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Economic Inequalities and Ethno-Nationalism: The Case of Catalan Independence

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In recent decades, Europe has faced a particular revival of nationalist groups with separatist demands.[1] Horizontal inequalities—political, economic, social or cultural—are cross-fertilization factors in the mobilization of these separatist groups.[2] What makes each case highly-context specific is the relative position of the separatist group in comparison to the rest of the identity groups of the country.[3] Of the many cases that can be studied from this puzzle, a key question seems under-theorized in existing literature. In unequal societies, under what conditions do economically advanced groups within advanced regions pursue separatism? To answer this question, I examine the case of Catalonia, a Spanish region with economic, political, and linguistic self-sufficiency, whose aims for independence have significantly increased throughout the last decade.

Can the Catalan separatist sentiment be resolved within the Spanish democratic state? The difficulty in unravelling this case is that the Catalans' rhetoric for secession combines different types of arguments. The goal of this research is to explore how Catalans—despite being an advanced group within an advanced region—experience grievances due to national economic inequalities, and how separatist groups ultimately formulate economic grievances from an ethno-nationalist perspective. As a consequence, one of Spain's arduous challenges is impeding Catalonia's secessionist process, while attempting to create a collective and inclusive national identity which the majority of Catalans also recognize. The economic and ethnonational divergence in the pluralist case of Catalonia's independence has ultimately fractured the state-society relations, and has indeed intensified the anti-Catalan sentiment in Spain and the anti-Spain sentiment in Catalonia,[4] hindering the reconciliation between Catalans and the Spanish central government.

Theoretical Perspectives on Nationalism and Secession

It is undeniable that the literature on nationalism has progressed toward the inclusion of ethnicity and ethnic symbols in understanding the formation of nations. Anthony Smith defends the concept of ethnosymbolism, according to which nations are rooted in ancient ethnic groups.[5] In his book *National Identity,* Smith provides an analysis of the different ways in which nations form based on their pre-modern background in ethnic communities.[6] According to Smith, the ethnic group is held together by a common identity that fosters the development of the nation,[7] an essential argument in the study of Catalonia's independence and the ensuing transformation of its national identity.

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[1] Emmanuel Dalle Mulle and Ivan Serrano. "Between a principled and a consequentialist logic: Theory and practice of secession in Catalonia and Scotland." *Nations and Nationalism* (Published on January 1, 2018): 1.

[2] Graham K. Brown and Arnim Langer. "Horizontal Inequalities and Conflict: A Critical Review and Research Agenda." *Conflict, Security & Development* 10, no. 1 (March 2010): 27.

[3] Donald L Horowitz. *Ethnic Groups in Conflict: Theories, Patterns, and Policies.* (Berkeley, CA.: University of California Press, 1985): 230.

[4] Andrew Dowling. *The Rise of Catalan Independence: Spain's Territorial Crisis.* (Milton: Routledge, 2017): 158-159, ProQuest Ebook Central.

[5] Anthony Smith. *National identity.* (Reno: University of Nevada Press, 1991): 33.

[6] Smith, *National Identity*, 123.

[7] Smith, *National Identity*, 25.

Donald L. Horowitz incorporates the concept of identity in his discussion of the dynamics of ethnic groups' relations, differentiating between the economic and political causal factors potentially contributing to secessionism.[8] According to Horowitz, ethnicity is an overarching concept that "embraces groups differentiated by color, language, and religion; it covers "tribes," "races," "nationalities," and "castes.""[9] Horowitz differentiates between advanced ethnic groups (which have received education and accessed non-agricultural employment), and backward ethnic groups (which are less educated and more disadvantaged in terms of employment and wealth). In tandem with this group-division, Horowitz presents a regional division. By comparing the relative economic position of regions within a country in terms of per capita income, Horowitz distinguishes between advanced and backward regions.[10] Based on these definitions, Horowitz crafts an identity matrix that explains how the relative position of ethnic groups within the state impacts their aims for secession. Horowitz's perspective is key to understanding how economic inequality in an advanced region such as Catalonia has taken an ethno-nationalist form for the purpose of separatism.[11] The authors Lars-Erik Cederman, Halvard Buhaug, and Kristian Skrede Gleditsch use Horowitz's theoretical framework in ethnic conflict to build their grievances-based argument.[12] Cederman *et al* address the impact of unfulfilled political and economic demands and the ensuing horizontal inequalities prevailing in various countries, which ultimately foster civil war and the onset of conflict.[13] However, their group-level analysis particularly focuses on the ethnic grievances experienced by economically disadvantaged ethnic groups within backward or advanced regions. Although the authors include the study of wealthy groups in their quantitative analysis, they do not find enough evidence and in turn leave out an in-depth study of the causes leading advanced groups in advanced regions to seek independence, such as the case of Catalonia.

Although Colin H. Kahl's research on identity groups does not focus on advanced groups either, it is critical to consider his argument. Kahl underlines that whether identity groups successfully secede has a causal dependence on the harshness of demographic and environmental conditions. This dependence fluctuates according to the relative strength of two intervening variables: the level of groupness and the level of institutional inclusivity.[14] This indirect causation is pivotal in investigating the intervening factors clouting Catalonia's independence: (1) the level of Catalans' sense of groupness and its correlation to economic grievances, and (2) the level of openness of Spanish and European democratic institutions. Since democratic nations are more inclusive than authoritarian regimes, they tend to build a sense of nationalism with the purpose of serving the needs of a broad spectrum of social groups.[15]

In this sense, nationalism is revived in the countries that were deemed to be democratic and Western. It is key to note that the majority of ethno-nationalist movements in Europe increased during the 1970s and 1980s and were particularly based on ethno-cultural and linguistic claims.[16]

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[8] Donald L Horowitz. *Ethnic Groups in Conflict Ethnic Groups in Conflict: Theories, Patterns, and Policies.* (Berkeley, CA.: University of California Press, 1985): 230.
[9] Horowitz, *Ethnic Groups in Conflict,* 53.
[10] Horowitz, *Ethnic Groups in Conflict,* 229.
[11] Horowitz, *Ethnic Groups in Conflict,* 250.
[12] Lars-Erik Cederman, Kristian Skrede Gleditsch, and Halvard Buhaug. *Inequality, grievances, and civil war.* (New York: Cambridge University Press, 2013): 13.
[13] Cederman, Gleditsch, and Buhaug. *Inequality, grievances, and civil war,* 30.
[14] Colin H. Kahl. *States, scarcity, and civil strife in the developing world.* (Princeton: Princeton University Press, 2008): 53-55.
[15] Kahl, *States, Scarcity, and Civil Strife in the Developing World,* 270.
[16] Daniele Conversi. *The Basques, the Catalans and Spain: Alternative Routes to Nationalist Mobilization.* (Reno University of Nevada Press, 2000): 2

Toni Rodon and Marc Guinjoan argue that both regional and national identities—Catalonian and Spanish respectively—are core elements in the determination for secession.[17] Thus, the study of individuals' dual-identity cannot be disjointed from the spatial dimension, known as the 'neighborhood' or 'group'.[18] This dimension offers a sense of belonging that motivates individuals to mobilize for regionalism at the expense of territorial decentralization.[19]

Overall, the existing literature on nationalism and secessionism predominantly focuses on the economic grievances experienced by separatist groups with a negative economic performance. However, there are several context-specific cases in which groups that have a positive economic performance may choose to separate and incentivize pro-independence movements. In this vein, the Catalonian case is puzzling, insofar as this Spanish region experiences an economically advanced position and almost half of its population supports the process for secession.[20] I claim that this form of group-level upheaval is under-theorized, which therefore requires a deeper analysis in the literature of secession and the onset of conflict. By taking Catalonia as my case study, I argue that the positive economic performance of a group can also act as a cause for conflict in an effort for independence. My contribution to the literature is an analysis of the particular conditions under which a powerful economic group seeks to secede or initiate conflict.

In the following sections, I seek to analyze the convergence of three explanatory factors that potentially account for the Catalan independence movement: (a) the economic inequalities experienced by Catalonians, (b) the level of groupness of Catalonian separatists and the level of openness of Spanish and European democratic institutions, and (c) the potential for secession or conflict in the region. For the purpose of this research, I explore the rhetoric used by key political actors in the independence process, such as Catalan nationalist political parties and their electoral manifestos. Through this content analysis, this paper will navigate how in the case of Catalonia, the economic grievances experienced by an advanced economic group in an advanced region have taken the form of ethnic conflict in the process for independence.

The gruesome Spanish civil war (1936-1939) led to the establishment of General Francisco Franco's regime in the country (1939-1975).[21] The Francoist dictatorship had a well-defined Catholic-fundamentalist character, with a centralist, unitary, and conservative political agenda.[22] Franco's authoritarianism sought to suppress all regional autonomies, Spanish pluralism, and the recognition of cultural minorities.[23] His agenda aimed to quell the formation of alternative identities, particularly the Catalonian and the Basque Country.[24] Through the dictatorship, Franco persecuted the Catalonia's ethno-nationalism and banned the Catalan co-official language in public spheres,

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[17] Tony Rodon and Marc Guinjoan. "When The Context Matters: Identity, Secession and the Spatial Dimension in Catalonia." *Political Geography* 63. (March 2018): 75-76.

[18] Rodon and Guinjoan, "When The Context Matters: Identity, Secession and the Spatial Dimension in Catalonia," 79.

[19] Rodon and Guinjoan, "When The Context Matters: Identity, Secession and the Spatial Dimension in Catalonia," 82.

[20] Government of Catalonia (Generalitat de Catalunya). "Press Report: Political Context Survey Third Quarter 2018". *Opinion Studies Center (CEO)*, Register of Opinion Studies Number 908. (Published November 2018): 14. http://upceo.ceo.gencat.cat/wsceop/6868/Abstract%20in%20English%20-908.pdf

[21] Nadia Hajji. "Post-transitional Justice in Spain: Passing the Historical Memory Law." (Duke University 2014): 84. https://academiccommons.columbia.edu/download/fedora_content/download/ac:179184/content/Hajji-Spring-2014.pdf

[22] Richards, Michael. "A Time of Silence: Civil War and the Culture of Repression in Franco's Spain, 1936-1945." (Cambridge University Press, Vol. 4, 1998): 12.

[23] Daniele Conversi. *The Basques, the Catalans and Spain: Alternative Routes to Nationalist Mobilization*. (Reno University of Nevada Press, 2000): 138.

[24] Conversi, *The Basques, the Catalans and Spain: Alternative Routes to Nationalist Mobilization*, 123.

journalism, education, intellectualism, and literacy, limiting its use to private life.[25] The very fact that Catalans were forced to lose their regional identity and culture[26] led to the emergence of an ethno-political movement known as Catalanism.[27]

Catalonia suffered greatly from the economic crisis of the postwar period. In the first stage of the dictatorship (1936-1959), Franco executed an economic policy of autarky marked by inflation, the overvaluation of the 'peseta', protectionism, and state interventionism.[28] Spain suffered a loss of competitiveness in international markets and a significant decline in exports that plunged the country into a situation of stagnation and backwardness,[29] in contrast to the recovery that the rest of Europe was experiencing due to the defeat of Nazism and fascism in World War II and the ensuing activation of democratic governments.[30] In order to catch up with European countries and strengthen its alliance with the United States, Franco decreed a progressive economic liberalization program through the Stabilization Plan of 1959.[31]

Through this economic opening, Catalonia's GDP grew from 22,617 to 78,118 million euros between 1955 and 1975, increasing its influence on the national economy from 17.7% to 19.1%.[32] In 1955, the registered employment in Catalonia amounted to 15.8% of the national total, and increased up to 18.8% in 1975, while the rest of Spain recorded a more moderate increase.[33] Catalonia's economic growth attracted a large-scale immigration throughout Spain, especially from Andalusia and Extremadura during the 1950s. At the beginning of the twentieth century, Catalonia represented only 10.5% of the Spanish population, and by 1981 Catalonia had increased to 15.8%.[34] Due to economic and population growth, the central government invested in physical capital, infrastructure, education and human capital in Catalonia which indeed increased the per capita income.[35]

With General Franco's death on November 20, 1975, Spain began the transition to democracy through the free elections of 1977.[36] During Adolfo Suárez's presidency and under the auspices of King Juan Carlos I, the new Spanish Constitution was approved in the referendum of

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[25] Conversi, *The Basques, the Catalans and Spain: Alternative Routes to Nationalist Mobilization*, 6.

[26] Jordi Cornellà-Detrell. "Literature as a Response to Cultural and Political Repression in Franco's Catalonia." (Suffolk: Boydell & Brewer, 2011): 3. ProQuest Ebook Central.

[27] Andrew Dowling. *The Rise of Catalan Independence: Spain's Territorial Crisis*. (Milton: Routledge, 2017): 60, ProQuest Ebook Central.

[28] Richards, Michael. "A Time of Silence: Civil War and the Culture of Repression in Franco's Spain, 1936-1945." (Cambridge University Press, Vol. 4, 1998): 127.

[29] Sima Lieberman. *Growth and Crisis in the Spanish Economy:1940-1993*. (New York: Routledge, 1995): 21.

[30] Andrew Dowling. *The Rise of Catalan Independence: Spain's Territorial Crisis*. (Milton: Routledge, 2017): 19, ProQuest Ebook Central.

[31] Balcells, Albert. "Catalan Nationalism: Past and Present" ed. Geoffrey J. Walker, trans. Jacqueline Hall Basingstoke: Macmillan, (1996): 139.

[32] José Luis Feito Higueruela, Ángel de la Fuente, Guillem López-Casasnovas, Joan Rosselló Villalonga, and Clemente Polo. "The Political Economy Of Catalan Independence." *Intituto de Estudios Económicos (IEE)*. (September 2014): 91.

[33] Elcano Royal Institute (Real Instituto Elcano). "The Catalan Conflict." Madrid, (2017): 6. http://www.realinstitutoelcano.org/wps/wcm/connect/8ca9ef80-5dcd-4351-817d-3efc491412c2/Cataluna-Dossier-Elcano-Octubre-2017.pdf?MOD=AJPERES&CACHEID=8ca9ef80-5dcd-4351-817d-3efc491412c2

[34] Elcano Royal Institute (Real Instituto Elcano). "The Catalan Conflict." Madrid, (2017): 6. http://www.realinstitutoelcano.org/wps/wcm/connect/8ca9ef80-5dcd-4351-817d-3efc491412c2/Cataluna-Dossier-Elcano-Octubre-2017.pdf?MOD=AJPERES&CACHEID=8ca9ef80-5dcd-4351-817d-3efc491412c2

[35] Sima Lieberman. *Growth and Crisis in the Spanish Economy:1940-1993*. (New York: Routledge, 1995): 23.

[36] Brandon M. Boylan. "In Pursuit Of Independence: The Political Economy of Catalonia's Secessionist Movement." *Nations & Nationalism* 21, no. 4 (2015): 763.

December 6, 1978.[37] Although this Constitution established that sovereignty resided in the Spanish people as a whole, it also added that regions and "nationalities" have the right of political autonomy.[38] Thus, the government experienced a decentralization of power in favor of regionalism through the formulation of the State of Autonomies. The Statute of Autonomy of Catalonia was reestablished in 1977 and later renewed in 2006.[39] This process allowed the reinstatement of the Parliament of Catalonia and its regional legislature in 1980.[40]

The reconstruction of the Catalan nation bolstered the argument for Catalonia's autonomy shaped by religion, empowered genders, and a common language, political unit, and economy.[41] Catalan nationalism was reinforced during the following years, breaking with the abrupt repression to which the region had been subjected for decades.[42] Since 1980, the Parliament of Catalonia has been consecutively dominated by the independentist party Convergence and Union (CiU) until 2015, when its successive pro-independence coalition Together for Yes (JxSi) took over power.[43] Despite the elections being held in 2015, the controversial referendum of October 1, 2017, and the ensuing unilateral declaration of independence of Catalan nationalist parties led the Spanish President—supported by the Spanish Senate—to invoke Article 155 of the Spanish Constitution. Consequently, the XI legislature was dissolved, and new elections were held in December 21, 2017.

The current political make-up of Catalonia's XII legislature is multifaceted, with a divergence of parties and coalitions based on traditional left-right lines as well as nationalist tendencies. As for the results of the 2017 regional election, the Parliament of Catalonia is constituted by seven different political parties. The constitutionalist parties include Citizens (C's) (36 seats), Socialists (PSC) (17 seats), and People's party (PP). The independentist parties comprise Together for Catalonia (JxC) (34 seats), Republican Left (ERC) (32 seats), Popular Unity Candidacy (CUP) (4 seats). In the regional elections 2015, JxC and ERC stood as a united coalition under the name Together for Yes (JxSi). The left-wing party Catalonia in Common (Comú) (8 seats) advocates for self-governance in Catalonia, but does not align itself with any of the opposing blocs.[44]

From Economic Inequalities to Economic Grievances

Separatism in Catalonia is partially the result of economic differentials among the Autonomous Communities (ACs) and the redistribution policies of the democratic central state.[45] At present, Catalonia is the second largest Spanish community, with a population of 7,488,207

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[37] Daniele Conversi. *The Basques, the Catalans and Spain: Alternative Routes to Nationalist Mobilization.* (Reno University of Nevada Press, 2000): 125.

[38] Elcano Royal Institute (Real Instituto Elcano). "The Catalan Conflict." Madrid, (2017): 5. http://www.realinstitutoelcano.org/wps/wcm/connect/8ca9ef80-5dcd-4351-817d-3efc491412c2/Cataluna-Dossier-Elcano-Octubre-2017.pdf?MOD=AJPERES&CACHEID=8ca9ef80-5dcd-4351-817d-3efc491412c2

[39] Brandon M. Boylan. "In Pursuit Of Independence: The Political Economy of Catalonia's Secessionist Movement." *Nations & Nationalism* 21, no. 4 (2015): 763.

[40] Parliament of Catalonia. "A Parliament for everyone: A practical guide to the Parliament of Catalonia,". Last Updated 2017. https://www.parlament.cat/document/intrade/212972

[41] Richards, Michael. "A Time of Silence: Civil War and the Culture of Repression in Franco's Spain, 1936-1945." (Cambridge University Press, Vol. 4, 1998): 1.

[42] Daniele Conversi. *The Basques, the Catalans and Spain: Alternative Routes to Nationalist Mobilization.* (Reno University of Nevada Press, 2000): 130.

[43] Parliament of Catalonia. "Election Results." Last Updated 2017. https://www.parlament.cat/pcat/parlament/que-es-el-parlament/resultats-electorals/

[44] Parliament of Catalonia. "Election Results." Last Updated 2017.

[45] Andrew Dowling. *The Rise of Catalan Independence : Spain's Territorial Crisis.* (Milton: Routledge, 2017): 123, ProQuest Ebook Central.

inhabitants and a population density of 233 inhabitants per square kilometer.[46] The unemployment rate in Catalonia during the second quarter of 2018 was 15.28%,[47] and Catalonia's current GDP is 3.4%.[48] In 2017, Catalonia's per capita GDP was €29,936, compared to €25,000 of Spain's national average.[49] Catalonia stands as the fourth economy in the ranking of ACs in terms of GDP per capita, following Madrid (€33.809), País Vasco (€33.088), and Navarra (€30.914).[50] In 2016, Catalonia recorded 25.6% of total Spanish exports and stood as the destination of 20.7% of total gross foreign investment.[51] In 2016, Catalonia's GDP represented 18.9% of the Spanish wealth, although the region only received 14% of spending in return.[52] In 2017, the Catalan public debt was €77,740 million, 34.8% of its GDP.[53]

Why is this? Spain is a democratic political system in which the government enforces redistributive income mechanisms among autonomies, from ACs with a positive economic performance to the regions with a negative performance, by taxing the economies that produce most of the GDP.[54] The current financial system of the autonomous communities is governed by the Law 22/2009.[55] According to this law, the Basque Country and Navarre are regulated by the *foral* or *cupo* system, whereby the collection of taxes is controlled by the provincial councils instead of the central government.[56] The remaining fifteen autonomous communities are governed by the so-called common system, including Catalonia, which is governed according to the Organic Law on the Financing of the Autonomous Communities (LOFCA) and is consigned to equalization transfers through ceded national taxes.[57]

The fact that the Basque Country and Navarre are among the wealthiest ACs in terms of resources,[58] and that they are in tandem partly exempted from enduring the income redistribution, fosters an extensive sense of injustice among other ACs, particularly Catalonia. In contrast to the *foral*, the common system seems to benefit the poorer communities more than the relatively well-off

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[46] Statistical Institute of Catalonia (IDESCAT). "Catalonian Statistics." (Published 2018). https://www.idescat.cat/pub/?id=aec&n=245&lang=es
[47] Statistical Institute of Catalonia (IDESCAT). "Economically Active Population Survey (EAPS) Second Quarter 2018 Press Release." (Published July, 2018). https://www.ine.es/en/daco/daco42/daco4211/epa0218_en.pdf
[48] Statistical Institute of Catalonia (IDESCAT). "Catalonian Statistics." (Published 2018). https://www.idescat.cat/tema/treba?lang=es
[49] Organization for Economic Co-operation and Development (OECD). "Spain - Economic forecast summary (May 2018)." (Published May 2008). http://www.oecd.org/eco/outlook/spain-economic-forecast-summary.htm
[50] Datos Macro. "GDP Autonomous Communities." *Expansion.* Last updated 2018. https://www.datosmacro.com/pib/espana-comunidades-autonomas
[51] Eurostat "Catalonia: Internal Market, Industry, Entrepreneurship and SMEs." *European Commission.* Last updated July, 2018. https://ec.europa.eu/growth/tools-databases/regional-innovation-monitor/base-profile/catalonia
[52] Government of Catalonia. "The Catalan economy." (Published June 2016). http://economia.gencat.cat/web/.content/20_publicacions/economia_catalana_en.pdf
[53] Statistical Institute of Catalonia (IDESCAT). "Catalonian Statistics year 2017." Published 2018). http://ctesc.gencat.cat/doc/doc_27542484_1.xlsx
[54] Institute of Economic Analysis (CSIC). "Welfare State and Autonomous State." Published in November 2009. http://digital.csic.es/bitstream/10261/58767/1/Estado%20del%20Bienestar%20y%20Estado%20Autonómico.pdf
[55] "Report of The System of Public Territorial Accounts 2014," Spanish Ministry of Finance and Civil Service, (July 2017): 5. http://www.hacienda.gob.es/Documentacion/Publico/CDI/Cuentas%20Territorializadas/Informe_Ministerio_SCPT_2014.pdf
[56] "Constitución Española (BOE 311.1)." Boletín Oficial del Estado (BOE), (1978): 29315-29339.
[57] "Financiación de las Comunidades Autónomas, Ley Orgánica 3/2009." Boletin Official del Estado (BOE), (2009a): 107077-107085. http://www.boe.es/diario_boe/
[58] Datos Macro. "GDP Autonomous Communities." *Expansion.* Last updates 2018. Accessed July 25th, 2018. https://www.datosmacro.com/pib/espana-comunidades-autonomas

ones in terms of state transfers, as the most prosperous regional administrations receive fewer resources because their citizens are better off than those in the poorest territories.[59] According to the Ministry of Finance and Civil Service's report on the System of Territorialized Public Accounts (SCPT) of the 2014 fiscal year, out of the 17 ACs, only four contribute more to the state than the expenditures they actually receive.[60] The data reflects that Madrid has a fiscal deficit of €19,205M, equivalent to 9.82% of GDP.[61] Catalonia records a negative balance of €9,892M, which corresponds to 5.02% of GDP.[62] For its part, the Valencian Community and the Balearic Islands also achieved a fiscal deficit of €1,735M (1.78% of GDP) and €1,516M (1.77% of GDP) respectively.[63] The coexistence of the two financial systems and their overlapping jurisdictions, conflicts with the long-standing demands of the Catalan government to be shifted from the common system to the *foral*, in order to enjoy the privileges of collecting and controlling its own taxation system.[64]

This statistical analysis proves that Catalonia is an advanced group within an advanced region, in terms of economic position relative to other ethnic groups in the country.[65] According to the logic of the existing literature on secessionism, it stands to reason that an ethnic group with a positive economic performance might not choose to secede due to the economic costs associated with the process of independence.[66] However, Catalonia's relative economic position within Spain is what leads part of the group to experience economic grievances due to the national economic inequalities.[67] Pro-independence groups remark the unjust treatment of the central government to Catalonia regarding the financial resources, fiscal transfers, or public investment. Since Catalonia has a much higher rate of income and prosperity than other ACs in Spain, the separatist groups claim to be unfairly subsidizing the rest of the country; this became one of the factors exploited by Catalonian elites to promote mobilization for self-determination.[68] However, it also must be noted that the limited role played by Catalan elites during the economic crisis unraveled the weakness of Catalonia's autonomy.[69]

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[59] Angel de la Fuente Moreno, and María Gundín. "El Sistema De Financiación De Las Comunidades Autónomas De Régimen Común: Un Análisis Crítico Y Algunas Propuestas De Reforma." *Fundación de Estudios de Economía Aplicada (FEDEA),* (2008): 19. https://www.fedea.net/documentos/pubs/ee/2008/18-2008.pdf

[60] "Report of The System of Public Territorial Accounts 2014," Spanish Ministry of Finance and Civil Service, (July 2017): 12. http://www.hacienda.gob.es/Documentacion/Publico/CDI/Cuentas%20Territorializadas/Informe_Ministerio_SCPT_2014.pdf

[61] Spanish Ministry of Finance and Civil Service, "Report of The System of Public Territorial Accounts 2014," (Published 2017): 12.

