Resolved

LETTER FROM THE EDITOR

With great pleasure, the Editorial Board and I present the second issue of the UNC Chapel Hill Undergraduate Law Journal. As in the first issue, each article has relevance to today’s college student. Our desire to create a publication that is both scholarly and spurs student interest in the field of law resulted in the inclusion of a four pages on law school application essentials and taking the LSAT by our research assistant, Leslie Page Nelson.

Central to the Carolina Way is giving back to the community—exemplified by the thousands of students who participate in campus organizations with global influences. Many of this issue’s articles explore policies and laws crucial to effectively implementing these service projects. Rachel Myrick’s article explores U.S. policy for granting asylum to refugees and ensuring equitable treatment. Madhu Vulimiri investigates aid conditionality (placing conditions on donations) in the arena of global health. Further exploring the intersection of American and international law, Hannah Abbot critiques the lack of formal evaluation criteria surrounding adoption in the U.S.

Ruopiao Xu’s article provides a benchmark study of the public housing policy in Hong Kong while Hannah Nemer critiques local zoning laws that prevent land usage for mosques due to fear of mosques as breeding grounds for extremist ideology.

Throughout history, concepts of law and justice have varied tremendously on global, national and local scales. Cody Poplin’s article questions the legitimacy of military operations in Iraq while my own article flags the continued impunity of the Lord’s Resistance Army for egregious crimes in Uganda and the necessity of a decisive military victory supported by international forces to end decades of warfare.

Analyzing controversial legal issues, Lionel Earl’s article defends the prohibition of military blogs for operational and national security. Wilson Parker explores the overlap of federal and state law and questions whether the Interstate Commerce Clause empowers Congress to require individuals to purchase health insurance. Sarah Johnson examines the ethical dilemma presented by physician-assisted suicide legislation (PAS), arguing that countries such as the Netherlands that have legalized PAS offer more ethical and efficient solutions.

I would like to thank all who helped produce this journal: the Editorial Board who worked continuously reviewing, evaluating and editing submissions; Katherine Lee, our design editor and web master, who labored tirelessly drawing cover art and combining articles, titles and suggestions to create a graphically-pleasing journal more than twice as long as our first edition; our advisor, Dr. Katie Rose Pryal, and our treasurer, Garrett Jacobs, who helped us acquire the funds necessary to publish the journal.

I hope you enjoy the second installment and find the articles both engaging and informative. I invite you to comment and share feedback at charlottelindeman@gmail.com.

Sincerely,
Charlotte Lindemanis
Editor-in-Chief and Founder

Mission Statement
The UNC Chapel Hill Undergraduate Law Journal is a student-run publication whose primary purpose is to produce a journal of legal scholarship that encompasses domestic and international as well as historical and current issues. The journal seeks to raise awareness of legal developments and to encourage engaging, intellectual debate on law-related topics within the undergraduate community.
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The Ambiguity of United States Adoptions:
A Case for the Need for Explicit Legislation Regarding from which Countries United States Citizens Can Adopt

MORGAN ABBOTT
Class of 2012

Abstract

The United States participates in over half of adoptions worldwide; yet, the United States lacks a formal declaration of evaluation criteria regarding from which countries United States citizens can adopt. This results in complications and uncertainty in adoptions, placing the child at heightened risk of exploitation or failed adoptions. This paper broadly defines the scope of the problem through a discussion of the impact of the United States ratification of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. I then define four potential solutions: maintaining the status quo, strictly adhering to the recommendations of the Hague Convention on Intercountry Adoption, creating bi-lateral agreements between sending and receiving countries, and halting all intercountry adoptions. I conclude with a policy recommendation.

The United States participates in over half of adoptions worldwide; yet, the U.S. has no formal evaluation criteria regarding the countries from which U.S. citizens can adopt. Potential adoptive families have minimal guidelines to follow when selecting a country for the adoption process. Families may initiate an international adoption and later learn the United States halted adoptions from that country, rendering the adoption illegal. Also, families may begin the adoption process in a country without firm children’s rights or family creation legislation, resulting in added discrepancies in the legal process. For example, a family may initiate an adoption of a child who they believe is orphaned, but later learn the child was purchased from parents and sold to the adoptive parents. Families must then halt or postpone the adoption, denying the child’s basic rights to a loving environment as outlined in the Convention on the Rights of the Child.

In 1989, the United Nations implemented the Convention on the Rights of the Child (CRC) to counter heightening reports of child trafficking via intercountry adoption. The CRC outlined the primary goal of children’s rights legislation to be the best interests of the child.

including adoption as a means of achieving a child's civil, political, social, and economic rights. The United States did not ratify the CRC because it did not outline the responsibility of sending countries to assure permanent, rather than fostered or temporary, adoptions. The United States disliked the CRC's ambiguous language regarding the sending countries' obligations and its lack of clear instructions regarding effectively facilitating adoptions in the best interest of the child.

The Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoption of 1993 created legal "standards for intercountry adoption, a system to enforce them, and a forum for communication between the countries involved." The Convention presented a "framework for improving transparency and accountability in intercountry adoptions." The United States did not immediately ratify the Hague Convention, but instead implemented the Intercountry Adoption Act of 2000 to "provide for the implementation of the Convention," "to protect the rights of... children, birth families, and adoptive parents... and to ensure that adoptions are in the child's best interests."

The United States officially ratified The Hague Convention in 2008; thus, the United States currently uses The Hague to govern intercountry adoptions. The Hague "applies only when an adoption involves a child from a country that is a party to The Hague who is being adopted by someone in another country that is a party to The Hague." Yet, the United States continues to allow adoptions from non-Hague nations. Despite the explicit ratification and implementation of The Hague, the U.S. lacks an unambiguous outline of the countries from which U.S. citizens can adopt. All countries from which U.S. citizens may potentially want to adopt are effected, regardless of the country's status as a party to The Hague, for source countries cannot prepare or abide by standards for adoptions outlined by the United States if no explicit standards exist.

Despite the Hague Convention's high priority of adopting from only other countries that are parties to the Hague Convention, United States citizens preferred to adopt from non-Hague signatory countries. For example, 134 United States citizens adopted from Kenya, the Hague signatory country in Africa with the highest number of adoptions from United States citizens from 2005-2011, while 10,668 adopted from Ethiopia, the non-Hague signatory country in Africa with the highest number of adoptions.

Orphaned children are primary stakeholders in intercountry adoption regulation as it allows children who would otherwise remain institutionalized to realize the basic human rights of a family, which the CRC calls "the natural environment for growth and well being." Potential adoptive parents have an important stake because clear regulations allow for informed decisions and safer adoptions. Many countries have extensive and expensive processes for adoption, and others do not allow intercountry adoption at all. Thus, clear communication and legal delineation of options is crucial for selecting the safest and most efficient sending country. Without clear standards as to what the United States expects from sending countries, source countries cannot effectively implement practices aligning with the United States' definition of legal adoption. Source countries may initiate adoptions with United States citizens, only to learn that the United States has halted adoptions from the sending country. Thus, the adopted child cannot legally enter the United States as part of a

7. O'Keefe, 2007
8. Breuning, & Ishiyama, 2009
12. Adoption.state.gov
13. Bartholet, 2010
new family, and the adoptive parents must remain in the source country with the child rather than returning home.

The government is the ultimate authority that oversees intercountry adoption regulations; thus, it is crucial for government to establish sound criteria outlining defining legal adoption. A lack of legislation permits children to be “potentially taken or purchased from their families unlawfully, and mistreated before being sold into adoption.” A gray market problem and lack of complete information and transparency makes intercountry adoptions difficult, allowing for significant deadweight loss. The legal guidelines for adoption vary globally; yet, minimal empirical work compares policies of intercountry adoption. A formal criteria regarding from which countries United States citizens can adopt encourages adoptions in the best interest of the child, rather than the exploitation of the children.

Lack of standardized regulations pertaining to intercountry adoptions minimizes equity. Adoptive parents do not have equal opportunity and the freedom to intelligently choose the country from which they want to adopt as a result of imperfect information and a lack of established property rights. Sending countries do not have equal opportunity to access information from the United States as to how to regulate and administer adoptions. Standardized regulations provide for abandoned children, a population at significant risk, and equal opportunity to access adoptive parents through a standardized, clear, accessible, and regulated process.

Policy Alternatives and Analysis

a. Maintaining the Status Quo

Maintaining the status quo allows the United States to regulate on a country-by-country basis depending on the current political status or the international relations of a sending country. But, no guidance or standards are offered for parents as they plan an adoption. As a result, parents may begin an adoption in a certain country, only to have United States later halt adoptions from that nation. For example, families initiated the adoption process in Nepal prior to the U.S. ban on adoptions from Nepal resulting from consistently unreliable documents and paperwork in August 2010. Families cannot legally return to the United States with their adopted child and must remain in Nepal. Furthermore, Ethiopia used to be one of the largest sending countries to the United States. But, since early 2011, Ethiopian adoptions have been slowed significantly due to changes in Ethiopia’s Ministry of Women, Children, and Youth Affairs, increased trafficking, and heightened reports of corrupt and failed adoption processes. Thus, families face increased difficulty in completing previously initiated adoptions.

Maintaining the status quo results in minimal additional costs to the United States government, sending countries, or adoption agencies, for no restructuring costs exist. Adoptive parents currently have imperfect information, and thus do not have equal opportunity for informed decision making and engaging in successful adoptions, as adoptive parents may not have the opportunity to complete their adoption due to shifting United States adoption policy.

b. Fully Comply with the Hague Convention

The United States, as a party to the Hague Convention, could participate fully in the Hague by standardizing intercountry adoption regulations, creating clarity by only allowing adoptions from countries that are also parties to The Hague. The Hague establishes “minimum standards for intercountry adoption procedures that apply to all adoptions between ratifying states” and outlines duties of sending and receiving countries. The Hague requires countries to establish a
Central Authority, a national governing body that regulates and oversees intercountry adoptions by determining a child adoptable, ensuring that no domestic adoption option exists, obtaining necessary consent, and considering the best interests of the child. The United States’ Central Authority, the Department of State, must finalize regulations regarding how requirements will be implemented. This results in costs of government restructuring and process changes. But, adoptive parents benefit significantly from perfect information and decision-making through minimized ambiguity, for U.S. citizens can adopt from any of the 74 countries that are parties to The Hague. Adoptive parents have equal opportunity for successful adoptions due to the clear criteria, for the risk is minimal that the U.S. will halt adoptions from a Hague-compliant nation.

Ratification of The Hague discourages United States citizens from adopting from countries, such as Russia, that are not parties to The Hague but comprise a large portion of intercountry adoptions. From 1999-2011, approximately 45,112 adoptions in Russia by United States citizens occurred, making Russia one of the top sending countries for adoptions by United States citizens. Furthermore, the establishment of a Central Authority may be an “insurmountable hurdle in some countries where the adoption process is in most need of repair,” for it necessitates significant costs or restructuring of governments who cannot currently accommodate a Central Authority in an existing entity. Such countries lacking in economic or political resources to reform the adoption process are most commonly ones with the highest amount of orphans.

Strictly adhering to the recommendations set forth by The Hague could cause significant problems for small adoption agencies or parents pursuing independent adoptions. The Convention will necessitate significant procedural changes within many small adoption agencies, resulting in increases in administrative and implementation costs. The Hague outlaws independent adoptions, or direct arrangements between birth parents and adoptive parents. Independent adoptions utilize an intermediary, such as an attorney, rather than an adoption agency, to facilitate adoptions. These adoptions are risky because they are often performed with minimal information exchange, which can lead to abuse of the process. But, independent adoptions are often the only way for orphaned children to become adopted in countries lacking governmental infrastructure to regulate adoptions. The Hague will prevent risky independent adoptions due to imperfect information, but will also prevent the adoption of unrepresented children in countries without strong governmental infrastructure, resulting in continued institutionalization of orphaned children.

Bi-Lateral Agreements for Intercountry Adoption

The Convention on the Rights of the Child suggests creating bi-lateral agreements between sending and receiving countries to regulate intercountry adoptions. Bi-lateral agreements are official arrangements between two countries that dictate adoption procedures from that specific country. Bi-lateral agreements allow the U.S. to clearly establish countries from which U.S. citizens can adopt without directly adhering to the umbrella legislation of the Hague Convention. For example, establishing a bi-lateral agreement with South Korea, a top sending country for United States adoptions, would allow the two countries to engage in adoptions safely and ethically even though South Korea is not a party to The Hague.

Bi-lateral agreements allow the United States and the sending country to work together to reach a manageable agreement for both countries in the best interest of the child. Furthermore, the United States can operate on a country-by-country basis, rather than relying on one overarching standard that does not account for local law or religious beliefs in sending countries. Regulation of intercountry adoption can be significantly dependent on

21. Kales, 2004
22. Throughout the past ten years, other top sending countries include Ethiopia, China, Guatemala, and South Korea. Of these countries, China and Guatemala are parties to the Hague Convention, while Ethiopia and South Korea are not. Although Guatemala has ratified the Hague Convention, Guatemala is not a U.S. Hague partner because the United States does not believe Guatemala has had adequate time to implement Hague regulated guidelines for adoption. All adoptions from China after January of 2009 followed Hague requirements. Source: adoption.state.gov
24. Kales, 2004
the circumstances and processes of sending countries. Bi-lateral agreements minimize gray markets that result from the Hague Convention when sending markets are allowed to exert "sovereignty in controlling the availability of their children and regulating who may adopt," which in turn can breed corruption.

Bi-lateral agreements are beneficial for families and orphaned children, for they allow the United States to dictate adoptions in a focused manner that considers sending countries’ local law, tradition, and government infrastructure. This prioritizes the protection of the children’s rights and allows parents to access perfect information regarding the country’s adoption procedures. But, it results in significant costs in time, finances, and administrative resources. It requires extensive time to study and analyze individual countries’ infrastructure pertaining to intercountry adoptions. Furthermore, reaching compromise between the United States and the sending country could require significant effort or could result in the United States sacrificing certain standards in order to reach an agreement. Finally, reaching bi-lateral agreements with individual countries would increase the administrative costs associated with administering intercountry adoptions, for it will require a restructure of adoption agencies to incorporate new, specific legislation varying among countries. Bi-lateral agreements provide significant equity for adoptive parents, who are able to make an informed decision regarding the sending country; thus, parents have equal opportunity to complete the successful adoption of a child.

c. Halt All Intercountry Adoptions by United States Citizens

The United States could outlaw international adoptions, thus ending complications, risks, and costs associated with imperfect information in intercountry adoptions. It would prioritize domestic adoptions, and minimize corruption and financial gain by sending countries through adoptions. But, outlawing intercountry adoptions could result in a market failure, for the demand by adoptive families in the United States for orphaned children is greater than the domestic supply of children available for adoption. As a result, adoptive parents will not have equal access to family creation through adoption, for only those with the highest ability to pay will have the financial means to adopt a child. Furthermore, orphaned children across the globe that could have assimilated into a family through intercountry adoption will be denied the opportunity to be adopted into a family. The government of sending countries, the United States, and adoption agencies would incur no costs that would stem from the creation of new legislation or regulations.

Policy Recommendation and Justification

Maintaining the status quo and outlawing intercountry adoption have the lowest costs, for they require no restructuring. Ratifying The Hague has the next highest costs, for it requires the restructuring of adoption agencies and time and energy costs associated with reorganizing under strict adherence to a new law. It has high costs for sending countries from which U.S. citizens currently adopt that are not parties to The Hague, for orphaned children in the country can no longer be adopted. Bi-lateral agreements hold highest costs, requiring significant involvement to construct adoption regulations on a country-by-country basis. Furthermore, it consists of high administrative costs as adoptions are regulated with different criteria for each sending country.

Maintaining the status quo has the least benefit, for it does not correct the gray market problem of allowing adoptive parents to select the sending country with clear criteria. The other three alternatives maintain equal benefit by delineating clear criteria for adoptive parents. Outlawing intercountry adoption and maintaining the status quo hold the least benefit for adoptive families and orphaned children, for they minimize the likelihood of successful adoptions. Fully complying to the recommendations of The Hague holds the next highest

26. Mezmur, 2009
29. Mezmur, 2009
30. Kales, 2004
benefit, for it provides perfect information and allows adoptive parents the opportunity to engage in successful adoptions. But, the creation of bi-lateral agreements provides the highest benefits, for in addition to providing perfect information, regulations are country-specific and tailored to the individual needs and administrative capacities of the sending countries. This maximizes the chance for adoptions to be successful and highly prioritizes the protection and rights of orphaned children.

Maintaining the status quo and outlawing intercountry adoptions are the least equitable of the alternatives, for parents and orphaned children have no opportunity to engage in the adoption process. Both the Hague Convention and the creation of bi-lateral agreements offer the same level of equity for adoptive parents, for both provide access to perfect information regarding sending countries. Adoptive parents have equal probability that adoptions will be successful and complete.

The most effective, safest, equitable, and beneficial means to regulate intercountry adoption is through the establishment of bi-lateral agreements between the United States and sending countries. Reaching bi-lateral agreements with individual countries requires higher administrative costs and the creation of extensive infrastructure to regulate adoptions. Yet, it allows equal access to perfect information for potential adoptive families, as the agreements create specific regulations to be followed throughout the adoption process. The agreements provide specific details regarding the adoption process in each country so adoptive parents can make informed decisions. Bi-lateral agreements consider local customs and infrastructure in sending countries, allowing for the protection and rights of orphaned children in adoption to be protected and prioritized on a country-by-country basis. Although bi-lateral agreements are not necessarily a cure-all solution, it is a necessary, attainable first step in regulation.

