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ESSAYS

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Emma Keyes

The Survival of the Syrian Ba'ath Party: Domestic Politics or International Support?

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The Responsibility to Protect through a Realist Lens: Strategic Choice, Inconsistency and Delegation

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"Be Fruitful and Multiply": The Role of Israeli Pronatalist Policy in the Pursuit of Jewish Demographic Dominance in the Holy Land

Devyn Rigsby

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GRAPHIC DESIGN

Elisabeth Siegel

CONTRIBUTORS

Emma Keyes
Marwan Safar Jalani
Jason Athanasios Doukakis
Devyn Rigsby
Cover photo taken by Jacob Madej.

DEAR READER,

In this issue of The Yale Review of International Studies, we're proud to continue our commitment to providing the best possible platform for outstanding student scholarship on international issues. We are humbled again by the student interest in The Review, and we sincerely believe that the pieces we have chosen reflect many of the issues our international community faces today. In this issue, we have included pieces that tackle profound and difficult subjects such as: the flaws with Responsibility to Protect, integrated and shared education programs as a means of reconciliation in Northern Ireland, the Ba'ath party's continued existence during the Syrian Civil War, and the effects of Israeli pro-natalist policies.

Working with our peers at Yale has been nothing short of an immense pleasure, and we at The Review are extremely grateful to not only those who gave us permission to publish their writing in this issue, but also to those who took the time to submit. We had an overwhelming amount of high caliber submissions this spring. Once again, it has been our pleasure to collect these pieces and bring them together for your enjoyment. We hope you enjoy reading them as much as we did, and we hope you will consider submitting your own work for publication. In the meantime, we're already getting a head start on our next issue: The Acheson Prize.

All our best,
The Editors

ESSAYS

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DEVYN RIGSBY

SCHOOLS SIDE BY SIDE, BUT WORLDS APART: POSSIBILITIES OF RECONCILIATION THROUGH INTEGRATED AND SHARED EDUCATION IN NORTHERN IRELAND

The period in Northern Irish history known as the “The Troubles” was brought to an end in 1998 with the signing of the Good Friday Agreement, but sectarian tension has not dissipated in the nearly thirty years since then, even with the successful reduction in violence. In fact, the “interface barriers between communities (so-called ‘peace’ walls) have increased in number” and “more than [seventy percent] of social housing estates are [ninety percent] single identity occupied.”¹ One of the modern manifestations of this historical sectarian tension is the religiously segregated schooling system in Northern Ireland.

The legacy of schooling in Northern Ireland dates back to before the Irish War for Independence, the creation of the Irish Free State, and the partitioning of the six counties in the northern part of the island that would become Northern Ireland. In the 1830s, when the National School System was established, the government declared that “preference would be given to joint applications from Catholic and Protestant clergy to establish new schools,” but over time “any semblance of integration was lost and most of these national schools took on the complexion and ethos of their majority community.”² That carried through until the upheaval caused by the Irish War for Independence and the ensuing Civil War.

After the border between the Republic of Ireland and Northern Ireland was drawn following the Irish Civil War, the new government in

Northern Ireland began reorganizing the education system and in 1923 “the official preference was that the Churches would hand control of their schools to the new local authorities, and that schools would be open to pupils from all denominations.”³ However, both the Catholic and Protestant Churches rebelled against this. Immediately post-partition, the Catholic Church and nationalist politicians in Northern Ireland “felt very much under siege and actively promoted a boycott of the Northern Ireland government,” which proved a clear obstacle to any efforts towards an integrated school system.⁴ Although initially less obvious, since the Northern Irish government represented Protestant interests, the Protestant Churches were also not prepared to hand school control over to the government either, “unless they received guarantees that gave them effective control over the schools anyway, without the burden of ownership.”⁵ Because of the boycott of the Northern Irish government by nationalist politicians, the new parliament consisted almost entirely of British unionists with deeply entrenched anti-nationalist and anti-Catholic beliefs. Nonetheless, a few remaining politicians did argue forcefully for integrated education—most notably the parliament’s first Minister of Education, Lord Londonderry—but his efforts faced opposition from all sides and demonstrated that “the processes of government were already deeply tinged with the divisions that would persist in the future.”⁶ The government did pass an Education Act in 1923 that attempted to create a unified system, but with widespread Church opposition, by 1930

1 Vani Borooah and Colin Knox, “The Contribution of ‘Shared Education’ to Catholic-Protestant Reconciliation in Northern Ireland: A Third Way?” *British Educational Research Journal*, vol. 39, no. 5 (2013): 925.

2 Tony Gallagher, “Shared Education in Northern Ireland: School Collaboration in Divided Societies,” *Oxford Review of Education*, vol. 42, no. 3 (2016): 363; John Gardner, “Education in Northern Ireland since the Good Friday Agreement: Kabuki Theatre Meets Danse Macabre,” *Oxford Review of Education*, vol. 42, no. 3 (2016): 348.

3 Gallagher, “Shared Education in Northern Ireland,” 363.

4 Gardner, “Education in Northern Ireland since the Good Friday Agreement,” 348.

5 Gallagher, “Shared education in Northern Ireland,” 363.

6 Gardner, “Education in Northern Ireland since the Good Friday Agreement,” 348.

"the government was forced to establish a de facto segregated education system."⁷

The resulting system of education was one in which some schools were controlled by the Ministry of Education (henceforth: controlled schools), other schools in which the management was split between two ministers from management committees and four from the relevant church (henceforth: maintained schools), and still others were independently managed voluntary schools (henceforth: voluntary schools).⁸ The controlled schools became de facto Protestant schools while Catholics predominantly attended Catholic maintained schools. Fewer students attended voluntary schools (akin to American private

schools). The opportunity to integrate Irish education had passed and the above system still exists in Northern Ireland today.

The status of schooling in Northern Ireland reflects the greater sectarian divide facing the region today. As of 2012, around ninety percent of children attend either controlled schools or Catholic maintained schools, with less than six percent attending integrated schools.⁹ Looking more closely, almost half of the students in Northern Ireland are being taught in schools where "[ninety percent] or more of the pupils are of the same religion."¹⁰ In 2012, 180 schools had no Protestant students on their roster and 111 schools had no Catholic students.¹¹ This reality means that for many people, "their first contact with a member of the opposing reli-

gious tradition and culture may not be until they attend university or enter the workforce."¹² Students can go their whole adolescence without ever meeting someone from the other group.

This deep division poses serious concerns. At the level of classroom curriculum, "a Catholic is likely to study more Irish history than a Protes-

tant, and a Protestant will study more British history than a Catholic."¹³ As a result, different groups of students have different conceptions of Northern Irish history. In terms of social effects, research has found that "separate schooling is more likely to contribute to 'own' group bias, stereotyping and prejudice" in polarized communities.¹⁴ In addition, the segregated educational system has been identified "as a key contributory factor in perpetuating the conflict," although empirical evidence on the

subject is sorely lacking.¹⁵ On the other hand, some in Northern Ireland consider segregated schooling a good thing "for protecting culture, promoting faith-based values and... providing safety for children in what at times can be a volatile environment."¹⁶ The continued debate over segregated education in Northern Ireland reflects concerns that exist at a global level "regarding the right to a separate education based on ethno-religious identity and the role that separate schools may play in sustaining and creating negative group relations."¹⁷ The question at stake in Northern Ireland is not so easy as saying that segregated schooling is the root of sectarian divisions and abolishing the parallel system would solve all of that society's

"THE NEW PARLIAMENT CONSISTED ALMOST ENTIRELY OF BRITISH UNIONISTS WITH DEEPLY ENTRENCHED ANTI-NATIONALIST AND ANTI-CATHOLIC BELIEFS."

7 Bernadette Hayes, et al., "Integrated Education, Intergroup Relations, and Political Identities in Northern Ireland," *Social Problems*, vol. 54, no. 4 (2007): 457.

8 Gardner, "Education in Northern Ireland since the Good Friday Agreement," 349.

9 Boroah and Knox, "The Contribution of 'Shared Education' to Catholic-Protestant Reconciliation in Northern Ireland," 925.

10 Kathryn Torney, "How Integrated Are Schools Where You Live?" *The Detail*, November 23, 2012, accessed December 14, 2017, <http://www.thedetail.tv/articles/how-integrated-are-schools-where-you-live>.

11 Ibid.

12 Hayes et al., "Integrated Education, Intergroup Relations, and Political Identities in Northern Ireland," 456.

13 Ibid., 457.

14 Boroah and Knox, "The Contribution of 'Shared Education' to Catholic-Protestant Reconciliation in Northern Ireland," 942.

15 Hayes et al., "Integrated Education, Intergroup Relations, and Political Identities in Northern Ireland," 455.

16 Gardner, "Education in Northern Ireland since the Good Friday Agreement," 351.

17 Danielle Blaylock and Joanne Hughes, "Shared Education Initiatives in Northern Ireland: A Model for Effective Intergroup Contact in Divided Jurisdictions," *Studies in Ethnicity and Nationalism*, vol. 13, no. 3 (2013): 479.

problems because, of course, many varied and complex factors are at play in Northern Irish society. Nonetheless, research has suggested that “in the context of societies in conflict, the general model of schooling ‘does more to contribute to the underlying causes of conflict than it does to peace.’”¹⁸ Although not enough research has been done on the exact effects of segregated education in Northern Ireland, the system certainly does not work to heal divisions.

At least one government official, former First Minister and DUP leader Peter Robinson, has described the education system in Northern Ireland as a “benign form of apartheid which is fundamentally damaging to our society,” so concerns about segregated education are being registered.¹⁹ At the same time, however, the Department of Education, in a recent policy document, cut the amount of funding available for “the promotion of equality and good community relations among children from £3.6 [million] to £1.1 [million]” and limits what it will support with regards to personnel training.²⁰ The instances in which controlled schools, maintained schools, and sometime integrated schools compete lend legitimacy to an economic argument against segregated education at the scale of the state. A study in 2006 estimated that “53,000 places ([fifteen percent] of the total capacity) in existing schools were unfilled.”²¹ Still, the political impetus for effective lasting change is not yet a reality in Northern Ireland.

In addition to religious segregation, the Northern Irish school system also perpetuates a system of academic segregation. In Northern Ireland, students attend primary school until about age eleven, after which they go on to either grammar school (which is explicitly academically focused) or secondary school (less academically focused but also not explicitly vocational). That access to post-primary education hinges on “controversial assessments of children’s ability to benefit from a grammar school

education.”²² Students take a test at age eleven, which dictates the rest of their academic career, and this system disproportionately hurts working-class students (both Protestant and Catholic) and advantages middle-class students. The DUP and other unionists defend the system of grammar school admittance which makes them appear to treat working-class Protestant children as “mere ‘education fodder in this middle-class system’ when it comes to educational achievement.”²³ In 2002, with the Northern Irish parliament about to cede rule directly to Westminster, the last move of the Sinn Féin Minister of Education was to “abolish the transfer tests with effect from 2004.”²⁴ This was an attempt to force the system to become more inclusive, but after typical politicking, this attempt failed and “many grammar schools continue to run ‘unregulated’ tests to select pupils.”²⁵ The effect of this is that Catholic and Protestant grammar schools have separate test systems “of uncertain technical reliability and validity, no comparability of outcomes between them and no significant government oversight.”²⁶ The education system in Northern Ireland continues to fail working-class students at the same time that it entrenches religious divisions.

With regards to antagonism between ethnic, racial, and religious groups, much has been written on the subject of intergroup contact theory. Contact theory posits that under the right conditions, “contact between members of opposing groups can effectively promote more positive group relations.”²⁷ Also known as the contact hypothesis, the idea was developed by Gordon Allport in 1954. The four conditions that Allport developed as integral to successful contact are “the equal status of groups, the requirement for co-operation, the avoidance of social competition and the legitimization of the situation through institutional support.”²⁸ Significant research has been done on the practical applications and effects of contact theory and in general the findings reveal that “intergroup

18 Merav Ben-Nun, “The 3Rs of Integration: Respect, Recognition and Reconciliation; Concepts and Practices of Integrated Schools in Israel and Northern Ireland,” *Journal of Peace Education*, vol. 10, no. 1 (2013): 2.

19 Kathryn Torney, “How Integrated Are Schools Where You Live?” *The Detail*, November 23, 2012, accessed December 14, 2017, <http://www.thedetail.tv/articles/how-integrated-are-schools-where-you-live>.

20 Borooh and Knox, “The Contribution of ‘Shared Education’ to Catholic-Protestant Reconciliation in Northern Ireland,” 926.

21 Gardner, “Education in Northern Ireland since the Good Friday Agreement,” 352.

22 *Ibid.*, 347.

23 *Ibid.*, 355.

24 *Ibid.*, 356.

25 Borooh and Knox, “The Contribution of ‘Shared Education’ to Catholic-Protestant Reconciliation in Northern Ireland,” 926.

26 Gardner, “Education in Northern Ireland since the Good Friday Agreement,” 358.

27 Blaylock and Hughes, “Shared Education Initiatives in Northern Ireland,” 480.

28 Claire McGlynn and Zvi Bekerman, “The Management of Pupil Difference in Catholic-Protestant and Palestinian-Jewish Integrated Education in Northern Ireland and Israel,” *Compare*, vol. 37, no. 5 (2007): 690.

contact may be useful for reducing prejudice in a variety of intergroup situations and contexts.²⁹ With regards to Northern Ireland, there is research evidence to “substantiate the reconciliation benefits of sustained contact between the school children in Northern Ireland,” but the empirical data is not robust.³⁰ Still, contact theory holds a lot of promise for the case of school-children in Northern Ireland.

Integrated education has existed in Northern Ireland since 1981 when the first integrated school was started by the All Children Together parents’ group. For the first eight years of its existence, the government did not recognize the school. Then in 1989, the school was recognized after the Education Reform Order of 1989 endorsed integrated schooling.³¹ Integrated education has since expanded, although not without problems: for many years the Catholic Church “refused to minister to the spiritual needs of Catholic children in integrated schools.”³² New integrated schools also sometimes faced antagonism from “some sections of communities when the creation of a new integrated school threatened the sustainability of existing local schools,” but nevertheless the growth of integrated education has continued slowly.³³ There are two mechanisms by which integrated schools can be created: new schools can be started, or controlled schools can be converted into integrated schools. That conversion process comes at the behest of parents at a given school in question who can request that their school be integrated thereby rendering the process as “voluntary integration by parental consent rather than compulsory desegregation.”³⁴ Those schools that “transform to integrated status are known as controlled integrated” and “new planned integrated schools are ‘grant maintained.’”³⁵ The convoluted system of school categorization in Northern Ireland has only gotten more so with the development of integrated education.

Rather than encouraging the integration controlled schools, the government’s preferred option in the past few decades has been to “close schools below certain arbitrary threshold enrolment levels and retain fewer but larger schools” which perpetuates “the segregated status quo.”³⁶ The effects of this can be seen in the fact that as of 2012, there is not a single integrated grammar school. There are about forty integrated primary schools and about twenty integrated secondary schools, but all grammar school education in Northern Ireland is currently segregated.³⁷ Another source of government-related tension surrounding the issue is that, in the mid-1990s, “government attempts to restrict educational expenditure discouraged further integration.”³⁸ Because of that, the expansion of integrated education has slowed significantly in the past twenty years, even with the signing of the Good Friday Agreement.

People in Northern Ireland, without regard to government policy, consistently support integrated education, even though it remains a niche sector.³⁹ And in some places people are acting on the theoretical support since “the two most oversubscribed schools in Northern Ireland are integrated colleges.”⁴⁰ Indeed, the history of integrated education in Northern Ireland rests firmly on parents: the main activists for integrated education, rather than government or Church officials, “have been parents and the motivation has been a community development process involving parents from different traditions working toward a common goal.”⁴¹ That thread of parental engagement has persisted from the opening of the first integrated school on. Still, in practice, very few students attend integrated schools, even though general support for integrated schools is much higher.

One critique of integrated education is the potential loss of cultural identity, the magnitude of which should not be understated in a place

29 Thomas Pettigrew and Linda Trop, “A Meta-Analytic Test of Intergroup Contact Theory,” *Journal of Personality and Social Psychology*, vol. 90, no. 5 (2006): 766.

30 Borooh and Knox, “The Contribution of ‘Shared Education’ to Catholic-Protestant Reconciliation in Northern Ireland,” 942.

31 Ben-Nun, “The 3Rs of Integration,” 4.

32 Gardner, “Education in Northern Ireland since the Good Friday Agreement,” 350.

33 Ibid.

34 Claire McGlynn, “Negotiating Difference in Post-conflict Northern Ireland: An Analysis of Approaches to Integrated Education,” *Multicultural Perspectives*, vol. 13, no. 1 (2011): 18.

35 McGlynn and Bekerman, “The Management of Pupil Difference,” 691.

36 Borooh and Knox, “The Contribution of ‘Shared Education’ to Catholic-Protestant Reconciliation in Northern Ireland,” 944.

37 Kathryn Torney, “How Integrated Are Schools Where You Live?” *The Detail*, November 23, 2012, accessed December 14, 2017, <http://www.thedetail.tv/articles/how-integrated-are-schools-where-you-live>.

38 Hayes et al., “Integrated Education, Intergroup Relations, and Political Identities in Northern Ireland,” 458.

39 Blaylock and Hughes, “Shared Education Initiatives in Northern Ireland,” 481.

40 Borooh and Knox, “The Contribution of ‘Shared Education’ to Catholic-Protestant Reconciliation in Northern Ireland,” 931.

41 Alan Smith, “Religious Segregation and the Emergence of Integrated Schools in Northern Ireland,” *Oxford Review of Education*, vol. 27, no. 4 (2001): 564.

as culturally divided as Northern Ireland. That critique stems from the perception that, in an integrated school, students of different backgrounds sit in classrooms together, but “the school simultaneously requires them to surrender their identities: for the time that they are in school these are subordinated to an ‘integrated’ identity.”⁴² Whether or not students actually feel that way in an integrated setting is up for debate because the data on the effects of integrated education is spotty at best. Another point of concern is that research shows that “limited social interactions occur outside of school,” which raises questions about whether “the reduction in social distance in school between the two groups is transferable outside the milieu of the integrated experience.”⁴³ One issue of implementation of integrat-

"LATENT PROBLEMS NEED TO BE DISCUSSED IN OPEN AND HEALTHY WAYS, AND INTEGRATED SCHOOLS WOULD BE AN EXCELLENT PLACE TO START THAT PROCESS."

ed education is the “extent to which students and teachers in integrated schools openly confront issues of sectarianism,” namely students and educators in Northern Ireland tend to shy away from actually discussing contentious issues of sectarianism in schools.⁴⁴ That’s a problem across society in Northern Ireland—the reluctance to actually talk about things—but in order for real reconciliation to actually take place, latent problems need to be discussed in open and healthy ways and integrated schools would be an excellent place to start that process.