[62] Spanish Ministry of Finance and Civil Service, "Report of The System of Public Territorial Accounts 2014," (Published 2017): 13.

[63] Spanish Ministry of Finance and Civil Service, "Report of The System of Public Territorial Accounts 2014," (Published 2017): 13.

[64] Antoni Zabalza Martí, and Julio López-Laborda. "The Uneasy Coexistence of the Spanish Foral and Common Regional Finance Systems." *Instituto Valenciano de Investigaciones Económicas*, No. 2014-02., SA (Ivie), (2014): 4.

[65] Anwen Elias, and Ludger Mees. "Between Accommodation and Secession: Explaining the Shifting Territorial Goals of Nationalist Parties in the Basque Country and Catalonia." *Revistes Catalanes amb Accés Obert (RACO),* (2017): 151.

[66] Donald L Horowitz. *Ethnic Groups in Conflict Ethnic Groups in Conflict: Theories, Patterns, and Policies.* (Berkeley, CA.: University of California Press, 1985): 250.

[67] Guillem Rico and Robert Liñeira. "Bringing Secessionism into the Mainstream: The 2012 Regional Election in Catalonia." *South European Society and Politics* 19, no. 2 (2014): 258. https://www.tandfonline.com/doi/pdf/10.1080/13608746.2014.910324?needAccess=true&

[68] Brandon M. Boylan. "In Pursuit of Independence: The Political Economy of Catalonia's Secessionist Movement." *Nations & Nationalism* 21, no. 4 (2015): 766.

[69] Andrew Dowling. *The Rise of Catalan Independence : Spain's Territorial Crisis.* (Milton: Routledge, 2017): 124. ProQuest Ebook Central.

These economic grievances were particularly reinforced by the economic crisis of 2008-2010 and the subsequent deepening of horizontal economic inequalities in Spain.[70] The drastic cuts in public spending by the Catalan government due to the economic recession, specifically in health and education, were presented by the nationalist parties as a consequence of the central government's fiscal deficit.[71] By 2012, Catalonia's GDP had declined by 1.3%, compared to the 1.6% of Spain.[72] In 2012, the Parliament of Catalonia used the relative economic position of the region to leverage for independence, by promoting the argument that secession would correct the 'fiscal pillage' of the state.[73] At that time, CiU, the dominant political party in Parliament, steered its political agenda toward the mobilization of the population to achieve Catalonia's fiscal sovereignty.[74] In this line, the ERC political party also pitted itself against the structural financial policies in Spain and defended independence as the only solution to Catalonia's economic crisis. These arguments mobilized Catalans to hold an unprecedented demonstration for independence on September 11, 2012, in commemoration of Catalonia's national day (*La Diada Nacional de Cataluña*)—which would be consecutively repeated in the years to come.[75] Moreover, these arguments were also epitomized in the survey results gathered by the Catalan Government's Opinion Studies Center (CEO). According to the survey, in the last quarter of 2012, 71.6% of Catalans considered Catalonia to have achieved an insufficient level of autonomy.[76]

From economic grievances to ethno-nationalism

For inequalities to become grievances, they need to be politicized, and even the materialization of grievances does not necessarily lead to violence. Yet, there are two key explanatory elements that can directly affect and reinforce the grievances experienced by the pro-independence population and ultimately mobilize the group to pursue secession.

The first element to be considered is the level of groupness of the secessionist group. This variable allows Catalan elites to politicize the horizontal inequalities through three steps: (a) group identification, (b) intergroup comparison, and (c) evaluation of injustice. These steps ultimately unite the nationalist individuals under a common identity. Elites use this identity to build up societal pressure for secession based on the arguments of framing and blaming, and the deprivation and oppression enforced by the Spanish central government.[77] In order for grievances to materialize into

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[70] Dowling, *The Rise of Catalan Independence : Spain's Territorial Crisis*, 134-136.

[71] Brandon M. Boylan. "In Pursuit Of Independence: The Political Economy of Catalonia's Secessionist Movement." *Nations & Nationalism* 21, no. 4 (2015): 773.

[72] Guillem Rico and Robert Liñeira. "Bringing Secessionism into the Mainstream: The 2012 Regional Election in Catalonia." *South European Society and Politics* 19, no. 2 (2014): 260. https://www.tandfonline.com/doi/pdf/10.1080/13608746.2014.910324?needAccess=true&

[73] Parliament of Catalonia. "Resolution 742/IX of the Parliament of Catalonia Sec 2.2 Art.1, on the General Political Orientation of the Government of Catalonia" Procedures 255-00006/09. (Published September 27, 2012): 9 V.2.2. https://www.parlament.cat/document/intrade/6026

[74] Anwen Elias, and Ludger Mees. "Between Accommodation and Secession: Explaining the Shifting Territorial Goals of Nationalist Parties in the Basque Country and Catalonia." *Revistes Catalanes amb Accés Obert (RACO)*, (2017): 149.

[75] Guillem Rico and Robert Liñeira. "Bringing Secessionism into the Mainstream: The 2012 Regional Election in Catalonia." *South European Society and Politics* 19, no. 2 (2014): 262. https://www.tandfonline.com/doi/pdf/10.1080/13608746.2014.910324?needAccess=true&

[76] Government of Catalonia (Generalitat de Catalunya) "Press Report: Political Context Survey Third Quarter 2012". *Opinion Studies Center (CEO)*, Register of Opinion Studies Number 705. Published October 2012, Pg 34. http://upceo.ceo.gencat.cat/wsceop/4308/Dossier_de_premsa_-705.pdf

[77] Lars-Erik Cederman, Kristian Skrede Gleditsch, and Halvard Buhaug. *Inequality, grievances, and civil war*. (New York: Cambridge University Press, 2013): 37.

secessionism or conflict, the separatist elites promote group mobilization and they rebel against the repression of the central state.[78] To do so, Catalan elites use the ethnic model of nationalism, insofar as ethnic identity is a galvanizing force that facilitates the process of rallying and mobilizing people.[79] The second element to be considered is the level of openness of the institutions in which Catalonia participates, both at the national and supranational levels. The importance of considering this element is grounded in the fact that separatist groups' interests are evaluated and mediated through international institutions. According to Horowitz, "the international environment plays a part in the emergence and remission of separatism."[80] In this sense, institutions can be open and allow the political expression of the population, or they can be closed and exclusionary, fostering the repression of the population.

1. Level of Groupness

According to Rogers Brubaker, if legitimacy is to be achieved after secession, the new state must demonstrate a strong common identity that defines its ethno-nationalism.[81] The level of groupness nurtures the reinforcement of nationalism for political mobilization,[82] since individuals' support for secession is significantly influenced by the level of pro-secession surrounding each individual.[83] How are interest groups organized? Due to the hierarchical nature of groups, it is important to highlight the role that Catalan elites play in the independence process, and more specifically, the way these elites present pro-independence demands. Although Catalans' grievances continue to stem from economic inequalities, the separatist elites formulate the pro-independence narrative in nationalist terms by claiming that horizontal inequalities in Spain trigger and dismantle the Catalan identity.[84] The importance of the level of groupness stems from the fact that identities are socially constructed; that is to say, people's identities change with the level of aggregation to a group.[85] The community identity becomes paramount as a condition of national survival.[86] A nation is held together by its common identity, and by the desire of a particular group to control the state (in this case, the separatist elites). In this vein, the Catalan elites have presented the case for self-determination to the population as a civil society initiative to recover the Catalonian identity.[87]

National identification with Catalonia accounts for the pattern of increasing support for independence, particularly throughout the period of 2006-2013, during which the number of pro-independence supporters tripled from 14% to around 47%.[88] More specifically, a political survey conducted in the third quarter of 2012 by the Catalan Government's Opinion Studies Center (CEO)

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[78] Cederman, Gleditsch, and Buhaug. *Inequality, grievances, and civil war*, 44.

[79] Andrew Dowling. *The Rise of Catalan Independence : Spain's Territorial Crisis*. (Milton: Routledge, 2017): 123-124, ProQuest Ebook Central.

[80] Donald L Horowitz. *Ethnic Groups in Conflict Ethnic Groups in Conflict: Theories, Patterns, and Policies*. (Berkeley, CA.: University of California Press, 1985): 4.

[81] Rogers Brubaker. "Ethnicity without groups". (Harvard University Press, 2004): 142.

[82] Colin H. Kahl. *States, scarcity, and civil strife in the developing world*. (Princeton: Princeton University Press, 2008): 53.

[83] Tony Rodon and Marc Guinjoan. "When The Context Matters: Identity, Secession and the Spatial Dimension in Catalonia." *Political Geography* 63. (March 2018): 76.

[84] Andrew Dowling. *The Rise of Catalan Independence : Spain's Territorial Crisis*. (Milton: Routledge, 2017): 88-89. ProQuest Ebook Central.

[85] Anderson, Benedict. *Imagined communities: Reflections on the origin and spread of nationalism*. Verso Books, (1983): 112.

[86] Montserrat Guibernau. "Anthony D. Smith On Nations And National Identity: A Critical Assessment." *Nations and Nationalism* 10 (1/2), 2004, 135. https://pdfs.semanticscholar.org/293a/8dabdfaa7c1cbd9667eaad2662d6875fe1f5.pdf

[87] Emmanuel Dalle Mulle and Ivan Serrano. "Between a principled and a consequentialist logic: Theory and practice of secession in Catalonia and Scotland." *Nations and Nationalism* (Published on January 1, 2018): 10.

[88] Montserrat Clua Fainé. "Identidad y Política En Cataluña: el Auge del Independentismo en el Nacionalismo Catalán Actual." *Quaderns-e de l'Institut Català d'Antropologia* 19 (2), (2014): 84.

demonstrates that 57% of the population were in favor of independence, versus the 20.5% who were against it and the remaining percentage who did not vote.[89] Surprisingly, the same survey in 2012 evaluated the rates of social trust among the Catalan population; according to these results, only 38% of Catalans voted that "You can almost always trust people" versus the 56.3% of Catalans who voted "All precautions are few when dealing with people."[90] These results provide meaningful evidence in the analysis of the level of groupness of Catalans, insofar as the percentage of social distrust was almost as high as the percentage of Catalans in favor of independence in the year 2012. The percentage of votes in favor of independence had its peak in this third quarter of 2012, and even though the CEO's surveys of the following years have continued to prove that an elevated percentage of Catalans favor independence, the gap of differences in percentages has shrunk. At the beginning of 2018, 60.2% of Catalans still defended that Catalonia possessed an insufficient level of autonomy. However, only 40.8% of Catalans would vote in favor of independence, versus the 53.9% of Catalans who opposed secessionism.[91] According to the CEO's survey results of the third quarter of 2018, 47.2% of Catalans currently defend that Catalonia should become an independent state, while 43.2% voted against the independence of the region.[92]

Furthermore, this evidence proves that for nationalist groups to rebel and secede, they have to overcome the "collective action problem;"[93] whether they succeed or fail in doing so depends on the level of groupness that exists among the individuals who support the cause. Catalan nationalist parties have appealed to collectiveness as a key factor in the independence process. JxC declared in 2017 that for Catalonia to become an independent nation-state, "[…] the region must preserve its collective identity, since the whole ideological spectrum is represented in civil society."[94] In this line, CUP's political manifesto added, "The Spanish State has opted for a logical centralization, from the point of view more strictly economic, political, functional and administrative, […] in relation to issues that refer to sovereignty and to the most symbolic or linked issues of national identities."[95] Throughout the electoral manifestos of independentist parties, the common factor that parties have used to increase support for independence is the degree to which individuals identify with the Catalan ethno-nationalist identity.[96]

Thus, Catalonia's issue epitomizes a connection between horizontal inequalities and cultural and ethnic elements, insofar as "ethnification" is a way to display nationalism and to hold together the agent population.[97] Through their discourse and political manifestos, the elites ultimately frame

[89] Government of Catalonia (Generalitat de Catalunya). "Press Report: Political Context Survey Third Quarter 2012". *Opinion Studies Center (CEO)*, Register of Opinion Studies Number 705. (Published October 2012): 37. http://upceo.ceo.gencat.cat/wsceop/4308/Dossier_de_premsa_-705.pdf

[90] Government of Catalonia (Generalitat de Catalunya), "Press Report: Political Context Survey Third Quarter 2012," 37.

[91] Government of Catalonia (Generalitat de Catalunya) "Press Report: Political Context Survey First Quarter 2018". *Opinion Studies Center (CEO)*, Register of Opinion Studies Number 874. (Published February 2018): 11. http://upceo.ceo.gencat.cat/wsceop/6508/Abstract%20in%20English%20-874.pdf

[92] Government of Catalonia (Generalitat de Catalunya) "Press Report: Political Context Survey Third Quarter 2018". *Opinion Studies Center (CEO)*, Register of Opinion Studies Number 908. (Published November 2018): 14. http://upceo.ceo.gencat.cat/wsceop/6868/Abstract%20in%20English%20-908.pdf

[93] Colin H. Kahl. *States, scarcity, and civil strife in the developing world.* (Princeton: Princeton University Press, 2008): 53.

[94] "Electoral Manifesto Regional Elections 21-D, 2017," Together for Catalonia (Juntos por Cataluña, JxC). (December 2017): 79. *My translation.* http://www.rtve.es/contenidos/documentos/programa_junts_17.pdf

[95] "Electoral Manifesto Regional Elections 2017," Popular Unity Candidacy (Candidatura de Unidad Popular, CUP). (December 2017): 5. *My translation.* http://www.rtve.es/contenidos/documentos/programa_cup_17.pdf

[96] Alan B. Anderson. "The Roots of Catalan Identity and Ethno-Nationalism." *JEMIE Vol 16, No 3,* (2017): 62. http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2017/Anderson3.pdf

[97] Rogers Brubaker. "Ethnicity, Race, and Nationalism." *Annual Review of Sociology* 35 (2009): 31.

the Catalan identity and its ethno-nationalism as legitimizers of separatist demands. In 2012, CiU's nationalist manifesto defended the case for independence as a "national transition," seeking to focus on strengthening Catalonia's state structures.[98] According to CiU, the achievement of a "state of our own" was not only aimed to help Catalans live better, but to reconstruct public policy in order to "protect and promote the Catalan identity."[99] The pro-independence process was presented both as a state-building and nation-building project.[100] In the same elections, ERC's electoral manifesto declared, "The independence of our country is essential to continue to exist as a nation."[101] The ERC specifically denounced the cultural and national oppression as the key factors for secession.[102] In 2017, ERC's electoral manifesto emphasized not only the need to establish an independent Catalan nation but also an independent cultural republic: "A cultured country, cohesive and strong in its identity."[103] In this line of thought, JxC's declared, "We believe in culture as a means of personal and collective emancipation, which ultimately projects our Catalan identity."[104]

In this context, the nationalizing process does not escape an identity crisis of Catalans, since the contested identities according to political viewpoints both divide and unite individuals and groups within the Spanish society. The separatist movement under an ethno-nationalist identity fosters a crisis of identity to those Catalans who cannot find an adequate label to represent their identities. That is to say, many Catalans identify with the duality of Spanish and Catalan identity, in tandem with the European identity.[105] The secessionist narratives insinuate that the Catalan and Spanish identities become mutually exclusive from one another, forcing Catalans to choose only one identity that perpetuates future generations. Yet, it is key to note that nationalist sentiments experienced by Catalans should not be directly correlated to an aim for independence, insofar as Catalans' nationalist sentiments may also identify with this duality of identities. More specifically, since the end of Franco's dictatorship in 1975 Catalans have been re-exposed to both the Catalan and the Spanish identities, and thus there is a variation in the degrees of recognition of both identities.[106]

2. Level of Openness of Democratic Institutions

Democratic institutions in Spain are structurally endogenous forces that directly impact the Catalonian secessionist process. The supranational institutions—particularly the European Union (EU) and even the United Nations (UN)—are exogenous forces that indirectly reinforce the independence aspirations of Catalonians.[107] This argument is evidenced in the electoral manifestos and political debates through which nationalist parties disassociate themselves from Spanish

[98] "Electoral Program Elections 2012: Catalunya 2020." Convergence and Union (CIU), (2012): 15. *My translation.* http://blogs.deusto.es/programasaldesnudo/wp-content/uploads/2012/10/CAT_2012_CiU.pdf
[99] "Electoral Program Elections 2012: Catalunya 2020," CIU: 16. *My translation.*
[100] Emmanuel Dalle Mulle and Ivan Serrano. "Between a principled and a consequentialist logic: Theory and practice of secession in Catalonia and Scotland." *Nations and Nationalism* (Published on January 1, 2018): 22-23.
[101] "Catalonia: Parliament Electoral Manifesto." Esquerra Republicana De Cataluña (ERC), (2012): 4. (My Translation). https://www.esquerra.cat/partit/programes/c2012_programa.pdf
[102] "Catalonia: Parliament Electoral Manifesto," ERC: 4. *My Translation.*
[103] "Electoral Manifesto Regional Elections 21-D, 2017." Together for Catalonia (Juntos por Cataluña, JxC), (December 2017): 57. *My translation.* http://www.rtve.es/contenidos/documentos/programa_erc_17.pdf
[104] "Electoral Manifesto Regional Elections 21-D, 2017," JXC: 71. *My translation.*
[105] Alan B. Anderson, "The Roots of Catalan Identity and Ethno-Nationalism." *JEMIE Vol 16, No 3,* (2017): 62. http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2017/Anderson3.pdf
[106] Andrew Dowling. *The Rise of Catalan Independence : Spain's Territorial Crisis.* (Milton: Routledge, 2017): 59-60, ProQuest Ebook Central.
[107] Dowling, *The Rise of Catalan Independence : Spain's Territorial Crisis*, 128.

institutions, while associating with the European institutions as a method of preserving the Catalan identity. Therefore, the institutionalist approach is also extremely important in regard to the formation democratic national and supranational identities. When individuals lose their identity, the solution to this identity crisis comes from the institutions of the state, as well as supranational institutions, which provide individuals with a common identity to which to subscribe.[108]

However, the role that institutions play in the Catalan case cannot be analyzed without considering the factor of time. During the Francoist years, the peripheral nationalism in Spain was associated with the struggle against the authoritarian center. The repression of authoritarian institutions during Franco dictatorship paved the way for ethno-nationalist sentiments to emerge in Catalonia, materialized in the Catalanism political movement.[109] Furthermore, in 1977, the political parties agreed on a transition to democracy that bypassed a social transitional justice that accounted for the crimes against humanity and the violation of human rights committed by Franco's forces.[110] Although atrocities targeted all Spanish civilians, there was particular repression against Catalans and their identity, language and culture.[111]

The reason for this absence of justice was that the Spanish judicial system was dependent on Franco's ruling, and in the transition to democracy, elites signed Spain's Pact of Silence ("Pacto del Silencio" or "Pacto del Olvido"),[112] which annulled any judicial account of the mass trials and executions committed throughout the dictatorship.[113] The new democratic government approved an Amnesty Law in October 1977, which exonerated all political crimes committed during the dictatorship.[114] Despite the creation of the Constitutional Court of Spain and the reform of the Organic Law 6/1985 of the Judiciary, there was no depuration of the predominantly conservative judges and prosecutors that had previously collaborated in the repression of Franco's years,[115] which were even transferred to bodies such as the Supreme Court or the National Court.[116] The inbreeding of the judicial system hindered a public denunciation of the judiciary institutions, which particularly fueled resentment among Catalans.[117]

The closeness of the Spanish judicial institutions in accounting for criminality reinforced Catalan nationalist parties' aim for self-determination. However, the decisions of national institutions occasionally conflict with the charters of supranational institutions, such as the EU or UN, which could have prosecuted the Spanish government at that time for the infringement of

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[108] Anthony Smith. *National identity*. (Reno: University of Nevada Press, 1991): 10.

[109] Andrew Dowling. *The Rise of Catalan Independence : Spain's Territorial Crisis*. (Milton: Routledge, 2017): 60, ProQuest Ebook Central.

[110] Gor, F. "De la justicia franquista a la constitucional." Pp. 322-332 en Memoria de la transición, coordinado por Joaquín Prieto, Santos Juliá Díaz y Javier Pradera. Madrid: Taurus (1996): 223.

[111] Alan B. Anderson, "The Roots of Catalan Identity and Ethno-Nationalism." *JEMIE Vol 16, No 3,* (2017): 58. http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2017/Anderson3.pdf

[112] Nadia Hajji. "Post-transitional Justice in Spain: Passing the Historical Memory Law." (Duke University 2014): 84. https://academiccommons.columbia.edu/download/fedora_content/download/ac:179184/content/Hajji-Spring-2014.pdf

[113] Paloma Aguilar. "Jueces, Represión y Justicia Transicional en España, Chile y Argentina." *Revista Internacional de Sociología* 71, no. 2 (2013): 290.

[114] Davis, Madeleine. "Is Spain Recovering Its Memory? Breaking the Pacto del Olvido." *Human Rights Quarterly* (2005): 863.

[115] Paloma Aguilar. "Jueces, Represión y Justicia Transicional en España, Chile y Argentina." *Revista Internacional de Sociología* 71, no. 2 (2013): 294.

[116] Benito, A. B. "Poder judicial, responsabilidad legal y transición a la democracia en España." Foro Internacional 195 (2009): 177

[117] Paloma Aguilar. "Jueces, Represión y Justicia Transicional en España, Chile y Argentina." *Revista Internacional de Sociología* 71, no. 2 (2013): 294.

human rights and the violation of International Humanitarian Law (IHL).[118] This confrontation demonstrates how international institutions restrain states from certain behaviors, although in the transition to democracy, these restrictions did not materialize. It is key to note that since the dictatorship, the Spanish government has not committed crimes against humanity, nor has it infringed IHL. The Pact of Silence stands as a context-specific procedure to facilitate the transition to democracy, the formulation of the constitution in 1978, and the avoidance of another civil war.

Despite the fact that the right to secession is contingent upon the legal framework embraced by the government at the national level, this right may conflict with the legal framework endorsed by institutions at the international level.[119] For instance, the Spanish Constitution of 1978 does not recognize the right to secession, stating: "The Constitution is based on the indissoluble unity of the Spanish Nation, and the common and indivisible homeland of all Spaniards."[120] In accordance with the Constitution, the Senate approved the invocation of Article 155 against Catalonia, when the nationalist parties declared independence unilaterally in October 2017.[121] According to this article, "If a Self-governing Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way that is seriously prejudicial to the general interest of Spain, the Government, [...] take all measures necessary to compel the Community to meet said obligations [...]."[122] Consequently, the Spanish Government took absolute control of the Parliament of Catalonia, enforced the cessation of Catalan President Carles Puigdemont and all separatist leaders, and called for regional elections on December 21, 2017.

