reforming BiH. As Bozic highlighted, youth are often a more tolerant social group, and their development can greatly influence the development of a country. However, the youth may also be the most vulnerable group in Bosnia. Despite the fact that current policies have failed to attract much youth support, youth continue to be subjected to an education system that leaves them incapable of critically questioning their government, fails to instill Bosnian nationalism (and in fact breeds the opposite), and fails to equip students with the skills to succeed in a multicultural society (not only necessary for the success of BiH but also of growing importance in an evermore globalized economy).

As evidenced by widespread public apathy, especially among the youth, the government of BiH at all levels has clearly failed to create a strong education system that caters to the needs of its citizens. It has, on multiple occasions, dropped the ball on the implementation of important educational reforms. Citizens do not view their government as accountable or productive, to the point that they blame the government for the ethno-national tensions that currently threaten the country. For Bosnia to succeed, its government must prove to its citizenry, and eventually the international community, that it has taken, and will continue to take, the steps necessary to move forward from the atrocities of the 1990s. The same heterogeneity that pre-war Yugoslavia praised is today viewed as a hindrance.

Ethno-Nationalism across the Balkans

After observing the ways ethnically divided institutions within Bosnia and Herzegovina shape ethno-nationalism, it is necessary to establish comparison points to discern whether the specific institutional structure within BiH is a controlling factor for the rise in ethno-nationalism or whether it is part of a wider regional trend after the break-up of Yugoslavia. To explore this, I will compare and contrast ethno-nationalist sentiment in BiH with similar sentiments in its neighbors: Slovenia, Croatia, Macedonia, Serbia, Montenegro, and Kosovo.

When the 2008 global economic crisis struck Slovenia, migrant workers' faced soaring xenophobia and racism, forced language barriers, and lack of legitimate employment opportunities.⁹² Tomaz Dezelen outlines the response by both the Slovene government and the Slovene people that limited the abilities of alien workers (out-group members) by reducing their social rights in order to protect domestic workers (in-group members). Dezelen argues that although Slovenia granted substantial rights to migrants during the pre-accession period to the EU, much of this was undone during this economic downturn at the hands of the "re-ethnicization" of the state. Much like in the rest of the EU, the widespread nationalization agenda swept aside the progress made in the years of prosperity and overrode standards of human rights. If Bosnia, like Slovenia, excludes out-groups during difficult economic periods, then, the stagnation of the Bosnian economy since the turn of the century can explain its continued ethno-nationalism.

During the post-war era, Montenegro fought to create a unique identity for itself under the auspices of a movement to gain its independence from the Former Republic of Yugoslavia.⁹³ Dissident writers took steps to identify their work as strictly Montenegrin and to preserve a set of culture and history that was uniquely

92 Dezelen, Tomaz. "In the Name of the Nation or/and Europe? Determinants of the Slovenian Citizenship Regime." *Citizenship Studies* 16:3-4 (2012): 413-429. p. 12

93 The FRY was the successor state to Yugoslavia after the wars of secession. It consisted of Serbia, its autonomous provinces, and Montenegro.

theirs.⁹⁴ Furthermore, and as controversial as similar actions across the region, Montenegrins took steps to declare their language unique. They argued that their language formed the original basis for the Serbian, Croatian, and Bosniak languages and its prominence had been sidelined by its more powerful neighbors. This growing nationalism pushed Montenegro towards an ethno-nationalism that was discouraged by the international community, which believed that differentiation (or Balkanization)⁹⁵ would not help bring peace. Many of the above actions directly mirror similar ethno-national phenomena that took place across Bosnia during the post-war period.

Post-war Croatia also struggled between building a strong national identity and the “de-ideologization” of its society.⁹⁶ Spajic-Vrkas outlines the careful line walked by the Croatian government in trying to craft an education program that would demobilize their recently war-stricken society, and would simultaneously create a new Croatian identity in the wake of its separation from Yugoslavia. Furthermore, in promoting this Croatian identity, authorities struggled with also supporting the idea of ethnic and religious diversity. Like their Bosnian neighbors, Croatia also faced significant international pressure to quickly reform.

In Croatia, elections in 2000 overturned the nationalist government connected to the Yugoslav Wars in favor of a group of reformists. The winning coalition sought to strengthen democracy and civil society while protecting the rights of minorities and Internally Displaced Persons who traditionally face inequality in the post-war era.⁹⁷ The new party also outlined the following education priorities: promotion of democratic principles, a pluralized curriculum, minority education, and movement towards a decentralized administration. Possibly due to their non-ethnically divided government structures, the Croatians succeeded where the Bosnians could not. They instituted a curriculum that focused on the primacy of a democratic state and promoted the rights of different ethnicities, while still succeeding in decentralization. On top of this, Croatia made itself one of the few countries in the world with a Human Rights Education Program.⁹⁸ The program provides an additional focus on personal identity, cultural competency, personal responsibility, and non-violent conflict resolution, in addition to creating a space for intercultural dialogue.⁹⁹ All of these skills are valuable in a post-war scenario and would prove indispensable to Bosnian youth.

Croatia faced many similar challenges to Bosnia in advancing the aforementioned agenda. Although the Croatians may have been strong in their rhetoric for a pluralistic education system, like Bosnia, they failed to impose strong requirements for implementation. Furthermore, although a class on human rights and citizenship demonstrates a significant feat, one course is not sufficient to instill citizenship; students need to be given the opportunity to actively engage in the civic process.¹⁰⁰ This need for engagement argued by Spajic-Vrkas is an important portion of what is lacking from the BiH education system.

In Croatia, the new method for exhibiting national loyalties is through demonstrating commitment to

94 Morrison, Kenneth. *Montenegro: A Modern History*. New York: I.B. Tauris & Co. Ltd, 2009. p. 112

95 Balkanization was a term coined during the Yugoslav wars to describe increasing fragmentation along lines of conflict.

