Political science often does not lend itself to tangible representations of work and success. Paideia was established to do just that – give students a physical way to demonstrate their accomplishments. It is our honor to welcome you to the fourth volume of Paideia.

This year, Paideia continues its mission to provide current and former students with the opportunity to showcase their work both throughout the University, and digitally around the world. It has always been the goal of this journal to have a diverse selection of papers that not only represent the different political science fields, but also showcase differing opinions. In the fourth volume, we are proud to present papers that tackle timely and contentious topics and challenge conventional notions about how the world works.

We hope that as you read through this journal, the papers provide the opportunity to gain deeper perspectives on the topics presented. Through the featured alumni, it is our goal to show readers the diverse success that political science students can achieve in any field.

We thank you for taking the time to explore the fourth volume of Paideia.

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BRETT RAFFISH is a second-year political science major concentrating in pre-law. He minors in global politics, religious studies, and psychology. Brett is currently Cal Poly’s ASI Secretary of Community Relations and is an appointed commissioner on the San Luis Obispo Human Relations Commission. After graduating, Brett plans on attending law school and becoming a Judge Advocate General in the U.S. Navy.
POLICE ON-BODY CAMERAS: A VIOLATION OF PRIVACY?

Brett Raffish

Introduction
Within the last ten years, the relationship between the public and the law enforcement community has diminished greatly. This impasse can be attributed to the public’s decreasing trust in officers to behave fairly and to treat individuals within the limits and boundaries of the law.¹ The emergence of cell phone cameras and other new, innovative recording devices has only deepened this mistrust. Civilians now utilize this new technology to record all types of police encounters, including the apprehension, arrest, or questioning of individuals.²³ The August 2014 shooting of Michael Brown, an 18 year old unarmed African-American, by Officer Darren Wilson of the Ferguson,

Missouri Police Department, exemplified and perpetuated society’s distrust of the reliability in officer testimonies and accounts as to how and why the shooting occurred. Without video evidence or the testimony of reliable witnesses, the court was forced to rely solely on the verbal testimony of Officer Wilson and on witnesses with conflicting accounts of what occurred. The dispute surrounding the Michael Brown shooting reflects just one example of dozens of cases detailing officer-involved shootings that are based exclusively on the verbal testimony of the individuals involved. Different law enforcement organizations such as the International Association of Chiefs of Police (IACP) have begun encouraging and promoting the use of various technologies to eliminate or mitigate discrepancies in the investigation of an officer’s actions. New innovative technologies, such as on-body cameras, would increase transparency to the public and provide evidence useful in the defense of a police department in cases of civil liability and/or in the adjudication of peace officer personnel complaints. The newest, and arguably most controversial technology introduced thus far, is the camera affixed to officers’ uniforms – also known as “on-body” cameras.

Due to the relative infancy of body camera technology, there is much debate surrounding almost every aspect of the new device. Policy options concerning exceptions to required camera activation must be examined in order to protect officer/civilian privacy. The overarching goal of the implementation of body camera technology is police department transparency and bridging the gap of mistrust between the public and the law enforcement community. The protection of privacy, in the context of law enforcement body camera usage, is a fine line which, if crossed, can destroy the advancements toward trust gained over recent years, and cause communities to again lose faith in their protectors. Therefore, the primary research question in this paper is: What are the most reasonable policy options to police body camera deactivation in order to protect civilian and officer privacy?

Implications of Body Cameras
The body camera performs the same function as a modern cell phone camera and can range in shape and size, from a unit as small as a pen to as large as a two-way radio (walkie-talkie). All such cameras also have tamper-proof hardware. While officers have the ability to control when the devices are activated, they cannot edit video while in the field. Some systems allow officers to select between audio and/or video modes. There are three common areas where the camera can be placed: affixed to an officer’s lapel, attached to an officer’s glasses, or hooked on to an officer’s uniform at the shoulder. No formal requirement exists concerning the placement of the cameras, with the decision left up to the discretion of each law enforcement agency. Law enforcement departments utilizing on-body cameras have created policies establishing when and how long an officer’s camera should be on. Policy makers and the law enforcement community are still in great debate over officers’ length of recordings and when the officer may turn the camera on and off.

The introduction of voluminous video recording and downloading presents two key technological issues for police departments and judicial systems. The initial technological issue is the method of storing body camera imagery. When the Chula Vista Police Department in Southern California transitioned to the use of body cameras, the department quickly realized data storage was an impediment to the implementation of the cameras. Given that a 30-minute video takes up approximately 800 megabytes of storage, the department calculated that 33 terabytes would be used every year for only 200 officers’ video data (to truly emphasize just how substantial 33 terabytes of data is, 33 terabytes of data would
fill 2,062 Apple iPhones to maximum storage capacity). A larger department of over 10,000 sworn officers, such as the Los Angeles Police Department or the New York Police Department, would be faced with thousands of terabytes of video data per year which would require such departments to either invest in massive hard drives, which are steep expenditures for a municipality, or store video online utilizing ‘cloud’ technology. Most ‘cloud’ servers, however, are not compliant with the FBI’s Criminal Justice Information Services requirements. This means that most available cloud networks neither provide sufficient security nor contain the algorithms or encryption codes necessary to keep the data from being compromised by experienced hackers. Moreover, it is uncertain whether the particular cloud network even has the capability to store thousands of terabytes of data. In the absence of a secure cloud network, Departments are not legally able to store the data online. This makes answering the storage issue of critical importance to agencies contemplating use of body cameras.

The second issue of debate is the retention period for video imagery. Departments have begun classifying video footage into two categories: evidentiary and non-evidentiary. Several cities have enacted policies whereby non-evidentiary footage is retained for approximately 60-90 days, and even as few as 30 days before it is purged. The time limit for retention of evidentiary data, however, varies from department to department. The rapid accumulation of evidentiary data forces certain departments, depending on the size of storage, to limit the length of time the data is retained to less than five years. Destruction of evidentiary data can give rise to problematic legal issues. For example, if a court case is retried after the retention period for the video imagery


has expired, the court may be without the evidence (video footage) used in the
original trial. Police departments are taking these issues into consideration and
are continuing to work on storage policies.

**Issues with Data Access**

Data access by the public is not regulated by or conferred under one single
piece of legislation. Instead, every state has a different public records statutory
scheme that describes the extent of public access to public records, of which
video footage is included. At the federal level, all data recorded and retained
by federal peace officers (i.e. Drug Enforcement Agency, Customs and Border
Protection, etc.) falls under the U.S. Freedom of Information Act (FOIA) which
grants all citizens the right to inspect or receive copies of public records created
by federal authorities.\(^\text{14}\) However, if the video footage is a part of an ongoing
investigation, the footage is generally exempt from public disclosure. Several
amendments to the FOIA have been suggested by the House Committee on
Government Operations as well as the Senate Committee on the Judiciary, which
would limit public access to video imagery. The goal of these amendments is to
prevent public access to footage showing officers’ use of force.\(^\text{15}\)

Various states have public records laws that exempt investigatory records such
as the majority of police body camera footage from disclosure to the public.
Some states such as Michigan and Florida have passed laws that exempt police
body camera footage taken in a person’s home from public disclosure.\(^\text{16}\) The
number of states that have mandated the release of footage are limited. Overall,
the process for accessing these records varies from state to state and municipality
to municipality. Under an interpretation of the California Public Records Act
(CPRA) by the California Attorney General’s Office, “Records of complaints,
preliminary inquiries to determine if a crime has been committed, and full-scale
investigations, as well as closure memoranda are investigative records,” and

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15 Testimony of Adam A. Marshall on Behalf of the Reporters Committee for Freedom
of the Press on B21-0351, the “BODY-WORN CAMERA PROGRAM REGULATIONS
AMENDMENT ACT OF 2015” B21-0356, the “PUBLIC ACCESS TO BODY-WORN
CAMERA VIDEO AMENDMENT ACT OF 2015”, https://www.rcfp.org/sites/default/
files/2015-10-21-comments-on-de-bodycam-legisla.pdf

16 “Police Body Cameras Raise Privacy Issues for Cops and the Public.” The
police-body-cameras-raise-privacy-issues-cops-public.
are exempt from disclosure to the public. Numerous judicial decisions have clarified the types of records which fall within the “investigatory” exemption. Further, assuming that the record in question properly fits within the exemption, the investigatory record exemption (and others found in the CPRA) is permissive, meaning California law enforcement agencies have discretion to assert the exemption over the record and withhold it, or not assert and allow the record to be disclosed.

Because each city in California has interpreted and applied the CPRA and its permissive exemptions differently, it has inherently created differing policies for relinquishing video to the public. The Oakland Police Department evaluates public records requests on a case-by-case basis, while the Los Angeles and San Diego Police Departments have generally asserted the available exemptions and denied all access to the footage. The lack of uniformity in the policies regarding video data disclosure has generated strong public outcry and criticism toward law enforcement agencies for not delivering on the original intent of the body cameras—department transparency and accountability.

**Policy Suggestions**

Nationally, police departments initially resisted the concept of police body cameras until the effects of the cameras were tested in various cities around the country and proved, over time, to decrease complaints against officers and improve public opinion of local law enforcement. For example, the Rialto Police Department in San Bernardino, CA, implemented on-body cameras in 2012. Within the first 12 months of implementation and use of the on-body cameras, general use of force against suspects was 50 percent lower than it had been the year prior. The Rialto Police Department also experienced a tremendous drop in personnel complaints against their officers, almost dropping to

zero. Although departments began to implement the new technology in hopes of increasing department and officer accountability and transparency, many departments soon realized that some recordings contained extremely sensitive content that revealed images of individuals in their most personal and private settings. To protect the privacy of individuals and officers, some departments (in accordance with their state’s public records laws) have refused to relinquish the video records, essentially acting against their original intention in implementing a camera program. In various cases, the cameras have also inhibited public cooperation with law enforcement for fear of intrusion into their privacy. There are, however, policy options involving when an officer should not record that can be implemented in order to enhance civilian and officer privacy. By not recording certain contacts and in certain places, California law enforcement agencies may, in turn, be more willing to permit public access to video records, foster a more uniform system for public access and improve privacy of both civilians and officers.

Policy options limiting an officer’s camera activation involve the following: (1) When interviewing, questioning, and/or assisting victims of sexual assault, rape, and other sexual offenses regardless of location; (2) When recording would expose the identity of a confidential informant, citizen informant, or undercover peace officer; (3) When an officer and his/her partner are alone in the car and not involved in an investigatory or enforcement action (see provisions below); (4) When entering hospitals and healthcare facilities; and (5) When in any locker room or bathroom for non-investigatory purposes, or while the officer is on break.

The first restriction on camera activation would occur when officers are interviewing or interacting with victims of sexual assault, rape, and/or sexual abuse, regardless of the location where this contact occurs. An officer’s duties

when dealing with a victim of a sex crime can include interviewing the victim in his/her house or hospital, responding to a 9-1-1 call by someone who was recently abused or raped, and/or assisting a victim in dressing themselves after abuse has occurred. Regardless of the specific scenario or situation, sex crimes by their very nature are extremely personal and private to the victim and require the utmost understanding and respect from officers when dealing with these types of crimes. Recording individuals during this time of greater fragility and unease could increase the trauma and stress for such victims who may feel that their situation is not as private as it could be or they would like it to be. Presently, the decision of whether or not to record such interactions varies by law enforcement agency, which means that depending on the agency overseeing the sex crime investigation, recordings of victims may be subject to public access. Access to such footage would almost certainly cause further embarrassment, as well as the strong possibility that victims would simply refuse to provide a statement or disclose pivotal or key details of the situation for fear of the footage being publicized. Privacy of victims of sex crimes should be respected and accommodated by deactivating officer body cameras.

The second restriction on officer body camera activation is when an officer is interacting with a confidential informant, citizen informant, or undercover peace officer. This exemption can be separated into two categories: confidential civilian informants and undercover peace officers. It is extremely challenging to find civilians (who may or may not also be criminals) willing to provide information about crimes to law enforcement agencies. Individuals who cooperate with law enforcement by providing information to assist agencies in their crime fighting efforts run the risk of exposure and, consequently, jeopardize their safety.

and the safety of those around them. Recording these individuals could not only put their life in peril, but could dissuade future civilian cooperation with authorities. Undercover peace officers at both the state and federal level can work in very volatile and hostile environments, and operate under aliases in order to assimilate into various criminal enterprises to collect evidence and effectuate arrests. The need to maintain the confidentiality of their law enforcement identity is vital to the success of the undercover operation. If officers’ identities are exposed, not only would it jeopardize the integrity of the operation, but put the undercover officer’s life in danger. To minimize such significant risks, all body camera policies should restrict activation where civilian informants or undercover officers are involved.

Requiring body camera activation while officers are in a police car also inhibits officer privacy. However, restricting camera activation to preserve officer privacy in this situation is subject to certain limitations. For instance, if an individual is being transported, camera activation may not intrude upon officer privacy, as the “forum” is far less private as compared to when officers are in the car alone. Officers must activate cameras before any contact with the public and before they activate lights and sirens in response to an emergency call, allowing officers to respond outside the rules of the road. This exemption only protects officers when partners are in the police car alone. Although employers are legally permitted to monitor an officer’s speech and conduct, even while in a police vehicle, doing so may not be productive or fair to officers. Partner communication is vital to an officer’s ability to carry out his or her job safely.


effectively, and efficiently. By monitoring officer conversation in the vehicle, officers could become uneasy about communicating with their partner due to constant worry of censorship over what they say. When partners are able to develop relationships and become comfortable and familiar with one another, chemistry and cooperation are increased, thereby fostering greater reliance and dependability in the field. In many professions, employers monitor electronic communications of their employees including emails, website access, and phone calls. However, not every word spoken or action taken is subject to recordation. Privacy should be granted to officers who are not engaged in contact with the public and where the communications consist of conversations between officers inside a contained environment (i.e., a police car).

Under no circumstances should body cameras be activated in hospitals or healthcare facilities where preservation of the privacy of patients and others receiving medical treatment or consultation is of the utmost importance. Police officers are often in hospitals to interview victims/suspects of crime, guard a suspect or prisoner, or for other investigatory matters. Although the Fourth Amendment to the United States Constitution prohibits unreasonable searches, and whether a “search” occurred is determined by assessing whether the individual in question had a reasonable expectation of privacy in the conduct, and that expectation is one that society is willing to accept as reasonable, an officer may record anyplace that he or she has a lawful right to be. The issue, therefore, is more about individual privacy and not necessarily one of constitutional dimension under the Fourth Amendment. Individuals in the hospital, whether criminals or victims, may be in extremely vulnerable and sensitive states. It would

be terribly intrusive to record individuals so situated. Additionally, under the Health Insurance Portability and Accountability Act (HIPAA), a substantial amount of protected patient information would need to be redacted from the recordings if the footage was made accessible to the public, which would be extraordinarily time consuming. Individual and patient privacy is infringed when police body cameras are activated in hospitals and healthcare facilities.38

The final restriction is to prohibit body camera activation in a bathroom or locker room (when the officer is present for non-investigatory purposes), or while the officer is on break. In the first instance, the intention of this restriction is overwhelmingly straightforward - the protection of officers’ privacy.39

An officer, like any other person, maintains a reasonable expectation of privacy while in restrooms and locker rooms.40 The more controversial restriction to body camera activation concerns officers on break. When officers are on lunch break, they may still have encounters with the public, and there is always the possibility of an officer being called on to stop a crime.41 Again, this is less about constitutional issues and more about general notions of privacy when individuals take a break from their primary duties. Even though officers in most jurisdictions still must respond should a radio call come in, they may take care of personal business unrelated to their duties during such breaks. Officers should not have to activate their cameras during their breaks as this time is allotted to them during an 8-12 hour shift.42


Future Recommendations

The implementation of police body cameras has significant potential for transparency and accountability in law enforcement. Although body cameras are a powerful tool and could generate better relationships between the public and the law enforcement community, the activation of cameras by officers in various scenarios and situations can impede civilian and officer privacy. Some of the critical restrictions on camera activation, examined in previous sections, include: when interviewing, questioning, and assisting victims of sexual assault, rape, and other sex offenses regardless of location; when recording would expose the identity of a confidential informant, citizen informant, or undercover peace officer; when an officer and his/her partner are alone in the patrol car; when entering hospitals and healthcare facilities; and when in any locker room or bathroom for non-investigatory purposes or while on break. Although officers may record in most if not all of the aforementioned situations, the issue truly becomes should they record.

The privacy of all individuals captured on body cameras is vital to the cooperation between law enforcement agencies and the public. For decades, this relationship has rapidly declined into a state of distrust. By implementing body cameras and simultaneously respecting one another’s privacy, the initial goal of body cameras (transparency and accountability) is maintained and the relationship between the two entities can improve without additional hindrance. It is the author’s recommendation that all of the restrictions and policies examined above be adopted and implemented by law enforcement agencies using body camera technology to insure that the privacy boundary of all individuals recorded is not crossed which, again, allows the relationship between the law enforcement community and the public to grow.

The restrictions examined pertain only to when police officers should not have their cameras activated to protect the privacy of all individuals recorded. However, future research should be done on the following: (1) the development of a national uniform system of access to body camera video (currently states control their own public records laws); (2) minimizing the vulnerability of police video data storage to infiltration, exposure and hacking; and (3) whether officers should be required to inform citizens that they are being recorded. Police body camera technology is very new and, due to its immaturity, many

43 Op. Cit., fn. 39
legal and ethical issues have yet to be resolved.
JEFF HUNT currently acts as Senior Counsel for Raytheon Company, providing international legal support for the company. He graduated from Cal Poly with a degree in Political Science in 1985.
ALUMNI SPOTLIGHT

Jeff Hunt

As a first-generation college student, Commander (Cmdr.) Jeff Hunt, U.S. Navy (retired) understood the importance of a well-rounded education. He chose to attend Cal Poly in 1982 as a political science major. Given his fascination with the legal system, he knew from a young age that he wanted to pursue a career as a lawyer. As he began to take courses, such as American Constitutional Law, it became evident that he had chosen the right career path. During Cmdr. Hunt’s his final year at Cal Poly, his mentor, Professor John Culver, suggested that he apply for a California State Assembly Fellowship. He was chosen for the Legislative Fellowship, where he worked on legislation for the California State Assembly’s Committee on Water, Parks and Wildlife under Assemblyman Jim Costa.

Cmdr. Hunt hoped to join the United States Navy Reserve and was offered a spot in the Navy Aviation Officer Candidate School. He moved to Pensacola, Florida, where he completed flight training and became a Naval Aviator. Cmdr. Hunt was then assigned to his squadron’s Safety Department and was selected to be a part of the Navy’s Landing Signal Officer program. However, his interest in law had not wavered. Through extensive hard work and dedication, he applied and was selected for the Navy’s Funded Legal Education Program in 1990.
After completing his degree at Vanderbilt Law School, he returned to Pensacola and served in the Naval Legal Service Office from 1993 to 1995. During his time at the Naval Legal Service Office he took part in a number of military-jury and bench trials. He has argued cases in Congress and the E-Ring in the Pentagon. One of his most notable cases, which regarded a female flight student, was featured in the PBS special documentary, “The Navy Blues.” Cmdr. Hunt later became a Navy prosecutor and Special United States Attorney for the Northern District of Florida. During this assignment, he was able to bring justice to a United States Navy member and his family when a drunk driver killed the sailor.

Cmdr. Hunt’s first experience with international law came in 1997 when he moved to San Diego to become a Battle Group Legal Advisor and served as a Summary Courts-Martial Judge. He assembled an international law training program that prepared both U.S. Navy and allied military personnel for global security operations and armed conflict. In 2002, he became the first Navy Officer to act as Legal Advisor to the U.S. Military Delegation to the North Atlantic Treaty Organization (NATO) in Brussels, Belgium. The importance of the U.S. delegation escalated after the September 11th attacks and he was given the opportunity to provide legal and policy advice to U.S. and NATO officials. He recalls his first time attending an international meeting in Belgium as being a “humbling experience.” He was the only country representative wearing a military uniform, sitting behind a placard that read “United States of America,” and had the honor to speak for the country. At the time of his service as a member of the U.S. Delegation, there had been little research or effort taken against human trafficking by the international community. Cmdr. Hunt played an essential role in helping NATO adopt an anti-human trafficking policy and implement training programs for NATO personnel to help fight the epidemic.

In 2005, his career in NATO came to an end. He moved to Washington, D.C. to serve as an Executive Officer in the Region Legal Service Naval District Washington. He provided advice to Navy commands, including the Naval Criminal Investigative Service on criminal law issues. In 2007, after 21 years of service, Cmdr. Hunt retired from the Navy. He currently works as the Senior Counsel for Raytheon, a major U.S. defense contractor. Cmdr. Hunt advises current Cal Poly political science students to “think about what they really want to do in life, and to not be afraid to dream big and go for it.”
CONTRIBUTOR BIO

CAROL JANSSEN is a first-year graduate student in the Master of Public Policy program. Her inspiration for this paper is based on a lifetime of promoting workplace fairness and observing career obstacles for women, including stagnating wages and unequal pay. Her passions include continuing to teach, learn, and spoil her Labrador Retrievers, attending hockey games with her husband, and trying to make the world a better place.
Executive Summary
The goal of equal pay, to ensure fairness in compensation, established in the mid-twentieth century has remained elusive. Today, women in the United States still earn 79 cents on the dollar. The lack of pay transparency prevents market forces from providing equal compensation for substantially similar work and permits discrimination to occur. The Equal Pay Act of 1963 (EPA) provides a litigation remedy to compensate victims of discrimination but this remedy, although initially successful in reducing the gap, has failed to close the divide. Instead of amending the EPA, an alternate solution to address this market failure includes mandatory pay audits and required pay transparency with government oversight.

Goals
Fairness and equality, foundational principles of the United States support narrowing the gender pay divide and establishing equal opportunity in
compensation for women. More than fifty years ago, the United States prohibited discrimination against women in the payment of wages. In signing the EPA, President Kennedy described unequal pay as an “unconscionable practice” and acknowledged women should not have to choose between government assistance or a job with inadequate and unequal pay. Fairness in pay, yet to be achieved, means equity in the amount of compensation, the criteria used to set compensation amounts, the extent to which the employer treats the employee with dignity and the degree of transparency in the pay structure. The concept of equal pay is not uniquely American. The International Labour Organization recognizes that “equal pay is a human right.”

In addition to promoting human rights, bridging the wage gap will benefit the economy and the workforce. Economists agree that reducing pay inequality helps employees get better jobs at better pay and has a positive impact on our overall economy. Equal pay will improve women’s financial independence and women will be less likely to fall into poverty. Specifically, closing the pay gap would reduce the poverty rate (Figure 1) and the amount spent on Temporary Assistance to Needy Families. Moreover, equal pay during a woman’s working years will improve her long-term financial condition into retirement.

Trends

The wage gap remains a persistent and substantial problem in society. Although the wage gap has lessened since Kennedy signed the EPA into law, progress has stalled with some industries demonstrating no improvement in twenty years. Women earned roughly 60 cents on the dollar in the 1960’s but wages rose

1 U.S. Const. amend. V and XIV, § 1; U.S. Declaration of Independence, Paragraph 2 (1776)
6 Oelz, Olney and Tomei, Equal Pay.
Carol Janssen

sharply and the gap lessened in the 1980’s.9 Thereafter, the wage gap narrowed at a slower and unsteady rate. In 2014, the full-time wages of female employees who worked year-round earned approximately 79% of what men did on an annual basis and 83% on a weekly basis (Figure 2).10 The pay gap disproportionately impacts older women (Figure 3) and women of color (Figure 4).