In opposition to the constitution, JxC's electoral manifesto of the December 2017 regional elections explicitly defended that "there are only two possible options in these elections; it is necessary to choose between the block of democracy and the block of 155 […] In democracy, Catalonia must be what its people want."[123] In line with this, ERC's electoral manifesto claimed that, "The 21D elections are a direct consequence of the arbitrary application of Article 155 of the Constitution, and are framed in an offensive by the Spanish Government which has even endangered the continuity of the Catalan institutions and are under threat some of its most emblematic referential elements."[124]

While secession is prohibited at the national level, the viability for secession increases within the international legal framework. In dissonance with the Spanish Constitution, Catalonian separatists have resorted to the international jurisdiction which acknowledges the collective right to self-determination of national communities when deciding about their political future, including the

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[118] "When Does the Charter of Fundamental Rights Apply?" European Commission: *Aid, Development Cooperation, Fundamental Rights*, (Last Updated 2017). https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/how-report-breach-your-rights_en
[119] Ridao Martín, Joan. "The Right to Secession in the Framework of Liberal Democracies and the Legitimacy of a Unilateral Declaration: The Case of Catalonia." *Age Of Human Rights Journal, Issue 4, Pp 111-137 (2015)* no. 4 (2015): 120.
[120] "Spanish Constitution, Sec.2" Spanish Government (December 1978). http://www.parliament.am/library/sahmanadrutyunner/ispania.pdf
[121] Constitutional Court of Spain. "Constitutional Court Judgment 4334-2017." October 17, 2017. Accessed July 27th, 2018. https://www.tribunalconstitucional.es/ResolucionesTraducidas/Ley%20referendum%20ENGLISH.pdf
[122] "Spanish Constitution, Sec.155 Art.1" December 7, 1978 Accessed on July 25th, 2018. http://www.parliament.am/library/sahmanadrutyunner/ispania.pdf
[123] "Electoral Manifesto Regional Elections 21-D, 2017," Together for Catalonia (Juntos por Cataluña, JxC). (December 2017), Pg 4. Accessed November 7, 2018. http://www.rtve.es/contenidos/documentos/programa_junts_17.pdf
[124] "Electoral Manifesto Regional Elections 2017," Republican Left (Esquerra Republicana De Cataluña, ERC). (December 2017), Pg 3. Accessed November 8, 2018. http://www.rtve.es/contenidos/documentos/programa_erc_17.pdf

possibility of secession.[125] The Catalonian Parliament has referred to the article in the Spanish Constitution that emphasizes respect for international treaties, i.e.: "Validly concluded international treaties, once officially published in Spain, shall be part of the internal legal system."[126] Through the invocation of this article, separatist groups have appealed to international treaties that defend the right to self-determination, and which Spain has officially ratified and endorsed. Even separatist leaders have taken advantage of international jurisdiction to avoid incarceration, such as President Carles Puigdemont who found asylum in Belgium after the declaration of independence. The openness of international institutions allowed him to appeal to the Belgian Court for protection from an imprisonment warrant.[127]

Moreover, in Resolution 19/2017, the Catalonian Parliament called upon the International Covenant on Economic, Social and Cultural Rights (ICESCR) as approved by the UN General Assembly (GA).[128] According to this covenant, "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[129] The Catalonian Parliament has also referred to the UN Charter, which declares that the organization's goal is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples […]."[130] Other international treaties that promote the right of self-determination are the UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States (1970),[131] the Vienna Declaration and Programme of Action (1993),[132] and the Treaty of Lisbon (2009),[133] among others. By appealing to international law, certain nationalist groups, such as Catalonia and Scotland, have benefited from the supranational centralization of power experienced by EU or UN.[134] The centralization of international institutions has conferred more power to sub-state identities, which have bolstered the aim for secession of ethno-nationalist groups. These institutions have been

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[125] Ridao Martín, Joan. "The Right to Secession in the Framework of Liberal Democracies and the Legitimacy of a Unilateral Declaration: The Case of Catalonia." *Age Of Human Rights Journal, Issue 4, Pp 111-137 (2015)* no. 4 (2015): 111-112.

[126] Spanish Constitution, Sec.96 Art. 1" December 7, 1978 Accessed on July 25th, 2018. http://www.parliament.am/library/sahmanadrutyunner/ispania.pdf

[127] Anderson, Alan B. "The Roots of Catalan Identity and Ethno-Nationalism." *JEMIE Vol 16, No 3,* (2017): 60. http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2017/Anderson3.pdf

[128] Parliament of Catalonia. "Law 19/2017 Charter 2, Art.2, of 6 September, on the Referendum on Self- determination" Procedure 202-00065/11. (September 2017). http://exteriors.gencat.cat/web/.content/00_ACTUALITAT/notes_context/Law-19_2017-on-the-Referendum-on-Self-determination.pdf

[129] United Nations General Assembly." International Covenant on Economic, Social and Cultural Rights (ICESCR)" Resolution 2200A (XXI): Part 1 Art. 1. Approved 1966. http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_2200A(XXI)_economic.pdf

[130] United Nations. "Charter of the United Nations and Statute of the International Court of Justice, Article 1.2" (1945). https://treaties.un.org/doc/publication/ctc/uncharter.pdf

[131] United Nations. "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" Resolution adopted by the General Assembly: 2625 (XXV), (A/RES/25/2625), (October 24, 1970). http://www.un-documents.net/a25r2625.htm

[132] United Nations Office of the High Commissioner for Human Rights (OHCHR). "Vienna Declaration and Programme of Action." Adopted by the World Conference on Human Rights in Vienna, (June 25, 1993). https://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf

[133] European Union. "Treaty Of Lisbon: Amending the Treaty on European Union and the Treaty Establishing the European Community," (2007/C 306/01). *Official Journal of the European Union,* (Signed December 13 2007, Entered into Force December 1, 2009). https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:FULL:EN:PDF

[134] Thomas Y. Patrick. "The Zeitgeist of Secession Amidst the March Towards Unification: Scotland, Catalonia, and the Future of the European Union." *Boston College International & Comparative Law Review* 39, no. 1 (2016).

consequently confronted with the dilemma of respecting the sovereignty of their member states, or weakening their own legitimacy by defending the nationalist movements and the right to secede under certain circumstances.[135]

The case of Catalonia bolters how institutions are crucial in the process of contestation and adaptation of competing identities. Every community tends to coalesce and reinforce its identity through certain institutions which allow its particular identity to be maintained. The Catalonian nationalist groups have particularly reiterated their democratic identity by using a secessionist repertoire characteristic of democratic institutions, that is, 'the right to decide.'[136] In September 2017, the Parliament of Catalonia passed a resolution on the referendum for self- determination, which avowed that, "The people of Catalonia are a sovereign political subject and, as such, exercise their right to freely and democratically decide upon their political condition."[137] In this vein, JxC remarked in its manifesto that "Catalonia is a nation where its citizens decide what and how they want to be, and not a territory that can be governed from Spain through the imposition, repression and suppression of their institutions."[138]

Conclusion

The puzzle of Catalonia's independence can only be understood by delving into its long history. In retrospect, two pivotal factors seem to have boosted the secessionist process: the lack of transnational justice in the transition from dictatorship to democracy and the increase in economic inequalities with its peak in the economic crisis of 2008. The absence of avenues for justice to account for the crimes against humanity committed during the dictatorship has reinforced an already deep-rooted sense of Catalonia's ethno-nationalism and separatist identity. The end of the dictatorship led to the democratic opening of the country, in which the decentralization of the government's power fostered the pluralism of nationalities in the form of Autonomous Communities. These communities' right to self-govern was particularly distinctive in Catalonia, where the local elites used the new process of politicization to promote the movement for independence. With the economic crisis of 2008, Catalonia suffered a general loss of economic sovereignty that fostered the materialization of grievances among the population. In the context of economic repression, pro-independence leaders exploited these economic grievances and popular dissatisfaction to mobilize Catalans. Elites argued that only through independence could the region regain its positive economic performance and develop a full-fledged Catalan identity.

However, since the end of the dictatorship, Spain has emerged as a pluralistic society with a multiplicity of subnational identities. According to Horowitz's definition of ethnic groups, Catalonia can be considered an ethnic minority in terms of culture and language. Yet, Catalonia's ethnic identity coalesces with the rest of the ACs' ethnic groups to ultimately form the overarching Spanish

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[135] Patrick, "The Zeitgeist of Secession Amidst the March Towards Unification: Scotland, Catalonia, and the Future of the European Union," 218.

[136] Emmanuel Dalle Mulle and Ivan Serrano. "Between a principled and a consequentialist logic: Theory and practice of secession in Catalonia and Scotland." *Nations and Nationalism* (Published on January 1, 2018): 20.

[137] Parliament of Catalonia. "Law 19/2017 Charter 2, Art.2, of 6 September, on the Referendum on Self- determination" Procedure 202-00065/11, (September 6, 2017): Page 4. Chapter II Article 2. http://exteriors.gencat.cat/web/.content/00_ACTUALITAT/notes_context/Law-19_2017-on-the-Referendum-on-Self-determination.pdf

[138] "Electoral Manifesto Regional Elections 21-D, 2017," Together for Catalonia (Juntos por Cataluña, JxC). (December 2017): 4. *My translation.* http://www.rtve.es/contenidos/documentos/programa_junts_17.pdf

national identity. Furthermore, Catalonia does not suffer ethno-political exclusion nor economic discrimination, and it is administered according to the Spanish Constitution that recognizes the right of self-governance of all ACs. Catalonia has a much higher rate of development of income and prosperity than other communities in the country, and the separatist groups seek to achieve the sovereignty and autonomy of the region through ethno-nationalism. Thus, the present research connects horizontal economic inequalities with cultural norms, providing the explanation for how the Catalan separatist sentiment has taken on its form of ethnic conflict.

Overall, the present research reinforces Horowitz's theoretical explanation of how the positive economic performance of an advanced group also leads to separatism and even conflict. Although the goal of this paper was to inquire into how economic grievances experienced by Catalans have taken the form of ethnic conflict in the process toward independence, the analysis of the electoral manifestos has unraveled an epistemological problem of the present research. In the presentation of explanatory factors—including horizontal inequalities, level of groupness and level of openness of institutions—the issue of independence was treated as the dependent consequence to said factors. However, the analysis of nationalist parties' manifestos has called into question the validity of treating independence as an end, and has rather brought into the debate the need to study Catalonia's independence as a means toward a successive project: the improvement of Catalans' lives and the preservation of the Catalan identity.

Moreover, several questions merit further research, incorporating empirical methodology. For instance, the analysis of the grievances experienced by Catalans may be considered weak, insofar as grievances are empirically and systematically difficult to measure as an explanatory factor; the present research has only approached the issue of grievances from a theoretical point of view. The same critique may emerge regarding the analysis of level of groupness experienced by separatist individuals and the level of openness of democratic institutions. In order to bridge these gaps, future research should be devoted to the empirical observations of the theoretical research proposed here. In that context, the three explanatory elements of grievances, level of groupness, and level of openness of democratic institutions should be treated as intervening variables towards the demonstration of a hypothesis. Further research should also discuss the arguments of authors who are skeptical of the grievances-based argument, such as Paul Collier (2000, 2004), Anke Hoeffler (2004), James D. Fearon and David D. Laitin (2003). These authors question the validity of the grievances model in defense of the greed-based argument for secession or conflict. In this vein, nationalist sentiments experienced by Catalans would be subject to the greed vs. grievances dichotomy, leading to a comparative analysis of whether Catalans' aim for independence is driven by rebels to generate profit and opportunities for self-enrichment, or if sentiments are rather motivated by a desire to achieve the collective well-being of Catalans.

What the present research depicts is that in the last decades, the Catalan case has become the epicenter of Spain's nation-building project. Ultimately, Catalonia's aim for independence has led to the modification of relations between the Catalan government and the Spanish institutions, between institutions and ethno-nationalist movements, and between Catalans and the Spanish national identity. The reinforcement of grievances suffered by Catalans will seriously undermine the legitimacy of an already weak Spanish central state, and could soon reach a point of no return. As long as the Spanish central government continues to fail in tackling Catalan separatist sentiment through diplomatic mechanisms, the anti-constitutionalist movement will divide an already polarized Catalan population even further.

Democracy Under Strain in Europe and the United States: The Greater Implications on the Liberal World Order

Anthony Branch

Introduction

Francis Fukuyama's *The End of History and The Last Man* presents the post-Cold War assessment that democracy triumphed, and the battle between ideologies has ended in favor of liberalism.[1] However, contrary to Fukuyama's optimistic outlook, nationalism, populism, and authoritarianism are on the rise in numerous contexts and are threatening to displace liberal democracies. Although this trend is demonstrated globally,[2] this paper will provide a comparative analysis between Europe and the United States: the original leaders of the liberal world order. To analyze this phenomenon, this paper will focus on "strongmen," such as U.S. President Donald Trump, Hungarian Prime Minister Viktor Orban, Czech President Milos Zeman; and movements including the Law and Justice Party in Poland, Alternative for Germany, and the Alt-Right in the United States. In addition, the analysis of these individuals and movements will be supplemented by trends in public opinion about democracy.

In analyzing specific cases, this paper will attempt to answer the following research question: what factors are contributing to the decline of liberal democratic institutions as a dominant feature of the world order? In order to answer this question, this paper will comparatively analyze the occurrence of nationalism, populism, and authoritarianism through three observable factors: state leaders and political movements, political rhetoric and policies, and public opinion.

For the purposes of this paper, nationalism is defined as a collective sentiment promoting anti-elitism and excluding outsiders from the national identity, often manifested in anti-immigration and anti-globalization movements.[3] Populism is not a particular ideology, but a type of political movement that appeals to the identity of the population supporting it, often occurring as a movement of 'the people' fighting against 'the elites.'[4]

Background

Despite forming long-established liberal democracies, illiberal trends have developed within Europe and the United States for the past twenty years, increasingly visible in right-wing political parties.[5] Russian President Vladimir Putin has governed Russia for nearly two decades, winning another reelection as president in March 2018.[6] Olga Oliker describes Putin's complete control over the Russian Federal Assembly, pointing out that there is little evidence of any real constraint over his power.[7] In this system of authoritarianism, few individuals are consulted and one (Putin) has full decision-making power. There are massive crackdowns on the press; high censorship; and the use of

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[1] See Francis Fukuyama, *The End of History and The Last Man* (New York: Free Press, 1992).

[2] See Roberto Stefan Foa and Yascha Mounk, "The Danger of Deconsolidation: The Democratic Disconnect," *Journal of Democracy* 27, no. 3 (2016).

[3] Olga Oliker, "Putinism, Populism and the Defence of Liberal Democracy, Survival," *Global Politics and Strategy* 59, no. 1 (2017): 14-5.

[4] Ibid., 14.

[5] Ibid., 7-8.

[6] Neil MacFarquhar, "Putin Wins Russia Election, and Broad Mandate for 4th Term," *The New York Times*, March 18, 2018, accessed May 10, 2018, https://nyti.ms/2GFzeaY.

[7] Oliker, "Putinism, Populism and the Defence of Liberal Democracy, Survival," 7.

police, courts, legislation, and propaganda to eliminate political opposition.[8] Despite dwindling resources and a stagnant economy, Putin has sustained his domestic popularity. As a result, illiberal leaders in Europe and the United States have lauded Putin for his leadership.

Similarly, Prime Minister Viktor Orban of Hungary has continued to maintain power due to several successive political factors: systematic weakening of democratic institutions in Hungary, support for his anti-immigration platform, and fragmentation of political opposition.[9] In addition, he has continued to praise Putin as a model for his self-proclaimed illiberalism.[10] The right-wing Law and Justice party (PiS) in Poland, led by Jaroslaw Kaczynski, is increasingly gaining power as well,[11] posturing the country become increasingly similar to Hungary.[12] Similarly, the U.K.'s vote to leave the European Union reportedly rested on the same populist right-wing factors: "fear of outsiders, distrust of globalization, and social constructivism."[13] Donald Trump won the U.S. presidency using political rhetoric that echoed these same factors.[14]

Oliker argues that once these individuals and parties are in power, they seek to strengthen executive rule, which "combined with their share of ideological threads, makes those who believe that the foundations of democracy lie in openness and tolerance understandably nervous."[15] The strengthening of centralized rule raises concerns that this global trend is not just a "crisis of values," but also a larger shift toward autocratic rule.[16]

Some observers argue that deconsolidation of democracies is occurring and that authoritarianism is on the rise. Roberto Stefan Foa and Yascha Mounk come to this conclusion through a thorough analysis of citizens' expression of support for the political system as a whole; the degree to which citizens support liberal democratic institutions, such as civil rights; citizens' willingness to advance their political causes within the existing political system; and citizens' openness to autocratic alternatives, such as military rule.[17] Through this investigation, Foa and Mounk have found that citizens in the United States and EU member states have not only grown cynical of their political leaders, but of the value of democracy itself as a political system.[18] In addition, citizens were found to be less hopeful that any political action they take may influence public policy, and were more willing to express support for authoritarian alternatives.[19]

Foa and Mounk ascribe the withdrawal from democratic institutions to cohorts of age groups or generations. In the United States specifically, only ten percent of citizens born in the interwar years and fourteen percent of "Baby-Boomers" say that it is "unimportant" in a democracy for people to "choose their leaders in free elections," contrary to millennials at twenty-six percent.[20]

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[8] Ibid., 7.

[9] Andras Biro-Nagy, "Why Orban Won," *Foreign Affairs*, April 10, 2018, accessed May 10, 2018, https://www.foreignaffairs.com/articles/hungary/2018-04-10/why-orban-won.

[10] Oliker, "Putinism, Populism and the Defence of Liberal Democracy, Survival," 8-9.

[11] Ibid., 8.

[12] R. Daniel Kelemen, "The Assault on Poland's Judiciary," *Foreign Affairs*, July 26, 2017, accessed May 10, 2018, https://www.foreignaffairs.com/articles/poland/2017-07-26/assault-polands-judiciary.

[13] Oliker, "Putinism, Populism and the Defence of Liberal Democracy, Survival," 8.

[14] Ibid., 8.

[15] Ibid., 8.

[16] Ibid., 8.

[17] Ibid., 6.

[18] Ibid., 7.

[19] Ibid., 7.

[20] Ibid, 10.

In Europe there is a similar trend, with a less dramatic disparity.[21] In addition, younger generations are not only less committed to the importance of democracy, they are also less likely to be politically engaged, as young people's interest in politics is found to be rapidly declining.[22] At the same time, older cohorts' interest in politics has remained the same or increased.[23]

In the past three decades, the share of U.S. citizens who think it would be "good" or "very good" for the army to rule has risen from one-in-sixteen to one-in-six.[24] There have been similar increases of those in favor of a "strong leader who doesn't have to bother with parliament and elections," and those who want experts to "take decisions" for the country.[25] According to Foa and Mounk, the U.S. is not the only consolidated democracy to experience this trend, as it is present in Western Europe as well. Foa and Mounk propose that citizens who came of age after the end of the Cold War do not express the same support for liberal democracy, because they have never experienced a real threat to it.[26]

Foa and Mounk's research demonstrates considerable concern for the health of global democracy and the trends of increasing authoritarianism. However, in recent polls conducted by the Pew Research Center, there is confidence in the sustainability of democracy in the United States. Most Americans see democracy as working well, but want "significant" changes to operate more efficiently in current times.[27] Most notably, seventy-six percent of Americans say it would be too risky to give U.S. presidents more power.[28] This contradicts the generational decrease in support for democracy in the United States. Moreover, there is rising concern amongst U.S. foreign policy experts: only twenty-seven percent are satisfied with the current state of U.S. democracy.[29] By contrast, sixty-four percent of European foreign policy experts are satisfied with how their democracies are functioning.[30]

Other political economists, such as Ziya Onis, argue that this rise of illiberalism is closely associated with the timing of global shifts and events, such as the 2008 financial crisis, rising problems of inequality and unemployment, and massive migration and terrorist attacks that have contributed to the growth of right-wing populist sentiments.[31] In turn, the right-wing movement has capitalized on charismatic strongmen leaders, lending to their electoral success through their personalist appeal. Onis argues that the rhetoric used by right-wing parties and leaders successfully articulates the fears of ordinary citizens through direct identification of the "enemy."[32] Using this fear-based strategy, populist rhetoric combines conceptions of the "economy" and "identity,"

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[21] Ibid., 10.

[22] Ibid., 10.

[23] Ibid., 10.

[24] Ibid., 12.

[25] Ibid., 12.

[26] Ibid.

[27] Carroll Doherty, "Key findings on Americans' views of the U.S. political system and democracy," *Pew Research Center*, April 26, 2018, accessed May 12, 2018, http://www.pewresearch.org/fact-tank/2018/04/26/key-findings-on-americans-views-of-the-u-s-political-system-and-democracy/.

[28] Ibid.

[29] Bruce Stokes, "U.S. foreign policy experts are more pessimistic about democracy than their European counterparts," *Pew Research Center*, April 13, 2018, accessed May 12, 2018, http://www.pewresearch.org/fact-tank/2018/04/13/u-s-foreign-policy-experts-are-more-pessimistic-about-democracy-than-their-european-counterparts/

[30] Ibid.

[31] Ziya Onis, "The Age of Anxiety: The Crisis of Liberal Democracy in a Post-Hegemonic Global Order," *The International Spectator* 52, no. 3 (2017): 19.

[32] Ibid., 28.

linking them to the "multiple insecurities" that ordinary people feel.[33] This rhetoric points specifically to the "other" or the "foreigner" as the ultimate cause of everyday problems, mobilizing mass appeal to an exclusionary nationalist identity.

Candidate Donald Trump used this tactic effectively, contributing to his unexpected electoral success.[34] For example, Trump's rhetoric relied on the topics of Chinese exports, the influx of Mexican immigrants, and Islamophobia, each of which appealed to the fears of many disillusioned American workers.[35] Similarly, the concerns of increasing migration and unfair trade were at the center of the U.K.'s EU referendum.[36]

The commonality between populist leaders in all the above cases is the rejection of centrist, globalist politics, as they focus exclusively on economic and identity concerns of the politically engaged, dwindling majority. This is amplified by use of divisive rhetoric with strong elements of exclusionary nationalism to stir populist appeal.[37]

Discussion

Clearly, the evidence displays a trend in the U.S. and Europe toward rising illiberalism, populism, nationalism, and authoritarianism. Donald Trump's rise as a leader within this trend toward illiberalism has a generational paradox. Despite the decrease in support for democracy among millennials, the largest electoral pool of support for Donald Trump was from the older age cohorts, who are also the most vehement supporters of a democratic political system.[38] Support for Trump is significantly associated with cultural backlash, as the older generation of Americans demonstrate fear that they are losing a stake in the nation, due to progressive politics and the transformation of cultural-social trends and norms.[39] This generation fears the weakening of conservative values associated with the Christian faith, traditional family values, and patriotism. A cultural shift is bolstering a wave of progressivism, such as respect for LGBTQ rights, tolerance of diverse lifestyles and ethnic identities, and shifts toward secularism.[40] In the United States, the political movement deemed the "alt-right" is a movement loosely affiliated with white nationalists, nativists, and right-wing populists who have reintegrated racial politics and anti-immigration sentiment into the national political dialogue.[41] The alt-right envisions a "racially homogenous white ethnostate," similar to groups such as the Aryan Nations or the Ku Klux Klan.[42] While the alt-right is reminiscent of racist revisionist American ideology, it is looking to the European far right for ideas and strategies, specifically the European New Right.[43] Contrary to the strategies of the roots of racist

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[33] Ibid., 28.

[34] Ibid., 28.

[35] Ibid., 28.

[36] Sara Hobolt, "The Brexit Vote: A Divided Nation, A Divided Continent," *Journal of European Public Policy* 23(9), 2016, accessed December 4, 2018, 1,10.
http://eprints.lse.ac.uk/67546/7/Hobolt_The%20Brexit%20vote%20a%20divided%20.pdf

[37] Ibid., 28.

[38] Pippa Norris, "Is Western Democracy Backsliding? Diagnosing the Risks," *Journal of Democracy*, April 28, 2017, accessed May 10, 2018, 16-17,
https://www.journalofdemocracy.org/sites/default/files/media/Journal%20of%20Democracy%20Web%20Exchange%20-%20Norris_0.pdf.

[39] Ibid., 16.

[40] Ibid., 16.

[41] Jozef Andrew Kosc, "The Liberal Roots of Nativism." *Foreign Affairs*, September 29, 2017, accessed May 10, 2018, https://www.foreignaffairs.com/articles/united-states/2017-09-29/liberal-roots-nativism.

[42] George Hawley, "The European Roots of the Alt-Right," *Foreign Affairs*, October 27, 2017, accessed May 10, 2018, https://www.foreignaffairs.com/articles/europe/2017-10-27/european-roots-alt-right.

[43] Ibid.

movements in the United States, such as the Ku Klux Klan, the Alt-Right employs a pseudo-academic approach.[44] This includes pseudo-academic journals, books, and websites.[45]

In addition, autocratic statements that are delivered by a populist leader [46] pose a risk to liberal democracy by empowering exclusionary narratives that restrict the rights of out-groups and undermine institutions.[47] During his campaign, candidate Trump bombastically peddled populist policies, such as the border wall with Mexico, and the travel ban on several predominantly Muslim countries.[48] After three different versions of the travel ban were introduced and continuously blocked by federal judges, it was finally brought before the Supreme Court in April 2018; the Supreme Court sustained the ban in favor of the Trump administration.[49] Trump's policies that attempt to contain the flow of immigrants to the United States are populist at their core: they identify the 'other' or the 'foreigner' as the cause of the state's problems.