96 Spajic-Vrkas, Vedrana. “Visions, Provision, and Reality: Political changes and education for democratic citizenship in Croatia.” *Cambridge Journal of Education*, 33:1 (2003): 33-51. p. 38

97 *Ibid.* p. 39

98 *Ibid.* p. 43

99 *Ibid.* p. 44

100 *Ibid.* p. 49

Catholicism.¹⁰¹ Leaders from the main Croatian parties very visibly increased their attendance of mass after the Yugoslav Wars and church attendance across the entire Croatian populace rose after the war. Belonging to the church entails more than just a connection to the faith, but is a part of the Croatian national identity. With the unofficial moratorium on nationalism after the Yugoslav Wars, this expression of devotion can be seen as an attempt to demonstrate one's nationalism. The increase in church attendance was an internationally acceptable replacement to other forms of nationalist expression.

After the Yugoslav Wars intentional changes to the Croatian language were also used to construct a unique ethno-national identity. Croatian historian Ivo Banac stated that "the policy of linguistic changes was to 'create new differences between Croatia and Yugoslavia so that communications differences between the two [are] more complicated and the idea of separate identities is strengthened.'"¹⁰² Strengthening religion and distinguishing a unique Croatian language are subtle ways Croats have exercised their nationalism in the post-war era. These two identities have helped distinguish the Croats from the rest of their Balkan neighbors and formed a boundary much stronger than those of sovereign nation-states.

In a comparison of postwar Croatia and Serbia, Sabrina Ramet¹⁰³ analyzes the textbooks of both states and their efforts to influence nationalism. She finds that although both governments undertook "revisions," the new products are "discouraging" and "more extreme."¹⁰⁴ The 2006 Croatian textbook revision, which was intended to reduce nationalism, placed more emphasis on Croatian suffering and periods when Croats were victims. The Serbian history textbooks were revised to focus on periods of suffering for the Serbs and highlight their righteous causes, even during the Yugoslav Wars. They also addressed Chetniks, a Serbian group that collaborated with the Nazis, as heroes of Serbia. These government-backed changes ran contrary to the types of changes that BiH lawmakers and members of the international community were trying to pass in Bosnia. Using biased education to create insulated ethno-national identity only creates fear and makes regional cooperation more difficult.

In the late 2000s, the Serbian people showed they were finally ready to shed the nationalist party that had led their country through two wars and numerous other tribulations.¹⁰⁵ After the 2008 elections, non-nationalist moderates began to gain seats in the government with the goal of achieving "the kind of prosperity and ease that the prospect of EU membership seemed to offer."¹⁰⁶ Like their Slovene and Croatian brothers, the Serbs were prepared to embark on an intensive campaign of reforms in order to gain the political and economic benefits that came with joining the world's largest trade union. Although the movement was almost derailed when Kosovo, an autonomous province in Serbia with a mostly Albanian population, declared independence in 2008, the progressive party continued to gain prominence from 2008 to 2009. Progress was almost stalled again in 2011 when two prominent Serbs, Ratko Mladic and Goran Hadzic, were arrested to be taken to the ICTY. Violence erupted in Northern Kosovo, the region with a large population of ethnic Serbs, which raised concerns in Belgrade that their cousins in Kosovo

101 Perica, Vjekoslav. "The Most Catholic Country in Europe? Church, State, and Society in Contemporary Croatia." *State & Society* 34: 4 (2006): 311-346. p. 313

102 *Ibid.* p. 75

103 Ramet, Sabrina P. "Croatia and Serbia since 1991: An Assessment of their Similarities and Differences." *Journal of Communist Studies and Transition Politics* 27:2 (2011): 263-290. p. 277

104 *Ibid.*

105 Pond, Elizabeth. "Serbia Reinvents Itself." *Survival: Global Politics and Strategy*, 55:4 (2013): 7-30. p. 16

106 *Ibid.*

would ruin any chances they had for integration.¹⁰⁷ Violence also erupted in Belgrade itself, during which Serb rioters attacked nine foreign embassies including those of the U.S. and Germany.¹⁰⁸ However, a rising public desire to reap the benefits of EU accession righted Serbia's course. The carrot of EU membership may have had its greatest transitional accomplishment when it successfully brought Serbian and Kosovar officials to sign an agreement that guaranteed non-interference in the affairs of the other state.¹⁰⁹

The Kosovo question has been one of the largest issues facing Serbian leaders since war broke out between the two states in 1998. The issue was so close to the heart for Serbians that the new 2006 constitution declared Kosovo an inalienable part of Serbia, making it unthinkable for any politician to suggest letting it go.¹¹⁰ Strong political will, unseen in Bosnia and Croatia, in combination with a widespread desire to join the EU has pushed Serbia down the road of reform. It has done away with its ethno-national leaders, settling its territorial disputes, and is working to quell violent nationalist outbursts.

Before Yugoslavia's break-up, Bosnia and Macedonia were its most heterogeneous republics, making the two excellent comparison points for ethno-nationalist tension. Both were subjected to violence, both internally and during regional conflicts of the 1990s, and both emerged with institutionalized power-sharing agreements. Both also had large ethno-national parties with little, if any, multi-ethnic opposition. The similar institutions and atmosphere in Bosnia and Macedonia create an excellent comparison point for the success of non-nationalist parties, allowing researchers to focus on individual voter preferences.¹¹¹ Paula Pickering's theory of negative voting can explain why social democratic parties succeeded in Macedonia but failed in Bosnia.

Pickering defines negative voting as "voting intended to punish a party."¹¹² She explains that parties in post-socialist countries are often top-down and have little voter connection; in response, voters reduce their support for these parties, in this case nationalist parties, and look to assign their patronage elsewhere. Pickering associates this negative voting with dissatisfaction with incumbent parties, which in the Balkans are often nationalist parties seen as supporters of wartime violence.

Pickering found that a considerably high percentage of Macedonians (53.8 percent) identified themselves only as a citizen of their state. Despite both Bosnians and Macedonians expressing similar dissatisfaction with national office holders, this number is considerably higher than the figures from BiH where the next highest-ranking group, the Bosniaks, only had 24 percent of respondents indicate the same. Bosnian Croats and Bosnian Serbs came in at 19 percent and 14 percent respectively.¹¹³ Meanwhile, 20 percent of Bosniaks, 30 percent of Bosnian Croats and 32 percent of Bosnian Serbs indicated that they view themselves first as a member of their ethno-national group and then as citizens of BiH. Macedonia was able to foster a sense of nationhood among its citizens, while most Bosnians still feel divided along ethno-national lines.