Even in traditional female occupations such as education and nursing, men still out-earn women, although the pay disparity is smaller than in traditionally male-dominated jobs.11 When women enter male-dominated professions, the result is a decrease in average wages for the occupation.12

An unexpected trend defeats the presumption that more education and experience will diminish the pay gap. The contrary is true. Women today are better educated than men earning more bachelor’s, master’s and doctoral degrees.13 The AAUW, after accounting for several other factors, “found a remaining 7 percent difference between the earnings of male and female college graduates one year after graduation. The gap jumped to 12 percent 10 years after college graduation.”14 In 1968, women comprised less than 10% of the entering classes for doctors and lawyers but today represent nearly 50% of students in those programs.15 However, the difference in earnings increased for women with the highest levels of education and achievement.16 For example, female accountants earn 75.8% as much as male accountants and the gap is even wider for lawyers (74.9%), managers (72.4%), stock brokers (64.5%) and doctors (64.2%).17 During their careers, female health care practitioners will lose $891,000 and females lawyers will lose $1,481,000.18

In comparison, women in lower-paying jobs experience a different type of gap. Employers are less likely to provide health insurance to low income.

10 Ibid.
13 Eisenberg, “Money, Sex, and Sunshine.”
16 Eisenberg, “Money, Sex, and Sunshine.”
17 Op. Cit., fn. 16
female employees who are also less likely to have retirement plans. Pay inequity follows women into retirement with reduced social security and other retirement benefits.

Women in poverty impact the economy and increase the need for government benefits. Approximately two-thirds of workers earning $10.50 per hour or less are women, frequently supporting children. More than one half of this group work full-time or nearly full-time. The poverty rates in 2012 were 3.9% for all working women, 11% for single women, and 28.7% for working single mothers. Additionally, “More than 40 percent of mothers are now the sole or primary source of income for the household and about two-thirds of children live in a family with a co-breadwinner or breadwinner mother, up from less than 30 percent in 1967.” Once viewed as “supplemental” family income, women’s earnings have become essential to families to pay for housing, child care, transportation and other necessities.

From 1950 to 2000, women’s participation in the labor force increased from 36% to 76% while the rate for men stayed constant at 88%. “With over 72 million women in the workforce, gender-based wage discrimination hurts the majority of American families, particularly single-parent households, which are predominately headed by women.” Measures to equalize compensation are more necessary today than when Congress passed the EPA in 1963.

 Conditioning Factors

In enacting the EPA, Congress recognized that discrimination caused the pay disparities between men and women. As women entered the workforce,

20 AAUW, “Gender Pay Gap.”
22 Hartmann, Hayes and Clark, “Working Women.”
24 Ibid.
the protectionist rationale was women’s work was less valuable, their income was merely supplemental, and women’s priority was to care for the family. Following a feminization of the workplace, explanations for the stubborn pay gap expanded to include women’s education and experience levels, motherhood, occupational segregation, and the glass ceiling. The EPA does not remedy any of these factors. As the trends demonstrate, the less educated and less experienced arguments do not explain today’s pay gap.

However, horizontal and vertical job segregation, both influenced by discrimination, play a role in the gender pay gap. Horizontal occupational segregation means the range of occupations for women is smaller, lower paying and often based on stereotypes of the acceptable jobs for women. Vertical occupational segregation is the underrepresentation of women in higher paid positions. This glass ceiling does not explain the wage gap because it exists at all income levels and particularly at the highest levels.

Women’s choices, such as motherhood and college major selection, are often blamed for job segregation and the wage gap. However, discriminatory social norms, gender expectations, workplace attitudes and business structures compel certain “choices” for women. The lack of information concerning job prospects as well as actual harassment and discrimination in male-dominated jobs limit freedom of choice. Moreover, the wage gap is present between childless men and childless women debunking the myth that women’s choice to have children is responsible for the gap.

Another purported cause of pay inequity is women’s failure to negotiate for equal pay; however, the reaction to negotiation is different for men and women evidencing discrimination. Negotiation behaviors such as assertiveness and self-promotion, expected of men, backfire on women.

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28 Ibid.
29 Op. Cit., fn. 27
30 Olez, Olney and Tomei, *Equal Pay.*
31 Ibid.
32 Kulow, “Paycheck Fairness Act.”
35 Kulow, “Paycheck Fairness Act.”
36 AAUW, “Gender Pay Gap.”
initiate salary negotiations incur a significant social cost and receive negative evaluations.\textsuperscript{37}

Further, wage secrecy impairs successful negotiations and produces pay disparity.\textsuperscript{38} Approximately one-half of workers reported their employers prohibited, discouraged or even punished the discussion of wage and salary information.\textsuperscript{39} In contrast, employers with greater transparency, such as the federal government (Figure 5), have greater gender pay equity.\textsuperscript{40}

Evidence demonstrates that discrimination remains a significant cause of the gender pay divide (Table 1). A considerable portion of the wage gap, estimated at 41%, is largely “unexplained,” meaning it is not attributable to motherhood, occupation, industry, or job title.\textsuperscript{41} These unexplained factors, which may include unintentional discrimination, blatant sexism, the influence of stereotypes, discretionary pay setting practices, and unequal opportunities, are causes of pay disparity.\textsuperscript{42} In addition, the states with no state protections from pay discrimination tend to have the biggest pay gaps.\textsuperscript{43}

The legal system, after decades of lawsuits under the EPA, has failed to resolve compensation differences because of the “unrealistically difficult” legal standard to prove and win pay discrimination cases.\textsuperscript{44} In addition to the difficult legal standard, in \textit{Wal-Mart Stores, Inc. v. Dukes} (2011), the Supreme Court effectively foreclosed the use of class actions to remedy pay discrimination.\textsuperscript{45} Further, although the Equal Employment Opportunity Commission (EEOC) may file unequal pay claims, it lacks the resources to significantly impact pay disparities nationwide.\textsuperscript{46}

\textsuperscript{38} ABA, “Paycheck Fairness Act.”
\textsuperscript{40} AAUW, “Gender Pay Gap.”
\textsuperscript{41} White House, “Gender Pay Gap.”
\textsuperscript{43} AAUW, “Gender Pay Gap.”
\textsuperscript{44} Stanberry and Aven, “Unequal Pay,” 193.
\textsuperscript{46} Yoshino, “Equal Pay Act.”
In addition to legal obstacles, bridging the pay gap faces significant political and social impediments. The decade long congressional battle over the Paycheck Fairness Act (PFA) resulted in “one of the most contentious political divides of the Obama Administration.” The issue has become unduly partisan with only one Independent and one Republican among the 44 and 193 co-sponsors of Senate Bill 862 and House of Representatives Bill 1619, respectively, the most recent versions of the PFA.

Moreover, a “pervasive lack of awareness of the pay gap” is a likely result from the need of individuals to maintain the status quo. “A large body of evidence suggests that people do not like to acknowledge that they are the either the perpetrators or victims of injustice, and that they create justifications to explain disparate outcomes.” However, in a Gallup poll, 42% of working women and 39% of all people surveyed concluded that equal pay or fair pay is one of the most significant issues facing working women in the United States. These seemingly contradictory ideas may suggest that while many people recognize the existence of a problem, few want to acknowledge their role in the problem. This complex problem requires a multifaceted solution to address these legal, political and social obstacles as well as avoid the stigma of victimization.

Alternatives
Measures to close the gap, with minimal success, include various individual, business and governmental actions.

College major and early job selection: Choice of majors and initial career selection impact a woman’s lifetime of earnings because a lower starting salary results in a lifetime of lower compensation and retirement income. However, even if women choose jobs with higher starting pay, the overall wage gap remains wider in higher paying occupations with women earning significantly less than men.

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48 ABA, “Paycheck Fairness Act.”
52 AAUW, “Gender Pay Gap.”
Salary negotiations: Although women “can’t negotiate around discrimination, knowing what your skills are worth and learning techniques to promote them can help.” Nonetheless, this approach fails to address discrimination and the social cost of negotiation. This option also puts the burden on women to become “more competitive and assertive” and women, without pay transparency, are unable to fully assess their worth to engage in effective negotiations.

Voluntary audits and other employer self-regulation: Employers can fully measure and assess the fairness in their compensation programs. For example, Salesforce performed a comprehensive analysis of its employees in 2015 which led to salary adjustments for 6 percent of workers and resulted in a 33% increase in promotions for women. Other self-regulating actions include company policies eliminating pay secrecy, addressing bias in negotiations, and establishing objective standards for compensation. These measures are commendable, but society cannot depend on enough employers to voluntarily engage in these efforts to have any significant impact on the wage gap.

Equal Pay Pledge: To promote self-regulation, Former President Barack Obama established the Equal Pay Pledge in which business signatories promise to conduct an annual pay analysis, review hiring and promotion processes and promote practices to close the wage gap. As of December 2016, over 100 major companies signed the pledge. However, the pledge has been removed from the White House website by the current administration.

Proposed Paycheck Fairness Act: The four key components of the proposed federal legislation in the 114th Congress: 1) changes the EPA to make unlawful unequal pay based on “any other factor” to any bona fide factor such as education, training or experience; 2) forbids retaliation against employees discussing wage information; 3) permits unlimited compensatory and punitive damages, and allows employees to join in a class action; and 4) provides a

53 Ibid. at 21.
55 AAUW, “Gender Pay Gap.”
national award recognizing voluntary compliance and establishes a negotiation training program for women. 60

The first factor does not fully address the litigation obstacles in equal pay claims especially for women in higher level occupations where “equal” positions within a company do not exist for pay comparison. The anti-retaliation provision is insufficient without mandated pay transparency. Additionally, enhanced litigation remedies lead to political opposition based on concern over increased litigation and argument over financial windfalls to plaintiffs.

**California’s Equal Pay Act:** The California Equal Pay Act amended existing state law to clarify what constitutes “equal work.” Some courts strictly construe equal pay for “equal work” very narrowly which results in the de-valuation of traditionally female-dominated jobs. Effective January 1, 2016, compensation must be equal for “substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions” rather than comparing identical jobs.61 This standard comports with the International Labor Organization’s Convention requirement that equal pay laws must be based on giving equal pay for different work which is of equal value.62 This alternative removes one significant obstacle in the pursuit of equal pay through litigation and increases the availability of a remedy to those who are unfairly paid.

**Status quo:** At the federal level, the PFA has stalled in Congress for a decade. As reflected in Figure 6, maintaining the trend since the passage of the EPA would delay pay equity until 2056 or even a century later if the current 21st century trend persists. Maintaining the status quo will not work to achieve the goal of pay equity.

**Recommendation**
Instead of reliance on litigation for enforcement, the International Labor Organization suggests enacting proactive legislation which requires employers to maintain fair pay practices.63 A multi-faceted approach at the federal level could consist of the following: 1) Legislation which clarifies that “equal work” is not dependent on job title or location but is either “substantially similar” (as

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60 ABA, “Paycheck Fairness Act.”
61 California Labor Code § 1197.5.
62 Olez, Olney and Tomei, Equal Pay.
63 Yoshino, “Equal Pay Act.”
defined by California law) or of “equal value” (as defined by the ILO) thereby eliminating pay disparities among traditionally female and traditionally male jobs; 2) Mandating regular internal pay audits; 3) Mandating pay transparency by posting wage information by job title; and 4) Establishing government oversight to ensure compliance. Similar approaches have been successful.

For example, Minnesota’s mandate eliminated the pay divide in government jobs of comparable value.64 Public-sector employers in Minnesota must conduct a pay equity audit every few years and act to eliminate pay disparities between jobs that are different but require comparable expertise. The government compares jobs based on complexity, required knowledge, needed interpersonal contacts, and working conditions. Wages are public information and the state also prohibits retaliation for employees discussing wage information.

The U.S. Office of Personnel Management found making salary information public helped bridge the gap. In 2012, female, white-collar federal workers earned 87% of what men made in contrast to 77% in the overall workforce.65

Mandates are successful in Canada and Sweden where employers must ensure jobs of equal value receive equal pay and the government provides oversight and accountability.66 In Sweden, in addition to mandating efforts to ensure gender equity in the number of women in particular jobs, employers with more than 25 employees must periodically examine pay differences in jobs of equal value, create action plans to address inequities and act to eliminate pay differences directly or indirectly related to gender.67 Without a mandatory disclosure law, “enforcement of equal pay laws will continue to be piecemeal and erratic, driven by inadvertent discoveries of wage inequities.”68

A pay transparency and audit mandate avoids the need for litigation and permits the market to operate more efficiently by providing employers and employees with sufficient information for setting and negotiating wages. Mandates move the sole responsibility from the employee to address inequity via litigation to the employer to amicably resolve pay inequities.69 A mandate is more effective than self-regulation because most employers are

65 AAUW, “Gender Pay Gap.”
66 Yoshino, “Equal Pay Act.”
67 Ibid.
69 Yoshino, “Equal Pay Act.”
not motivated to disclose pay information or conduct audits despite the potential benefits.

The EEOC could manage government oversight. The cost may be offset by fewer Title VII claims presented to the EEOC (for processing, investigation and issuance of right to sue letters), reduced court expenditures for wage litigation, and reduction of government assistance to women in poverty.\(^70\) Further research should fully analyze potential costs.

**Conclusion**

The failure to act will unreasonably delay achieving pay equity (Figure 6). Individual actions and business self-regulation may operate to narrow the wage gap slightly. However, self-regulation alone is insufficient because it relies on voluntary cooperation and fails to fully address both market failure and discrimination. Congress is unwilling to amend the EPA to make changes to the ineffective litigation process. The PFA, if enacted, would improve litigation access to victims of discrimination; however, as suggested by Eisenberg, the focus should not be on the victimization of women but the correction of a market failure.\(^71\) For the market to achieve wage equity, the government must require transparency and permit public scrutiny. Therefore, redefining “equal work” and implementing government oversight of mandated company pay audits and transparency is the most effective solution to achieve pay equity.

\(^{70}\) *Ibid.*

\(^{71}\) Eisenberg, “Money, Sex, and Sunshine.”
FIGURES AND TABLES
Figure 1: Projected reduction in poverty rates for working women


Notes: This figure (based upon 2009-2011 data) demonstrates the significant reduction in poverty rates for single mothers and other working women if pay equity is achieved.
Figure 2: Gender earnings ratios for full-time workers from 1955-2014


Notes: This figure demonstrates the percentage of weekly and annual earnings of women in comparison to men from 1955 to 2014.

As noted by Francine D. Blau, M. A. Ferber and A. E. Winkler, The Economics of Women, Men, and Work (Upper Saddle River, New Jersey: Pearson: 2014), the lower percentage for women’s annual earnings reflects that overtime pay and bonus compensation are more frequently earned by men and are not reported in the weekly figure.
Figure 3: Median weekly earnings of women and men who are full-time wage and salary workers, by age - 2014 annual averages


Notes: Wages for women stagnate beginning at age 35 in comparison to men who continue to achieve higher salaries until retirement age creating a larger pay gap for older women.
Figure 4: The gender pay gap by race based on median annual earnings of full-time, year round workers in 2014


Notes: Although not a focus of this brief, the wage gap disproportionately impacts women of different races.
Figure 5: Comparison of Pay Secrecy Policies between private and public employers


Notes: Public sector employers provide more information to employees concerning wage amounts.
Figure 6: Projected wage gap percentage for full-time, year-round workers based on 1960-2015 earnings


Notes: Maintenance of the status quo will significantly delay achieving pay equity. If the trend remains consistent with the wage gap since the enactment of the Equal Pay Act, women may achieve equity in 2059. However, progress has stalled in recent years. If the trend follows the 21st Century pattern, women will not achieve pay equity until 2152.
Table 1: The Gender Wage Gap Conditioning Factors in 1980 and 2010: Sample of non-farm, full-time wage and salary workers age 25-64 who worked at least 26 weeks.


Notes: This table presents the results of studies evaluating the impact of various conditioning factors on the wage gap. The most significant contributor to the wage gap is the “unexplained gap” which is attributable to discrimination.
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A WAR IN THE SHADOWS
Spencer Stucky

Introduction
On April 24, 2016, David Sanger of The New York Times reported that the United States military had recently launched cyber-attacks against the Islamic State of Iraq and Syria (ISIS) in an effort to broaden the methods of warfare aimed at toppling the regime.¹ The article outlines how until recently, U.S. Cyber Command, the military’s cyber operations command, has yet to aim the technological weapons that have been traditionally used against nations such as Iran, North Korea, and Russia at ISIS.² Cyber Command plans to initiate this “new line of combat against” the terrorist organization alongside traditional military efforts that are being executed.³ Specifically, the cyber-attacks will aim to “disrupt the ability of the Islamic State to spread its message, attract new adherents, circulate orders from commanders and carry out day-to-day functions,

² Ibid.
³ Ibid.
like paying its fighters.” Furthermore, through the acknowledgement of these tactics the U.S. military hopes to inflict psychological paranoia within ISIS as its leaders notice their plans, operations, and organization succumbing to technological sabotage. The article notes that launching cyber weapons must be done with caution, but the time to open up a new front in the war against ISIS has begun to override those initial concerns.

The United States’ decision to announce the use of such tactics against a foreign enemy represents a changing tide in warfare doctrine. Previously, all U.S. cyber operations were classified and the nation had never publicly announced the use of such weapons. Thus, Sanger’s article represents a shift in transparency regarding new domains of warfare. Perhaps more importantly, the article highlights that the U.S. does, in fact, use cyber weapons for offensive purposes. There have been suspicions in the past regarding cyber operations that could have potentially been carried out by the U.S. government. However strong the evidence may be, the U.S. has never admitted to such a tactic; until now. To put the scope of the U.S. cyber platform into perspective, the American populace generally believes that most agencies and programs operate on a purely defensive level. Nonetheless, because the cyber security infrastructure in the U.S. is so expansive, many think otherwise: that operations go beyond simple defensive measures. The Sanger article chronicles a shift in United States cyber warfare as its use slowly begins to emerge from the shadows and into the light.

The layman’s view sees cyber operations as purely defensive and in the interest of the protection of the country. In a recent poll by Gallup, 73 percent of Americans saw the presence of cyber activities as a critical threat to U.S. national security. This highlights that a majority of Americans believe the nation is vulnerable to attack by cyber operations from other nations and organizations. Furthermore, this lends to the idea that the U.S. assumes a defensive position

4 Ibid.
5 Ibid.
6 Ibid.
in the field of cyber warfare and only acts in response to an aggressor’s attack. In another poll taken by the Pew Research Center, 61 percent of respondents believed that a serious cyber-attack would cripple the society and infrastructure of a nation in the near future.9 This poll serves to underline the consensus of alarm amongst the population that cyber warfare is an imminent threat and the U.S., among other nations, must take the necessary steps in order to protect itself. In general, both polls characterize the conventional wisdom behind cyber warfare: that the possibility of an attack is likely and the U.S. must pursue precautionary, defensive measures in order to ensure the security of the country.

Although the United States has developed a defensive cyber arsenal since the events of 9/11, this perspective is incomplete. There are, indeed, cyber programs that have been developed in the interest of national security and defense. However, this viewpoint does not capture the entire story. The United States has eclipsed defensive cyber strategies and developed and implemented offensive cyber operations aimed at sabotaging the infrastructure of groups and nations across the globe. The U.S. fleet of cyber programs has drastically expanded since the terrorist acts on September 11, 2001.10 The U.S. has embarked down a path of aggressive cyber warfare that has slipped beneath the public’s perception and been misunderstood for national security purposes.

The United States military’s decision to pursue a path of offensive cyber warfare in the conflict against ISIS raises numerous questions and concerns. The implications of such an action range from ethical issues associated with privacy rights and technological sabotage to the further concentration of global political power in the U.S.’s hands. The act of launching an offensive cyber weapon opens the floodgates to an entirely new form of warfare. While still in its infancy, the potential strength of cyber operations is just beginning to be discovered and the U.S.’s decision to meddle in the structural and logistical arms of an enemy opens the door to unknown side effects. Not only does this decision alter the methods and direction of combat, but it also creates

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potentially dangerous situations if this malicious data gets in the hands of the wrong people. For example, once a malicious code is created it remains in the domain of the World Wide Web and can be reused by whoever finds it to commit sabotage or espionage.\(^\text{11}\)

The decision by the U.S. to conduct such operations highlights the military and technological strength of the country. The power of offensive cyber operations must not be overlooked and the potential for them to fall in the hands of the wrong people raises considerable alarm. No longer can these methods of warfare solely be considered defensive mechanisms for security. To better understand the scope and extent of the U.S.’s cyber warfare program, the following research question will be asked: How have United States cyber operations abroad evolved in the years following September 11, 2001?

**Operation Olympic Games**

Operation Olympic Games was an operation initiated by President George W. Bush and later carried out by President Obama aimed towards crippling Iran’s nuclear capabilities.\(^\text{12}\) The primary component within the program was a malicious virus, later named Stuxnet, which successfully infiltrated the Iranian nuclear facility at Natanz in 2010.\(^\text{13}\) Alongside Stuxnet were malicious programs, Flame and Duqu, that are thought to have contributed to the overall operation.\(^\text{14}\) The combination of Stuxnet, Flame, and Duqu made up the overall cyber strategy of Operation Olympic Games. Between January and June of 2010, Iranian officials at the Natanz nuclear facility reported an unprecedented amount of failures among their centrifuges.\(^\text{15}\) United States intelligence officials had discovered that scientists were


being fired at the nuclear facility due to industrial miscalculations.\textsuperscript{16} On June 17, 2010, Iranian officials contacted an outside cyber security firm to investigate a series of peculiar crashes their computers were experiencing.\textsuperscript{17} The security firm, VirusBlokAda, based in Belarus, analyzed the computer malfunctions and identified the culprit as a large sequence of malicious code.\textsuperscript{18} The company then contacted Microsoft – the creator of the interface by which the malware operated. Microsoft security experts began to file through the unusually large 1 megabyte of binary code, finding trailblazing complexities within the software. Soon thereafter, the connection between the malware identified on the servers and the industrial failures at the Natanz nuclear facility was made. Stuxnet, the world’s most dangerous and sophisticated cyber weapon, had been discovered. The virus that had caused the malfunctions of the centrifuges was found within the computer network at Natanz.\textsuperscript{19} The first ever cyber weapon had been successfully utilized to physically sabotage a target.

The original version of Stuxnet, which operated prior to 2010, was designed to block the release of pressure within the centrifuges.\textsuperscript{20} Subsequently, this alteration in pressure would sabotage the nuclear enrichment process. This initial design of Stuxnet was intended to spread manually via USB stick and lacked the later qualities of self-replication.\textsuperscript{21} However, after some time, officials at the nuclear facility “did change several important configuration details such as the number of centrifuges and enrichment stages per cascade.”\textsuperscript{22} These alterations in the enrichment process subsequently rendered the overpressure attack void. Additionally, the tactic of over pressurizing centrifuges led to some concern that the result could be catastrophic. Hence, the creators of the code abandoned the pressure attack and went to work on a new and improved code.