Viktor Orban of Hungary's right-wing party, Fidesz, has secured forty-eight percent of the parliamentary vote, its largest win since its dominance began in 2010.[50] Economic anxiety and general discontent with the political system have allowed the Fidesz party to implement radical policy changes, such as closing its borders to immigrants.[51] In 2014, Orban openly professed his desire to build an "illiberal state."[52] In 2017 and 2018 he doubled down on this desire by targeting funding for non-governmental organizations,[53] and adopting legislation to cripple the operation of the Central European University in Hungary.[54] Although Orban governs a small country in Europe, the illiberal movement he foments is likely to be the systematic contender to liberalism globally.[55]

In Europe there are many populist and illiberal groups on the rise, as the average share of the vote for populist parties in national and European parliamentary elections has more than doubled since the 1960s, from about five percent to thirteen percent.[56] During this same period of time, populist share of seats tripled from just under four percent to nearly thirteen percent.[57] In

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[44] George Hawley, *Making Sense of the Alt-Right*, New York: *Columbia University Press*, 2017, accessed December 6, 2018, 26.
[45] Ibid, 26.
[46] It is important to note that Donald Trump has made numerous remarks praising autocratic values and policies, such as celebratory and supportive public statements about Recep Tayyip Erdogan, Vladimir Putin, and Xi Jinping's consolidation of authoritarian power.
[47] Ibid., 11.
[48] Amanda Holpuch, "The Invisible Wall: How Trump is Slowing Immigration Without Laying a Brick," *The Guardian*, December 23, 2017, accessed May 10, 2018, https://www.theguardian.com/us-news/2017/dec/23/donald-trump-mexico-border-wall-invisible-immigration.
[49] Adam Liptak and Michael D. Shear, "Key Justices Seem Skeptical of Challenge to Trump's Travel Ban," *The New York Times*, April 25, 2018, accessed May 10, 2018, https://nyti.ms/2FfxumF.
[50] Andras Biro-Nagy, "Why Orban Won," *Foreign Affairs*.
[51] Ibid.
[52] Csaba Toth, "Full Text of Viktor Orban's Speech at Baile Tusnad (Tusnadfurdo) of 26 July 2014," *The Budapest Beacon*, July 29, 2014, accessed May 10, 2018, https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/.
[53] Yasmeen Serhan, "Hungary's Anti-Foreign NGO Law," *The Guardian*, June 13, 2017, accessed May 10, 2018, https://www.theatlantic.com/news/archive/2017/06/hungarys-anti-foreign-ngo-law/530121/.
[54] Jennifer Rankin, "Hungary Investigated by EU Over Law Threatening Top University," *The Guardian*, April 12, 2017, accessed May 10, 2018, https://www.theguardian.com/world/2017/apr/12/frans-timmermans-eu-commission-central-european-university-budapest-hungary.
[55] Ivan Krastev, "Eastern Europe's Illiberal Revolution," *Foreign Affairs*, May/June 2018 Issue, accessed May 10, 2018, https://www.foreignaffairs.com/articles/hungary/2018-04-16/eastern-europes-illiberal-revolution.
[56] Pippa Norris, "Is Western Democracy Backsliding? Diagnosing the Risks," 14.
[57] Ibid., 14.

2015, Poland's PiS won thirty-seven and a half percent of the vote and a parliamentary majority.[58] Utilizing this majority, the PiS has made it illegal to accuse the "Polish Nation" of any complicity in the Holocaust and has promoted Russian propaganda about the aircraft crash in 2010, which killed President Lech Kaczynski (Jaroslaw Kaczynski's twin brother).[59] In addition, PiS has crippled the constitutional tribunal and given lawmakers and ministers increased power over the appointment of judges, threatening the principle of judicial independence and exploiting the very liberal institutions to which PiS owes its success.[60] In addition, the PiS reduced the supreme court's mandatory retirement age from 70 to 65, forcing 27 of 74 judges to retire.[61] Moreover, Jaroslaw Kaczynski asserts himself as Poland's de facto leader, recently drawing attention to "parts of our reality which must not be merely [...] modernized, but ploughed over."[62] Since 2015, the Law and Justice party has aimed to dismantle democratic institutions and rejects the European project.[63] Thus, its movement contributes to the undermining of the liberal-democratic world order.

As the evidence demonstrated, one of Viktor Orban's most significant objectives is the deterrence of Muslim migrants attempting to enter the country. As Orban pronounced on May 11, 2018, "Rather than try to fix a liberal democracy that has run aground, we will build a 21st-century Christian democracy."[64] In addition, Orban and the Fidesz party introduced a new law that would ban NGOs and civil society groups that help immigrants and refugees, including jailing those who help illegal migrants gain status to stay in Hungary;[65] he also stated in 2016 that migrants are "poison" and "not needed."[66] Not only does this violate the 1951 United Nations Refugee Convention,[67] but it reinforces xenophobic and nationalist sentiment. In an effort to curb Orban's behavior, the European Parliament has invoked Article 7 for the first time: the suspension of a state's rights pursuant to breaching the union's founding principles.[68] Among other aims, the Marshall Plan, NATO, and the European Union all shared a common goal: to implement and

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[58] Remi Adekoya, "Why Poland's Law and Justice Party Remains So Popular," *Foreign Affairs*, November 3, 2017, accessed May 10, 2018, https://www.foreignaffairs.com/articles/central-europe/2017-11-03/why-polands-law-and-justice-party-remains-so-popular.

[59] "Poland's Ruling Law and Justice Party is Doing Lasting Damage," *The Economist*, April 21, 2018, accessed May 10, 2018, https://www.economist.com/news/europe/21740803-once-hollowed-out-rule-law-hard-restore-polands-ruling-law-and-justice-party.

[60] Ibid.

[61] Philip Heijmans, "Poland Forces Supreme Court Judges into Early Retirement," *Public Radio International*, July 3, 2018, accessed December 3, 2018, https://www.pri.org/stories/2018-07-03/poland-forces-supreme-court-judges-early-retirement

[62] Ibid.

[63] "Policy Performance and Governance Capacities in the OECD and EU," 184. *Bertelsmann Stiftung*. October 9, 2018, accessed December 3, 2018. https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/SGI_2018_Englisch_komprimiert.pdf

[64] Marc Santora and Helene Bienvenu, "Secure in Hungary, Orban Readies for Battle with Brussels," *The New York Times*, May 11, 2018, accessed May 12, 2018, https://nyti.ms/2G4Cye4.

[65] Krisztina Than, "Hungary Aims to Criminalize Aiding Illegal Migration in 'Stop Soros' Bill," *Reuters*, May 29, 2018, accessed December 3, 2018. https://www.reuters.com/article/us-hungary-soros-law/hungary-aims-to-criminalize-aiding-illegal-migration-in-stop-soros-bill-idUSKCN1IU1KE

[66] "Hungarian prime minister says migrants are 'poison' and 'not needed'" *The Guardian*, July 26, 2016, accessed May 12, 2018, https://www.theguardian.com/world/2016/jul/26/hungarian-prime-minister-viktor-orban-praises-donald-trump.

[67] United Nations, "Convention and Protocol Relating to the Status of Refugees," accessed December 3, 2018. https://cms.emergency.unhcr.org/documents/11982/55726/Convention+relating+to+the+Status+of+Refugees+%28signed+28+July+1951%2C+entered+into+force+22+April+1954%29+189+UNTS+150+and+Protocol+relating+to+the+Status+of+Refugees+%28signed+31+January+1967%2C+entered+into+force+4+October+1967%29+606+UNTS+267/0bf3248a-cfa8-4a60-864d-65cdfece1d47

[68] "EU Parliament Votes to Punish Hungary Over 'Breaches' of Core Values," *BBC*, September 12, 2018, accessed December 3, 2018. https://www.bbc.com/news/world-europe-45498514

sustain democracy and cooperation within Europe, in order to prevent another great war. By dismantling the democratic pillars of their states, Orban and Kaczynski not only risk their own security and stability, but the security of Europe, and thus global security itself.

Foa and Mounk found that the American public lacks both knowledge about democracy and confidence that political action will ever have any real impact;[69] however, there is overall satisfaction with its functionality.[70] Whereas U.S. foreign policy experts are blatantly dissatisfied, despite their active engagement in and complete understanding of the democratic system.[71] Of notable interest is that while the European Bloc is under legitimate transformations from liberal democracies to illiberal regimes, as seen in Hungary, Poland, and Turkey,[72] European thought-leaders are more satisfied with the state of democracy in their countries than their U.S. counterparts.[73]

In states with low political affiliation among the public, there is widespread negative perception of democracy;[74] specifically, nations with higher shares of politically unaffiliated people show stronger opposition to representative democracy.[75] Among these countries are both Poland (32%) and Hungary (37%), both scoring the highest within the European Bloc that are politically unaffiliated (except Greece).[76] As such, it is no surprise that the states with the largest lack of politically affiliated citizens are the same states with illiberal leaders, rhetoric, policies, and movements. Without exercising the basic democratic principle of political participation,[77] these states are likely to continue on an illiberal path, resulting in further disintegration of their democratic institutions. In addition, the abdication of political participation by the populace grants leaders, such as Orban and Kaczynski, the opportunity to reconstruct domestic political structures to consolidate executive power and further weaken the power of the people, as seen in Turkey.[78]

Conclusion

The indicators of nationalism, populism, and authoritarianism are tangibly seen in political rhetoric, public policy, and changes to domestic institutions. Rhetoric that demonstrates blatant xenophobia and intent to build an "illiberal" state, policies that restrict the ability to seek asylum, and the systematic corruption of the judicial system are likely only the beginning—an early symptom—of a growing trend. The full implications of these factors on liberal democracy and the world order are unknowable; however, it is reasonable to assess that they will contribute to the erosion of an international system already under tremendous stress.

The future of liberal democracy as a fundamental feature of the international system, particularly in the traditionally liberal states of the West, is uncertain, which points to a great shift in the world order. While there is yet to be any concrete illiberal manifestations in the United States,

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[69] Foa and Mounk, "The Danger of Deconsolidation: The Democratic Disconnect," 7.

[70] Doherty, "Key findings on Americans' views of the U.S. political system and democracy."

[71] Stokes, "U.S. foreign policy experts are more pessimistic about democracy than their European counterparts."

[72] "Policy Performance and Governance Capacities in the OECD and EU," 6-11, 213, *Bertelsmann Stiftung.*

[73] Bruce Stokes, "U.S. foreign policy experts are more pessimistic about democracy than their European counterparts," *Pew Research Center*, April 13, 2018, accessed May 12, 2018, http://www.pewresearch.org/fact-tank/2018/04/13/u-s-foreign-policy-experts-are-more-pessimistic-about-democracy-than-their-european-counterparts/.

[74] Janell Fetterolf, "Negative views of democracy more widespread in countries with low political affiliation," *Pew Research Center*, March 8, 2018, accessed May 12, 2018, http://www.pewresearch.org/fact-tank/2018/03/08/negative-views-of-democracy-more-widespread-in-countries-with-low-political-affiliation/.

[75] Ibid.

[76] Ibid.

[77] United Nations, "Democracy," accessed December 3, 2018. http://www.un.org/en/sections/issues-depth/democracy/

[78] "Policy Performance and Governance Capacities in the OECD and EU," 215, *Bertelsmann Stiftung.*

Europe is already witnessing the rise of illiberal regimes in Hungary and Poland—and the rhetoric of current American politics echoes the political dialogue of these states' nationalist leaders. The revival of authoritarian trends—manifested through exclusionary nationalist and populist sentiment, policies, movements, and leaders—and public complacency toward these trends, gives credibility to the idea that a world order is emerging that will not prioritize the liberal values that have been pursued and promoted on the world stage since the mid-twentieth century.

Asymmetric Puzzles: A comparative analysis of the evolution of 'New Wars' in the Middle East and Eastern Europe

Eleftheria Photiou

Introduction

Within the last decade, the world has witnessed deadly conflicts and extreme violence, especially in vulnerable areas such as the Middle East and Eastern Europe. A period of globalization and the rapid resurgence of nationalism has resulted in radical disputes amongst intra-state actors. The ISIS insurgency in Syria and subsequent seven-year Civil War, and the nationalist uprising of Russian ethnic minorities in Eastern Europe are just a few examples of the asymmetric conflicts arising in these regions. In the midst of the conflict, a new type of warfare is emerging. Following the post-Cold War period, a new phenomenon developed globally known as "new wars," a concept primarily advanced by the British academic Mary Kaldor.[1]

These new wars differ characteristically in nature from conventional wars, which are traditionally fought amongst states for territorial gains. On the contrary, new wars can be described as conflicts between varying combinations of state and non-state actors, fighting for political rather than physical control, and which in many cases are privately funded.[2] This novel concept includes a component of hybrid warfare, as it is implemented with non-military tools such as economic influence, cyber operations, and proxies in order to pursue national interests outside the borders.[3] A debate has emerged within journalistic scholarship regarding the existence of these new wars and their degree of originality. This paper will defend this concept within modern warfare and compare and contrast the phenomenon in two regions: the Middle East and Eastern Europe.

Literature Review

A vast amount of literature has emerged about the existence of new wars and their influence in the Middle Eastern and Russian conflicts. Kaldor argues against the continuing existence of conventional wars as a result of the power vacuum left behind by the Cold War era.[4] This argument is put forth in a World Bank report drafted in 2011, following the beginning of the Syrian Civil War and the transformation of conflicts:

> Global systems of the 20th century were designed to address inter-state tensions and civil wars. … 21st century violence does not remind 20th century mould...Violence and conflict have not been banished...But because of the success in reducing inter-state war, the remaining forms of violence do not fit neatly either into "war" or "peace", or into "political" or "criminal" violence.[5]

Herfried Münkler agrees with this 'new wars' thesis and describes how the privatization of wars has contributed to the change of modern warfare. He states that these changes are fueled by

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[1] Mary Kaldor, "In Defence of New Wars," *Stability: International Journal of Security and Development,* 2(1):4 (March 7, 2013): 1.

[2] Ibid., 2-3.

[3] C.S. Chivvis, "Understanding Russian 'Hybrid Warfare' and What Can be Done About it," *RAND Corporation* (2017): 1.

[4] Kaldor, "In Defence of New Wars," 5.

[5] World Bank, *World Development Report 2011: Conflict, Security and Development,* 2011, 2.

weaknesses in state structures and an increase in the presence of non-state actors, such as jihadist groups in the Middle East, who are financed by third parties to engage in conflicts. Therefore, the dissolution of distinctions between military and non-military aspects, as well as the narrowing gap between civilians and combatants,[6] results in the evolution of this new phenomenon. Still, objectors of this idea express the need for a historical perspective to be incorporated into these new findings. An example is Newman's argument, which stresses that the nature of warfare has not changed, but rather new circumstances exist within the same framework.[7]

In their analysis of 'Rumours of New Wars,' Henderson and Singer demonstrate that despite the fact patterns of warfare have changed, these new wars are just "amalgamations of various interstate, extrastate and intrastate wars,"[8] meaning they represent the 'Old Wars' in new formats but do not necessarily present a novel character. In an exploration of datasets for new wars, Anouk Rigterink juxtaposes both the arguments of Kaldor and Henderson/Singer. Rigterink uses empirical evidence to support the changing patterns of modern warfare while maintaining the position that this was a recurring event following the end of the Second World War. She notes no significant change during the post-Cold War period.[9] Notwithstanding these views, Münkler proves that the joint occurrence of the emerging privatization of war along with the intrastate conflicts that occurred after the Cold War has produced a distinctly new phenomenon.[10]

A middle ground perspective is very helpful to understand all arguments in this discourse. Fleming, in his analysis of the Clausewitzian future, discusses opposing sides on the matter and incorporates the Clausewitzian perspective, favoring the predominant existence of 'Old Wars' into a new reality with the features of new wars.[11] Schuurman agrees with Fleming and further discusses the trinity found in Clausewitz's theory of war. This is a set of principles composed by "primordial violence, hatred and enmity," found in three components of society: government, people and the army.[12] This paper will borrow this interpretation, specifically discussing this novel occurrence in the Middle East and Eastern Europe. Scholars like Valbjørn and Bank analyse this view with a discussion about the "New Arab Cold War." They examine current regional dynamics, which are marked by a fundamental break from the Old Middle East through emerging competing identities and an interplay between various forms of power and sovereignty.[13] Jeannie Sowers reinforces this opinion with a discussion of targeting in new Middle Eastern Wars[14] that directly attacks the weakness of state authority and impacts the lives of civilians.

Murphy and Schaub Jr. are examples of authors expanding the debate on the existence of new wars in Eastern Europe. They develop research on the use of hybrid warfare in the eastern part of the continent by the strongest military power in the region: Russia. They expand this argument

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[6] H. Münkler, "The Brutal Logic of Terror: The Privatization of War on Modernity," *Constellations,* 9(1) (March 2002): 66-73.

[7] E. Newman, "The 'New Wars' Debate: A Historical Perspective is Needed," *Security Dialogue,* 35(2) (2004): 181.

[8] E. Henderson, J. Singer, "'New Wars and Rumours of "New Wars,"" State College, *International Interactions* (2010): 166.

[9] A.S. Rigterink, "New Wars in numbers: An exploration of various datasets on intra-state violence," London School of Economics and Political Science, *MPRA*, 1-27.

[10] H. Münkler, "The Brutal Logic of Terror: The Privatization of War on Modernity," *Constellations,* 9(1) (March 2002): 73.

[11] C.M. Fleming, "New or Old Wars? Debating a Clausewitzian Future," *Royal Holloway, University of London* (2009): 213-241.

[12] B. Schuurman, "Clausewitz and the "New Wars" Scholars," *Utrecht University*, The Netherlands (2010): 89-100.

[13] M. Valbjørn, A. Bank, "The New Arab Cold War: rediscovering the Arab dimension of Middle East regional politics," *Review of International Studies,*38 (2012): 20.

[14] J. L. Sowers, "Targeting environmental infrastructures, international law and civilians in the new Middle Eastern wars," *Security Dialogue,* 48(5) (2017): 423.

with precautions about potential maritime hybrid warfare in the Baltic Sea, and indicate the differences between old and new war making in the region.[15] The new wars in the Middle East and Eastern Europe share common ground with basic mutual principles, as the prevailing literature has proved. They fought to bring political and social change, either in the form of insurgency against authoritarian regimes or through hybrid warfare pursuing national interests. The discussion below will review the theory of new wars and discuss each case separately in order to justify its existence in both regions.

What are new wars, and do they exist?

New Wars developed during the era of globalization. Typically, "they take place in areas where authoritarian states have been greatly weakened as a consequence of opening up to the rest of the world."[16] In this context, there is a dissolution of the distinction between state, non-state, external and internal actors. This perception follows a post-positivist approach to the realist view of wars. Following the fall of the Berlin Wall in 1989; economic, political and ideological dominance both in Europe and the Middle East had begun to change. Western hopes of delivering peace were destroyed in Rwanda, Somalia and the Balkans in the late twentieth century. Field professionals sought to explain how the world's most powerful militaries failed to defeat guerrilla militias armed with simple weapons.[17] This reality contradicted the main argument in the Clausewitzian perspective of war. Clausewitz stressed the moral and political aspects of war and he ultimately saw it as "the use of military means to defeat another state."[18]

Strategic complexes during the new wars are based on increasingly privatised networks of state and non-state actors.[19] Although fighting exists within the same territory, power is captured through the control of people, which is embodied in outcomes such as population displacement. Since the beginning of the Syrian Civil War in 2011, 6.6 million people have been registered as internally displaced.[20] Analysts claim that attacking population centers has been a key pillar of the Assad regime's military strategy, while some scholars suggest that the destruction of infrastructure has emerged as a central aim in the war.[21] Thus, it is evident that new wars are rapidly developing , as the Syrian conflict is largely directed against civilians as a way of controlling territory rather than against state enemy forces. Still, Clausewitz's critics often dismiss the fact that his theory emphasizes the population as a decisive element in war as well. Exhausting popular support in a country can cause greater damage than physical violence.

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[15] M. Murphy, G. Schaub Jr., "'Sea of Peace' or Sea of War: Russian Maritime Hybrid Warfare in the Baltic Sea," U.S. Naval War College Digital Common, *Naval College Review*, 71(2):9, 2018: 123-147.

[16] M. Kaldor, "In Defence of New Wars", 12.

[17] B. Schuurman, 'Clausewitz and the "New Wars" Scholars,' *Utrecht University*, The Netherlands (2010): 89.

[18] M. Kaldor, "Elaborating the 'New War' Thesis," in Isabelle Duyvesteyn and Jan Angstrom, eds., *Rethinking the Nature of War* (New York: Frank Cass, 2005), 221.

[19] M. Duffield, "*Global Governance and the New Wars: The Merging of Development and Security*," (Zed Books, United Kingdom, 2014), 13.

[20] UNHCR, 'Syria Emergency,' 19 April 2018.
Available at: https://www.unhcr.org/syria-emergency.html (Accessed 3 December 2018).

[21] E. Hokayem, 'Assad or we burn the country': Misreading sectarianism and the regime in Syria. War On The Rocks, 24 August 2016. Available at: http://warontherocks.com/2016/08/assad-or-we-burn-the-country-misreading-sectarianism-and-the-regime-in-syria/ (Accessed 5 November 2018).

The current Russian view of power politics and war proves this assertion. According to Berzins:

> "The Russian view of modern warfare is based on the idea that the main battlespace is the mind and, as a result, new-generation wars are to be dominated by information and psychological warfare, in order to achieve superiority in troops and weapons control, morally and psychologically depressing the enemy's armed forces personnel and civil population."[22]

Russian ethnic minorities in the areas of Crimea and Donbass began seeking unification with Russia only after the Ukrainian Revolution in February 2014. A series of violent events involving riot police, protesters, and unknown shooters in the capital Kiev resulted in the fleeing of the Ukrainian President, Viktor Yanukovych. Many sources have suggested that the Russian government's support for Yanukovych[23] and his rejection of the possibility of joining the EU, which the popular vote supported, led to his ousting. During the revolution, opposition in the eastern and southern regions escalated into the annexation of Crimea and the later military intervention in Donbass. Reinforcing his support of the unpopular Ukrainian president and taking advantage of this widespread instability, Putin prepared the ground for invasion.[24] Therefore, it is fair to argue that new wars do exist, but with many features borrowed from the old, conventional wars. The pursuit of self-interest as part of the realist view of war still exists but through new methods. Warfare and actors transform the previous wars to new conflicts through a rise in sharp power and a decline in the old means and methods of combat.

In order to understand the growth of this phenomenon in the two regions, one needs to identify the main characteristics of the current warfare: the actors of the conflicts, the forms of financing, the methods used and the goals achieved. As mentioned above, old wars were fought by the armed forces of states, while the new wars include a combination of state and non-state actors, mercenaries, paramilitaries and jihadists.

Middle East: Ideological Wars

In the case of the Middle East, various regional conflicts can be used to provide evidence for this argument. A global intervention was carried out in Syria and Iraq in response to rapid territorial gains and reported human rights abuses by the terrorist organization ISIS during the first half of 2014. States went against the Islamist societal actors with popular appeal, but the group's success was evident only after the instability of the regime was exposed and a sustained Civil War developed.

Jihadists are successful actors in new wars when a regime is wounded by internal factors. While fighting the jihadists, the Syrian regime has simultaneously fought the Syrian opposition and used chemical weapons against the civilian population to establish its authority.[25] Hence, the continuing dispute indicates a further delegitimized Arab authoritarianism compared to the past, as

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[22] J. Berzins, "Russia's New Generation Warfare in Ukraine," *National Defense Academy of Latvia* (2014): 5.

[23] L. Bershidsky, "How the Russian-Ukrainian War played out in 2016," Bloomberg, 2017. Available at: https://www.bloomberg.com/view/articles/2017-07-13/how-the-russian-ukrainian-war-played-out-in-2016 (Accessed 11 May 2017).

[24] S. Pifer, "The growing Russian military threat in Europe. Assessing and addressing the challenge: The case of Ukraine," *The Brookings Institution*, 17 May 2017.

[25] UNSC, "Security Council Unanimously Adopts Resolution 2235, Establishing Mechanism to Identify Perpetrators Using Chemical Weapons in Syria," *United Nations*, 2015. https://www.un.org/press/en/2015/sc12001.doc.htm (Accessed 26 April 2018)

well as the presence of a parallel non-state Arab order; both characteristics of new wars.