It is the federal government’s responsibility to regulate and oversee adoptions, coordinate adoption procedures, and establish an adoption agency accreditation system. Regulating intercountry adoptions through the federal government allows for increased uniformity in adoption regulation and minimizes corruption resulting from loopholes or varying standards. For successful implementation, the federal government must regulate adoptions through the creation of property rights, institutions, and partnerships between the government, sending countries, adoption agencies, and adoptive parents to eliminate imperfect information and a gray market.

The United States must make the most significant tradeoffs with bi-lateral agreements as the solution, for it requires the use of costly or time-consuming creation tools to tailor policies to individual sending countries. But, orphaned children and potential adoptive families benefit significantly from these tradeoffs, for it allows for the free exchange of information and informed decision making in adoptions. Source countries also benefit, for policies are tailored to fit local laws and administrative capabilities.

Difficulties with this solution arise because bi-lateral agreements may need to be constantly changing and regulated due to changes in political factors within sending countries, or if sending countries deviate away from stipulations of the agreement. Although this is a risk, bi-lateral agreements allow for decisions to be made and regulations to be altered on a case-by-case basis in which the protection of the rights of children are of highest priority. Such tailored agreements and accountability are not possible with the ratification of the Hague Convention, in which the United States must allow adoptions from all parties to the Hague Convention, regardless of extenuating circumstances.

31. Kales, 2004
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Uganda’s Policy Regarding the Lord’s Resistance Army: Appeasing Rebels and Perpetuating Atrocities

CHARLOTTE LINDEMANIS
Class of 2013

Abstract

Plagued by decades of warfare, Northern Uganda has become the site of one of Africa’s longest and most brutal rebel conflicts. The Lord’s Resistance Army (LRA) has abducted, raped and murdered women and children, massacred villages and forced Ugandans to kill and maim or be killed and maimed. Failure to implement effective military strategy and the rebels’ seemingly suicidal resolve has forced the Ugandan government to repeatedly subject itself to failed negotiations. This paper draws on international intervention policies to emphasize that only through a decisive military victory supported by international forces can Uganda eliminate the root cause of the conflict, including key military commanders, and reestablish peace. Newfound resolve would weaken the LRA’s bargaining power and eliminate culprits’ assurance that they can engage in severe atrocities without repercussions.

Uganda’s Policy Regarding the Lord’s Resistance Army: Appeasing Rebels and Perpetuating Atrocities

Since 1986, the Lord’s Resistance Army (LRA) has waged war on the Ugandan government, murdering, abducting, enslaving and mutilating civilian populations and maintaining one of Africa’s longest and most gruesome rebel conflicts. The violence has displaced almost two million civilians1 and escalated to a regional conflict involving the Democratic Republic of Congo, Central African Republic, Sudan and Uganda. Led by Joseph Kony, the Lord’s Resistance Army initially desired a theocracy rooted in the Ten Commandments and the termination of perceived discrimination against the Acholi people by the Ugandan government. However, the LRA’s continued brutality and increasingly obscure motives and political objectives prompted many nations to conclude that the Lord’s Resistance Army lacks a political agenda and purpose other than its own survival.

Over twenty years of fanatical and unpredictable warfare by the LRA has created an environment of uncertainty that both hinders the Ugandan government’s ability to eliminate rebel forces and amplifies the LRA’s potential bargaining power. Failure to implement effective military strategy and the rebels’ seemingly suicidal resolve, including the expenditure of over 10,000 child soldiers, has forced the Ugandan government to repeatedly subject itself to failed negotiations. Furthermore, the government fears that possible solutions, such as ICC2 arrest warrants for key LRA leaders, may jeopardize tenuous peace agreements—aggravating an already dire situation and perpetuating the cycle of impunity and violent crimes that have plagued Uganda for more than two decades. To terminate LRA atrocities and thus end the brutal civil war, the Ugandan government must abandon strategies of appeasement and subordinate temporary cease fires to a permanent solution that will both eliminate current rebel violence

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1. Feinstein, Lee, and Tod Lindberg
2. Established in 2002 under the Rome Statute to prosecute individuals for the most egregious of international crimes, the International Criminal Court (ICC) serves as a permanent tribunal that tries genocide, war, and humanitarian crimes.
and prevent reoccurrences. This paper draws on international intervention policies to emphasize that only through a decisive military victory supported by international forces can Uganda eliminate the root cause of the conflict, including key military commanders, and reestablish peace. Newfound resolve would weaken the LRA's bargaining power and eliminate the culprits' assurance that they can engage in severe atrocities without repercussions.

The current conflict in Uganda stems back to socio-political differences that emerged during the colonial era. According to Ogenga Otunnu's article “Causes and Consequences of the War in Acholiland,” British colonial policies exacerbated pre-existing ethnic, religious and regional divisions. These policies encouraged political and economic development in the South, primarily among the Baganda people, while using northern ethnic groups such as the Acholi as a labor reserve and embedding the majority of the military forces in the north. Consequently, the post-colonial regime inherited a fractured state that experienced years of internal power struggles and exploitation of minority ethnic groups. Finally, in January 1986, current-President Yoweri Museveni and the National Resistance Army (NRA) seized power by defeating Acholi General Tito Okello and his Acholi-dominated army.

Shortly after, Alice Lakwena initiated the Holy Spirit Movement, mobilizing Okello's supporters against Museveni’s NRA, which later comprised the core of the Ugandan People's Defense Force (UPDF). As described in Heike Behrendt's essay, “War in Northern Uganda,” the movement aimed at “purifying” the Acholi people of suspected witchcraft in Museveni's regime and establishing a “paradise on earth.” Although this movement failed, in the wake of Lakwena's defeat, her nephew, Joseph Kony, declared himself her spiritual heir and formed the LRA, drawing power and followers from her rebellion. The LRA's initial mission to establish a theocracy rooted in the Ten Commandments and to eliminate discrimination against the Acholi people quickly disintegrated as LRA actions grew increasingly brutal and seemed to lack a clear direction or political objective.

Since launching its campaign against the Ugandan government in 1986, the LRA has abducted, murdered, enslaved and raped thousands of women and children. According to Lee Feinstein’s Means to an End: U.S. Interest in the International Criminal Court, “…the group has abducted at least 20,000 women and children, more than 12,000 people have died, and the violence has displaced almost two million civilians from their homes” (64). Relying heavily upon child soldiers for more than ninety percent of its ranks, the guerilla group has kidnapped an estimated 30,000 to 66,000 children throughout the course of the war and forced them to become rebel fighters or concubines, as described by World Vision in the article “Crisis in Northern Uganda.” Young girls are often abducted as sex and labor slaves and sold or traded by the LRA to arms dealers in Sudan. Meanwhile, boys are terrorized into submission, marched to exhaustion, trained in guerilla warfare and forced to help kill other children who attempt to escape. McDoon's article, “No deal after U.N. official meets Ugandan rebel Kony,” describes child soldiers forced to “beat siblings to death or eat the brains of other children.” These brutal tactics baffle experts as to the LRA's true goals: “The LRA remains one of the least understood rebel movements in the world, and its ideology, as far as it has one, is difficult to understand,” states the IRIN. Ugandan army spokesman Major Shaban Bantariza emphasized in an interview with IRIN, “You can't tell whether they want political power. Its only aim is to terrorize and brutalize the civilian population and to loot their homes.” Through terror tactics, the LRA both signals its power and resolve to the government and creates an environment of uncertainty that empowers the LRA with potential bargaining power.

Vulnerable to the LRA's unpredictable nature and lacking the power to credibly thwart attacks, the Ugandan government fluctuates between attempted military solutions and political appeasement strategies. Since its inception, the LRA has infiltrated surrounding nations, murdered Ugandans and other African nationalities and resupplied during promises of false cease-fires—only to resume their devastating endeavors. In return for aiding the Sudan government with the Sudan People’s Liberation Army, the Sudan government provided shelter and military supplies to the LRA. Operating from bases in southern Sudan, the LRA attempted
Uganda's Policy Regarding the Lord's Resistance Army

to destabilize the Ugandan government by abducting, raping, maiming and killing civilians. In 2003, Sudan allowed Ugandan troops to enter Sudanese territory to attack LRA rebels. The resulting destruction of LRA bases in southern Sudan forced rebels back into northern Uganda, making them more vulnerable to attacks by government troops. Desperate for food and military supplies in the north, LRA forces declared a cease-fire and relented to peace talks with Museveni’s government. However, according to Rowland Coucher’s article, “Northern Uganda: Kony Orders the LRA to Target the Church,” after resupplying during the cease-fire, the rebel army resumed atrocities—massacring Catholic missions, killing priests and beating and raping nuns. President Museveni realized that even with the destruction of rebel bases in Sudan, the military solution was unfeasible, reinforcing the need to relent to public pressures for a negotiated, political settlement.

In 2005, the International Criminal Court (ICC) issued arrest warrants for Joseph Kony and four of his top LRA deputies, charging them with crimes against humanity and war crimes including murder, rape, sexual slavery, and enlisting children as combatants. Since the ICC issued the warrants, LRA leadership has argued for immunity from prosecution as a condition for surrender. Peace talks in 2007 failed, as Kony refused to sign the agreements, arguing that “until all ICC charges were dropped, there would be no peace agreement” as described by Global Security in “Uganda Civil War.”

Joseph Kony of the Lord’s Resistance Army in Uganda offers a prime example of a human rights violator who exploits truces as opportunities to rearm and launch further attacks. The online article “The Lord’s Resistance Army Uses Truce to Rearm and Spread Fear in Uganda” describes how the ICC and the Ugandan government have repeatedly considered demands for immunity for LRA leaders from ICC prosecution in return for ending insurgency—only to be devastated when LRA forces abandon negotiations to resume slaughtering civilian populations. Weisbord writes, “Every attempt to negotiate peace with the LRA since its creation in 1986 has failed, giving Kony time to regroup, rearm and resume his atrocities.” The ICC’s willingness to consider false peace promises after the LRA has reneged on cease-fire agreements countless times only exacerbates the situation—emboldening transgressors with the knowledge that they can continue to massacre innocent civilian populations without repercussions: “Failure to prosecute leaders responsible for human rights abuses breeds contempt for the law and encourages future violations” as described by Michael Scharf in “Justice versus Peace” (182).

Following the aforementioned failed peace talks in 2007 amidst the ICC arrest warrants, the LRA subsequently amplified attacks in the Democratic Republic of the Congo, prompting Operation Lightning Thunder, a US supported joint military effort by Ugandan and DRC forces. However, this attempt at a final and decisive military defeat of the LRA failed, resulting in vicious revenge attacks by the LRA that killed over 1,000 people in the Congo and Sudan. Although the military strike destroyed the main LRA base in the DRC, this forced Kony’s troops into the Central African Republic (CAR). According to the BBC article “Uganda’s Northern War,” the movement of the LRA into CAR escalated the Uganda Civil War to a regional conflict involving four countries (the DRC, the CAR, Sudan and Uganda). The LRA remains a destructive, unpredictable force that continues to evade capture by the Ugandan military—prompting the dire need for new and innovative solutions.

Both decentralization and national elections pose problems and are infeasible solutions. Decentralization, in which the Ugandan government would grant LRA forces local control of northern Uganda, raises the risk that once the LRA achieves internal cohesion, they may demand independence. National elections to reinforce the legitimacy of Museveni’s government (assuming that he is reelected) present the issue that following a legitimate election, the government cannot credibly commit to protecting the rights of the rebel group. Thus, the minority rationally resorts to violence rather than placing themselves at risk for exploitation. As violence in the Ugandan Civil War is sporadic and encompasses surrounding nations, international peacekeepers attempting to protect each of the warring sides from each other by serving as “human shields” would encounter extreme difficulty given the unpredictable nature of the LRA’s guerilla warfare. Not only do rebels appear to lack clear strategic goals, but the conflict also lacks clearly defined territories and spans numerous surrounding countries—eliminating peacekeepers as a feasible solution to prevent military engagements.
Thus, international forces must intervene with definite military goals and strategies including the complete disbanding of rebel forces. However, international forces should deeply regulate their involvement, as unrestricted military aid and supplies to Ugandan government could result in moral hazard. Museveni’s regime, recognizing that they will receive subsidies if they are unremittingly reckless or encounter difficulties, may seek revenge on Kony’s forces; thus, exacerbating the solution rather than attaining the desperately desired peace. Furthermore, withdrawing prematurely prior to eliminating the root cause of the conflict, including eliminating key military commanders, will only temporarily resolve the situation. Without eradicating the problem entirely, international forces may have to remain in the territory indefinitely to maintain peace; if international forces depart, Uganda may descend into civil war again.

The ICC and Ugandan government must fully support and maintain steadfast commitment to arrest warrants and peace settlement stipulations—acknowledging that appeasement of guilty parties only undermines both entities’ credibility and convinces LRA rebels that they are immune to laws and justice. By bolstering the credibility of their threats, both the government and ICC will weaken the LRA’s bargaining power. As LRA goals become increasingly unclear and Global Security experts argue that the rebels pose a greater threat to civilian populations than to the governments of the targeted countries, permanently disbanding the Lord’s Resistance Army is the only means of achieving sustainable, long term peace. Vital to successful resolution of the conflict is a decisive international military intervention that will uphold ICC arrest warrants, disband rebel forces, and refuse to be swayed by empty promises of peace negotiations and cease-fires. As the BBC article “Christian Rebels Wage a War of Terror in Uganda” describes, although the group of Christian fundamentalists initially proclaimed to desire a theocracy, the LRA’s vicious abuse of civilian populations prompts many diplomats to characterize the fighters as “terrorists”—enforcing the necessity of intervention to resolve a dire situation and to end the cycle of impunity and violent crimes that have plagued Uganda for more than two decades.
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Physician-Assisted Suicide: An International Conundrum

SARAH JOHNSON
Class of 2013

Abstract

The “right to die” is central to many ethical debates around the world. Specifically, the United States and the Netherlands produced legislation that legalizes the use of Physician-Assisted Suicide (PAS) in the event that a patient is terminally ill and wishes to end his or her life. However, the United States Supreme Court did not uphold PAS as a fundamental right for U.S. citizens in Washington v. Glucksberg (1997) and Vacco v. Quill (1997) cases, while the Netherlands recognizes the fundamental right to die in the 2002 Dutch Law on Termination of Life on Request and Assisted Suicide. The PAS legislation presents an ethical dilemma to patients, physicians, and lawmakers. Furthermore, medical and legal scholars are divided on the legislation’s effectiveness. In order to reach my conclusion, I examined the legislative history of PAS in the United States and the Netherlands, as well as analyzed scholarly debates on the morality and effectiveness of PAS legislation. In this article, I argue that countries, like the Netherlands, that have legalized PAS, handle the issue of the “right to die” in a more ethical and efficient manner than the United States.

Physician-Assisted Suicide: An International Conundrum

The issue of the “right to die” is creating intense debate in societies around the world; the fact that terminally patients want to willingly end their life is counterintuitive to many cultures, religions and personal beliefs. Nonetheless, many consider the ability to expedite one’s death with the help of a medical professional, a practice known as Physician-Assisted Suicide (PAS), to be a fundamental right by many. In Baxter v. Montana (2009), the Supreme Court legalized PAS in December of 2009. The ruling allows terminally ill patients to choose to die via lethal medication prescribed by physicians. Presently, Montana, Oregon, and Washington are the only states that have legislation that legalizes PAS in the United States, while many European nations, like the Netherlands, have allowed the practice since 2002 (“Netherlands First Nation to Approve Physician-Assisted Suicide”). Currently, scholars are split on the issue of PAS. Proponents of the legalization of PAS, such as Dr. Marcia Angell, the first woman editor-in-chief of the New England Journal of Medicine, and Dr. Timothy Quill, the lead plaintiff in the PAS U.S. Supreme Court case Vacco v. Quill (1997), assert that patients have a right to die under certain circumstances. They maintain that morality is not compromised by the physician or patient involved and that the existing regulations in the Netherlands are effective. Conversely, opponents, such as Daniel Callahan, who is President of the Hastings Center, a bioethics research institute, claim that regulations in the Netherlands are ineffectual and that the physicians who practice PAS are void of ethical standards. I find the former argument to be more compelling and accurate than the latter. In this article, I argue that European countries, like the Netherlands, which have legalized PAS, are handling the issue in a more ethical and efficient manner than the United States. First, I will examine the legislative and judicial history of PAS in the United States and the Netherlands. Then, I will analyze the debate of the morality of PAS between legal scholars and medical professionals. I will conclude by examining the implications for society that PAS regulations bring, including their effects on patients, physicians, and politicians.

Vital to understanding an analysis of the PAS legal debate among physicians and scholars is an examination of the U.S. Supreme Court decisions and Congressional legislation about
Physician-Assisted Suicide

the “right to die,” as well as laws in the Netherlands that have legalized PAS. The U.S. Supreme Court decisions dealing with PAS include Washington v. Glucksberg (1997) and Vacco. These cases dealt with the constitutionality of Washington and New York’s ban on PAS and both cases received the same ruling. The question at the center of Washington and Vacco was whether the state’s ban violated the Due Process Clause of the Fourteenth Amendment or the Equal Protection Clause of the Fourteenth Amendment. The court reasoned that the right to assisted suicide is “not a fundamental liberty. This is supported by the court’s interpretation of individual states’ interests and “the preservation of human life” (Washington v. Glucksberg).