\textsuperscript{16} Ibid.
\textsuperscript{17} Op. Cit., fn. 13.
\textsuperscript{19} Op. Cit., fn. 18
\textsuperscript{20} Ralph Langner, “To Kill a Centrifuge: A Technical Analysis of What Stuxnet’s Creators Tried to Achieve,” The Langner Group, November 2013
\textsuperscript{22} Op. Cit., fn. 20.
The new version of Stuxnet was designed to attack the Centrifuge Drive System (CDS), targeting the rotor velocities of the centrifuges.\(^{23}\) This version of the malware was slightly simpler in its objective: targeting the speed of the centrifuges instead of pressure. The new Stuxnet had the ability to not only spread via the manual use of USB sticks, but could also self-replicate. As noted by Ralph Langner in his technical analysis of Stuxnet, the malware now had the power to duplicate itself on machines “within trusted networks and via USB sticks even on computers that did not host the engineering software application.”\(^{24}\) Suddenly, the malicious code had been updated with an incredibly new powerful arsenal. It was now equipped with the, “latest and greatest MS Windows exploits and stolen digital certificates.”\(^{25}\) These zero-day exploits are undisclosed software vulnerabilities that hackers can utilize to adversely affect computer systems.\(^{26}\) Specifically, the exploits allowed the virus to be more versatile and lethal, but came at a cost. It was this expansion in hacking vulnerabilities and self-replication that made the virus less secure and ultimately led to its discovery when Iranian officials noticed random shut downs and reboots on their computers.\(^{27}\) Along with these multiple zero-day exploits, the malware had many diverse functions that included modifying system libraries, attacking Siemens’ SCADA control software, and using rootkits.\(^{28}\) Rootkits are, “clandestine computer programs” that allow an unauthorized user to access computer systems while going undetected.\(^{29}\) By using rootkits, Stuxnet was able to collect information from the SCADA control software, which was responsible for visually displaying the physical and functional layout of the Natanz nuclear facility on computer screens.\(^{30}\) Accessing the information on these SCADA screens was vital to understanding the layout of the facility and the industrial processes of the plant. It was this combination of functionalities that rendered Stuxnet so unique, effective, and complex.

\(^{26}\) Kaspersky Lab, “What is a zero day exploit?” USA Kaspersky, 2016, https://usa.kaspersky.com/internet-security-center/definitions/zero-day-exploit#.WMNLC2QrLR0.
The virus was purposefully and specifically designed to infiltrate the Step7 installations within the Siemens’ SCADA control software.\(^{31}\) These Step7 installations control the programmable logic controllers (PLCs) that are necessary to control the industrial processes. The Iranian nuclear facility at Natanz used this specific software for its industrial operations. Additionally, in order for the virus to be successful, it needed to understand the layout and structure of the building. Stuxnet’s programming was catered to the layout of the Natanz nuclear facility, which was carefully pieced together over the years from insider information and the unintentional release of a photograph of former President Ahmadinejad during his tour of the facility in 2008.\(^ {32}\)

The enhanced form of Stuxnet operated periodically, about once a month, to avoid detection. The new directive of the cyber weapon was to speed up the rotors of the centrifuges which, by function, increases rotor-wall pressure. At Natanz, normal centrifuge rotor speeds hovered around 63,000 rpm, but the introduction of Stuxnet increased speeds to 84,600 rpm for approximately fifteen minutes. Other methods such as deceleration were thought to have been used if the initial high velocity speeds did not successfully sabotage all the uranium in the centrifuge. The operation is thought to have destroyed approximately 1,000 of Iran’s 5,000 centrifuges in use and set back the nation’s nuclear program by a couple of years.\(^ {33}\) This number might have been larger if computer analysts had not discovered the code so early on. Regardless, the operation was aimed at the long-term. The creators of such a code had the intention of a prolonged, slow process of manipulation, rather than a quick, violent destruction of Iran’s nuclear capabilities.

As previously mentioned, Stuxnet had some assistance from other software. Both Flame and Duqu share striking similarities with Stuxnet in their technical aspects and design.\(^ {34}\) Flame is perhaps the largest piece of malware ever discovered at six megabytes.\(^ {35}\) The intent of this malware was aimed more specifically at the collection of data through espionage. Spying activities such as activating webcams and microphones and collecting geo-locational data are

\(^ {35}\) Ibid.
just a few of its primary functions.\textsuperscript{36} Quite similar but with a slight difference was the Duqu malware whose function was to collect information regarding industrial processes. More specifically, Duqu was a, “reconnaissance tool that researchers say was used to copy blueprints of Iran’s nuclear program.”\textsuperscript{37} Given the functions of Flame and Duqu and the overall similarities in structure, these programs are thought to have supplemented Stuxnet and assisted in its overall operation.

**The Culprits**

Much ink has been spilled over who created such a project. While neither the United States nor Israel have claimed responsibility for the attack, there is sufficient evidence that points toward these two countries. The United States has pursued a route of nuclear non-proliferation and containment toward Iran for decades.\textsuperscript{38} The U.S. wishes to deter nuclear powers, especially within the volatile Middle East, whilst supporting Israel’s defense and power within the region. Furthermore, the complexity and sheer size of Stuxnet led many professional software analysts to conclude that only a powerful nation-state could have created and conducted such an operation.\textsuperscript{39} By process of elimination, the political motivations and grandeur of the malware point directly toward the United States. In Ralph Langner’s “To Kill a Centrifuge,” he argues that the operation against Iran was as much a nuclear non-proliferation tactic as much as it was a cyber-attack.\textsuperscript{40} He goes on to say, “it is not even difficult to identify potential suspects for such an operation; nuclear non-proliferation is the responsibility of the US Department of Energy and since 1994 also of the Central Intelligence Agency.”\textsuperscript{41} His remarks highlight the rational motive behind the United States undertaking such an operation.

In David E. Sanger’s article entitled, “Obama Order Sped Up Wave of Cyberattacks Against Iran,” he chronicles a meeting in the White House Situation Room following the leak of the virus in which President Obama,

\textsuperscript{36} Ibid.


\textsuperscript{39} Op. Cit., fn. 21.

\textsuperscript{40} Op. Cit., fn. 20.

\textsuperscript{41} Op. Cit., fn. 20.
Vice President Joe Biden, and former CIA Director Leon E. Panetta discuss shutting down the operation.\textsuperscript{42} Furthermore, Sanger goes on to note that his account of the US-Israeli operation to sabotage the Iranian nuclear program is, “based on interviews over the past 18 months with current and former American, European and Israeli officials involved in the program.”\textsuperscript{43} Sanger, a reputable journalist specializing in covert American programs, chronicles detailed information and interviews that exposes the US-Israeli joint effort in Operation Olympic Games. The facts and assumptions clearly point toward the United States and Israel as the primary culprits behind the masterful cyber weapon.

**Conclusion**

As presented above, it is quite clear United States’ covert cyber operations have not only drastically expanded since 9/11, but have done so in an offensive manner. The complexity, sophistication, and grandeur of Stuxnet are a testament to the vast expansion and utilization of the United States’ cyber arsenal. Furthermore, this repudiates the view that the U.S. is the victim in most cyber affairs, simply playing a defensive role in the interest of national security. Operation Olympic Games serves as a prime example of the proliferation and secrecy of U.S. cyber operations abroad in the wake of September 11, 2001.

The research presented throughout this paper serves to highlight the overall growth of the United States cyber arsenal. The offensive cyber-attack against Iran’s nuclear facility merely scratches the surface of a larger agenda looming deep within the U.S. government. The U.S. has capabilities that stretch far beyond defensive measures; so far that in most cases the U.S. is the aggressor, instigating the cyber conflict. Since the terrorist attacks on 9/11, the United States has pursued a path that has resulted in the massive expansion of covert cyber operations and the subsequent growth of its industry.

On a broader scale, the use of such cyber operations has profound implications in the geopolitical realm. The U.S. deployed the first-ever digital weapon on Iran, forever altering warfare. The introduction of such a covert, powerful weapon has begun to change the methods of warfare and has spawned the emergence of the fifth warfighting domain: cyber space. Furthermore, the

extensive cyber platform currently utilized by the U.S. further concentrates hegemonic power within its hands. The scale of the global distribution of power continues to shift toward America as the nation demonstrates its strength on the global stage. Internationally, U.S. dominance in the cyber realm affects the decisions, policies, and security of nations around the globe. The power the U.S. exerts in the field of cyberspace has caused nations to implement cyber programs of their own. The attack has thus opened the floodgates to a digital age of warfare that has no bounds and few restrictions. Finally, the capabilities of cyber operations have instigated an ethical war between privacy rights and national security that has further contributed to the onslaught of unintended consequences. As the realm of cyber warfare expands, so too will the danger it poses to society.
ELISE ST. JOHN is an educational policy researcher and consultant for American Institutes for Research. She graduated from Cal Poly in 1994 with a degree in political science. Elise obtained her master’s degree in sociology from San Jose State University and a Ph.D. in educational policy from the University of Washington.
Elise St. John

Elise was driven by her fascination of diverse systems of government and how societies are structured, leading her to apply to Cal Poly as a political science undergraduate. Elise credits some of her most valuable experiences, her method of critical thinking, and the foundation of her success to her political science degree. Currently an educational policy consultant for American Institute of Research, Elise acknowledges that her political science background helped her unearth her passion for research. Elise admits, “I did not catch my stride as a student until my third year, however I had two experiences that year which helped me find my particular career pathway.” She states, “These significant opportunities allowed me to understand how relevant political science is in both academic and everyday life.”

Her first experience was an internship with a local congressional campaign in San Luis Obispo that eventually led to an internship in Washington, D.C. working for then U.S. Senator Joe Biden. As an intern on Capitol Hill, Elise had a variety of duties, ranging from bringing the senator lunch to helping create press releases. However, her most important job was reading through stacks of newspapers each morning and clipping various prevalent stories together for Senator Biden. Elise says that as a young student who had only traveled
regionally, her internship experience in D.C. revealed the possibilities a degree in political science offers. Elise’s second influential experience was when she took her very first research methods class at Cal Poly. She states, “Learning about the existence of data sources and various methods for examining my endless questions… I still get excited just thinking about it!” This class, along with her Senate internship, bolstered Elise’s confidence and completely changed her approach to the study of political science.

After graduating from Cal Poly, Elise obtained her master’s degree in sociology from San Jose State University and a Ph.D. in educational policy from the University of Washington. Her dissertation, which examined the factors that influence how elementary school students are distributed to classrooms and teachers, won the Outstanding Dissertation Award from the Mixed Methods division of the American Educational Research Association. Elise asserts that her political science background aided her career in educational research. She explains, “One of my academic mentors once told me that I had a capacity for ‘thinking big’ and ‘thinking small’ about the ways educational policy issues play out in schools, and I attribute much of that to my early training in political science.” In her current position as an educational policy consultant for American Institutes for Research, Elise is working with education economists in Washington on a statewide study of the teacher pipeline. The multi-year study analyzes the accounts of teachers at various levels of classroom experience. Its purpose is to provide state legislatures with knowledge that will help them design beneficial policies for students and teachers. Elise’s political science degree provides the context of local governmental systems and how their policies positively or negatively influence school systems.

Elise’s advice to current political science students is to form a relationship as early as possible with either an advisor or a professor. She acknowledges, “It can be intimidating to go to a professor’s office hours, but it really helps to have a mentor to help navigate higher education and think through your academic and professional next steps.” Elise also stresses that applying for an internship is non-negotiable. She says, “College is a unique point in a person’s life where students have time to explore their passions and interests, so do not be afraid to aim big when looking for opportunities.”
LUANA MELLO is a graduating third-year political science major concentrating in global politics and minoring in sociology. At Cal Poly, Luana is involved in the Model United Nations program, and has traveled to both San Francisco and Brazil with the team, and is a part of the campus chapter of California Women’s List. After she graduates, Luana plans to go to law school with one day becoming an international lawyer for the UN.
The United Kingdom’s affiliation with the European Union has never been classified as a strong relationship due its history of tense relations. Many factors contribute to this distinct membership, including the U.K.’s isolated geographical location, its tight-knit alliance with the United States, and its inability to give up power. Throughout its forty years of membership, the U.K. has made sure to keep a divide between itself and the EU, particularly in relation to social and political policy. The U.K.’s resistance to fully immersing itself into the EU has made Brexit inevitable, ultimately freezing all attempts to further integrate the Union.

The United Kingdom’s rocky welcome into the European Union - what was then known as the European Economic Community (EEC) - began shaping their unique relationship with the EU. In 1961 and 1967, former French President Charles de Gaulle vetoed both of the U.K.’s attempts to join the EEC. De Gaulle feared that the U.K.’s alliance with the United States would be carried over into its membership, serving to protect American interests over European interests. Additionally, there was concern over the U.K.’s skepticism of European integration, as it was never as eager as France or Germany to relinquish their sovereignty. Britain has always advocated for an intergovernmental Europe rather
than full integration, while retaining a strong sense of nationalism. However, the United Kingdom’s entry into the EEC in 1973 was not a measure towards political integration, but rather an economic decision. With its own economy struggling to recover from World War II, the U.K. was aware of the monetary successes in the EEC and sought to join this mutually beneficial relationship.

In 1975, the United Kingdom held a referendum that confirmed that the country was going to uphold its membership with over 67 percent of votes in favor of the European Community (EC). Although Home Secretary Roy Jenkins believed that this referendum committed Britain “to playing an active, constructive and enthusiastic role” in the EC, this “enthusiastic role” did not last as long as expected. Historically, the U.K. has not been afraid to challenge its contentious position in the EC. For example, in 1984 Prime Minister Margaret Thatcher threatened to withhold Britain’s payments to the EC until they received a large rebate. The rebate was meant to offset the difference in agricultural subsidies Britain received, which was much less than other countries. Ultimately, Britain received the rebate and won the argument.

After discussion over the rebate, the belief that the U.K. was not benefitting as much as other countries in the European Community was spreading throughout British media, increasing Euroscepticism. This further clarified the fiscal intentions of the United Kingdom joining the European Community, rather than the political intentions. Additionally, Thatcher’s “The Bruges Speech” in September 1988 made it very clear that Britain was still extremely skeptical of the intentions and purpose of the European Community. Thatcher stated that, “the Community is not an end in itself” and should not be concerned with

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6 Ibid.
“endless regulation” towards “some abstract intellectual concept.” Instead, she argued that the EC should continue focusing on protecting the prosperity and security of its members.

Despite Thatcher’s warnings, her successor, Prime Minister John Major, signed the Maastricht Treaty in 1992, which formally established the European Union and “involved huge transfers of power” to the Union, creating its current three pillars system. Although ratifying the Maastricht Treaty was a great step towards integrating Britain and the EU, it did not mean that the country was ready to surrender its sovereignty. Shortly after signing the treaty, a major economic setback known as Black Wednesday further differentiated the U.K. from other EU members. On Wednesday, September 16th, 1992, the British pound sterling was placed under great strain and ultimately failed in keeping the pound within the limit established by the EU’s Exchange Rate Mechanism (ERM). As a result, Britain had to withdraw from the ERM which has been seen as “one of the lowest points in Britain’s relationship with Europe” and a day of utter humiliation. Black Wednesday demonstrated a severe loss for the U.K., which heightened the tension between the U.K. and the EU.

After signing the Maastricht Treaty and suffering through Black Wednesday, former Prime Minister Major made sure that the country received special exemptions for a variety of economic, social, and political clauses. Throughout its membership, Britain has used opt-outs that have ultimately kept the country at a safe distance from the EU. In 1985, the U.K. opted out of the Schengen Agreement, which removed internal border controls, and instead kept their border controls along with Ireland. The United Kingdom has also exempted itself from the EU Charter of Fundamental Rights, with the option to join at their own discretion. Perhaps the most significant opt-out that distances the U.K. from other EU members is its immunity from the Economic and

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8 Ibid.
9 Op. Cit., fn. 2
10 Ibid.
Monetary Union (EMU). With this exclusion, the U.K. refused to introduce the euro as its national currency, despite nineteen other members doing so.\textsuperscript{14} The United Kingdom kept its pound sterling and moved itself even further from integration of the European Union.

Regardless of the tense relations between the United Kingdom and the European Union following the U.K.’s entry in the community, some leaders pushed for the idea of European integration despite national resistance. Former Prime Minister Tony Blair’s speech to the European Parliament in 2005 was far more supportive than Thatcher’s Bruges speech, where he advocated for Britain to have a stronger role in shaping and leading Europe instead of looking for more ways to opt out. Blair spoke of the positive values that the EU holds of solidarity between people and nations and stated it was an important factor in growing globalization.\textsuperscript{15} In addition to Blair, former Prime Minister Gordon Brown was also a strong advocate for the United Kingdom’s involvement with the EU and applauded its achievements.\textsuperscript{16}

However, shortly after these limited steps forward, the euro crisis affected millions of people throughout Europe and led British skepticism to grow in popularity. Instead of working with the Union to solve the economic crisis, Prime Minister David Cameron vetoed an EU-wide treaty that attempted to mitigate the economic emergency. Cameron’s veto was seen as a huge move in support of Euroscepticism.\textsuperscript{17} Additionally, the refugee crisis, which resulted in millions of people entering the United Kingdom, caused further resentment towards the EU. Soon after, the Brexit referendum was offered and adopted in 2016, damaging Britain’s relationship with the EU more than ever before.\textsuperscript{18}

Despite international shock after the Brexit referendum passed, when examining the history of the U.K. and the EU, it comes at much less of a surprise. Britain has a long history as an extremely powerful imperialist nation, and giving up its power to the European Union was not an easy task. According to a study conducted by Britain’s largest independent social research agency,

\begin{itemize}
  \item \textsuperscript{16} Ibid.
  \item \textsuperscript{18} Op. Cit., fn. 2
\end{itemize}
NatCen, over 12,000 U.K. citizens were asked the following question: “What was the most important reason for you voting to leave the EU?” An alarming 49 percent of the respondents believed that “decisions about the U.K. should be taken in the U.K.” as their most important issue, followed by immigration control at 33 percent. The U.K.’s relationship with the EU reflects longstanding social and cultural beliefs of British nationalism. British citizens have made it clear that their countries’ decisions should be made at home, with no interference from a supranational union. Furthermore, in keeping its close relations with the United States, Britain is aware of its role as a powerful nation and is confident it does not need to be part of the EU to maintain that position. As a founder of the United Nations and permanent Security Council member, and an active member of NATO, the United Kingdom will continue to hold strong ties in global affairs.

The European Union, on the other hand, has already begun to adapt to the implications of Brexit. In July 2016, the Council of the European Union established a revised order of which member states will hold presidency in the upcoming years. After the U.K.’s decision to give up its Council presidency in 2017, the revision included the EU’s newest member, Croatia, in the list and removed the U.K. entirely. This new order will remain until 2030, leaving the U.K. with no chance for presidency if Brexit were for some reason repealed. This reveals that the Council is ready to confront Brexit, and other institutions will follow with similar actions.

There have been many news reports, predictions, and concerns regarding what precedent Brexit will have over other EU members. “Who will leave the EU next?” is a common headline spread across news organizations. Some Eurosceptics even see Brexit as the first step in the “dismantling of the EU.” The rise of populist movements and support of far-right politicians, like France’s leader of the National Front Marine Le Pen, have also stirred the media following

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19 “What was the most important reason for you voting to leave the EU?” The Economic & Social Research Council (ESRC). June 2016.
21 Ibid.
Brexit. Although there have been threats of France exiting the EU, otherwise known as “Frexit,” or the Netherlands exiting, known as “Nexit,” no further legitimate step has been taken by any nation to follow Britain in leaving the EU. In fact, the opposite has occurred in Scotland, where 62 percent of constituents voted to remain in the EU.23 Since Brexit, there has been much speculation over whether, and how, Scotland will join the European Union independently from the United Kingdom. Scottish First Minister Nicola Sturgeon has announced a two-year plan for an independence referendum from Britain, and seeks to apply for EU membership once it passes.24 Furthermore, the six Founding Members of the EU, Belgium, France, Germany, Italy, Luxembourg, and the Netherlands, released a statement after Brexit, reaffirming their beliefs and commitment to the EU.25 The Founders were quick to outline the future of the union, stating that they are “ready to work with the [EU] institutions” in order to create “a stronger and more cohesive European Union of 27 based on common values and the rule of law.”26 The Founding Members assert that the EU will improve its relations to all member states from “different levels of ambition” for European integration, and are confident that the European future will be successful.27

Despite a history of constant power struggles and severe domestic skepticism of the EU, British citizens did not expect the Brexit referendum to pass. With only five hours left until the elections results were revealed, 88 percent of British betting markets still believed that the U.K. would remain in the EU.28 However, state sovereignty and nationalism continue to be important values of the U.K., and Brexit is one of the greatest markers of these efforts. Among other factors, Brexit was an attempt to control and halt immigration, showing that

26 Ibid.
27 Ibid.
the country seeks to move away from integration and retain its autonomy. It is possible, nonetheless, that the U.K.’s departure may take some Euroscepticism away from the Union, since some of the strongest skeptics came from Britain. The U.K.’s influence over the EU is not as dominating as many may expect, which is one of the many reasons for Brexit in the first place. Although it will require extensive negotiating and planning, the EU and its many institutions have already and will continue to recover and move forward. The events leading to Brexit demonstrate a clash between two powerful entities, where one side was never fully willing to cooperate with the other, and shows just how extreme of an outcome this power struggle creates.
KELLEY LASHLEY BANNON acts as Partner at Calleton, Merritt, De Francisco & Bannon, LLP. She graduated from Cal Poly with a degree in Political Science in 1995.
ALUMNI SPOTLIGHT

Kelley Lashley Bannon

Kelley Lashley Bannon’s deep appreciation and interest for history and law began at a young age. While in high school, her athletic talent caught Cal Poly’s eye. In 1991 she was admitted to the university as a student-athlete majoring in history. During her first year at Cal Poly she took an American and California government course and fell in love with politics and the legal aspect of American history. She quickly decided to change her major, declared her concentration in pre-law, and joined the Pre-Law Society.

After earning her bachelor’s degree, Kelley attended Santa Clara Law School. Kelley states, “athletics shaped [her] world” and her passion for sports did not fade while in law school. She had the opportunity to intern with the in-house legal team for the Oakland Raiders, during which the owner of the team was involved in four controversial lawsuits against the National Football League. Throughout the experience, she discovered her love of working on collective bargaining agreements. This led her to apply to professional and major league sports teams across California that opted to institute in-house legal teams.

Kelley later returned to San Luis Obispo where she joined the Sinsheimer, Schiebelhut & Baggett law firm, the largest in the county for business litigation. She realized that she had talent for transactional work and entered state
and tax planning law. A few years later, she took over her grandfather’s firm in Pasadena. Since her arrival, the firm has more than tripled in size. Additionally, she became highly involved in Five Acres, a nonprofit organization in Los Angeles County that is concerned with foster care and adoption, as the Vice Chair of Advancement.

Although Kelley now resides in Southern California her love for Cal Poly has not wavered. She remains highly involved in students’ educations by aiding students completing senior projects in the recreation, parks, tourism and administration and journalism majors by offering seniors hands-on experience at her firm and acting as their mentor. Additionally, when Kelley first returned to Cal Poly she realized that an alumni chapter for athletics had yet to be established. She then established the alumni chapter and instituted the Varsity Club. She has served on the Alumni Association Board of Directors since 2011 and is head of the Spirits and Traditions Committee, which consists of both former and current student-athletes whose main goal is to increase campus spirit for Cal Poly sports.