Another example of the emergence of state and non-state actors is the existence and development of Hezbollah in Lebanon. Hezbollah was very successful in presenting itself as an Arab movement concerned with Arab solidarity, the liberation of Palestine and resistance to occupation.[26] Therefore, the establishment of this "Arab solidarity" idea further reinforces the idea that ideological wars are now a crucial part of the new wars in the Middle East. Although Egypt, Jordan and Saudi Arabia denounced the Shia-Arab Hezbollah, the current form of warfare presents an anti-Western approach that radicalizes and attracts more people in the region than the previous, more moderate stance that appealed to Western allies in the 20th century.

It is important to note that financing is critical for the actors of new wars to be able to carry out their fight. Currently, the weakness of state structures in the Middle East make room for vacuums of power and the emergence of non-state actors. Kaldor proposes that old wars were largely financed by states with centralized economies, while now the main sources of funding lie within a global, decentralized economy in which revenues depend on continued violence.[27] Her argument lies within the fact that terrorist organizations like ISIS, raise money through a range of new criminal activities including trafficking of antiquities, kidnapping, and theft.[28] In Libya, following the fall of the Gaddafi regime, more than 1,600 militia groups developed with both Islamist and non-Islamist actors which became increasingly politicised through affiliations with major political parties in the country.[29] Thus, the financing of non-state actors ranges from non-centralized economic methods to secret political affiliations.

There is a binary relationship between state and non-state actors in recent warfare, and their goals, targets and methods differ extensively from the past. The ambivalent relationship of the Syrian regime and ISIS assisted the growth of the terrorist group in the beginning when they reached agreements that allowed the latter to cross through regime-held territory to export its oil.[30] It can be suggested that several Arab states used non-state actors to pursue their strategic interests. In the case of Libya, the central aim of local and transnational groups was to gain state access rather than to carry out particular policies or programs in the broader public interest.[31] Still, the rise of ideological wars is associated with the final dissolution of more inclusive identity politics. There is a complete destruction of the control held by the state as well as the development of new communication technologies. An example is ISIS attracting popular support through propaganda via social media.[32] As a result, political mobilization around identity is often the goal of war rather than a mere instrument.

The Civil War in Syria and the power vacuum created in Iraq in the early 21st century attracted many warriors of the new *jihad* to join militia groups. These are often young people, with

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[26] G.E. Fuller, "The Hezbollah-Iran Connection: Model for Sunni Resistance," *Washington Quarterly,* 30(1) (2007): 144.

[27] M. Kaldor, "In Defence of New Wars," 3.

[28] C.P. Clarke, "ISIS's New Plans to Get Rich and Wreak Havoc," *RAND,* October 2018.

[29] V. Durac, "The Role of Non-State Actors in Arab Countries after the Arab Uprisings," *Crisis and New Agenda of the Arab State,* School of Politics and International Relations, University College Dublin (2015): 38.

[30] L. Kamel, "The Frailty of Authority: Borders, Non-State Actors and Power Vacuums in a Changing Middle East," *Istituto Affari Internazionali* (2017): 58.

[31] International Crisis Group, "How the Islamic State Rose, Fell and Could Rise Again in the Maghreb," 178, Middle East & North Africa (24 July 2017). https://www.crisisgroup.org/middle-east-north-africa/north-africa/178-how-islamic-state-rose-fell-and-could-rise-again-maghreb (Accessed 3 December 2018)

[32] A.V. Lieberman, "Terrorism, the Internet, and Propaganda: A Deadly Combination," *Journal of National Security Law & Policy,* 9(95) (2017): 95.

little knowledge of their religion's holy texts who want to externalize their internal jihad: a struggle against the self.[33] Under the label of "martyrs" they become a central figure within their struggle, resulting in an aim of war founded upon representing the restoration of the caliphate of early Islam. Therefore, the current methods which are pursued through political means to control the populations of the various countries in the region still represent the argument found in Clausewitz's trinity on the components of society.

Russia/Eastern Europe: Hybrid Warfare

The unfolding of the new wars in Russia and Eastern Europe diverges from the model in the Middle East, even though there is a common framework in its newness. Following a series of conflicts in the post-Cold War period, Russia's military and political thinking changed in the second decade of the 21st century. The Chechen wars in 1994-96 and 1999-2009 had a great impact on Russia's development of unconventional and information-based warfare.[34] After the end of the Georgian conflict in 2008, which can be seen as a historic predecessor of Crimea, Russians realized that hybrid warfare was more resourceful both economically and politically.

Williamson Murray and Peter R. Mansoor define hybrid warfare as "a conflict involving a combination of conventional military forces and irregulars (guerrillas, insurgents and terrorists), which could include both state and non-state actors, aimed at achieving a common political purpose."[35] Russia's use of unconventional hybrid warfare elevates the popular and psychological side of the conflict in Crimea and Donbass. According to Fedyk, "It is a true total war battlespace that encompasses political, economic, informational, technological and ecological instruments."[36]

In this case, Russia is a powerful state actor, willing to mobilize supporters within the ethnic minorities in the Ukrainian border, in order to advance its national self-interest. Instead of an inter-state conflict with Ukraine, Russia has adopted a more subtle approach by overseeing a local referendum in order to legitimize its annexation effort and inserting unmarked militia groups, known as little green men, to occupy official government buildings.[37] Russia has managed to attract support on the borders through a combination of soft and sharp power. They disseminated pro-Russian propaganda through Russian-owned and funded radio and television networks, which showcase Kiev as a Western puppet but also emphasize the close historical and cultural ties of Russia and Ukraine. This resulted in an increase in popular support for less Europeanized politics and more pro-Russian relations.[38] Russia's clever use of media and communication had a substantial effect on their short-term tactical success and it is a critical part of the new asymmetric warfare, which benefits the stronger player amongst two rivals. The incredibly low costs faced by Russia's military during the annexation of Crimea[39] differentiates new warfare from old wars and the the huge financial burdens they often entailed.

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[33] M. Bonner, *Jihad in Islamic History: Doctrines and Practice* (Princeton University Press, 2006), 160.

[34] M. Murphy, G. Schaub Jr., "'Sea of Peace' or Sea of War: Russian Maritime Hybrid Warfare in the Baltic Sea," U.S. Naval War College Digital Common, *Naval College Review*, 71(2):9 (2018): 124-125.

[35] W. Murray, P. R. Mansoor, *Hybrid Warfare: fighting complex opponents from the ancient world to the present*, (Cambridge: Cambridge University Press*,* 2012), 3.

[36] N. Fedyk, "Russian "New Generation" Warfare: Theory, Practice, and Lessons for U.S. Strategists," *A Small Wars Journal and Military Writers Guild Writing Contest Finalist Article,* 2017.

[37] A. Lanoszka, "Russian hybrid warfare and extended deterrence in eastern Europe," *International Affairs,* 92(1) (2016): 175.

[38] N. Fedyk, 'Russian "New Generation" Warfare: Theory, Practice, and Lessons for U.S. Strategists,' *A Small Wars Journal and Military Writers Guild Writing Contest Finalist Article,* 2017.

[39] M. Kofman, K. Migacheva, B. Nichiporuk, A. Radin, O. Tkacheva, J. Oberholtzer, "Lessons from Russia's Operations in Crimea and Eastern Ukraine," *RAND Corporation,* 2017: 2.

Hybrid warfare by Russia in Eastern Europe could also pose a threat in the Baltic region and the Baltic Sea. Taking into consideration the large groups of ethnic Russian minorities in Latvia and Estonia, the same tactic deployed in eastern Ukraine could be used to divide the population in the Baltic States. Also, the Baltic Sea offers Russia a competitive advantage in the region. The increasing trend of common relations between Russia, China and Iran as the aggressors in their regions within the international arena, especially considering China's military build-up in the South China Sea, could function as a motive for Russia to build up even more powerful warfare in the Baltic Sea.[40] Russia's concern over its Baltic neighbors results from the infrastructure of oil pipelines dating from the Soviet Union. Active campaigns from Russian environmental organizations in the Baltics have managed to postpone and suspend infrastructure plans, such as the Lithuanian nuclear power plant project, that could provide the Balkans with alternative sources of energy.[41] Consequently, another aspect of the new wars is the evolution of information technology, carried out by select groups within civil society that can influence results in the aggressor's interest.

Conclusions

This paper has compared and analysed the existence of new wars in the Middle East and Eastern Europe. In sum, these new wars constitute a disappearance of wars between states and a decline of high intensity quarrels which were prevalent in the past. Still, the level of casualties remains high due to the fact current asymmetric conflicts are recurring and proving hard to cease. Both in the Middle East and Eastern Europe, the current hostilities need to be addressed politically, a reality that makes these situations even more desperate since sides struggle to use mediation procedures due to a lack of communication. Taking into consideration the discursive analysis above, it could be suggested that different features of new warfare are evident in the two regions, but they share the overall nature and characteristics of this emerging concept. The combination of ideological and religious wars carried out in the Middle East for the last two decades, along with the manipulation and hybrid warfare undertaken by Russia in Eastern Europe, results in a fruitful discourse that defends the existence of new wars but also accepts the persistence of some ideas found in the Clausewitzian theory of war. A further comparative analysis of more regions should be led in order to reach more appropriate conclusions regarding the fighting of new wars worldwide.

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[40] M. Murphy, G. Schaub Jr., "'Sea of Peace' or Sea of War: Russian Maritime Hybrid Warfare in the Baltic Sea," U.S. Naval War College Digital Common, *Naval College Review*, 71(2):9 (2018): 126-127.
[41] A. Król, "Information Warfare against Strategic Investments in the Baltic States and Poland," *The Warsaw Institute Review*, July 2017.

Responding to the Stateless: An Examination of Humanitarian Global Civil Society and Refugees in the Twentieth Century

Laura Salter

Introduction and Background

In December 1978, President Jimmy Carter addressed a group of human rights activists and organizations, saying, "Refugees are the living, homeless casualties of one very important failure on the part of the world to live by the principles of peace and human rights. To help these refugees is a simple duty."[1] This speech is a unique snapshot of a crisis that lay beneath the turbulence of the twentieth century. Carter acknowledged two sets of people whose significance is often understated in state-centric historiography: transnational civil society and refugees. Historical narratives conventionally focus on state and intergovernmental responses to the effects of the great wars, despite the burgeoning role of a global civil society that persistently arose to the challenges of global restructuring. Simultaneously, the number of people forcibly displaced from their states due to conflict or persecution reached unprecedented levels during the twentieth century, surpassing the capacity of former humanitarian assistance programs.

While organizations of global civil society were not all alike and did not always act cohesively, they nonetheless represented an active side of the international community that contributed to the developing international refugee regime.[2] How, then, did humanitarian global civil society influence responses to refugee crises in the twentieth century, and how did its changing role over the course of the century respond to greater changes in the world system? An episodic consideration of the international response to refugees in the interwar period, post-War II, and during the Cold War demonstrates that although an early global consciousness first caused humanitarian civil society to engage in the newly institutionalized internationalism, its role changed and was amplified as the century's turbulence continued. This analysis will argue that nongovernmental actors increasingly arose and coordinated efforts during the twentieth century in reaction to the imbalance of justice in the rapidly restructuring geopolitical system. These efforts will be illustrated in the various refugee crises examined. It is demonstrated that over the given time period, humanitarian NGOs transformed from operational tools of refugee relief to active promoters of human rights, in direct contrast to contemporaneous geopolitical tension. Ultimately, this study provides a new lens through which to view twentieth century historiography, by considering the role that voluntary humanitarian communities have played in counterbalancing the upheaval of the world system during the modern era and encouraging dialogue about refugee rights.

Humanitarianism began to take on a transnational character before the global crises of the two world wars. In the late nineteenth and early twentieth centuries, the advent of new technology for communication and transportation was increasing global connectedness, raising both the awareness of others' crises and the ability of voluntary relief projects to address them.[3] Historian Mark Frost analyzes the "overseas aid craze" that took place in Britain's Asian colonies in the late

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[1] Carl J. Bon Tempo, "'The Soul of Our Sense of Nationhood': Human Rights and Refugees in the 1970s," in *Americans at the Gate: The United States and Refugees during the Cold War,* (Princeton; Oxford: Princeton University Press, 2008), doi:10.2307/j.ctt7rj3n.11, 152.

[2] This paper understands the term "international refugee regime" as the set of explicit rules or implicit norms guiding states, individuals, organizations, and institutions in responding to the issue of forced migration.

[3] Mark R. Frost, "Humanitarianism and the Overseas Aid Craze in Britain's Colonial Straits Settlements, 1870-1920," *Past and Present* Volume 236, Issue 1 (1 August 2017): 177.

nineteenth century, as colonists of Penang and Singapore organized international relief efforts to aid victims of war and disaster both in Europe and China.[4] These efforts exhibited a newly possible solidarity with religious brethren abroad, but also reached across religious boundaries—as with a multi-faith campaign commenced by the Church of St. Gregory of Singapore in 1915 to provide relief to Armenian refugees.[5] These voluntary efforts were born of religious philanthropy and the new sentiment of global interconnection; as international relief efforts evolved, they began to concurrently operate as a response to the geopolitical system. For a time, benevolence intended to aid other British colonies was mutually beneficial as Britain used it as an imperial tool.[6] This began to shift during World War I when colonists of the Straits Settlements led relief fund efforts for French, Belgian, Serbian, and Armenian refugees, and especially for British imperial subjects.[7] Humanitarian assistance in this case had a philanthropic purpose, but with underlying political aims: to challenge the colonial order.[8] That European imperial leaders needed the humanitarian and financial support of the Straits colonists demonstrated the injustice of the system. This injustice was taken on by civil society through the provision of voluntary humanitarian relief to the empire, an implicit demand for their due rights of imperial citizenship.[9] In this, Frost's Asiatic case study is a microcosm of humanitarian global civil society in the twentieth century: transnational, purposeful in its civilian response to the existing world system, and key to the effective relief of refugees.

Analyzing the twentieth century in terms of refugee crises is a useful prism for considering the role of private organizations in international humanitarian responses, because the flow of refugees became an unprecedented and unmatched crisis during this time. As such, non-state actors came to a new level of significance in their cooperation with newly-formed intergovernmental organizations (IGOs). One of the seminal works of refugee history is Michael Marrus's *The Unwanted*. As Marrus discusses, the refugee was a new phenomenon entirely in this time period. In the premodern era, the vagabond could still exist as an element of society. With the shift toward the nation-state system, due to the vast technological and sociological changes of the late nineteenth and early twentieth centuries, refugees became external to the national community and devoid of the rights and welfare afforded by "citizenship."[10] Marrus discusses the Jewish emigration from Eastern Europe and the Russian Empire in the late nineteenth century as one of the earliest European mass refugee movements. In this case, non-governmental relief monopolized the humanitarian response; as states politically considered the extent of their responsibility to and receptiveness of the refugees, Jewish charitable organizations provided clumsy but ardent assistance with movement, foreign settlement, and basic needs.[11] This example was largely representative of responses to refugee movements prior to the events of the twentieth century: primarily based on efforts by charitable organizations (not yet termed NGOs).[12] Like in Frost's case study of Asiatic colonial philanthropy, Jewish relief organizations acted out a transnational sentiment of solidarity and filled the void of relief created by state inaction. But the scope of humanitarianism in the international system was soon to be greatly augmented by the scale of the conflicts to come, the destruction of long-standing

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4Ibid.
5Ibid., 190.
6Frost, 196.
7Ibid., 199.
8Ibid., 201.
9Ibid., 204.
10Michael R. Marrus, *The Unwanted: European Refugees in the Twentieth Century* (New York: Oxford University Press,1985), 4.
11Ibid., 38-39.
12Ibid., 39.

empires, the extent of displacement and the ensuing economic and political pressure on states and the international system.[13]

The Interwar Period

The conclusion of the First World War and the collapse of major multi-ethnic empires, particularly in Asia and Europe, solidified the division of the world into nation-states, and the devastation wrought by the widespread violence left an estimated 9.5 million refugees in Europe by 1926.[14] The political confusion that followed the redrawing of Europe's borders and the end of dynastic empires left many individuals stateless by default, unable to fit the redefined political categories of citizenship.[15] Justifiably, historians of the Great War and the following period of reconstruction largely focus on the actions of the fledgling League of Nations and the victorious nation-states, but also deeply enmeshed in the period's humanitarian concerns was a host of private, voluntary organizations. As Marrus states, private agencies originally shouldered the burden of refugee aid and coordinated internationally, and by keeping a significant number of refugees alive immediately following the war, these organizations maintained the pressure of the refugee crisis to evoke an intergovernmental response.[16] The League's lack of commitment to addressing the severity of the refugee crisis in Europe was met with pressure, as well as reports written by private organizations about the situation.[17] Since the International Committee of the Red Cross (ICRC) was established in 1864 (the first such humanitarian organization with distinctly international aims), voluntary actors had similarly organized to press for humanitarian ideals, with varying success.[18] In fact, it was Gustav Ador, president of the ICRC, who recommended the appointment of a High Commissioner for Russian Refugees to the League of Nations in 1921 and initiated the formal interstate refugee regime, laying the foundation for the eventual United Nations High Commissioner for Refugees of the modern day.[19] Under the auspices of the League of Nations, Fridtjof Nansen was appointed High Commissioner for Refugees, an office that was considered to be temporary given the misconception of the extent of Europe's refugee crisis.[20] The high commission was given a small staff and a limited budget as a result, so Nansen opted to include refugees themselves as delegates and relied on private voluntary organizations like the ICRC for funds, expertise, and operation.[21] Nansen established an Advisory Committee which grew from 16 private organizations in 1922 to 40 in 1936.[22] Clearly, non-governmental actors played a tremendous role in the formation of the refugee regime following the First World War due to the paucity of resources allocated by the League; the institutions that came together affected and informed future global institutions. These members of global civil society took action by identifying the humanitarian situation, reporting it, and applying pressure on the political apparatus of the time to address the humanitarian concern. While the institution of the League of Nations was unconvinced of the longevity of the refugee crisis, and therefore would not commit substantial administration or resources to its solution, the

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[13]Ibid., 5.
[14]Ibid., 51.
[15]Ibid., 70-71.
[16]Ibid., 82-83.
[17]Barbara Metzger, "The League of Nations, Refugees and Individual Rights," in *Refugees in Twentieth-Century Europe: The Forty Years' Crisis*, eds. Matthew Frank and Jessica Reinisch (London: Bloomsbury Publishing PLC, 2016), ProQuest Ebook Central, 103.
[18]Johannes Paulmann, "Conjunctures in the History of International Humanitarian Aid during the Twentieth Century," *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 4, no. 2 (2013), 224.
[19]Metzger,101.
[20]Metzger, 103.
[21]Ibid.; Marrus, 88.
[22]Metzger, 103.

inherently humanitarian purpose of these private organizations did not impose the same limits to their advocacy. Already, the political undercurrent of private philanthropy was growing.

Non-governmental organizations continued in this pattern in the interwar period, and their numbers multiplied from an estimated 135 in 1910 to 375 in 1930.[23] The 1920s was a period of general growth in the legal establishment of refugee rights and in the protection of an increased number of national groups' refugees by mechanisms like the Nansen Passport.[24] But the 1930s brought a drastic increase in German refugees, which the League refused to intervene in on the grounds of Germany's sovereignty. Instead, a separate organization called the High Commission for Refugees (Jewish and Other) Coming from Germany was established, with James Macdonald as its head.[25] With no funds from the League and little receptiveness from governments, Macdonald's organization was ineffectual. In 1935, seeing this injustice being perpetuated by the League of Nations' neglect of refugees from Nazi Germany, private refugee organizations including the ICRC began to petition the League for a universal approach to refugee crises that would not distinguish based on national origin, and called for a more political approach to the causes of refugee movements.[26] There was already a notable pre-existing relationship between the League of Nations and NGOs, which is discussed at length by Thomas Davies. International NGOs were considered valuable actors by the League secretariat, which often published various organizations' communications and resolutions in the journal of the League of Nations assemblies.[27] Non-governmental representatives were welcomed to petition the League and its specialist organs regarding a number of social topics, to such an extent that they were viewed as part of the "Greater League of Nations."[28] Altogether, this relationship demonstrated the role global civil society was beginning to play in global governance while transcending the geopolitics and concerns of state sovereignty that plagued member states. However, the League began to withdraw from this relationship with private organizations during the 1930s,[29] and although it was discussed in the Assembly, the petition for a reorganized approach to refugees was met with a lack of enthusiasm and no definitive policy change.[30] After Nansen's death in 1930, work on behalf of refugees was relegated to the League Secretariat and a Nansen Office was given responsibility over general "humanitarian work" until 1938, again demonstrating the intergovernmental community's misapprehension of the scale of the decade's humanitarian concerns.[31]

The height of disconnect between refugee-minded organizations and the League of Nations was seen at the Evian Conference of 1938, which was organized to find a solution to the Jewish refugee problem stemming from Germany. The conference ultimately resulted in avoidance of cooperation with the 39 private refugee organizations present and no commitment from the 32 participating state governments to offer protection to the refugees.[32] Instead, another organization separate from the League of Nations was created to address the refugee problem, called the Intergovernmental Committee on Refugees. It was hoped that its independence would allow it to

[23]Akira Iriye, "A Century of NGOs," *Diplomatic History* 23, no. 3 (1999): 425, http://www.jstor.org/stable/24913673.
[24]Metzger, 115.
[25]Ibid., 108.
[26]Ibid., 110.
[27]Thomas Davies, "A 'Great Experiment' of the League of Nations Era: International Nongovernmental Organizations, Global Governance, and Democracy Beyond the State," *Global Governance*, 18, 4 (2012): 409.
[28]Ibid., 410.
[29]Ibid., 417.
[30]Metzger, 111.
[31]Marrus, 159.
[32]Zara Steiner, "Refugees: The Timeless Problem," in *Refugees in Twentieth-Century Europe: the Forty Years' Crisis*, eds. Matthew Frank and Jessica Reinisch (London: Bloomsbury Publishing PLC, 2016), ProQuest Ebook Central, 26.

rationally negotiate with the Nazis on behalf of the refugees, solving the problem internally.[33] Because of hesitation to supersede sovereign states' authority to make immigration policy, a desire to appease Germany, and anti-Semitic sentiment, humanitarian measures to accept and resettle refugees in other countries were not taken, despite the fact that the refugee crisis was not limited to Jews streaming from Germany's borders.[34] Throughout the decade, the rate of statelessness swelled in Europe, desperation grew, and an Intergovernmental Committee with nothing but an unsuccessful record of negotiations left private organizations and charities alone in the provision of humanitarian assistance.

Jewish organizations took the largest role in addressing the failure of the international system to protect Europe's refugees, as charities raised millions of dollars to aid thousands of escapees.[35] These organizations also reacted by pressuring their governments, sometimes successfully, to accept more Jewish refugees.[36] In an era when the international political structure failed to humanely intervene, these non-governmental organizations filled the void in an extension of philanthropy and a transnationally united reaction that fed the spirit of Zionism.[37] The interwar period featured both success and failure in the treatment of refugees, and altogether set important precedents for the refugee regime to be constructed following World War II. In the meantime, international NGOs increased their numbers and their advocacy, which Akira Iriye aptly postulates was a reaction of global civil society against the interstate system "that was considered to have brought about the unprecedented tragedy."[38] While the political internationalism of the League failed to address mounting injustices, global civil society responded both operationally and politically.

Post-World War II Reconstruction

The Second World War overwhelmed the world with a new height of statelessness as populations were uprooted and forced to flee war-torn and invaded lands, and the interwar, interstate refugee regime was ineffectual in facing the coming refugee crises directly.[39] Before European war had even broken out in 1939, 350,000 refugees had escaped Nazi Germany.[40] During the war, German refugees were most often treated with suspicion, as enemy aliens.[41] But by 1943, evidence of the Holocaust taking place against Jews had become public, and NGOs began rallies and appeals for increased asylum for Jewish refugees. These ranged from the Jewish organizations of the Emergency Committee to Save the Jewish People of Europe rallying at Madison Square Garden to the Christian World Council of Churches in Geneva.[42] By the end of the war, one estimate places the number of displaced Europeans at over 30 million, nearly half of whom were uprooted Soviets;[43] other estimates suggest up to 60 million Europeans were displaced when considering the immediate postwar period.[44] At war's end, battlefields were filled with soldiers and relief workers to address the refugee crisis.

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[33]Marrus, 171-2.
[34]Marrus, 171-2.
[35]Ibid., 182.
[36]Steiner, 26-27.
[37]Marrus, 184-5.
[38]Iriye, "A Century of NGOs," 425.
[39]Gil Loescher, "The International Refugee Regime: Stretched to the Limit?" *Journal of International Affairs* 47, no. 2 (1994): 355, http://www.jstor.org/stable/24357286.
[40]Marrus, 203.
[41]Ibid., 204.
[42]Ibid., 283.
[43]Ibid., 297.
[44]Jessica Reinisch, "Introduction: Relief in the Aftermath of War," *Journal of Contemporary History* 43, no. 3 (2008): 374.