Overall the evidence that does exist about integrated education in Northern Ireland points towards predominantly positive effects. Studies that compare outcomes for students in integrated schools “have found them to have higher levels of contact, more moderate political views and more favourable [sic] views of the other community” than their peers at controlled or Catholic maintained schools.⁴⁵ Those stu-

dents from integrated schools also took “a liberal position on mixed marriage and integrated education,” compared to their segregated peers.⁴⁶ Recent more general research has also indicated that integrated education “may impact positively on identity, outgroup attitudes and forgiveness, with potential to help rebuild the social cohesion fragmented by protracted conflict,” which has clear implications for the case of integrated education in Northern Ireland.⁴⁷ One study found that 93 percent of past students felt that “integrated education had a significant positive impact on their lives.”⁴⁸ If the purpose of integrated education is to lessen the strength of identity categories of students, then it does not generally succeed at that, since that same study say that “religious identity was unaffected and there was also

little impact on political identity,” but the argument for integrated education is generally for the possibility of greater social cohesion, not a more homogenous society.⁴⁹ More support should be leant to integrated education from the government in terms of funding, public support, and research.

A much more recent development in the educational fabric of Northern Ireland is the idea of what is called “shared education.” The Shared Education Programme (SEP) was launched in 2007 with funding from the International Fund for Ireland with the goal of fostering partnerships between controlled and Catholic maintained schools. Collaborating between separate schools wherein teachers and students move between schools “to take classes on a regular basis would allow for a degree of mixing and contact, while at the same time protecting the ethos and existence of

42 Borooh and Knox, “The Contribution of ‘Shared Education’ to Catholic-Protestant Reconciliation in Northern Ireland,” 930.

43 Ben-Nun, “The 3Rs of Integration,” 6.

44 Ibid.

45 Gallagher, “Shared education in Northern Ireland,” 364.

46 Hayes et al., “Integrated Education, Intergroup Relations, and Political Identities in Northern Ireland,” 460.

47 McGlynn and Bekerman, “The Management of Pupil Difference,” 692.

48 Hayes et al., “Integrated Education, Intergroup Relations, and Political Identities in Northern Ireland,” 460.

49 Ibid.

separate schools.”⁵⁰ SEP allows for a semi-integrated experience for students, since they take classes with students from the other religious group while still attending their own school. In a shared education system, schools are seen as part of “an interdependent network within which changes in one part of the system will have consequences for other schools in the system.”⁵¹ The introduction of SEP to schools in Northern Ireland requires a recalibration with respect to ideas about how schools should operate as independent, individual pieces towards viewing schools as part of an interconnected web.

There is somewhat of a precedent for the SEP in that Northern Ireland has attempted semi-similar contact programs in the past that brought together Protestant and Catholic youth on a joint project. The impact of these earlier programs was generally limited “as contact was generally not used to address issues related to conflict or division and often lacked any real ambition to promote change.”⁵² Also, these programs tended to be one-off that did not focus on sustaining longer-term contact between groups. SEP also draws from similar shared education models in England and Scotland where the evidence suggests that, “despite their different goals, the Scottish and English initiatives had been largely successful in leading to educational and social benefits, and protecting denominational ethos.”⁵³

Shared education has clear academic benefits, alongside the less definitively clear social ones. School partnerships allow for “the pooling of resources, expertise, and professional development, which has the potential to raise educational standards and ultimately improve pupil attainment.”⁵⁴ That means that if two schools do not have the resources or enough students to offer a particular class, a partnership between the two can allow one of those schools to offer that class to both sets of students, thereby benefitting all parties involved. In order to qualify for SEP funding, partnering schools must have “sustained, regular engagement working towards the development of students working together, in shared classes, in each other’s schools, on core examination sub-

jects.”⁵⁵ The situation is in general a net positive for schools and students in terms of resources and academic opportunity.

In the programs that have been implemented since 2007, very few sectarian incidents occurred, and when they did, the schools “normally dealt with this in an open and explicit way—the over-arching, and public, framework provided by SEP seemed to provide a context when these issues could be dealt with openly” compared to the usual response in schools with sectarian tension which would be to suspend activity until things quiet down on their own.⁵⁶ The main issues with SEP have been logistical ones, specifically the “problems of timetabling and busing arrangements needed to make it happen,” since cross-school programs involve the physical movement of students from one school to another.⁵⁷

The advantage of being a less radical approach, in some sense, compared to outright integrated education is that working within the existing segregated framework can help facilitate experiences that would not otherwise have any chance of happening. In the first group of SEP partnerships, for “as many as [forty percent] of the pupils, intergroup interactions that occurred through the programme marked the first time they had ever interacted with someone from a different religious community.”⁵⁸ That is a staggering number of students so insulated in their own community that they have never even interacted with someone from another group. SEP allows for those first interactions to occur earlier than they otherwise would have and in a controlled environment that can help promote social cohesion. Shared education also exists as a more appealing alternative for parents who support the idea of integrated education, but still send their children to a segregated school. The practice also exists at the intersection of the idea that separate education is “a fundamental right in liberal democratic societies” and the concern that integrated education is “the only solution to ethnic/racial divisions.”⁵⁹ Northern Ireland’s positioning as a deeply divided society within a larger western democracy means that the balancing of these principles is of the utmost importance.

50 Gallagher, “Shared education in Northern Ireland,” 367.

51 *Ibid.*

52 *Ibid.*, 364.

53 *Ibid.*, 366.

54 Blaylock and Hughes, “Shared Education Initiatives in Northern Ireland,” 484.

55 *Ibid.*, 482.

56 Gallagher, “Shared education in Northern Ireland,” 370.

57 Borooh and Knox, “The Contribution of ‘Shared Education’ to Catholic-Protestant Reconciliation in Northern Ireland,” 943.

58 Blaylock and Hughes, “Shared Education Initiatives in Northern Ireland,” 483.

59 *Ibid.*, 477.

The effects of SEP are hard to judge because the program is so new, but initial results look promising. Even at a basic level, the crossing of “physical boundaries to get to each other’s schools amounted to transcending long established cultural barriers,” which takes a key first step towards achieving a more lasting impact.⁶⁰ Evidence from the first stage of SEP implementation suggests that the program “positively impacts intergroup attitudes and behaviours of participants,” although the effects of those attitude changes have not been sufficiently measured.⁶¹ One study found that students who participated in SEP, compared to those who did not, experienced “a reduction in ingroup bias; greater outgroup trust; reduced anxiety towards the outgroup; more positive feelings when in the company of outgroup members; and more positive outgroup action tendencies,” including the desire to pursue contact, support, help, and learn more.⁶² The observed effects of shared education differ across kinds of schools in Northern Ireland. The positive outcomes occur more strongly in relatively less divided schools compared to more divided schools, but even so, in schools with more intense historical tension and lower engagement, “pupils expressed initial trepidation about contact but following the programme reported feeling less anxious and more comfortable interacting with members of the other community.”⁶³ Even if the effects of shared education vary across student populations, the benefits have, so far, outweighed any anxieties about the program.

Much like with integrated education, the government in Northern Ireland has not been as proactive as it should be if it is genuinely interested in supporting anti-sectarian work. With regards to shared education, the Department of Education has been “criticized as lacking a coherent policy framework and attaining insufficient professional development training for teachers.”⁶⁴ For a system so new and rife with delicate issues, the policies behind it need to be clear, so that effective implementation can

be sustained. Alongside that, teachers participating in the program need sufficient training for running a mixed classroom and navigating issues that may arise from that. A lack of teacher training probably factors into teacher reluctance to discuss contentious issues in both integrated and shared education environments. But since shared education is new, a policy window is open with the potential to “embed shared education through a structural reconfiguration of the schools estate in Northern Ireland,” which will hopefully result in “a more efficient system of education with fewer teachers but one which confers education and reconciliation benefits on its pupils.”⁶⁵ And indeed, after the passage of the 2014 Education Act in Northern Ireland, the Department of Education released a document entitled *Sharing Works: A Policy for Shared Education* that stated, “The Department is conscious of its duty under the Education Reform Order 1989 (Article 6) to encourage and facilitate the development of integrated education and will continue to do so alongside the advancement of Shared Education.”⁶⁶ Policy in Northern Ireland has been decidedly drifting towards the promotion of shared education in favor of integrated education, even though the Department of Education has a mandate to support and promote integrated education.

Both integrated education and shared education programs have great potential to help lessen sectarian tension in Northern Ireland, but as evidenced throughout this paper, more research needs to be done about the effects of both potential options. It will be much easier to make concrete policy proposals regarding integrated and shared education if the direct effects of both options have been thoroughly researched with the collection of large-scale empirical data.

One such study might attempt to interview as many graduates of integrated schools as possible from three stagings (say graduating classes of 1985, 1995, and 2005) to more fully track the effects of an integrated education on students’ lives after leaving school. Do these students have more moderate political and religious opinions? Do they have more intra-community relationships? How do they view their integrated educational experience? These kinds of questions need to be studied at a na-

60 Borooh and Knowx, “The Contribution of ‘Shared Education’ to Catholic-Protestant Reconciliation in Northern Ireland,” 942.

61 Blaylock and Hughes, “Shared Education Initiatives in Northern Ireland,” 477.

62 Joanne Hughes and Rebecca Loader, “‘Plugging the Gap’: Shared Education and the Promotion of Community Relations through Schools in Northern Ireland.” *British Educational Research Journal*, vol. 41, no. 6 (2015): 1147.

63 Blaylock and Hughes, “Shared Education Initiatives in Northern Ireland,” 484.

64 *Ibid.*, 481.

65 Borooh and Knox, “The Contribution of ‘Shared Education’ to Catholic-Protestant Reconciliation in Northern Ireland,” 944.

66 Raffaella Santi, “Devolution and Education Policy in Northern Ireland, 2013-2015,” *Agathos*, vol. 6, no. 2 (2015): 130.

tional level to more fully understand the benefits and drawbacks of an integrated education. More research needs to be done on the effects of shared education as well, even if the same kind of generational study is not yet possible because of the relative newness of the initiative. Still, there is a group of students from the past ten years that have experienced shared education in the classroom, so they are a good place to start in looking at the possibility of longer lasting impacts on students' cultural and social consciousnesses.

With regards to integrated education, the Department of Education needs to reaffirm its commitment to the development and support of integrated education with financial support and sufficient training for teachers and ad-

ministrators in integrated environments. That training needs to include concrete ways to approach sectarian issues in the classroom because integrated education will not reach its full potential if the divisive issues underlying the need for an integrated system are not directly addressed with students from all backgrounds. This training should be implemented for teachers in shared education programs, as well, because the same predicament exists in that environment even if the environment is less drastic. Overall, there is potential for Northern Ireland's school system to be a place of reconciliation between the next generation of Protestants and Catholics if integrated and shared education are properly studied supported.

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THE SURVIVAL OF THE SYRIAN BA'ATH PARTY: DOMESTIC POLITICS OR INTERNATIONAL SUPPORT?

INTRODUCTION

While the Syrian civil war has no precedent in the modern history of the Levant, the survival of the Ba'ath party through the seventh year of the war was far from unprecedented. The generation of Syrians that have witnessed no ruler other than the Assad family saw no political alternative to the Ba'ath Party. The geopolitical importance of Syria to Iran, Russia and Hezbollah in Lebanon and the maneuvering of these foreign actors are crucial to analyzing the survival of the Party. However, this analysis must also account for the complexities of the political, social and economic landscape that the Ba'ath Party managed to create domestically before the uprising of 2011. Despite the unique character of the Syrian Revolution in Syria's modern history, it is certainly not the first political crisis that the regime has survived. The Ba'ath party has outlasted the collapse of the United Arab Republic (UAR) in the sixties, an Islamic uprising in the seventies, economic stagnation in the eighties, the end of Soviet protection era in the nineties, and, the power transition from father to son at the start of the 21st century. This paper challenges the perception that credits the Ba'ath Party's survival to the support of its international allies and examines the historical techniques and experiences that the party developed to ensure its hegemony. By doing so, this paper argues that the party's success in establishing a sustainable and rapidly shifting social base, developing efficient state and security apparatuses, and adapting to the changes in the international and economic arena contributed to its survival until the uprising of 2011.

HISTORY OF THE BA'ATH PARTY

The word "Ba'ath" is the Arabic for rebirth, or resurrection, a renewal of the conception of Arabness around the three main pillars of Michel Aflaq's thought, the founder of the Ba'ath

Party: Unity, Freedom and Socialism. As early as the 1940s, the party's activities responded to the decades-old colonial presence in the Levant. In the early Ba'athist mindset, the Arabs should abolish the artificial colonial boundaries to give space for the Arab civilization to flourish and renew itself.¹ The freedom that Aflaq envisaged was freedom of speech and belief as well as the freedom of the Arab Ummah from foreign domination. The Ba'ath party formally entered the Syrian political space in July 1947 elections in coalition with the communists. The Party's activism soon centered around shifting the country's rule away from the order of the notables.

The Party's appeal to Arab Unity prompted the Ba'athist leaders to sacrifice the party to form the United Arab Republic (UAR). But after the coup of 1961 which dissolved this unity, the party overrode the elected politicians in government and abused its power to incorporate family members and relatives of party members in the bureaucracy, many of whom were minorities. The party's focus on peasantry interests appealed to the Alawite youth, including Hafez Al-Assad, who would become Syria's Defense Minister and subsequently the president through his military coup, "The Corrective Movement." The rise of the Ba'ath party and its transformation to a personality cult of one leader culminated in amending the constitution in 1973, making the Ba'ath "the leading party of the society and state."²

ESTABLISHING A SOCIAL BASE

The party's appeal to minorities in the post-UAR era would give it a social base through kinship and clientelism. The regime used the rise of a minority-based "petit-bourgeois" to undermine the power of local Sunni elites and

1 John McHugo, *Syria: A History of the Last Hundred Years* (New York: New Press, 2015), 119.

2 *Ibid.*, 184.

notables. However, to describe Hafez's Ba'athist regime as merely maintaining Alawite hegemony is to ignore the complexities of power structures in Syria. Hafez recognized his inability to rule a Sunni majority country with a minority-based government. He was determined to incorporate urban Sunnis whose economic prosperity was dependent on the success of the Ba'ath party. In Syria: Revolution from Above, Raymond Hinnebusch reasons, "[Being] anxious to placate urban Sunnis, especially Damascenes, [Hafez Assad] deliberately co-opted significant numbers of them into the top ranks of the party and many non-party technocrats into the government...forge an alliance with a section of Damascene private bourgeoisie."³ Assad's Alawite as well as Sunni social base in the country was therefore key to his party's survival.

The Ba'ath party also relied on its appeal to peasants as one of its four power pillars.⁴ By the end of the French mandate in Syria, private agriculture was controlled by a small sector of landlords. Frustrated at the reluctance of the French colonial powers to restructure the power dynamics, the peasantry, led by Akram Al-Hawrani, instigated scattered revolts that began in the early 1940s. Hawrani managed to secure land redistribution policies issued in a decree by Adib Al-Shishakli in January 1952.⁵ As Shishakli's rule solidified, he exiled Hawrani to Lebanon, where the latter met Michel Aflaq and formed a coalition which would be called the Arab Socialist Ba'ath Party. The Ba'athist land reforms materialized during Hafez Assad leadership. Through its broad political agenda, the Ba'ath party formed a coalition of urban class, schoolteachers, government employees and others, with revolutionary peasants. By the end of 1980s, the peasantry formed more than 13%

of the Ba'ath Party members,⁶ making them the second largest profession in the party membership, after students.

While it would be a mistake to label the regime solely Alawite, the regime security apparatus did have a disproportionate representation of Alawites. Hafez managed to fill the party collegial leadership with an Alawite coercive body.

The officers around Hafez Assad, until the early 1980s, were tied to the Party by means of kinship and clientelism: Hafez's brother, Rifat, as the commander of the Defense Detachments, Hafez's son-in-law, Adan, as the commander of the Presidential Guard. Other Alawites were Ali Haydar commanding the Special Forces to repress domestic rebellion and Ibrahim Al-Ali commanding the

"THE IDEOLOGY OF SYRIAN POLITICAL ISLAM STOOD IN SHARP CONTRAST TO BAATHIST ATTITUDES IN THE COUNTRY."

Popular Army.⁷ The presence of Alawites, kinsmen of Hafez Al-Assad in the party leadership, secured the position of Assad in the party and gained him what Zisser calls "the Alawi Orbit" in his book, *Asad's Legacy: Syria in Transition*. Zisser argues that the Alawi takeover of Syria was firmly established by the "Corrective Movement," the military coup in 1970 that allowed Hafez to appoint himself as a president and his fellow Alawites in the central leadership of the party.⁸

ANALYSIS OF POLITICAL ALTERNATIVE

Any analysis of state opposition in Syria requires a careful examination of the rise of political Islam and party dissent. The fact that the only political alternatives for Syrians were those two unpopular options limited the capacity to establish a regime apart from the Ba'athist Party.

The Syrian branch of the Muslim Brotherhood was founded in 1944-1946 to restore the roots of Islam and prevent the westernization and secularization of the country. The Brotherhood (Al-Ikhwan) entered the political discourse after winning 10 seats in the parliament

3 Raymond A. Hinnebusch, *Syria: Revolution from Above* (New York: Routledge/Taylor & Francis Group, 2005), 67.

4 *Ibid.*, 33

5 Patrick Seale, *Asad of Syria: The Struggle for the Middle East* (Berkeley: University of California Press, 1989), 47.

6 Hinnebusch, *Syria*, 81.

7 *Ibid.*, 69.

8 Eyal Zisser, *Asad's Legacy: Syria in Transition* (London: Hurst & Company, 2001), 20.

in the 1961 elections. Hinnebusch argues that in its early stages, the Ikhwan faithfully represented the interests and values of roughly half of the Syrian population: non-Damascene urban elites, lower and middle-class Sunnis and some fractions of the secular oppositionist left.⁹ The ideology of Syrian political Islam stood in sharp contrast to Baathist attitudes in the country: The Ikhwan envisaged a Sunni-ruled Syria with the Shari'a law as the main source of constitutional legislation. Al-Ikhwan rejected notions of secular Arab nationalism and worked with the marginalized urban Sunnis to promote political Islam as a viable source of governance.