The reluctance to punish underperforming political parties and a lack of citizenship indicates much

107 *Ibid.* p. 19

108 *Ibid.* p. 14

109 Morris, Chris. "EU's Ashton Sees 'Brave' Kosovo Deal as Breakthrough." BBC, 4/24/2013.

110 *Ibid.* p. 12

111 Pickering, Paula M. "Explaining Support for Non-nationalist Parties in Post-conflict Societies in the Balkans." *Europe-Asia Studies*, 61:4 (May 2009): 565-91. p. 572

112 *Ibid.* p. 576

113 *Ibid.* p. 578. There were 1,415 Bosnian respondents and 952 Croat respondents.

higher levels of ethno-nationalism in BiH than in Macedonia. It is possible that Bosnian voters fear that by not voting for their respective ethno-national parties, they will lose the narrow protection offered by these parties. That these ethno-national interests outweigh continued dissatisfaction and the possibility of a well-functioning Bosnian government, only illustrates the depth of ethno-nationalist sentiment in Bosnia. This can, in part, be traced back to the failures of the BiH education system to promote cross-cultural understanding and the concept of united citizenship. The system fails to build groups that bring people together based on their interests in hopes of crossing ethno-national lines. Pickering asserts that these groups can create political forces that ultimately supersede ethno-nationalism and support a system of governance that would benefit the whole and not just specific ethno-national groups.

Despite these successes in moving beyond ethno-nationalism, Macedonians are also familiar with some of the same practices as their Bosnian counterparts. The intertwined Balkan identities of religion, language, and ethnicity began in the late nineteenth century in Macedonia where competing nations sought to claim a piece of the crumbling Ottoman Empire.¹¹⁴ The construction of religious buildings helped to cement these claims, and the holding of services in particular languages helped join religion and ethnicity. These practices created significant resentment, discrimination, and marginalization between the region's ethno-national groups and the confluence of religious, ethnic, and linguistic identities continues to this day across the region. Political competition fused these various identities and began spreading nationalist rhetoric throughout the region.

Throughout the 2000s, Croatia, Serbia, and Macedonia shed their nationalist parties that had led them to war.¹¹⁵ Despite their losses, the nationalist parties that used to govern Croatia and Serbia, respectively HDZ and SDS, still serve as the primary parties for Bosnian Croats and Bosnian Serbs. As its neighbors opted for significant liberal reforms, the Bosnian electorate continued to elect nationalist parties to lead the state, fighting the greater regional trend towards multiethnic parties and international community. Bosnia's neighbors have worked towards creating cohesive, multi-ethnic states based around citizenship. On the contrary, BiH has nearly completely failed to encourage a universal Bosnian identity and instead set up structures that enable differentiation, at the expense of the Bosnian state and its people.

As states broke off from Yugoslavia and sought to establish their own national identities, many of them took similar steps to differentiate themselves across the Western Balkans. Language became an important issue not just in Bosnia, but also Montenegro and Croatia. These new democracies stumbled as they tried to overcome post-war nationalist sentiment and implement laws through democracy instead of authoritarianism. Bosnia is not the only state that has struggled to provide the best opportunities to its students. Croatia was also challenged to implement education reform. Textbooks were contentious because they reshaped history to absolve the country's largest ethnic group.

The allure of admission into the European Union, the ultimate display of legitimacy for these countries, drove reform agendas in Serbia, Croatia, and Slovenia. However, the treatment of migrants in Slovenia during tough economic times—which was similar to how countries such as Germany, France, Spain, and

114 Schubert, Violeta Duklevska. "My Faith, My Nation: Exploring the 'Natural' Affinity between Orthodox Christianity and National Identity in Macedonia." *Macedonia: The Political, Social, Economic, and Cultural Foundations of a Balkan State*. Ed. Victor C. de Munck, Ed. Ijupcho Risteski. New York: I.B. Tauris, 2013. 65-88. p. 72

115 Friedman, 2004. p. 74

other European powerhouses treated migrants during the same period—has called into question the depth of these reforms beyond a façade to please Brussels. Despite that, the EU has succeeded in pushing Balkan states to reform their education sectors to incorporate minority populations, focus on democratic values, and boost national spirit, three areas that have not been advanced in BiH. These reforms focused on what Pickering called “building social capital” through exposing students to different groups; such steps are necessary to promote multi-ethnic civil society in Bosnia.

An interesting trend that has not yet occurred in Bosnia is the negative voting that pushed nationalist parties within Macedonia, Croatia, and Serbia from their deeply entrenched positions of power. Despite widespread dissatisfaction with the poor performance of ethno-national parties in Bosnia, voters have yet to express their dissatisfaction at the polls. Further research into this area would be beneficial to a study of BiH.

Generational Differences in Bosnian Ethno-Nationalism

Within Bosnia, there appears to be an increasingly growing generational divide regarding ethno-national sentiment. Multiple authors noted differences in the way that the youth in Bosnia and Herzegovina view other ethno-national groups and the multi-ethnic composition of their state. These views seem to hold true across ethnic lines and appear to be based more on age than any other factor. When conducting interviews on economic progress in BiH, Bozic noted, “ethnic divisions are increasingly seen by the young of all ethnic backgrounds as an inhibitor of economic recovery and individual development.”¹¹⁶ This signifies that the youth could be drivers of tolerant change in BiH. Bozic also discovered that youth who remain at home with their parents are most vulnerable to ethno-nationalism.¹¹⁷ It may be possible that by remaining with their parents and interacting more with individuals of an older generation, the youth are more exposed to the viewpoints of this generation and are less likely to form their own more tolerant opinions or pick up on those of their peers.