Although the federal government has not protected the “right to die,” the aforementioned Montana Supreme Court case, Baxter, which was decided on December 31, 2009, found that although the Montana State Constitution does not explicitly assure a right to PAS, there is no evidence in Montana’s legal history that indicates that PAS would be harmful to the state’s well-being (Baxter v. State of Montana).

The court cases listed above were sparked by the Oregon Death with Dignity Act that was enacted on October 21, 1997 (Oregon Death with Dignity Act). The law allows terminally ill Oregon citizens to die through the self-administration of fatal medications that are prescribed by physicians (Oregon Death with Dignity Act). An important aspect to note about the Death with Dignity law is the use of strict stipulations within the legislation. The laws do not allow for easy access to PAS and only permit its practice if the patient is terminally ill. One such legal limit exists in the patient meeting certain qualifications: the patient must be an adult, remain in contact with an attending and consulting physician for a period of time, attend multiple counseling sessions, and submit a written request for the lethal medication (Oregon Death with Dignity Act 127.800). These regulations provide ethical authority to the legislation and keep citizens from abusing the privilege of PAS.

The regulations that exist in the United State’s legislation are similar to the stipulations in place in the Netherlands. The Dutch legalized PAS in 2002 with the Dutch Law on Termination of Life on Request and Assisted Suicide. The law has similar legal framework to the Oregon Death with Dignity Act, as the legislation only allows PAS to occur under certain circumstances, including consultations with other physicians and the physician’s conviction that the patient’s suffering is lasting and unbearable ("Dutch Law on Termination"). Also, the physician aiding in the assisted suicide must report the death to a coroner in order for the specific PAS to be considered legal ("Dutch Law on Termination").

Given the historical legal background of PAS in the Netherlands and the United States, I will now consider the morality debate among professionals in the medical field. A common question arises when PAS is discussed; patients who are terminally ill view their choice in death as a right, thus is the fact that physicians are forcing humans to live a painful life unethical? I will first address the issue of patient autonomy, which is recognized in the Netherlands by the national law, but not in the United States. The aforementioned scholar, Marcia Angell, M.D., is a proponent for the precedence of patient autonomy, which is one of the most important ethical principles in medicine (Angell 50). Dr. Angell asserts, patient autonomy “is incorporated into our laws governing medical practice and research, including the requirement of informed consent to any treatment” (Angell 50). Angell further argues,

“In medicine, patients exercise their self-determination most dramatically when they ask that life-sustaining treatment be withdrawn. Although others may sometimes consider the request ill-founded, we are bound to honor it if the patient is mentally competent — that is, if the patient can understand the nature of the decision and its consequences” (Angell 50).

Medical professionals like Dr. Angell find that a patient’s choice in their right to die is paramount and that physicians must respect this moral principle of medicine, which is practiced in the Netherlands.

Angell’s remarks are persuasive in a morally driven sense, however, other medical professionals disagree with Angell. They argue that according to the Hippocratic Oath, a pledge to practice medicine ethically, physicians may not prescribe any lethal drugs or consult patients considering it. Dr. John Glasson, a delegate for North Carolina physicians in the House of Delegates for the American Medical Association (AMA) and also a member of the prestigious
Council on Ethical and Judicial Affairs for the AMA writes, “The physician’s role is to affirm life, not to hasten its demise” (Glasson 93). Dr. Glasson asserts that “permitting assisted suicide would compromise the physician’s professional role because it would involve physicians in making inappropriate value judgments about the quality of life” (Glasson 93). Dr. Glasson further argues that the majority of medical professionals in the United States do not accept PAS and neither do most of the world’s major religions (Glasson 93-94). This position argues for the sanctity of human life over the patient’s autonomy. Though Dr. Glasson’s arguments are valid to some extent, his statements are flawed; medical professionals and scholars who argue for the precedence of patient autonomy have a more historically and ethically valid point. I agree with Franklin Miller Ph.D., a member of the senior faculty in the Department of Bioethics in the National Institutes of Health (NIH) and his colleagues at the University of Virginia School of Medicine, who argue that the ethical norms in medicine are changing. Miller asserts with these new norms, “reliving suffering and respecting patients’ rights to self-determination” is now acceptable in the medical world, especially when dealing with PAS; in fact this belief is already in place in the Netherlands. Furthermore, Dr. Victor Lieberman, a practicing physician in Montana and an avid supporter of the Baxter decision, states that “We have a moral duty to provide the best possible end of life care. I am, however, convinced that there is a sub-set of the terminally ill who are capable of weighing their own reasons for choosing the proximate means and moment of death” (Lieberman). Lieberman argues that there is often misunderstanding in the morality of aid in dying; however, with an understanding of the moral duty a physician has to patient autonomy the ethicality of the practice becomes less questionable.

In order to understand the scope of the PAS morality debate in real world terms, I will now examine the implications that PAS regulations have on society as a whole. Patients in European countries have the right to request PAS under certain circumstances; meaning there are regulations to ensure that those who request the aid to die are doing so in an ethical and efficient manner. However, many opponents of PAS and its regulation argue that regulations are too cumbersome and are not effective. Daniel Callahan, President of The Hastings Center, a bioethics research institute, and Margot White, a visiting Assistant Professor at University of Virginia School of Medicine, find this to be the case. They argue, “It is impossible in principle and in practice to regulate either euthanasia or PAS successfully,” and they use the Netherlands as an example (Callahan and White 2). They assert that “although the Dutch have supposedly established criteria, they seem perfectly willing to set the criteria aside in the name of necessity. The criteria become, in effect, dispensable guidelines rather than essential requirements” (Callahan and White 15). Callahan and White find the Netherlands’s regulations to be “reminiscent of the kind of strategic and systematic vagueness of the proposed American statute, which would set aside its criteria for those physically unable to commit suicide and for those who, though not terminal, are judged to be suffering unbearably” (Callahan and White 15). Essentially, they argue that with such intricate situations, “it is hard to know just where a line could be drawn in theory or in practice” (Callahan and White 15). However, other scholars in the medical field disagree with Callahan and White, arguing that legislation can create unambiguous directions for physicians in many situations. Dr. Timothy Quill, the Director of the Center for Ethics, Humanities and Palliative Care in Rochester, New York and the lead plaintiff in the Vacco case, stresses that regulations can be created that provide clear procedures and criteria for patients (Quill 1911). According to Quill, these clear regulations diminish the likelihood of PAS abuse and there is evidence that the possibility of last-resort practices being chosen because of inadequate palliative care is lessening (Quill 1911). He argues that the “explicit legislation” in the Netherlands has prevented the increase and abuse of PAS death; essentially dispelling the “slippery slope” argument (Quill 1911). Quill’s opinion shows that with clear legislation, PAS can exist ethically and efficiently. I find Quill’s argument to be more convincing due to the evidence of avoided abuse and the success of transparent legislation policies.

PAS is a medical debate that will not end in the near future. The United States is a country in which varying political, cultural, and religious ideologies often govern state legislature and court decisions; this diverse political culture yields debates about issues like PAS that will ultimately not find a consensus. Also, the United States and the Netherlands have different
health care systems, which further complicate the comparison of the legalization of PAS, along with the Netherlands' more liberal political climate. However, the Netherlands is able to distribute the “right to die” to its citizens who meet reasonable requirements, while only a few states in the United States allow their citizens to exercise this right. One important aspect of the Washington and Vacco decisions is that the U.S. Supreme Court has left the decision of legislation for or against PAS up to the states and that the Court has not ruled out hearing other cases dealing with the matter. Ultimately, the issue of the “right to die” has the potential to be brought to the U.S. Supreme Court again, and it will inevitably be an issue in the United States for years to come. The future will yield the results of whether the Netherlands’ PAS legislation is a success; however, PAS is now considered moral by many according to changing ethical norms and is made efficient due to explicit legislation.
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The Great Shelter: Public Housing Policy in Hong Kong

RUOPIAO XU  
Class of 2013

Abstract

This paper examines Hong Kong’s public housing policy. I identify the distinctive economic and social backgrounds that give rise to the unique public housing policy. I then trace the implementation process and evaluate the effectiveness of the policy. Also, I compare public housing policies in Hong Kong to those in Singapore. By focusing on Home Ownership Schemes, I explore the varying degrees of government involvement. Although governments that intervene the least are generally considered the most effective, in areas where the private sector cannot function efficiently, the higher degree of government involvement in Singapore has created a more effective housing solution.

The Great Shelter: Public Housing Policy in Hong Kong

Introduction

Walking down the streets in Hong Kong, I seldom worry about getting excessive summer sunshine. High rise buildings, if not skyscrapers, always project huge shadows on the narrow roads and provide people with shaded space. They are not necessarily grand office buildings or shopping malls located in the most expensive district in the metropolis -- in fact, many are ordinary apartments in the outskirts such as New Territory. Every building face is speckled with numerous tiny windows in such a way that one could easily touch the neighboring window if he or she outstretched an arm.

However, these tiny living spaces are not at all easily acquired in Hong Kong, one of the most densely populated cities in the world. The Hong Kong government plays an active role in allocating extremely scarce land resources to shelter its citizens. This paper examines how effectively the Hong Kong government has resolved its housing problem and then compares the public housing policies of Hong Kong and Singapore.

Background

With a population of seven million and land mass of 1100 square km (426 square miles), Hong Kong is one of the most densely populated regions in the world. Sixty-seven percent of the area is occupied by forests and wetlands, while only seven percent is allocated as residential land. Currently, forty-eight percent of the population lives in government subsidized Public Permanent Housing, among which more than 60% rent the flats. Due to the public housing system, housing expenditure accounts for only 5.6% of the average income.

History of Public Housing

Hong Kong has faced a critical housing problem since 1945. High levels of immigration from mainland China and war-time destruction of housing stock triggered a severe imbalance between supply and demand. As a result, impoverished refugees who could not afford private rents constructed makeshift dwellings on their own.

1. (Hong Kong Census Bureau, 2011)  
2. (Hong Kong Housing Authority, 2011)
The private sector could not profitably construct enough affordable shelters for the influx of low-income residents. At first, the government responded by adopting laissez-faire practices. However, large squatter areas continued to threaten public health, urban development, and social stability. The mass Public Housing Program started in 1954 and was adjusted in the following decades to account for massive social and economic changes. The introduction of the self-contained housing concept is one of the most remarkable solutions. It was set as a target in the 1970s, when designated commercial amenities replaced street vendors to complete the whole living environment.

Innovation regarding types of public housing significantly shifted the housing condition. Previously, the government subsidized public rental housing so that low-income families could rent at discounted rates. Beginning in the 1980s, the long-term target of government policy turned into homeownership instead of merely relocating people into adequate shelters. The Home Ownership Scheme is a set of policies that allowed low-income families to purchase their homes for the first time. The estates, which have designs and quality that are constructed nearly identically to public rental housing, were sold at discounted rates, usually between 30 to 40 percent.

However, as the property market collapsed after the 1997 Asian Financial Crisis, housing prices dropped drastically. To stabilize and boost the real estate market, the government abandoned the promotion of homeownership as a policy goal. The production and sale of Home-Ownership Scheme flats ceased. Instead of selling flats, the Housing Authority has been refocusing on subsidizing rental housing to the needy since then.

Evaluation of Public Housing Policy in Hong Kong

Public housing in Hong Kong has achieved great success in providing low-income families with decent living space. Aside from the heavily discounted rent, public housing residents enjoy well-developed public amenities such as government-constructed recreational facilities. Also, convenient transportation, as well as ample public schools, hospitals, and malls contribute to the quality and habitability of public housing projects. Therefore, in Hong Kong, public housing is not associated with slums. Rather, it serves as comprehensive living and leisure space and becomes a successful example of public goods management.

Forward-looking urban planning and constant policy support are crucial in implementing the housing scheme. Hong Kong Housing Authority currently owns more than 700,000 renting flats, which can accommodate more than one third of the city’s residents. The government not only supports the housing scheme in terms of land distribution and financial arrangement, but also incorporates public housing communities into urban planning. Hong Kong Housing Authority is therefore able to support large-scale public housing and guarantee sufficient public facilities.

Another remarkable feature of Hong Kong’s public housing is its relative equity in the distribution process. Two distinctive practices help achieve rational allocation.

Firstly, Hong Kong Housing Authority carefully examines and tracks public housing residents’ economic conditions. In terms of admittance, the government requires both income and asset means-testing for all public housing applicants. With regard to existing public housing benefactors, periodical assessments are carried out. The double rent policy targets well-off public housing tenants whose income exceeds the limit on the public housing waiting list by 100%. Households that have been in the program for more than ten years would have to go through biennial income review in order to be exempted from the higher rent. If the

3. (Lau, 2007, p 47)
4. Self-contained housing offers not only living spaces, but also complete facilities and services necessary for comfortable daily life.
5. (Lau, 2007, pp. 47-50)
6. (Yung, 2008)
7. (Discount of 37 pc for flat buyers, 1992)
8. (Hong Kong Property Prices Drop 61% below peak)
9. (Lau, 2007, pp. 45-75)
10. (Hong Kong Housing Authority, 2011)
reported income exceeds the standard by 100% to 200%, the rent increases by half; if by more than 200%, the rent doubles. This policy effectively identifies people who are “too rich” to enjoy the social welfare.

In addition to stringent qualification measures, effective supervision maintains allocation equity. Dishonest practices are subjected to severe penalization. The former judge of the Hong Kong Judiciary, Bojian Li, and his wife were sentenced to 11-month imprisonment for underreporting their assets to be eligible for public housing. Proper dealing with fraud and corruption has a significant impact on the remaining population. Transparent and concrete rules are a must to prevent such fraud.

Although successful, the public housing program faces issues and criticism, among which inefficiency and inequity are the most frequent. The waiting time for a public settlement is about three years, and many people complain about the strict application process. The well-off are unwilling to move out since public housing is able to meet their demand at minimum cost. At the same time, the double rent policy is extremely unpopular with public housing tenants. Even those who are not immediately affected oppose the policy because they expect to be adversely affected in the future. Low turnover rates and long waiting lines result in large unmet demands of the truly needy and reduce the policy’s overall efficiency. Privatization of public housing could effectively solve these problems. Singapore serves as a successful model for the commercialization of public housing.

**Comparison with Public Housing in Singapore**

I compared Hong Kong’s public housing policy with Singapore’s system for public housing because the two countries face similar land shortages relative to their dense populations. Additionally, they share a cultural homogeneity of Confucianism, which emphasizes the role of family as the building block of society and the values of harmony, solidarity, and loyalty. A good society is seen as not based on individualism and citizenship, but rather on “ascending orders of duty and obligation.” Unlike the Western notion, the government is not generally perceived as the property of people, and its actions are driven mostly by duty instead of electoral pledges. This expectation sets the public policy making process and effectiveness of Hong Kong and Singapore apart from that of the US and Western Europe. For instance, much of the state housing service is provided by large, state-run enterprises: the Hong Kong Housing Authority and the Housing and Development Board in Singapore. They are directly responsible for the development and management of estates, a practice uncommon to the West.

Like Hong Kong, Singapore is characterized by a dense population and very limited land resources. When the country first gained self-governance in 1955, 40% of its population lived in squatters or slums. Today, more than 88% of its people reside in public estates constructed by the government. In 1960, the Housing and Development Board (HDB) of Singapore was founded with the mission to provide housing for all those in need. In 1964 HDB put forward Home Ownership Scheme, which was aimed at enabling lower income groups to own homes. This time frame resembles that of Hong Kong. However, Singapore has achieved greater success in accommodating its people as seen in its broader coverage, larger living spaces, and cheaper prices.

The major underlying reason for Singapore’s relative success is the extent of government involvement. The construction of public housing in Singapore is all funded by the government, which is also responsible for potential losses (whereas the Hong Kong government is not accountable for the Housing Authority’s gain or loss). The deficits created by the construction and development of public estates are covered by the state, which devotes 3.8% of its annual

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11. (Huo, 2007)
12. Confucianism: a Chinese ethical and philosophical system that emphasizes humanism and loyalty
13. (Jin, 2004)
14. (Song, 2010)
15. A subsidized-sale program of public housing in Hong Kong managed by Hong Kong Housing Authority
16. (Song, 2010)
budget to the public housing scheme. In addition, the Land Acquisition Act, which was introduced in 1966, empowered the government to acquire land from many small and medium land owners. HDB flats are then built on the “state owned land,” which had been compulsorily acquired from private landowners at prices far below fair market value. While Hong Kong also provides free land usage for public flats, the source of state owned land is much more limited, and the cost of acquiring private land is significantly higher. Therefore, stronger political force allows the Singaporean government to provide more flats at below market price.

Another striking success of Singapore is its housing ownership process. The financial support from the Singaporean government is so strong that more than 95% of the residents own their HDB flats. Three main factors drive this remarkable achievement. First, the price of public housing flats is substantially lower than that of privately-built developments. For example, a typical HDB 4-room has a sale price of between S$200,000 to S$300,000. In contrast, comparable privately developed housing can cost as much as S$1,000,000.

Second, the government offers various financial planning options for home purchases. The Central Provident Fund, for example, has been established as a pension plan since 1955. All employers and employees are required to make monthly deposits to the fund. The bulk of contributions can be only withdrawn after retirement or for specific purposes, of which housing dominates. The fund not only supports home purchases, but also creates constant demand for the massive housing projects. This balance of supply and demand is essential for sustainable implementation of the housing ownership scheme.