The Ikhwan revolt started as early as 1977 and lasted until it was brutally crushed in Hama in 1982. Their political activism was initiated in mosque sermons, which soon turned into street protests calling for the fall of the regime. During the Ba'ath era, the Ikhwan developed a social base among urban middle-class Sunnis who were mostly affected by the regularization of foreign trade, restrictions on imports and capital management. Moreover, scholarships, jobs and university admission programs mostly favored Alawites, which made political Islam particularly appeal to the Sunni youth. However, the Sunni resentment was by no means unanimous. As discussed earlier, upper-middle class professionals collaborated with the regime, which realized that the support of the urban Sunni elites was conditional upon the party's maintaining its hegemony in the country's main urban center. By spring 1980, the Ikhwan had a large enough social base that they organized protests in four different urban centers: Homs, Hama, Aleppo and Latakia. In Aleppo, entire neighborhoods fell out of government control while in Hama, the

infamous massacre where more than 20,000 people were murdered by government militants.¹⁰ The shelling of the major urban centers after the uprising of 2011 would become reminiscent of the coercion previously used against the Muslim Brotherhood.

**"THE REGIME THAT
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ITS INFORMAL ONE."**

While the failure of political Islam in Syria could be well attributed to the government coercion, political Islam was also insufficiently organized and only appealed to separate sectors of the population. The movement was an urban one: small Sunni populated cities like Hama, Homs and Aleppo. It has reinforced the urban-rural divide which the Ba'ath party maintained by uplifting the peasantry. Moreover, the increasingly polarized climate intensified as urban workers and rural peasants became wary of any return to feudalism.

Although the Muslim brotherhood promised to champion minority rights, other religious and ethnic minorities feared a Muslim hegemony in Syria. Although political Islam was on the rise, Arab nationalism appealed to more people, as Hafez Assad managed to depict its regime as a secular, pro-peasantry and anti-Zionist.

On the far extreme opposite of political Islam, a major threat to the Hafez Assad rule culminated in 1984 with a coup attempt by his brother Rifaat Assad. Being the major perpetrator of the Hama Massacre, Rifaat held key party positions, exemplifying the trust that Hafez held for him. Meanwhile, Rifaat managed to develop a keen relationship with the historical enemies of the regime: the Lebanese Maronites, the Americans, and the urban bourgeoisie. By doing so, Rifaat expanded his state and society network to Alawites on one hand, and elements of the Sunni majority on the other. He promoted a pro-western, pro-Bourgeois Syria.

⁹ Hinnebusch, Syria, 93.

¹⁰ Ibid., 92-101.

It is precisely the following analysis of the state and party apparatuses that would prevent him from succeeding.¹¹

WHEN PARTY AND SECURITY APPARATUSES MEET

The state, military and security service apparatuses are conditional to the survival of the Ba'ath Party. After the party took over in Syria, the word Mukhabarat (Intelligence Services) becomes not only emblematic of Syrian political discourse, but also of Syrian jokes, proverbs and sometimes children's games.

The regime that Hafez Assad carefully orchestrated and bequeathed to his son, Bashar, seeks legitimacy through its formal apparatus and practices repression through its informal one. In his book *Assad's Legacy*, Zisser carefully explores the differences between these two aspects of governance. The former consists of the executive, legislative and judicial powers outlined in the constitution. It outlines the role of Majlis Al-Sh'ab (People's Assembly), the Supreme Court, the government and the presidency. It is through this apparatus that the party legitimates itself: 60% of the People's Assembly are members of the National Progressive Front, a coalition of the Ba'ath Party and other approved parties in Syria and 40% are independent candidates. Moreover, 60% of the formal government apparatus are Sunni appointees, matching the percentage of Sunnis in the population.¹²

However, the informal apparatus consists of the senior military commanders and heads of security services. The status and strength of this apparatus is not outlined in the constitution but is foundational for maintaining the power structure. 90 % of the informal apparatus (heads of intelligence services and military commanders) are Alawites. It is precisely through integrating the Ba'ath party into the informal apparatus that the regime maintains its power. While the military consists of high percentage of Alawite kinsmen and clients to the Assad family, the Ba'ath party and the formal apparatus are politically and denominationally diverse. The presence of different intelligence and party agencies ensures that all sides watch each other while also watching the opposition, whether political or civil. This is Assad's version of "checks and balances."¹³

While building a complex repressive military apparatus, the regime has also maintained other elements of populist authoritarianism. By the time Hafez Assad took power in 1970, the party membership was 65,000, rising to 374,000 in 1981 and to almost 1 million in 1992 and 1.8 million by 2005.¹⁴ This exponential increase in party membership represents the wide spectrum of organizations affiliated with the Baath Party: trade unions, popular organizations (Munazamaat Sha'abiya) to include peasant unions, youth and women empowerment organizations and professional associations (Naqabat Mihaniya) of doctors, lawyers and engineers.¹⁵ While party membership benefited a significant percentage of the population, the top-down control was maintained by counting only 30% as full party members. This has ensured a rule by those closest to the Assad family and a popular base through which the party maintains its power.

It is thus unsurprising that Syrians have grown accustomed to looking to their right and left in coffee shops before engaging in political discussions. The strong relationship between the military, the party and the government apparatuses ensures the development of effective surveillance, arbitrary arrests, imprisonment and torture of dissidents. The Hama massacre is only one of the long list of oppressed urban disturbances that the Ba'athized military (or militarized Ba'ath) managed to repress. By the end of the 1980s, the military has repressed no less than seven urban disturbances and one military coup attempt.¹⁶ The accumulating number only serves as a major deterrent for future civil action.

DYNAMISM: WAS THE BA'ATH PARTY DRIVEN BY POLITICAL AND ECONOMIC CIRCUMSTANCES?

It is not unrealistic to attribute the rise of the Ba'ath Party to the frustration of the lower and lower-middle classes of the society in the pre-Ba'ath era. The French Mandate's reluctance to change social structure in Syria and its reliance on nobility mobilized the disaffected classes – notably the peasants, minorities and rural classes – to overthrow the notable order.¹⁷

1966 (California: Hoover Institution Press, 1979), 63-68.

14 Barry M. Rubin, *The Truth About Syria* (New York: Palgrave Macmillan, 2008), 45.

15 Hinnebusch, Syria, 83.

16 *Ibid.*, 85-86.

17 Samer Nassif Abboud, *Syria* (Cambridge, UK: Polity Press, 2016), 13.

11 *Ibid.*, 74.

12 Zisser, *Assad's Legacy*, 25-29.

13 John F. Devlin, *The Ba'ath Party: A History from Its Origins to*

The Ba'ath Party emerged from a mixture of socialistic proletarian revolution and political pan-Arabism. Once the regime was firmly established, however, it went through economic and political conditions, namely the UAR, the rise in oil prices during the Six Day War, the economic crisis of 1986, and the private sector transformation in the 2000s. Arguably, the ability of the Ba'ath party to undergo transition through these economic and political circumstances allowed it to survive.

The socioeconomic strata that the regime targeted before and after the UAR era shifted. After the UAR was dissolved, the Ba'ath Party leadership acknowledged that the mass political mobilization and social revolution would achieve the goal of Arab Unity. This stood in sharp contrast with Aflaq's conservative and reformist approach and created a strong divide in the party membership: Nasserist elements mostly constituting an urban middle and upper classes, and anti-unionist elements, through which the new minoritarian, mainly Alawite, leadership evolves.¹⁸ The ability of the Ba'ath Party to rid itself of the unionist elements expanded its popularity and social base, especially among the minorities and peasantry. Moreover, the party successfully incorporated proletarian elements of the society through radical economic reforms and nationalizations of industry and finance.

Being the commander-in-chief of the army and the secretary general of the party, Hafez Al-Assad managed to depict himself and the party leadership as main political forces capable of defying Israel during the October War. Although the army failed to regain lost territories, it had performed much better than in the 1967 war, which won more legitimacy to Hafez Assad's rule. This coincided with the proclamation of the Ba'ath Party as the leading party in society and politics in the constitution. The internal turmoil produced by this change in the constitution was later ignored by the outbreak of the war. In his *Syria: The Rise and Fall of the Ba'ath Party*, Samer N. Abboud argues that the boom in oil prices in 1970s to Arab states has fueled petrodollars to Syria in form of grants to support its efforts against Israel. This, subsequently, allowed Hafez to control the expansion of state, distribution of resources and consolidation of power.¹⁹

Another source of turbulence that the state

successfully overcame was the decline in oil prices in the mid-1980s. The regime tackled the crisis by approaching a historic antagonist: the private sector. By the late 1980s and early 1990s, businesspeople developed a stronger patronage relations with the regime.²⁰ The liberalization of the political and economic spaces has brought about a regime ideology shift to compromise its hegemony for the sake of compensating for the loss of revenues with the rise of private sector power. This inclusion, however, was not complete. Most of the businesspeople benefiting from the economic liberalization were the ones with direct access to the regime and were the most embedded in the political elite. The small size, family-run businesses suffered from limited production, complicated regulations, fear of asset seizure and regime suppression.²¹ By doing so, the regime ensured ties with private sector businesspeople to maintain revenues while excluding the majority from the political decision-making.

DYNAMISM DURING THE BASHAR ERA?

Finally, what occurred in Syria during the Bashar Al-Assad era in the 2000s was a diffusion of economic authority from public to private sector through transfers of responsibility for social welfare from the state to the market. The private sector was increasingly seen as the main source of the economic growth. This was a way for the party to alter the embeddedness of the public sector in state operations and replace it with the private sector through economic and political liberalization. The state attempted to create parallel private and public sector while allowing for investment in finance, insurance, education and health care to shift Syria's fiscal dependence away from oil revenues.²²

However, the dismantling of the government power in social sectors such as housing and education due to the marketization of the economy created uncertainty among households and businesses. The basic objective was to diversify the economy while keeping the authoritarian political structures effective in the economy. But this did not save the economy from the uncertainty: unemployment rates

20 Bassam Haddad, "The Formation and Development of Economic Networks in Syria: Implications for Economic and Fiscal Reforms, 1986–2000," in *Networks of Privilege in the Middle East: The Politics of Economic Reform Revisited*, ed. Steven Heydemann (New York, NY: Palgrave Macmillan, 2004).

21 Abboud, *Syria*, 23–33.

22 *Ibid.*, 36.

18 *Ibid.*, 27.

19 *Ibid.*, 31.

were increasing while wage rates did not match the increasing costs of living.²³ The declining agricultural subsidies and the neglect that the government demonstrated towards the agricultural sector of the economy both declined the productivity of Syrian agriculture and led to the movement of rural migrants to urban peripheries.²⁴ This has tremendously decreased the social basis that the party has relied on during the early 1970s. The abandonment of the Ba'athist socialist policies "placed political and social pressures on the Syrian populace for which there was no political outlet to express discontent or mobilize."²⁵ It is precisely the attempt to liberalize the economy while maintaining the populist authoritarianism that would shape the public discontent in the country until the uprising of 2011.

CONCLUSION

While the global and international arenas certainly influenced how the Syrian civil war unfolded, certain domestic factors also caused the revolution in Syria largely driven by youth. An entire generation of Syrians lived through

and learned from the Ba'ath regime's brutality. The older generation recognized that the regime developed economic, political and social strategies to attract a percentage of the population while abandoning the other. When everything else fails, what Zisser called The Informal Apparatus, and what the Syrian people call Mukhabarat would step in to crush any attempt for opposition. The ability of the Ba'ath party to attract minorities, peasantry, rural classes and a fraction of the social elite has given it a long-lasting support that would fragment the Syrian society in the future. Building a gradually more powerful state, party and security apparatuses would prove useful in the suppression of any political alternatives, namely political Islam and Rifaat's coup. Finally, the ability of the regime to maintain its power while going through political, economic and social transformation would soon prove crucial for its survival. These factors resulted in the absence of organized and coordinated bodies for opposition and in the shaping of the limitations and the possibilities that Syrians can achieve through their revolution. What Syrians envisaged as the epitome of Syrian courage and honor would soon be known to the world as The Aborted Revolution (Al-Thawra Al-Mujhada).

23 Ibid., 37.

24 Ibid., 38.

25 Ibid., 40.

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THE RESPONSIBILITY TO PROTECT THROUGH A REALIST LENS: STRATEGIC CHOICE, INCONSISTENCY AND DELEGITIMATION

ABSTRACT

In 2005, the World Summit Outcome articulated the Responsibility to Protect (R2P) as an international political commitment of member-states at the United Nations to prevent and prosecute atrocity crimes. This study interprets the third pillar of R2P with regard to international military intervention through the lens of realism in international relations theory, framing it as an ephemeral foreign policy tool. It argues that the national realist appropriation of this concept leads to an inconsistency in implementation that discredits its humanitarian objectives and foreshadows its delegitimation by states. This looming problem occurs due to a series of factors, including: 1) the fickle and susceptible tenets of institutional liberalism that underscore R2P, 2) its legally ambiguous nature that is conducive to its selective, discretionary, and inconsistent use by the international community, 3) its subjugation to the national interests of states as expressed through their foreign policy choices, and 4) its interpretation as a tool that harbors the potential to upset relative security and system stability. The existence of forgotten and ignored crises involving atrocity crimes, such as in Darfur in the 2000s and Syria during this decade, delegitimizes the cases when international intervention does occur to protect civilians, framing them as self-interested invasions by powerful states. This analysis thus contends that the debate surrounding R2P should be reformulated, shifting the focus from legalism and moralism to a practical understanding of how to normalize its application. Achieving greater consistency in its enforcement would help the international community protect the legitimacy of its humanitarian bedrock and viably address qualifying emergencies in the future.

INTRODUCTION

The Uncertain Future of R2P

In 2001, the International Commission on Intervention and State Sovereignty (ICISS) convened in Canada and articulated for the first time the Responsibility to Protect (R2P).¹ In 2005, the General Assembly of the United Nations (UNGA) modified and subsequently approved the contents of the ICISS report in its World Summit Outcome (WSO).² R2P has thereafter gradually become a permanent fixture in the vocabulary associated with humanitarian emergencies. Intergovernmental organizations, states, NGOs, and civil society have all employed it on multiple occasions to demand or legitimize international action against atrocity crimes conducted within the borders of a state.³ As per the paragraphs of the WSO that established this framework:

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance

1 International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001).

2 Halil Rahman Basaran, "Identifying the Responsibility to Protect," *Fletcher Forum of World Affairs* 38, no. 1 (Winter 2014): 195; United Nations General Assembly (UNGA), 2005 World Summit Outcome: resolution / adopted by the General Assembly, 24 October 2005, A/RES/60/1.

3 Throughout this paper, I adhere to the use of the term 'atrocity crimes' as summarizing the four forms of violence identified in the WSO: genocide, war crimes, ethnic cleansing, and crimes against humanity. Alex J. Bellamy, "The Responsibility to Protect—Five Years on," *Ethics & International Affairs* 24, no. 2 (2010): 144; Susan E. Mayer, "In Our Interest: The Responsibility to Protect" in *Responsibility to Protect: The Global Moral Compact for the 21st Century*, eds. Richard H. Cooper and Juliette Voïnov Kohler (New York, NY: Palgrave Macmillan, 2009), 44.

with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic

cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.⁴

Secretary General (SG) Ban Ki-Moon fur-

ther elaborated upon these stipulations in his 2009 report entitled "Implementing the responsibility to protect," in which he identified three pillars for the agenda's implementation.⁵ The first focuses on the domestic responsibility of states to protect their civilians from atrocity crimes, the second on the responsibility of the international community to provide assistance and capacity building to states so that they can fulfill R2P, and the third on the responsibility of the international community to respond to atrocity crimes when states manifestly fail to do so.⁶ Based on the WSO and the 2009 SG report,

enforcement of R2P when a state does not fulfill its responsibility can range from a warning to a full-scale military intervention depending on the circumstances.⁷ The target government might be unable to protect its population due to a lack of capacity, but it could also be unwilling to fulfill its responsibility because it is complicit or fully responsible for the crimes in question.⁸ The United Nations Security Council (UNSC) has since reaffirmed the concept in its resolutions, such as 1674 (2006) and 1894 (2009), as have a series

of SG reports and the establishment of the Office on Genocide Prevention and the Responsibility to Protect.⁹ A Special Adviser on the Responsibility to Protect, a position currently held by Ivan Šimonović, has been tasked since 2008 with directing its theoretical development and institutional application.¹⁰

"THE UNITED NATIONS... HAS THE RESPONSIBILITY... TO PROTECT POPULATIONS FROM GENOCIDE, WAR CRIMES, ETHNIC CLEANSING, AND CRIMES AGAINST HUMANITY."

5 United Nations Secretary General (SG), *Implementing the responsibility to protect: report of the Secretary-General*, 12 January 2009, A/63/677, 2; Zheng Chen, "China and the responsibility to protect," *Journal of Contemporary China* 25, no. 101 (2016): 688.

6 Bellamy, "The Responsibility to Protect—Five Years on:" 143; United Nations Secretary General (SG), *Implementing the responsibility to protect* (2009), 2.

7 Basaran, "Identifying the Responsibility to Protect:" 195.

8 Giorgio Bosco, "The Responsibility to Protect."

9 Alex J. Bellamy and Paul D. Williams, "The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect," *International Affairs* 87, no. 4 (July 2011): 827.

10 United Nations Office on Genocide Prevention and the Respon-

4 UNGA, *2005 World Summit Outcome*, 30.

Yet heated debate and controversy have surrounded R2P since its inception, as many commentators have struggled to understand its place in international law and have expressed reservations about the coercive measures that can be applied under the third pillar.¹¹ The legally ambiguous and discretionary nature of this agenda has led many states to openly question its legitimacy and integrity.¹² Many of its critics speak of a wave of defeatism regarding civilian protection, while others decry the political disunity that plagues international executive bodies such as the UNSC.¹³ Meanwhile, advocates of the concept oppose this portrayal of a “growing controversy” and remain optimistic about

the gradual emergence of a consensus on its interpretation and implementation.¹⁴ As this debate rages on, numerous cases of atrocity crimes that endanger and claim the lives of civilians remain unaddressed by the international community.¹⁵ While the concept has been vocally applied in certain cases, such as in Côte d’Ivoire in 2011, other cases where the horrors of atrocity crimes are blatantly manifest, such as the crisis unfolding in Syria since 2012, do not elicit a commensurate response.