Bozic observed a distrust of politicians in the youth that she interviewed.¹¹⁸ Bozic’s subjects viewed Bosnian politicians as corrupt, nationalist, and solely interested in remaining in power. The youth look forward to the future when the education system will improve and education will count as a primary qualification for civil service instead of patronage. The current system results in unprofessional and unqualified civil servants, who often provide poor service that is confused for ethnic discrimination instead of simple incompetence.¹¹⁹ Ensuring a flow of quality civil servants to effectively manage the country and securing youth buy-in incentivizes BiH politicians to reform the education sector.

Contrarily, while analyzing attitudes towards education of both youth and their parents, Pilvi Torsti¹²⁰ found that youth within the BiH education system are often less tolerant than their parents. On the question of whether schools should be monoethnic, 60 percent of students and 55 percent of parents responded that schools should not be monoethnic. When broken down by ethno-national group, Bosnian Serb and Bosnian Croat parents answered in the same way as the whole, however only 29 percent Bosnian Serb and

116 Bozic, 2006. p. 754

117 Ibid. p. 756

118 Ibid. p. 759

119 Ibid. p. 760

120 Torsti, 2009. p. 195

Bosnian Croat students supported the idea that schools should not be monoethnic.¹²¹ The ethno-national curriculum employed in Bosnian Serb and Bosnian Croat schools is likely to blame for these beliefs. Students also came in below their parents in viewing diversity as a value to the state and the education system: 71 percent for students and 75 percent for parents. 22 percent of students found religious and ethno-national diversity as a shortcoming and possible source of problems compared to only 17 percent of parents, and only 26 percent of students surveyed thought that schools should promote affiliation with the state of Bosnia and Herzegovina. A small percentage of students surveyed supported the status quo of segregated education, with 10 percent of Bosnian Croat respondents, 9 percent of Bosnian Serb respondents, and 4 percent of Bosniaks supporting the current model. This may illustrate, for the Bosniaks, the vulnerability they feel due to the security threat created by the current education system. Although all groups appear dissatisfied with the current arrangement, the small boost in retaining the status quo expressed by Bosnian Croats and Bosnian Serbs may result from the fear that unified state organizations may threaten their autonomy. One thing both students and parents strongly agreed upon was the need to overhaul the curriculum to focus more on BiH instead of its neighbors, promote tolerance and mutual understanding, and focus on a wider variety of literature that includes authors of different ethnicities. Also, most respondents believed that education should be handled at the state level.¹²²

In attempting to close the disparity between parents and students, who are typically more progressive, Torsti posits the idea of “common life.”¹²³ She argues that the existence of other groups next to one’s own creates a sense of tolerance for others. Anyone school-aged during Torsti’s study (2006-2007), would have not been alive during the period of the Yugoslav Federation and were, at the earliest, born in the middle of the Yugoslav wars. Unlike their parents, these children have no recollection of a time when different ethno-national groups coexisted peacefully in the same neighborhoods. Instead they occupy a Bosnia that is severely segregated. Their main activity, schooling, is further segregated and imbues them with the belief that their ethno-national group is unique and superior and that all others are the enemy. Without the exposure to other groups that their parents enjoyed, these children have no plausible way of countering the ideas that they are taught in school, leaving them with the tragic belief that there is little chance for a successful multi-ethnic Bosnia and Herzegovina. Torsti’s “common life” is similar to the contact theory put forth by Bozic and other authors. If youth are not exposed to members of other groups, they will have greater difficulty understanding and interacting with them.

Another possible explanation for this phenomenon is that since many students cannot remember the Yugoslav Wars, they have not been exposed to the violence that resulted from the heightened nationalist rhetoric and do not fully understand the possible consequences of advocating ethno-nationalism.

As a result of the current divisive education system, youth of the three ethno-national groups feel differently about their attachment to BiH. Bozic found that 88 percent of Bosniak respondents felt proud to be citizens of BiH compared with only 28 percent of their Bosnian Croat counterparts and 22 percent of their Bosnian Serb counterparts.¹²⁴ This could be linked to the current education system, in which the Bosniak curriculum is the only one that features sections on citizenship and service, while the Bosnian

121 Ibid.

122 Ibid. p. 196

123 Ibid.

124 Bozic, 2006. p. 754

Croatian and Bosnian Serb curricula focus on their “home states,” robbing Bosnian Croat and Bosnian Serb youth of their connection to their true home.

As a contrast to the common life theory above, Mila Dragojevic offers a family based explanation to youth ethno-nationalism.¹²⁵ Dragojevic looks at refugees in Serbia and gauges their ethno-nationalism based on tales of violence against their families during World War II. She found that family members are trained to recognize potential threats to their safety through the retelling of stories about the atrocities of the war by their parents, grandparents, and siblings. The passage of these stories is a survival tactic employed by these groups to prevent future generations from facing the same fate. In this theory, identity formation begins with the family where certain groups are portrayed negatively due to actions against the family in the past. Dragojevic’s analysis concluded that interviewees who evoked tales of past family violence were most susceptible to nationalist party rhetoric.¹²⁶ Dragojevic explains that family members are taught that they must act in order to survive. Nationalist parties prey on the fear of these groups, inciting nationalist sentiment and then providing an opportunity for action through the party.

The same cycle of violence and story telling could be attributed to the Yugoslav Wars. As the location of the bloodiest part of the war, nearly everyone in Bosnia was affected either directly through the loss of family, as a witness to atrocities, or by knowing an individual who lost his or her life. Potentially all Bosnian families can experience the phenomenon explored by Dragojevic. These tales make it difficult to reestablish inter-ethnic trust within Bosnia as nearly every action can be construed as a threat to security. The combination of segregated society and ethno-national education adds further fear and credibility to these stories as Bosnians are mostly unable to interact with the people that are painted to be their potential abusers or murderers. Furthermore, as Dragojevic concluded, the telling and re-telling of these stories makes Bosnians more susceptible to the dangerous rhetoric of nationalist parties. This theory helps to explain the continued success of Bosnian nationalist parties as their counterparts throughout the region were removed from power.