Kelley suggests that prospective law students take as many writing classes as they can while at Cal Poly, as well as challenge themselves to write something every day. She also says being involved in unique extracurricular activities, such as community service, Greek life, leadership positions, athletics, and work experience, help establish well-rounded and unique perspectives. She emphasizes that personal growth is key to being successful when taking the next steps after undergraduate education. Kelley advises, “Hearing others say that your dreams are impossible should only fuel your fire.”
DEEKSHA KOHLI is a senior Political Science major, concentrating in pre-law. She is involved in Mock Trial and the Undergraduate Law Association. Upon graduation she plans to attend law school. She chose to write this paper in order to highlight what she finds to be a problem with the current criminal justice system currently in place.
INTENT BASED CRIMINAL RESPONSIBILITY: HOW SHOULD WE PUNISH ATTEMPTS?
Deeksha Kohli

Introduction
It seems that society has come to a basic consensus about the types of acts that should be considered crimes and should be punished, although there is still dispute in some regards. Everyone agrees that murder, theft, assault and the like should be considered crimes. There is not a consensus about how we should punish someone who attempted one of these crimes but failed. In our current system, we apply a lesser punishment to attempts than we do to successful crimes. For example, the sentence for attempted murder is less than the sentence for successful murder. Some political theorists think that this is the correct system that should be in place while others believe that an attempt should receive the same punishment as a success. There has been a long-standing debate in the world of political theory surrounding this issue. The argument has almost turned into a situational analysis. While attempts at crimes such as murder seemingly fit the view that there should be equal punishment, attempts at a crime like money laundering arguably seem silly to punish equally. Gideon Yaffee is one of the many theorists who have tried to
answer this daunting question using what he calls the “Guiding Commitment View” of attempt.

The first section of this paper will introduce Yaffee’s argument and the guiding commitment view of attempt in order to show that we should punish attempts in the first place. It will then offer a critique of Yaffee’s argument presented by Michael E. Bratman. The second section will discuss a piece by Thomas Nagel in order to explain the concept of moral luck and how it applies to the punishment of attempts. Then the question of to what degree attempts should be punished will be discussed by offering the arguments of two other theorists, David Lewis and Joel Feinberg, in favor of punishing attempts the same as successful crimes. In addition, this section will also include an opinion against this view by Thomas Bittner. Finally, the third section of this paper will consist of a collective analysis of all the theorist’s opinions, coming to the conclusion that Yaffee’s Guiding Commitment View of attempt appears to be the solution to the arguments set forth by the critics of equal punishment and also encompasses the reasoning for which the proponents of equal punishment are advocating for equal punishment.

Yaffee’s Guiding Commitment View: Section 1.0

Yaffee begins by setting forth “the problem of impossibility.” He does this by presenting the fact pattern for States v. Crow. In this fact pattern, Crow was messaging an undercover officer who was posing as a thirteen-year old. Crow then tried to solicit sexually explicit photos from whom he believed to be a thirteen-year old girl. He was charged with sexual exploitation of a minor, however, the law requires proof that the person being exploited was indeed a minor. Seeing as it was an adult police officer undercover, the person being exploited was in fact not a minor even though Crow thought it was. The question then arises whether Crow is actually guilty of exploiting a minor. Yaffee states that he has a solution to the impossibility problem, but first there must be a working definition for what exactly an attempt is.

He starts by laying out the two most common schools of thought: the subjectivists and the objectivists. The subjectivists focus on the mens rea, or the state of mind of the agent, when looking at what qualifies as an attempt. However, they run into the problem of punishing thought crimes, which are seen as

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being monstrous. In response, the subjectivists say that “they involve resolute intention of a sort that is manifested in action, and not merely idle thoughts.”² Objectivists, on the other hand, still believe it would be monstrous to punish thought crimes so they look to the actus rea. The actus rea involves the conduct and action taken on behalf of the agent rather than the intent and mindset that mens rea looks at. The objectivists are faced with the problem of having to explain why failed attempts should be punished, despite the actions being harmless because the agent did not cause harm if they did not succeed. For example, they would have to show that the action “risks harm, is ‘proximate’ to harm, or would result in harm if not prevented.”³ Yaffee, on the other hand, finds a problem that both the objectivists and the subjectivists do not address. He states that neither party tries to explain what distinguishes an attempt from other forms of action and offers that there may be a middle ground here that needs to be found, which would address this issue.

He then introduces us to “the Transfer Principle” in order to explain why attempts should be criminalized. He states that the reasons for which we criminalize the completion of a crime transfer to why we would want to punish the attempt of the crime. Yaffee argues that “if a form of conduct is legitimately criminalized, then so are attempts to engage in that form of conduct”.⁴ But, he also qualifies this principle by saying that the criminality of an attempt to commit a specific crime can only come from the criminality of that same crime. For example, the criminality of attempted battery cannot come from the reasons that we criminalize theft. Under the Transfer Principle, an attempt can only be criminalized if a description of the act that is attempted matches the description of an act that is criminalized.

In order to proceed with this principle, we also must look at what constitutes an intention. Here, Yaffee cites Michael Bratman’s definition of intention. Bratman states that “intention’s function is to make the world as intended and to make that happen in a way that allows agents to efficiently achieve long-term goals.”⁵ Along this regard, one would not act rationally in a way that conflicts with their intention. They would also not have an intention while also believing with certainty that they will not accomplish

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² Op. Cit., fn. 1
³ Ibid.
⁴ Ibid.
⁵ Ibid.
what they are intending to accomplish. Yaffee states that looking at intention is important because its sources are from the agent’s will and not from confounding circumstances.

Yaffee then turns his focus to types of commitment, which will muster his “Guiding Commitment View.” He states that there are three kinds of commitment: commitment to promotion, commitment to non-reconsideration and commitment to non-complaint. Commitment to promotion means the agent will act in a way that will make the odds more likely that their intended outcome will arise and they will respond to obstacles that come in their way in a manner that will dampen their effect. A commitment to non-reconsideration means the agent will not reconsider their actions on the basis of a component of their original intent. This is best illustrated with an example: if you intend to go running at 9 AM, you will not wake up at 9 AM and decide not to go running because it is 9 AM. Instead, you may feel that you are too tired or realize that it is raining and then decide not to go on that basis. However, if you have a commitment to non-reconsideration, then you cannot reconsider your intended action based on a component of that intent. Finally, there is a commitment to non-complaint. This means if the world turns out to be the way you intended it to be, you cannot complain that what you intended to happen actually happened. Simply put, “a very particular kind of complaint is silenced, namely, the complaint that might be expressed by saying, ‘that’s not what I intended.’”

It is important to keep in mind that these types of commitment can exist without the others, meaning you can have one form of commitment without having the others, but they are also not mutually exclusive.

Yaffee uses the above three kinds of commitment in order to create his definition of an attempt, but first he shows that the other senses on an attempt are insufficient. First is the wide sense of attempt, which states, “anything that would be true of your act were you to do as you intended contributes to what you are trying to do.” Yaffee calls this the wide sense of attempt because it criminalizes too much and constitutes a large amount of over-inclusion. The narrow sense of attempt is when “only that which you are committed by your intention to promoting contributes to what you are trying to do.” Yaffee claims that this view does not criminalize many actions that should be and constitutes a large

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6 Op. Cit., fn. 1
7 Ibid.
8 Ibid.
amount under inclusion. Although, he does contend that the narrow sense of attempt is closer to what the definition of attempt really should be. Yaffee then presents his own definition of attempt, which is “to try to act, in the sense of relevance to the criminal law, is to have an intention that commits one (in one of the three sense of intention-based commitment) to each of the conditions involved in completion, and for one’s behavior to be guided by the intention.” He calls this definition “The Guiding Commitment” view of attempt.

Yaffee finally loops back to the problem of impossibility and shows how the Guiding Commitment view of attempt would criminalize Crow’s actions in States v. Crow. He first lays out two types of impossibility: legal impossibility and factual impossibility. Legal impossibility means that if you succeeded in doing what you intended to do, it would not have even been a crime in the first place, meaning an attempt at this action would not be a crime either. Yaffee gives the example of attempted adultery in a state where adultery itself is legal. Factual impossibility on the other hand means that if you succeeded in doing what you intended to do, it would be a crime, but you made some kind of factual mistake in the process. His example is buying goods you believed to be stolen, and intending to buy stolen goods, that are not actually stolen. He states that in general, it is believed that legal impossibility would not be a crime but factual impossibility would be. Yaffee, however, states that there are numerous problems with this because the wrong question is being asked, “would he have committed a crime had he done as intended?” In the case of the factual impossibility, the answer would be no. Yaffee claims that the right question to ask is: “Was he committed by his intention to all of the components of the crime of receipt of stolen property?” This question embodies the Guiding Commitment view of attempt and the answer to the question would be yes. Therefore, Yaffee concludes that his Guiding Commitment view of attempt is the solution to the impossibility problem.

A Critique of Yaffee’s Guiding Commitment View: Section 1.1

Michael E. Bratman begins his critique of Yaffee’s argument by starting with the transfer principle. As Yaffee acknowledges, we do not want to criminalize mere thoughts as attempts even if the thoughts are about how to conduct criminal activity. In other words, both Bratman and Yaffee agree that punishing pure

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9 Ibid.
10 Ibid.
thought crimes would be monstrous and unjust. However, Bratman brings up that the wording of the transfer principle seemingly does support the criminalization of pure thought crimes because it “does not include an explicit limitation to attempts that involve action on the part of the agent that is in fact, […] in the public space.”\textsuperscript{11} Bratman claims that in order for there to be intent, there must be an act in the public space. For example, you cannot intend to kill someone without making an action in the public space. Yaffee, on the other hand, does not agree with this logic. Yaffee believes that “intention based guidance can still occur even if there is unanticipated, relevant paralysis.”\textsuperscript{12} Though if the attempted action were to be completed, it would be an act in the public space, even if the attempt does not necessarily have to be.

Bratman furthers his argument by setting forth a hypothetical. He argues that there are cases of attempt, which involve trying to think something through. This involves goal-directed thinking and planning that are entirely mental. His example involves an intention to defraud. He asks the reader to suppose that the early steps of his plan to defraud you is complexly thinking through how exactly he is going to attempt to defraud you. He claims that although the last act would go beyond mere thoughts, the early thinking seems to constitute an attempt according to the guiding commitment view because the thinking is guided by intention and commitment. This would be considered a “non-last-act attempt,” but Yaffee includes non-last-act attempts in the guiding commitment view. This presents the problem that “given that there are attempts that do not involve acts in the public space, and given that the transfer principle supports the criminalization of attempts tout court, not only attempts that involve acts in the public space, we seem to be in danger of endorsing ‘thought crimes.’”\textsuperscript{13}

In response to this concern, Yaffee has created what he calls the means requirement, which states: “A defendant has committed a criminal attempt only if he has performed an act in the class of means.”\textsuperscript{14} The wording of the means requirement, specifically the use of the term “act” proposes a solution to criminalizing thought crimes. The word “act” constitutes an act in the public space as Bratman has been suggesting all along. Now, Bratman argues that the

\textsuperscript{12} Ibid.
\textsuperscript{13} Ibid.
\textsuperscript{14} Ibid.
transfer principle and the means requirement are incompatible with each other. He claims, “if C is legitimately criminalized, the mere attempt to C is not legitimately criminalized if it does not involve an act in the public space that is in the class of means, though it is indeed possible for an attempt not to involve such an act.”15 This violates the transfer principle because it places limitations on the criminalization of attempts to those that satisfy the means requirement.

Yaffee responds with what he calls the guidance based evidentialist approach. This approach involves not looking at the means requirement as an independent normative constraint and not looking at the performance of a public act as a necessary element of an attempt. This approaches involves seeing the performance of a public act in the class of means as a necessary piece of evidence to show the attempt. This involves three ideas that will make up the guidance based evidentialist approach. The first idea is that the performance of an act in the class of means is evidence that the agent is attempting criminal conduct and the attempt fits the definition set forth in the guiding commitment view. The second idea is that the performance of an act in the class of means is a necessary piece of evidence to show an attempt. This is not to say that it is evidence of intention, rather, it is necessary evidence to prove that the intention to engage in criminal conduct is guiding the agent in a way essential to constitute an attempt. The third idea is that the evidence cannot simply be correlated to the guidance of intent, “the action is itself a part of that in which the crime of attempt consists.”16

In order to counteract Yaffee’s guidance based evidentialist approach, Bratman brings up the example of “Hacker,” who intends to hack and steal data from someone’s computer. Hacker does all the initial planning in her head, trying to figure out the code. Bratman argues that this would constitute an attempt according to Yaffee’s theory. This is where I think Bratman’s argument begins to fall apart. I do not think Yaffee would agree that this constitutes an attempt. In these initial stages, it appears that Hacker is simply trying to learn how to hack a computer, granted it is with the intent to steal data from another’s computer. I would still argue that this does not constitute a criminal attempt regardless of the planning being guiding by commitment, especially when we consider the means requirement. It is not clear at all that learning how to hack a computer, regardless of the intent, would constitute an attempt. This is arguably an attempt, but not a criminal one. Bratman furthers this hypothetical and adds

15 Ibid.
that Hacker has been publishing detailed journals online, which illustrates how she is trying to figure out the codes so she can hack and steal data. While these blog posts are correlated to the act that is criminalized, it is not itself a part of what is being criminalized. Therefore, according to the means requirement and the guidance based evidentialist approach, it does not qualify to prove an attempt. This is where Bratman begins contradicting himself. At the beginning of his piece, Bratman states that his only concern with Yaffee’s point of view is that it would justify thought crimes. Here, Bratman is now arguing that the means requirement, the solution to the aforementioned problem, is problematic because it does not punish thought crimes.

Based off the previous logic, Bratman offers a counter principle to the transfer principle, which he calls the qualified transfer. It reads, “‘if a particular form of conduct is legitimately criminalized then the attempt to engage in that form of conduct’ that involves an act in the class of means to that criminalized conduct ‘is also legitimately criminalized’”\(^{17}\). It seems that what Bratman has done here is not negate the legitimacy of the transfer principle, the guiding commitment view, or the means requirement. The wording of the qualified transfer is simply combining the wording of all of Yaffee’s theories into one sentence. The logic and reasoning that Yaffee presented in his works still stands and by creating the qualified transfer principle, Bratman has arguably agreed to Yaffee’s approach. Therefore, if we adopt Bratman and Yaffee’s logic, it would be appropriate to criminalize attempts to commit crimes according to the limitations stated above. Now the question arises, which is addressed in the following section, as to how we should punish attempts.

The Issue of Moral Luck: Section 2.0

Through the arguments laid out in Section 1, we can see that it would be morally just to criminalize attempts. However, neither Bratman nor Yaffee addressed the issue of how we should punish criminal attempts. In other words, should failed attempts carry the same punishment as successful attempts or should failed attempts receive a lesser punishment? While this may seem like a relatively simple question on the surface, it becomes more intricate when addressing the issue of moral luck.

In order to understand why the concept of moral luck may pose a problem in deciding whether to impose equal punishment or not, it is necessary to

\(^{17}\) Ibid.
understand what moral luck is. Thomas Nagel, in his article “Moral Luck,” addresses this concept and its implications including intent-based criminal responsibility. Nagel defines moral luck to be “where a significant aspect of what someone does depends on factors beyond his control, yet we continue to treat him in that respect as an object of moral judgment.” Moral luck, just like regular luck, can be good or bad. Nagel gives the example of if you are driving and have to hit the brakes and swerve. An example of good moral luck would be if there were no one on the sidewalk, but bad moral luck would be if there were and you hit them with your car. In both situations, you did the same action, however it was out of your control whether or not someone was there. You would blame yourself for the injury of the person you hit, but if there were no one there, you would feel relief and like you just made a mistake. Nagel argues that in fact, “ultimately nothing or almost nothing about what a person does seems to be under his control.” After establishing that we cannot rid of the condition of control, Nagel establishes “four ways in which the natural objects of moral assessment are disturbingly subject to luck.” The first is called constitutive luck, which is based on “the kind of person you are … your inclinations, capacities and temperament.” The second is one’s circumstances, which are “the kind of problems and situations one faces.” The third is the antecedent to one’s actions, and the fourth is the outcome of the action.

Nagel goes into further detail about luck in the way things turn out. He brings up a truck driver who accidentally runs over a child. Nagel states that if the driver has absolutely no part or fault, then all that would happen is the driver might feel “agent-regret.” However, if the driver even had the smallest amount of fault or negligence, then he would have to blame himself for the death of the child instead of just feeling bad. Therefore, the first instance is not yet reaching the scale of moral luck but the second instance does. He states that this displays moral luck because the negligence would be the same even if the child had not run in front of the car, and the driver has no control over that.

Nagel then addresses the issue at hand in this paper, looking at the intent of the agent rather than the outcome of their actions. He cites how attempted

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19 Ibid.
20 Ibid.
21 Ibid.
22 Ibid.
murder is a lesser sentence than actual murder in court, yet the intent to kill is the same in both scenarios. However, he cites Joel Feinberg to state that looking to intent or “restricting the domain of moral responsibility to the inner world will not immunize it to luck” because factors beyond the agent’s control could still affect the decision making process.\(^2\) For example, a coughing fit can interfere with decisions as well as interfere with the path of a bullet from a gun. Ultimately, Nagel rejects intent based criminal liability as a solution to moral luck because it also cannot account for factors out of one’s control.

**Lewis’s Penal Lottery: Section 2.1**

David Lewis, in his paper “The Punishment That Leaves Something to Chance,” tries to make sense of why we punish attempts the way that we currently do. He states we are more prone to punishing successful attempts more severely than failed attempts, as we have established in the previous sections. Lewis sets forth a famous hypothetical known as the “Dee and Dum Scenario.” In this scenario, there are two people, Dee and Dum. They are both plotting to kill their enemy and are exactly the same in their intent to do so. They both try equally as hard to kill their enemy, they both act out of malice with no justification, and they both shoot a gun at their respective enemies. The only difference between the two is that Dee hits his target and Dum misses, meaning Dum is only guilty of attempted murder and gets a shorter prison sentence than Dee. The question then arises as to why it should be so. They were both equally wicked in their desires and they both pursued them. Additionally, their actions were equally dangerous. Lewis states that, “Dee’s act was worse than Dum’s, just because of Dee’s success; but it is not the act that suffers punishment, it is the agent.”\(^2\)

He argues that both Dee and Dum engaged in conduct that, as a society, we would want to prevent by deterrence. In order to prevent successful attempts, we must prevent attempts altogether. Lewis states that one of the functions of punishment is to get criminals off the streets before they do more harm, so punishing the attempt would satisfy that function.

Lewis then outlines some of the common rationales for punishing failed attempts less severely than successful attempts. The first is the argument of the gods, which states that if the gods see bloodshed, they will be angered and


the only way to appease them will be to shed guilty blood. If there is a failed attempt, then there is no bloodshed and consequently no appeasement to be done. However, Lewis argues that this rationale does nothing to defend our current practice as just. He then moves on to the conservative argument, which states that it is a good idea to have the least amount of reform possible in order to avoid unexpected problems. He again argues that this also does nothing to show that our current system is just. Lewis then moves on to the deterrence of a second attempt rationale, which states that it will make failed attempters more inclined to attempt the crime again, because they will bear no extra punishment if they succeed. This is the nothing left to lose argument; it will give the criminal every reason to make at least one attempt successful. However, Lewis argues that we can just make the punishment for two attempts more severe than one, regardless of success. Therefore, this rationale also does not show why we should not punish attempts equal to success. Additionally, Lewis brings up moral luck, explained in the previous section. He argues that while people use moral luck as a rationale for more severe punishment of successes, it seems to actually name the problem with not having equal punishment. For example, why does Dee deserve less punishment because he missed his mark due to luck? Finally, Lewis addresses the rationale that involves wholehearted and halfhearted attempts. Wholehearted attempts are seen as worse because they involve more planning, more effort, more persistence and sometimes repeated tries. He says that due to the higher likelihood of success and the greater risk the victim is in, “ceteris paribus, a wholehearted attempt, is more dangerous.”

Therefore, from the standpoint of every function of punishment, it makes sense to punish wholehearted attempts more severely. His problem here lies in that success is often used as evidence to show wholeheartedness. However, Lewis argues that wholehearted attempts can fail and halfhearted attempts can succeed, so it is not a good indicator.

Lewis then proceeds to argue that our current system is a disguised penal lottery as a new rationale for why we punish the way we do. Although, he does qualify this by stating he does not say that it works nor does he think that there is a justification for punishing attempts more severely when they succeed. He defines a penal lottery as a punishment system in which the criminal is subject to risk of punitive harm. He argues that our system is a

mixture of a pure and impure penal lottery, meaning, “part of the punishment is certain harm, part is the penal lottery.”

He specifies that an overt penal lottery is one in which there is explicit statement or announcement of the risk. Lewis leaves the justness of such a system up to the reader. He argues that he will prove that our current system is an overt penal lottery, so if you believe that a penal lottery is just, then you will believe our current system is just and vice versa.

Lewis starts by presenting “cases” showing differences between the two, each case building on the one that comes before it, in order to show that they do not matter. In all of the cases the death penalty is in place for those found guilty, in other words, those who lose the lottery. Through analysis of the cases, Lewis concludes that our current system is like his sixth case, which involves a lottery by reenactment of the crime. In the previous cases, Lewis enforced a value of giving the defendant a risk of punishment that equals the risk of harm the defendant places his victim in. With lottery by reenactment, if the defendant is sentenced to face the lottery, actors recreate the situation and the levels of risk of the original crime. If the victim dies in the reenactment, then the defendant loses the lottery and is sentenced to death as well and vice versa. In case six, “enactment replaces reenactment.”

They use the original crime in the manner that the reenactment was used in the previous cases. Meaning if the victim died in the actual crime, then the defendant has lost the lottery and dies too. But if the victim lived in the actual act, then the defendant wins and gets a shorter prison sentence.

Lewis still leaves the justness of such a system up to the reader. Although his analysis of our current system as a penal lottery in the sense of the sixth case, the justness of such a system is not clear. This rationale still fails to answer all the questions and problems that Lewis raised with the rationales he mentioned earlier in his piece. He fails to show, like with the gods rationale and the conservative rationale, how the penal lottery defends our current system as just. It does not explain why we should punish Dee and Dum differently, in fact to me it shows why they should be punished the same. In that sense, I am one of the readers who finds the penal lottery to be unjust, thereby finding our current system of punishment unjust.

26 Ibid.
27 Ibid.
Feinberg’s Wrongful Homicidal Behavior: Section 2.2

Joel Feinberg also wrote a piece addressing this historical legal problem of how to punish failed attempts at committing criminal acts. He starts, much like Lewis, with a “Dee and Dum” scenario, however he calls his characters A1 and A2. The fact pattern is the same as Dee and Dum in that both attempted murder, but A1 succeeded and A2 did not. Feinberg argues that punishing A1 and A2 differently does not commit to the principle of proportionality. The principle of proportionality “requires that the severity of the punishment be proportional to the moral blameworthiness of the offense.” In this example, the moral blameworthiness can be argued to be identical, but the punishments are not. Feinberg claims that the characters are not being punished to what they deserve morally but simply according to their luck.

Feinberg argues that when the discrepancy between punishments is as large as a term of imprisonment and the death penalty, it is important that there is as little arbitrariness as possible. If we were to rely on luck, or give weight to factors that are out of the agent’s control, then this introduces arbitrariness as “the absence of rule, as in the bare will of an authority who can exert his power free of accountability, in a manner without rhyme or reason, which in turn makes predictability and security from abuse difficult, and fairness an inapplicable notion,” into the court proceedings. Based on the arbitrariness of basing sentencing on moral luck, Feinberg argues that completed crimes and unsuccessful attempts should be treated essentially the same, other things being equal.