Through this analysis, I argue that R2P functions as an ephemeral foreign policy tool and is best understood through the lens of realism in international relations (IR) theory, which views states as constantly competing for power and

relative security in an anarchic system. More specifically, I engage with both advocates and critics to highlight the concept’s fickle and legally ambiguous nature as a tenet of institutional liberalism, according to which international institutions and organizations can successfully instigate interstate cooperation to prevent conflict and solve global challenges. I consequently argue that this indeterminate framework allows states to appropriate R2P as a realist device and inconsistently employ it on a selective, case-by-case basis that favors their interests. The existence of forgotten or ignored crises involving atrocity crimes delegitimizes the cases when international intervention occurs to

protect civilians as self-interested invasions by powerful states. I thus contend that the national realist appropriation of this international liberal concept leads to an inconsistency that discredits its humanitarian objectives as unilateral foreign policy decisions. The debate surrounding R2P should therefore be reformulated, shifting the focus from one-sided legalistic and moralist arguments to a practical understanding of how to normalize its application. Achieving greater consistency in its enforcement would help the international community protect the legitimacy of its humanitarian bedrock and viably address qualifying emergencies in the future.

In this context, the following investigation draws from IR theory and empirical case studies related to what the ICISS called “the responsibility to react,” rather than the responsibility to prevent these crimes altogether or to rebuild a state after they have been stopped.¹⁶ In spite of the focus of this study, it should be noted that the third pillar of R2P does not refer to the use of force as the only alternative to inaction, but includes a variety of peaceful options in-

"THE DEBATE SURROUNDING R2P SHOULD THEREFORE BE REFORMULATED, SHIFTING THE FOCUS TO A PRACTICAL UNDERSTANDING OF HOW TO NORMALIZE ITS APPLICATION."

sibility to Protect, “Mandate,” United Nations, Date Accessed: 4 Nov 2017, URL: www.un.org/en/genocideprevention/office-mandate.html.

11 Alex J. Bellamy, “The Responsibility to Protect Turns Ten,” *Ethics & International Affairs* 29, no. 2 (Summer 2015): 168.

12 Basaran, “Identifying the Responsibility to Protect,” 207.

13 Ivan Šimonović, “The Responsibility to Protect,” *United Nations Chronicle* 53, no. 4 (February 2017): 18.

14 Bellamy, “The Responsibility to Protect Turns Ten,” 161.

15 Simon Chesterman, ““Leading from Behind”: The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention after Libya,” *Ethics & International Affairs* 25, no. 3 (Fall 2011): 1.

16 ICISS, *The Responsibility to Protect*, XI.

volving political, diplomatic, and humanitarian channels, such as sanctions.¹⁷ In addition, I do not address here strategies for the prevention of atrocity crimes under the first and second pillars, nor the operational challenges to intervention that include logistical and financial obstacles, violations of humanitarian principles, and nation-building. In order to better grasp and overcome the complications that arise from the application of the third pillar, it is first necessary to understand why certain calls for action against atrocity crimes elicit an international armed response while others remain unaddressed. IR theory can help identify the main challenges to R2P's success by illuminating the mechanics of state behavior under the third pillar. Only after addressing this underlying issue can the operational aspects of intervention under R2P be properly resolved. In this spirit, I follow former Assistant SG and ICISS member Ramesh Thakur's advice "to combine philosophical and theoretical reflections with empirical case-studies" in search of a productive approach to this problem.¹⁸

The Lens of IR Theory & Strategic Choice

In order to understand why R2P faces a looming crisis of legitimacy, this analysis aims to transcend traditional barriers between liberalism and realism in IR theory. I adopt a combinational approach that accepts the inherent realism in state behavior, but purports that national foreign policy often serves liberal internationalism with success. The research thus aspires to contribute to the evolution of realist theory and to productive dialogue between realists and liberals with regard to the dynamics and potential of international institutions.¹⁹ In accordance with existing theory, this analysis demonstrates that a variety of fluid factors determine the legitimation, or in this case delegitimation, of international institutions. The internalization of codes of conduct, jurisdictional determinacy and specificity, the record of adherence by states, and punitive and incentive mechanisms

are all factors that shape this process.²⁰ By not viewing international law and IR theory as black and white, but as a spectrum where concepts like R2P escape narrow legal definitions, I focus on the problem of operationalizing rather than legalizing or institutionalizing R2P.²¹ I accept as a given fact that genocide, war crimes, ethnic cleansing, and crimes against humanity are all universally undesirable and in the vested interests of all states to prevent and punish as crimes for a variety of political, moral, and security reasons.

Under this framework, I ascribe to a reasoning that focuses on the realist enforceability of R2P as a tenet of institutional liberalism, rather than on its precise legal label in international law. I recognize that the legal ambiguity of R2P and the debate over its interpretation are conducive to its inconsistent application, yet I do not espouse legalism, which advances strict adherence to the law and searches for prescriptive legal solutions. The research does not concern itself as much with the legal right of states to intervene under the third pillar as with their political will to do so from an IR standpoint.²² As discussed below, confusion over the nature of this right makes political will a leading factor that trumps legal and terminological evaluations.²³ This lens of analysis is largely contingent on Stephen Krasner's seminal book *Sovereignty: Organized Hypocrisy* (1999) and its application of James March's and Johan Olsen's thesis on the supremacy of the logics of expected consequences over the logics of appropriateness.²⁴ I purport that their argument holds true in this case, as political action and outcomes with regard to R2P do form the result of preference-maximizing rational behavior in the form of foreign policy responses.²⁵ Nevertheless, Krasner asserts that institutions and the multiplicity of norms and jurisdictions in the international environment can decisive-

17 United Nations Secretary-General (SG), A vital and enduring commitment: implementing the responsibility to protect: Report of the Secretary-General, 13 July 2015, A/69/981-S/2015/500, 122.

18 Ramesh Thakur, "The Responsibility to Protect at 15," *International Affairs* 92, no. 2 (2016): 423.

19 Martin Griffiths, *Rethinking International Relations Theory* (New York, NY: Palgrave Macmillan, 2011), 13-4; Annette Freyberg-Inan, Ewan Harrison, and Patrick James, introduction to *Rethinking Realism in International Relations: Between Tradition and Innovation*, eds. Annette Freyberg-Inan, Ewan Harrison, and Patrick James (Baltimore, MD: Johns Hopkins University Press, 2009), 9.

20 Michael W. Doyle, "International Ethics and the Responsibility to Protect," *International Studies Review* 13, no. 1 (March, 2011): 83; Ian Hurd, *After Anarchy: Legitimacy and Power in the United Nations Security Council* (Princeton, NJ: Princeton University Press, 2007), 7; Aidan Hehir, "The Permanence of Inconsistency: Libya, the Security Council, and the Responsibility to Protect," *International Security* 38, no. 1 (Summer 2013): 150.

21 Basaran, "Identifying the Responsibility to Protect:" 203.

22 Chesterman, "Leading from Behind:" 1.

23 Robert O. Keohane, "Twenty Years of Institutional Liberalism," *International Relations* 26, no. 2 (2012): 133.

24 Stephen D. Krasner, *Sovereignty: organized hypocrisy* (Princeton, NJ: Princeton University Press, 1999), 5.

25 Ibid.

ly influence actors' strategies and decisions.²⁶ With this condition in mind, I attempt to prove that states intervene under the third pillar only when it is in their interests to do so, working with this fact rather than around it towards the normalization of R2P.

INTERNATIONAL LAW & INSTITUTIONAL LIBERALISM

A thorough investigation of the challenges that R2P faces must begin by identifying its normative foundations, which are deeply rooted in tenets of liberalism, and particularly institutional liberalism, as encountered in traditional IR theory. In institutional terms, this concept derives legitimacy from and simultaneously interacts with an elaborate legal apparatus pertaining to state sovereignty, human rights, and intergovernmental cooperation.

R2P originated in the 1990s, when the international community faced a major backlash of popular humanitarian sentiment due to repeated failures in responding to mass atrocities in Bosnia, Rwanda, and Kosovo.²⁷ Public opinion on the national and international levels contributed to a shift from the concept of vulnerable civilians' right to protection to that of a responsibility to protect them.²⁸ When the ICISS coined the term R2P in 2001, it partly attributed this sense of duty to the international community and tasked it with the protection of civilians if their government was unable or disinclined to provide it.²⁹ After the WSO was signed in 2005, many concerned parties interpreted the third pillar as a reincarnation of the highly controversial concept of "humanitarian intervention," which heavily featured in public debate after Rwanda and Srebrenica.³⁰ This association spawned both rhetorical and practical challenges, discussed in more detail in the following section about the concept's troublesome equivocality.

Regardless of such obstacles, by the turn of the century, the theoretical underpinnings of R2P had made their way into the language of world leaders. During the North Atlantic Treaty Organization's (NATO) aerial campaign in

Kosovo in 1999, President of the United States Bill Clinton told the media that "If the world community has the power to stop it, we ought to stop genocide and ethnic cleansing."³¹ It is telling that the resulting Kosovo Report characterized the intervention as "illegal but legitimate." In spite of its legal indefensibility (given its lack of UNSC Article 39 authorization), its indispensable humanitarian function granted it legitimacy.³² This trend continued throughout the 2000s, which saw the informal codification of R2P and its induction into the vocabulary of the international community. On 28 March 2011, President of the United States Barack Obama defended American involvement in NATO's UN-sanctioned military operation in Libya by stating that: "Some nations may be able to turn a blind eye to atrocities in other countries. The United States of America is different. And as President, I refused to wait for the images of slaughter and mass graves before taking action."³³

In this context, R2P has been envisioned and articulated against an elaborate institutional and legal backdrop that is essential to its function: the complex system of international laws and institutions. As per the ICISS, this "emerging guiding principle in favor of military intervention for human protection purposes is also supported by a wide variety of legal sources."³⁴ In the same report, the ICISS established third pillar intervention based on the "Just Cause Threshold:"

Military intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind: A. large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or B. large scale 'ethnic cleansing', actual or apprehended, whether carried

26 Ibid., 43, 72.

27 Basaran, "Identifying the Responsibility to Protect:" 197; Nabil Hajjami, *La Responsabilité de Protéger* (Brussels, Belgium: Éditions Bruylant, 2013), 28-33.

28 Basaran, "Identifying the Responsibility to Protect:" 197.

29 Chen, "China and the responsibility to protect:" 687; ICISS, *The Responsibility to Protect*, XII.

30 John Holmes, "Responsibility to Protect: A Humanitarian overview," *Global Responsibility to Protect* 6 (2014): 128.

31 "President Clinton talks with 'Late Edition'," *CNN.com*, 20 June 1999, Date Accessed: 28 Oct 2017, URL: <http://www.cnn.com/ALLPOLITICS/stories/1999/06/20/clinton.transcript/>; Alan J. Kuperman, "Rethinking the Responsibility to Protect," *The Whitehead Journal of Diplomacy and International Relations* 10, no. 1 (Winter/Spring 2009): 20.

32 Doyle, "International Ethics and the Responsibility to Protect:" 80; The Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford, UK: Oxford University Press, 2000), 4.

33 Keohane, "Twenty Years of Institutional Liberalism:" 130.

34 ICISS, *The Responsibility to Protect*, 16.

out by killing, forced expulsion, acts of terror or rape.³⁵

When the responsibility was mapped out in the WSO, it was limited to the four atrocity crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity.³⁶ This specificity underscored the gravity of such intervention and set the protection of civilians as its sole objective in an attempt to assuage skeptics who viewed R2P as an open-ended infringement upon state sovereignty. More importantly, it attached this agenda to a series of institutions that form the core of the postwar international legal regime.

The first of these institutions is the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, whose first article establishes genocide as “a crime under international law which [the signatories] undertake to prevent and to punish.”³⁷ This foundational provision grounds the first pillar of R2P by establishing governmental responsibility to prevent and punish genocide. Article 8 provides an interpretation, providing to signatories the option to “call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of” this crime.³⁸ International involvement is therefore directly referenced in the Genocide Convention, and the competent UN organ implied is the UNSC, which holds the authority to sanction the use of force. This international responsibility to protect civilians from atrocity crimes appears in the International Court of Justice’s (ICJ) application of this convention in the 2007 case ruling for Bosnia and Herzegovina v. Serbia and Montenegro, in which it is stated that:³⁹

[T]he obligation of States parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power....⁴⁰

Included in these means to prevent genocide is recourse to any and all available domestic remedies and subsequently to the international community, a solution to which the signatory state has ascribed as a last resort by signing the Convention.⁴¹

Language of equal import that provides legal grounds for R2P is present in the common articles of the *Geneva Conventions of 12 August 1949*, as Article 1 commits states “to respect and to ensure respect for the present Convention in all circumstances.”⁴² This provision is inextricably tied to Article 8.2 of the *Rome Statute of the International Criminal Court* (ICC), which defines ‘war crimes’ as breaches of the Geneva Conventions under the jurisdiction of the Court, including:

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities....
[...]

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law....⁴³

These two articles in tandem establish that signatories must prevent and punish war crimes committed against unprotected civilians even in the case of domestic conflicts, granting legitimacy to the first, second, and potentially third pillar. At the same time, the International Law Commission’s (ILC) non-binding Draft Articles on the Responsibility of States for Internationally Wrongful Acts attribute to member-states of the UN the duty of international cooperation in order to prosecute any grave breach of international law.⁴⁴

All these provisions relating to R2P come into play under the UN’s institutional structure.

Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina vs. Serbia and Montenegro).” Judgment, 26 February 2007. 221.
41 Ibid., 225.

42 International Committee of the Red Cross (ICRC), *The Geneva Conventions of 12 August 1949*, 75 UNTS 287, 35.

43 United Nations General Assembly (UNGA), *Rome Statute of the International Criminal Court* (last amended 2010). 17 July 1998. 5, 8.

44 International Law Commission (ILC), Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001; International Law Commission (ILC), “Third Report on Responsibility of International Organizations by Mr. Giorgio Gaja, Special Rapporteur,” A/CN.4/553, para. 10.

35 ICISS, *The Responsibility to Protect*, XII.

36 UNGA, 2005 World Summit Outcome, 30.

37 United Nations General Assembly (UNGA), *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series 78: 280.

38 Ibid., 282.

39 Bellamy, “The Responsibility to Protect—Five Years on:” 161.

40 International Court of Justice (ICJ). “The Application of the

Of the utmost importance in considering action under the third pillar is Chapter VII of the UN Charter, which grants the UNSC the right to determine what qualifies as a threat to international peace and security (Article 39), as well as legally authorize the use of force against a state without consent (Article 42).⁴⁵

The UNSC has not only increasingly responded to atrocity crimes since the end of the Cold War, but has since also adopted the language of R2P on certain occasions during the past decade.⁴⁶ Through its authority derived from Charter, its resolutions have set precedent in acknowledging intrastate humanitarian emergencies and atrocity crimes as direct threats to international peace and security.⁴⁷ This trend would not have transpired were it not for the constellation of the Genocide Convention, the Geneva Conventions, the Rome Statute, and, of course, the UN Charter.

The third pillar of R2P is best explained as a global understanding that certain states will be unable or unwilling to fulfill their responsibilities, resulting in situations where international action is required.⁴⁸ The Director of the Asia Pacific Centre for the Responsibility to Protect, Professor Alex Bellamy, provides an accessible definition that avoids legal elements: "a political commitment to prevent and halt genocide and mass atrocities accompanied by a policy agenda in need of implementation."⁴⁹

Prominent international relations theorist Robert Keohane interestingly frames R2P as a concept that fits into broader global trends of increasing legalization, legalism, and moralism, as well as a declining "coherence of some international regimes."⁵⁰

His latter observation is perhaps the most pertinent when it comes to R2P's inconsistent application, yet his overall evaluation demonstrates its theoretical foundation on the belief that moral principles can give direction and structure to political action.⁵¹ This is by no means a new development: Permanent 5 (P5) veto powers of the UNSC (China, France, Russia, UK, US) often evoked morality and even the concept of obligation to justify their foreign

policy decisions during the Cold War era.⁵² The fact that intervention under the third pillar must pursue exclusively moral objectives of protecting and saving civilians from atrocity crimes constitutes an update of *jus ad bellum* that raises many questions about jurisprudence and morality in international law.⁵³

The growing influence of international civil society, intensifying globalization, and the increasing feasibility of interventionism due to interdependence networks and technology can help contextualize the character of R2P, which draws directly from liberalism in IR theory.⁵⁴ This doctrine is premised on the belief that states are capable of successfully cooperating with each other and non-state actors to transcend power politics, avoid conflict, and overcome global challenges.⁵⁵

In this case, atrocity crimes are the challenge at hand, with R2P resting upon the thorny intersection of national sovereignty and security on the one hand, and self-determination and human rights on the other.⁵⁶ It is the gravity of a government's failure to fulfill the positive and negative rights of its population (i.e. to prevent and stop other parties from attacking its citizens or to not attack them itself) that justifies intervention in the case of atrocity crimes.⁵⁷ When this failure occurs, it is supposed to automatically deprive the state of its claim to national authenticity and sovereignty, legitimizing external intervention aimed at rectifying the humanitarian violation.⁵⁸ One of the many internal divisions within the theory of liberalism is that between liberals favoring interventionism and those opposing it.⁵⁹ External intervention for civilian protection undeniably falls in that first camp and draws its authority from the UN.

Such action therefore endorses an ideology of institutional liberalism, which supports cooperation in international relations, such as third pillar intervention to stop atrocity crimes,

45 United Nations (UN), Charter of the United Nations, 24 October 1945, 1 UNTS XVI, 9.

46 Bellamy, "The Responsibility to Protect Turns Ten:" 166.

47 Bosco, "The responsibility to protect:" 59.

48 Hehir, "The Permanence of Inconsistency:" 147.

49 Bellamy, "The Responsibility to Protect—Five Years on:" 158-9.

50 Keohane, "Twenty Years of Institutional Liberalism:" 128.

51 *Ibid.*, 130.

52 Hehir, "The Permanence of Inconsistency:" 149.

53 Doyle, "International Ethics and the Responsibility to Protect:" 77; Griffiths, *Rethinking International Relations Theory*, 173.

54 David Armstrong, Theo Farrell and Hélène Lambert, *International Law and International Relations* (Cambridge, UK: Cambridge University Press, 2012), 69; Doyle, "International Ethics and the Responsibility to Protect:" 72.