Despite the traditional thinking of youth tolerance, Bosnian youth appear on the whole to be less accepting than their older counterparts. This likely results from their lack of interaction with members of other ethno-national groups, as posited by the “common life” and contact theories. The lack of understanding and empathy due to this lack of interaction, in combination with institutionalized segregation and ethno-national schooling, has created a generation of youth that may bring the opposite of the change many hope for. The problems of this generation are further compacted by the Bosnian government that, with its system of patronage to ethno-nationalist party supporters, provides little opportunity to advance without engaging in ethno-national politics.

Conclusions

While it is clear that ethno-nationalist sentiment has increased in post-war Bosnia, it is not possible to totally separate this phenomenon from a regional movement to carve out unique identities in the post-Yugoslav era. However there is considerable evidence that the ethnically divided institutions created by the Dayton Peace Accords have created a generation of students in Bosnia that may harbor more ethno-

125 Dragojevic, Mila. “Memory and Identity: Inter-Generational Narratives of Violence Among Refugees in Serbia.” *Nationalities Papers: The Journal of Nationalism and Ethnicity* 41:6 (2013): 1065-1082. p. 1066

126 *Ibid.* p. 1072

nationalist sentiments than the previous one. The institutional segregation created by Dayton – in territory, in language, and in schools – has prevented opportunities for inter-ethnic engagement while allowing the continued domination of ethno-national rhetoric in politics. The current generation has never experienced a time of what Pilvi Torsti calls “common life” and instead they have been filled with ideas – through their families, schooling, and political rhetoric – that shape members of other constituent ethnicities, their partners in governing Bosnia, as the enemy. Furthermore, another enemy has been created in the minds of this generation: the state of Bosnia and Herzegovina itself.

Given the above issues, Bosnia may soon face a crisis. As the current generation of elected officials ages out, they will be replaced by today’s youth. The severe lack of contact between ethnic groups will make inter-ethnic cooperation within the Bosnian government even less likely than it is today. Without the experience of a common life of small, shared interactions between members of other ethnic groups, there is little hope that these future officials will be able to productively interact. As Steven Oluic wrote in his dissertation:

Identity formation is important and crucial to Bosnia’s future...Bosniaks see their identity and future linked with a politically and territorially strong state of Bosnia and Herzegovina. The Serbs wish to preserve their current level of pseudo-statehood of Republika Srpska within the framework of the Dayton Peace Accords. The Croats desire their increasing level of autonomy within Bosnia by maintaining the concept of cantons, some expressing aspirations for an entity such as the Serbs now have...Without a shared sense of Bosnian national and civic identity, Bosnia and Herzegovina’s future remains bleak.¹²⁷

These disparate goals need to be synthesized into one, cohesive and inclusive Bosnian identity if BiH is to have any chance of moving forward politically and economically.

To accomplish these goals, the focus of Bosnian politics needs to shift from ideological competition to improving the numerous shortcomings.¹²⁸ Progressive politicians must actively look past ethno-national differences to improve the failing sectors of Bosnia and Herzegovina – education, government, and the economy. To return to and close on education, it is imperative that all Bosnian students are given the critical skills needed to question their political environment. The only way Bosnia can move forward is by critically analyzing its current situation and finding creative solutions to problems that have plagued the stagnant country for what is nearing two decades. Critically thinking students will be able to analyze the current situation in Bosnia and see past the ideological veil to diagnose the systemic issues holding Bosnia back. Only under new leadership, empowered with the skill-set needed to look at BiH from a fresh angle, will Bosnia succeed.

127 Oluic, 2007. p. 93-4 and 169

128 Bozic, 2007. p. 767

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Appendix A

Country	Risk of Social Unrest	Transparency Score	Transparency Rank	WGI-Voice & Accountability	WGI-Political Stability / non-violence	WGI-Economic Effectiveness	WGI-Regulatory Quality	WGI-Rule of Law	WGI-Control of Corruption
Bosnia and Herzegovina	Very High Risk	42	72	-0.14	-0.54	-0.47	-0.05	-0.23	-0.30
Albania	High Risk	31	116	0.01	-0.16	-0.28	0.17	-0.57	-0.17
Belarus	High Risk	29	123	0.05	0.20	0.94	-1.10	0.92	-0.52
Bulgaria	High Risk	41	77	0.38	0.33	0.14	0.54	-0.12	-0.24
Greece	Very High Risk	40	80	0.65	-0.22	0.31	0.50	-0.29	-0.25
Kosovo	V/A	33	111	-0.12	-1.11	-0.39	-0.04	-0.56	-0.62
Macedonia	High Risk	44	67	0.00	-0.44	-0.07	0.35	0.24	-0.02
Moldova	High Risk	35	203	-0.09	0.02	-0.55	-0.11	-0.36	-0.60
Serbia	Medium Risk	42	72	0.17	-0.22	-0.11	-0.08	-0.39	-0.31
Ukraine	High Risk	35	144	-0.29	-0.10	-0.38	-0.61	-0.29	-1.03