The planners of Europe's rehabilitation recognized that the economic and social strain that would be created by the sheer volume of displaced persons meant that it was time for an intergovernmental authority to guide repatriation, above and beyond the efforts of the voluntary associations of the interwar period.[45] Daniel Cohen explores this shift in refugee humanitarianism in the post-war period, claiming the end of the "charitable phase" of humanitarianism with the onset of intergovernmental direction.[46] Jessica Reinisch also contributed to the research of relief work in the immediate post-war period, stating that the list of voluntary organizations present could be a "'Who Was Who' of charitable activity," encompassing religious and charitable organizations that joined the efforts of the newly established United Nations Relief and Rehabilitation Administration (UNRRA).[47] Cohen suggests that the American New Deal was being expanded internationally; in light of this new level of American internationalism, the structure of humanitarian effort was fundamentally altered. While the League of Nations had simply coordinated the efforts of various NGOs, largely relying on them for both personnel and funds, following World War II these organizations were under direct supervision of Allied armies and the UNRRA—no longer independent philanthropic actors, but within the geopolitical apparatus of IGOs.[48] Cohen argues that in the context of displaced persons, this gave rehabilitation social, political, and national features. To a large extent, humanitarian relief came to be used as a tool for political agendas by state governments, which politicized the decision of how to distribute relief supplies[49] and professionalized the refugee selection process.[50] This was problematic in providing for German civilians, who were excluded from the UNRRA's relief provisions but whose reconstruction was considered crucial; so in the absence of UN-sanctioned aid, NGOs like the Red Cross provided their own relief.[51] Faith-based organizations also stepped in, actively accusing states of discriminatory practices in refugee selection; the World Council of Churches (WCC), for example, was a vocal critic of Western governments' neglect of non-Soviet refugees, like those of the Partition of India and Pakistan.[52] Peter Gatrell quotes the WCC's spokesman as claiming that voluntary agencies "had a duty to speak up on behalf of refugees who were not recognized by the international political community."[53] Non-Western NGOs also critically addressed the refugee regime, like the Muslim organization Jami'at al' Islam critique of the UN's perceived failure to equitably protect and represent suffering Muslims.[54] There was a fundamental change in the atmosphere of the international response to refugees; voluntary philanthropy no longer simply filled a complete void of intergovernmental commitment—it filled gaps that represented the geopolitical agenda of states and which conflicted with the concept of a global community that was supposedly based on equality. States were taking a new level of initiative following this war, as humanitarian assistance was transitioning to become a means for a political end: reconstruction and adherence to the Western

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[45]Jessica Reinisch, "Old Wine in New Bottles? UNRRA and the Mid-Century World of Refugees," in *Refugees in Twentieth-Century Europe : The Forty Years' Crisis,* eds. Matthew Frank and Jessica Reinisch (London: Bloomsbury Publishing PLC, 2016), ProQuest Ebook Central, 152.

[46]Gerard Daniel Cohen, "Between Relief and Politics: Refugee Humanitarianism in Occupied Germany 1945-1946," *Journal of Contemporary History* 43, no. 3 (2008): 438.

[47]Reinisch, "Introduction: Relief in the Aftermath of War," 371.

[48]Cohen, "Between Relief and Politics," 439.

[49]Reinisch, "Introduction: Relief in the Aftermath of War," 386.

[50]Cohen, "Between Relief and Politics," 446.

[51]Reinisch, "Introduction: Relief in the Aftermath of War," 387.

[52]Peter Gatrell, "The world-wide web of humanitarianism: NGOs and population displacement in the third quarter of the twentieth century," *European Review of History* 23, no. 1/2 (February 2016): 103.

[53]Ibid.

[54]Ibid., 105-6.

vision of modernity, which required that liberalism and democracy be the most attractive options to the world's nations.

The operation of the UNRRA's protocol encountered a problem when it became clear that many eastern Europeans refused to be repatriated; many Jews, for example, demanded to move to Palestine.[55] The issue of refused repatriation was taken to be representative of the great ideological division in the world by policymakers in the West, as the development of the Cold War shifted the international community's responses to the refugee problem further. As the fate of displaced persons was utilized for Cold War debates,[56] a new height of non-governmental activity was stirring. For just as new aid movements proliferated after 1918, the conclusion of the Second World War was followed by the creation of Oxfam, the International Rescue Committee, and the Catholic Relief Services, among other major organizations.[57] Global civil society had been eager to contribute material support to displaced persons in the effort to reconstruct the ravaged world. But as Cold War ideological tension deepened and coupled with the political turmoil of decolonization, the aims of NGOs took on a more independent, normative stance in response by promoting the public image and rhetoric of the human rights movement.

Decolonization and the Cold War

The period following World War II was one of significant global political restructuring for two reasons: the process of decolonization and the Cold War—two phenomena which intertwined through the latter half of the twentieth century, each one affecting vulnerable societies and the international refugee regime greatly.

I.   Decolonization

Widespread decolonization in Africa and Asia during and after the war led to the expansion of the international refugee regime into the Third World, affecting the resources and mandate of the newest intergovernmental organ to address refugees: the United Nations High Commissioner for Refugees (UNHCR). This was a significant shift from the conventional focus on refugee flow from Eastern Europe.[58] In combination with the various proxy wars fought in conjunction with the Cold War's bilateral rivalry, anticolonial insurgencies and post-independence conflicts generated from decolonization significantly altered the character and number of refugee crises taking place in the developing world.[59] The UNHCR rose in significance as a direct result, as former colonial powers relegated responsibility for addressing these crises to the international body, broadening its scope and powers. Voluntary charitable organizations, however, had already established a presence in former colonies. Often, charities and missionary outposts had been the sole providers of welfare and necessities to rural colonized populations, acting both out of religious conviction and out of colonizing powers' need to subtly control the behavior and education of African inhabitants.[60] During decolonization, these voluntary organizations reconstructed themselves as community development organizations and war charities—departing from colonial discourse to embrace the liberal idealist and internationalist, albeit paternalistic, discourse dominating the century.[61] These

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[55] Reinisch, "Old Wine in New Bottles?" 163.
[56] Gerard Daniel Cohen, *In War's Wake : Europe's Displaced Persons in the Postwar Order* (Cary: Oxford University Press, 2014), ProQuest Ebook Central, 19.
[57] Ibid., 58.
[58] Loescher, 359.
[59] Loescher, 359.
[60] Firoze Manji and Carl O'Coill, "The Missionary Position: NGOs and Development in Africa," *International Affairs (Royal Institute of International Affairs 1944-)* 78, no. 3 (2002): 570. http://www.jstor.org/stable/3095891.
[61] Manji and O'Coil, 574.

decades brought voluntary relief organizations to global prominence due to their universalist and politically neutral approach, closing the geopolitical gap between Cold War rivals.

II. Great Power Rivalry

As the West and the East vied for influence in the developing world, the UNHCR was a strategic tool to donate aid to those states whose instability was deemed a risk of succumbing to Communism by Western governments.[62] While private citizens and organizations in the United States had contributed monetary aid to refugees throughout World War II, in the following decades, the federal government drastically increased its financial role, establishing the Refugee Relief Program in 1953 to bring over 200,000 refugees into the country.[63] This policy directly reflected the American political goal of aiding individuals who opposed the rival ideology of the Soviet Union.[64]

More and more, intergovernmental organizations were paralyzed by the rivalry between the two great powers, and the tension was felt worldwide as power vacuums were created in newly decolonized states and the refugee crisis expanded far beyond Europe's borders. The UNHCR was inherently limited by geopolitical tensions as its funds and mandate stemmed from its member states.[65] While this stifled its ability to intervene on behalf of refugees in decolonization conflicts, such as Algeria, NGOs were not similarly restrained.[66] Gatrell uses the Comité Inter-Mouvement Auprès des Evacués (CIMADE) to illustrate the role of NGOs in providing operational support to the UNHCR, while also demonstrating a shift in humanitarianism: CIMADE openly criticized France and helped members of the Algerian Front de Libération Nationale avoid capture.[67] Beyond simply providing material relief and operational support in refugee efforts, this was an example of global civil society using humanitarianism as a moral act against the perceived injustices of the political system.

Conflict between the two great powers spread from Europe to Asia and Africa, and alliance systems bolstered the two sides of the divide—and like Akira Iriye mentions, study of the 1950s world expresses nearly all international and domestic developments in terms of this political tension, an approach he suggests is misleading.[68] For while state action divided the world, global civil society became even more active, adopting new roles and tactics in humanitarian advocacy—such as the creation of informal professional networks to advocate for global peace—in order to preserve international unity despite Cold War divisiveness.[69] Iriye reconceives the common picture of the 1950s to portray how numerous private campaigns and initiatives in global civil society attempted to unite the world and propagate an alternative, peaceful future, transcending the geopolitical structure of the time period. This was especially evident in the rising human rights movement which reached into the refugee regime, and ultimately changed the public image and rhetoric surrounding refugee relief by the 1970s.

III. Human Rights Revolution

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[62]Loescher, 361.

[63]Carl J. Bon Tempo, "The United States and the Forty Years' Crisis," in *Refugees in Twentieth-Century Europe: The Forty Years' Crisis*, eds. Matthew Frank and Jessica Reinisch (London: Bloomsbury Publishing PLC, 2016), ProQuest Ebook Central, 187.

[64]Ibid., 186.

[65]Gatrell, 110.

[66]Ibid., 110.

[67]Ibid., 108.

[68]Akira Iriye, *Global Community : The Role of International Organizations in the Making of the Contemporary World* (Berkeley: University of California Press, 2004), ProQuest Ebook Central, 61-2.

[69]Ibid., 66.

Although human rights had already become part of international discourse through texts like the UN Charter and the 1951 Geneva Convention on the Status of Refugees, the lack of enforcement mechanisms and limited number of human rights NGOs in the 1940s and early 1950s meant that the human rights "revolution" in the global consciousness took place later.[70] In the United States and internationally during the 1970s, human rights politics became essential to public discourse, and consequently in policy-making. Transnational organizations specializing in human rights advocacy played a crucial role in this process by direct lobbying, mobilizing popular support, and collecting and disseminating information in unprecedented ways—what Kenneth Cmiel calls the "global flow of key bits of fact."[71] This was truly an innovative tactic developed by NGOs during the 1960s and 1970s. Even faith-based organizations like the WCC began to publicize human interest stories of refugees, formulating an image of the passive refugee who deserved compassion.[72] At times, this rhetoric was political as it aimed to prove the plight of those who fled Communist regimes, but the greater human rights movement featuring new NGOs like Amnesty International, Human Rights Watch, and Médecins Sans Frontières also emerged in reaction to the collectively traumatic experiences wrought by geopolitics, like the Vietnam War.[73] It is clear in the texts of historians of the human rights movement, like Cmiel and Carl Bon Tempo, that activists were largely driven by a rejection of Cold War politics and rhetoric.

Human rights organizations proliferated, scholarly discussion was amplified, and Washington politicians were lobbied by more human rights activists than ever before.[74] NGOs adopted new tactics of fact-finding about international human rights abuses. Eventually, Amnesty International's reports came to be considered the most accurate information about human rights of the time.[75] Lawmakers took note. For the first time, the United States accepted a number of non-white, non-European refugees whose advocates appealed not to anti-communism, but to principles of human rights.[76] Although Bon Tempo's historical analysis of this policy shift places its cause in the overlapping foreign policy agendas of liberals and conservatives in Congress,[77] it remains true that NGOs contributed a great deal of the data, public image, and rhetoric that made the human rights movement a viable policy justification. Proxy wars and American support for anti-communist Third World dictators had given human rights activists the impetus to start conversations about whether the existing power structure and political goals were just or humane. As Bon Tempo states, grassroots movements of the 1970s showed Washington politicians that the principles of human rights could be effective politics.[78]

The fall of South Vietnam's government in 1975 brought about the aforementioned shift in American refugee admissions. Examination of the policy change in the United States is interesting, as this case provides clear evidence of the role that grassroots lobbying by civil society played in fomenting the international human rights revolution and placing the refugee problem itself within the human rights framework. The 1975 Indochina Migration and Refugee Assistance Act appropriated funds for the evacuation and resettlement of 200,000 Vietnamese, a policy decision

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[70]Cohen, *In War's Wake*, 81.
[71]Kenneth Cmiel, "The Emergence of Human Rights Politics in the United States," *The Journal of American History* 86, no. 3 (1999): 1232.
[72]Gatrell, 104.
[73]Cmiel, 1234.
[74]Ibid., 1234-5.
[75]Ibid., 1237.
[76]Bon Tempo, "The Soul of Our Sense of Nationhood," 133.
[77]Ibid., 133-4.
[78]Ibid., 140.

that neither contributed to American security policy nor reflected the wishes of the public at large, but which stemmed from the sense of moral responsibility for Vietnamese human rights felt by policymakers.[79] Nonetheless, this was followed by the period of the "Boat People," a descriptor used for the immense number of refugees who fled Indochina between 1975 and 1979. Often, they were turned away to return to the sea; despite effort by the United States, governments and the international community generally lacked an effective response to the migrants.[80] In the United States, the rhetoric about refugee admission had largely changed. Instead of Cold War-driven discussion, the late 1970s focused on the Indochinese refugees in terms of their human rights.[81] NGOs had promoted, and continued to promote, the discussion of individual human rights against the geopolitical conflicts of the Cold War. The results of the movement in the political psyche by the end of the 1970s, although imperfect, were evident in the transformed treatment of the refugee as an individual: a bearer of human rights. It was during the Indochinese refugee crisis that President Carter made his speech to the gathering of human rights organizations, proclaiming the protection of refugees' human rights as the country's duty to the very organizations who had promoted them for decades.

Conclusion

Due to the fall of empires, the unparalleled global violence of two world wars, and the process of decolonization, the world system was restructuring itself throughout the twentieth century. Perhaps the fact that private, voluntary organizations came to be called "non-governmental organizations" is telling about their purpose during this upheaval; when those governmental organizations that decided the political structure of the world system underestimated the impact of refugee crises, and when states became preoccupied with geopolitical strategy or nativism, global civil society organized and acted on the humanitarian impulse as a reaction to these injustices. As Gatrell states, non-governmental organizations did not act in a vacuum; they were actors in the turbulent, changing world system advancing their own ideological claims and pursuing a version of modernity that was contrary at times to the political goals of states and IGOs.[82]

The conflicts of the twentieth century were invariably followed by the growth of organized, voluntary actors who initially primarily provided relief, but who shifted more and more toward advocacy and criticism of political failures and injustices. When the League of Nations did not provide the funds or personnel to the first High Commissioner, private organizations filled the gap. When in 1933, the intergovernmental debate about Jewish refugees failed to extend humanitarian assistance despite dramatically increasing persecution, voluntary organizations responded with pressure and humanitarian assistance, in spite of politics. While geopolitics and great power rivalry divided the world and affected the functioning of the United Nations, NGOs began international conversations about unifying ideals and universal human rights, contributing to a movement that reached the discussion of American refugee policy by the 1970s. The pressure that private organizations put on IGOs and governments to change their actions was not always directly effective, and clearly did not always inspire political choices to recognize the plight of refugees. Nonetheless, reviewing the actions of NGOs in these crises shows that the history of the twentieth century was not defined simply by the interactions of states and the creation of intergovernmental organizations; from the start, humanitarianism involved the voluntary participation, critiques, and

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[79]Bon Tempo, "The Soul of Our Sense of Nationhood," 146-7.
[80]Ibid., 149.
[81]Ibid., 155.
[82]Gatrell, 102.

advocacy of global civil society. It is clear that NGOs and the stateless have an inseparable role in the historical narrative of IGOs and states.

The Judicialization of Politics and Regime Transition in Dominant Party Systems: Evidence from Venezuela's Supreme Tribunal of Justice

Mishella Romo

Introduction

On December 6, 2015, the United Socialist Party of Venezuela (PSUV) lost its control over the National Assembly for the first time since 1999 by a two-thirds majority. This event revealed the hidden democratic quality of uncertainty in a dominant party regime often described with adjectives of authoritarianism. For many observers, this moment of uncertainty, in which the president-led political party (which governed for sixteen years in Venezuela) lost and conceded to the opposition, was perhaps a watershed.[1]

Yet, prior to losing its super-majority in the unicameral legislature, leaders of the dominant party regime reconfigured their high court *ex ante* so as to establish it as the subsequent final arbiter of imminent political conflict. In so doing, the regime was creating a new institutional order that could attenuate the uncertainty and threats stemming from the aforementioned unfavorable elections. Although the literature reviewed below can explain what conditions—i.e. the fragmentation of power/divided government—prompt a subsequent judicialization of politics to emerge,[2] not much has been written about how a high court's rulings can shape regime pathways, particularly in dominant party systems. Exploring this avenue may give insight into the transitions paradigm and explain why certain regimes democratize while others de-democratize.[3] This is especially important given the uptick of mass protests that emerged in the twenty-first century.[4]

Scholars studying regime transitions in South America have previously emphasized the need to study the nature of transitions, the actors involved, and the institutions which either delayed or enabled change through *pacts*.[5] Others studying newer transitions, such as the protracted transition in Mexico, have studied how schisms within hegemonic ruling parties—and their subsequent concessions with oppositional forces—provide more accurate explanations.[6] Nevertheless, both imply that what influences a regime's transition is not solely the popular or electoral pressures germinating from below, but rather, the processes and negotiations between elites and institutions.[7]

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[1] When defining democracy, Przeworski emphasizes that neither the incumbent nor the "competing political forces" know *ex ante* the outcomes of conflicts or election events.
Adam Przeworski, *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America* (New York: Cambridge University Press, 1991), 12.

[2] See Pilar Domingo, "Judicialization of Politics: The Changing Political Role of the Judiciary in Mexico" In *The Judicialization of Politics in Latin America* (2005); Jodi Finkel, "Supreme Court Decisions on Electoral Rules after Mexico's 1994 Judicial Reform: An Empowered Court." *Journal of Latin American Studies* 35(4) (2003): 777-799;
Tom Ginsburg, *Judicial Review in New Democracies* (Cambridge: Cambridge University Press, 2003); Gretchen Helmke, "The Puzzle of Purges," Annual Meeting of the American Political Science Association, Washington D.C. (2014): 1-32.

[3] Thomas Carothers, "The End of the Transition Paradigm," *Journal of Democracy* 13, no.1 (2002): 5-21;
Philippe C. Schmitter, "The Future of Real-Existing Democracy" *Society and Economy*. 33, no. 2 (2011): 399–428.

[4] Sonia E. Alvarez et al., *Beyond the Civil Society Agenda: Social Movements, Civic Participation, and Democratic Contestation* (Durham: Duke University Press, 2017).

[5] Guillermo A. O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule, Vol. 4: Tentative Conclusions about Uncertain Democracies* (Baltimore: Johns Hopkins University Press, 1986).

[6] Todd Eisenstadt, *Courting Democracy in Mexico: Party Strategies and Electoral Institutions* (New York: Cambridge University Press, 2004).

[7] Gerardo Munck and Richard Snyder, *Passion, Craft, and Method in Comparative Politics,* (Baltimore: Johns Hopkins University Press, 2007), 305.

The cases examined here will reveal an extreme judicialization of politics from above. That is, judicialization that has been "driven by elite actors," "constitutional court judges," or "politicians who may resort to judicial review to try to block or change certain policies."[8]

One of the conditions which makes the diffusion of decision-making power more likely is the fragmentation of power between elected branches.[9] According to Rios-Figueroa, "fragmentation in the political organs of government (also known as divided government) means that no single political party controls the three branches necessary to enact a policy."[10] Ran Hirschl has furthered these ideas and hypothesized that ruling elites empower high courts when they perceive a threat to their "decision-making arenas."[11] Similarly, Jodi Finkel had discussed how incumbents empower courts as "insurance policy."[12] I will follow these theories and posit that during times of political fragmentation, incumbents activate previously fallow constitutional courts in order to secure a venue of decision-making power. Consequently, following certain political (divided government) and legal (the attack on the *de jure* power of courts) conditions, the judicialization of *mega politics* enables an identifiable change in regime type towards authoritarianism.[13] To explain the outcome of interest—namely regime change—I will examine the rulings issued by its Tribunal Supremo de Justicia (Supreme Tribunal of Justice of Venezuela, TSJ hereafter). These will show how the high court effectively closed crucial spaces of political competition in the legislative and electoral arenas. In its rulings from 2015 to present, the TSJ has nullified, usurped, reallocated and vitiated legislative power from the newly elected National Assembly entirely. In so doing, the TSJ has helped transform the Bolivarian Republic of Venezuela from a dominant party regime to an outright authoritarian system in which a single party (the PSUV) led by President Nicolas Maduro, governs.

Nevertheless, prior to turning to these decisions, this paper will also trace the transformation of judicial power—*de facto* and *de jure*—of the TSJ in Venezuela from 1999 to present. This time period was chosen for this analysis of the judiciary because this was when the Constitution of 1999 was promulgated and when the Supreme Tribunal of Justice was created. This historical approach to examine judicial power will reveal how the interaction between contextual conditions (i.e. economic crisis, the palpable threat of political fragmentation) and path-dependent factors have triggered the regime's transformation.[14] As Falletti and Lynch suggest, "mechanisms alone cannot cause outcomes"; instead, "causation resides in the interaction between the mechanism and the context within which it operates." As a result, this paper integrates both path-dependent processes and

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[8] Rachel Sieder, Line Schjolden, and Alan Angell, *The Judicialization of Politics in Latin America* (Basingstoke: Palgrave Macmillan, 2005), 340.

[9] John Ferejohn, "Judicialized Politics, Politicizing Law," *Law and Contemporary Problems* 65 no. 3 (2002):41-68; Gretchen Helmke, "The Puzzle of Purges," *Annual Meeting of the American Political Science Association*, Washington D.C. (2014): 1-32.

[10] Julio Ríos-Figueroa, "Fragmentation of Power and the Emergence of an Effective Judiciary in Mexico, 1994-2002," *Latin American Politics and Society* 49 no. 1 (2007): 31-57.

[11] Ran Hirschl, "The Judicialization of Mega-Politics and the Rise of Political Courts," *Annual Review of Political Science* 11 no. 1 (2008): 93-118.

[12] Jodi Finkel, "Judicial Reform as Insurance Policy: Mexico in the 1990s," *Latin American Politics and Society* 47 no. 1 (2005): 102. Finkel (2005, 102) writes, "a ruling party that expects to remain in power should not be expected to increase the independence and authority of the judicial branch. On the other hand, a ruling party whose probability of reelection is low or decreasing may see such a change as worthwhile."

[13] Given that this analysis takes on a historical institutional approach it may not apply to all cases where judicialization of politics emerges per se. Nevertheless, it unpacks a pathway case in the literature and explores under what legal and political conditions the transfer of decision-making power to courts may enable a regime to consolidate power absolutely.

[14] Tulia G. Falleti and Julia F. Lynch, "Context and Causal Mechanisms in Political Analysis," *Comparative Political Studies* 42 no. 9 (2009): 1143-1166.

contextual factors to understand the concrete regime shift in Venezuela. For a more detailed discussion on how path-dependent processes are affected by events, see Capoccia and Kelemen.[15]

Similarly, it will give insight on why the TSJ remained an agent for authority even after the elections of 2015. More broadly, this analysis also will also highlight the increased relevance of weak but activated constitutional courts in regimes that have lost the majoritarian appeal.[16] In the following sections, I will review the role of courts in dominant party regimes with hyper-presidential qualities. In addition, I explain why I refer to Venezuela as a *dominant party regime* and what is meant by *judicialization of politics*.

Institutions in Hyper-Presidential and Dominant Party Systems

Attacks on the independence of institutions have been commonplace in Latin America, a region in which presidents traditionally enjoy a deference of authority from citizens and other branches.[17] These are often described as hyper-presidential systems.[18] In Venezuela, the president was the leader of a party that intermittently delegated its lawmaking powers through the passing of enabling laws.[19] Under Chávez, the legislature approved enabling laws four times (1999, 2000, 2007, and 2010). In these contexts, presidents utilize their parties to "expand their scope for policy making"[20] and curb horizontal accountability. Guillermo O'Donnell writes that horizontal accountability allows other institutions (such as legislatures and courts) to act as checks on the executive. This keeps a regime from becoming "delegative," where the ruler governs as "he or she sees fit." Notably, such an accountability allows for a "republican dimension of democracy [that creates] a careful distinction between the spheres of public and private interests of office holders."[21] Often, they accomplish this by deploying an "autocratic legalism" that cripples the *de jure* and *de facto* power of institutions tailored to horizontally contest government overreach.[22]

Given the diminished amount of competition and accountability, scholars such as Magaloni and Kricheli characterize these systems as "dominant party regimes." Such regimes, they write, "permit the opposition to compete in multiparty elections [but these] usually do not allow an alternation of political power."[23] Likewise, other scholars also classify regimes by the tactics they use,

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[15] Giovanni Capoccia and Daniel R. Kelemen, "The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism," *World Politics* 59 no. 3 (2007): 341-369.