55 Armstrong et al., *International Law and International Relations*, 92.

56 Doyle, "International Ethics and the Responsibility to Protect:" 75.

57 ICJ, *Bosnia and Herzegovina vs. Serbia and Montenegro*, 223.

58 Doyle, "International Ethics and the Responsibility to Protect:" 77.

59 Griffiths, *Rethinking International Relations Theory*, 5.

through international institutions and organizations, such as R2P and the UN.⁶⁰ This worldview challenges Westphalian tradition by making sovereignty conditional on and partially synonymous with the protection of civilians: it is a privilege that states earn, rather than a fixed or absolute entitlement, and it can be taken away if necessary.⁶¹ For a government to merit its title, it has to live up to shared standards involving restraints and stipulations on its power.⁶² For R2P to function, international institutions, such as the UN, the humanitarian principles, and the precepts of civilian protection, must enable the cooperation required for successful intervention with a humanitarian purpose.⁶³ This assumption implies that a universal notion of justice is attainable through interstate cooperation, an idea that the ICISS explicitly referred to in its report:

Just as the substance of human rights law is coming increasingly closer to realizing the notion of universal justice - justice without borders - so too is the process. ... the universal jurisdiction which now exists under a number of treaties, like the Geneva Conventions, and which enables any state party to try anyone accused of the crimes in question, is now beginning to be seriously applied.⁶⁴

The rhetoric of IR liberalism is also present in the 2017 SG report "Implementing the Responsibility to Protect: Accountability for Prevention," which underscores that both international and national action against atrocity crimes is necessary to promote "just, peaceful and inclusive societies."⁶⁵ When pronounced in such a manner, R2P also intersects, perhaps not on paper but on the battlefield, with republican liberalism's missionary ideals about the spread of democratic governance that holds representative governments accountable to their populations.⁶⁶ The political nature and normative imperatives of this concept evidently become problematic and potentially self-defeating at this point. Such a vision of global governance, as liberal and law-enabled, not only flirts with

imperialistic moralism and myopic legalism, but also prioritizes traditional and asymmetric power dynamics between states.⁶⁷ As discussed in the following sections, in a world where institutional liberalism often hits a wall built by realist national practice, R2P is in grave danger of delegitimation if its inconsistent application is not thoroughly dissected and overcome.

THE GREY ZONE: LEGAL AMBIGUITY & SOVEREIGNTY

R2P emerged from the tempestuous international experience with atrocity crimes in the 1990s and built its liberal narrative on the extensive legal apparatus analyzed above. Nevertheless, realist dynamics that oppose institutional liberalism severely jeopardize its implementation and lead to its inconsistent and selective application, which foreshadows its delegitimation by states. Before exploring these inhibitory realist politics in more detail, the legal ambiguity and scholarly dispute that plague R2P warrant special attention, as they contribute to a defective institutional environment in which states can employ this doctrine in erratic and dubious ways. The legalism that permeates this debate and the struggle to attribute a label to this agenda ultimately offer no answer to the problem of inconsistency and ignore the formative influence of political power and interests.

A plethora of views exist about the precise legal nature of R2P, although all fall under a strong consensus on its nonbinding and political character, making it much easier to define the concept in negative terms. Unequivocally, it is not a primary source of international law, as it only appears in non-binding and ancillary sources, such as UNGA declarations, SG reports, and legal scholarship, and is absent from all formal ones, such as treaties, customs, and principles.⁶⁸ It does not possess the status of a legal obligation due to its vague definition and scope, lack of a prescribed mechanism through which to delegate authority, and unspecified framework of implementation.⁶⁹ The UN High-level Panel on Threats, Challenges and Change referred to R2P as an "emerging norm" in its 2004 report about shared responsibility on international security.⁷⁰ Nonetheless, scholars have since

60 Keohane, "Twenty Years of Institutional Liberalism:" 125.

61 Kuperman, "Rethinking the Responsibility to Protect:" 19.

62 Francis M. Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild, I. William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa*, First Edition (Washington, DC: Brookings Institution Press, 1996), 4.

63 Keohane, "Twenty Years of Institutional Liberalism:" 126.

64 ICISS, *The Responsibility to Protect*, 14.

65 United Nations Secretary General (SG), *Implementing the Responsibility to Protect: Accountability for Prevention: Report of the Secretary-General*. 10 August 2017, A/71/1016-S/2017/556, 12.

66 Griffiths, *Rethinking International Relations Theory*, 27.

67 Armstrong et al., *International Law and International Relations*, 88.

68 Basaran, "Identifying the Responsibility to Protect:" 202.

69 Ibid.: 203.

70 United Nations General Assembly (UNGA), Note [transmitting

denied that it can be characterized as a 'norm,' because it lacks the clarity of legal elements required to recognize an emergent norm.⁷¹ Many states have also refuted this characterization.⁷² Faced with increasing international legalization in the past decades, many writers have classified certain concepts as 'soft law,' because they escape the paradigm of treaties and custom as the only pathways to legality.⁷³ Yet R2P has even been excluded from this flexible category as it presently carries no aspirations of assuming legally binding power and it is impossible to predict how and when it could turn into a legal obligation.⁷⁴

In terms of what R2P actually is, some scholars have defined it "as a stalled or degenerating norm," as a compilation of shared expectations with regard to the treatment of domestic populations, and as a sum of expectations that states with common political and institutional identities share.⁷⁵ It is considered to be a universal and enduring commitment that applies to all situations throughout time, yet practically forms a discretionary option for states.⁷⁶ Under this framework, legalistic approaches posit that the concept allocates informal jurisdiction by expanding and conferring public powers to the international community and its members.⁷⁷ Bellamy contends this terminologically normative approach and views the responsibility simply as a policy agenda that has to be implemented.⁷⁸ With regard to potential progress towards the concept's elucidation, the aforementioned ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts appear to be far from becoming a binding treaty anytime soon, in spite of their mostly positive reception by the UNGA.⁷⁹

In consequence, the ambiguity, confusion,

and debate surrounding R2P's place in the legal and institutional apparatus of the international community significantly debilitate its application by allowing states to appropriate it as an ephemeral foreign policy choice.⁸⁰ This legal indeterminacy can be more broadly framed under the ambiguity of the concept of 'responsibility,' whose parameters in international law are not defined in any convention or other formal source.⁸¹ Even though R2P does not qualify as *opinio juris vel necessitatis*, its use of the term 'responsibility' may approximate some form of legitimacy rather than legality.⁸² The possibility of future legal obligations stemming from its ongoing ad hoc implementation is a contested topic and a dreaded prospect for many states.⁸³

The liberal theoretical claims upon which R2P rests not only contribute to this paralyzing uncertainty about its legal nature, but they also come to odds with a fundamental principle of international law: state sovereignty.⁸⁴ More specifically, the challenge of indeterminacy is particularly problematic with regard to the implications of pillars two and three for sovereignty.⁸⁵ It is an uncontested fact that the four atrocity crimes are universally illegal, yet a crucial question remains: is it legal for external actors to prosecute them domestically? Article 2.7 of the UN Charter forms the hallmark of the principle of noninterference in respect of the territorial sovereignty of states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement mea-

report of the High-level Panel on Threats, Challenges and Change, entitled "A more secure world: our shared responsibility", 2 December 2004, A/59/565, 57.

71 Blagovesta Tacheva and Garrett Wallace Brown, "Global constitutionalism and the responsibility to protect," *Global Constitutionalism* 4, no. 3 (2015): 428.

72 Bellamy, "The Responsibility to Protect Turns Ten:" 162.

73 Armstrong et al., *International Law and International Relations*, 67.

74 Basaran, "Identifying the Responsibility to Protect:" 203.

75 Bellamy, "The Responsibility to Protect—Five Years on:" 160; Tacheva and Brown, "Global constitutionalism and the responsibility to protect:" 428; Bellamy, "The Responsibility to Protect Turns Ten:" 162.

76 Bellamy, "The Responsibility to Protect—Five Years on:" 158.

77 Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge, UK: Cambridge University Press, 2011), 25; Chesterman, "Leading from Behind:" 4.

78 Bellamy, "The Responsibility to Protect—Five Years on:" 144.

79 Basaran, "Identifying the Responsibility to Protect:" 210.

80 Holmes, "Responsibility to Protect:" 144; Thakur, "The Responsibility to Protect at 15:" 422; Basaran, "Identifying the Responsibility to Protect:" 202.

81 Basaran, "Identifying the Responsibility to Protect:" 208.

82 In customary international law, certain actions are undertaken by states as legal obligations. The concerned state must feel that it possesses a legal duty that forces it to comply with an objective rule, regardless of the resulting action's habitual nature or frequency. International Court of Justice, *North Sea Continental Shelf Cases* (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), ICJ Reports 1969, 20 February 1969; Doyle, "International Ethics and the Responsibility to Protect:" 83.

83 Basaran, "Identifying the Responsibility to Protect:" 195.

84 Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (Autumn 1998): 890.

85 Bellamy, "The Responsibility to Protect—Five Years on:" 161.

ures under Chapter VII.⁸⁶

It logically follows that tensions exist between this provision and the activation of Article 42 under Chapter VII that authorizes the use of force.⁸⁷ Third pillar intervention tacitly accepts the interpretation of atrocity crimes as an international threat even when conducted domestically and warrants authority over this interpretation to the UNSC, an executive body whose membership structure is widely contested.⁸⁸

Governments have even criticized the first and second pillars of the WSO, arguing that information gathering, monitoring, and assessment activities conducted by the UN can constitute violations of sovereignty.⁸⁹ Stephen Krasner distinguishes between four types of such sovereignty: international legal sovereignty, Westphalian sovereignty, domestic sovereignty, and interdependence sovereignty.⁹⁰ It is the relationship between R2P and Westphalian sovereignty, meaning the jurisdiction of states to determine the nature of their domestic authority, that is crucial to the former's function, as the implementation of the third pillar effectively conditions this capacity of target states.⁹¹ The ICISS report attempted to reframe and resolve the heated "sovereignty-intervention debate" that arose following humanitarian operations in the 1990s and was largely unsuccessful.⁹²

As was mentioned above, a significant obstacle to R2P's success has been its conflation with the older and rather unpopular term 'humanitarian intervention,' which stirred major controversy and fears with regard to the constitutional integrity of the principle of non-intervention following NATO's campaign in

Kosovo.⁹³ Some commonalities between these two concepts include external interference with humanitarian objectives, intrastate civilian protection operations, and the use of military force, most often for the protection of persecuted minority groups.⁹⁴ This terminological conflation has been particularly detrimental to the reputation of R2P, especially for those suspicious of the attempts made to reframe sovereignty as responsibility and prioritize civilian protection while vaguely sidestepping references to non-intervention.⁹⁵ Thakur has bemoaned the grouping of these two terms,

"A SIGNIFICANT OBSTACLE TO R2P'S SUCCESS HAS BEEN ITS CONFLATION WITH THE OLDER AND RATHER UNPOPULAR TERM 'HUMANITARIAN INTERVENTION' ..."

commenting that "it is difficult to know if the continued employment of 'humanitarian intervention' in the academic world as synonymous with R2P is due to intellectual hubris, laziness or incompetence."⁹⁶

The liberal contribution of this agenda to the normative architecture of the international

93 Throughout this paper, I repeatedly employ the term "humanitarian" when discussing the objectives of R2P as they entail saving human lives, alleviating suffering, and protecting the human rights of vulnerable populations. However, I clearly distinguish between R2P and 'humanitarian intervention' and avoid conflating the two in line with the ICISS's opinion:

"1.39 The Commission recognizes the long history, and continuing wide and popular usage, of the phrase "humanitarian intervention," and also its descriptive usefulness in clearly focusing attention on one particular category of interventions – namely, those undertaken for the stated purpose of protecting or assisting people at risk. But we have made a deliberate decision not to adopt this terminology, preferring to refer either to "intervention," or as appropriate "military intervention," for human protection purposes.

"1.40 We have responded in this respect to the very strong opposition expressed by humanitarian agencies, humanitarian organizations and humanitarian workers towards any militarization of the word "humanitarian": whatever the motives of those engaging in the intervention, it is anathema for the humanitarian relief and assistance sector to have this word appropriated to describe any kind of military action. The Commission has also been responsive to the suggestion in some political quarters that use in this context of an inherently approving word like "humanitarian" tends to prejudge the very question in issue – that is, whether the intervention is in fact defensible." ICISS, *The Responsibility to Protect*, 9.

94 Basaran, "Identifying the Responsibility to Protect:" 196.

95 Bellamy, "The Responsibility to Protect—Five Years on:" 143.

96 Thakur, "The Responsibility to Protect at 15:" 418.

86 UN, Charter, 3.

87 Ibid., 9.

88 Bellamy, "The Responsibility to Protect—Five Years on:" 148; Doyle, "International Ethics and the Responsibility to Protect:" 73.

89 Bellamy, "The Responsibility to Protect—Five Years on:" 148.

90 Krasner, *Sovereignty: organized hypocrisy*, 3.

91 Edward C. Luck, "Sovereignty, Choice, and the Responsibility to Protect," *Global Responsibility to Protect* 1 (2009): 15-6.

92 ICISS, *The Responsibility to Protect*, 9.

93 ICISS, *The Responsibility to Protect*, 9.

community has thus produced major confusion and uncertainty.⁹⁷ Is it possible to claim that state refusal of external intervention against atrocities denies the international community its responsibilities when their very nature and legality are the subject of dispute? The fact that some of R2P's partner norms and institutions are also under scrutiny further complicates matters. Most notably, the ICC, which is supposed to complement the three pillars by prosecuting criminals involved in atrocity crimes, has incomplete membership and faces serious opposition by certain states, including the US.⁹⁸ In light of the legal and institutional obstacles that plague R2P's conclusive conceptualization and implementation, legalist approaches emphasizing the need for its formalization as a norm appear to be misguided and counterproductive.⁹⁹ Streamlined legalization and institutionalization of R2P become impossible when the fundamentals of its implementation cannot be concretely established.¹⁰⁰ This debate is not only unable to reach any definitive conclusions due to the pitfalls of legalistic and moralist rhetoric, but it also approaches the problem in an inverted manner. It is the realities of the international system that shape if and how a concept like R2P will function, first in the military and political battlefields, and consequently in the legal and institutional arenas. As discussed in the following sections, the concept is presently exposed to the realist politics of state governments, which selectively employ the term at their discretion and in pursuit of their national interests on a case-by-case basis. The resulting inconsistency in practice threatens the very viability and legitimacy of R2P.

PRINCIPLE IN PRACTICE: R2P AS A REALIST DEVICE

Realism: Foreign Policy & National Threats

The performance of R2P is therefore strong in liberal and ideological terms, mediocre at best in legal and institutional terms, and, as will be discussed in this section, poor in practical and political terms. Time and again, the international community has confronted its limits in rallying political will for civilian protection,

an agenda interpreted as an optional tool of diplomacy that legitimizes intervention if powerful preferences coincide with the requisite criteria.¹⁰¹

State behavior towards R2P can best be understood through realism to explain how national interests unrelated to humanitarian concerns determine its implementation.¹⁰² The realist school of thought views states as the only significant actors in world affairs, the international system as anarchic and competitive, material factors (e.g. military might) as far more important than non-material ones (e.g. international law), and state actions as rational and conducive to self-help.¹⁰³

According to Basaran, "humanitarian and strategic concerns are not merely coincidental [but] indistinguishable."¹⁰⁴ International law and ethics seem to figure less in some cases of atrocity crimes, such as in Syria since 2012, when states opt for action or inaction in violation of international norms and structures.¹⁰⁵ Economic interests, historical enmities, political agendas, and security concerns all contribute to the inconsistency of R2P.¹⁰⁶

Before exploring empirical cases illustrative of this realist appropriation, it is important to consider the concept as a matter of strategic choice in rational foreign policymaking. Governments exercising their foreign policies do not deliberate over whether R2P is a norm, a provision of soft law, or an emerging custom. They identify it as a non-binding and optional path, and may therefore operate within this framework to achieve the best possible result for their national preferences.¹⁰⁷ Any and all obligations arising from the second and third

97 Doyle, "International Ethics and the Responsibility to Protect:" 73; Bosco, "The responsibility to protect:" 65.

98 SG, Implementing the responsibility to protect (2009), 23

99 Keohane, "Twenty Years of Institutional Liberalism:" 132.

100 Charles E. Ziegler, "Contesting the Responsibility to Protect," *International Studies Perspectives* 17 (2016): 76.

101 Bellamy, "The Responsibility to Protect—Five Years on:" 157.
102 Doyle, "International Ethics and the Responsibility to Protect:" 74.

103 Armstrong et al., *International Law and International Relations*, 79.

104 Basaran, "Identifying the Responsibility to Protect:" 199.

105 Doyle, "International Ethics and the Responsibility to Protect:" 74.

106 Basaran, "Identifying the Responsibility to Protect:" 199-200.

107 The following quote by Professor Robert O. Keohane ideally grasps the value of examining the implementation of R2P through the lens of IR theory instead of purely legal and normative frames. "[L]egalism that ignores power and interests misattributes causality and limits adaptation to change. Because of this misattribution of causality, it may generate excessive attention to legal issues when more basic political and interest-based problems may need more urgent attention; and its constraints on adaptation may inhibit creative and flexible diplomacy. When structures of interests and power are coherent and stable and favor democracy, legalism may be quite benign; but when interests and power are changing rapidly, an excessive focus on law can divert attention from more basic problems." Keohane, "Twenty Years of Institutional Liberalism:" 133.

pillar of the SG's 2009 report should therefore be viewed as foreign policy decisions and opportunities for self-help. It can be expected that anytime political will and military capacity overlap, states will engage in intervention to protect civilians.¹⁰⁸

A cost-benefit analysis pertaining to foreign policy objectives is necessary to decide if intervention is too risky, ambitious, or otherwise potentially prejudicial.¹⁰⁹ Krasner points out that decision-makers seek to preserve their position and further their constituents' interests; utilizing, ignoring, or blocking R2P are different ways to achieve these goals, as is recourse to the normative shield of sovereignty.¹¹⁰

The ICISS specified that any intervention under the third pillar should be "carried out only for the purposes proposed," yet this hope may simply be an unrealistic one.¹¹¹ Pioneering IR theorist E. H. Carr would have branded this expectation as a typical case of 'utopianism' that ignores the disharmony and rivalry of state interests in a multipolar world.¹¹² Hans Morgenthau, one of the postwar architects of realism, would have also rejected this sanitized humanitarian view of R2P for being fundamentally incompatible with the eternal insecurity and struggle for power in international politics.¹¹³ The same could be said of a response by Kenneth Waltz, father of neorealism.¹¹⁴ It can be safely assumed that rulers want to remain in power and promote the security of their position and constituents – if the third pillar furthers

these objectives and the major institutional powers at the UN (the P5) concur, R2P will be applied.¹¹⁵

It would be a gross oversimplification to condemn this entire agenda as a neo-colonial ruse that exposes weaker states against the predatory military powers vociferously pursuing their national interests.¹¹⁶ Yet an overview of R2P as part of UN operations since 2005 shows that sovereignty and self-help repeatedly undercut international humanitarian principles, and, in this case, the civilian protection agenda.¹¹⁷ As a result, instead of one scenario whereby R2P is invoked and applied as appropriate, there are four: the presence of third pillar criteria followed by intervention or inaction, and the lack of the third pillar criteria

"AN OVERVIEW OF R2P...SHOWS THAT SOVEREIGNTY REPEATEDLY UNDERCUTS INTERNATIONAL HUMANITARIAN PRINCIPLES, AND IN THIS CASE THE CIVILIAN PROTECTION AGENDA."

followed by intervention or inaction. In the remainder of this section, the effect of these scenarios on the legitimacy and viability of R2P are explored through empirical case studies.