Feinberg argues that we should eliminate the causal requirement in the definition of all so-called completed crimes. For example, the crime of murder would not require a death to come from the act in order for the action to be criminally liable. He acknowledges that this would necessitate a change in terminology in order to avoid confusion and saying foolish things like “Jones murdered Smith although Smith is still alive.” He offers a more comprehensive “Wrongful Homicidal Behavior,” but recognizes that completely reinventing the terminology would also cause confusion. Therefore, he offers that we can try to downplay the moral significance of the distinction between murder and attempted murder, so we can still use traditional terms. We could still use the

29 Ibid.
terms “murder” and “attempted murder” without letting anything substantively different come between them. He also includes that there can still be degrees of criminality based on motive or premeditation. Therefore, some defendants would receive more severe punishments but only when their actions are more morally blameworthy, not when the defendant was just luckier. Feinberg emphasizes that what the so-called “reformists” are looking for is equality, which can come from reducing the severity of one’s sentence, increasing the severity of the attempt sentence or even meeting somewhere in the middle. The end result should be that the punishment for an attempt and for a success should be the same.

Feinberg then addresses the arguments in favor of keeping the current system. The first argument he looks at is the rationale that because criminal law aims to prevent harm to the public, there can be no crime without harm. Therefore, they are arguing not only that an unsuccessful attempt should have a lesser punishment, but actually that the criminalization of attempts would be pointless. On the other hand, Feinberg argues that their logic does not conclude that attempts to perform an act that is harmful should not be criminalized. The second argument Feinberg addresses is the argument which states that, “if you are responsible for more harm, then you pay for more, or alternatively, the more harm you cause, the more harm you must pay for.”³⁰ Feinberg argues that this rationale comes from confusion between the function of the law of torts and criminal law. The law of torts is intended to be compensatory, where you add up the amount of harm caused and compensation is required. Therefore, in the law of torts, if there is no harm, then there is nothing to compensate. Criminal law is intended to punish parties for criminal acts, whether or not harm occurred due to the actions. The rationale behind criminal law is that it should reduce the amount of harm by deterring all conduct that would be considered as dangerous. Using this rationale, the above argument is not consistent with criminal law.

Feinberg argues that in looking at the reformist approach, one would not have to look at responsibility for someone’s death ever again, rather, whether or not they are guilty of breaking the law. Feinberg’s argument about the arbitrariness that stems from moral luck builds off of Lewis’s claim that moral luck is a statement of the problem with the current system rather than a deterrent to

change it. It seems that according to Feinberg’s logic, the current system rewards people for their “good” moral luck by lessening the punishment for attempts.

A Critique of Equal Punishment and “Dee and Dum”: Section 2.3
Thomas Bittner, in a critique of the reformist view, focuses on the inadequacy of the Dee and Dum scenario presented by Lewis. He starts by claiming that Dee and Dum are not an accurate representation of the average differences between attempts to commit crimes and the actual successes. First, he states that many attempts differ from the crime in the actual actions taken. While Dee and Dum performed the same action but received different results, this model would not follow for theft, incest, and money laundering. Bittner states that, “in all these cases, the completed crime involves by definition a different act than the attempted crime.”31 For example, burglary requires that the agent enters the house, but attempted burglary does not require entrance for a number of reasons. Second, in some cases, the legal requirements for the completed crime are different from the requirements for the attempt. For example, money laundering requires some amount of stolen money while the attempt does not. Finally, Bittner claims that Dee and Dum do not accurately show the differences between attempts and successes because often attempts do not fail due to pure luck, rather there is a reason a victim escapes harm.

The purpose of the Dee and Dum scenario is to isolate the element of harm. However, Bittner feels this is a mistake because comparisons should be made based on all factors that are stable, not by isolating a single element. One should compare the average failed attempt to commit a given crime to an average successful attempt to commit that crime. He states that by simply isolating the harm element, the full picture is not considered. One cannot find that in general, attempters are less skillful, less committed and less persistent than those who succeed in harming their victims. Therefore, they deserve a lesser degree of moral condemnation because they are not failing by luck alone.

Bittner argues that generalizable rules should be created that can apply consistently in every case. While he acknowledges that this is impossible because there will always be unpredictable cases, a legal system cannot operate on a case by case basis. A principle must be created that would be the most generalizable as possible. He argues that if one tries hard enough, they

would be able to find some kind of extraneous circumstance in which the principle would not seem to fit, but that is no reason to suddenly re-evaluate the entire system.

It seems that what Bittner is advocating for here, a generalizable principle, is discussed by Yaffee and Bratman in Section 1 through the qualified transfer principle. Therefore, it appears that the logic that Bittner used to advocate for keeping the status quo may in fact be used to show the opposite. In addition, the qualified transfer principle does not rely on the Dee and Dum principle that Bittner is opposed to.

Conclusion: Section 3.0
Given Feinberg’s discussion of the purpose of criminal law as opposed to the law of torts, it is clear where the logic of punishing attempts differently than successes came from. However, if taking the reformist argument and coupling that with the definition of attempt that is set forth by Yaffee, it appears that there are compelling arguments to indicate that there should be equal punishment. Many of those who are opposed to punishing attempts equally indicate that their opposition is due to the potential of punishing thought crimes or punishing actions of lesser moral culpability equally. Although, given the definition of attempt set forth by the guiding commitment view of attempts, both of those concerns virtually disappear.

Obviously, no system is perfect but our current method of giving lesser punishments to unsuccessful attempts to commit crimes does not fulfill the purpose of criminal law. However, there are still concerns and risks in adopting Yaffee’s guiding commitment view of attempts, and criminalize those attempts with equal punishment to completed crimes. But the current system does not address proportionality, as suggested by Feinberg. By eliminating the harm element to these crimes, it would create a greater deterrence and protect our society in a better manner. It seems as though we are rewarding people for their moral luck. Specifically, in the Dee and Dum scenario, Dum could have been considered to have good moral luck because he missed his target and received a lesser sentence. Dum is still a danger to society and put a person at extremely high risk of harm. To say that Dum’s action is not as morally culpable as Dee’s actions would be naïve. Let’s even take the example of burglary that Bittner set forth to show the unrealistic nature of the Dee and Dum. If a burglar attempted to rob a house but did not know that they had a security system so he could not
get in, does that make him any less morally culpable? Just because something prevented him from committing the crime, the intention was still there and the deterrence is necessary. As stated above, punishing thought crimes is not the purpose of the reformist argument. The purpose is to grant equal punishment to equally morally condemning actions.
ATHENA BROCKMAN is currently a freelance writer. She was a Capital Fellow from 2010 to 2011. Athena graduated from Cal Poly in 2010 with degrees in political science and journalism.
ALUMNI SPOTLIGHT

Athena Brockman

During her five years at Cal Poly, Athena completed a double major in political science and journalism, was the Vice President of her sorority as well as the newly established Political Science Club, was a founding member of the Institute for Research & Policy, and held internships at the State Capitol. With all this experience, Athena’s time at Cal Poly provided useful skills and connections that continue to aid her professionally. Athena was drawn to Cal Poly because of its campus and beautiful surroundings, but she now realizes that the Political Science Department was most influential to her college experience. Political science courses provided Athena with her first glimpse into the liberal arts’ approach to “Learn By Doing.” Athena recalls one class she took that analyzed the intersection of politics and religion, through the conflict between Israel and Palestine. This class compared news sources to religious and political theory, exemplifying how political science relates to a variety of contemporary issues. Athena credits Cal Poly’s political science program for providing her qualities that employers look for when hiring. The debates during classes and the discussions made between those with different political views were all essential experiences she had in political science that made a career in politics, law, and government more attainable.
After Athena graduated in 2010, Athena became a Capital Fellow in Sacramento. In this position, she mainly focused on research and communication for assembly-wide functions. Athena’s advice to current students interested in applying to the fellowship is to connect with alumni from the program and find ways to stand out. Intertwining one’s own personal story and how it relates to their interests in government and law is a perfect way to shape an application. She also notes that the Capital Fellows Program can provide foundational knowledge of the state legislature and lead to more opportunities working in government. Athena spent another four years after her fellowship at the Capitol as a legislative aide for Assemblyman Cameron Smyth and State Senator Mark Wyland. As a legislative aide, she drafted legislation and gave advice to the legislator on specific issues. Athena says, “Being able to give and receive constructive criticism along with critical thinking were skills vital to my role as a legislative aide. My political science degree surely cultivated this foundation that constitutes my work ethic.”

Athena is currently a freelance writer for a variety of lifestyle blogs and contends that a degree alone is not enough to show the world what a recent graduate is possible of accomplishing. She explains, “Political science gave me foundational knowledge that I can apply to everything. In addition to my education, I have found that being creative online is an influential facet that allures employers.” Athena believes the Internet is perfect for expressing one’s professional abilities to employers, and capitalizing on the positive aspects of social media is a great asset when searching for careers. Above all, Athena thinks that especially in the field of government, where getting ahead relies heavily on individuality and networking, staying true to one’s beliefs and keeping a steady ambition will always help in the long run.
EMILY MATTHEWS is a graduating political science senior concentrating in global politics and minoring in environmental studies and religious studies. At Cal Poly, Emily has been involved in Paideia since the second volume, is a founder and President of the campus chapter of California Women’s List, and is currently participating in the CSU Research Competition. After graduating, Emily plans on pursuing a career in campaigning and political communications.
AID AGENCIES’ FACILITATION OF LAND GRABS IN DEVELOPING COUNTRIES

Emily Matthews

The World Bank’s Facilitation of Land Grabs

On April 16, 2015 The Guardian reported on The World Bank funding projects that led to millions of people losing their land and damaging their livelihoods for the past decade. According to the report, most of these operations were to “boost electricity and water supplies and expand transport networks” in many developing countries. Millions of people have been displaced as the World Bank has participated in land grabs; large-scale land acquisitions of land larger than 200 hectares, for completed projects such as dams. However, in most land grab cases the World Bank violated its safeguard policies, which state that the organization aims to avoid “involuntary resettlement” as well as provide “compensation and other resettlement measures.” In response to the unveiling of these “shortcomings,” World Bank President Jim Yong Kim stated

2 Ibid.
that the organization “[hasn’t] done a good enough job in overseeing projects involving resettlement...[and hasn’t] implemented those plans well enough.”\(^5\) Furthermore, the World Bank released a statement noting that its anti-poverty goals can only be met if they make large adjustments to the current institutional failures.\(^6\) Despite forced resettlement complaints to inspection panels within the World Bank, many investigations were never opened.

The World Bank’s negligence with respect to resettlement highlights a pattern of past practices within the previous decades within the organization in the area of land grabs. The World Bank’s funded projects that require forced resettlement has gone from 8% in 1993 to 29% in 2009, indicating that the organization is benefiting from funding these types of projects.\(^7\) Furthermore, forced resettlements directly go against its Twin Goals of ending extreme poverty and “[promoting] shared prosperity by improving the living standards of the bottom 40 percent of every country.”\(^8\) Inequalities perpetuated by aid agencies have been seen in Sub-Saharan Africa, where in 1981 residents accounted for 11% of the world’s extreme poverty population as compared to 2010 where they made up 34% of the population.\(^9\) Despite seemingly good intentions, the World Bank has had decades of failed development policy in countries where it is needed most. The World Bank’s failed development policies were also demonstrated in Argentina during the 1990’s when the organization held a series of discussions about the Country Assistance Strategy (CAS). During these discussions, it became apparent that the already-approved CAS was based more on Washington’s interests rather than Argentines taking out the loans.\(^10\) Abiding by the Washington consensus has led to several structural adjustments within these countries that allow for deregulation and policy reforms to be implemented. This enables private companies to work with international organizations and governments to cheaply acquire land without giving residents compensation.

\(^6\) Op. Cit., fn. 1
\(^7\) Op. Cit., fn. 1
The critical issues that aid agencies supporting land grabs pose have important implications for international organizations. Despite the aid agencies’ seemingly good intentions, United States hegemony has led to flawed Washington consensus assumptions as to what development policies should be put into place. The World Bank and other aid agencies have continued with the same development policies marked by a flawed paradigm that only increases inequalities in developing countries. This leads many to question both international organizations’ ability to help those in need, as well as the way they choose to aid developing countries. This pattern of disregard for those in developing countries is apparent in a leaked memo by former World Bank President Lawrence Summers in which he stated, “shouldn’t the World Bank be encouraging more migration of the dirty industries to the LDCs [less developed countries].”11 Furthermore, Summers stated that it was merely “economic logic” to dump waste into low wage countries that are likely to develop further, instead of keeping it in developed countries.12 This reflects policies of the World Bank that are intended to aid developing countries, but instead disregard the world’s poor. With the updates in the World Bank’s Safeguard environmental and social policies, the World Bank has the opportunity to take responsibility for its actions and begin to enforce policies that will actually lift countries out of poverty with sustainable development.13 To understand why aid agencies and international organizations have continued to neglect large amounts of the world’s poor when implementing its projects leads me to ask the following research question: Why are aid agencies supporting land grabs?

Public Support for Aid Agencies
The conventional wisdom surrounding aid agencies is that they are helpful and bring about positive impacts. In a poll conducted by the Pew Research Center, nonpartisan research found that within developed countries such as Britain, France and South Africa, two in three people thought that international organizations, such as the World Trade Organization, are a good influence.14 In another poll conducted by Gallup, researchers found that out

12 Ibid.
of 126 surveyed countries, 106 of these countries approved of the United Nations leadership, with a global median of 44% approval and a global median of 17% disapproval.15 These polls reveal that globally, most people approve of and support international institutions, and have the perception that these institutions bring about favorable effects. This further reflects that international institutions are thought of as helpful entities that provide aid to many countries in need.

While many people believe that international institutions are helpful to developing countries, this conventional wisdom is wrong. It is apparent that these institutions are playing a large role in damaging people’s livelihood, despite being organizations that exist to assist the global poor. International organizations’ primary objectives in the past decade have been to promote food security, sustainability, and environmental conservation. While pursuing these seemingly positive goals, local people are often uprooted in order to make room for large agricultural production fields, thus negatively affecting indigenous farmers and taking away indigenous homes. Despite the positive goals that aid agencies have laid out, many bring about unfavorable effects, harming many of the developing countries most vulnerable citizens. Aid agencies encourage countries to relinquish land in order to meet the agencies’ goals, but do not consider or care whether the land is inhabited or not.

**Marxism to Answer the Research Question**

The theory that best explains and frames my research question is Marxism. In international relations, Marxism’s core assumption is that capitalism is exploitative and that change is system-driven.16 The founder of the theory, Karl Marx, stresses that the structure of world power is a hierarchy, and that the causal mechanisms are systems based, such as the international division of labor and capitalism.17 Inequality is a core part of Marxism’s assumptions, where many of the world’s elite can profit from exploiting cheap land and labor in developing countries.18 As a result of Marxism’s core assumption

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16 Professor Shelley L. Hurt, “Theoretical Paradigms of International Relations,” POLS 426 course reader (Spring 2015).
17 *Ibid*.
that change is class driven, the “super-elites have two ways to survive: by suppressing dissent or by sharing their wealth.”19

Given these assumptions, Marxism will help explain the answer to my research question and my research findings. Marxism’s theory that capitalism is exploitative will help to frame the drive that countries and businesses have to sell and buy large pieces of land, causing forced resettlements. Additionally, the assumption of power from global elites will help explain how aid agencies are suppressing dissent and exploiting the global poor. Furthermore, the theory of world power structured as a hierarchy will help demonstrate why developing countries abide by the Washington consensus and accept the continued practices of aid agencies.

**Case Study: Promotion of Food Security**

Development goals have a history of being grounded in food security. This was seen during the green revolution in which Norman Borlaug created a strand of wheat that produced high yields for developing countries.20 This policy of food security was reinforced after the 2008 food crisis, which became a pivotal moment in food security aid. After this initial crisis, international organizations reinvigorated their promotion of food security. The World Bank subsequently stated, “the world needs to increase investment in agriculture” in order to meet the agricultural production needs to feed the world’s increasing population.21 They responded with an investment of over $8 billion in 2013, much of which was through public and private partnerships.22 In addition to the World Bank’s policy approach of private/public partnerships, the International Monetary Fund (IMF) emphasized trade liberalization in developing countries to promote food security, reiterating the necessity of the private sector.23 Private sector interest is further reinforced by the high rates of return within developing world agriculture, making acquiring agricultural land more attractive.24 Aid agencies’ policies often

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20 International Food Policy Research Institute, “Green Revolution: Curse or Blessing?” (online report, 2002).
22 Op. Cit., fn. 21
emphasize the incorporation of the private sector and increased productivity in order to drive down food prices and enhance food production. However, these policies encourage misconduct from private companies that lead to land grabs.

Developing countries, such as those in Africa, have critical agricultural land that has been recognized by international organizations as having investment value. In the past decade as the demand for fertile agricultural land has increased, people have turned to African countries because of their “abundant natural resources, exploitable yield gaps, and an improving investment climate.” Furthermore, private sector interest in African agriculture and agribusiness has been steadily increasing over the years, making acquiring land in the continent increasingly competitive as agriculture is projected to be a $1 trillion industry in Sub-Saharan Africa by 2030. Furthermore, in a World Bank Report on global interest in farmland, “foreign investors expressed interest in around 56 million hectares (ha) of land globally” with 29 million ha of this land in Sub-Saharan Africa. Additionally, The World Bank and other private entities have been planning for investment in underutilized land for staple crops. Citing the critical market for Maize, the World Bank has detailed the “5 million hectares of uncultivated land suited to maize production” in Zambia, which could lead to Zambia becoming “a breadbasket for the region.” This untapped land serves as an incentive for The World Bank and private companies to invest in the production of a highly demanded crop for a growing population.

In response to the growing interest in African land, the World Bank, along with more than 200 companies, such as Bank of America, Merrill Lynch and Bayer, and 12 countries joined the Grow Africa agreement, that focuses on the commitment of public and private sectors to “specific policy reforms and investments…that accelerate implementation of African country food security strategies.” This agreement led to private companies intending to invest $4 billion in African agriculture, showing the high level of interest in African land.

26 Ibid.
27 Klaus Deininger, Derek Byerlee, Jonathan Lindsay, Andrew Norton, Harris Selod and Mercedes Stickler, “Rising Global Interest in Farmland” (online report, The World Bank, 2011).
28 Ibid.
29 Ibid.
30 “About Grow Africa” (online report, Grow Africa).
31 Op. Cit., fn. 20
Despite these deals encouraging food security, the underlying motive surrounds business deals within private and public partnerships. In the World Bank report titled “Doing Business,” the policies that are outlined encourage developing countries to employ policies that are more investment friendly, exemplifying the World Bank’s interest in deals with the private sector. The purpose of “Doing Business” is to implement “regulatory reforms” that make the conduction of business easier.\(^{32}\) Additionally, the World Bank ranks countries based on “the ease of doing business with them” encouraging developing countries to deregulate and reform policies in an effort to become more investor friendly.\(^ {33}\) This allows private businesses to work with governments to promote fewer regulations in order for these companies to invest within the country. However, during this process, the reform policies lead to an environment that allows corporations to participate in land grabs. Specifically, the World Bank’s indicators of “registering property” encourage countries to reduce regulations on buying land so that businesses are more easily able to purchase land.\(^ {34}\) The World Bank’s policies that promote food security are heavily reliant on satisfying the private sector and encouraging investments. Due to these practices, the World Bank is directly facilitating in corporate land grabs, as well as encouraging countries to allow fewer regulations for buying land, thus institutionalizing these practices.

While these policies may look good on paper to many governments, they continue to harm and reverse development. Many of these countries that fall victim to land grabs have had stagnant economies and slow development, so in order to help promote development and reverse their extreme poverty, they look at investors to bring in capital. Leaders in countries such as Sierra Leone emphasize that private investors are necessary to “ensure food security and sustainable development.”\(^ {35}\) However, as a result of these companies taking over local people’s farmland, indigenous people not only struggle to feed their families but also fail to receive adequately paid jobs from the companies. Furthermore, the original landowners are often never compensated for the land and the natural

resources that are taken away from them.\textsuperscript{36} The promises that investors and governments make lead to lower paid jobs within these agribusinesses, which in turn does not help promote any food security. This is because the farmers, who were once self-sufficient, now have no land to farm their own subsistence, and lack sufficient income to pay for other food.

**Case Study: The Promotion of Biofuels**

In the recent decades, the demand for biofuels has been increasing as policymakers look towards alternative energy sources. Furthermore, the biofuel industry has been sourced as “an important driver for economic growth” in many developing countries, helping to create more jobs per hectare than other farming operations.\textsuperscript{37} Additionally, biofuels can have “significant greenhouse gas mitigation potential” leading to an 80 to 90 percent reduction in emissions.\textsuperscript{38} The positive economic and environmental prospects that biofuels pose correlate with both aid agencies and countries interests in reducing emissions and using alternative energy. In the World Bank’s attempt to mitigate the issue of global poverty, they have turned to biofuels as a way to increase revenue and employment in developing countries.

In pursuit of reducing carbon emissions, developed countries have had target goals of increasing reliance on biofuels, such as the European Union making 10 percent of transportation run on biofuels by 2020.\textsuperscript{39} Moreover, the World Bank has emphasized the biofuel industry, specifically palm oil crops, as being an important sector to provide jobs to millions of rural poor, meeting the institution’s goals of helping to mitigate global poverty.\textsuperscript{40} Given the opportunities that biofuel production can have for developing countries, aid agencies look towards this industry to meet its’ goals of generating job and income growth in developing countries. Additionally, biofuels could lead to a rise of “all agricultural

\textsuperscript{36} Ibid.


\textsuperscript{38} Helena Chum, Andre Faaij, José Moreira, Goran Berndes, Parveen Dhamija, Hongmin Dong, Benoit Gabrielle, Alison Goss Eng, Wolfgang Lucht, Maxwell Mapako, Omar Masera Cerutti, Terry McIntyre, Tomoaki Minowa, Kim Pingoud, Richard Bain, Ranyee Chiang, David Dawe, Garvin Heath, Martin Junginer, Martin Patel, Joyce Yang and Ethan Warner, “Biofuels” (online report, Intergovernmental Panel on Climate Change).

\textsuperscript{39} “Biofuel use ‘increasing poverty’,” BBC News (June 25, 2008).

commodities” due to an increase in competition for resources, which could help address declining agricultural prices in developing countries.\textsuperscript{41} The World Bank has also stated that biofuels “can benefit smallholder farmers” by increasing rural incomes and employment.\textsuperscript{42} The positive potentials of biofuels, including the prospect of combating poverty, have led the World Bank and International Finance Corporation (IFC) to release a report on their strategy for the palm oil sector. This plan engages private sector investment, along with IFC financing to strengthen the industry within developing countries.\textsuperscript{43} This investment strategy comes as a “response to private sector need and interest” leading to a bolstering of the palm oil industry in developing countries.\textsuperscript{44} With the financing of private sector investment, investors in developing countries have purchased several thousand hectares of farmland to produce palm oil, often taking the land away from local farmers.