Third, various designs and layouts for public housing flats cover diverse needs of different social classes. Room type ranges from one-room (700 square feet) all the way up to executive maisonette (1500 square feet). The broad range ensures that social welfare covers people from middle and upper-middle classes. This practice solves the “middle class dilemma” in many societies, including Hong Kong. There, the middle class is referred to as the struggling middle class, often referred to as the “sandwich class” because it is excluded from subsidies yet cannot afford to purchase property on its own.

As mentioned in the previous section, Hong Kong had supported Home Ownership Scheme since the 1970s. In 2003, however, the construction of new Home Ownership Scheme estates was paused indefinitely because of housing values, which had been continuously falling since the 1997 Financial Crisis. Unlike Singapore’s HDB, Hong Kong Housing Authority is not funded by the government. Between 1997 and 2003, a large portion of Hong Kong Housing Authority’s revenue came from the sales under Home Ownership Scheme. Therefore, the new policy shift broke the budget balance and forced Hong Kong Housing Authority to search for other ways to compensate for the deficit. Since 2004, Hong Kong Housing Authority has been privatizing formerly public properties, including shopping malls and parking lots, to fund its operations.

In the long term, this partial privatization is unsustainable, since the Housing Authority essentially forgoes future rent revenue in exchange for immediate sales profits. Concerned about the possible future rise in public housing rent, many people protested against this practice. On the other hand, the Housing Authority could not support the Public Housing Rent Scheme without enough cash today to cover the large expense. Therefore, it is not surprising that the Home Ownership Scheme, which requires even higher subsidies, was not able to move forward in Hong Kong. The dilemma does not exist in Singapore at the moment, whose government has agreed to ultimately pay the bill.

Under capitalist ideology, the less the government intervenes, the more prosperous its people are. The Hong Kong government probably had a good intention in leaving the Housing Authority financially independent. However, Singapore seems to have solved the housing problem more effectively thanks to its higher degree of intervention: a significantly larger percent of its citizens own their homes, and distinctive demands are addressed differently.
Essentially, fair distribution of social welfare often requires effective government actions, including reallocation of scarce resources. Governments collect taxes (and thus reallocate monetary resources) to reduce the gap between the wealthy and poor, to provide public goods including schools, hospitals, and transportation systems, and to take care of the retired population. To a large extent, the government’s purpose in entering the real estate market is to reallocate land resources. The need for government intervention exists because the private sector is either too profit-oriented or too constrained in terms of fund availability or political power to achieve optimal social outcomes. Public housing happens to be an urgent social need that Hong Kong and Singapore have to support more than other countries. Although the degree of intervention should be examined carefully after weighing the relative social benefits and costs, it is too demanding to argue that government involvement undermines the freedom of markets. The extent of the role the government should play depends on different problems in different societies. It would be more cost effective for the Hong Kong government to subsidize more in Home Ownership Scheme now than to wait until the Housing Authority cannot even finance the existing Public Housing Rent Scheme as revenue from historic flat sale runs out. Also, a higher proportion of home owners is beneficial to social stability and economic development in the long run.

Conclusion

The overall position of the Hong Kong government in the housing market can be characterized as a positive role. With the purpose of improving social justice and development, the government intervenes by making up for the basic housing supply deficit, which is caused by the imperfection of the market. On the other hand, it leaves the higher-end segment of population to market forces. This partial intervention calls for a set of effective mechanisms, including both entry and exit procedures, to identify the truly needy as beneficiaries of the policy. The Hong Kong government has already achieved great success in public housing policy through strong fiscal support, long-term planning, and efficient implementation. However, consistent adjustment to the ever-changing social and economic situation is a must for the continuing success of its public housing scheme. Although the role of government in housing needs further examination, Singapore is an extremely successful model for the public housing welfare, especially in its public housing privatization process. Promoting home ownership has been a long-term goal for Hong Kong public housing policy. Although not all government intervention in Singapore achieves optimal results, it would be beneficial to draw on the successful practices of Singapore if the Hong Kong government was headed towards a home-owning society again.
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Terms for Granting Asylum in Liberal Democratic States

RACHEL MYRICK
Class of 2013

Abstract

Who should we let in? This paper analyzes arguments from leading immigration scholars about which individuals should be granted asylum. I conclude that an expansion of the United Nations definition of a refugee is warranted to ensure asylum-seekers are treated equitably by all states.

Terms for Granting Asylum in Liberal Democratic States

In a globalized world, liberal democratic states are bombarded with migrants fleeing their home countries for fear of persecution or simply for a more promising lifestyle. The burden falls on these liberal states – marked by self-limited sovereignty, democratic governance, and economic opportunity – to distinguish between these two motives and to grant asylum to those most in need. When evaluating circumstances under which liberal democracies should grant asylum, I build upon the research of Gil Loescher, Mark Gibney, and Bonny Ibhawoh, three scholars who have made substantial contributions to the asylum debate. I narrow my discussion to two dimensions of the issue. First, I explore what states should prioritize when considering claims of asylum-seekers. Second, I suggest how this process is best approached and managed. I argue that liberal democracies should prioritize asylum-seekers facing life-threatening situations, admitting individuals on a case-by-case basis and deferring to the United Nations High Commission on Refugees (UNHCR) to holistically monitor refugee and asylum policies in Western states.

In order to evaluate asylum policies of liberal democracies, one must first understand the accepted definition of an asylum-seeker and a refugee. An asylum-seeker arrives at a state's border seeking refugee status. Liberal democratic states base their framework for evaluating claims of asylum-seekers on the definition of a refugee established by the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol. The definition states that refugees have “a well-founded fear of persecution for reasons of political opinion, race, religion, nationality or membership in a particular social group and are outside their country of nationality and are unable or, as a result of such fear, unwilling to return to it.” As this definition is the backbone of refugee and asylum policy, I argue that it requires serious scrutiny in order to construct a proper foundation for the asylum debate.

The definition of a refugee, used to evaluate claims of asylum seekers, lacks two critical components: the fear of persecution based on gender and the qualification of “life-threatening” situations. Gibney and Ibhawoh both touch on controversy surrounding the UN definition, but neither makes a strong claim that “gender” should be included as a qualifier along with race, religion, and political opinion. I believe this addition is necessary because it encompasses persecution related to both one’s sex and one’s sexual orientation.

1. (Hong Kong Census Bureau, 2011)
2. (Hong Kong Housing Authority, 2011)
One recent example of a potential gender-based asylum claim occurred in Uganda in 2009. Uganda’s proposed Anti-Homosexuality Bill, known colloquially as the “Kill the Gays Bill,” would have introduced the death penalty for any individual over 18 known to have engaged in homosexual acts. Although the bill had strong support in Uganda, it was ultimately suppressed by the international community. If the legislation had passed, it would certainly have given thousands of openly homosexual Ugandans a “well-founded fear of persecution” and legitimate grounds for asylum, despite the fact that gender is not included in the UN definition.

The second change I propose aligns closely with Gibney’s views. Gibney asserts that the central claim of a refugee should be, “Grant me asylum for, if you do not, I will be persecuted or face life-threatening danger.” Acceptance of asylum-seekers should be based primarily on a fundamental need to protect and preserve existing human life. For example, both Somali refugees fleeing famine and outspoken Chinese artists fearing political persecution have equally just grounds for asylum.

Gibney consistently uses a broader definition of “refugee,” claiming an individual has grounds for asylum when he or she is in situations that “jeopardize physical security or vital subsistence needs” or becomes a victim of “generalized states of violence and events seriously disturbing the public order.” Ibhawoh also acknowledges this claim but qualifies that the accepted definition of a refugee is limited primarily because, “Western countries… do not take adequate consideration of socio-economic concerns like starvation, war, and environmental disasters.”

Upholding protection of life and freedom from harm as critical grounds for asylum establishes a clear value system and suggests some of the responsibilities that liberal democratic states must bear. Dissonance is created when accepting countries must balance “concerns of value” with “the challenges of agency.” In sum, it is one thing to claim to protect and value human life and another to open one’s borders to all those knocking at the gates.

Gibney addresses this challenge by suggesting that liberal democratic states approach asylum policy under the framework of humanitarianism. Humanitarianism implies that “states have an obligation to assist refugees when the costs of doing so are low.” I expound upon the humanitarianism principle by asserting that individuals should be granted asylum when: a) they have established both a “well-founded” and “individualized” fear of persecution on grounds previously discussed, b) they present a relatively low cost to the accepting state, and c) they do not present a threat to the accepting state.

While I have outlined the general criteria for credible asylum seekers, it is impossible to fully flesh out a checklist of qualifications, a detailed definition of grounds for asylum, or an appropriate model that can be applied to the asylum process. There will always be exceptional cases, and final determinations must come down to individuals (in the case of Western states, asylum officers). While opponents of this practice argue that the process is imperfect, I view it as the most humane and appropriate policy for liberal democratic states to pursue.

Approaching asylum on a case-by-case basis calls into question both individual and cultural biases, a topic addressed by Ibhawoh. Ibhawoh draws a distinction between universality and cultural relativism, suggesting that balancing these two approaches in an asylum discussion is difficult. While I agree with Ibhawoh’s sentiments in this regard, I reject his condemnation of certain asylum policies as reflecting “cultural chauvinism.” For instance, Ibhawoh interprets Canada’s admission of a woman fleeing Female Genital Mutilation (FGM) as an example of cultural chauvinism. The view that admitting someone based on his or her fear of a certain practice condemns that cultural practice in all contexts is too simplistic.

Consider, for example, a female fleeing Mauritania, her home country, to seek asylum in the United States because she fears she will be subject to FGM. By accepting her request, the United States is not inherently condemning FGM in all situations. Instead, the acceptance implies that a) the woman has an individualized fear of this practice, and b) Mauritania is not offering her necessary protection from that fear.

The justification for this is threefold. First, if, for example, the United States is already accepting refugees from Mauritania, it has already acknowledged the weakness of the state and therefore renders the practical consideration of “embarrassing the state” already void. Second, the U.S. should have sovereignty over its own borders. Its decision, therefore, should
be based on American values and not on the acceptability of cultural practices in Mauritania. Finally, from a purely normative standpoint, the health and well-being of an individual at the doorstep of a liberal democratic state should outweigh the fear of a cultural “faux paus.” In other words, if the woman’s fear of FGM is legitimate and well-founded, refusal to grant her asylum will result in circumcision against her will in Mauritania.

Although I have described a framework for granting asylum, what I have illustrated lacks an enforcement mechanism. This is arguably the most difficult aspect of the equation and the point at which Loescher’s argument becomes relevant. Loescher argues that the United Nations High Commission on Refugees (UNHCR), founded as an independent advocate for refugee rights, needs to shift its efforts away from humanitarian action and refocus on protecting the rights of refugees and asylum-seekers. While Loescher mainly focuses on the redundancy of UNHCR duplicating efforts of other humanitarian aid organizations, he also mentions the role that UNHCR could play in “reminding liberal democracies of their own identities as promoters of international human rights.” I would push Loescher’s argument farther by saying fostering accountability among liberal democracies is the single most important role UNHCR can play.

As an independent agency, UNHCR is in a unique position to mitigate a collective action problem among Western states, ensuring each state takes a fair share of the refugee burden. To boost its credibility, UNHCR can implement strategies such as promoting public awareness, focusing on reputation costs for liberal democracies, and monitoring and reporting current asylum policies.

By positioning itself in this way, UNHCR will have the unique ability to not only outline the circumstances under which asylum-seekers should be granted asylum, but also to monitor asylum policies within liberal democracies. By functioning as a “watchdog,” UNHCR can ensure that Western states open their borders to those most in need. The agency can begin this process by spearheading a movement to broaden the definition of “refugee,” prioritizing the global community’s fundamental need to preserve life and protect individuals from harm.
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Was the Iraq War Just?

An Analysis of Invasion and Occupation

CODY POPLIN

Class of 2012

Abstract

New challenges to the international system have raised questions regarding the application of Just War Theory. This reexamination of the Just War Tradition reached a climax in the months leading up to the invasion of Iraq in 2003, as the Bush Administration attempted to justify the war in Iraq under a new classification called “preventive war.” This paper examines the legitimacy of this classification as applied to the Just War Tradition as part of an overall examination of the justness of the War in Iraq. Ultimately, this paper argues that the injustice of the Iraq War stemmed from the inability of Coalition forces to safely and justly return sovereignty to the Iraqi people—not because the Bush Administration lacked proper authority, a just cause, or acted precipitously through its strategy of preventive war. This failure of foresight resulted in lapses of discrimination and proportionality and critically weakened any chance of success for the Coalition. The decision to extend the occupation undermined the legitimacy of the entire military operation and resulted in an unjust war.

Was the Iraq War Just? An Analysis of Invasion and Occupation

Since the end of the Second World War and the advent of nuclear weapons, Just War Theory has undergone numerous profound challenges regarding its viability and application to current political realities and systemic threats. In the current international order, great powers no longer are the main threats to international peace. Instead, failed and fragile states that permit terrorist organizations and the potential of the proliferation of weapons of mass destruction characterize the main security concerns. These new threats from inside states that have lost the monopoly on the legitimate use of physical force inside their territory or that are characterized by other social, political, or economic failures present new challenges to the tradition based on state sovereignty. Subsequently, the intensity of questioning regarding Just War continues to increase. This reexamination of the Just War Tradition reached a climax in the months preceding the invasion of Iraq in 2003. As President George W. Bush intimated while speaking at West Point prior to the March invasion, “New threats require new thinking.” This new thinking, which presumably validated the Iraq War, is called preventive war and it presents the most current test of Just War Theory. With uncertainty regarding the authority, the causes, and the probability of success, it is appropriate that both international lawyers and ethics scholars continue to question the justifications of what many consider a mistaken invasion. In this paper, I argue that the Iraq War was unjust and that this injustice stemmed from the fact that Coalition forces were not adequately equipped with a policy to safely and justly return

1. Just War Theory is a framework for evaluating the morality of the use of armed force on behalf of a political community that has evolved since St. Augustine first theorized about it in *City of God* in the fourth century. For an excellent overview of the Just War Tradition, look at pages 22-44 of Rhodes, Bill. *An Introduction to Military Ethics: A Reference Handbook*. Santa Barbara, California: ABC-CLIO, LLC. 2009.


sovereignty to the Iraqi people—not because the Bush Administration lacked proper authority, a just cause, or acted precipitously through its strategy of preventive war. The requirements for a just war operate in two paradigms. The first are the *Jus ad Bellum* requirements of a just cause, a right intention, a right authority, a reasonable expectation that the outcome of the war will outweigh the pain and destruction it causes, and that all other means have been exhausted. The second category, the *Jus in Bello* conditions, require that military actions discriminate between combatants and non-combatants and that the means maintain proportionality—that is, the military benefit outweighs the harm inflicted. During its inception and the invasion, the Iraq War fulfilled both the *Jus ad Bellum* and *Jus in Bello* requirements of Just War Theory. However, the United States departed from this with the decision to occupy Iraq for an indefinite period. This decision, which was not part of the original plan, invalidated the *Jus ad Bellum* and the *Jus in Bello* requirements, as military strategists had not planned for the insoluble contingencies of occupation, such as insurgency, sectarian violence, and the difficulty of preventing human rights abuses in a complex environment without essential judicial infrastructure. This failure of foresight resulted in lapses of discrimination and proportionality and critically weakened chances for success. This paper demonstrates that this one decision undermined the legitimacy of the entire military operation; thus, the Iraq War was unjust.

In March of 2003, the Coalition forces launched the Iraq War because Saddam Hussein, the President of Iraq, refused to cooperate fully with United Nations inspectors in their search for weapons of mass destruction (WMDs). For twelve years, Saddam Hussein had prevaricated evidence in a bluffing game with the United Nations, refusing to demonstrate that he had desisted from developing weapons of mass destruction. When he forced UN inspectors out of Iraq in 1999, they were obliged to submit a final report stating that they had been unable to account for 6,000 chemical aircraft bombs, seven Iraqi surface-to-surface missiles and two Russian-supplied Scuds. Moreover, they had failed to account for much chemical and biological weapon material, including that capable of producing 26,000 liters of anthrax and 1.5 tons of VX gas, nerve agents commonly used in chemical warfare. This history and his renewed refusal to offer facilities for inspection and provide guarantees of compliance convinced experts from around the world that he maintained illegal weapons. A second putative justification for invading Iraq in 2003 was the assertion that Saddam Hussein was a supporter of Al-Qa’ida. While that *casus belli*, as the one that he had weapons of mass destruction, has now been discredited, it does not mean that the Coalition was unjust in invading Iraq. Even without weapons of mass destruction or a connection to Al-Qa’ida, the war was just and merited because intelligence analysts from around the world, including UN inspectors, believed Hussein had failed to comply with UN resolutions and was hiding WMDs. Moreover, the United States argued that Hussein was a brutal dictator who had committed mass murder and numerous human rights abuses. With intent to prevent further recalcitrance and atrocity, intervention was justified.