Perhaps the most critical category is the lack of intervention when R2P criteria warrant international military action under the third pillar. The two most exemplary cases of such inaction in the face of atrocity crimes have been Darfur for the 2000s and Syria for the 2010s. The former case, a genocide that began in 2003 and unfolded as R2P was still being articulated, immediately challenged the concept's capacity to generate any sort of "compliance pull" amongst states in a timely fashion.¹¹⁸ The humanitarian crisis in what was then a contiguous Sudan became a staple accusation about the inability of the UN to respond in a timely and effective manner to atrocity crimes, just as

108 Thomas G. Weiss, "Military Humanitarianism: Syria Hasn't Killed It," *The Washington Quarterly* 37, no. 1 (Spring 2014): 13.

109 Heather M. Roff, "Covert Actions and the Responsibility to Protect," *Global Responsibility to Protect* 7 (2015): 172-3.

110 Krasner, *Sovereignty: organized hypocrisy*, 238.

111 ICISS, *The Responsibility to Protect*, 11.

112 Armstrong et al., *International Law and International Relations*, 77.

113 *Ibid.*, 78.

114 Kenneth N. Waltz, "Reflections on Theory of International Politics: A Reply to My Critics" in *Neorealism and its Critics*, ed. Robert O. Keohane (New York, NY: Columbia University Press, 1986), 343.

115 Krasner, *Sovereignty: organized hypocrisy*, 7.

116 Alex J. Bellamy, *The responsibility to protect: a defense* (Oxford, UK: Oxford University Press, 2015), 133.

117 Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984), 62.

118 Bellamy, "The Responsibility to Protect—Five Years on:" 154.

the Rwandan genocide had been in the 1990s. John Holmes, who served as Under-SG for Humanitarian Affairs and Emergency Relief Coordinator at the time, noted in retrospect that international intervention was not seriously considered until the genocide was well underway because it was simply not in the interests of capable powers.¹¹⁹ Observers surmised that Sudan, a relatively poor and strategically unimportant state, did not merit the risks attached to such a humanitarian investment.¹²⁰ By the time action was underway, many commentators, such as Columbia University Professor Mahmood Mamdani, characterized humanitarian concerns for Darfur as masked imperialism or, at the very least, contrived liberal rhetoric.¹²¹

Yet it is the crisis in Syria during this decade that has dealt the most serious blow to the reputation of R2P. Five years into the conflict, the evidence of several types of atrocity crimes is overwhelming. The complexity of relations between the Syrian state, the Syrian opposition, and ISIS on the one hand and foreign governments and international actors on the other has created a logjam in the UNSC. Human rights advocates and other critics have lamented the situation as definitive confirmation of the harsh reality that geopolitical interests supersede humanitarianism and civilian protection.¹²² This crisis also evinces that domestic humanitarian emergencies often have significant regional and global repercussions. For instance, even though China has weak trade and investment ties with the Syrian economy, it is highly vested in maintaining regional stability in the Middle East for diplomatic, economic, and energy reasons.¹²³ In a similar vein, President Obama explicitly linked the situation to U.S. security interests and the threat of terrorism in order to defend proposals for intervention.¹²⁴

Even beyond the P5, India's skepticism towards intervention might be understood as responsible and attentive apprehension towards Middle Eastern conflicts due to Delhi's own large Muslim minority.¹²⁵

Darfur and Syria thus comprise the two exemplary cases of R2P's chronic selectivity, in-

consistency, and sluggishness due to the dominance of realism at the UN, yet many other less publicized instances of inaction have occurred since its establishment. Some of these include the deteriorating humanitarian situation in Yemen that has elicited little response and the escalating threat of crimes against humanity and ethnic cleansing in post-intervention Somalia since 2006.¹²⁶ Indicative is the protection crisis that transpired in Sri Lanka in 2009, when intervention was never seriously considered despite the killing of approximately 40,000 ethnic Tamil civilians.

Under-SG John Holmes recounted how this crisis posed the fundamental "question of whether R2P means anything at all in practice," since its first two pillars had been exhausted and the abuses against Sri Lankans may have warranted intervention under the third one.¹²⁷ Yet again, a divergence of interests can explain why the crisis did not even make it to the UNSC's formal agenda.¹²⁸

It is therefore evident that the reputation and legitimacy of R2P may be irreparably damaged as instances of inaction amass, in addition to cases when the application of the concept is hotly contested. The most striking example of such a debate occurred when, in 2008, Russia militarily intervened in Georgia to route local troops out of the region of South Ossetia in what became known as the Russo-Georgian War. Russian Foreign Minister Sergei Lavrov defended the operation as lawful under R2P, while mainly Western observers argued that the intervention was disproportionate and illegitimate.¹²⁹

In response to this incident, grave concerns were expressed about how to identify and apply R2P.¹³⁰ In another instance, in 2008 Cyclone Nargis devastated Myanmar, whose government was unable to manage the emergency but refused to admit aid workers into the country.¹³¹ A group of predominantly French policymakers rapidly invoked R2P to express the need for intervention, an argument that generated further unease towards the concept even though no military action was ultimately considered or required as the government was

119 Holmes, "Responsibility to Protect:" 131.

120 *Ibid.*

121 Doyle, "International Ethics and the Responsibility to Protect:" 79.

122 Hehir, "The Permanence of Inconsistency:" 157-8; Weiss, "Military Humanitarianism:" 17.

123 Chen, "China and the responsibility to protect:" 695.

124 Basaran, "Identifying the Responsibility to Protect:" 199.

125 Ziegler, "Contesting the Responsibility to Protect:" 91.

126 For instance, in the past ten years, approximately 16,500 Somali civilians have been killed and 1.9 million have been displaced. Bellamy, "The Responsibility to Protect—Five Years on:" 150, 155, 159; Šimonović, "The Responsibility to Protect:" 20.

127 Holmes, "Responsibility to Protect:" 136.

128 Bellamy, "The Responsibility to Protect Turns Ten:" 165.

129 Bellamy, "The Responsibility to Protect—Five Years on:" 151.

130 Thakur, "The Responsibility to Protect at 15:" 424.

131 Bellamy, "The Responsibility to Protect—Five Years on:" 151.

later convinced to accept aid.¹³²

In consequence, Darfur, Syria, South Ossetia, Sri Lanka, and other such cases of ignored, unanswered, or debated humanitarian crises discredit and delegitimize action in the cases where R2P is applied. The poster child for the implementation of the third pillar is widely considered to be the 2011 NATO intervention in Libya. A looming humanitarian crisis in the target state was addressed using the vocabulary of civilian protection in compliance with the stipulations of the WSO and the 2009 SG report.¹³³ The terminology was partially expressed both in UNSC resolution 1973 and in the rhetoric of world leaders, such as British Prime Minister David Cameron.¹³⁴ Nonetheless, no sooner was the intervention welcomed as a victory for this emerging concept, than suspicion, complaints and accusations arose about the Western agenda in Libya and its underlying goal of regime change.¹³⁵ Many commentators have retrospectively framed this operation in relatively conspiratorial terms as a rare confluence of interests of the European Union (EU), LAS, and NATO centered upon economic and geopolitical concerns.¹³⁶ Initially a perceived success for R2P, the Libya case reignited fears about its function as a political tool that enables military predation and interference under humanitarian pretenses.¹³⁷ The same backlash later occurred against the response to the escalating crisis in Cote d'Ivoire in 2011, when the French-led intervention was later severely criticized for bypassing its mandate and facilitating regime change in violation of humanitarian principles.¹³⁸

All of these case studies are the end results of complex amalgams of competing national interests expressed through the UNSC. Evidently, present institutional structures have been instrumental in transforming R2P into a "discretionary entitlement" dependent on the degree of convergence between powerful foreign policy objectives.¹³⁹ Such fragile convergence transpired momentarily to authorize

the 2011 intervention in Libya, but appears to be definitively lacking in the case of Syria.¹⁴⁰ The ICISS, SG Ban Ki-Moon, and many other policymakers and commentators have called on the P5 to restrict veto use in humanitarian emergencies, yet these demands seem unlikely to succeed in the near future.¹⁴¹ The opposition of many member-states to the ICC compounds the sluggishness, indecision, and bottlenecks at the UNSC, making it increasingly disinclined to refer breaches of international law to the Court.¹⁴² As a result, the complementarity principle of the ICC is increasingly undermined, while tensions over legal jurisdiction intensify.¹⁴³ Calls for the UNSC to live up to its responsibility and put an end to impunity are made increasingly difficult to respond to under these mechanisms.¹⁴⁴

This empirical overview, framed under the principles of realist thought in IR theory, demonstrates that when intervention is actually favored under the third pillar, it is in tandem with the pursuit of some form of power, such as profit, strategic influence, or prestige.¹⁴⁵ Taking into account the entirety of these case studies, it is safe to assert that past fears of R2P besmirching the broader agenda for civilian protection during armed conflict have partially materialized, owing to the concept's political

140 Weiss, "Military Humanitarianism:" 13.

141 SG, *Implementing the responsibility to protect* (2009), 27; ICISS, *The Responsibility to Protect*, XIII.

142 Šimonović, "The Responsibility to Protect:" 19; Hehir, "The Permanence of Inconsistency:" 157.

143 In the words of the ICC, the principle of complementarity allows the Court to "exercise jurisdiction where national legal systems fail to do so, including where they purport to act but in reality are unwilling or unable to genuinely carry out proceedings. The principle of complementarity is based both on respect for the primary jurisdiction of States and on considerations of efficiency and effectiveness, since States will generally have the best access to evidence and witnesses and the resources to carry out proceedings. [...] As a matter of principle, the complementarity regime applies even in the event of a Security Council referral. Articles 17 and 19 do not indicate any exception for Security Council referrals. Although the Security Council has enforcement powers under the UN Charter when acting under Chapter VII (Articles 25, 41, 103), these powers relate primarily to States, and not directly to international institutions such as the ICC. Moreover, the [Rome] Statute explicitly contemplates and addresses the interaction of ICC procedures and Security Council actions, including the extent to which procedures are affected by a Security Council action (Article 13, 16, 18). For example, the Statute specifies that the Article 18 notification procedure does not apply for Security Council referrals, whereas no such suspension is stipulated for Articles 17 and 19, raising a clear e contrario inference." ICC-OPT Group of Experts, *Informal expert paper: The Principle of complementarity in practice* (The Hague, Netherlands: International Criminal Court, 2003), 3, 21.

144 Bellamy, "The Responsibility to Protect Turns Ten:" 171.

145 Doyle, "International Ethics and the Responsibility to Protect:" 76.

132 Doyle, "International Ethics and the Responsibility to Protect:" 81; Holmes, "Responsibility to Protect:" 141.

133 Bellamy, "The Responsibility to Protect Turns Ten:" 174.

134 Basaran, "Identifying the Responsibility to Protect:" 200; Bellamy, "The Responsibility to Protect Turns Ten:" 174.

135 Hehir, "The Permanence of Inconsistency:" 156; Bellamy and Williams, "The new politics of protection:" 826, 846.

136 Basaran, "Identifying the Responsibility to Protect:" 200.

137 Chen, "China and the responsibility to protect:" 687.

138 Bellamy and Williams, "The new politics of protection:" 828, 831, 835.

139 Hehir, "The Permanence of Inconsistency:" 152.

susceptibility.¹⁴⁶ Under the rigid structure of the UNSC, the implementation of the third pillar is bound to inconsistency and will occur only if the P5 reach an ephemeral consensus and the intervention has a high likelihood of success and manageable costs.¹⁴⁷ The ICISS itself briefly admitted that the material and political costs of intervention may make it imperative for self-interest to exist for intervening states to take on this complex responsibility.¹⁴⁸

The Relativity of Security: Delegitimation through State Interaction

The above empirical overview thus establishes that states engage in, abstain from, or block third pillar intervention based on rational foreign policymaking that accounts for political and operational risks, domestic and international opinions, and material and reputational costs. Yet it is equally important to address the interaction of these national interests: state behavior and preferences are not determined in a unilateral political vacuum, which means that collective, multilateral dynamics must shape the inconsistent and problematic implementation of R2P. The rationale of comparative power that lies behind fears and accusations of imperialism, violations of sovereignty, and objectives of regime change warrants special attention if this concept is to be thoroughly decoded through the realist lens.

R2P functions on a more profound level by upsetting relative security in a zero-sum game of power between states. Lake's and Powell's strategic-choice approach is critical to understand this dynamic: the focus is placed on the effect that the interaction of states has on institutions of international cooperation, as the ability of each actor to further their ends is directly related to the behavior and abilities of other actors.¹⁴⁹ Recalling the aforesaid fundamentals of realism, states that are in constant pursuit of their interests inevitably define their national preferences based on long-run regime security, which is defined in terms of power relative to that of other states.¹⁵⁰ In a fiercely compet-

itive international system, power can only be defined against weakness, and vice versa. If a state gains more power, it acquires a comparative advantage over its peers, while if one of its peers gains more power, it is placed in a comparative disadvantage that decreases its regime security. A zero-sum game emerges because any gain or loss of power, or security, by one state is balanced by a corresponding loss or gain of power by the others, always in relative terms.

This dynamic leads to the question: can R2P help a state achieve that comparative advantage? Or, more importantly, can it help states place their rivals in a comparative disadvantage? The answer to both of these questions is ambivalent, due to the important consideration of which states actually possess the power and capacity to implement the third pillar. The disproportionate capacity of the most powerful states to shape global norms and project military might naturally generates opposition by other powers, which are always at risk of becoming comparatively weaker.¹⁵¹ States with the potential to undertake major R2P interventions abroad encounter the suspicion and opposition of those who would suffer from a potential institutionalization of such power projection under the agenda for civilian protection.¹⁵² As a result, the dimensions of institutionalization and persistence/durability that Krasner identifies as characteristic of institutions are hotly contested in the case of R2P: behavioral compliance and its normative viability are both cloudy prospects at the moment.¹⁵³

Domestic affairs, foreign policy objectives, culture-specific definitions of sovereignty, and historical legacies thus define full or partial acceptance or rejection of R2P on a case-by-case and state-by-state basis.¹⁵⁴ Adherence to the concept legitimizes R2P through the operative process of internalizing an external, international standard.¹⁵⁵ The stance of a government towards the application of the third pillar is inextricably tied to the effect of an intervention on its regime security and relative power. This

146 Holmes, "Responsibility to Protect:" 129.

147 Roff, "Covert Actions and the Responsibility to Protect:" 174-5.

148 Bellamy, "The Responsibility to Protect—Five Years on:" 144; ICISS, *The Responsibility to Protect*, 36.

149 David A. Lake and Robert Powell, *Strategic Choice and International Relations* (Princeton, NJ: Princeton University Press, 1999), 3-4.

150 Doyle, "International Ethics and the Responsibility to Protect:" 74; Chen, "China and the responsibility to protect:" 697.

151 Thakur, "The Responsibility to Protect at 15:" 422; Holmes, "Responsibility to Protect:" 127.

152 Kuperman, "Rethinking the Responsibility to Protect:" 27; Krasner, *Sovereignty: organized hypocrisy*, 228.

153 Krasner, *Sovereignty: organized hypocrisy*, 56.

154 Ziegler, "Contesting the Responsibility to Protect:" 76.

155 Hehir, "The Permanence of Inconsistency:" 150; Ian Clark, *Legitimacy in International Society* (Oxford, UK: Oxford University Press, 2007), 210-19; Hurd, *Legitimacy and Power in the United Nations Security Council*, 7.

deliberation depends on many factors pertaining to the target and the intervening actor(s) in an atrocity crisis somewhere in the world.¹⁵⁶ The negative consequence of this reality is that civilian protection is framed against an ephemeral and negatively biased burden of proof encouraging non-engagement. This burden could perhaps explain why R2P suffered from “buyer’s remorse” expressed by several states early on in its development.¹⁵⁷ In practice, states interpret it less as an opportunity to save vulnerable populations from atrocity crimes and more as an opportunity for their rivals, or themselves, to make relative gains of power and upset system stability.¹⁵⁸ A perverse collective action problem under multi-agent game theory thus arises, whereby successful cooperation cannot be normalized.¹⁵⁹ At the same time, states wish to strengthen their reputations as another form of security by projecting a law-abiding image of themselves and upholding *ius inter gentes*, the system of laws that governs relations between sovereigns that are equal and derive their legitimacy by consenting to that system.¹⁶⁰ For this reason, objections regarding the third pillar largely concern how states judge the behavior of their peers as appropriate or not when sanctioned under R2P.¹⁶¹

In this context, the reactions of other states towards the decision to intervene are just as important as the decision itself when it comes to functionalizing R2P. Instead of examining again specific cases based on the application of R2P, it is more pertinent to look at the behavior of specific states and groups of states towards specific cases, namely Russia, China, and Brazil. The paradigm of military and political dominance of Western powers over international institutions reasonably generates opposition, which is fueled by security concerns and realpolitik ambitions.¹⁶² The broad range of reactions, especially the plethora of negative ones, towards the agenda for civilian protection mostly concern the projection of concentrated Western power.¹⁶³ After more than a decade, it

has become clear that R2P will not be transformed into a tool as extreme as a so-called “interveners’ charter,” yet its implementation still remains a battleground where states fight for international influence and national security.¹⁶⁴

This key role of the observer-critic can be principally attributed to Russia and China, the two global leaders in the UNSC that do not belong in the Western bloc.¹⁶⁵ Both powers expressed strong skepticism and reservations during the inception of R2P, arguing that the WSO only committed the UNGA to further discussion and deliberation about a concept that was not ready to enter the UNSC Chamber.¹⁶⁶ When R2P’s big Libyan moment came in 2011, the Russian and Chinese delegations abstained from the resolution that authorized intervention; reportedly unconvinced about the necessity to use military force and doubting the motives of a potential campaign, they later decried its agenda as dedicated to regime change after the operation had begun.¹⁶⁷ This campaign has retrospectively been translated by some into a “win” for the West in the zero-sum game with a complete lack of accountability for NATO, leading both Russia and China to refuse to repeat themselves when the crisis in Syria erupted in 2012.¹⁶⁸ Vetoing a series of resolutions to impose punitive measures on the Syrian regime, they doubted Western motives and emphasized the need for domestic reforms and political dialogue without questioning the legitimacy per se of international intervention with humanitarian objectives.¹⁶⁹ Russia also condemned the political motives behind the French third pillar intervention in Côte d’Ivoire and questioned the legality of that operation.¹⁷⁰ This is not to say that the dispute over R2P is framed along a ‘West vs. rest’ line; when Russian officials defended the intervention in Ukraine and the resulting annexation of Crimea under such humanitarian language, China and other powers opposed their argument for the very same realist security reasons since they oppose Western actions.¹⁷¹ Meanwhile, China’s

156 Chen, “China and the responsibility to protect:” 679.

157 Bellamy, “The Responsibility to Protect—Five Years on:” 145, 153; Bellamy, “The Responsibility to Protect Turns Ten:” 173.