[16] More recently, Bolivia's President Evo Morales also turned to its constitutional court to curb electoral results of a national referendum that voted against the removal of presidential term limits in 2016. By November of 2017, the court scrapped term limits.

[17] Guillermo O'Donnell, "Delegative Democracy," *Journal of Democracy* 5 no. 1 (1994): 55-69; Francisco Panizza, *Contemporary Latin America: Development and Democracy Beyond the Washington Consensus* (New York: Zed Books, 2009).

[18] Diane A. Desierto, Susan Rose-Ackerman, and Natalia Volosin, "Hyper-Presidentialism: Separation of Powers without Checks and Balances in Argentina and Philippines," *Berkeley Journal of International Law* 29 no. 1 (2011): 246-333; Jodi Finkel, "Supreme Court Decisions on Electoral Rules after Mexico's 1994 Judicial Reform: An Empowered Court," *Journal of Latin American Studies,* 35 no. 4 (2003): 777-799; Carlos Santiago Nino, "The Debate over Constitutional Reform in Latin America," *Fordham International Law Journal* 16 no. 3 (1992): 635-651.

[19] Javier Corrales, "The Authoritarian Resurgence: Autocratic Legalism in Venezuela," *Journal of Democracy* 26 no. 2 (2015): 37-51.

[20] Desierto, Rose-Ackerman and Volosin, 247.

[21] O'Donnell, 1994, 59- 61.

[22] Corrales, 2015, 38.

[23] Beatriz Magaloni and Ruth Kricheli, "Political Order and One-Party Rule," *Annual Review of Political Science* 13 no. 1 (2010): 124. I apply Magaloni and Kricheli's characterization of "dominant party" to the regime under Hugo Chávez because it describes the utility of the political party for the president to shape national policy-making during moments of electoral popularity.

such as elections, to secure their durability and bolster legitimacy.[24] Some of these classifications are: electoral authoritarian, competitive authoritarian, semi-authoritarian, and hybrid authoritarian.[25] In such electoral systems, scholars agree that actors and institutions—be they politicians/parties, judges/courts, or journalists/press—have an opportunity (albeit limited) to contest the regime in what Levitsky and Way characterize as the electoral, legislative, judicial, and media arenas. This is a stark contrast to full-scale authoritarian systems in which elections, legislatures, judiciaries, and the media are either entirely co-opted, subdued, or simply "do not exist." As the rulings issued by the TSJ will show, the legislative and electoral arenas—which were already operating in limited spaces of competition for state power in Venezuela since 2004—were absolutely thwarted after December 2015.

Institutions in Non-Democracies

In the last couple of years, political scientists have been compelled to study how incumbents in both dominant and single-party systems use institutions to secure regime stability, legitimacy, and the power to govern.[26] Describing this phenomenon known as "new institutionalism,"[27] Schedler submits that "studies of authoritarianism have shifted their focus to those institutions of representation and power divisions that we tend to associate with liberal-democratic regimes."[28] For instance, Gandhi and Przeworski argue that rulers in non-democratic systems utilize democratic institutions for more than "window-dressing."[29] Instead, political parties and legislatures allow rulers to secure policy preferences and negotiate concessions with groups that could pose a potential threat to their tenure and survival. Within such nominal democratic institutions, incumbents formalize rules to prevent defection from within. In different regions, scholars have also studied how governments resort to decentralization to curb the coercion-repression dilemma of potential collective resistance. Some scholars have examined how even the single-party in the People's Republic of China has turned to the delegation of conditional autonomy to lower-level officials in provincial and local governments to manage citizen resistance.[30] Cai contends that through decentralization, the regime averts taking the blame for any tough decision-making—employed by low-level officials—which could tarnish its legitimacy. For many reasons, therefore, the regime may

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[24] Barbara Geddes, "What do We Know about Democratization After Twenty Years?" *Annual Review of Political Science* 2 no. 3 (1999): 115-144; Beatriz Magaloni, *Voting for Autocracy: Hegemonic Party Survival and its Demise in Mexico* (Cambridge: Cambridge University Press, 2006).

[25] Larry Diamond, "Thinking About Hybrid Regimes," *Journal of Democracy*. 12 no. 2 (2002): 21–35; Andreas Schedler, "The Logic of Electoral Authoritarianism" In *Electoral Authoritarianism: The Dynamics of Unfree Competition* (Boulder: Lynne Rienner, 2006): 1-22; Steven Levitsky and Lucan A. Way, *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (New York: Cambridge University Press, 2002 [2010]); Raul A. Sanchez-Urribarri, "Courts between Democracy and Hybrid Authoritarianism: Evidence from the Venezuelan Supreme Courts," *Law & Social Inquiry* 36 no. 4 (2011): 854–884.

[26] Geddes 1999; Magaloni 2006; Schedler 2006.

[27] Andreas Schedler, "The New Institutionalism in the Study of Authoritarian Regimes," *Totalitarismus und Demokratie* 6 no. 2 (2009): 323-340.

[28] Schedler 2009, 324.

[29] Jennifer Gandhi and Adam Przeworski, "Authoritarian Institutions and the Survival of Autocrats," *Comparative Political Studies* 40 no. 11 (2007): 1279-1301.

[30] Yongshun Cai, "Power Structure and Regime Resilience: Contentious Politics in China," *British Journal of Political Science* 38 no. 2 (2008): 411-432. Cai notes that since both concessions and repression can be costly, the ruler's options are limited. On the one hand, concessions can either incentivize citizens to make more demands (be they political, social, or economic), or they can give the citizenry the outright impression that the regime's power is waning. On the other hand, engaging in repression may be disadvantageous to the regime since it can sully its legitimacy. This suggests that irrespective of which path is taken, a costly outcome may ensue.

find it advantageous to "get the struggle off the streets and into the courts."[31] This paper thus submits that the institutions which dominant party regimes have increasingly come to share power with during crisis are constitutional courts. This activation of the court may thus create the space for judges to close spaces of political competition crucial to democracy. The concept most applicable to this pattern of activation is the *judicialization of politics*.

The Judicialization of Politics

Vallinder conceptualizes judicialization as, "the transfer of decision-making rights from the legislature, the cabinet, or the civil service to the courts, or, at least, the spread of judicial decision-making methods outside the judicial province proper."[32] Hence, although legislative power is usually seen as a domain exclusively reserved for the legislative branch, it can and may fluctuate to courts in the form of constitutional adjudication. As Ferejohn and Pasquino note, some political systems which establish constitutional courts may be characterized as "Kelsenian" after Austrian jurist Hans Kelsen argued that constitutional courts were to be the true guardians of the constitution.[33] As such, initially, legal scholars saw the post-WWII trend of judicialization as potentially salubrious to democracy and rights-enhancing.[34] Nevertheless, others were more skeptical.

In his analysis of the U.S. presidential system, Dahl argued that even in the United States, courts were inherently political for two reasons.[35] First, judges are appointed and "presidents are not famous for appointing justices hostile to their own views on public policy." Second, there is usually legal "precedent for both sides."[36] Some legal scholars have submitted that when issuing final rulings, judges can and do make a "judgment of importance" on whether or not certain exceptions matter more than the rule.[37] What's more, some scholars also submit that apex courts are unaccountable institutions which may allow judges the opportunity to legislate from the bench without facing scrutiny.[38] As such, some research has shown that when courts take on matters that would otherwise be resolved in the legislative arena what may ensue is an institutional backlash from political actors who resist the anti-majoritarian role of the rulings.[39]

In the context of political change, the role of the court becomes particularly more complicated. Given that with a loss of electoral dominance of a regime what is "at stake institutionally" is the "allocation of legislative power" *vis-à-vis* the executive, what may follow a fragmentation of power is a "politicization of the court."[40] This politicization could effectively turn the judiciaries into institutions that confer legalistic legitimacy to policies promulgated by the regime. This has roots in Weber's proposition that modern states make claims of legitimacy through a

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[31] Ibid., 431.

[32] Vallinder, 1994, 13.

[33] John A. Ferejohn and Pasquale Pasquino, "Rule of Democracy and Rule of Law," in *Democracy and the Rule of Law* edited by Jose Maria Maravall and Adam Przeworski (Cambridge: Cambridge University Press, 2003): 251.

[34] Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977).; Martin Shapiro, "The Judicialization of Politics in the United States." *International Political Science Review* 15 no. 2 (1994): 91-99. Dworkin contended that a "judge is portrayed not as exercising policy discretion but simply as enforcing pre-existing legal rights [of individuals]" (cited in Shapiro, 104).

[35] Robert Dahl, "Decision-making in a Democracy: The Supreme Court as a National Policy-maker," *Journal of Public Law* 6 no. 1 (1957): 279-295.

[36] Ibid., 284, 281.

[37] Cass R. Sunstein, *Legal Reasoning and Political Conflict* (New York: Oxford University Press, 1996), 26.

[38] David Kosař, "The Least Accountable Branch," *International Journal of Constitutional Law* 11 no. 1 (2013): 234–260.

[39] Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago: University of Chicago, 1991).

[40] Ferejohn, 2002. Politicization occurs when "those interested in judicial decisions have reason to seek to influence and, if possible, to control appointments to the courts and other legal institutions" (63-64).

rational-legal appeal.[41] He defines rational-legal legitimate rule as "a belief in the 'legality' of patterns of normative rules and the right of those elevated to authority under such rules to issue commands."[42] Consequently, when courts issue controversial rulings with policy implications that are justified by legality, what may ensue is a *rule by law* as opposed to rule *of* law.[43] In this context, both law and high courts become instruments of governance in regimes enduring or attempting to assuage crisis.[44] It is critical then, to trace how judiciaries apply law and justify legality, namely because the rule of law is seldom apolitical during moments of regime transition.[45]

As the empirical decisions below will show, both the politicization of the court and subsequent judicialization of politics is precisely what has occurred in Venezuela. Although the literature reviewed here has explained under what conditions the judicialization of politics emerges—and why it may attenuate threats to the regime's tenure and stability—there has been less scholarly discussion on how the role of judiciaries, prior and/or after historic moments of fragmentation of power, may be telling of a concrete transition. I will attempt to bridge this gap by examining the power of TSJ before and after moments of divided government in the Bolivarian Republic of Venezuela. Such an examination will delineate not just what processes preceding the elections of 2015 crippled the TSJ's *de jure* and *de facto* independence,[46] but also why constitutional judges may stand by and secure the regime's decision-making powers even after it has lost its majoritarian appeal.

Judicial Power in Bolivarian Venezuela Under Chávez

The Establishment of De Jure Independence Powers in the Constitution of 1999

Immediately after being elected in 1998, President Hugo Chávez issued a call for a referendum to convene a Constituent Assembly that would then rewrite and replace the Constitution of 1961.[47] Although the judges that approved the referendum were subsequently removed, the new constitution did in fact reform, and to a certain extent empower, the new Tribunal Supremo de Justicia (Supreme Tribunal of Justice). To begin with, it imposed standards for judicial nomination and eliminated its previous Judicial Council, which was responsible for corruptly administrating and disciplining judges. Legal scholar Perez-Perdomo contends that this action did

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[41] Max Weber, *The Theory of Social and Economic Organization,* (Illinois: The Free Press, 1947). Weber distinguishes legitimacy into three types: traditional, charismatic and rational-legal. Since most of the decision-making in Venezuela after 2015 have been made by the TSJ's constitutional court, this paper will examine rational-legal appeal of legitimacy.
[42] Ibid., 328.
[43] Tamir Moustafa and Tom Ginsburg, *Rule By Law: The Politics of Courts in Authoritarian Regimes* (New York: Cambridge University Press, 2008); Tamir Moustafa, "Law and Courts in Authoritarian Regimes," *Annual Review of Law and Social Science* 10 no. 2 (2014): 281-299; Rajah Jothie, *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore* (New York: Cambridge University Press, 2012).
[44] Moustafa, 2014, 283. According to this text, courts "deploy law" in these contexts to "(a) exercise state power vis-a-vis opposition, (b) advance administrative discipline within state institutions, (c) maintain cohesion among various factions within the ruling coalition, (d) facilitate market transitions, (e) contain majoritarian institutions through authoritarian enclaves, (f) delegate controversial reforms, and (g) bolster regime legitimacy."
[45] Tom Ginsburg, *Judicial Review in New Democracies* (Cambridge: Cambridge University Press, 2003); Stephanie R. Golob, "'Rule of Law' in Transition: The Chilean Judiciary, Globalized Norms, and the Repatriation of the Pinochet Case," paper presented at Latin American Studies Association (Dallas, March 27-29, 2003).
[46] Matthew M. Taylor, "The Limits of Judicial Independence: A Model with Illustration from Venezuela under Chávez," *Journal of Latin American Studies* 46 no. 2 (2014): 229-256.
[47] Anthony P. Spanakos, "Institutionalism and Political Change in Bolivarian Venezuela," in *Conceptualising Comparative Politics*, edited by Anthony Petros Spanakos and Francisco Panizza (New York: Routledge, 2015), 113-124; Supreme Court of Justice of Venezuela 1999.

away with inefficiency and clientelism within the judiciary.[48] Secondly, the Constitution of 1999 centralized judicial review powers. This meant that decisions issued by the Constitutional Chamber had *erga omnes* effects[49] over lower courts and its sister-chambers. During the first five years of Hugo Chávez's mandate (1999-2004), the TSJ exercised this *de jure* power in a number of controversial occasions. These rulings, however, triggered a series of judicial attacks by the Chávez regime which ultimately left the TSJ with little to no *de jure* or *de facto* independence.[50] The following sections will revisit these decisions and developments.

The Dominant Party Regime:

The 2002 Coup Decision and Inter-Chamber Debates During the Recall Referendum of 2004

In 2002, a coup took place and Hugo Chávez was temporarily deposed from the presidency for three controversial days. After he was reinstated, the TSJ took on the case regarding the indictment of the high brass military officers accused of temporarily displacing him. Yet on August 14 2002, to Hugo Chávez's dismay, the TSJ absolved the military officers of all guilt and ruled that Chávez had voluntarily abdicated his position. By this logic, the TSJ held that this event constituted a "power vacuum" as opposed to a "coup".[51] In defying the president by absolving the high brass officers from imprisonment in such a politically salient case, the magistrates evidenced that they enjoyed a degree of autonomy from the executive branch. When ruling on subsequent matters regarding the president's tenure, the TSJ would once more practice this autonomy.

After having failed to remove Hugo Chávez through a coup, a persistent opposition followed an electoral route to remove Chávez from office.[52] The opposition called for a Recall Referendum, the only constitutional "escape valve" for the sudden removal of public officials in Venezuela.[53] In 2004, the Venezuelan opposition gathered the signatures necessary to initiate the process towards a Recall Referendum. However, once the signatures were gathered, the National Electoral Council (CNE onward) invalidated them.[54] Consequently, a group of NGOs took the case to the TSJ's Electoral Chamber, which deemed the opposition's signatures valid once more. Nevertheless, since the Constitutional Chamber had constitutional supremacy over other chambers, it overturned the Electoral Chamber's ruling.[55] In response, the opposition found itself obliged to once again collect signatures.

The Recall Referendum was held on August 15, 2004, and with a 58% of the vote, Hugo Chávez garnered the needed popular support to defeat the recall against his mandate. Although this inter-chamber debate revealed once more that President Chávez still did not dominate the TSJ,[56] it set forth the incentives for attacks on the judiciary. During the same year, Hugo Chávez's party

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[48] Rogelio Perez-Perdomo, "Judicialization and Regime Transformation: The Venezuelan Supreme Court," in *The Judicialization of Politics in Latin Americ,* edited by Rachel Sieder, Line Schjolden and Alan Angell (Basingstoke: Palgrave Macmillan, 2005), 131-160.

[49] Constitution of the Bolivarian Republic of Venezuela 1999, Article 335 and 336.

[50] Sanchez-Urribarri, 2011; Taylor, 2014.

[51] TSJ 2002.

[52] Javier Corrales and Michael Penfold, *Dragon in The Tropics: Hugo Chávez and the Political Economy of Revolution in Venezuela* (Washington, D.C.: Brookings Institution Press, 2011).

[53] John Polga-Hecimovich, "Brazil's Impeachment Process is Not a Coup (or, How I learned to Stop Worrying and Love Impeachment)," *LatinAmericaGoesGlobal.org* (27 April 2016): para. 12.

[54] Human Rights Watch, "A Decade under Chávez," Human Rights Watch (2008), accessed 2 November 2017, http://www.hrw.org/en/reports/2008/09/22/decade-under-ch-vez.

[55] Ibid.

[56] Perez-Perdomo, 2005; Sanchez-Urribarri, 2011.

proceeded to launch a *de jure* attack on the TSJ that gradually crippled its *de facto* independence.[57]

The De Jure and De Facto Attack on the TSJ: Ley Orgánica del Tribunal Supremo de Justicia (LOTSJ):

In light of this lack of institutional dominion over the TSJ, the legislature passed the *Ley Orgánica del Tribunal Supremo de Justicia* (LOTSJ) in 2004. This newly established *de jure* roadblock allowed the government to pack the court with supporters and purge it of its opponents. It changed the number of magistrates from twenty to thirty-two.[58] In a similar arena, career security was attacked. According to Article 3 and 4 of the LOSTJ, "magistrates [could] be ousted by a simple majority" when any "administrative act of their appointment" was revoked.[59] This was contrary to the constitutional requirements which held that only a "supermajority [of National Assembly Members could] remove judges, following a prior qualification by the Citizens Power."[60] By attacking career tenure and changing the composition of the TSJ, the government made the judiciary accountable to President Hugo Chávez's party in the National Assembly.[61] This *de jure* roadblock had a concrete impact on the *de facto* independence of the TSJ.

Taylor notes that the Chávez regime diminished the *de facto* independence of the TSJ through informal practices. These include the "threatening non-compliance with key rulings and threatening key judges."[62] Sanchez-Urribarri writes that after the passage of the LOTSJ, the number of dissents within the Constitutional Chamber declined.[63] There was also a break with factions within the court as well as "a visible decay in the judiciary's willingness to support petitioners in constitutional review cases, precisely after the institutional structure and the composition of the Constitutional Chamber" was altered. What ensued then was a "timid" TSJ which deliberately avoided taking on cases.[64] The timid nature of the TSJ only allowed the centralization of power in the dominant party system.

After defeating the opposition in the 2004 Referendum, President Chávez and the National Assembly passed a series of laws to radically deepen popular sovereignty.[65] A myriad of decrees on food sovereignty, popular economy, among others were passed without judicial oversight. For Brewer-Carias, the TSJ's deliberate decision to avoid ruling against these decrees revealed a pattern of "judicial omission." He writes,

> "Almost all these laws and decree laws have been challenged on the grounds of unconstitutionality before the Constitutional Chamber of the Supreme Tribunal, which has never decided on the matter. [The TSJ's] omission has been without a doubt the main source of deconstitutionalization of the Constitutional State."[66]

Consequently, what was clearly present in Venezuela since the passing of the LOTSJ in 2004 until close to 2015, was a court unable to take cases that would compel it to rule against the regime. A

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[57] Taylor, 2014.

[58] Human Rights Watch.

[59] Allan R. Brewer-Carías, *Authoritarian Government v. The Rule of Law: Lectures and Essays (1999-2014) on the Venezuelan Authoritarian Regime Established in Contempt of the Constitution* (Caracas: Fundación de Derecho Público Editorial Jurídica Venezolana, 2014), 291.

[60] Bolivarian Republic of Venezuela (1999), Article 265; Brewer-Carias, 291.

[61] Sanchez-Urribarri, 872.

[62] Taylor, 257.

[63] Sanchez-Urribarri writes, "most dissenting opinions after 2004 were filed by former justice Rondón Haaz, the lone opposition justice in the Chamber." (877)

[64] Sanchez-Urribarri, 856 & 874.

[65] Daniel Hellinger and David Smilde, *Venezuela's Bolivarian Democracy: Participation, Politics, and Culture Under Chávez* (Durham: Duke University Press, 2011).

[66] Brewer-Carias, 772.

number of legal scholars examined decisions issued by the electoral, constitutional, and administrative chambers of the TSJ concluded that from 2004-2013, not one legal act of the government was suspended or canceled.[67] Perhaps what is most notable from these findings is not just the timid nature of the court, but rather that the instrument of governance by which the regime set forth policy was the president's political party. This meant that the opposition had to operate and contest the regime in the, albeit limited, legislative arena. Nevertheless, by 2015, the regime has changed its strategy of governance. Instead, it resorted to activating a previously inactive TSJ. Given that this behavior and activation did not particularly shift until the fragmentation of power in 2015, the following section will analyze the decisions issued by the TSJ after the elections of 2015. This analysis will make more evident the shift of the court's behavior from *judicial omission* in matters of national policy to *judicialization*.

Part IV. Judicial Power in Bolivarian Venezuela Under Maduro

Ex Ante Politicization of the TSJ and the Ex Post Judicialization of the TSJ

By 2014, the dominant party regime was enduring unprecedented internal and external problems that threatened its stability. The death of Hugo Chavez in 2013 predictably fomented the problem of post-populist succession for Nicolas Maduro. No longer could the executive rely on popularity and charisma to legitimate illiberal practices through his political party.[68] Subsequently, the drop in commodity prices triggered the worst inflation and food shortages in Venezuela's history. This political and economic crisis prompted the disaffection even of some of the regime's most loyal electoral bases.

Upon fearing they would lose their majority in the National Assembly after the legislative elections of December 6, 2015, the soon-to-be outvoted PSUV legislators compelled thirteen magistrates to retire from office. After their electoral loss in the legislative branch became official, the PSUV appointed thirteen new magistrates for a term lasting from 2015-2027.[69] These appointments further deepened the lack of *de facto* independence in the judiciary as they entailed the appointment of pro-government justices, which held unequivocal personal links with the regime, for a 12-year track. One of the newly appointed magistrates even included an outvoted PSUV legislator, Christian Zerpa, a former deputy of Trujillo. Hence, the institutional ideology of the court had been further polluted. Similarly, this blatant inserting of cronies disabled the opposition to take these magistrates seriously and therefore may have disincentivized the newly appointed judges from considering any form of strategic defection.[70]

Immediately after the elections, the TSJ became the crucial instrument by which the regime managed to secure the status quo—i.e. centralization of power and control over national and local policymaking—that the Nicolas Maduro enjoyed prior to the elections of December 6, 2015. When the president issued a number of decrees declaring a state of exception, the TSJ without a doubt sanctioned them. The following subsections will describe how the rulings issued by the TSJ allowed

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[67] Antonio Canova González et al. *El TSJ al Servicio de la Revolución: la Toma, los Números y los Criterios del TSJ Venezolano (2004-2013)* (Caracas: Editorial Galipan, 2014).

[68] See Honorata Mazepus, Wouter Veenendaal, Anthea McCarthy-Jones and Juan Manuel Trak Vásquez, "A Comparative Study of Legitimation Strategies in Hybrid Regimes," *Policy Studies* 37 no. 4 (2016): 350-369.

[69] Victor Cruz, "National Assembly Passes Designation of 13 Top Tribunal Magistrates" *El Universal* (25 December 2015).

[70] Gretchen Helmke, *Courts Under Constraints: Judges, Generals and Presidents in Argentina* (New York: Cambridge University Press, 2005).

for the nullification, reallocation, and usurpation of legislative power from the legislative branch to the executive branch and beyond.

From Dominant Party to Outright Authoritarian: Nullifying, Reallocating and Usurping Legislative Power

Nullifying Legislative Power

By December 30, 2015, the newly appointed magistrates in the Electoral Chamber of the TSJ did away with the opposition's super-majority and suspended three of the newly elected legislators from the Southern State of Amazonas.[71] Shortly after, the Constitutional Chamber of the TSJ deemed that the actions of the Electoral Chamber to suspend the deputies were constitutional.[72] In spite of using claims of fraud for such decision, the magistrates did not present any evidence— thereby revealing the lacking legal basis for issuing such a ruling. As a result of the refusal of the court to provide evidence for the suspension of the Amazonas deputies, the opposition swore in the suspended Amazonas officials during late July of 2016. Almost immediately, an institutional battle ensued.