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4. Translated: Just to War, or just in deciding to go to war. Rhodes, *An Introduction to Military Affairs*, 23
5. Translated: Just in War, or just actions within an on-going war. Rhodes, *An Introduction to Military Affairs*, 23
Despite some opponents’ incredulity, the Coalition’s purpose was to eliminate the threat of weapons of mass destruction and prevent their subsequent proliferation to terrorist organizations. As such, the United States and the United Kingdom fulfilled the category of right intention by fighting for their just cause and striving to create a more lasting peace. Demonstrably, the claim that President Bush wanted to invade Iraq to gain access to its huge oil reserves remains unfounded. According to the United States Energy Information Administration, Iraq has never represented more than 4.5% of the crude oil used in the U.S. This small percentage does not seem to justify a large scale invasion to ensure access to reserves. Furthermore, in the years following the Iraq War, American consumption of Iraqi oil actually decreased to its lowest level of 2.77% in 2008\textsuperscript{12}. While it is possible that the Administration miscalculated the amount of oil that the US could obtain by going to war, it is unlikely that they failed to foresee the war’s consequences of closing off oil fields; oil does not appear to have been their main pursuit. If, as opponents state, the Iraq War was about oil, then the U.S. has spent almost a trillion dollars to topple Saddam Hussein, lost thousands of American lives, run elections, established enormous efforts to benefit civil society, and struggled to train military and police forces, in order to get less oil from Iraq. Under scrutiny, this theory simply does not hold up.

Another claim which aims to undermine the Coalition’s right intentions is that the neo-conservatives in Bush’s cabinet wanted to establish a long-term military presence in the Middle East in order to show and further project American power into the region. This theory has gained some credibility following the occupation, and some cabinet members did support this opinion. However, Secretary of Defense Donald Rumsfeld and President Bush initially drafted a precipitous withdrawal from Iraq, asserting that the United States did not “want to be in a position where failure” to reconstrcut Iraq and determine government structure “ties down our forces indefinitely”\textsuperscript{13}. Consequently, without economic or imperialistic incentives, the intentions of the Coalition must have been based on security concerns and the provision of a more lasting peace. The justifications of the Iraq War dissolved after the United States deviated from its initial intention, when after a successful regime change it was argued that the U.S. forces should stay in order to ensure domestic peace.

If the United States and the United Kingdom did have a just cause and harbored the right intentions in invading Iraq, then the next question hinges on whether they had the authority to do so. It is commonly disputed that the Coalition did not receive proper authorization from the UN Security Council\textsuperscript{14} before starting the invasion. Yet, the Security Council is a political body made up of sovereign states that are nominally representing the international community but have often instead pursued their own interests; if we are to subject right authority to complete international acquiescence, then one may never have a just war. Keegan states that it is commonly elided that Russia and France were profiting commercially by provisions that allowed Hussein to export oil to their countries in return for humanitarian aid\textsuperscript{15}, creating a serious moral hazard when opposing the invasion. However, even without the approbation of the Security Council in 2003,
the Coalition maintained right authority due to the relevant resolutions governing relations with Iraq. Resolution 678\textsuperscript{16}, authorized in the year 1990, sanctioned the use of force against Iraq in “support of subsequent relevant resolutions needed to restore international peace and security.”\textsuperscript{17} Immediately following the first Gulf War, Resolution 687 of 1991\textsuperscript{18}, was framed to legalize military action if Iraq persisted in the acquisition and development of WMDs. The resolution required the unconditional destruction of all stocks of weapons\textsuperscript{19}. International lawyers accepted Resolution 687 as reinforcing Resolution 678. In 1999, when Hussein refused to let inspectors see facilities, he forced inspectors to conclude that they could not account for all weapons. Therefore, in November 2002, Resolution 1441 stated that Iraq was still in “material breach” of Resolution 687. It required the Iraqi government to prove that it no longer possessed weapons of mass destruction and to cooperate with inspectors. It allowed a “final opportunity” for cooperation, warning that failing such cooperation within the allotted time would result in “serious consequences”\textsuperscript{20}. Thus, a material breach of Resolution 687, which required the destruction of all WMD and means of delivery, revived authority to use force under 678 and Resolution 1441. Since the UN determined that “Iraq has been and remains in material breach of Resolution 687, because it had not fully complied with its obligations to disarm,” the Coalition had the right authority to invade Iraq\textsuperscript{21}. When the Chief Inspector of Iraq, Hans Blix, testified on March 7 that the Iraqis still refused to reach full disclosure, he confirmed that Iraq was in violation of international law. Operation Iraqi Freedom, an invasion force with direct support from more than thirty-five countries, began justly on March 20, 2003.

A foremost argument against the invasion is that it was not a last resort, but in reality, the occupation is what did not fulfill last resort. There were many options outside of occupation that could have facilitated the rebuilding of Iraq. Pressing for more time, many international actors dissented that there was not an imminent and immediate threat; however, Hussein had obstinately resisted the United Nations for twelve years\textsuperscript{22} and was unlikely to yield to full disclosure, no matter how long he was given. At this point, we arrive at the question of the morality of preventive war. The cover letter for the 2002 National Security Strategy declares, “As a matter of common sense and self-defense, America will act against emerging threats before they are fully formed.” Challenging such a bold departure from precedent, critics of the doctrine argue that a threat that is not fully formed is not any recognizable concept of an imminent threat\textsuperscript{23}. Consequently, according to Michael Walzer’s explanation of the international “legalist paradigm,” self-defense can be justified only against someone who has wronged you. If you attack someone preventively, you have attacked them before they have done any wrong\textsuperscript{24}. However, this aggressor-defender, unjust and just, paradigm is reductive and a severe narrowing of the just cause. Near certainty of acquisition of nuclear weapons can be considered a sufficiently serious threat that imperils international security and suggests a rational fear of a catastrophic

\textsuperscript{16} Authorized member states to use all necessary means to uphold and implement Resolution 660 which demanded Iraq withdraw immediately from Kuwait. Also stated that member states could use force to implement subsequent resolutions such as Resolution 687. United Nations Security Council Resolutions. 1990. <http://www.un.org/Docs/scres/1990/scres90.htm>

\textsuperscript{17} Keegan, The Iraq War, p. 123.

\textsuperscript{18} Keegan, The Iraq War, p. 105.

\textsuperscript{19} Keegan, The Iraq War, p. 107.

\textsuperscript{20} Keegan, The Iraq War, p. 123-124.

\textsuperscript{21} Keegan, The Iraq War, p. 7.


attack that is so grievous it merits prevention. David Luban, Georgetown Law professor and author of multiple articles on preventive war, demonstrates that since one can be charged with conspiracy to commit murder and be justly punished, the corollary is that if a nation illegally maintains nuclear weapons with the threat of using them, then they have committed a crime and should face punitive measures. In a world with perfect knowledge where intent is unknown, the imminent threat should be considered the acquisition or maintenance of nuclear capabilities. While it seems incongruous to speak of “last resorts” when the threat itself might be years away, preventive war is a sensible measure if now happens to be the last practicable moment of forestalling the threat. With a serious threat of this type, if the preventive action abides by the principle of proportionality, then it can be a just action. Preventive wars against rogue states with histories of violence and current hostile intentions as evidenced by programs to develop WMDs can be justified, as these states are more likely to utilize such weapons once they acquire the capacity. Thus, a preventive strike against Hussein’s regime, with its history of tyrannical rule, unjust wars, and invidious intentions, was just.

At the start of the Iraq War, the United States and the United Kingdom rightfully believed that they met the criteria of a reasonable chance of success in achieving their goals, and that the outcome would be proportionate by causing more good than the harm of the war itself. The invasion proceeded better than predicted, lasting only twenty-one days, and with only 139 Americans dying. Since extraordinary threat of a catastrophic attack could have been perceived as evident, the invasion, with its remarkably low civilian casualty count, was proportionate. Conversely, it becomes harder to maintain that more good than harm occurred as the war waged on during the occupation. At this pivot, Jonathon Steele clarifies that the crime, terrorism, sectarian violence, and slide towards civil war all stem from the decision to control the Iraqi transition with no plan. Had the Coalition followed the easy military victory with an announcement to withdraw completely and requested a UN Peacekeeping force to prevent civil war, they could have left with a much lower loss of life. This was the greatest missed opportunity of the post-invasion period. It was this refusal to withdraw that ignited the Iraqi insurgency, arousing suspicions and sparking nationalist anger. In addition, a precipitous withdrawal had been Defense Secretary Donald Rumsfeld’s plan, originally detailing the inherent risk of attritional counterinsurgency. Moreover, one would struggle to contend that the United States should have expected success in counterinsurgency without any preparation of its military for such activities. Therefore, we must analyze the decision to invade and the decision to occupy as different decisions in fulfilling the Just War criteria. Under the criteria of proportion and a reasonable chance of success, the invasion stands the test, but the occupation fails, and the war becomes unjust.

As a consequence of the absence of planning for the contingencies an occupation would present, the Jus in Bello principles of discrimination and of proportionality were substantially harder to uphold, resulting in the Coalition’s ultimate failure. During the invasion, the Coalition

29. Steele, Defeat: Why They Lost Iraq, p. 9.
30. Steele, Defeat: Why They Lost Iraq, p.8 .
31. Steele, Defeat: Why They Lost Iraq, p. 117.
32. Steele, Defeat: Why They Lost Iraq, p. 114.
had taken every precaution to ensure that civilian lives were spared, often choosing to attack with 18-pound hell-fire missiles from helicopters instead of using the conventional 500-pound bombs dropped from strike aircraft, even sparing enemy targets due to this choice. However, violations of these principles began in mass following the decision to occupy Iraq. The decision to release the Iraqi security forces, instead relying on poorly trained US soldiers to police the state, exacerbated the situation. In March of 2007, the total number of detainees held across Iraq stood at 37,641, with the majority exposed to overcrowding and inhumane conditions, sometimes including torture. Beyond the infamous examples of the techniques used at prisons such as Abu Gharib, the civilian death toll rose prodigiously after May 2003, reaching 5,000 a month in 2007. It was not until the implementation of the new counterinsurgency doctrine in 2006 and the additional troop surge that civilian and Coalition deaths began to decrease, finally reaching pre-occupation levels in July of 2008. The U.S. army had planned for almost a year but made no proper arrangements for policing Iraq and handling detainees after the fall of Hussein, resulting in gross violations of the requisites of the Just War tradition.

Subsequent difficulties in Iraq highlight the importance of satisfying Just War criteria in all dimensions of the war, not just prior to and during invasion. Terrance Kelly argues that to judge the balance of consequences and likelihood of success, there must be some clarity about prospects for Just Outcomes. The failure to consider Just Outcomes means that the conditions that contribute to violence will remain, if not worsen. Here, strategic prudence coincides with morality. Governments have a moral responsibility to reconnect ad bellum and in Bello considerations. Suppose one needs to remove a screw from a piece of machinery (ad bellum decision) but only a hammer is available. The person will be forced to use the hammer (in Bello decisions) but may end up destroying the piece of machinery. Before launching the invasion, the Coalition had fulfilled the Jus ad Bellum criteria with intent to demilitarize Iraq; however, upon making the decision to occupy the country, they raised the costs of the conflict. Failure to develop the anticipatory structures necessary to prevent the escalation of violence violated the principles of proportionality and a reasonable chance of success. Moreover, this decision resulted in gross human rights violations and hundreds of thousands of unnecessary deaths. Therefore, the Iraq War was an unjust war.

33. Keegan, The Iraq War, p. 158.
35. Steele, Defeat: Why They Lost Iraq, p. 147.
36. Steele, Defeat: Why They Lost Iraq, p. 143.
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Evaluating the Religious Land Use and Institutionalized Persons Act: The Need for Greater Land Use Protections for Mosques post-9/11

HANNAH NEMER
Class of 2014

Abstract

Fearful that mosques are breeding grounds for extremist ideology, local governments have justified preventing land usage for mosques through local zoning laws. Enacted in 2000, the Religious Land Use and Institutionalized Persons Act (RLUIPA) offers protection to religious communities that seek to build religious facilities in the face of discriminatorily applied local zoning laws. While this act has been a critical factor in the protection of mosques post-September 11, 2001, much can be done to clarify and enhance the legislation. Given growing American Islamophobia and the important roles that mosques may play in building positive community relations, RLUIPA should (1) include a provision that makes discriminatory practices of land-takings through eminent domain applicable under RLUIPA, and (2) amend RLUIPA to mandate, rather than merely permit, fee shifting, while better defining available relief to Muslim communities.

Evaluating the Religious Land Use and Institutionalized Persons Act: The Need for Greater Land Use Protections for Mosques post-9/11

Historical Context

A decade prior to RLUIPA, the Supreme Court replaced the previously accepted standard of strict scrutiny in cases of potential religious discrimination with a lower-level rational basis review in Employment Division v. Smith. To restore a standard of strict scrutiny, Congress passed the Religious Freedom and Restoration Act (RFRA) of 1993. The court then struck down RFRA in Boerne v. Flores, as the Supreme Court determined that it overextended the remedial power of Congressional legislation, an encroachment on state powers. Still seeking to craft remedial legislation to circumvent religious discrimination, Congress passed RLUIPA, which more narrowly restored the standard of strict scrutiny for government land use actions that substantially burden the exercise of religion. RLUIPA was widely

1. The Council on American-Islamic Relations defines Islamophobia as "unfounded fear of and hostility towards Islam. Such fear and hostility leads to discriminations against Muslims, exclusion of Muslims from mainstream political or social process, stereotyping, the presumption of guilt by association, and finally hate crimes."


3. Ibid.

4. Ibid.
supported, passing unanimously through both houses of Congress.\textsuperscript{5}

**Social Context**

Since September 11, 2001, RLUIPA has offered critical legal protection against undue applications of zoning ordinances for Muslim communities seeking to build mosques. In the decade following September 11, 2001, a documented 37 proposed mosques and Islamic centers have faced resistance, raising 26 RLUIPA claims pertaining to mosque construction.\textsuperscript{6} However, the number of cases has surged in recent years, with 16 of these cases initiated within a 15-month period preceding September 2010.

This resurgence in claims suggests an increase in perceived/applied Islamophobia, as mosques are seen as the breeding grounds of extremist sentiments. Indeed, in the past five years, the American Civil Liberties Union has tracked more than 60 anti-mosque incidents, ranging from vandalism and hate speech to questionable zoning policies.\textsuperscript{7} The perception that mosques spread radical sentiments poses a serious threat to Muslim places of worship throughout the United States.

Mosques are critical to developing peaceful engagement in the decades to follow September 11, 2001. Recent research supported by the National Institute of Justice suggests that despite an increase in bias against Muslim Americans, mosques have actually become a forum for reduced radicalization, warning against terrorist propaganda, and promoting greater tolerance and inclusion in the American public sphere.\textsuperscript{8} Thus, instead of demonizing Muslim places of worship through discriminatory zoning practices, supporting them through protective legislation is necessary.

**RLUIPA**

The primary RLUIPA provisions deal with relieving persons from substantial burdens to religious exercise. RLUIPA protects religious freedom by targeting two mechanisms of religious discrimination – land use regulation and regulations regarding institutionalized or imprisoned individuals. The general rule of RLUIPA land use regulations reads:

“No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution – (A) is in furtherance of a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest.”\textsuperscript{9}

**Redefining Land Use Regulation**

RLUIPA defines “land use regulation” as “a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant’s use or development of land [...]”\textsuperscript{10} The language of this definition is problematic in its lack of clarity, as courts are undecided on the application of eminent domain to RLUIPA claims. Eminent domain is the ability of the government to seize – or condemn – land for public use. The government must provide due compensation but does
not need the landowner’s consent. As it stands, the question of the act’s relevance for eminent domain is left up to the courts.

Eminent domain in the RLUIPA context takes several forms; governments may condemn Muslim-owned but undeveloped property and prevent mosque construction, or they may condemn land that contains a preexisting religious facility. The government prevented future construction in Faith Temple Church v. Town of Brighton in the United States District Court for the Western District of New York, in which undeveloped church land was subject to government takings so that the land could become a part of a nearby park. In another application of eminent domain, St. John’s United Church of Christ v. City of Chicago in the District Court for the Northern District of Illinois, the city hoped to expand the O’Hare International Airport’s runways over existing cemeteries. Though the court ultimately concluded that this was within the rights of the city, such a case reflects the scope that eminent domain may take. In both cases the district courts determined that eminent domain was not a land use regulation under RLUIPA, and therefore not within the scope of the statute.

There is little consensus in the courts on eminent domain’s role within RLUIPA, though most courts ultimately reject its application. In the case of Cottonwood Christian Center v. Cypress Redevelopment Agency, the United States District Court for the Central District of California concluded that eminent domain proceedings fall under the term “land use regulation.” This stands in direct contrast to the later case of Faith Temple Church v. Town of Brighton, in which the District Court for the Western District of New York noted, “The statute says what it says. Congress made no mention of eminent domain, and it is not the Court’s proper function to add language to the statute in order to stretch its applicability to suit the aspirations of a particular litigant.” Because of the manner in which the statute defines land use regulation, there remains uncertainty within RLUIPA.

This lack of clarity presents a challenge to Muslim communities, as local governments have instituted eminent domain with empirical discrimination. The need for an eminent domain provision in RLUIPA became clear with the Albanian Associated Fund’s (AAF) complaint against the Township of Wayne, in which a local government used eminent domain to prevent mosque construction. The basis of the complaint began in 2001, when the Muslim community sought to construct a new mosque, as their current worship facilities were inadequate in size and location. After filing a land development application, the township cited environmental impact concerns due to the mosque’s potential increase in traffic, though the mosque proposal complied with presented criteria. Revising its plan three times to tailor the mosque to the township’s concerns, the AAF presented its revisions to the planning board more than 20 times between 2003-2006. Ultimately, the township passed a resolution under its existing “Open Space and Recreation Plan,” which condemned the AAF property for “preservation,”

14. Ibid.
16. Ibid.
hoping to decisively end AAF's bid for development. 18

AAF argued that such an individualized and targeted application of eminent domain violates RLUIPA, imposing a substantial burden on the free exercise of religion. 19 The District Court of New Jersey agreed, arguing that RLUIPA was applicable based on the local “Open Space and Recreation Plan” itself, which constituted a land use policy; thus, the courts avoided the more complex question of eminent domain. 20 Thus, the courts have not decisively addressed questions of eminent domain’s role within RLUIPA.