158 Armstrong et al., *International Law and International Relations*, 130.

159 Keohane, *After Hegemony*, 65.

160 Armstrong et al., *International Law and International Relations*, 54.

161 Bellamy, “The Responsibility to Protect Turns Ten:” 178-9.

162 Keohane, “Twenty Years of Institutional Liberalism:” 135.

163 Basaran, “Identifying the Responsibility to Protect:” 201-2. Keohane, “Twenty Years of Institutional Liberalism:” 134.

164 Bellamy, “The Responsibility to Protect Turns Ten:” 177.

165 Bellamy, *The responsibility to protect: A Defense*, 115.

166 Bellamy, “The Responsibility to Protect—Five Years on:” 154.

167 Basaran, “Identifying the Responsibility to Protect:” 202; Bellamy and Williams, “The new politics of protection:” 843; Holmes, “Responsibility to Protect:” 127; Chen, “China and the responsibility to protect:” 692; Ziegler, “Contesting the Responsibility to Protect:” 89.

168 Bellamy, “The Responsibility to Protect Turns Ten:” 179.

169 *Ibid.*, 168.

170 Bellamy and Williams, “The new politics of protection:” 835.

171 Bellamy, “The Responsibility to Protect Turns Ten:” 176.

strong opposition to foreign interference in its domestic affairs and its aspirations to responsible superpowerdom fuel its consistent reservation towards R2P; in response to Libya, an article in the People's Daily that year emphasized the importance of avoiding "external imposition of political solutions."¹⁷²

Many governments beyond the P5 have been vocally skeptical of any sort of intervention with humanitarian objectives ever since the emergence of the Blair-Clinton doctrines of 'humanitarian intervention' in the 1990s. Many analysts justify this approach given the interventionism that these states have faced in the past.¹⁷³ A BRIC member, Brazil, has spearheaded revisionism regarding R2P: the "responsibility while protecting" is an alternative interpretation that focuses on the actions and jurisdiction of the state that decides to take up the international community's responsibilities to protect civilians.¹⁷⁴ During the 64th Session of the UNGA in 2009, countries including Cuba, Nicaragua, Sudan, Venezuela, and Zimbabwe attacked the concept.¹⁷⁵ A controversial moment during this occasion saw Noam Chomsky blast the US, Britain, and other Western powers, accusing them of hypocrisy and a colonial agenda behind their inconsistent intervention in humanitarian emergencies.¹⁷⁶ India and South Africa are also wary of potential infringements upon their sovereignty through the ruse of responsibility. As I have argued so far, the inconsistency of its application may partly give credit to the view that R2P provides a mechanism for Western states to expand their influence, and thus comparatively decrease the security of other states.¹⁷⁷

The realist showdown over R2P, which approximates a multilateral game theory scenario gone wrong, forces intervening states to become more reticent about taking action if it is in their interests and makes them completely unwilling to do so if it is not. When they do act, they strive to undermine the gravity of their actions by emphasizing their selective and exceptional nature.¹⁷⁸ In virtually every one of the aforementioned cases of third pillar invocation,

states have avoided justifying intervention using legal terms, not only to prevent other states from using the same argument against them, but also to portray their foreign policy as complying with acceptable standards of state behavior and responding to a sui generis, unique situation.¹⁷⁹ Following the backlash against the 'humanitarian intervention' proclamations of Western powers in the 1990s, states have become so aware of the 'audience costs' of the foreign policy commitment and risks involved in R2P intervention that consistent action under the third pillar is often paralyzed. Characteristically, President Obama justified the 2011 intervention in Libya with reasons that were cautiously confined and tailored only to this case.¹⁸⁰ The EU has, in turn, appropriated aspects of this argument to justify its responses to events in the North African and Middle Eastern regions ever since.¹⁸¹ It should therefore come as no surprise that no explicit mention was made in the relevant UNSC resolution to the international community's "responsibility to protect" and no clear relationship was established between the military campaign to protect Libyan citizens and the third pillar under the framework of R2P.¹⁸²

In this climate, the P5 have avoided setting precedent of any kind with regard to intervention even when R2P has been applied, signaling in good faith to their peers that they abstain from interpreting and defining the meaning of protection and peace through force in the interests of stability.¹⁸³ At the same time, viewing R2P as yet another screw in the realist toolkit raises questions about free-rider behavior. Such behavior could manifest as political penetration of other states with the purpose of influencing the deployment of military power in a way that advances home interests.¹⁸⁴ In this scenario, the third pillar becomes a specie of political com-

179 Chesterman, "Leading from Behind:" 3.

180 Ibid., 5.

181 Gowan, "EU-UN Cooperation: From Safe Altruism to Reluctant Pragmatism," 24.

182 Hehir, "The Permanence of Inconsistency:" 147.

183 Armstrong et al., *International Law and International Relations*, 154; Orford, *International Authority and the Responsibility to Protect*, 141.

184 Nayef R. F. Al-Rodhan, *Symbiotic Realism: A Theory of International Relations in an Instant and an Interdependent World* (Piscataway, NJ: Transaction, 2007), 102; Stephen M. Walt, *Taming American Power: The Global Response to US Primacy* (New York, NY: Norton & Company, 2005), 195; Robert O. Keohane, "Hobbes's dilemma and institutional change in world politics: sovereignty in international society" in *Power and Governance in a Partially Globalized World*, ed. Robert O. Keohane (London, UK: Routledge, 2002), 77-8.

172 Chen, "China and the responsibility to protect:" 687, 694.

173 Doyle, "International Ethics and the Responsibility to Protect:" 79; Weiss, "Military Humanitarianism:" 10.

174 Holmes, "Responsibility to Protect:" 127.

175 Weiss, "Military Humanitarianism:" 8.

176 Noam Chomsky, "Statement by Professor Noam Chomsky to the United Nations General Assembly Thematic Dialogue on the Responsibility to Protect," Statement, 64th Session of the United Nations General Assembly, New York, NY, July 23, 2009.

177 Ziegler, "Contesting the Responsibility to Protect:" 89, 93.

178 Basaran, "Identifying the Responsibility to Protect:" 202.

modity, an ephemeral option that must be kept secret and downplayed in the hope that benefits will be reaped from abroad, very much like a covert operation reminiscent of the Cold War era.

Looking at the broader realist picture, it becomes easier to believe that it is not in any state's security interests to normalize the implementation of R2P and amend its selective, inconsistent application. Keohane summarizes this dynamic in his pivotal work *After Hegemony*: "Actors may fail to cooperate even when their interests are entirely identical."¹⁸⁵ Yet framing this challenge as a collective action problem is perhaps misleading, as all states would not benefit from a unanimous legitimation of R2P in practice in the same way that not all states benefit from its ongoing failures. The proclaimed path to a world where atrocity crimes have been completely eliminated through international action may be premised upon assumptions that run counter to the deepest instincts of the Westphalian state for future security and survival.¹⁸⁶ Inferring that a conflict of interests exists across the table due to ongoing disputes poses the risk of a dangerous simplification: national foreign policies are highly prone to incompatibility based on shifting geopolitical and economic factors, yet the desire for security is fixed and shared.¹⁸⁷ The result is the present controversy surrounding the implementation of the third pillar within an international system in a realist 'state of war,' with the main challenge being the relativity of security.¹⁸⁸ States may be unable to reach a consensus on R2P because a fixed consensus is actually undesirable and therefore unachievable.¹⁸⁹ It may be cynical or even deterministic to assert that there will always be Libyas and there will always be Syrias as natural outcomes of the interaction of state preferences, but the belief in the independent agency of national foreign policy may be overestimated.¹⁹⁰ The element of agency in strategic choice, such as the implementation of the third pillar, arises under collective institutions carrying shared meanings that may be partly unconscious and involuntary, owing to the

structural and systemic dynamics of the international regime and the importance of maintaining a balance of power that is functioning and sustainable.¹⁹¹ This reality escapes the moralism and legalism present in the debate over R2P as representative of liberalism in IR theory and casts doubt over the concept's viability.

CONCLUSION

This theoretical and empirical study demonstrates that R2P functions as a foreign policy choice that is best understood through the lens of realism in IR theory. The susceptible liberal underpinnings of this concept, along with its challenging legal ambiguity, have undermined its humanitarian character and generated skepticism, uncertainty, and confusion about its interpretation. In 2001, the ICISS presaged the real challenge with the following question: "But can the fact that effective international action is not always possible in every instance of major humanitarian catastrophe ever be an excuse for inaction where effective responses are possible?"¹⁹² The answer is definitely negative, and the double standard of inconsistency is by all means and measures preferable to complete inaction when it comes to saving human lives.¹⁹³ Achieving a state of complete disinterestedness, in which moral humanitarianism would exclusively and completely replace the relativity of power, is an unrealistic and practically impossible prospect. As evinced by this analysis, the competitive pursuit of state interests and the constant interaction of national preferences result in the inconsistent application of R2P against a negative burden of proof that favors non-engagement and a lack of accountability.¹⁹⁴ The positive euphoria of the liberal internationalism and solidarism that followed the end of the Cold War appears to be retreating, leaving behind an updated yet still traditional model of Westphalian sovereignty.¹⁹⁵

Nonetheless, by accepting and embracing the realism inherent in state behavior, the debate surrounding R2P can shift from cyclical

185 Keohane, *After Hegemony*, 65.

186 Mayer, "In Our Interest: The Responsibility to Protect," 43.

187 Russell Hardin, *Collective Action* (Baltimore, MD: The Johns Hopkins University Press for Resources for the Future, 1982), 1-3.

188 Doyle, "International Ethics and the Responsibility to Protect:" 74.

189 Bellamy and Williams, "The new politics of protection:" 826.

190 Thakur, "The Responsibility to Protect at 15:" 416; Lake and Powell, *Strategic Choice and International Relations*, 74.

191 Rodhan, *Symbiotic Realism*, 97; Armstrong et al., *International Law and International Relations*, 125.

192 ICISS, *The Responsibility to Protect*, 6.

193 Weiss, "Military Humanitarianism:" 8.

194 Hehir, "The Permanence of Inconsistency:" 159; Basaran, "Identifying the Responsibility to Protect:" 202.

195 Andrew Hurrell, "Emerging Powers, Diverse Values and the Changing Character of International Society" in "Responsibility to Protect": nuovi orientamenti su intervento umanitario e ordine internazionale, ed. Vincenzo Lavenia (Macerata, Italy: edizioni università di macerata, 2015), 149.

disputes about its precise legal status to practical questions about its implementation. As discussed above, R2P risks delegitimation due to a variety of factors, including its legal and institutional ambiguity, its discretionary nature, the legalism and moralism of its commentators, and, most importantly, its realist appropriation and inconsistent application by states. The ongoing normative dialogue's counterproductive character concerning the third pillar echoes the words of Keohane about how liberalism, and in this case institutional liberalism, "is incomplete as an explanation[,] can become normatively myopic, [and] can backfire as a policy prescription."¹⁹⁶ Yet these shortcomings do not make its objectives unattainable or inherently incompatible with the nature of states: realist and liberal interests can and often do coincide, as case studies like Libya and Côte d'Ivoire illustrate. Through the interactive process of state interests that define if and how R2P is applied, successful incentive mechanisms could lead states to cling to international institutions rather than unilateral self-help.¹⁹⁷ As Kenneth Waltz argued, "[t]hrough a variety of causal mechanisms, structure shapes and shoves states to do certain things."¹⁹⁸

In order to combat the culture of impunity and address as many cases of atrocity crimes as possible, it is vital to decode this structure and begin an exploration of realist methods to incentivize foreign policymaking in the service

of past, present, and future victims of atrocity crimes.¹⁹⁹ This investigation forms only the first step in this process: understanding how the current structure of the international system is shaping the problematic behavior of states towards this agenda. Following steps should address how to equitably cooperate under that structure in order to elicit change in state behavior and minimize number of victims of atrocity crimes. Potential paths moving forward could include the regionalization of certain aspects of R2P to facilitate third pillar intervention, the establishment of incentive mechanisms to maintain uninterrupted rather than ad hoc cooperation under the complementarity principle, and the cultivation of punitive reputational mechanisms that mobilize international civil society against inaction.²⁰⁰ Yet such prospects to normalize R2P seem to be in a race against time, as many policymakers, scholars, and analysts already claim that the agenda will not survive the impact of the Syrian crisis.²⁰¹ In the current state of affairs, the inconsistent application of R2P is a risk to its legitimacy and viability, and consequently the prospect of one day addressing the majority, if not the entirety, of humanitarian emergencies involving atrocity crimes.

196 Robert O. Keohane, "International Liberalism Reconsidered" in *Power and Governance in a Partially Globalized World*, ed. Robert O. Keohane (London, UK: Routledge, 2002), 57.

197 Keohane, "Hobbes's dilemma and institutional change in world politics," 71; Alexander Wendt, "Anarchy Is What States Make of It," *International Organization* 46, no. 2 (Spring 1992): 414-5.

198 Waltz, "Reflections on Theory of International Politics," 343.

199 Kofi A. Annan, 'We the peoples': The Role of the United Nations in the 21st Century (New York, NY: United Nations, 2000), 46.

200 International Coalition for the Responsibility to Protect (ICRtoP), "The Rome Statute of the International Criminal Court and the Responsibility to Protect" in *The International Criminal Court and the Responsibility to Protect (RtoP)*, ICRtoP, Date Accessed: 29 Oct 2017, URL: <http://www.responsibilitytoprotect.org/index.php/about-rtop/related-themes/2416-icc-and-rtop>.

201 Gowan, "EU-UN Cooperation: From Safe Altruism to Reluctant Pragmatism," 27; Cesáreo Gutiérrez Espada and María José Cervell Hortal, *Nacimiento, Auge y Decadencia de la Responsabilidad de Proteger* (Granada, Spain: Editorial Comares, 2014), 116.

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"BE FRUITFUL AND MULTIPLY":

THE ROLE OF ISRAELI PRONATALIST POLICY IN THE PURSUIT OF JEWISH DEMOGRAPHIC DOMINANCE IN THE HOLY LAND

INTRODUCTION

In *Der Judenstaat*, Theodor Herzl proposed the creation of a Jewish state as a safe haven for Jews of the European diaspora threatened by discrimination and anti-Semitism.¹ Herzl reasoned that Jews would never fully assimilate into European culture given their minority status, so the only way to save the Ashkenazim from a hostile existence was to create a state in which they were the majority.² Thus, from its earliest roots, the survival of the State of Israel rested upon the assurance of a European Jewish majority in a land that was for centuries inhabited almost entirely by Arab Muslims. Although no formal Israeli *fertility policy* has been codified,³ leaders from the nation's founding have promoted Jewish over Arab population growth via immigration law, economic incentives, targeted modernization programs in Arab communities, and discerning governmental coverage of reproductive health services. While these efforts largely succeeded for many decades, "population momentum"⁴ has now shifted away from the secular, European Ashkenazim—the leaders and intended beneficiaries of the Zionist project—toward non-Israeli Arab Muslims and ultra-Orthodox Charedi Jews, with significant social and political consequences.

ISRAELI IMMIGRATION POLICY

The 1948 war culminating in Israeli inde-

pendence and subsequent Jewish immigration law transformed Herzl's dream of a majority-Jewish state into a reality. In November 1947, 45% of the population living on Jewish land (as defined by the United Nations) was Palestinian; by 1951 this percentage had fallen to 11%⁵ due to the emigration of hundreds of thousands of Palestinian refugees. David Ben-Gurion, the first Israeli Prime Minister, obsessed over Jewish demographic superiority in his new nation: he wrote in his autobiography, "For the survival and security of the State of Israel, a higher birthrate and increased immigration are essential,"⁶ and he "likened Jewish women with less than four children to draftees who evade military service."⁷ However, because Israel was founded as a dual Jewish and democratic state, Ben-Gurion could not advocate for pro-natal laws that explicitly advantaged Jews over Arab non-Jews. Instead, preferring that such overt natal favoritism remain in the realm of non-profit organizations such as the wealthy and influential Jewish Agency,⁸ he set a precedent of crafting legislation that introduced a Jewish population preference indirectly. The 1950 Law of Return, a cornerstone of Israeli legislation, asserted: "Every Jew has the right to immigrate to Israel."⁹ The law leniently defined "Jew": non-Jewish spouses of Jews, their children, and their grandchildren were permitted to immigrate under the law¹⁰ in order to encourage additional immigration of Jewish

1 Theodor Herzl, *The Jewish State*, ed. Jacob De Haas, trans. Sylvia D'Avigdor (*Federation of American Zionists*, 1917), books.google.com/books?id=eXkLAAAIAAJ&hl=en, passim

2 Paul P. Bernard, "Theodor Herzl: From Assimilation to Zionism," *Shofar: An Interdisciplinary Journal of Jewish Studies* 13, no. 2 (1995): 115.

3 Jacqueline Portuguese, *Fertility Policy in Israel: The Politics of Religion, Gender, and Nation* (Greenwood Publishing Group, 1998), 186.

4 Alon Tal, *The Land is Full: Addressing Overpopulation in Israel* (Yale University Press, 2016), 215.

5 Dov Friedlander et al., *Population Policy in Israel* (New York: McGraw-Hill, 1974), 47.

6 David Ben Gurion, *Israel, a Personal History* (Herzl Press, 1972), 838.

7 Tal, *The Land is Full*, 81.

8 Leslie King, "From Pronatalism to Social Welfare? Extending Family Allowances to Minority Populations in France and Israel," *European Journal of Population/Revue européenne de Démographie* 17, no. 4 (2001): 314.