However, to meet the minimum demand of biofuels such as palm oil, an additional 6.3 million hectares would be needed for production, leading to the increased demand for agricultural land.\textsuperscript{45} Additionally, the world would need to at least double the annual harvest of biofuels to meet the energy demand by 2050.\textsuperscript{46} As a result, the world has little room for biofuel crops and many developing countries must turn to forced resettlement in order to meet production demands. As demand for agricultural land for biofuels increases, many subsistence farmers no longer have access to land for food production. The lack of access to farmable land has led rural farmers in Guatemala to go so far as to plant their crops in highway medians in order to feed their families.\textsuperscript{47} Despite these negative impacts, the World Bank is still a large player in facilitating investment and land acquisition, and has tripled investments in agriculture “from $2.5 billion in 2002 to $6-8 billion in 2012.\textsuperscript{48} The increase in investments played a vital role aiding in direct financial support for

\begin{itemize}
\item 43 \textit{Op. Cit.}, fn. 34
\item 44 \textit{Ibid.}
\item 45 \textit{Ibid.}
\item 48 \textit{Op. Cit.}, fn. 3
\end{itemize}
investments in land, allowing for several large land acquisitions. In many of these purchasing operations, such as in Honduras and Sierra Leone, private sector investment has led to local farmers being pushed off their land with inadequate compensation.\(^{49}\) Although there is a lack of compensation for indigenous people, developing countries are still encouraged to invest in biofuels to help them produce new cash crops and use their abundant land resources. For example, in Liberia 30% of the country’s land was put into the hands of investors between 2006 and 2011.\(^{50}\) Additionally, foreign land investors have been paying lease fees “from as little as seven cents,” leading many rural poor without land, perpetuating poverty.\(^{51}\) Despite the appearance of good intentions, the World Bank’s strategy of investment in biofuels in developing countries lacks proper oversight to guarantee that local people are compensated and are not forced to resettle.

Biofuels are increasingly becoming a popular energy alternative, as the world becomes more concerned with the impact of traditional fuels as well as the cost of oil. The projected positive effects of biofuels on job and wage growth in developing countries makes them an important investment for many countries, private companies and aid agencies. However, “the lack of secure land tenure” and property rights in developing countries have led to an “astonishing buying spree across Africa.”\(^{52}\) Furthermore, international interest in switching to biofuels has led to local subsistence farmers’ land being acquired for economic crops such as palm oil fields and sugarcane. The proposed positive environmental impacts of biofuel and the international interest in the sector have led aid agencies to look past the negative effects land grabs pose for the rural poor.

**Case Study: The Promotion of Carbon Credit Programs**

In addition to the influx in biofuels as a response to growing concern over climate change, carbon credit programs were established as a result of the Kyoto Protocol’s Clean Development Mechanism in an attempt to mitigate carbon emissions. Carbon credit programs allow countries with an “emission-limitation commitment...to implement an emission-reduction project in developing

\(^{49}\) **Op. Cit.**, fn. 34


\(^{51}\) **Op. Cit.**, fn. 3

\(^{52}\) **Op. Cit.**, fn. 49
countries” giving both countries and companies an opportunity to obtain certified emission reduction credits to meet their emission targets.\textsuperscript{53} Furthermore, the IFC arm of the World Bank has been strongly supporting carbon-financing programs in developing countries. This support comes from their assessment of the $95 billion market that has developed between 2005 and 2010 for carbon credits.\textsuperscript{54} Carbon finance’s lucrative market and the perceived environmental benefit have made aid agencies and international organizations advocate for projects in developing countries to help mitigate extreme poverty. This has led to multimillion-dollar projects in countries such as Argentina, Brazil and Kenya that require vast amounts of land for projects such as wind farms and hydropower, leading to large-scale land grabs.

The World Bank has been a key player in financing carbon-offset programs as well as creating carbon-auctioning events. Using the carbon offset program that was outlined in the Kyoto Protocol, the World Bank has been able to “scale up emission reductions…increase access to energy in least developed countries, and reduce emissions from deforestation and forest degradation.”\textsuperscript{55} Carbon offset programs support environmental efforts, while also providing the World Bank, private corporations and countries investment opportunities in the new market. In addition to the so-called environmental benefits from carbon trading programs, carbon finance has become a “key component of the IFC climate business strategy,” providing huge financial benefits to the World Bank.\textsuperscript{56} As carbon finance has become a more central part to the IFC, international interest has led to the vast growth of carbon offset programs. The World Bank has also led an initiative that led to more than 1,000 companies and investors supporting carbon finance, showing the global interest in investing.\textsuperscript{57} In addition to the large investor interest in carbon finance, “since 2000, $4.36 billion has been raised through the World Bank’s 18 carbon funds and initiatives” revealing that carbon finance is an incredibly lucrative and important sector to the World Bank.\textsuperscript{58} As a result of the large amount of money that has

\textsuperscript{53} United Nations Framework Convention on Climate Change, “Clean Development Mechanism (CMD)” (online report).
\textsuperscript{54} International Finance Corporation, “Carbon Finance,” (online report).
\textsuperscript{56} Op. Cit., fn. 53
\textsuperscript{57} The World Bank, “Pricing Carbon” (online report).
\textsuperscript{58} The World Bank, “Climate Finance” (online report, Oct. 4, 2015).
been raised from carbon finance, the World Bank has responded by attempting to “increase climate financing up to $29 billion annually by 2020,” showing their long-term interest in carbon financing, and the amount of money they are willing to spend on future carbon offset programs.⁵⁹ As the market for carbon finance has steadily increased, the amount of land needed to support this growing industry must also increase, which has led to the extension of World Bank carbon offset programs into more than 75 countries.⁶⁰ Furthermore, the World Bank has shown their continued investment and interest in the sector, which means that the institution will support companies that are able to facilitate carbon-financing programs.

Seeing the potential in carbon finance, the World Bank has been a large investor in carbon trading companies, such as the New Forests Company (NFC), which buy up rural land to plant forests, then sell the carbon credits they have earned to polluting companies hoping to meet their carbon cap. From 2005 to 2015, NFC has planted 24 million trees, taken over 37,000 hectares of land, and has amassed $128.3 million in assets from their forests.⁶¹ The World Bank’s investment in NFC and the company’s success shows how profitable this market has become and how much land is required to continue making a large profit. Furthermore, NFC has cited their projects in Africa as supplying jobs, increasing incomes and mitigating poverty levels.⁶² NFC and other carbon trading companies fall in line with promoted policies of aid agencies, such as the World Bank, and lead to both interest and investment from these organizations. Carbon offset programs appear to be a sound investment for aid agencies because not only are they able to provide perceived environmental benefits, but they are also sourced as being an incredible growth opportunity to countries with extreme poverty levels.

However, the vast amount of land needed to support carbon finance operations has led to a series of forced resettlements by companies supported by the World Bank, such as NFC. While NFC was beginning operations in Uganda, Oxfam reports that the company forced more than 20,000 people from their homes to make room for new forest plantations.⁶³ To meet the

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⁵⁹ Ibid.
⁶⁰ Op. Cit., fn 54
demands of NFC’s large operation in Uganda, they needed a vast amount of fertile land, and as a result of the expected profit from the plan, it was easy for the Ugandan government to be complacent in forced resettlements of indigenous people. It was particularly easy for the government to support the World Bank and NFC’s project in Uganda when it was projected to earn up to $1.8 million a year.\textsuperscript{64} With the potential to make aid agencies, private investors and the country a large amount of money, giving up fertile land and allowing forced resettlements to occur is necessary to generate profit. Carbon finance’s expanding market throughout the world requires fertile land to be put in the hands of investors, but without proper oversight often leads to forced resettlement without proper compensation.

**So What? The Implications of My Research Findings**

The research presented comes at a critical point where global poverty levels are only increasing, despite aid agencies continued efforts to mitigate these issues. These research findings are compelling because they show the complicated reasons why aid agencies often have good policies on paper, but are unable to execute strong results. Despite the seemingly good intentions of many aid agency projects, there are often ulterior motives and a lack of government oversight in countries where these projects are occurring. These findings are innovative because it reveals the contradictions within organizations such as the World Bank, which continue to ignore its safeguard policies, but is currently increasing investment to these three types of projects throughout the world. Furthermore, this research is important because it shows that the global poor are continually suppressed by even the organizations that were established to lift them out of poverty, showing that it is of extreme importance to restructure how aid agencies design and implement their projects.

These findings have a number of implications on international organizations. Despite public opinion that aid agencies are generally beneficial and helpful, this research shows that there is clearly a conflict between aid agencies’ safeguard policies and the actions they take to meet certain development goals. Aid agencies have the opportunity to restructure existing policies and take a more hands on approach so that they can continue to work towards meeting the millennium development goals. As aid agencies, such as the World Bank, have had repeated accusations of forced resettlements and facilitating land

\textsuperscript{64} Op. Cit., fn. 62
grabs, these research findings will reveal that aid agencies are driven by a Washington consensus of increased investment and the involvement of the private sector. However, the implications of forced resettlements as a way to mitigate food insecure nations shows aid agencies neglect for the actual livelihoods of indigenous people. Furthermore, as the countries and aid agencies address the issue of alternative fuels and climate change, this research shows that they are more concerned with the potential economic prosperity which comes with private investment, and less concerned about the well being of the people that inhabit these lands. Aid agencies have interest in helping indigenous people and mitigating extreme poverty in developing countries, however the research shows that they need to closely monitor their projects and better enforce safeguard policies to avoid pursuing economic interests over human rights.
ROSS BUCKLEY is a legislative advocate for the Personal Insurance Federation of California. He graduated from Cal Poly in 2010 with a degree in political science.
Due to his undeniable interest in government and politics, Ross Buckley always knew that he wanted to study political science. Ross says Cal Poly’s “Learn by Doing” philosophy has carried its influence to his professional life. During his first days at Cal Poly, Ross enjoyed studying government and law, however, he did not know how he wanted to apply these interests into a career. One class Ross took that he found particularly influential was the United States Congress course with Professor Chris Den Hartog, during which he learned the ins and outs of the U.S. legislature through class simulations. This hands-on approach that embodied “Learn by Doing” assured Ross that he wanted a future career working in the halls of a state or federal legislature.

In 2010, Ross volunteered for Cal Poly alumnus Katcho Achadjian’s California State Assembly campaign. The campaign showed Ross how social a person must be when pursuing a career in politics. It highlighted that networking and connecting with all kinds of people is vital to success. The campaign also provided him with the knowledge of California state government that is not necessarily discussed in political science courses that are typically focused on federal and international government issues. Ross vehemently recommends getting involved in a local campaign when the opportunity strikes, especially
because volunteering or interning for a campaign can eventually lead to larger opportunities. After graduating in 2010, Ross was offered a job in Assemblyman Achadjian’s office as a legislative aide. This position became a starting point for Ross’ time working in the California legislature. He worked for Achadjian for almost seven years in San Luis Obispo and Sacramento, gaining experience in every single one of the office’s positions including Legislative Director, Capital Director, and finally Chief of Staff.

Ross currently works as a legislative advocate for the Personal Insurance Foundation of California. Ross represents the interests of eight of California’s leading automobile and homeowners’ insurers, including State Farm, Nationwide, and Liberty Mutual Insurance companies, in the State Legislature and the California Department of Insurance. Ross says that throughout his professional career, the education he received from Cal Poly built the foundation he needed to succeed and progress further into the political realm. Ross acknowledges that there are similarities between the work he does in his profession and the work students do in college. Ross explains, “The assignments in college that may seem tedious are actually transferable to professional politics not just when it comes to writing and conceptualizing, but also when it comes to establishing a solid work ethic.” Ross emphasizes that in order to make the most out of a profession or employment, one must treat every task at hand with the same level of importance.
Kelly Eaton is a third year Political Science major, concentrating in pre-law. Her choice in major is based on her deep passion for human rights and social justice. After she graduates, she plans on pursuing an MBA and a career in financial and political consulting. In her free time, Kelly enjoys filmmaking, kickboxing, and photography. At Cal Poly, she is a member of the sorority Kappa Alpha Theta and was an Orientation Leader for the freshman class of 2016.
VOTE DILUTION IN AMERICAN POLITICS AND CONSTITUTIONAL LAW

Kelly Eaton

Question Presented
Under what conditions does vote dilution in single district elections violate the rights of expression, association, and due process provided by the Constitution, and what standards should the Supreme Court rely on when adjudicating questions of vote dilution?

Background
Vote dilution occurs when the voting power of individuals is diminished. Vote dilution can be achieved through discriminatory voting practices or the process of gerrymandering, which is performed by election officials. Election officials can engage in both racial and partisan gerrymandering. According to the Legal Information Institute, “Two typical forms of vote dilution involve ‘cracking’ a minority community between several election districts, and ‘submerging’ minority communities in multi-member districts.”1 In gerrymandering, “cracking” splits up the collective votes of a minority, while “submerging,” or “packing,”

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combines the votes of a minority with a majority so that the minority votes carry less weight. In addition to laws which require photo identification for voting, among others, these gerrymandering tactics effectively squander the right of expression and association of voters. Furthermore, vote dilution results in unfair treatment that violates due process of the law. All of this culminates to a lack of voter equality in the United States.

To begin with, the Constitution provides for the right of expression and association through the First Amendment. Due process is a right of the law as per the Fifth and Fourteenth Amendments of the Constitution; the right to vote is necessary to upholding all of these rights. Although the right to vote is not explicitly stated in the Constitution, “the right to vote is the most important right granted to a U.S. citizen.” Nonetheless, the right to vote is not sufficient to upholding the rights of expression, association, and due process. To be sufficient, the right to vote must include the right to an equally weighted vote. In Election Law: Cases and Materials, authors Hasen and Lowenstein affirm that “full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature.” Currently, vote dilution is preventing this.

The importance of the right to an equally weighted vote was officially recognized by the passage of the Voting Rights Act of 1965. The Voting Rights Act, or the VRA, is defined as “an important federal civil rights law that protects minorities from discriminatory voting practices.” In 1965, the significance of the Voting Rights Act laid in the prohibitions on practices such as literacy tests. The establishment of the coverage formula and preclearance was also significant. However, today what is most significant about the Voting Rights Act is that it protects against vote dilution. This is accomplished through Section 2 of the Act, which “prohibits drawing election districts in ways that improperly dilute minorities’ voting power.” Section 2 effectively addresses racial gerrymandering as a tactic of vote dilution.

The amount of voting rights cases throughout history is substantial. In 2008, the Supreme Court decided the case Crawford v. Marion County Election

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4 Op. Cit., fn. 1
5 Ibid.
Board. In this case, the Supreme Court upheld the constitutionality of an Indiana law that required voters to show photo identification prior to voting. The decision was made on the grounds that voter fraud posed a bigger problem to the state of Indiana than the votes that would be lost on account of some voters not having photo identification. Thus, the Court formally acknowledged voter fraud as a form of vote dilution, but failed to address questions of access under photo identification laws.

Five years later, in the 2013 Supreme Court case Shelby County v. Holder, the Supreme Court overturned Section 4(b) of the Voting Rights Act, which effectively overturned Section 5 of the Act as well. Section 4(b) of the VRA established the coverage formula, a formula used to identify regions where racially discriminatory voting practices had led to vote dilution. This formula was necessary because, “when Congress enacted the Voting Rights Act of 1965, it determined that racial discrimination in voting had been more prevalent in certain areas of the country.”6 Preclearance, found in Section 5, is an extension of the coverage formula whereby covered regions must approve any new voting measures with the federal government. However, there is no power to enforce preclearance without a coverage formula.

Out of deference for state sovereignty, the Court in Holder felt that the coverage formula targeted some states too harshly, and that states should be able to enact their own voting measures. Part of the Court’s reasoning was that, “the conditions that justified Section 5 no longer characterize voting in the covered jurisdictions...voter turnout and registration rates now approach parity.” This led the Court to declare the coverage formula, which was reauthorized by Congress in 2006, unconstitutional. Shelby County v. Holder is often perceived as a setback for minority voting rights. As the dissenting opinion acknowledges, “second-generation barriers” to minority voting still exist. These are “efforts to reduce the impact of minority votes, in contrast to direct attempts to block access to the ballot.”7 Photo identification laws are just one example of second-generation barriers to minority voting.

In 2016, the Supreme Court case Evenwel v. Abbott was a progressive step towards combating vote dilution. In this case, the Court held that

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7 Ibid.
total population must be used in redistricting processes, according to the “one person, one vote” principle implied by the Equal Protection Clause. This opposed the exclusive use of voting-eligible population in redistricting. Justice Ginsburg, who delivered the majority opinion, writes, “As the Framers of the Constitution and the 14th Amendment comprehended, representatives serve all residents, not just those eligible or registered to vote. Nonvoters have an important stake in many policy decisions.” Thus, Abbott ensured that minority groups, who are less likely to be registered to vote, and nonvoting groups, such as children, are still considered in the drawing of legislative districts. Accordingly, each member of the population must be given equal weight.

Lastly, Whitford v. Gill is an ongoing case that may be brought before the Supreme Court. On November 21st, 2016, the United States District Court for the Western District of Wisconsin overturned legislative districts created by the Wisconsin Republican majority. These districts were drawn in secret, as Republicans prevented the Wisconsin Democratic minority from participating in the redistricting process. The result was malapportioned districts, largely favoring Republicans. In the majority opinion, the District Court finds that, “as a result of the statewide partisan gerrymandering, Democrats do not have the same opportunity provided to Republicans to elect representatives of their choice to the Assembly...the electoral influence of plaintiffs and other Democratic voters statewide has been unfairly and disproportionately reduced.” In addition to overturning the districts contended in Gill, the District Court also approved the plaintiff’s proposed standard for determining unconstitutional partisan gerrymandering. The standard is a three-part test: plaintiffs must prove that the defendant had the intent of partisan gerrymandering, that the partisan gerrymandering had a discriminatory effect, and that the discriminatory effect did not result from some alternative. This standard puts a significant burden of proof on the plaintiff, but nevertheless should be seen as positive. Its adoption signals that vote dilution is a serious problem that should be addressed by the Supreme Court.

Judicable and Manageable Standards for Racial and Partisan Gerrymandering

Judicable and manageable standards for racial and partisan gerrymandering were first addressed in the landmark Supreme Court case, Baker v. Carr. The 1962 decision gave the Court the power to decide future redistricting cases, due to the fact that redistricting was both a political and legal question. In the majority opinion, Justice Brennan states that a political question is characterized by “a lack of judicially discoverable and manageable standards for resolving it.”\(^{10}\)

A legal question, on the other hand, does have these standards for resolving it. Although Justice Brennan does not explicitly offer standards for resolving redistricting cases, he does imply the necessity of these standards, as redistricting will be considered a legal question going forward. Since the decision made in Baker v. Carr, three standards have been developed to determine whether unconstitutional racial or partisan gerrymandering has occurred in redistricting processes. The first is the symmetry standard, which compares the seats that each political party receives relative to their vote share in an election. The second standard is the efficiency gap, which compares the percentage of wasted votes for each political party in an election. The third standard is proportionality, which determines “whether minorities have the opportunity to elect representatives of their choice in a number of districts roughly proportional to the percentage of minority voters in the population as a whole.”\(^{11}\) Proportionality measures racial gerrymandering, while the symmetry standard and the efficiency gap measure partisan gerrymandering.

To prevent racial and partisan gerrymandering, state redistricting plans must traditionally follow six criteria. Districts must maintain compactness, communities of interest, contiguity, equal populations, partisan fairness, and a lack of racial political considerations involved in the process of redistricting. According to Professor Justin Levitt of Loyola Law School, “Few states define precisely what ‘compactness’ means, but a district in which people generally live near each other is usually more compact than one in which they do not...a ‘community of interest’ is just a group of people with a common interest

(usually, a common interest that legislation might benefit).”12 Next, “a district is contiguous if you can travel from any point in the district to another point in the district without crossing the district’s boundary.”13 Finally, populations of districts must be kept as equal as possible.

Unfortunately, very few state redistricting plans follow the last two criteria—partisan fairness and a lack of racial political considerations involved in the process of redistricting. “Individual districts...[are often] drawn to favor or disfavor candidates of a certain party, or individual incumbents or challengers.”14 As Whitford v. Gill demonstrates, majority-minority requirements in redistricting have been unclear for some time. “Partisan fairness” is not a strict enough criteria for state redistricting plans, which gives majorities the power to draw district lines in their favor, while minorities often lack this power. In addition, “redistricting has [also] been abused to dilute racial and ethnic minorities’ voice at the polls.”15 This brings up questions of access, and whether or not minority groups have the right to an equally weighted vote. However, Section 2 of the Voting Rights Act still offers some protection for voting rights in the future. Looking forward, Whitford v. Gill is poised to overcome past issues of vote dilution if it is appealed to the Supreme Court and the District Court’s decision is upheld. The three-part test for unconstitutional partisan gerrymandering approved by the District Court provides a judicable and manageable standard for redistricting cases. The Supreme Court should apply this standard to future redistricting cases, whether they involve partisan or racial gerrymandering. While partisan and racial gerrymandering target different groups of voters, they both result in vote dilution that could be effectively addressed by this standard.

**Wisconsin Gerrymandering and Whitford v. Gill**

Prior to this legal brief, six Cal Poly students enrolled in Voting Rights and Representation, taught by Professor Michael Latner, Ph.D., and completed a project where they gerrymandered the state of Wisconsin. The names of the collaborators were Evan Boogay, Annie Campbell, Jake Clark, Kelly Eaton, Sam Goldman, and Abby Bull-Windham. Their objective was to make Wisconsin's
eight congressional districts more Republican. The old congressional districts from 2010 were mostly Republican to begin with. Only two districts were Democratic, Districts 2 and 4.

Figure 1: Map of Republican Gerrymander of Wisconsin

Beginning with partisan demographics, the old districts had an average of 1,112,384 Republicans in the majority. There were an average of 999,946 Democrats. In terms of racial demographics, the old districts had a total population of 5,665,863, with a total of 4,719,502 White individuals in the majority. There were a total of 350,562 Black individuals, 335,096 Hispanic individuals, 129,248 Asian individuals, and 48,301 Native American individuals in the population. 83,154 individuals identified themselves as another ethnicity.
Figure 2: Table of Old and New Racial and Partisan Demographics of Wisconsin

Focusing on Districts 4 and 5, the group engaged in partisan gerrymandering in favor of the Republican Party to achieve their objective. Aforementioned District 4 was predominantly Democratic; District 5, Republican. Their gerrymandering technique was based on diluting the Democratic vote in District 4 as much as possible. They used a massive portion of District 5 to “crack” the Democratic vote in the city of Milwaukee, located in District 4. “Cracking” resulted in approximately 60,000 new Republican voters in District 4 who were originally in District 5. The group decided to leave District 2 as a Democratic district. To make District 2 Republican, the students would have had to drastically alter the contiguity of the district, which would have appeared extremely biased. Making the district appear fair, while not actually being fair, would have been nearly impossible in the amount of time they had to complete the project.

After gerrymandering the state of Wisconsin, seven new congressional districts were majority Republican, while only a single new district was majority Democratic. The eight new congressional districts were contiguous and of near equal populations. The new districts, excluding the Democratic District 2, contained between 51.58% and 59.28% Republican voters. District 4, which originally had 70.90% Democratic voters, had only 48.42% after gerrymandering. These Democratic voters were moved to District 5, which had a 46.66% Democratic vote compared to a previous 33.40% after gerrymandering. The districts were not the most compact; however, the effectiveness of the partisan
gerrymander justified the strange appearance of some of the new congressional
districts. Racial demographics remained the same in the new districts as in the
old districts. Partisan demographics reflected Republicans still in the majority.

Through the gerrymandering process, the racial composition of the districts
was altered. All of the congressional districts became majority White, between
63.90% and 93.90%. The Black, Hispanic, Asian, Native American, and other
populations were spread out among districts, effectively disintegrating their
voting power. Therefore, not only did the Republican gerrymander create par-
tisan inequality in favor of Republicans, it also created racial inequality. Thus,
the group concluded that district boundaries were extremely significant, and
that vote dilution could easily occur through gerrymandering.