In this way, a standard of strict scrutiny under RLUIPA should apply to eminent domain. As demonstrated by AAF’s case, eminent domain, like land use policies, may be applied in an individualized manner, leaving the decision to condemn land open to question.

If RLUIPA incorporated eminent domain into the definition of “land use regulation,” decisions of eminent domain would undergo such a level of scrutiny. Such an adjustment does not grant immunity for religious institutions from appropriately applied eminent domain. It merely forces the courts to question the validity of government takings when such takings place a substantial burden on the free exercise of religion. 21 Such proposed applications of eminent domain may still be found valid. Even with this revised policy in place, the previously mentioned Chicago O’Hare case would have likely survived the application of strict scrutiny, as the takings in question did not target the individual religious community over other religious institutions. 22 In this way, a RLUIPA claim that encompasses eminent domain would not overly restrict the state in favor of religious communities, but rather provide greater scrutiny.

**RLUIPA’s Financial Costs**

RLUIPA should be amended to (1) mandate fee-shifting on behalf of plaintiffs facing a demonstrated substantial burden to religious exercise, and to (2) offer injunctive relief and/or compensatory monetary damages for such plaintiffs, excluding monetary relief for damages predicated on the plaintiff’s “pain or suffering.”

RLUIPA currently permits, but does not mandate, fee-shifting, in which the local government must cover the plaintiff’s legal costs if found guilty of a RLUIPA violation. 23 However, as there is no mandate for fee-shifting, religious institutions may question the net worth of pursuing RLUIPA violations. Thus, mosques may choose not to file valid claims for fear of inordinate bills. 24 While local governments may be better able to handle such fees, religious communities are often small and without the necessary resources.

If a local government is found in violation of RLUIPA, the court may order an injunction against the contested policy, effectively preventing the policy’s implementation. Beyond implementing injunctive relief, the courts have also considered the application of monetary damages for injured communities. However, in Sossamon v. Texas, a case pertaining to the institutionalized persons component of RLUIPA, which primarily protects imprisoned

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18. Ibid.
19. Ibid.
individuals from religious discrimination within their institutions, the United States Supreme Court interpreted the act to mean that RLUIPA only provided injunctive relief – an enforced end to the discriminatory policy. While the institutionalized persons component of RLUIPA is legally distinct from its land use provision, it raises the question of damages in relation to land use violations of RLUIPA.

Thus, RLUIPA should be amended to (1) mandate fee-shifting for plaintiffs facing a demonstrated substantial burden to religious exercise, and to (2) offer injunctive relief and/or compensatory monetary damages for such plaintiffs, excluding monetary relief for damages predicated on the plaintiff’s “pain or suffering.” These amendments protect targeted Muslim communities from RLUIPA’s financial burden without privileging them to undue monetary gain. The fee-shifting adjustment would provide greater insurance for Muslim communities that believe their RLUIPA rights have been compromised, better protecting those that lack the resources to otherwise address discriminatory policies. The amendment allowing for compensatory monetary damages serves a similar purpose, providing that when there is clear discriminatory intent, the court may mandate that those in violation of RLUIPA compensate the Muslim community for money lost directly because of the violating policy. Through this provision, Muslim communities could receive financial relief for the costs of redrafting land proposals over the course of the RLUIPA case. Conversely, by prohibiting damages based on “pain and suffering,” Muslim communities could not claim monetary compensation to remedy any subsequent emotional distress.

Opponents of RLUIPA suggest that there are too many incentives for a religious group to file a claim. With the prospect of having legal fees covered and damages paid, religious institutions may become overly litigious, relying on the court’s strict scrutiny against that which may potentially inhibit religious exercise. But by limiting the nature of RLUIPA damages, this policy ensures less incentive for such communities to capriciously engage in lawsuits in hopes of receiving significant financial compensation for less tangible damages.

**Conclusion and Recommendations**

Given the history of local government and public anti-mosque actions, reframing the presentation of RLUIPA becomes increasingly significant. To more effectively protect religious communities from discriminatory policies, RLUIPA should encompass eminent domain proceedings and include a more comprehensive strategy of relief that prevents excessive incentives/disincentives for entering a RLUIPA suit. While RLUIPA has protected many communities since September 11, 2001, such revisions will allow RLUIPA to more effectively prevent mosque-based religious discrimination, without unduly privileging religious institutions.

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Foreign Aid Conditionality: Negative Impacts on Aid for Global Health

MADHULIKA VULIMIRI
Class of 2014

Abstract

Foreign aid is a multi-billion dollar industry that has attracted criticism for decades. Much of the foreign aid allocated for global health is lost to aid conditionality, when donors place conditions on how the aid money must be spent. Within the health sector, donors have given significant assistance for drugs, treatments, and complex procedures without allocating funds for training healthcare personnel and building infrastructure necessary for their effective implementation and distribution.

Policy options to address aid conditionality include deeper investigation of individual country priorities and a focus on preventive rather than curative solutions. In this paper, I recommend that the U.S. government and aid agencies remove conditions on aid for vertical, disease-specific programs and spread funds among community-based interventions. In order to build upon the success of vertical programs like President's Emergency Plan for AIDS Relief (PEPFAR), donors should finance a diagonal approach that incorporates existing treatment programs into bolstered health infrastructure and services. This reform is both cost-effective and allows for increased aid sustainability.

Foreign Aid Conditionality: Negative Impacts on Aid for Global Health

Introduction

Aid conditionality, also known as aid specification, is the narrow application of foreign aid for specific targeted purposes. This brief analyzes why aid conditionality is a problem and explores options for improving the current process of foreign aid allocation for global health initiatives.

Foreign aid is assistance disbursed by individuals, private organizations, or governments in the form of financial flows, technical assistance, or commodities that benefits another country in economic need (Radelet 2006). The United States designs and implements aid programs as investments rather than charity, putting its political and economic motivations before the specific needs of recipient countries (McKeown 2011). The debate over costs and benefits of foreign aid has continued for decades without producing viable solutions.

Billions of dollars from global organizations and governments have been pooled to combat diseases like HIV/AIDS, TB, and malaria in the developing world. Unfortunately, much of the aid is wasted annually due to “poor institutional development, corruption, inefficiencies, and bureaucratic failures” (Alesina 2000). This misuse is exacerbated by aid conditionality, when donors place conditions on how funds must be spent according to their political agendas. In Ghana, for example, donors tied aid specifically for expensive anti-retroviral (ARV) drugs before setting up HIV tests or counseling services (Mayhew 2004). In this example, funds could have been allocated to more cost-effective interventions like water purification technology and condom distribution. Aid conditionality creates dependence on foreign funding and prevents...
global health projects from operating sustainably.

Aid conditionality has hampered the success of global health initiatives like the Millennium Development Goals (MDGs) set in 2000. Of the eight anti-poverty goals, three are health-related problems to be addressed by 2015: reduce child mortality; improve maternal health; and combat HIV/AIDS, malaria and other diseases (UNDP). In the last decade, aid that is specifically for HIV/AIDS relief has skyrocketed while aid for other health needs like child and maternal mortality has stagnated, with worsening health conditions. Sub-Saharan African nations like Democratic Republic of the Congo, Cameroon, Sierra Leone, Niger, and Nigeria all have maternal mortality rates of over 1000 deaths per 100,000 women in 2005 that are higher than the 1995 rates (MDG Monitor). Shiffman (2007) suggests that there are large gaps in global resources for maternal health and that few countries have made maternal mortality a political priority. In order to change the focus, foreign aid must be redistributed without conditions to reach the widest population.

II. Identification of Policy Problem

Health services are usually provided with two models of delivery: vertical or horizontal. Vertical programs target specific diseases, operate in a specific time frame, and are not fully integrated within the system (Oliveira-Cruz 2003). Horizontal programs deliver services through regular, publicly financed infrastructure of health services (Msuya 2003). Donors are attracted to vertical programs, like the highly successful global smallpox eradication initiative, because they are easier to manage than horizontal programs and show quick results that can bring in more funding (Oliveira-Cruz 2003; Msuya 2004). The drawback is that vertical programs often create “donor-dependence” in the recipient countries (Mayhew 2004). Ministers of Health in Ghana have stopped distributing government funds to reproductive health (RH) programs because foreign donors have been earmarking funds, albeit sporadically, for RH services (Mayhew 2004). The vertical RH programs are now dependent on donor assistance and struggle to have a sustainable, internal stream of funding.

Another example of aid conditionality for a vertical program is seen in President Bush’s President’s Emergency Plan for AIDS Relief (PEPFAR). Over the span of five years, this program succeeded in distributing ARV drugs to 1.7 million people and some form of care to ten million more worldwide (Garrett 2007). Still, PEPFAR is not without its critics, who call for “greater attention to supporting overall healthcare systems and addressing vulnerabilities to HIV” (El-Sadr and Hoos, 2008).

Though vertical programs have obvious advantages, donors must consider the long-term impact of only using “band-aid solutions.” Instead of tying up aid for the sole purpose of ARV drugs, donors should support community-based interventions that address the root of the issue. With the issue of maternal health, viable solutions include starting up family planning programs and women’s rights groups, teaching sex education in schools, lobbying politicians for the legalization of abortion, distributing condoms, distributing cheap and low-tech tools to aid pregnancy, and strengthening C-section services. Directing more aid towards improving infrastructure and delivery has long-term benefits, including lower costs, better health outcomes, and more sustainability (Costello 2005).

To properly finance health projects, donors must have an intimate understanding of both the diverse resources and needs of countries with vastly different profiles. Applying a one-size-fits-all model for foreign aid reflects donor agencies’ lack of cultural awareness about countries’ individual starting points and capabilities (Moss 2010). Additionally, when the political
priorities that impel donors’ conditions are inconsistent with the priorities of the recipient country, it is difficult for those recipients to feel ownership for the programs (Brookings 2010). PEPFAR, for example, was criticized for its prevention strategies like overemphasis of abstinence and prohibition of support for commercial sex workers that are “driven by ideology rather than science” (El-Sadr and Hoos 2008). Here, donor values determined who received care and marginalized various groups of patients. To ensure equitable, appropriate use of funding, donors should seek feedback from a variety of stakeholders in recipient countries to evaluate what services are most needed and desired. Comprehensive and effective health programs are contingent upon fostering buy-in and support from the local people. Botswana is a striking example of how financing and implementation is not purely donor-driven, but rather involves collaboration with the local government and healthcare workers (Garrett 2007). Agencies that fund RH programs should partner with “RH civil society groups, Ministers of Health, research and teaching institutions, legal/professional groups, women’s health networks, and OB-GYN/midwives associations” to forge powerful partnerships (Kumar 2011). This strategy can better educate donors on individual country priorities, but it takes significant time and cooperation to build trust and form partnerships.

III. Recommendations

The bulk of foreign aid investments go towards disease-specific initiatives like PEPFAR (for HIV/AIDS), President’s Malaria Initiative (PMI), or Global Fund for HIV, TB, and Malaria. While these programs have had substantial success, they have been mostly vertical in nature, focusing on palliative care that alleviates symptoms of specific diseases (Ooms 2008). Providing funding for medicines is not enough when “it takes states, health-care systems and at least passable local infrastructure to improve public health in the developing world” (Garrett 2007, 15).

I recommend addressing the problem of aid conditionality by removing the ties from vertical, disease-specific programs and funneling aid to train healthcare workers and build health infrastructure. It is critical to build upon the success of vertical initiatives and incorporate the existing treatment programs into new health systems. Instead of disbursing funds solely for ARV drugs or anti-malarial bed nets, donor agencies should reallocate some funding to training physicians, nurses, and community health workers and building primary care facilities. Contrary to the opinions of many critics of foreign aid, these two strategies are not mutually exclusive. Vertical and horizontal strategies must be employed in tandem. Donors can start doing this by financing “diagonal” approaches, which marries the disease-specific, vertical and the broad, horizontal health strategies (Ooms 2008).

Investing in physical infrastructure and human capital is the key to effectively distributing much-needed resources and services. Primary funds should go towards training healthcare personnel by investing in medical schools and scholarships for students in developing countries (Sachs 2005). Fair compensation of health workers is critical to ensure that they do not leave the home country for better wages (Ooms 2008; Sachs 2005). The next priority is to construct hospitals, clinics, laboratories and purchase vehicles and basic health technology. Distribution of ARV drugs is not cost-effective if there are no hospitals for patients to get the HIV test, make follow-up appointments, and receive gynecological and auxiliary services (Garrett 2007). Donors should capitalize on the existing platform for HIV/AIDS treatment and simultaneously offer improved RH services like pap smears and family planning.

Strong partnerships with a variety of community stakeholders are critical to the success of financing diagonal programs. Investing in physical and human capital requires the cooperation
of Ministries of Health, advocacy groups, NGOs, religious groups, and citizens. Successful community-based interventions in maternal health have focused on youth, brought medical abortion to women, and reduced barriers to high-quality abortion care (Kumar 2011). In Nepal, funding for participatory intervention with women’s groups greatly reduced neonatal and maternal mortality (Manandhar 2004). Canada has proposed a maternal and child health plan called G8 that addresses a wide range of public health issues and makes expansive interventions for family planning, immunization, clean water, and screening/treatment for STDs (Webster 2010). A diagonal approach to training workers and building infrastructures is contingent upon strong partnerships with community stakeholders.

IV. Conclusion

The U.S. government and international donors face global health issues that will not be solved in a month, a year, or even ten years. While vertical programs have attracted incredible funds for specific causes like HIV/AIDS, TB, and malaria, the conditions that donors have placed on aid spending limits their effectiveness. Removing the ties to aid will allow recipient countries to make the most of foreign aid and wean themselves off of donor assistance. The solution lies in a diagonal approach — a combination of comprehensive care (horizontal) and existing disease-specific interventions (vertical). Donors must build upon the success of vertical initiatives and channel funds into training healthcare personnel and building health infrastructure like medical schools, hospitals, labs, and clinics. They should integrate improved gynecological and chronic care services along existing treatments like ARV drugs for HIV/AIDS to reach the widest audience. This is only feasible if donors understand individual country health priorities and form partnerships with a variety of in-country stakeholders, like Ministries of Health, advocacy groups, and citizens. Foreign aid is beneficial when recipient countries adopt appropriate policies and take ownership of the health programs (Burnside 2000; Collier 2001). Though foreign aid is not without its problems, its many successes prove that the humanitarian case remains strong.
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Is “Economic Inactivity” Subject to the Interstate Commerce Clause?

WILSON PARKER
Class of 2015

Abstract

Federal courts are presently assessing whether the Interstate Commerce Clause empowers Congress to compel individuals to purchase health insurance. The primary debate over this issue centers on whether Congress’ power to regulate economic activity that affects interstate commerce also allows it to regulate inactivity. In this article, I argue that both activity and inactivity, when they substantially affect interstate commerce, are subject to Congressional regulation. Therefore, Federal courts should reject the claim that the Essential Minimum Coverage Position, better known as the individual mandate, is unconstitutional.

Is “Economic Inactivity” Subject to the Interstate Commerce Clause?

The Patient Protection and Affordable Care Act\(^1\) was heralded by its supporters as a major accomplishment for the Obama administration and an important step toward ensuring universal access to healthcare in the United States. One of the act’s central requirements, the Minimum Essential Coverage Provision, better known as the individual mandate, requires that all individuals (with a few exceptions) obtain a minimum level of health insurance coverage for themselves. Several states and organizations have challenged the constitutionality of the provision in court. According to these states and organizations, Congress does not have the power to require individuals to purchase health insurance because it can only regulate “economic activity” and such a requirement constitutes regulating “economic inactivity.” However, the law’s defenders have asserted that the constitution draws no meaningful distinction between “activity” and “inactivity” and both are subject to the Interstate Commerce Clause.\(^2\) Whatever the decision in this case, it represents a completely new area of Commerce Clause jurisprudence; it is, in the words of the Congressional Research Service, “a novel issue.”\(^3\) However, while this case may not have a direct precedent in American legal history and may present a difficult dilemma to jurists and legal scholars, the appropriate decision in this case is clear: the individual mandate is an appropriate and constitutional exercise of Congressional power. The Supreme Court is scheduled to hear oral arguments for this case in March, 2012.

Understanding this case requires an understanding of what the Supreme Court currently

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1. The Patient Protection and Affordable Care Act is a federal statute signed into law by President Obama that provides subsidies to low income families and individuals to purchase healthcare, increases coverage of pre-existing conditions, and requires (with certain exceptions) uninsured individuals to purchase healthcare.
2. “The Congress shall have power ... to regulate commerce with foreign Nations, and among the several States, and with the Indian tribes.” US Constitution Article I Section 8 Clause 3
interprets as Congress’ power to regulate commerce. That interpretation is succinctly summarized by Chief Justice Rehnquist in the case of *United States v. Lopez*:

“[W]e have identified three broad categories of activity that Congress may regulate under its commerce power. ... First, Congress may regulate the use of the channels of interstate commerce. ... Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. ... Finally, Congress’ commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce.”