Appendix B -- Source: travels.bowenplace.com

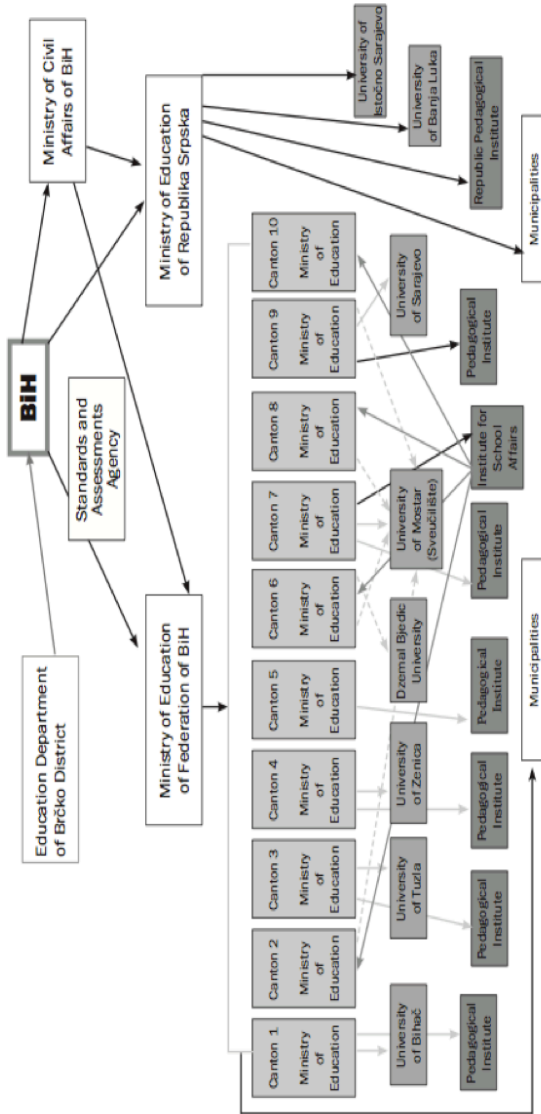


Appendix C -- Source: Wikimedia Commons



Appendix D Source: “Education and fragility in Bosnia and Herzegovina,” published by International Institute for Educational Planning, 2010

Figure 2. Structure of the education system in Bosnia and Herzegovina



China's 2007 Property Law and the Rule of Law

Danae Wheeler

The following is an excerpt from a longer piece, titled "What is the Relationship Between 'Rule of Law' and Economic Development?"

What makes people interested in the rule of law, the first thing that they understand... is that everybody on this earth lives on a plot of land.

—Hernando de Soto¹

Discussion of the Property Law of China (2007) and its relationship to “rule of law” is important for two reasons. First, China’s rapid real estate expansion during the preceding two decades occurred without a published real estate law. This raises questions as to whether the rule of law is necessary and has a role to play in China’s continuing economic development given the governmental disregard for property rights until very recently. Second, after the promulgation of the 2007 Property Law, there have been many protests in China about the state’s forced relocations and demolitions of citizens’ private property. Chinese people now have the opportunity to consult a formal legal document, the Constitution, and use it as a basis to argue that their rights have been violated. Citizens are demanding appropriate compensation and are increasingly using courts as tools to remedy the situation. It is yet to be determined whether the rule of law will confirm Chinese property rights and lead to a period of greater democratization in China.

Property Law

Property law is a vitally important section in a legal code. It theoretically protects the basic rights of citizens, such as the rights to rent or own property, a notion that is present in several modern liberal democracies. For investors, property law is necessary for defining property rights, land-use rights, and mortgage rights. It is remarkable that the first Chinese law detailing property rights, The Property Law of the People's Republic of China, did not come into effect until October 1, 2007. Consequently, China’s rapid real estate expansion during the preceding two decades occurred without a published real estate law. According to law professor Gregory Stein, “Those who have been buying, selling, and lending against Chinese real estate during this era have been operating in a world of significant legal uncertainty.”²

Although the adoption of the Property Law represented a significant step towards protecting private

1 Hernando de Soto, “Property Rights & Rule of Law,” Poverty Cure, accessed on March 14, 2014, <http://www.povertycure.org/voices/hernando-de-soto/>.

2 Gregory Stein, *Modern Chinese Real Estate Law: Property Development in an Evolving Legal System*, (Surrey: MPG Books Group, 2012), 5.

property rights and developing the rule of law in China, property law in China remains particularly complicated in terms of its application and content. This is because the public sector is a significant portion of the nation's economy, and ownership of land is legally separated from the possession and use of it. Relocations and demolitions demonstrate the ongoing tension in Chinese property law between rights obtained under a socialized property regime and rights exercised under a developing privatized system.

The paper begins with a brief history of Chinese property law in order to provide necessary context. It then analyzes how the language in the Property Law of China is applied and how the government manipulates the language in order to support demolitions and relocations. The chapter provides a framework to analyze the Nail House phenomenon, a symbolic phrase referring to a household that will be demolished or removed by the government for real estate development purposes. The Nail House phenomenon demonstrates the unique relationship between China's continued rapid development and the evolution of the rule of law. There were no previous Nail House cases because basic individual property rights were not recognized.

In Western jurisprudence, property rights are considered to be a cornerstone of liberty because the right to own and use private property is considered a human right. It is equally important for economic growth.³ There was originally a property qualification for voting in the West. Without property, a man lacked a political voice or presence; thus protecting one's assets or land was politically as well as economically necessary.

The scope and application of property law in China is unique. According to law Professor Mo Zhang: "Pursuant to Confucianism, to rule a country is like to rule a family where the father has absolute power to decide everything for the family, and each individual member in the family must subordinate his or her own interest to the family interest."⁴ After the Communists rose to power in 1949, many Chinese people believed that individual human rights and socialist ideology were mutually exclusive. It was essential to sacrifice personal interests in order to maintain the government's power for the common good.

After the establishment of the People's Republic of China in October 1949, the Communist regime considered collective ownership to be a critical element of public policy. Mao's public ownership theory stated that "we do not recognize anything private," and from 1949 to 1976 Mao enforced large-scale disinvestment in private ownership of properties.⁵ Private interest and private property rights became synonymous with capitalism or bourgeois, "an enemy to the socialism."⁶

It was not until Deng Xiaoping's liberalization reforms of the 1990s that the central leadership abandoned this position and began to endorse private homeownership. Chinese Real Estate News stated on May 19, 2000 that at the end of the Mao era (1976), less than 15 percent of the urban population lived in privately owned dwellings. By 1999, real estate was commoditized and a significant percentage of residents had become homeowners. At the same time, millions of farmers lost access to the land they had

3 Timothy Sandefur, *Cornerstone of Liberty: Property Rights in 21st-century America*. (Washington, D.C.: Cato Institute, 2006), 1.

4 Mo Zhang, "From Public to Private: The Newly Enacted Chinese Property Law and the Protection of Property Rights in China." *Berkeley Business Law Journal* 5 (2008): 7.

5 Raymond Wacks, *Hong Kong, China, and 1997: Essays in Legal Theory*. (Hong Kong: Hong Kong University Press, 1993), 214.