In the recent case Whitford v. Gill, the Republican Party in Wisconsin did
effectively disintegrating their exactly what Boogay, Campbell, Clark, Eaton, Goldman, and Bull-Windham did
in their project. They enacted what was known as Act 43, governing the creation
of the state assembly district map. The result was a Republican gerrymander of
Wisconsin. The recent ruling on November 21, 2016, states that, “Act 43 was
intended to burden the representational rights of Democratic voters throughout
the decennial period by impeding their ability to translate their votes into legis-

ative seats. Moreover, as demonstrated by the 2012 and 2014 elections, among
other evidence, we conclude that Act 43 has had its intended effect.” Should
the Supreme Court find Act 43 to be an unconstitutional partisan gerryman-
der, in accordance with the District Court decision, it would be the first time
in history. It would result in the three-part test becoming the judicable and
manageable standard for partisan gerrymandering. The standard could extend
to racial gerrymandering as well. Until then, “partisan gerrymandering [will
increasingly become] the political choice for legislators to maintain power.”

It is likely that gerrymandering schemes like Act 43 will continue to threaten
equality in the future.

The Broader Landscape
“Currently, politicians are allowed to choose their own voters and draw voting
maps that are self-serving, at the expense of American voters and our democracy

16 Op. Cit., fn 10
17 The Campaign Legal Center, “Whitford v. Gill,” The Campaign Legal Center, N.d.,
18 Ibid.
as a whole.”\textsuperscript{19} For example, photo identification laws, as well as registration requirements, tend to discriminate against poor voters, minority voters, and Democrats. These measures have largely been justified by the intent to prevent voter fraud. However, there is little evidence that voter fraud exists. New York University School of Law warns, “We must be careful not to undermine free and fair access to the ballot in the name of preventing voter fraud.”\textsuperscript{20} They find, “Voter fraud claims reveal that voter fraud is very rare, voter impersonation is nearly non-existent, and much of the problems associated with alleged fraud in elections relates to unintentional mistakes by voters or election administrators.”\textsuperscript{21} But whether voter fraud is prevalent or not, it remains a form of vote dilution, and the Supreme Court must be careful in evaluating its effects.

Another voting rights issue is the exclusion of prisoners from voting, also known as felony disenfranchisement. “Forty-eight states prohibit current inmates from voting, 36 keep parolees from the polls, 31 exclude probationers, and only two—Vermont and Maine—allow inmates to vote.”\textsuperscript{22} Just like photo identification laws and registration requirements, felony disenfranchisement is a form of vote dilution that creates voter suppression. Denying felons the right to vote may be justified on the basis that they have broken laws. Yet, all methods of vote dilution are related in that they diminish the value of the individual vote. In a democracy, individual votes should have equal value no matter the individual. This is especially true in the United States, where government was founded upon notions of equality. As Reynolds Holding of Time states, “We should be finding ways to get more voters to the polls, not looking for excuses to keep them away.”\textsuperscript{23}

**Conclusion**

Vote dilution is often treated as “politics as usual.” However, it creates the serious problem of voter inequality, and any level of voter inequality should not be tolerated in democratic systems. Democratic voting implies the right to vote, but more importantly, the right to an equally weighted vote. This is

\textsuperscript{19} Op. Cit., fn 18


\textsuperscript{21} Ibid.


\textsuperscript{23} Op. Cit., fn. 23
why adopting a system of proportional representation may be the next step for the United States government in protecting voting rights. Until a system of proportional representation is put in place, recent cases like *Whitford v. Gill* are combatting vote dilution and establishing a judicable and manageable standard for gerrymandering. According to the First, Fifth, and Fourteenth Amendments, voting rights are a compelling state and federal interest that deserve protection by the Supreme Court. All things considered, the Supreme Court should apply strict standards when adjudicating questions of vote dilution. It goes without saying that it has been difficult to establish voting equality in the United States. There are still changes to be made before each individual in the United States has the right to an equally weighted vote. Getting there will require policy collaboration on both sides of the aisle and landmark decisions made by the Supreme Court. In the meantime, it is crucial to be aware of the issue of vote dilution in American politics and constitutional law; but more importantly, to be aware of its effects on electoral outcomes.
ANNA CONSANI is the Director of Community Partnership for Springboard Enterprises in Washington, D.C. She graduated from Cal Poly in 2009 with a degree in Political Science.
ALUMNI FEATURE

Anna Consani

When Anna first arrived at Cal Poly, she was not sure whether or not political science was the right path. However, after taking her first global politics course with Professor Shelley Hurt she realized where her passions lie. Anna values her concentration in global politics because it provided her with a greater understanding of the fundamentals of the world and how different cultures work together. She was taught “that cultures clash because they have differing truths and ideas behind the inner workings of society, and this is why it is so important to have broad perspectives in international relations.” She credits her education and her “Learn by Doing” experience in Model UN for providing her with skillsets in leadership, politics, and diplomacy.

While at Cal Poly, Anna applied for the highly competitive and coveted Panetta Institute Congressional Internship. The institute chooses one student from each CSU campus to work on Capitol Hill and the candidate is then assigned a California congressional member to assist for three months. The internship gave her the opportunity to conduct policy research in Washington, D.C. She recounts being briefed on the importance of maintaining government spending in the defense sector by Secretary Leon Panetta, the former head of the CIA and Secretary of Defense in the Obama Administration. Anna says
that her time at the Panetta Institute instilled in her a deeper appreciation for national politics.

Anna returned to Cal Poly for her final quarter and quickly became involved with Elect Her, an organization that takes applications from schools across the country and provides women with the necessary tools to run for office later on in life. She combined quantitative and qualitative research methods to help improve the Elect Her outreach program. This provided a new momentum for Anna, who now hopes to one day run for office. After graduating, she moved back to the Bay Area where she worked with Representative Jared Huffman. Her experiences in Representative Huffman’s office helped her realize the difference between a D.C. office and the local government office, which was mostly concerned with case-by-case issues rather than policy issues.

Anna wanted to challenge herself and become directly involved in national politics. She says that Washington, D.C. drew her because there are people from all over the country with differing perspectives. Anna strongly believes that the more people you can meet and learn from, the more likely you are to develop strong leadership skills. Her past experiences working in both local and national legislative offices left her wanting to approach politics from a new angle. After arriving to D.C., Anna began working for the start-up Spring Board Enterprises as the Director of Community and Partnership. Spring Board Enterprises concerns itself with the women in the tech industry, and Anna’s job is to help women leaders foster partnerships and capital growth with local governments and agencies. She has gained an entirely new skill set in entrepreneurship, and combined it with her experience in politics to help women access Capitol Hill.

By challenging herself to work outside of her comfort zone for a tech start-up, combined with the knowledge of a political science student, Anna has helped pave a path for those looking to pursue a career outside of the classic political science field. She advises current Cal Poly political science students to get involved in whatever industry they feel most passionate about, no matter what realm of politics one is trying to enter. She states that when you want to change the landscape of an industry, “one must get involved and understand the posed challenges. The best way to enter politics is by being exposed to a wide variety of industries that help shape the policies that one finds most intriguing.”
CONTRIBUTOR BIO

STEPHEN RICHARDSON is a third year political science student, concentrating in pre-law, and is a member of the Cal Poly Marksmanship Club. Stephen is a Marine veteran who was stationed in Okinawa, Japan from 2009-2011. Stephen hopes to eventually pursue a career in international law or diplomacy focused in national security.
“It’s the answer spoken by young and old, rich and poor, Democrat and Republican, Black, White, Hispanic, Asian, Native American, gay, straight, disabled and not disabled Americans who sent a message to the world that we have never been just a collection of individuals or a collection of red states and blue states. We are, and always will be, the United States of America.”

— Former President Barack Obama’s 2008 Victory Speech

Former President Barack Obama most likely did not foresee how ironic this quote would become when he took the stage in Chicago after his historic 2008 election. Americans are now more divided and polarized than he could have imagined. Cultural divisions and political partisanship have been reaching fever-pitch, as a wave of populism has swept through Europe and the United States, fanning fears of demagoguery. With Brexit in the United Kingdom, and President Trump’s shocking victory in the US, many mainstream observers fear that fascism is both spreading through and threatening liberal democracies.¹

¹ Sheri Berman, “Populism is not Fascism: But it Could Be a Harbinger.” *Foreign Affairs*, December, 2016, 39.
Fascism is profoundly different than populism, and attempts to claim that recent events equate to fascism are exaggerated and incorrect. Nonetheless, concerns regarding economic insecurity, demographical shifts, anxieties over migration, and a cultural backlash from dominate groups who are losing influence and power has led to the emergence of populism. Populism is not the threat, but rather is symptomatic of issues facing liberal democracies. The exploitation by Mr. Trump of these issues were both the proximate and ultimate-factors that led to his victory. However, there are actions that may be taken to address these issues and thereby quell the spread of populism.

**Populism, not Fascism**

Given the controversial platforms of many Populist Parties, such as nativist sentiment, the incendiary rhetoric, and the questionable history of some populist leaders, it is understandable that the term “fascist” is prone to abuse. But questions arise over the fairness and accuracy of its application. In “Populism Is Not Fascism,” Sheri Berman says, “‘Fascist’ has served as a generic term of political abuse for many decades, but for the first time in ages, mainstream observers are using it seriously to describe major politicians and parties.”\(^2\) This term is usually directed at conservatives in an effort to quickly discredit them, regardless of whether or not the conservative in question is even a radical. Ultimately, the term has become abused and as such, robbed of its power which once evoked dread and fear. “Fascist” is a potent term used to describe a very serious and frightening political ideology. What some refer to as fascism in the modern sense is populism, and the two terms should not be used interchangeably. While they may be similar, they are indeed distinct and signify two different political realities.\(^3\) As Berman notes, “Right-wing populism – indeed, populism of any kind – is a symptom of democracy in trouble; fascism and other revolutionary movements are the consequence of democracy in crisis.”\(^4\)

The similarities between populism and fascism are less significant than their differences. The Foundation and Manifesto of Futurism, published in 1909 by Italian poet and futurist Pillippo Tommaso Marinetti, serves as the ideological bedrock of fascism.\(^5\) The Manifesto expressed the voice of many disillusioned

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and angry Italian men who felt antagonized by: invasive bureaucracy of the young Italian state, unwanted social change, and servitude to a rich minority.\textsuperscript{6} Their resentment turned grim in a yearning for “vengeful violence against the establishment.”\textsuperscript{7} Many, including non-Italians, were attracted to the cause by the allure of physical and sexual dominance.\textsuperscript{8} The futurists proclaimed,

“We want to glorify war – the world’s only hygiene – militarism, patriotism, the destructive act of the anarchists, the beautiful ideas for which one dies, and contempt for women. We want to destroy museums, libraries and academies of all kinds, and to fight against moralism, feminism, and every utilitarian or opportunistic cowardice.”\textsuperscript{9}

It would be dishonest and unfair to equate or compare this sentiment to that of modern populist leaders such as Mr. Trump, Marine Le Penn of France and Prime Minister Theresa May of the United Kingdom. Modern populists are nowhere near as extreme nor as frightful as fascist leaders and movements of the past. The two ideologies are plainly distinct, and the two ultimately aim for different goals.

**Defining Fascism**

Fascism is a revolutionary political ideology\textsuperscript{10} that advocates a unitary-authoritarian government centered on a single dictator.\textsuperscript{11} Fascists seek to reverse decadence and rejuvenate the “nation” through aggressive polices that “cleanse, purify, and redeem” the prescribed community.\textsuperscript{12} Ultra-nationalism permeates into all fascism’s facets, purporting that the nation is a living organism whose health is determined by the purity and homogeneity of its demographics.\textsuperscript{13} Fascist leaders recognized that this concept of a nation is a myth however, rooted entirely in

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\textsuperscript{6} Ibid.
\textsuperscript{7} Mishra, “The Globalization of Rage,” 47.
\textsuperscript{8} Ibid.
\textsuperscript{9} Ibid.
\textsuperscript{12} Blamires and Jackson, *World Fascism*. 2-3.
\textsuperscript{13} Blamires and Jackson, *World Fascism*. 2-3.
the mythos of their own thinking. Socially and politically, fascism is highly collectivist, putting the needs of the State before everything else, while subjugating the individual. In fact, the fascist claims that individuals exist only to serve the State and greater good, or otherwise have no right to life. Fiscally, fascism is corporatist, preserving private property, profits, and initiative – but under the watchful eye of the State which sets many guidelines and regulations. This marriage between the State and economy serves to merge the interests of the State, employers, employees, suppliers, consumers and each socioeconomic class. Fascist thought is grounded in masculism, Social-Darwinism, the glorification of violence, and a fascination with both killing and death. Warfare is depicted in romantic terms, and is seen as the highest expression of man, where death in battle is the most honorable passing. The goal of fascism is to destroy both liberal democracy and capitalism, while violently uprooting the international order, which is embedded with hostile “others” who supposedly threaten the very existence of the nation. The fascist yearns for adventure and danger, in a never-ending quest to prove himself while fighting for the cause, and battling the enemies of the nation. The extreme nature of fascist mythos establishes a quasi-Religious essence, steeped in ultra-patriotism that resulted in the near worship of fascist dictators, the state and their conception of the nation.

Modern populist thought has essentially none of these characteristics, while modern populists themselves have made no such claims, and have aired no such

14 Laquer, Fascism: Past Present and Future. 25.
16 Ibid. at 33.
17 Blamires and Jackson, World Fascism. 188-189.
18 Ashton, The Fascist: His State and His Mind. 31.
19 Blamires and Jackson, World Fascism. 188-189.
20 Ibid.
22 Blamires and Jackson, World Fascism. 717.
23 Ibid.
25 Mosse, The Image of Man. 156-158.
26 Ibid.
27 Berman “Populism is not Fascism.” 39.
28 Ibid.
29 Berman “Populism is not Fascism.” 39.
31 Ashton, The Fascist: His State and His Mind. 34.
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desires. Instead, their stated goal is to improve democracy, so all have a voice and the “silent majority” is heard, rather than ignored by corrupt elitists’ own agenda. The fascist claims to know what is best for the people and so speaks on their behalf, while the populist claims to speak for the people, in order to magnify their voice. Ultimately, it is expected that a populist veering from a stated path would draw criticism, however, a fascist doing the same would suppress such criticism. Mr. Trump is being criticized and even abandoned by some of his populist supporters, like Nigel Farage of the U.K. and Marine Le Penn of France, for his decision to strike a Syrian airbase on April 6, 2017. Mr. Trump retaliated against Syrian President Bashar Al-Assad due to his order for the use of chemical warfare agents on civilians. This action is claimed to be a violation of his campaign promises by Mr. Trump’s supporters. Ironically, Mr. Trump’s most vocal critics have been white nationalists who oppose military-adventurism, which is a notable departure from fascist’s aggressive militarist instincts. Some of these critics feel betrayed by Mr. Trump’s decision, because they perceive this as a departure from their own interests and promises broken, while some of Mr. Trump’s traditional critics have praised his decision. The fact that Mr. Trump’s supporters both at home and abroad openly criticize this as a departure from his populist platform is significant.

While modern populist leaders such as Mr. Trump and Marine Le Penn are anti-liberal, they are not anti-democratic, which is a crucial distinction. A significant difference between fascism and populism is the broader political

32 Berman, “Populism is not Fascism.” 39.
33 Ibid.
37 Ibid.
38 Ibid.
40 Berman, “Populism is not Fascism.”
context. Fascism only arises in times of crises and devastation, the likes of which the west has come nowhere near to facing since the 1930’s.

**Defining Populism**

Populism is hard to define as there is considerable debate over what it is – an ideology, a creed, a political movement or marketing ploy or a mixture thereof. Michael Kazin, a historian from Georgetown University, states: “populists are praised as defenders of the values and needs of the hard-working majority and condemned as demagogues who prey on the ignorance of the uneducated.” Populists have arisen in times of grievances, where large swaths of the electorate were made insecure by “an economic system that favors the rich, fear of losing jobs to new immigrants, and politicians who care more about their own advancement than the well-being of the majority.” The American experience has given us two types: the leftist variety, and the rightist variety. The first was exemplified by the “People’s Party,” formed in the late 19th century, which sought to liberate the political system from the poisoning influence of money in politics. The “Bernie Sanders Revolution” is a reincarnate of this strain, representing cosmopolitan middle and working class values. Senator Sanders’s rhetoric echoes the words of Ignatius Donnelly’s keynote speech at the People’s Party founding convention in 1892: “we seek to restore the Government of the Republic to the hands of the ‘plain people’ with whom it originated.” The second was founded in the same era by Denis Kearney, a nativist labor leader calling his party the “Workingmen’s Party of California” (WPC). This party was known for xenophobic sentiment and scorn towards the wealthy elite. The WPC sought to bar Chinese and Japanese laborers from immigrating to the US, out of concern for the middle and working class, who Kearney claimed

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41 Ibid.
42 Ibid.
45 Ibid.
47 Ibid.
48 Ibid.
49 Ibid. at 19.
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were being sold-out and abused by a “bloated aristocracy.” It is this strain of populism that Mr. Trump and populist leaders in Europe, such as Marine Le Penn, are echoing.

In the modern sense, a populist is someone who: “claims that they alone represent ordinary people, present themselves as outsiders challenging corrupt elites, maintains direct links to their followers through rallies, television, social media etc.” and prioritizes election results over other aspects of democracy – arguing that winning elections grants wide discretion in governing. Mr. Trump, and other modern populist, embodies many if not most, of these characteristics. Demographical factors caused by mass-migration, cultural shifts, and the socio-economic degradation of middle and working classes contribute to the awakening and spread of populism sweeping across Europe and America.

Populism on the March

In his article, “Populism on the March” from Foreign Affairs, author Fareed Zakaria articulates the present state of populism, where it came from, and why it is occurring in America. Zakaria notes that economic status no longer serves as a reliable predictor of how an American will vote, but instead cultural issues and identity have moved to the forefront. This largely stems from an economic stasis faced by the western world over recent decades, which has blurred the lines between economic classes. This is partly due to the advances and changes attributed to globalization. At first, markets, goods, and services were what became globalized, but now people are becoming globalized at unprecedented rates. Globalizing the markets does not necessarily affect the daily life of average citizens in obvious ways, but when demographics are changed accompanying shifts are more noticeable, more pervasive, and inevitably become more entrenched. Pervasive shifts in demographics and culture are bound to produce a backlash from the “losers” of such, especially if

51 Ibid.
54 Ibid.
55 Ibid.
56 Ibid 12.
57 Ibid.
they were a once culturally-dominate demographic, as blue-collar Americans considered themselves.

In “Trump, Brexit, and the rise of Populism,” Ronald F. Inglehart and Pippa Norris submit a thesis strikingly similar to Zakaria’s as the intersection of economic insecurity and a cultural backlash is likely what breeds populism.58 The negative effects of globalization mentioned by Zakaria are compounded by wage stagnation and increasing economic inequalities that have been plaguing Western democracies in recent decades.59 Job security for blue-collar Americans has only become more questionable, while multi-national corporations seemingly never cease to find success.60 Thus it would appear to many blue-collar Americans that corporations are benefiting from the very conditions that harm them.61 Meanwhile the government suspiciously appears either unwilling or unable to curb the flow of immigration, which worsens economic anxieties.62 Inglehart and Norris explain the “economic inequality argument,” by stating:

“…economic vulnerability is conducive to in-group solidarity, conformity to group norms, and rejection of outsiders. When threatened, groups are thought to seek strong, authoritarian leaders to protect them from what are perceived as dangerous outsiders seen as threatening jobs and benefits.”63

Thus, large swaths of the American public are sensitive to economic uncertainty while simultaneously insecure about cultural change from foreigners and the progressives who embrace them.

To address this, policy makers are thus compelled to act, but are greatly limited by the constraints of “demographics, globalization, technology and budgets.”64 The most feasible options are incremental reforms such as increased investments

59 Ibid. at 10.
61 Ibid.
62 Ibid. at 10-11.
63 Ibid. at 11.
64 Zakaria, “Populism on the March.” 12.
in the public, improved job revocation training, and health care reform. But slow progress is frustrating to many voters who want quick results and dramatic solutions. Their frustration turns into demands for a bold leader who is willing to exercise decisive action and is capable of bypassing the stagnate political order. Voters in the U.S. and U.K. have been in this bind for years, and now it appears that something similar is occurring in France and Germany. When this frustration and pain is widely felt – a populist candidate steps in to exploit the situation. In the United States, this individual was Mr. Trump, who had been watching and monitoring the American people from the sidelines for years.

The Emergence of the Trump Era

Mr. Trump exercised a sort of political-genius in pinpointing his future base, and identifying their grievances. More importantly, his timing was impeccable. Fittingly, the first major issue Mr. Trump decided to take on while campaigning was immigration. This issue seemed to be the most incendiary of them all given the modern realities of terrorism, long-standing tensions over illegal-immigration in the US, and the demographical shifts in Europe. Immigration is a major concern in the United States for many reasons, and as in other countries, the systems for integrating immigrants are buckling due to overwhelming strains. There were approximately 250 million international migrants in 2015, 65 million of whom were forcibly displaced, and 76 million of whom migrated to Europe. This makes the migration during the late 19th and early 20th centuries a drop in the bucket in comparison given that the United States received 20 million immigrants from Europe between 1880 and 1920, and far fewer from East Asia. Lack of integration inevitably leads to identity issues in the form of in-group and out-group rivalries. This may instigate further furor by pundits or

66 Ibid.
69 Ibid.
70 Ibid. at 15.
71 Ibid. 14.
politicians who are eager to exploit already present fears and anxieties. Justin Gest, a public policy professor at George Mason University, found that 65% of White Americans polled said they would support a political party dedicated to “stopping mass immigration, providing American jobs to American workers, preserving America’s Christian heritage and stopping the threat of Islam.” Gest concluded that Mr. Trump is temporary and reactionary, yet “Trumpism” is something that will outlast Mr. Trump himself.

Many find comfort in knowing that Mr. Trump is temporary, but many others find it perplexing that he was elected at all. Given his apparent character flaws, controversial history, unfiltered-unrefined-and-incendiary speech, it would be troubling if Mr. Trump could actually be elected because of immigration, xenophobia, racism, and a fear of terrorism. The truth is much more complicated, as populist sentiment became popular with Americans who were “disgusted with the corrupt establishment, incompetent politicians, dishonest Wall Street speculators, arrogant intellectuals, and politically correct liberals,” not just nativists and sexists. These concerns were among many, thus, created a peculiar socio-political environment that placed great burden and stress on ordinary folk. Much of the American public therefore turned to the drastic solution of an “outsider” who claims to know the pain of the people and the solutions, no matter how controversial they may be. Mr. Trump seemed to fit the profile of what many American voters were looking for, and he would continually affirm this on the campaign trail.

Why Trump is Winning

At the beginning of the election cycle Mr. Trump was a laughing stock and treated as a nuisance to the crowded field of the GOP. His shocking victory took almost everyone by surprise, proving to be even more perplexing when it became apparent that Mr. Trump had won over millions who voted for Former President Obama. Many were quick to point out what was self-evident to

them - that sexism and racism were the driving factors. While these two factors certainly were in play, it is disingenuous to write off a victory with such terms. Speaking at the 2017 Sister Giant Conference in Washington, D.C. on Feb 2, Senator Bernie Sanders aired his annoyance with this line of reasoning. In a frustrated tone, he said “Trump’s victory was not a victory for Trump or his ideology. It was a gross political failure of the Democratic Party… if you think everyone who voted for Mr. Trump is a racist or a sexist or a homophobe, you would be dead wrong.” 79 The underlying message from Senator Sanders was that pervasive sexism and racism did not win over Obama voters, but rather, the Democratic Party failed to reach-out to them.