Four of the Supreme Court’s recent rulings are important for understanding its interpretation of the Commerce Clause and its application of the restriction mentioned above. The first two, *Wickard v. Filburn* and *Gonzales v. Raich*, both expanded Congress’ power over interstate commerce. In *Wickard*, an individual sued the federal government for enforcing the Agricultural Adjustment Act, which limited his ability to grow wheat, even though he only intended to use the wheat for personal consumption. However, as Justice Robert H. Jackson points out in the court opinion, “a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions.” *Raich* involved a similar situation regarding an individual who grew marijuana solely for personal consumption. In both cases, simply because the actions of the plaintiff have a “substantial influence” on interstate commerce, they were subject to the Commerce Clause. It will be up to the Supreme Court to determine if individuals without health insurance also have a “substantial influence” on interstate commerce.

However, the Supreme Court’s two most recent notable rulings on the Commerce Clause place restrictions on Congress’ power. In *United States v. Lopez*, the Supreme Court held that the Gun Free School Zones Act of 1990, which prohibited carrying guns on or near the grounds of public schools, was unconstitutional because school safety did not have a relationship to commerce. A later case, *United States v. Morrison*, struck down a portion of the Violence Against Women Act of 1994 that provided for a civil remedy to the victims of rape and assault for similar reasons. In its opinion in *Morrison*, the court held that “gender motivated crimes of violence are not, in any sense of the phrase, economic activity... thus far in our nation’s history our cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature.” Some of the individual mandate’s opponents have argued that it is similar to these cases; they assert that upholding its constitutionality would also “obliterate ... meaningful limits on federal power.”

While these rulings are important to understanding this case, none of them provide a clear

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4. *United States v. Lopez* 514 US 564. Supreme Court Opinion. The Court held that the Gun Free School Zones Act, which prohibited carrying guns on or near the grounds of public schools, violated Congress’ power under the interstate commerce clause because school safety did not have a relationship to commerce.

5. *Wickard v. Filburn* 317 US 111 Supreme Court Opinion. 1942. In this case, the court held that an individual who grew grain was subject to the interstate commerce clause even if the grain was intended only for personal consumption because, in the aggregate, such actions still had a relationship to interstate commerce.

6. *Gonzales v. Raich* 545 US 1. Supreme Court Opinion. 2005. The Court held that an individual who grew marijuana for personal consumption was still subject to regulation under the interstate commerce clause because, as in *Wickard*, the aggregation of individuals growing marijuana would substantially affect interstate commerce.

7. *United States v. Morrison* 529 US 598. In this case, the court struck down a provision of the Violence Against Women Act that offered the victims of sexual assault the right to civil damages in federal court. The court held that gender motivated crimes are not economic activity and therefore not subject to federal regulation under the Interstate Commerce Clause.
answer to the question posed by the cases regarding the individual mandate. Judge Henry Hudson, who struck down the individual mandate in *Virginia v. Sebelius*, argued that in order for an individual to become part of interstate commerce and therefore subject to regulation under the Interstate Commerce Clause, he must undertake an action that places him there. As Judge Hudson state in his opinion:

“In *Wickard and Gonzales*, the Supreme Court staked out the outer boundaries of Commerce Clause Power. In both cases, the activity under review was the product of a self-directed affirmative move to cultivate and consume wheat or marijuana. This self-initialed change of position voluntarily placed the subject within the stream of commerce.”

However, Judge Norman Moon argues in his opinion in *Liberty University v. Geithner* that individuals are already within interstate commerce, with or without an action that puts them there. He asserts:

“Regardless of whether one relies on an insurance policy, one’s savings, or the backstop of free or reduced-cost emergency room services, one has made a choice regarding the method of payment for the health care services one expects to receive. Far from ‘inactivity,’ by choosing to forgo insurance, [individuals] are making an economic decision to try to pay for health care services later, out of pocket, rather than now, through the purchase of insurance….As Congress found, the total incidence of these economic decisions has a substantial impact on the national market for health care by collectively shifting billions of dollars on to other market participants and driving up the prices of insurance policies.”

Judge Moon is correct in stating that the impact of the uninsured is substantial; indeed, according to estimates performed by Jonathan Gruber of the Center for American Progress, the more than twenty million individuals who would not purchase care absent the Essential Minimum Coverage Provision would drive up premiums for the insured in the nongroup market by more than 15%. Therefore, the court is faced with a difficult dilemma: uninsured individuals are certainly within what Judge Hudson calls the “stream of commerce” because by not having insurance, they substantially affect the market. However, even though they are in the “stream of commerce,” they have entered it without the “self-initialed change of position” which Judge Hudson believes is necessary to place them there. Resolving this quandary – what to do with individuals who are very much a part of commerce but who have not intentionally become involved in it – is the essence of this case.

George Steeh, a judge whose opinion in *Thomas More Law Center v. Barack Obama* also upheld the Affordable Care Act, attempts to resolve this issue by asserting that: “the text of the Commerce Clause does not acknowledge a constitutional distinction between activity and inactivity, and neither does the Supreme Court.” Laurence Silberman, a judge on the Federal Court of Appeals for the District of Columbia, agreed, writing in *Susan Sevensky et al v. Eric*
Holder et al.\textsuperscript{12} that “No Supreme Court case has ever held or implied that Congress’s Commerce Clause authority is limited to individuals who are presently engaging in an activity involving, or substantially affecting, interstate commerce.” Because it is clear that an individual may affect a market by being uninsured and imposing a liability, Steeh and Silberman are correct to dispose of the distinction. Indeed, the liability for health insurance that an individual holds is similar to the wheat owned by Roscoe Filburn – owning that wheat or having that liability has a substantial relation to interstate commerce. Furthermore, the liability is not only placed on individuals themselves; as Steeh notes, the Emergency Medical Treatment and Active Labor Act\textsuperscript{13} requires hospitals to treat any individual who requires care. Therefore, individuals can, by their inactivity, place a liability on all of society.

An important precedent that relates to this situation is the court’s opinion on cases testing the constitutionality of the Child Support Recovery Act,\textsuperscript{14} which empowers the federal government to compel a spouse to pay child support. In one such case, United States v. Faasse, the court found “no principle distinction between the parent who fails to send any child support … and the parent who sends only a fraction of the amount owed.” In other words, in this instance, the court cannot distinguish between two individuals, one of whom is actively engaged in commerce and one of whom is not. They both substantially affect interstate commerce by being inactive and thereby violating their obligations under the Child Support Recovery Act. Indeed, the Supreme Court has generally not found arguments against laws based on the passivity of offender to be valid in a wide variety of cases; as Silberman also notes in Sevensky v. Holder:

Indeed, were “activities” of some sort to be required before the Commerce Clause could be invoked, it would be rather difficult to define such “activity.” For instance, our drug and child pornography laws, criminalizing mere possession, have been upheld no matter how passive the possession, and even if the owner never actively distributes the contraband, on the theory that possession makes active trade more likely in the future.

These precedents show that both inactivity and activity have been regulated in the past and that both can and should be regulated when they have a substantial effect on others. Also, it is important to remember that the Commerce Clause of the Constitution itself does not admit to any difference between activity and inactivity. To claim that the choice of the word “activity” by justices in cases totally unrelated to the distinction between “activity” and “inactivity” has fundamentally altered the Commerce Clause is ridiculous. In the words of Judge Silberman:

To be sure, a number of the Supreme Court’s Commerce Clause cases have used the word “activity” to describe behavior that was either regarded as within or without Congress’s authority. But those cases did not purport to limit Congress to reach only existing activities. They were merely identifying the relevant conduct in a descriptive way, because the facts of those cases did not raise the question – presented here- of whether “inactivity” can also be regulated. In short, we do not believe that these cases endorse the view that an existing activity is some kind of touchstone or a necessary precursor to Commerce Clause regulation.”

\textsuperscript{12} Susan Sevensky et al. v. Eric Holder et al. In this case the Circuit Court of Appeals for the District of Columbia upheld the Constitutionality of the minimum essential coverage provision.

\textsuperscript{13} Codified at 42 USC 1395dd. The Emergency Medical Treatment and Active Labor Act of 1986 requires hospitals to provide emergency medical services to anyone, regardless of their ability to pay.

\textsuperscript{14} Codified at 18 USC 228. The Child Support Recovery Act of 1992 makes to pay child support for a child residing in another state a federal offense.
Roger Vinson, a district court judge whose ruling in *Florida v. Department of Health and Human Services* stuck down the individual mandate, raises another objection to regulating “inactivity:” that the Commerce Clause must be a meaningful restriction on federal power, allowing Congress to regulate “inactivity” would obliterate that restriction.

In his opinion, he asserts that “in [United States v. Lopez] the Supreme Court struck down the Gun Free School Zones Act of 1990 after stating that, if the statute were to be upheld, ‘we are hard pressed to posit any activity by an individual that Congress is without power to regulate.’” Vinson believes that the same is true of the individual mandate, because “if Congress can penalize an individual for failing to engage in commerce, the enumeration of powers would have been in vain for it would be ‘difficult to perceive any limitation on federal power,’ it is not hyperbolizing to suggest that Congress could do anything that it wanted.”

While his assertion that the Commerce Clause must constitute some meaningful restriction on the power of the federal government, his belief that allowing the regulation of inactivity would obliterate that restriction is incorrect. Once again, Congress is limited by the restriction determined by the Supreme Court in *United States v. Morrison* (that Vinson himself cites): that “Commerce Clause regulation of intrastate activity” is permissible “only where that activity is economic in nature.” The “economic in nature” restriction is still a palpable one regardless of whether economic inactivity is also subject to regulation; even if it accepted that regulating economic inactivity was a permissible use of the Commerce Clause, the Rehnquist court would still have struck down the controversial portions of the Violence Against Women Act and the Gun Free School Zones Act that it struck down in *Morrison* and *Lopez*.

Vinson also asserts that allowing Congress to regulate economic inactivity is the same as allowing Congress to regulate economic decisions, which he believes are beyond Congress’ authority. He states that:

“The important distinction is that ‘economic decisions’ are a much broader and far-reaching category than are ‘activities that substantially affect interstate commerce.’ While the latter necessarily encompasses the first, the reverse is not true... Every person throughout the course of his or her life makes hundreds or even thousands of life decisions that involve the same general sort of thought process that the defendants maintain is ‘economic activity.’ There will be no stopping point if that should be deemed the equivalent of activity for commerce clause purposes.”

Here, Vinson is correct; letting Congress regulate all economic decisions would be unconstitutional. However, in this case, Congress is not regulating decisions but “inactivity” or “neglect.” In this case, by forcing others to pay for the cost of one’s healthcare, “inactivity” substantially affects interstate commerce, and is therefore subject to congressional regulation. This inactivity is similar to another kind of neglect that is subject to the commerce clause: the “inactivity” of a spouse who owes child support and is compelled to pay it by the Child Support Recovery Act but fails to do so. Certainly, Congress cannot regulate all “inactivity,” but when “inactivity” places a liability on others, it does affect interstate commerce and can be regulated.

Ultimately, although the Essential Minimum Coverage Provision of the Patient Protection and Affordable Care Act of 2009 represents a novel extension of Congressional

15. *Florida et al. v. United States Department of Health and Human Services et al.* was a case in which the individual mandate was challenged under the interstate commerce clause. In his ruling, Judge Vinson struck down not only the individual mandate but the entire Affordable Care Act (his is the only ruling that does so.) The Eleventh Circuit Court of Appeals upheld his ruling in part, striking down the individual mandate but not the entire Affordable Care Act. This case was granted certiorari by the Supreme Court. Oral arguments are scheduled for March, 2012.

16. He once again cites *United States v. Lopez* 514 US 564
power under the Interstate Commerce Clause, this extension of power is reasonable and consistent with precedent. Passive neglect is just as economically palpable as active harm. Therefore, as it assesses the constitutionality of the individual mandate, the Supreme Court must recognize that “economic activity” and “economic inactivity” are legally identical and that both are subject to regulation under the Interstate Commerce Clause when they have impact interstate commerce. Therefore, Congress does have the power to compel individuals to purchase healthcare, and the Essential Minimum Coverage Provision is constitutional.
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Prohibiting Military Blogs to Preserve Operational & National Security

LIONEL EARL
Class of 2012

Abstract

Since the beginning of the War on Terror, military blogs have been an intimate source of information about U.S. military involvement in the Middle East. While the Supreme Court has historically protected free speech, these standards do not always apply to the military. This article explores the legal groundwork for the military to prohibit these blogs. From my studies at University of North Carolina and my perspective as a military dependent, I argue that the military is within its rights to restrict this form of speech for operational and national security.

Prohibiting Military Blogs to Preserve Operational & National Security

In wake of restrictions on free speech following the 9/11 attacks and subsequent Patriot Act\(^1\), the American public responded with a firm demand to defend these rights. However, the troops who fight to preserve these freedoms are forced to sacrifice these rights—including free speech due to the nature of their work. Many scholars agree that as the military operates under specific discipline and conditions, certain norms and standards do not translate from civilian society. The Constitution dictates that “Congress shall make no law...abridging the freedom of speech” so no one disputes that the general American population enjoys the right to free speech under the First Amendment\(^2\). However, legal scholars such as Katherine Bleyker and Danley Corzyn of the Fordham Law Journal and Texas Law Journal, respectively, maintain that United States military duties prevent its members from practicing unrestricted free speech. Air Force Officer James Kinniburgh highlights that blogging can be beneficial for deployed troops by providing the opportunity for “documenting experiences, venting strong emotions, and working through ideas through writing” (Kinniburgh, 8) Despite the benefits that Internet blogging can have on service-members, uncensored posting of information on the Internet undermines the military’s goals of national and operational security. This piece argues that when balancing free speech and operational security concerns, the military is within its rights to prohibit the use of blogs, especially for service-members on combat duty or other sensitive fields. Ultimately, given the stark reality of the War on Terror, the most direct way of preventing

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1. USA PATRIOT standing for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism” The act was signed by former President George Bush on October 26, 2001 in response to the September 11 attacks.
2. First Amendment of the United States Constitution and Bill of Rights. Lays the foundation for the freedoms of: religion, speech, press, assembly, and petition.
the disclosure of potentially vital information is by forbidding troops from posting personal blogs. I will examine the various legal approaches the military has in order to suppress free speech in the form of blogs. After exploring the specifics of military blogging, I will explain how the military’s priorities of discipline and security constitute a substantial government interest. In addition to addressing the Clear and Present Danger test, I will provide precedent on how the military has previously placed blanket bans on certain forms of speech. Finally, I will contrast the Court’s established limits on military intrusion on online behavior with the current blogging scenario.

Before addressing the specific legal justifications for prohibiting military blogs, it is essential to discuss what the blogs are and what their content is. In its most basic form, a “web log” is a tool that the public can use to post personal information on the Internet in journalistic fashion. As Air Force officer James Kinniburgh & computer science professor Dorothy Denning list in the Joint Special Operations University Report (2006), the major motivations for posting blogs are “documenting the author’s life & experiences, expressing opinions and commentary, venting strong emotions, working out ideas through writing, and forming or maintaining virtual communities” (Kinniburgh, 8). Applied specifically to the military, blogs are a way for service-members, deployed or otherwise, to share their experiences and give readers a realistic perspective of the U.S. Military. Through a blog, the details of daily military life can be discussed and analyzed. Therefore, military blogging has multiple positive effects. For example, the ability to express oneself can have a cathartic effect on deployed troops. It can serve as a channel of communication between a service-member and his or her family located thousands of miles away. Perhaps most important on a large scale is the opportunity unaffiliated people have to gain insight and respect for the military and the United States as a whole. Likewise, as Kinniburgh and Denning (2006) insist, “if a military blog offers valuable information that is not available from other sources [then] the U.S. can overleap the entrenched inequalities and make use of preexisting intellectual and social capital” (Kinniburgh, 20). Nevertheless, blogging becomes a problem when, as scholars in a University of Oklahoma (2006) study note, the information shared across the Internet poses a security risk and provides the enemy with easy access to “photos depicting weapons system vulnerabilities and tactics, techniques, and procedures” (Shoomaker via Anderson et al., 11). Given this possibility, the U.S. Military has a vested interest in the use of blogs by individual service-members and the larger issue of determining if outright prohibiting the use of blogs is legal.

As military officials are aware of, free speech rights are not absolute. Principles and precedent from past court cases stand as the basis for limitations on free speech. This is the approach by which the military can legally proceed in prohibiting the use of blogs. One Supreme Court case that clearly addresses the limits of free speech is U.S. v O’Brien (1968). The respondent, David Paul O’Brien, burned his draft card in protest of the Vietnam War and attempted to demonstrate that the law prohibiting the burning of draft cards was unconstitutional under the First Amendment. However, the Court upheld the law, maintaining that “a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms” (O’Brien, 367). To explain further, a “substantial government interest” is one in which the law itself serves a legitimate purpose outside the scope or intention of restricting speech. Justice Warren and the majority held that the law was valid because, among other reasons, “the registration certificate serve[d] as proof that the individual described thereon has registered for the draft [and] the information
supplied on the certificates facilitate[d] communication between registrants and local boards” (O’Brien, 378). These circumstances were unrelated to the restriction of free speech and the law was constitutional; however, to apply specifically to blog restrictions, this concept must be linked to the military.