In response to the swearing in of the deputies, the Constitutional Chamber went beyond holding the National Assembly in contempt and deemed a law passed by the legislature unconstitutional without even reviewing its content.[73] By late March of 2017, the TSJ stunned the international community when it temporarily assumed legislative powers, on the grounds that the National Assembly was and had continued to act in contempt of its previous rulings.[74] Although the TSJ promptly revised this ruling, it still refused to reinstate the suspended Amazonas deputies and to return the usurped legislative power to the National Assembly. In continuing to ban the deputies and deny the National Assembly of its right to pass legal acts, the high court effectively and permanently closed spaces of deliberation and decision-making in the electoral and legislative arenas. But there had been more.

Reallocating Legislative Power

On January 15, 2016, President Nicolas Maduro issued a State of Economic Emergency through Decree 2.184. The court sanctioned its constitutionality on January 20.[75] Although opposition lawmakers disputed this call, the TSJ noted that the opposition lawmakers had missed their 48-hour deadline to challenge the decree. The court justified its opinion using the Organic Law on States of Exception which pre-establishes that during a time of crisis, the executive can issue a State of Exception.[76] The judges, however, ignored Article 26 of the Organic Law on States of Exception. This article holds that the National Assembly has the power to review the decree and request changes. Instead, as the institution that gets to decide on the exception of the rule, the Constitutional Chamber allowed President Maduro to unilaterally manage the economy.[77] In so doing, the TSJ was accepting the use of emergency powers to enable regime change.

As a result of the widespread and ongoing food shortage, Maduro decreed into Action *Gran Misión Abastecimiento*.[78] The decree held that the Minister of Defense Padrino Lopez would be

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[71] Tribunal Supremo de Justicia, Decision 260, Sala Electoral, República Bolivariana de Venezuela (30 December 2015).
[72] Tribunal Supremo de Justicia, Decision 3, Sala Constitucional, República Bolivariana de Venezuela (14 Enero 2016).
[73] Tribunal Supremo de Justicia, Decision 808, Sala Constitucional, República Bolivariana de Venezuela. (4 Septiembre 2016).
[74] Tribunal Supremo de Justicia, Decision 156, Sala Constitucional, República Bolivariana de Venezuela (29 Marzo 2017).
[75] Tribunal Supremo de Justicia, Decision 4, Sala Constitucional, República Bolivariana de Venezuela (20 Enero 2016).
[76] Article 27.
[77] See Sunstein.
[78] vía Decree 2.667.

responsible for the national administration and allocation of food and that all government institutions and ministries were subordinate to him. The legislative power that had been judicialized from the legislative branch, and then extended to the president, had now been delegated to military high brass officers.

Although the opposition in the National Assembly has contested these decrees and disapproved of them, the TSJ has reported that the National Assembly's acts were still nullified for disobeying the Constitutional Chamber power when swearing in the Amazonas deputies.[79] In this same opinion, the Supreme Tribunal of Justice reiterated without reservation that the legislative power remains "vitiated" and that all of their legal acts were "null, nonexistent, and ineffective." Here, the court revealed the full-scale authoritarian qualities of the regime: a system which controls all policymaking and in which spaces for the contestation of state power to borrow from Levitsky and Way simply do "not exist," particularly in the national electoral and legislative arenas.[80]

Usurping Budgetary Authority

In addition to sanctioning the reallocation of legislative power, the court also usurped legislative power. In late 2016, Nicolas Maduro issued Decree n. 2.452 to draft the budget for the Fiscal Year of 2017. According to the Constitution of 1999, the National Assembly has the right to "discuss and approve the national budget and any bill relating to taxation and public credit."[81] However, the TSJ held that the National Assembly was still void of its competencies. In effect, it deemed the decree issued by Nicolas Maduro constitutional. Hence, the TSJ became the institution that oversaw and approved the final fiscal budget of 2017 and thereby assumed a legislative authority.[82] Nowhere in the constitution did it state that the TSJ has the right to approve a fiscal budget. Yet, in its ruling, the TSJ cited Article 336 sections 3 and 4 of the 1999 Constitution, which grants them the final decision-making power to annul acts, to justify its decision.

The TSJ further evidenced its taking of the National Assembly's legislative power when it mentioned, "the National Assembly may not alter at any time budget items or pretend to obstruct or affect the integrity of the provisions laid down in the relevant decree of the national budget."[83] Ironically, the TSJ's reasoning attempted to align itself with the liberal constitutional tradition of separation of powers. As per the court, it had to decide on the budget in order to meet

> the pressing necessity to complete a stage in the legal drafting of the national budget, with a duty "to honor separation and balance of the powers comprising the Public Power, and in order to preserve the State's operations, the guarantee of fundamental rights and the constitutional order."[84]

Evidently, the TSJ was attempting to secure the rational-legal legitimacy of its authoritative decisions by appealing to law and the principles of separation of powers. The TSJ's rhetoric mirrors behavior of other authoritarian regimes, such as Singapore, which typically deploy a discourse of legality to build on the illusion of the "state[s] realizations of rule of law" while also centralizing state power

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[79] Tribunal Supremo de Justicia, Decision 113, Sala Constitucional, República Bolivariana de Venezuela (20 Marzo 2017).

[80] Levitsky and Way, 54.

[81] Article 187, section 6.

[82] Tribunal Supremo de Justicia, Decision 810, Sala Constitucional, República Bolivariana de Venezuela (21 Septiembre 2016).

[83] Tribunal Supremo de Justicia, Decision 808, Sala Constitucional, República Bolivariana de Venezuela (4 Septiembre 2016).

[84] Tribunal Supremo de Justicia, Decision 814, Sala Constitucional, República Bolivariana de Venezuela (11 Octubre 2016).

through law.[85] The TSJ has consistently utilized this discourse in a multitude of other rulings.[86] Looking beyond this discourse, however, it is clear that by forbidding the National Assembly to approve or alter the budget, the TSJ once more unabashedly closed and even usurped spaces of deliberation and decision-making reserved for the National Assembly.

Conclusion

Although Venezuela was long critiqued for the illiberalism employed during Hugo Chávez's mandate, spaces to contest state power were still palpable. Even the most critical scholars referred to Venezuela as a dominant party, competitive authoritarian, or semi-authoritarian regime.[87] Nevertheless, Chávez and his party effectively set up a path-dependence which disabled the TSJ from asserting any degree of independence during moments of political fragmentation.

This paper has followed these events (such as the passing of the LOTSJ in 2004) and examined how judicial power has transformed from 1999 to present. Perhaps what was most notable in this analysis was how the interaction between these path dependent processes and contextual conditions (economic crisis and the electoral decline of the dominant party regime) set the stage for the regime to resort to the TSJ instead of its political party to continue to govern. In light of unprecedented political fragmentation, the previously quiet Constitutional Chamber in the Bolivarian Republic of Venezuela transformed into an institution that enabled the regime to maintain their control over policymaking, close spaces of political competition, and attempt to secure a legalistic legitimacy for its actions.

When barring the elected Amazonas deputies and later holding the National Assembly in contempt, the TSJ disenfranchised and trumped the *en masse* demand for political change expressed during the legislative elections of December 6, 2015.[88] Similarly, its rulings that nullified legislative power disabled the opposition deputies from meeting one of the crucial criteria that many scholars would consider necessary in a competitive regime. These criteria hold that elected officials have to possess a real authority to carry out their mandate. By not allowing the elected deputies to pass legal acts, the TSJ was aggressively doing away with all semblances of political contestation in the legislative arena.

Similarly, the Constitutional Chamber's sanctioning of the government's call for a State of Exception and approval of the fiscal budget of 2017 allowed President Nicolas Maduro to centralize and maintain administrative control over matters of national politics.[89] The TSJ's decisions not only judicialized legislative power, but in other instances also enabled Nicolas Maduro to re-allocate the same power to the military. Hence, the TSJ was allowing public power to transfer from one inherently unaccountable and undemocratic institution to another (its chambers and the military). More recently, the National Assembly has been displaced by a Constituent Assembly (made up

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[85] Rajah 2011, 945.

[86] If allotted more resources and space for the writing sample, this paper would have included a list of rulings issued by the TSJ which cling to the rhetoric of legality in order to justify their controversial decisions.

[87] Magaloni and Kricheli, 124; Levitsky and Way, 178; Corrales, 44.

[88] The regime was effectively ignoring the electoral demands of perhaps some of the same citizens that may have brought it to power more than a decade ago. This nods to the extant tensions between constituent power (popular sovereignty) and the constituted power (the state and its institutions). As per some scholars, this tension becomes more visible during moments of crisis. See Dario Azzellini, "Constituent and Constituted Power: Reading Social Transformation in Latin America," in *Popular Sovereignty and Constituent Power in Latin America*, edited by Emelio Betances and Carlos Figueroa-Ibarra (New York: Palgrave Macmillan, 2016): 15-41.

[89] Tribunal Supremo de Justicia, Decision 814, Sala Constitucional, República Bolivariana de Venezuela (11 Octubre 2016).

entirely of the President's political party, the PSUV), which President Maduro convened. This absolute taking of legislative power and disenfranchisement of voters in the electoral arena was also sanctioned by the TSJ's Constitutional Chamber in 2017.[90]

Ultimately, the lens of extreme "judicialization of politics" in this analysis has helped elucidate how compromised constitutional courts can effectively close the spaces where political actors can check and contest incumbents. In particular, the examination of the TSJ's closing of political competition within the electoral and legislative arenas has revealed just how Venezuela transitioned from a dominant party to an outright authoritarian regime. These empirical developments resonate with what scholars insist has occurred in the post-Cold War era. Although they acknowledge that Western liberal democracy and constitutionalism has subsisted, they also emphasize that the resilience of non-democratic systems has also endured. As such, it is critical to review the more prevalent role of high courts in enabling, sanctioning, and legitimating policies that prompt de-democratization, particularly in dominant party systems enduring electoral decline and post-populist succession.

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[90] Tribunal Supremo de Justicia, Decision 378, Sala Constitucional, República Bolivariana de Venezuela (31 Mayo 2017).

Book Review: *Inequality, Grievances, and Civil War* by Halvard Buhaug, Kristian Skrede Gleditsch, and Lars-Erik Cederman

Ana García Soria

Since the end of World War II, the international relations system has been characterized by the eruption of civil wars and internal violence. Intra-state conflicts have surpassed the number of interstate battles, reaching a global death toll of 16.2 million casualties from 1945 to 1999.[1] Although 127 civil wars were started during this period, scant literature has been devoted to the study of the underlying factors behind internal conflict. In this context, scholars have primarily compared two divergent motivations as the causes of civil war: greed vs. grievances. The political economy literature understands greed as the motivation of rebels to generate profitable, self-enriching opportunities from the onset of conflict. In contrast to this, grievances consist of the collective motivation that emerges from horizontal inequalities—the "inequalities in economic, social or political dimensions or cultural status between culturally defined groups."[2] The greed-argument has found wider support across civil war literature and scholars have for the most part argued that grievances are the products rather than the cause of violence.

In their book *Inequality, Grievances, and Civil War*, Cederman, Gleditsch, and Buhaug deviate from past literature that determined that fractionalization and polarization are insufficient causes for civil war. The authors revisit the greed vs. grievance dichotomy and elevate the theoretical and methodological validity of grievances as the cause of civil wars and internal violence.[3] They develop new indicators of political and economic exclusion to show that shared grievances—expressed in the inequalities between ethnic groups—are in fact a fundamental cause of civil war. Their argument is supported by groundbreaking methodological research that examines the grievances model from a group-level approach and a macro-level empirical process. Their research ultimately provides four central contributions to conventional civil war literature: (1) A group-level approach instead of an individual or country-level aggregation; (2) A postulated theory based on motivational mechanisms rather than merely cognitive ones; (3) An analysis of ethnonationalism instead of ethnicity as the causal mechanism of conflict; (4) An alternative empirical methodology that provides pertinent data and measures, beyond the standard toolbox.[4] Their study does not provide an in-depth analysis of why groups with positive economic or political performance seek to separate or beget conflict, which could further counter the grievance-skeptical positions, and even the greed-based argument for rebellion. Despite this shortcoming, Cederman et al. reaffirm the idea that grievances can fuel civil war and provide new ways for analyzing civil conflict and its motivations.

In contextualizing this book, it is important to note that its grievance-based argument explicitly shares with the classical civil war literature, the idea that inequalities in wealth and power distribution act as significant sources of conflict. Proponents of the relative deprivation theory, such as James A. Davis (1959), Ted Robert Gurr (1970), Bruce Russett (1964), and Edward Muller (1985), have already investigated the relationship between grievances and conflict, but were ultimately

[1] Fearon, James D., and David D. Laitin. "Ethnicity, Insurgency, and Civil war," Stanford: *The American Political Science Review* 97, no. 1, (2003): 75.

[2] Frances Stewart, ed. *Horizontal Inequalities and Conflict : Understanding Group Violence in Multiethnic Societies.* (London: Palgrave Macmillan Limited, 2008), 3.

[3] Lars-Erik Cederman, Kristian S. Gleditsch, and Halvard Buhaug, *Inequality, grievances, and civil war* (New York: Cambridge University Press, 2013), 1.

[4] Cederman, Gleditsch, and Buhaug. *Inequality, Grievances, and Civil War*, 208.

skeptical of considering grievances as the pivotal source for rebellion. Scholars came to argue that greed-driven actions, rather than grievances, are what ultimately motivate conflict onset, a perspective epitomized in the works of Paul Collier (2000 and 2004), Anke Hoeffler (2004),[5] and James D. Fearon and David D. Laitin (2003).[6] By the 1980s, emerging theories within the violence onset literature undermined materialist explanations of mobilization processes and modernization theory. Authors such as Ernest Gellner (1983), Michael Hechter (1978), and Donald L. Horowitz (1985) built theoretical frameworks that accentuate the ethnic and cultural dimensions of political competition, which ultimately bolster how grievances potentially lead to violent conflicts. Cederman et al., however, incorporate empirical examples into their civil war and ethnonationalism research that further strengthen the grievances-related literature. A noteworthy example is their analysis on how structural asymmetries trigger the onset of conflict.

Cederman et al. appeal to ethnic nationalism and cultural identity in order to sustain their grievance-based rationalization for violence. This decision is based on the recognition that insofar as both issues stand as the nexus of group-level identities and inequalities, they can further stimulate the necessary mobilization among group members for conflict onset. In this manner, the book constructs an indirect methodology that pinpoints the circumstances under which grievances are more likely to materialize.[7] By framing ethno-political and economic inequalities as the independent variables, grievances as the intervening variable, and civil war onset as the dependent variable, the authors adroitly the literature gaps between inequality, grievances, and violence. It is important to note the authors' ingenuity in going one step forward and treating grievances as the intervening variable rather than presenting a direct empirical link between horizontal inequalities and conflict. Moreover, Cederman et al. efficiently convey the need to consider horizontal inequalities as the independent variable of their research, since horizontality allows us to compare identity groups to each other without paying heed to internal diversity within groups.[8] The authors borrow the political and economic dimensions of horizontal inequalities from Frances Steward (2008), and proceed to divide the evidence supporting the grievances argument into two parts: (1) The empirical study of ethno-political grievances due to political exclusion, and (2) The study of economic grievances due to the unequal distribution of power and wealth.

When faced with this dual-step analysis, our first instinct may be to argue that grievances are too difficult an indicator to measure both systematically and empirically, let alone use it to produce a comparative analysis between grievances experienced by different ethnic groups in different regions. These hesitations dissipate when the authors present their original database code-named Ethnic Power Relations (EPR-ETH). This database provides a group-level analysis instead of the individualist approach offered by the Gini coefficient or traditional ethnic fractionalization indexes, which often offer poor operationalization of horizontal inequalities. The EPR-ETH contains data on ethnic group access to government power as well as the wealth distribution of different regions, and the data coverage extends from 1946 to 2009. I claim that the authors convince the readers of the validity of their grievances-based study due to the tailored cluster of results that they present for the operationalization of structural asymmetries.

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[5] Paul Collier and Anke Hoeffler present their greed-explanation of conflict risk in "Greed and Grievance in Civil War." *Oxford Economic Papers* 56, no. 4 (2004): 563-95.

[6] James D. Fearon and David D. Laitin defend that it is poverty rather than ethnic or religious issues what lead to conflict, insofar as financially weak states present the conditions that favor insurgency. They explore this argument in "Ethnicity, insurgency, and civil war." *American political science review* 97, no. 1 (2003): 75-90.

[7] Lars-Erik Cederman, Kristian S. Gleditsch, and Halvard Buhaug. *Inequality, grievances, and civil war.* (New York: Cambridge University Press, 2013), 30.

[8] Cederman, Gleditsch, and Buhaug. *Inequality, Grievances, and Civil War*, 32.

The first part of their empirical analysis is their examination of the correlation between political asymmetries and civil war outbreak. To do so, the authors focus on the ethno-political exclusion of groups as a political inequality that indirectly fuels ethnonationalist conflicts.[9] They argue that competition for access to executive authority emphasizes power differences, which ultimately favor, "included or incumbent groups," at the expense of diminishing the political opportunities for, "excluded or marginalized groups."[10] This statement is evidenced by the results obtained from the EPR-ETH database, which tracks ethnic group access to state power from 1946 through 2009.[11] Since the database produces a large total sample of 28,302 observations, readers can also contextualize the ethno-political mechanisms fueling violence onset by focusing on specific cases such as Croatia in 1991, Serbia in 1998, or Mexico in 1994, among others. The authors specifically analyze the political discrimination that the Turkish Kurds have experienced since Turkey began its nation-building project after World War I. Kurdish ethno-political grievances materialized in the rebellions of the 1920s and 1930s, and ongoing tensions ultimately led to the emergence of the insurgent Kurdistan Workers' Party (PKK). This empirical analysis reinforces the group-identification arguments of previously mentioned authors such as Gurr and Horowitz and provides more comprehensive information than the pioneer Minorities at Risk (MAR) database built by Gurr during the 1990s.

Although Cederman et al. demonstrate the postulated link between inequality and violence onset, several questions arise regarding their statistical analysis. The authors prove that the less access a group has to central state power, the more likely grievances are to consolidate and eventually trigger the outbreak of civil war. Exclusion from central state power, however, does not only imply a direct absence of political rights; it also fosters an indirect impact on the wealth distribution of affected individuals. I argue that in this context, the empirical research of political and economic inequality cannot be as cleanly separated as the authors attempt to do. The authors seem to only focus on the impaired power access of disadvantaged and excluded groups in order to explain conflict-proneness, as is the case with the Kurdish issue. If civil war onset is dependent on the level of grievances produced by political asymmetries, it may seem obvious to expect democracies and states that preserve civil liberties to be less violence-prone than more authoritarian systems. Nevertheless, this does not hold true across all cases. For instance, the Basque Country is a Spanish autonomous community with equal access to Spain's central government as others, yet the Basque Homeland and Liberty (ETA) insurgent movement initiated a wave of violence against the state that lasted for several decades. I therefore consider that although Cederman et al. demonstrate a correlation between political grievances of discriminated groups and violence onset, the authors leave unexplained the role of grievances experienced by groups included in central state power.

From the analysis of political inequalities, the authors turn to the economic dimension of structural asymmetries. This subsection of their research gains momentum as the readers come to understand the relationship between Stewart's explanation of wealth inequalities and Horowitz's understanding of the conflict proneness characteristic of ethnic groups, which is based on inclusivity or exclusivity and their relative regional positioning.[12] I agree that this focus is a pivotal contribution for the literature on civil wars insofar as the authors construct the previously-absent quantitative data that empirically validates the link between economic inequality and internal conflict. The authors employ the EPR-ETH (GeopEPR) data set to study the group-level distribution

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[9] Cederman, Gleditsch, and Buhaug. *Inequality, Grievances, and Civil War*, 57.

[10] Cederman, Gleditsch, and Buhaug. *Inequality, Grievances, and Civil War*, 58.

[11] Cederman, Gleditsch, and Buhaug. *Inequality, Grievances, and Civil War*, 66.

[12] Cederman, Gleditsch, and Buhaug. *Inequality, Grievances, and Civil War*, 96.

asymmetries in relation to ethnic groups' settlement areas. They limit the coverage from 1991 through 2009 and analyze a total of 5,377 group years with only 59 conflicts onsets.[13]

By analyzing the conflict proneness of differently situated groups, Cederman et al. determine that there is a higher risk for conflict among poor and wealthy ethnic groups compared to their average compatriots.[14] The cluster of results shows that conflict-proneness is potentially found among ethnic groups that present lower economic levels than the national average, as was the case in the outbreak of the Chechen wars in 1994 and 1999, and in Kosovo throughout the 1990s. Moreover, their results indicate an asymmetric correlation between the political and economic dimensions of inequalities. If economic and political inequalities are so intertwined, does the explanatory power behind civil wars truly reside within grievances or is it rather greed that conduces groups to rebellion? Cederman et. al resolve this issue by empirically demonstrating that economic inequality is dependent on political inequality insofar as conflict due to wealth distribution predominantly erupts when ethnic groups are exposed to alien rule and are consequent targets of discriminatory executive policies that widen the economic gap.[15] I consider this to be a paramount demonstration of the book's argument, which answers the questions other authors have posed regarding political grievances and rebel greed.

New criticism may arise against Cederman et al.'s decision to link economic inequalities and civil war onset through the intervening variable of grievances. In contrast to Cederman et al., Paul Collier and Anke Hoeffler (2004) crafted an econometric model to predict civil conflict onset founded upon the idea that for either greed or misperceived grievances to trigger conflict, there has to be opportunity and viability for rebellion. While Cederman et al.'s research is based on motivational rather than cognitive mechanisms, Collier and Hoeffler expose the infeasibility of observing the motives behind violence onset. New apprehensions arise on whether Cederman et al.'s analysis of grievances is grounded in objective circumstances. On the other hand, it is true that the book's dual-step logic allows readers to further understand the clashes of the Palestinians in West Bank and Gaza, the Tamils in Sri Lanka, the Karen in Myanmar, the Fur in the Sudan, and the Kurds in Turkey. However, this grievance-based approach feels incomplete as it seems to particularly focus on disadvantaged groups within disadvantaged regions. Although I defend the cogent case that this book makes in terms of explaining the political and economic causes behind civil war onset, I once again argue that the book fails to address the motivations of well-off ethnic groups seeking separation. For instance, Scotland, Catalonia and the Basque Country are regions with positive economic performances, yet groups politicizing ethno-political grievances have continuously fostered separatist movements within them. Other examples of this phenomenon are the Sikhs in Indian Punjab, the Yoruba in Nigeria, and the Baganda in Uganda.[16] Although aims for secession are stronger in some cases than in others, these are all advanced ethnic groups in advanced regional economies who demonstrate the correlation between structural asymmetries and the onset of conflict. It remains unresolved whether economic horizontal inequality also triggers civil violence for well-off groups in well-off regions, and whether this violence can be further exacerbated in the absence of political exclusion or categorical discriminations.[17]

[13] Cederman, Gleditsch, and Buhaug. *Inequality, Grievances, and Civil War*, 106.

[14] Cederman, Gleditsch, and Buhaug. *Inequality, Grievances, and Civil War*, 97.

[15] Cederman, Gleditsch, and Buhaug. *Inequality, Grievances, and Civil War*, 117.

[16] Donald L Horowitz. *Ethnic Groups in Conflict: Ethnic Groups in Conflict Ethnic Groups in Conflict: Theories, Patterns, and Policies.* (Berkeley, CA.: University of California Press, 1985): 234.

[17] Lars-Erik Cederman, Kristian S. Gleditsch, and Halvard Buhaug. *Inequality, grievances, and civil war.*(New York: Cambridge University Press, 2013), 91.

The importance of this grievances-related study is not only grounded on the imperative need to expose the causes of conflict-proneness, but also on the potential application of these results in the construction of new theory and policy. In this line, Cederman et al. conclude their theoretical and empirical analysis by discussing the urgent need for policies that include ethnic groups in executive power in order to prevent civil wars. Since most modern civil conflict literature has focused on the emergence of insurgencies, scholars and politicians have generally focused on policies to help weak governments improve their counter-insurgency (COIN) operations. I agree with the author's' proposal of a power-sharing strategy that would supersede the counter-insurgency campaigns weakly proposed by other scholars and politicians.[18] From the economic perspective, I claim that Cederman et al.'s results further uncover reveal the preventive or even problem-solving effects that short term politically inclusive policies could have as a compensation for long term economic inequalities, hence mitigating the probability of conflict. This policy breakthrough within civil war literature is derived from the book's core achievement: its demonstration that political and economic inequalities contribute asymmetrically but jointly to the outbreak of civil wars insofar as these incendiary economic inequalities often depend on discriminatory state policies.

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