Another explanation for Mr. Trump’s victory is the hotly contended issue of Russia’s interference with the election; however, claims that this affected the outcome are difficult to substantiate. Secretary Clinton has stated that the media fallout over the John Podesta and Democratic National Convention email hacking was a decisive factor in her loss. 80 She further stated that the untimely letter from FBI director James Comey to congressional Republicans alerting them of a reopened investigation into her alleged misuse of a personal email server cost her “several swing states.” 81 Much of the mainstream media echoed Secretary Clinto’s explanation, and social media was buzzing with this same narrative. The swing states referred to are those in the “rust belt” which is considered a valuable segment of the “blue wall,” in that every Democratic presidential candidate since 1992 had won those states. 82 Ohio should not be lumped into this “lost coalition” for Secretary Clinton, since Mr. Trump won that state by 8.1%, whereas Michigan, Pennsylvania and Wisconsin were won by only .3%, .7%, and .7%, respectively. 83

81 Revesz, “Hillary Clinton blames Russia hacking and FBI director James Comey for her election loss.”
82 Nate Silver, “There is no ‘Blue Wall’,” FiveThirtyEight, May 12, 2015. https://fivethirtyeight.com/features/there-is-no-blue-wall/
It is a hard case to make that the slim victories were nudged by media fallout, given that those blue states were already turning red. Commentators such as Nate Silver had been warning for over a year prior to the election that the Democratic “blue wall” was crumbling due to recent trends that were being ignored, and it appears he was right all along. This trend was further aided by Mr. Trump’s opportunism. Secretary Clintons exacerbated this trend in neglecting those states, save only Pennsylvania, because she took them for granted. Her extensive efforts in Pennsylvania were futile due to a cultural backlash from blue-collar voters who expressed strong economic pessimism and anxiety over the cultural change in America. This change is largely attributed to Democrats, whom Secretary Clinton personified, and the increased pervasiveness of progressive cosmopolitan values. This is an objective factor that one does not hear from the Democratic establishment, nor leftist pundits. Secretary Clinton lost the voters of those blue-states though her own efforts (or lack thereof) and those of the Democratic Party, and making claims of Russian influence are unneeded and dubious at best. To be sure, the Democratic Party lost votes due to the media fall-out, especially among supports of Senator Sanders. The key factors to consider however are; the number of votes lost, and in which states they were lost. In these states, it seems clear enough that Secretary Clinton was going to lose anyway, namely because of a blue-collar backlash. If it were to be conceded, for the sake of fairness, that she would have won Michigan (lost by .3%) and Wisconsin (lost by .7%) if not for the email hack and James Comey letter, the result of the election remains the same.

84 Edward McClelland, “The Rust Belt was turning red already. Donald Trump just pushed it along.” The Washington Post, November 9, 2016
85 Silver, “There is no ‘Blue Wall.’”
86 McClelland, “The Rust Belt was turning red already. Donald Trump just pushed it along.”
88 Ibid.
89 Brownstein, “How the Rustbelt Paved Trump’s Road to Victory.”
Mr. Trump winning the male vote is evidence that gender was a factor in his win.\textsuperscript{91} Furthermore, whites were the only race in which Trump won both male and female voters, making race an apparent factor as well.\textsuperscript{92} Neither of these facts, however, are as telling as they appear. While Mr. Trump won the male vote, it was not by a huge margin. Mr. Trump won 53\% compared to Secretary Clinton’s 41\% which is strikingly similar to past elections: Mitt Romney’s 53\% to Former President Obama’s 45\% in 2012; President George W. Bush’s 55\% to John Kerry’s 44\% in 2004; and the most similar, President Bush’s 53\% to Vice President Al Gore’s 42\% in 2000.\textsuperscript{93} Since 2000, the only election that saw a near-even split among the male vote was between Senators Barack Obama and John McCain in 2008 with 49\% and 48\%, respectively.\textsuperscript{94} While Mr. Trump’s 12-point spread was the largest of these elections, it was not terribly so, and follows the pattern of recent trends. Given this fact, the claim that gender was a decisive factor in Mr. Trump’s win is doubtful, at best.

Race, too, seems like an obvious answer but again the data hardly supports this. Non-white women and men, whether educated or not, are less trusting of Secretary Clinton than whites of the same category.\textsuperscript{95} It might be tempting to dismiss this as an irrelevant factoid, but the voting results do not reflect the hysteria of racism allegations. Trump did better with each minority group than Mitt Romney in 2012, and better with the Black vote than Senator John McCain in 2008.\textsuperscript{96} In fact, the only race that Mr. Trump did worse with than Romney was the white vote, ironically.\textsuperscript{97} While it is true that Mitt Romney’s performance with minorities is not exactly the gold standard for Republican candidates, the fact that he did worse in that regard than Mr. Trump discredits the race argument. Russian interference, gender, and race certainly played a role in Mr. Trump’s victory, but in reality, these were mere proximate-factors. In order to properly analyze the Presidential election results, ultimate-factors must be examined. These ultimate-factors include; demographics, the troubled

\textsuperscript{91} Jon Huang et. al, “Election 2016: Exit Polls.”
\textsuperscript{92} Ibid.
\textsuperscript{93} Jon Huang et. al, “Election 2016: Exit Polls.”
\textsuperscript{94} Ibid.
\textsuperscript{96} Jon Huang et. al, “Election 2016: Exit Polls.”
\textsuperscript{97} Ibid.
state of the Democratic Party, a backlash against the American left, Middle America’s resentment, and legions of disillusioned Americans.

**Demographics**

Mr. Trump emerged victorious because he paid close attention to a crucial detail that was overlooked by the Democratic Party: demographics. The Democratic Party pursued a platform of inclusivity and diversity in order to appeal to a broader base and to keep pace with social change, yet they overlooked the white working-class. The Democrats underestimated how much of their base was made up of this principle demographic, thinking that their gains with minority votes would make up for the white votes they were losing to Mr. Trump, and they were wrong. The party seemed unaware of the extent to which Middle America was repulsed by their cosmopolitan liberal message, inadvertently pushing them into the arms of populist rhetoric. Perhaps, Democrats were insulated by their mainstream success in the media and favorable polling. Secretary Clinton had an overwhelming number of supporters, yet her voting base is concentrated in “Mega-Cities,” those with a population of over 5 million. Secretary Clinton won the major population centers by the greatest margins in recent Democratic history, towering over of Mr. Trump by 30 points in almost every Mega-City. Once all the votes were counted, it became apparent that she had won the 100 most populous counties by an impressive 12.6 million votes – the greatest spread in any Presidential election. The numbers are not enough however, as a geographical dimension is critical to understanding the American electoral process.

Due to how the Electoral College is designed, a presidential candidate must have broad support among many states in order to win enough electoral votes to secure the presidency. States win the election, not the popular vote. Secretary Clinton had the numbers, but she did not have the broad state support. The Democratic coalition had failed to entice the diverse voting block it thought it had among less populated counties, namely in rural America. Amongst a

98 Cohn, “Why Trump Won: Working-Class Whites.”
99 Ibid.
101 Ibid.
102 Brownstein, “How the Rustbelt Paved Trump’s Road to Victory.”
103 Trende and Byler, “How Trump Won: Conclusions.”
104 Brownstein, “How the Rustbelt Paved Trump’s Road to Victory.”
sea of red-counties in the nation’s interior, there were blue islands from where Secretary Clinton could find support, but everywhere else, only contempt. An exemplification of this was her devastating “oops moment” at a CNN town hall on March 13, 2016 where she failed to properly articulate what she meant by: “we’re going to put a lot of coal miners and coal companies out of business.” Regardless of the message she intended to convey, Clinton ended up alienating huge swaths of blue-collar America with that singular comment. In rural America, the Clinton name became a byword for unwanted change and economic hardship. This ensured that she would not get the blue-collar vote, which is one of the biggest in the country and the most geographically widespread. Instead, these voters would turn to those who claimed to speak for “ordinary folk” and who would exalt their virtues where rhetoric coincides with the march of populism. On a geographical basis, Secretary Clinton simply had little support and many enemies – many of whom were flocking to Mr. Trump. Mr. Trump appealed to a geographically broader base of Americans than Secretary Clinton, who has been accused by this same base of either ignoring or alienating them.

These demographic and geographic facts reveal an America deeply divided. Americans have usually been divided along ideological party lines, especially during contentious election seasons, but this election has revealed the division between city and country, and urban and rural. Ultimately, Americans are now sharply divided on three fronts: ideology, culture, and geography. Mr. Trump and Senator Sanders were the only candidates astutely aware of this, and sought to exploit the issue. Secretary Clinton ultimately failed to capitalize on much of the pain felt by her base and instead alienated large swaths of the American voters, whether Democrat, Republican, or neither. Such a failure is emblematic of wider problems that the Democratic Party is facing.

109 Brownstein, “How the Rustbelt Paved Trump’s Road to Victory.”
Democratic Party in Trouble

There are a growing number of disillusioned Democrats who are either leaving the party, voting elsewhere, or not voting enthusiastically. The content of John Podesta's emails, released by WikiLeaks, revealed that the party was being run by elitists, the corrupted wealthy, and snobbish career politicians who were becoming increasingly out-of-touch. Even before this revelation, however, Michael Moore had warned of the “Depressed Bernie Voter” who would negatively affect the outcome of the election by dropping their support for the Democratic candidate. Moore warned that this would result in a net-loss of campaign volunteers, activists, and enthusiastic voters who are more likely to encourage others to vote. After deferring to Secretary Clinton, and initially refusing to criticize the Democratic Party, Senator Sanders has finally opened up about his true feeling towards the party; disappointment and frustration. He stated, “there are people in this country who are hurting, and they are hurting terribly… and for years they looked to the Democratic Party, which at one time was the party of working people, and they looked and they looked and they looked and they got nothing in return. And out of desperation, they turned to Mr. Trump.” The Democratic Party has lost touch with its roots and sold-out to big-business and Wall Street, which is a sharp contrast to its historic leanings as “The Party of the People.” Many who were disillusioned with Democrats looked for someone who would speak for them, the “ordinary” Americans. Some found a voice through Libertarian candidate Gary Johnson and Green Party candidate Jill Stein, but as Senator Sanders said, many turned to Mr. Trump.

The Democratic Party is split, and a growing number are dissatisfied with the establishment. This can be seen with the controversial election of Representative Nancy Pelosi as House Minority Leader, which has shown deep divisions within

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112 Moore, “5 Reasons Trump will win.”
113 Moore, “5 Reasons Trump will win.”
114 Sainato, “Bernie Sanders Finally Blames Establishment Dems for T urmp Victory.”
115 Ibid.
116 Sainato, “Bernie Sanders Finally Blames Establishment Dems for Turmp Victory.”
the party itself.\textsuperscript{117} Cenk Uygur, famous for his non-mainstream progressive commentary via The Young Turks video series, launched the “Justice Democrats” campaign a week after Mr. Trump’s inauguration in order to uproot “corporate democrats” and replace them with “true” progressives.\textsuperscript{118} The new wing of the party is falling behind Senator Sanders and now spurred by Representative Pelosi’s election, taking aim at the establishment.\textsuperscript{119} It is too early to see if this wing will prove to be effective, but the Democratic Party is in need of sweeping reform and a break from the status quo. If the fracturing of the Democratic Party is not enough of an incentive to reform, then a broader backlash should be.

**Backlash Against the Left**

An overlooked factor in the election’s outcome is the general sense of anger towards the American left. On one hand, there is a cultural-backlash from traditionalist Americans who feel their values and ways of life are under siege by the politically correct and cosmopolitan values of modern progressives.\textsuperscript{120} On the other hand, there is a broader and less serious backlash against modern liberal discourse, which seems consumed by social justice and identity-politics.\textsuperscript{121} Even broader is the perception of liberals’ smugness, which has increasingly become a turn-off for many Americans.\textsuperscript{122} Often times, especially on social media, disagreeing with a progressive talking point is an invitation to scorn, belittlement, and even harassment. This has pushed many away from the left and into the arms of Mr. Trump who openly condemns this phenomenon.

Years of needless antagonization over singular issues drove away many would-be-allies of the progressive cause, some of whom were angry or even
infuriated by the kind of belittlement and harassment they had received. British anti-Islamist activist Maajid Nawaz took issue with this in his 2012 book, *Radical: My Journey out of Islamist Extremism*, where he coined the term “regressive left.” He describes “regressive leftists” as “well-meaning liberals and ideologically driven leftists” who naïvely and “ignorantly pandered to” Islamists, aiding the acceptance of Islamist ideology, while reactively harassing those who are critical of it. The term is used more broadly today in reference to reactionary social justice activism, after being popularized by commentators such as Bill Maher and Dave Rubin, and academics such as Richard Dawkins and Sam Harris.

Bill Maher, the controversial “politically incorrect” comedian has taken issue with this facet of American liberalism for over a decade now, but more so recently. He has gone so far as to blame Secretary Clinton’s loss on those leftists who antagonized too many, in zealous fits of outrage. While previously being interviewed on Maher’s show Real Time with Bill Maher in October, 2015, Richard Dawkins expressed similar disdain towards these “regressive leftists” for smug attitudes, abrasive tactics, naivety, and hypocrisy on key issues. Sam Harris, a neurologist and philosopher, was harassed for months after actor and filmmaker, Ben Affleck, accused him of racism while Harris and Maher were criticizing Islam on Real Time. For that same conversation, students from the University of Berkley started a petition to disinvite Bill Maher from speaking at the University’s graduation ceremony in 2014, accusing him of being a “racist and bigot.”

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123 Hanson, “Why Trump Won.”
125 *Ibid*.
from itself, because mainstream modern liberal discourse has betrayed what liberalism once stood for.\textsuperscript{131}

Adding to this sense of ideological abandonment, the tactics used by so-called “Regressive Leftist” further alienated both centrist and moderate leftist. By engaging in abrasive and at times, crass tactics, this faction has attracted widespread criticism and even condemnation from many who either identify as leftist or used to.\textsuperscript{132} As exemplified by Secretary Clinton’s “basket of deplorables” label, this pushback was either ignored by the Clinton Campaign, or simply written off as venting from bigots, racists, sexists, xenophobes, and/or the resentful white male.\textsuperscript{133}

**Middle America’s Resentment**

It goes without saying that Mr. Trump won the angry vote, given that 77\% of those feeling angry towards the federal government voted for him, compared to 18\% voting for Secretary Clinton.\textsuperscript{134} More important than the angry vote, however, was the “resentful white male.”\textsuperscript{135} Michael Moore had also warned about this demographic; suggesting that it was their last stand, and were no longer willing to tolerate the urban and politically correct message of the Democratic Party.\textsuperscript{136} “White America” (Middle America) had largely felt ignored and left behind during the first two years of the Obama presidency, turning frustration from losing the 2008 election into fury.\textsuperscript{137} This was exemplified through the Tea Party’s sweeping victories in the 2010-midterm elections, which took control of the U.S. House of Representatives, and six more Governorships, delivering a devastating defeat to the Democratic Party.\textsuperscript{138} The antagonistic relationships between the Tea Party, the Republican establishment, and the Democratic Party,

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\textsuperscript{131} Sam Harris, “Can Liberalism be Saved from Itself?” \textit{SamHarris.org}, October 7, 2014. https://www.samharris.org/blog/item/can-liberalism-be-saved-from-itself
\textsuperscript{132} Hamilton, “Liberals Are Starting To Reject Leftist Identity Politics. Time To Unite Against It.”
\textsuperscript{133} \textit{Ibid.}
\textsuperscript{134} Huang et al, “Election 2016: Exit Polls.”
\textsuperscript{136} Moore, “5 Reasons Trump will win.”
\textsuperscript{138} Kirk et al. “Divided States of America.”
\end{flushright}
is indicative of deepening divisions within the country itself.\footnote{139} Through the Tea Party, and more recently Mr. Trump, the resentful white male has made it clear that he will no longer be ignored.

**Disillusioned Americans Were Ignored — Trump Listened**

Under the leadership of Former President Obama, the Democratic Party embarked on a mission to rebrand the country, heal divisions, and create a more inclusive and liberal order.\footnote{140} For any number of reasons, many Americans were hesitant to comply, and skeptical of the need to do so. Many were more interested in working on issues like the economy and reforming politics in the capital, with little concern for socially progressive issues.\footnote{141} The concept of political correctness was making in-roads due to the mainstream success it was achieving in the media.\footnote{142} This was akin to an insult-added-to-injury, as many felt they could not escape scorn even in their own homes, because using the Internet and watching TV was an invitation to criticism and mockery.\footnote{143} Many conservative white Americans who already felt disaffected with the Obama administration found no quarter with the corrupt and out-of-touch Republican Party. To many, it felt as if the country and the government was turning on them, and the indignation this inflamed became too much to bear.\footnote{144} The Democratic Party did not listen to them and the Republican Party did not listen, so many felt that they did not truly have a voice. This changed when Mr. Trump seized an opportunity, and exploited angry public sentiment to suit his own cause.

In early 2011, tensions were high in the capital, as they were across the country. On April 13, 2011 Former President Obama gave a speech to Congress in which he decried Representative Paul Ryan’s proposed economic plan, not knowing that Ryan himself was sitting in the front row.\footnote{145} The Republican establishment, the Tea Party, and much of the far-right were outraged by this insult, and so the uneasy relationship between the two sides reached a boiling point, turning into an outright political war.\footnote{146} Mr. Trump, who had been sitting

\begin{footnotes}
\item[139] Ibid.
\item[140] Kirk et al. “Divided States of America.”
\item[142] Ibid.
\item[143] Ibid.
\item[144] Sainato, “Bernie Sanders Finally blames Establishment Dems for Trump Victory.”
\item[145] Kirk et al, “Divided States of America.”
\item[146] Ibid.
\end{footnotes}
Stephen Richardson

on the sidelines looking for a controversy to exploit—had finally found one. Mr. Trump used his celebrity status to exploit the issue and in doing so, created a foothold in the political arena. He capitalized on the anger towards Former President Obama by giving air to the “birther conspiracy,” in which many from the far-right fringe questioned whether Mr. Obama was truly born a U.S. citizen. With Mr. Trump peddling it, this conspiracy theory would become mainstream overnight. Mr. Trump knew that many Americans, namely white and conservative, questioned the legitimacy of Former President Obama, so he took it upon himself to vocalize this grievance on behalf of the many. He initially found little success, but plenty of criticism.

Years later in 2015, Mr. Trump announced his candidacy in an already contentious election. With his straightforward talk, anti-political correctness sentiments, and unconventional style, Mr. Trump brought something new to the political arena. Many Americans who were fed up with both parties, the direction the country was headed, and economic woes would soon find a voice through Mr. Trump. He openly rejected political “rules,” decried social norms that censored unsavory speech, lambasted his opposition in an unconventional manner, and refused to apologize for any of it. While the media, both parties, and much of the public was taken aback by this, many greeted it with relief. The political climate seemed too much like an artificial game that was played by careerist politicians for their own benefit, at the expense of every day Americans. Many were tired of the system and wanted something else entirely. To this end, Mr. Trump would pick up the cause of conservative Americans who felt neglected and abused, expertly feeding off their angry energy to present his platform as their own. From this they felt as though they finally had found someone who understands them and “just gets it.” Mr. Trump promised to fight for them, take on corrupt politicians and toxic corporate influence, relieve their economic anxieties, and revamp their cultural dominance. Mr. Trump astutely formed a populist platform that greatly appealed to Middle America, giving them the cause and leader they had been yearning for. Regardless of how Americans feel about the tumultuous

147 Ibid.
148 Ibid.
149 Ibid.
150 Kirk et al. “Divided States of America.”
151 Kirk et al. “Trump’s Road to the White House.”
152 Kirk et al. “Trump’s Road to the White House.”
early months of the Trump presidency, most can currently agree that some reform is needed, whether in support or opposition of the administration.

What’s to be Done
Mr. Trump is a product of the times and the result of deep, antagonistic relationships between divided Americans. He is symptomatic of a Republic in trouble, and one that needs urgent attention if a crisis is to be avoided. Mr. Trump is not the dreadful threat to democracy that he is made out to be, instead he is an opportunist who exploited public sentiment and rode a wave of anger into the White House. Mr. Trump will only be relevant if he is relevant, and it is the frustration and disillusion of many that makes him so. That is what needs to be fixed, because after Mr. Trump, another populist may emerge to do just as he has done. If, however, the structural and societal reforms that we need are implemented, then there will be no need for one. To that end, there are several needed reforms, three of which should be implemented in the immediate future.

First and foremost, the many problems surrounding immigration need to be addressed. Broken systems of integration must be fixed, so as to prevent further nativist clamor and to create a sense of shared community.\textsuperscript{153} Public officials and leaders need to more adequately address the real concerns of dealing with foreigners that give way to racism and xenophobia – instead of simply accusing people of racism and xenophobia.\textsuperscript{154} To this end, a greater education effort must be undertaken so those with xenophobic leanings have greater access to sound facts and the realities of immigration, instead of peddled fears and phobias.\textsuperscript{155} Western governments may have to come to the conclusion that too-rapid cultural change can be disastrous, and so such efforts must be more organic and incremental, rather than hasty and forced.\textsuperscript{156} This will come with the price of limiting the number of migrants and furthering restrictions of those allowed into the country.\textsuperscript{157} Further, policy-makers must realize that the generational divide on immigration is the most significantly pronounced.\textsuperscript{158} Millennials must be brought into the fold so that they can take charge and help solve this issue, which is more relevant to them than anything else. The Democratic Party

\textsuperscript{153} Zakaria, “Populism on the March.” 15.
\textsuperscript{154} Ibid.
\textsuperscript{155} Ibid.
\textsuperscript{156} Ibid.
\textsuperscript{157} Ibid.
\textsuperscript{158} Zakaria, “Populism on the March.” 15.
learned a painful lesson on appealing to the youth, and they must not repeat such mistakes if they are serious about reform.

Secondly, Congress needs reform as it has become deeply unrepresentative. One of the primary reasons for this is the influence of money in politics.\textsuperscript{159} Vast amounts of money thrown into electoral campaigns have poisoned the system, making special interests the true constituents of elected representatives.\textsuperscript{160} While there are some fundamental differences in opinion between Trump, Clinton, and Sanders supporters – they all share the same pain from a dysfunctional government. The disillusion and alienation many Americans feel, largely stems from an unrepresentative Congress. A core aspect of American democracy has been robbed from the people by special interests, and the people need to work together to overcome this.\textsuperscript{161} Dave Rubin, a political commentator and comedian tweeted a realization that could help heal the entire country, “After all this if we have a clean transition of power, and liberals and conservatives realize we aren’t enemies, the future will be bright.”\textsuperscript{162}

Lastly, Americans must spend more time listening to each other, and less time scorning or lecturing one another. Partisan battles have been tried, and have failed. The U.S. identifies with and is divided by the very identities that Former President Obama thought were superficial. If anything is to be changed for the better, Americans must look past partisan leanings and be willing to compromise with “the other,” in order to settle or at least work on problems. Questions over globalization, immigration, health care, and social issues are not going to go away, nor are they going to be resolved through more of the same. A genuine and dedicated effort is needed, and since it is the Democrats who are out of power, the responsibility falls on them.


\textsuperscript{160} \textit{Ibid.}

\textsuperscript{161} \textit{Ibid.}

\textsuperscript{162} Hamilton, “Liberals Are Starting To Reject Leftist Identity Politics. Time To Unite Against It.”
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