6 Mo Zhang, "From Public to Private: The Newly Enacted Chinese Property Law and the Protection of Property Rights in China," 5.

relied on for subsistence and were driven into poverty.

While private ownership increased among urban residents, China's migrant population (*nongminggong*) suffered under the house registration system (*hukou*). There is a distinction between a rural and urban *hukou*. This discrepancy has prevented workers from purchasing property, gaining access to social welfare programs, and sending their children to school in the city in which they work. These difficulties are worsened by the fact that apartments in Chinese cities are extremely expensive. Thus, when workers reach old age and can no longer perform labor-intensive work, they often return to their hometown.

Intricacies of the 2007 Property Rights Law

The Property Law of China was passed on March 16, 2007 and took effect on October 1, 2007. After almost thirty years of major economic transformation in China, the Property Rights Law established a politically binding framework of laws and regulations that enabled the creation, alteration, and termination of property. This was the first time in the legal history of the People's Republic of China that a law provided basic ownership rights in immovables (real property) and movables (personal property). Individual property rights are an important characteristic of market economies, and the promulgation of the Property Law was especially significant for business and foreign investors. Property rights are seen as a component of an effective, efficient, and fair judicial system. Property rights are theoretically meant to protect citizens from arbitrary acts of the state.

Although China wants to demonstrate that it has departed from Mao's socialist ideology, the CCP (Chinese Communist Party) has a vested interest in maintaining its authority and control. It does not want to subject itself to the rule of law requirement that no one, including the governing body, is above the law. This creates discrepancies in the enforcement of the Property Rights Law and gives rise to issues such as the nail house phenomenon and forced evictions.

Nail House Syndrome

The nail house (*ding zi hu*) phenomenon refers to a household that refuses to vacate their house in order to make way for the government's real estate development.⁷

The nail house incident that attracted the most national attention occurred in 2007 in Chongqing Jiulongpo District. Dubbed by the media as "the strongest nail house in history," the incident involved a couple, Mr. and Mrs. Ping, who refused to accept the compensation offered by developers seeking to build a shopping mall.⁸

The offer was below market value and after several rounds of negotiations the issue was taken to court. As a result of the court's futile efforts to reach a consensus, the couple sought public support and spoke with the media. According to Mrs. Wu Ping, their demand was simple: an apartment unit in the same area with comparable footage to the house they currently owned. While holding a copy of the Chinese constitution in her hands, Wu told reporters: "The Constitution and the latest Property Law protect private property

7 Joseph Cheng, *Whither China's Democracy: Democratization in China since the Tiananmen Incident*, (Hong Kong: City University of Hong Kong Press, 2010), 116.

8 Rui Zhang, "The Inside Investigation of the Chongqing 'Nail House.'" *Southern Weekend* [Guangzhou] March 23 2007, accessed November 12, 2011, http://www.zonaeuropa.com/20070401_1.htm

ownership. They said they were going to demolish our house because it is in the public interest. But they are going to build a shopping center, which has nothing to do with the public interest!"⁹ Finally, in April 2007, an agreement was reached and the couple accepted an apartment in downtown Chongqing similar in size to their old house.¹⁰

Recently, the BBC covered a story about an owner in Zhejiang province who refused to leave his house because of inadequate compensation. When the owner, Luo Baogen, completed building his house at a cost of \$95,000, he was told it must be demolished in order to build a new railway and was offered \$35,000 in compensation. After more than a year of negotiations, Luo Baogen accepted an offer of \$41,000 and the house was demolished. This case highlights the unrest in China resulting from huge infrastructure and real estate developments "that spark hundreds of thousands of relocations."¹¹

China's continued high-pace development of cities and countryside suggests that conflicts of interest between homeowners, developers, and the government will arise more frequently. Unless the CCP can find an effective legal and institutional mechanism to curb demolition and relocation unrest, this will pose a serious threat to social stability.

Defining Public Interest

Although the 2007 Property Law is an important marker for individual property rights in China, there are conflicting laws that undermine the power of the legislation. The nail house phenomenon demonstrates the state's reluctance to be subjected to the law. Under article 42 of the Property Law, the state may expropriate or requisition private property for public interest purposes. As articulated by Eva Pils, teacher at the Chinese University of Hong Kong: "Demolition and relocation begins with a legal decision to 'take back' land that—as a result of preemptive 'expropriation' in the 1980s—is already in state ownership, but may be used by private entities."¹²

Since all land is owned either collectively or by the state, expropriation of rural land only requires the withdrawal of land use rights for purposes in the "public interest." The intentionally vague definition of public interest results in land seizures for commercial purposes. Because it does not define important terms such as "public interest," the 2007 Property Law fails to provide adequate protection of individual property interests.

Wang Liming, a civil lawyer and Vice President of Renmin University, proposed a factor-based approach to determine public interest based on: "(a) scope of beneficiaries, (b) burdens on general public, (c) priority of interests involved, and (d) availability of alternatives."¹³ But these terms also lack clear definitions and are just as easy to manipulate as the term "public interest."

9 Zhang, "The Inside Investigation of the Chongqing 'Nail House.'" Southern Weekend, http://www.zonaeuropa.com/20070401_1.htm.

10 Joseph Cheng, *Whither China's Democracy: Democratization in China since the Tiananmen Incident*, 117.

11 "China home marooned in middle of road is bulldozed." BBC, December 1, 2012, accessed on December 2, 2012, <<http://www.bbc.co.uk/news/world-asia-china-20566295>>.

12 Eva Pils, "Chinese Property Law as an Image of PRC History." *Hong Kong Law Journal* 39 (2009): 1.

13 Liming Wang, *Study on Crucial & Difficult Problems of China's Civil Code*. (Beijing: Beijing Books, 2006), 427.

Compensation

Another notable issue is just compensation. The Fifth Amendment to the U.S. Constitution forbids the confiscation of property without just compensation, which usually relates to market value. In China, there is no requirement that compensation be “reasonable.” Instead, the Property Rights Law states that compensation must allow for the “maintenance of lawful rights and interests,” and “guarantee living condition.”¹⁴ However, these terms are vague and ineffective protection for citizens.