Unlike civilian society, the military depends on discipline and security to function. Danley Cornyn (2008), a writer for the University of Texas Law Review, maintains that “due to the special characteristics of the military community and its mission, the Supreme Court applies a different First Amendment standard with regard to the protection of service-members’ speech” (Cornyn, 468). Reasonably, since the military’s focus and aims are a ‘substantial government interest’, it is legal for the military to limit free speech in order to preserve its efficiency and safety. The main issue is establishing that the prohibition of certain forms of speech, like blogs, is legal under court precedent, such as in the case of Brown v. Glines (1980). In the case of Brown, an Air Force member attempted to circulate a petition, but he was restricted from doing so, not only by his commanding officer, but the military’s general prohibition of petitions. The Court determined that the Air Force’s restriction of circulating petitions was “protect[ing] a substantial Government interest unrelated to the suppression of free expression” (Brown, 348). Ultimately, the Court decided that “the interest in maintaining the respect for duty and discipline [is] so vital to military effectiveness” and warranted the measures put in place to prohibit petitions and other forms of political dissension (Brown, 348). In this respect, the government’s main interest is restricting speech is unrelated to opinion or viewpoint; no matter what the airman wanted to petition for or protest, it would not be allowed for the sole reason that such behavior disrupts the unity and discipline of the military. Military cohesion is contingent on a work environment free of dissent; unrestricted free speech in this regard is a direct source of ineffectiveness and must be controlled.

In the interest of maintaining its effectiveness, the military exploits the “substantial government interest” precedent. However, as other Supreme Court cases have established, the “substantial government interest” precedent is not the only principle in the military’s arsenal to legally restrict speech. The Clear and Present Danger test, which could have conceivably arisen in the modern post-9/11 times, was devised during the case of Schenck v. United States (1919). Charles Schenck, a socialist in protest of the draft, was arrested for violating the Espionage Act of 1917. Overall, the Act sought to protect national security by criminalizing actions that obstructed military operations. The Court held that the law was constitutional and, in terms of free speech, stated “when a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured” (Schenck, 249). This supports the fundamental notion that free speech can be restricted in the name of national security. The information presented in personal military blogs pose a potential security risk since the enemy can use to their benefit the most inadvertent remark about U.S. Military procedure. Since the military can demonstrate an inverse relation between unrestricted blog usage and operational and national security, the speech can be limited. Cornyn highlights the military’s uneasiness that “the internet and blogs are becoming an ever greater source of open source information for adversaries” (Cornyn, 464). Because the military has determined blog usage as a security hazard, under precedent it can and should be limited.

3. In this particular case, Schenck distributed information to World War I draftees and encouraged insubordination, explicitly advocating that draftees “do not submit.”
One could argue that blogs are not included in the general category of what the military can legally ban. However, as past cases indicate, the Courts have already established limits for the military’s restriction of online behavior; blogs are beyond those established limits and can legally be banned. In the case of *McVeigh v Cohen* (1997), the Navy attempted to discharge McVeigh on suspicion of homosexuality. The investigation of McVeigh started after officers discovered information from an online profile that appeared to belong to McVeigh and suggested homosexual behavior. Given the Don’t Ask, Don’t Tell policy, the Navy was obligated to address this situation and determined that the information on McVeigh’s America Online profile suggested a homosexual lifestyle. The Navy subsequently removed McVeigh. The Court reversed the Navy’s decision, noting that “suggestions of sexual orientation in a private, anonymous email account did not give the Navy a sufficient reason to investigate to determine whether to commence discharge proceedings” (McVeigh, 216). In regards to the general issue of Internet behavior, the Court stated that “in the context of cyberspace, [it is] a medium of ‘virtual reality’ that invites fantasy and affords anonymity” (McVeigh, 216). This decision drew the line for what was acceptable for online behavior and legally set the limit for the military’s restricting or addressing such behavior. However, unlike McVeigh’s alleged biographical information on the email profile, blogs are self-authenticating and personal representations. In some cases, troops have identified not only themselves, but their job, personal views on military campaigns, and political preferences. For example, the University of Oklahoma study describes “Chris Missick, a soldier who writes *A Line in the Sand*, [as someone who] is pro-military and has aspirations to run for Congress” (Anderson et al., 12). Because most of this information is not anonymous, sensitive and (in Missick’s case) self-promoting, this is beyond the scope that the Court has previously established as protected speech.

The United States Military has the latitude to legally restrict the use of blogs because of the special category it falls into according to Congress. The Court’s determination in *Parker v. Levy* (1974) was that “Congress is permitted to legislate with greater breadth and flexibility when prescribing rules for the [military] than when prescribing rules for the [civilian population]” (Parker, 417). In other words, because the military is an isolated and specialized sector of society, different sets of norms and standards apply to the military than the civilian population. As a testament to the military’s separation and specialization, all service-members are obliged to follow the Uniformed Code of Military Justice (UCMJ) in addition to local and federal laws. The UCMJ is authorized by the Constitution and applies to all service-members regardless of branch. Legal scholar Katherine Bleyker from Fordham University echoes this by contending “DOD Directives thus govern all branches of the armed forces and are given the force of law via the UCMJ and the Department of Defense’s grant of power from the Legislative and Executive branches of government” (Bleyker, 409). Despite this special categorization, the military’s status does not universally allow the military to dismiss traditional laws. Chicago Law Professor Geoffrey Stone points out that the government and, by extension, the military cannot absolutely prevent information from being disclosed. After comparing the Bush administration and the National Security Agency disclosure incident to the Pentagon Papers,
Stone emphasizes that “the government could not prove that the disclosure caused ‘direct, immediate, and irreparable’ harm to national security” (Stone 958). Therefore, there are limits to free speech due to national security. However, as the military has already established the connection between unrestricted blog use and security breaches, the prohibition of speech is legal.

Because free speech is such a fundamental element of political and social life in America, safeguards have been put into place so that right is not easily denied. However, in the case of a specialized group like the military, restrictions on free speech are not only acceptable but, in some cases, beneficial. Dissension and a free marketplace of ideas are essential to the American democracy, but the military is obligated to serve the Commander-in-Chief without fail and without consideration to the political climate of the time. It is this balance of procedural conservatism and political fluidity that the military must maintain to be an effective tool for the government to wield to ensure the safety of the American public. Given this narrow focus, there are some cases in which the military’s right of free speech must be curbed to preserve operational and national security. To ensure that military leaders are within legal bounds to prohibit certain types of speech, Congress and the courts have classified the military as a special entity and have addressed this entity with measures to ensure its goals can be met legally. The increased use of blogs and the military’s aversion to the sharing of such information cannot challenge the legal precedent. Due to the decisions made in prior legal scenarios, the military is within its rights to prohibit the use of blogs.
Works Cited


Your LSAT Essentials

Applying to Law School?

What’s in the application?

1. Admissions Index
   GPA & LSAT score
2. Letter of Recommendation
   Minimum of four
3. Personal Statement

What is the LSAT?

The LSAT is the standardized test required for all law school applicants in the United States. The LSAT is created and organized by the Law School Admission Council (LSAC). You can take it up to three times within any two-year period; however, score reports show all scores. The LSAT is composed of five multiple choice sections, four of which count toward your final score (one section is experimental, but you are not told which section). There is also a short writing section that is not scored, but is seen by admission committees and sometimes used in the admissions process. The LSAT is designed to test a student’s ability to think critically and reason under extreme pressure and time constraints. Unlike other standardized tests, there is no penalty for guessing on the LSAT. The LSAT is offered four to five times a year and you can register for it online at LSAC.org.

Where do you fall?

The following are the GPA and LSAT averages for the class of 2014.

<table>
<thead>
<tr>
<th>School</th>
<th>GPA</th>
<th>LSAT</th>
</tr>
</thead>
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<tr>
<td>UNC</td>
<td>3.51</td>
<td>163</td>
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<tr>
<td>Columbia</td>
<td>3.70</td>
<td>171</td>
</tr>
<tr>
<td>Harvard</td>
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</tr>
<tr>
<td>Yale</td>
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<td>173</td>
</tr>
</tbody>
</table>

LSAT Resources

LSAT Preparation courses are available through the UNC Learning Center. Learn more at learningcenter.unc.edu/services/testprep.

General Preparation

- LSAC free test prep, including past exams, can be found at lsac.org/jd/lsat/lsat-prep-materials.asp

UNC Resources

- UNC Advising Offices offer a prelaw handbook for undergraduates that can be found at advising.unc.edu/FieldsofStudy/prelaw
- The UNC Writing Center, located in SASB North, provides feedback on personal statements.
Undergraduate Timeline: Applying to Law School

**Junior Year · (pre-May)**
- Think about who will write your letters of recommendation.
- If taking the June LSAT, register in January and begin preparing for it.

**Summer after Junior Year · (May - July)**
- If you do not have one, create an LSAC account.
- If taking the upcoming June LSAT, ensure that your practice test scores are in the range you want for the actual LSAT; if your scores are not within the range you need, consider postponing the LSAT until October.
- If you are planning on sitting for the October LSAT, register for the test immediately.
- If you are taking the LSAT in September/October, begin acquiring previous LSATs and LSAT preparation books. If you are taking a summer LSAT class, register for the class.
- Take an inventory of all of your extracurricular involvements and leadership positions to update your resume, and make an appointment with the Career Services Office.
- Draft a preliminary list of law schools you would consider attending.

**Senior Year · (August)**
- Speak with everyone you plan to ask to write you a letter of recommendation.
- Write rough drafts of your personal statement as well as any other writing samples required by the schools you wish to attend. Consider making an appointment with the Writing Center to review your work.

**Senior Year · (September - October)**
- Take the October LSAT, if applicable. If you are unhappy with your score, register for the December LSAT immediately after you receive your score.
- Be sure to follow up with everyone that wrote you a letter of recommendation and ensure that all of your letters of recommendation have been sent.
- If you are planning on applying to schools that require a dean’s certification, get started completing that.
- Write the final draft of your personal statement.
- If you took the LSAT and are happy with your score, submit your applications as soon as possible. Most schools start accepting applications in September and some begin in October.
- Meet with admission representatives at graduate law fairs or regional law fairs.

**Senior Year · (November - December)**
- If you have not done so, submit your applications. Only delay if you are retaking the LSAT in December, but try to submit your applications by the end of the calendar year.
- If you have not heard from one or more of the schools that you have applied to, confirm that the schools received your application materials.
Undergraduate Timeline Continued...

Senior Year - (January - February)
- With your tax information, fill out FAFSA and any other aid forms a particular law school may require. Make sure this is completed by February.
- If you have new grades from the fall semester, have the registrar’s office send an updated copy of your transcript to the LSAC. Some schools may also request that you send an update of your grades directly to the school.
- When you start hearing back from schools, be sure to keep track of scholarship information and deadlines.

Senior Year - (March - April)
- If you have been waitlisted at a school you still want to attend, send a letter expressing continued interest.
- Notify schools to which you have been admitted but do not wish to attend that you wish to withdraw your application.
- Compare scholarship offers and financial assistance offers from each school.
- Non-refundable deposits will be due in April.

What If You Don’t Go To Law School Right After Graduation?

Law school is a serious investment – personally, academically and financially. Many prospective law students do not go to law school directly after receiving undergraduate degrees. If you choose not to attend law school following graduation, consider the following between completing your undergraduate degree and applying to law school:

- Take advantage of volunteer opportunities – Some law schools (e.g. Tulane) require law students to complete mandatory Pro Bono work. Volunteer opportunities need not be law related but are meant to show an applicant’s willingness to serve the community.
- Applicants not applying during their undergraduate years should be able to demonstrate that they gained some type of professional work experience. Again, this does not need to be law related, but should demonstrate the applicant’s work ethic and ability to thrive in a professional environment.

If you are considering law school, you are highly encouraged to contact Jennifer Kott, Director of Admissions and Pre-Law Advisor, Academic Advising Programs at jkott@email.unc.edu | 919.962.1477

Sample Logic Games

The Basics

The LSAT contains one scored Logic Games section consisting of four Logic Games, each with 5 to 7 questions, for a total or 23 or 24 questions. Each game begins with a set of information called the fact pattern, which is then followed by a set of rules called constraints. These games are designed to test three things:

1. Your ability to use and understand the precise meaning of language
2. Your ability to make deductions
3. Your ability to keep track of a large amount of information
Multiple Choice

During a period of six consecutive days – day 1 through day 6 – a Marine Corps aircraft squadron will complete six different evolutions – A, B, C, D, E and F. During this period, each evolution will be performed exactly once, one evolution per day. The schedule for the evolutions must conform to the following conditions:

A is completed on either day 1 or day 6
C is completed on an earlier day than E is completed
E is completed on the day

I. Which of the following is a possible list of the evolutions in the order of their scheduled completion, from day 1 through day 6?
1. A, E, F, C, D, B
2. B, C, D, E, F, A
3. B, D, E, F, A, C
4. B, D, E, C, F, A
5. D, C, B, F, E, A

II. If the completion of evolution A is scheduled for the day immediately before the completion of evolution D, which of the following must be true about the schedule?
1. B or C is scheduled for day 2
2. B or C is scheduled for day 4
3. C or E is scheduled for day 4
4. E or F is scheduled for day 5
5. E or F is scheduled for day 6

See pages 24-27 of LSAT Direct for original questions.
Meet the Authors

Morgan Abbott
Class of 2012
Major: Public Policy and Religious Studies
Minor: Entrepreneurship

Morgan Abbott is a senior double majoring in Public Policy and Religious Studies with a minor in Entrepreneurship. Abbott is the founder and director of Carolina for Amani, a non-profit organization that supports the New Life Homes in Kenya through fundraising, advocacy, and an internship program. Abbott also serves as a Vice-Chair of the Undergraduate Honor Court. In her spare time, Abbott enjoys running, reading, traveling, and spending time with friends.

Lionel Earl
Class of 2012
Major: Political Science

Lionel Earl is a senior from Fayetteville, N.C. As an Air Force dependent and Political Science major, Lionel is interested in the juncture of politics, law, and military issues. Lionel hopes to pursue these issues further in law school and eventually become an attorney in the Air Force (JAG, Judge Advocate General). In the meantime, he works as a resident advisor in Odum Village and a mentor in the Minority Advising program. Lionel is passionate about litigation and he is involved with Mock Trial at both the high school and college levels.

Sarah Johnson
Class of 2013
Major: Political Science and Global Studies

Sarah Johnson is a junior majoring in political science and global studies from Siler City, North Carolina. She is a member of Zeta Tau Alpha and is the Franklin 5K Public Relations Chair for the 2012 race. Sarah is interested in the European Union and is currently studying abroad in Paris, France.

Charlotte Lindemanis
Class of 2013
Major: Global Studies and Spanish

Charlotte Lindemanis is a junior majoring in Global Studies and Spanish. She is an editor of Solutions for the South, a regional publication featuring student policy papers addressing issues throughout the South, a member of the Honor Court, a Deputy Legal Officer of the UNC Judicial Branch and served as director of the UNC Roosevelt Social Justice Center from 2010-2011. Charlotte spent last summer volunteering in Belize at a shelter for women and children rescued from domestic violence and enjoys playing tennis for the Women’s Club Team.

Rachel Myrick
Class of 2013
Major: Political Science and Global Studies
Minor: Creative Writing

Rachel Myrick is a junior at the University of North Carolina at Chapel Hill majoring in Political Science and Global Studies with a minor in Creative Writing. Rachel is co-President of the Honors Student Executive Board and of Advocates for Human Rights, a committee in the Campus Y. In addition, Rachel co-directs the TEDxUNC Conference, serves on the Student Advisory Committee to the Chancellor, and writes for Campus Blueprint Magazine.

Leslie Nelson
Class of 2014
Major: Psychology and Peace, War and Defense
Minor: Naval Science

Leslie Nelson is a sophomore from Charlotte, NC. Leslie is a 3/C midshipman with the UNC-CH NROTC battalion and hopes to graduate and commission as a Naval Officer in the Surface Warfare community. In addition to her NROTC and Law Journal duties, she also plays for the three-time College National Champion UNC Women’s Team Handball Club.
Hannah Nemer
Class of 2014
Major: Peace, War and Defense and International American Studies
Hannah is a co-center director of the Roosevelt Institute’s Social Justice Policy Center. She is passionate about promoting religious pluralism, and best expresses herself through film.

Wilson Parker
Class of 2015
Major: Economics
Wilson Parker is a freshman Economics major from beautiful Asheville, North Carolina. At UNC, he works for the Roosevelt Institute, an undergraduate policy think tank, volunteers with the Community Empowerment Fund, writes for Campus BluePrint, serves on the Student Government’s Advocacy Committee, and debates in UNC’s 215 year old debate societies, the Dialectic and Philanthropic Societies. He spends his free time eating barbeque, playing water polo, and complaining about how little free time he has.

Ruopiao Xu
Class of 2013
Major: Business Administration and Management
Ruopiao Xu is a junior business major from Hangzhou, China, at the University of North Carolina at Chapel Hill. She studied abroad as a Phillips Ambassador at the Chinese University of Hong Kong in the summer of 2011.

Cody Poplin
Class of 2012
Major: Political Science and Peace, War and Defense
Cody Poplin is a senior double-majoring in Political Science and Peace, War and Defense. He is particularly interested in the morality of American grand strategy and the manner in which the U.S. can leverage international incentives to promote a more just international system and prevent, manage, and win conflicts. Following graduation, his interest in American foreign policy will take him to southeast Asia where he will engage in democracy promotion and human rights protection policy development as a Luce Scholar.

Madhulika Vulmiri
Class of 2014
Major: Public Policy
Madhulika is currently studying abroad in London with the UNC Honors Program and interning at the London School of Hygiene and Tropical Medicine. She is interested in the intersection of reproductive health and policy and is currently researching priority setting for cervical cancer among other global health issues. On campus, Madhulika is involved with the Campus Y Center for Social Justice, Roosevelt Institute Health Policy Center, Cadence All-Female A Cappella, and Admissions Ambassadors.
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