For example, in 2005 the Shanghai Expo, the largest and most expensive world fair, relocated nearly 20,000 people and displaced 18,000 households in an “aggressive fashion.”¹⁵ Shen Pelan, a resident in the Minhang district who protested the Expo’s displacements, has been detained nearly 100 times since 2000. In an interview with Amnesty International she said, “at least 3,000 families are victims of Minhang district demolition. They are so poor that many have no place for shelter.”¹⁶ Families in Minhang demanded adequate property rights and compensation but were silenced by the government. The absence of a defined criteria for public interest and the lack of a formula for compensation leads to these demolitions and evictions.

What Rule of Law Institutions are Available?

“Human beings in China are not ‘political animals’ but are involved in a ‘role based society.’ There is a role for everyone even though the government sometimes defines these roles.”¹⁷ Lawyer and professor Dan Guttman states that, “different systems for resolving land disputes in a common law framework have existed for centuries [in the West] but have only been present for 30 years in China.”¹⁸

When asked whether relying more on local courts would be an appropriate solution, both Seth Gurgel, Shanghai Research Fellow for the U.S.-Asia Law Institute, and Guttman stated that local courts rarely take cases pertaining to local government. As a result, aggrieved individuals appeal to the higher levels of government, provincial party leadership, or the media. The Ministry of Construction received three times as many complaints about land disputes in the first quarter of 2004 as it did in the same period of 2003. By the end of June 2004, 4,026 groups and 18,620 individuals lodged petitions over allegedly illicit land confiscations, compared to 3,929 groups and 18,071 individuals for the entire year of 2003.¹⁹

Others are dissatisfied with the complicated court process and are using the media as a forum to voice

14 Mo Zhang. "From Public to Private: The Newly Enacted Chinese Property Law and the Protection of Property Rights in China," 44.

15 Gordon Chang, "The Most Expensive Event In History," *Forbes*, April 29, 2010, November 19, 2012, <<http://www.forbes.com/2010/04/28/shanghai-china-asia-expo-opinions-columnists-gordon-g-chang.html>>.

16 "China silences women housing rights activists ahead of Expo 2010 | Amnesty International." Amnesty International | Working to Protect Human Rights, April 30, 2010, accessed on December 2, 2012, <http://www.amnesty.org/en/news-and-updates/china-silences-women-housing-rights-activists-ahead-expo-2010-2010-04-30>>.

17 Lawyer and Research Fellow for U.S.-Asia Law Institute. Seth Gurgel. "Asia Law Institute Lecture" East China Normal University. Shanghai, China, November 8, 2012.

18 Professor and Lawyer Daniel Guttman. "Personal interview China's Legal System." East China Normal University. Shanghai, China, November 16, 2012.

19 Mo Zhang, "From Public to Private: The Newly Enacted Chinese Property Law and the Protection of Property Rights in China," 16.

their discontent. Haolun Shu, a Shanghai filmmaker, produced the film *Nostalgia*, which shows his family's old house in the old Shanghai neighborhood, Da Zhongli, before it is demolished. Sylvie Levy's *Shanghai Waiting for Paradise* follows a Shanghai family confronted by the imminent demolition of their home, but due to bureaucratic incompetence and political interference, they must wait five years before they are relocated and compensated. Shu stated that in Shanghai "government and business go hand in hand" and that making the documentary was "the method to channel my feelings."²⁰

The housing market in China, and especially in Shanghai, grew rapidly under the previously lax real estate laws. But these laws and their implementation have created many challenges for future development. In 1995, the total volume of relocated space in Shanghai was 3.23 million square meters. According to the 2005 Shanghai Statistics Yearbook, this indicator grew almost 80% in less than ten years, reaching 5.8 million square meters in 2004. Old homes and buildings, and entire old tightly knit neighborhoods were torn down and replaced with skyscrapers, offices complexes, shopping malls, and other forms of modern development. Tens of thousands of urban residents were relocated or evicted. Relocation policy and practices remain some of the most important and controversial issues confronting authorities in Shanghai.

As authors and design consultants Edward Denison and Guang Yu Ren state, "Shanghai's history is repeated with a consistent lack of regard for public spaces, despite repeated claims to the contrary from the administrations charged with their improvement."²¹ With 50,000-60,000 persons per square kilometer in some areas, Shanghai is a megacity with one of the highest population densities in the world. With its rapidly expanding urban population and demand for additional housing and modern infrastructure, the pressures on available land will increase.

Mo Zhang explains, "The greatest challenge facing the country is how to enforce the law so that private property rights would be effectively protected, especially in the situation where public ownership is involved."²² Yujun Feng, professor at Renmin University Law School, believes that the solution lies in developing a "multiplex dispute solving mechanism" that would include the provision of legal aid and advice on the judicial procedure for victims. In addition, a "house demolition agency company" would allow those with grievances to be addressed within a reasonable time.²³

Until then, the government is able to manipulate current laws to justify demolitions and forced relocations. These conflicting policies and the government's proclivity to intervene in property ownership demonstrate the complicated relationship between the government and individual property owners.

Shanghai will continue challenging other global cities as a center of rapid development—as it has with the elaborate 2010 Shanghai Expo and the current construction of the Disney Resort in Pudong. The tensions between citizens and the public authorities over the process of residential demolition and relocation are likely to increase until the government follows the rule of law and ensures transparency and equality.

20 *Nostalgia*. DVD. Directed by Haolun Shu. Shanghai, 2006.

21 Edward Denison and Guang Yu Ren, *Building Shanghai: The Story of China's Gateway*, (Chichester, Wiley Academy 2006), 224.

22 Mo Zhang, "From Public to Private: The Newly Enacted Chinese Property Law and the Protection of Property Rights in China," 1.

23 Yujun Feng, "The Interplay of Power, Rights and Interests: An Economic and Legal Analysis of Urban House Demolition and Relocation in China." New Zealand Contemporary China Research Centre: China Papers 6 (2009): 32.

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