9 Tal, *The Land is Full*, 61.

10 *Ibid.*, 61.

allies. The right to immigration was not extended to Arabs, and as a result of numerous waves of Jewish aliyot from Eastern Europe, the Middle East, and North Africa, millions of immigrant Jews padded the Jewish demographic advantage in their new state.¹¹ Importantly, however, Ben-Gurion's original vision for the Jewish State did not include such extensive non-Ashkenazi immigration; indeed, when the full extent of the Holocaust's destruction was revealed, Ben-Gurion exclaimed, "The extermination of the European Jewry is a catastrophe for Zionism. There won't be anyone left to build the country!"¹² The decimation of the European Ashkenazim

required full-scale efforts to import Eastern Mizrachim and Charedim—second-choice Jews who often did not conform to European Zionist ideals—to ensure a Jewish "critical mass"¹³ in Palestine.

PRONATALIST ECONOMIC INCENTIVES

Israel's early leaders did not rely on immigration law alone to boost the Jewish population growth rate; they also legislated pronatalist economic incentives cleverly targeting Ashkenazi Israelis in particular while avoiding outright ethnic discrimination. In 1962, Ben-Gurion established the Committee for the Problems of Natality, chaired by Italian-Jewish economist Roberto Bachi.¹⁴ The Bachi Committee found two troubling trends: first, the Arab birthrate exceeded the Jewish one, and second, the Mizrachim, poorer, less educated, and more religious Eastern Jews, were reproducing far more rapidly than the more established Western Ash-

kenazim,¹⁵ who comprised the governmental and economic elites. Given its charge, the committee could not reasonably recommend the limitation of the Jewish Mizrachi birthrate, so its members instead argued for increased economic assistance and incentives for large families in order to "improve the financial and educational status of the Mizrachim and to encourage the wealthier Ashkenazim to bear as many children as they could reasonably be expected to support."¹⁶ However, quotations from contemporary politicians revealed that the committee's proposals were primarily designed to achieve the latter goal; social welfare for the disadvantaged Jewish Mizrachim was merely a positive externality.

"THE ISRAELI GOVERNMENT EXPECTED ALL JEWS, AND PARTICULARLY THOSE FROM ADVANTAGED BACKGROUNDS, TO UNDERTAKE 'INTERNAL ALIYAH' (I.E., TO PROCREATE ABUNDANTLY)."

For example, in a 1964 Knesset debate regarding the child allowance program, Minister of Labor Yigal Allon lamented, "[I] only state with utmost regret that the birthrate among the veteran sections of the Jewish population in Israel and among the Western immigrants is amongst the lowest in the world."¹⁷ The committee's report prompted an increase in child allowance payments and their expansion to all salaried workers, not only those of low socioeconomic status, so as to include the wealthier Ashkenazim. The Israeli government expected all Jews, and particularly those from advantaged backgrounds, to undertake "internal aliyah"¹⁸ (i.e., to procreate abundantly) in order to secure the nation's future as a Jewish state, and in return it was willing to invest heavily in its Jewish citizens' reproduction.

Since the purpose of child allowances was to "arrest negative trends in demographic developments," as Minister of Labor Mordechai

11 Ibid., 63-69.

12 Tom Segev, *The Seventh Million: the Israelis and the Holocaust* (Henry Holt and Company, 2005), 97.

13 Tal, *The Land is Full*, 48.

14 Ibid., 85.

15 Portugese, *Fertility Policy*, 76.

16 Ibid., 76, emphasis added.

17 R. Ben-Shem, *Demographic Problems of the Jewish People in Israel and the Diaspora*, ed. Ephrat (Tel Aviv, 1964), 6.

18 Portugese, *Fertility Policy*, 82.

Namir euphemistically stated in 1959,¹⁹ Israeli Arabs saw limited economic benefits in the first several years following the implementation of Bachi's recommendations. Initially, Israeli Arabs collected fewer child allowance benefits due to the inconvenient placement of national insurance offices, which were not typically located in remote Arab regions.²⁰ This de facto ethnic disparity in fertility allowance access soon became codified, formalizing the unspoken rule that pronatalist policies were intended to benefit Jews alone. In 1970, the Knesset passed the Veteran's Benefit Law, which offered low-interest housing loans to couples looking to expand their families as long as a spouse or a spouse's family member had served in the Israeli military.²¹ Both Arabs and ultra-Orthodox Charedi Jews typically did not serve in the IDF, but under-the-table practices revealed the policy's pro-Jewish bias: some Charedim were issued IDF reservist cards that qualified them for the allowance, but they were never called to serve,²² and an additional stipend was authorized for ultra-Orthodox yeshiva students and their families.²³

In 1983, the so-called "Law for Families Blessed with Children" offered significantly higher child allowance payments only to those eligible under the Veteran's Benefit Law—that is, Jews.²⁴ The unspoken intent of Israeli pronatalist economic policies—to advantage Jewish over Arab population growth—had become overt, and when an Arab-sponsored law eliminating the veteran requirement to receive large-family benefits passed the Knesset in 1993, old-guard Israelis were outraged.²⁵ Conservative MK Rehavam Ze'evi shouted on the Knesset floor, "[The Arabs] will give birth to 70 children; they do anyway... They will make 50, 60, 70 children and we will pay them discharged soldiers' grants."²⁶ Thus, in the minds of governmental officials, the exclusion of non-Jewish Arabs from many pronatalist economic benefits constituted an essential component of Israeli fertility policy.

MODERNIZATION IN THE ARAB SECTOR

While less accessible economic incentives for childbirth may have indirectly reduced Arab population growth, Israel's targeted program of modernization, or "Israelization,"²⁷ of the Israeli Arab population has almost certainly contributed to the Arab birthrate's significant decline since the mid-20th century. In 1965, Arab Israeli women bore on average 9.2 children,²⁸ a remarkably high birthrate characteristic of a population in its earliest stages of economic development. By 2015, this statistic had dropped to an average of 3.3 children per Israeli Arab woman, with even lower, replacement-level fertility levels observed among Arab Christians and Druze.²⁹ Israeli environmental scientist Alon Tal argued that a portion of this decline was due to natural demographic transition in developing nations: the introduction of Western medicine and social institutions during the pre-1948 British Mandate lowered mortality rates, but it required multiple generations for birthrates to fall (and mindsets to adjust) to a new population equilibrium.³⁰ However, from its founding, Israel implemented aggressive modernization policies in Arab communities in order to hasten this natural transition. In 1949, Israel established compulsory public education for all citizens, including Arabs.³¹

Coupled with the Marriage Act of 1950, which raised the minimum marriage age for girls to 17,³² this policy reduced Arab birthrates by limiting a woman's opportunity to bear children in her teenage years, as had previously been the custom.³³ Furthermore, education, particularly for females, raised awareness of effective contraception and opened new opportunities for employment, typically in urban sectors like industry and service.³⁴ The shift from traditional rural to modern urban life "integrat[ed] [Arabs] into the Jewish controlled economy"³⁵ and exposed them to Western, capitalist norms that encouraged higher consumption at the expense of lower fertility. Furthermore, the Israeli Ministry of Health "disproportionately focused on the 'Arab sector'" when implementing their

19 Tal, *The Land is Full*, 92.

20 Ibid., 92.

21 Michal Ofir and Tami Eliav, *Child Allowances in Israel: A Historical View and International Perspective* (National Insurance Institute of Israel, 2005), 5.

22 Portugese, *Fertility Policy*, 97.

23 Tal, *The Land is Full*, 92.

24 Portugese, *Fertility Policy*, 105.

25 Tal, *The Land is Full*, 95.

26 Portugese, *Fertility Policy*, 108.

27 Sammy Smootha, *Arabs and Jews in Israel* (Westview Press, 1992), passim.

28 Israel Central Bureau of Statistics, *Fertility Rates by Age and Religion*, 2016, www.cbs.gov.il/shnaton68/st03_13.pdf, 1.

29 Ibid., n.p.

30 Tal, *The Land is Full*, 168.

31 Portugese, *Fertility Policy*, 172.

32 Ibid., 176.

33 Tal, *The Land is Full*, 191.

34 Ibid., 191.

35 Portugese, *Fertility Policy*, 172.

first family planning initiatives in the 1980s.³⁶ In her book *Birthing the Nation: Strategies of Palestinian Women in Israel*, Israeli-Arab anthropologist Rhoda Ann Kanaaneh argued, “Despite the Ministry [of Health]’s reluctance to start family planning programs in Jewish communities, it was eager to do so among Arabs. It was widely known that approval for a general clinic in an Arab area was difficult to get... but approval was all but guaranteed if [it] included a family planning unit.”³⁷ Through education, women’s initiatives, economic integration, and readily accessible family planning, Israel deliberately increased the pace of demographic transition within Arab communities, instilling Western reproductive norms that favored smaller families in order to halt the non-Jewish population momentum.

REPRODUCTIVE HEALTHCARE ACCESS AND COVERAGE

Israel’s nationalized healthcare system constituted the third and final prong of Israeli pronatalist policy: by limiting or refusing coverage of procedures and medications that discouraged childbirth, the government influenced Israeli families to bear more children. As mentioned above, the 1962 Bachi Committee noted a concerning gap in birthrates between Ashkenazi and Mizrahi Jews, partially due to the former’s higher usage of contraception and abortion as methods of birth control.³⁸ In response to this finding, Israel imposed significant restrictions and bureaucratic barriers to abortion access: women were required to submit a written request to a committee, appear before a hospital panel to argue their case, and pay a fee of 400 NIS not covered by insurance simply to apply for an abortion.³⁹ Permission for the procedure was only granted if the woman was below 18 or above 40, if the pregnancy occurred out of wedlock or resulted from adultery, or if a dangerous complication for the fetus or the mother had arisen.⁴⁰ Furthermore, Israeli national health insurance only covered abortion expenses for girls under 18, medical emergencies of the mother or her fetus, or in cases of

rape or incest.⁴¹ Thus abortion was either illegal or costly (or both) for the vast majority of Israeli women seeking to undergo the procedure, fueling an unregulated underground abortion network that has been estimated to provide at least half of the nation’s abortions each year.⁴² Social stigmas and pressures have also contributed to lower incidences of Jewish abortion in Israel. For example, in the 1980s, Minister of Health Haim Sadan proposed that “all Jewish women considering abortion be forced to watch images of mangled and dead fetuses in addition to pictures of Jewish children murdered in the Holocaust.”⁴³ Recently, a strong pro-life movement has coalesced in Israel, and Jewish women seeking abortions have reported intimidation and physical assault by members of groups such as Efrat, who use both religious reasoning and ad hominem attacks to harass women in abortion clinics.⁴⁴ Thus Israeli leaders and social organizations have attempted to impose social costs in addition to the economic burden of abortion upon Jewish (and particularly Ashkenazi) women by likening the procedure to murder during the Holocaust or by claiming that abortion is a sin in Judaism.⁴⁵ These two widely advertised arguments conveniently have not typically dissuaded Arab Muslim women from obtaining the procedure.

Just as Israel enacted abortion restrictions to boost the relative Ashkenazi population, it also introduced contraceptive devices and medications (albeit slowly, and with a price) to achieve this same goal by curbing the much-higher birthrates of Mizrahi and Arab Israelis. Contraception, oral or otherwise, was not covered under the Israeli national health insurance program in the early years of the state, when Ashkenazim comprised the vast majority of the population, and several physicians refused to prescribe it even for a fee due to their personal pronatalist beliefs.⁴⁶ In the early 1970s, for example, a survey of government-employed medical professionals revealed that up to 27% believed the government (and by extension, they themselves) “should act to encourage a higher Jewish birthrate.”⁴⁷ However,

36 Barbara Swirski, Hatim Kanaaneh, and Amy Avgar, “Health Care in Israel,” *Israel Equality Monitor* 9 (1998): 21.

37 Rhoda Ann Kanaaneh, *Birthing the Nation: Strategies of Palestinian Women in Israel* (Univ. of California Press, 2010), 37.

38 Tal, *The Land is Full*, 86.

39 Israel Ministry of Health, *Procedures or Health Funds in Cases of Pregnancy and Abortion*, 2012, www.health.gov.il/hozer/mk23_1993.pdf, 1.1-1.4.

40 Portuguese, *Fertility Policy*, 137.

41 Tal, *The Land is Full*, 121.

42 Knesset Committee to Promote the Status of Women, *Testimony of Dr. Amy Avger*, Israeli Knesset, 2003, www.knesset.gov.il/protocols/data/rf/maamad/2003-05-19.rtf, n.p.

43 Tal, *The Land is Full*, 115.

44 Tal, *The Land is Full*, 123-124.

45 *Ibid.*, 123-124.

46 *Ibid.*, 108.

47 Tziyona Peled, *Family Planning in Israel: Behavior and Atti-*

by the 1980s, Israeli women enjoyed almost “universal access” to birth control,⁴⁸ though contraception still was not free, unlike most other services and medications offered under the Israeli socialized medical system. Canadian scholar Jacqueline Portugese has argued that 1980s-era Israeli leaders’ newfound leniency in contraceptive provision and accessibility was in fact a targeted effort to reduce the high birthrate among poorer immigrant Jews who had recently arrived from the Middle East and North Africa, limiting their growth relative to Israelis of European origin and assimilating them into mainstream Western Israeli culture.⁴⁹ Today, both IUDs and oral contraceptive pills are subsidized under the national health-care system’s “basket of medicines,” but with restrictions; for example, only girls under 21 are eligible for the oral contraceptive subsidy.⁵⁰ Contraception is still expensive: it has been estimated that an Israeli woman spends between 7200 and 12000 NIS on contraception throughout her life.⁵¹ In sum, Israeli healthcare policy selectively discouraged abortion and contraception among Ashkenazim via economic incentives such as insurance coverage as well as social pressures from physicians and other figures of authority. Meanwhile, family planning techniques, including contraception, were readily introduced into majority-Arab and Mizrahi communities in order to mitigate what Israeli leaders deemed to be negative demographic developments.

In contrast to its restrictions on abortion and contraception, the Israeli government has provided generous coverage of costly assist-

ed reproductive technologies (ART) under its national health insurance program in order to ensure that all families desiring children could in fact bear them. In 1998, Israel boasted 23 in vitro fertilization (IVF) clinics, the highest per capita in the world.⁵² However, the clinics were less accessible for Arab women, who often lived in more remote areas of the country.⁵³ The 1995 National Health Insurance Law fully covered the price of an Israeli woman’s first two children born via IVF; each birth cost taxpayers on average between \$10,000 and \$15,000 USD.⁵⁴ Even though IVF in Israel yields only a 12-14% success rate per treatment cycle,⁵⁵ and despite the fact that the government’s lax protocols for treatment permit overly intensive hormone therapies that can endanger women’s health,⁵⁶ IVF remains a popular component of Israeli reproductive healthcare. Daphna Birenbaum-Carmeli, a health specialist at Haifa University, credited this phenomenon both to citizens’ pride in “the steady stream of [IVF] innovations developed [by] Israeli doctors” and to social

" THE UNSPOKEN INTENT OF ISRAELI PRONATALIST ECONOMIC POLICIES— TO ADVANTAGE JEWISH OVER ARAB POPULATION GROWTH—HAD BECOME OVERT."

norms dating back to Biblical times that painted infertile Jewish women as “suffering... tragic figures” in need of compassion and care.⁵⁷ Health Minister and former general Motta Gur took a more pragmatic approach to ART costs: although he acknowledged the expense of IVF, “it was a whole lot cheaper than bringing in new immigrants.”⁵⁸ The overt pronatalist bias of the Israeli healthcare system has manifested itself in the Israeli government’s willingness to spare no expense to boost native Israeli fertility

tudes of Professionals, Part I (The Institute of Social Policy, 1973), 78.

48 Barbara S. Okun, “Innovation and Adaptation in Fertility Transition: Jewish Immigrants to Israel from Muslim North Africa and the Middle East,” *Population Studies* 51, no. 3 (1997): 317.

49 Portugese, *Fertility Policy*, 125.

50 Tal, *The Land is Full*, 110-111.

51 Orshlimi, Sharon, “Numbers Behind the Abortion Industry,” *Onlife: A Website of Substance and Current Events for Women*, August 6, 2013, www.onlife.co.il.

52 Alison Solomon, “Anything for a Baby: Reproductive Technology in Israel,” in *Calling the Equality Bluff: Women in Israel*, ed. Barbara Swirski and Marilyn Safir (Pergamon Press, 1991), 102.

53 Tal, *The Land is Full*, 126.

54 Portugese, *Fertility Policy*, 154.

55 Sarit Rosenbloom, “A Multitude of Fertility Treatments—Few Pregnancies,” *Yedioth Ahronot*, November 25, 2014, 9.

56 Hedva Eyal, interview by Alon Tal, July 2, 2013.

57 Daphna Birenbaum-Carmeli and Yoram S. Carmeli, Kin, Gene, Community: Reproductive Technologies among Jewish Israelis (Berghahn Books, 2010), 51-61.

58 Portugese, *Fertility Policy*, 153.

rates while at the same time imposing financial, social, and legal barriers to women (and particularly Jewish women of European descent) desiring smaller families.

ISRAELI PRONATALISM TODAY: CHAREDIM AND THE CHANGING FACE OF ISRAEL

In a twist of fate, today's Ashkenazi Israeli leaders, heirs to the original Jewish pronatalists, face a new demographic threat from within the Israeli Jewish population: ultra-Orthodox Israeli Charedim have bucked natural demographic trends in recent years, growing at the rapid rate of 6% per annum⁵⁹ and causing significant economic and social turmoil.

On average, Charedi women bear six children, twice the national average, but many have families of 10 or more.⁶⁰ Furthermore, the Charedim abide by strict social conventions, which they believe to be the proper interpretation of Jewish law. Men typically do not work and instead study Torah; more than half are unemployed.⁶¹ In addition to running the household and raising several children, women often earn the family's only meager income besides government welfare such as child allowances.⁶² Division of labor practices as well as cultural norms within the Charedi community explain why 52% of all ultra-Orthodox Israeli Jews and 67% of Charedi children live below the poverty line.⁶³ Therefore, maintaining and ideally increasing pronatalist economic incentives constitutes a top policy

issue for Charedi political parties, and indeed, Aryeh Deri, the current Israeli economics minister and the leader of Shas, a Mizrahi-Charedi political party, insists that he "will block any attempt to cut benefits," such as the yeshiva student stipend and child allowances.⁶⁴ As the impoverished Charedim grow to a predicted 27% of the total Israeli population by 2059,⁶⁵ public debt is expected to increase from 67% to 170% of Israeli GDP.⁶⁶ These trends threaten the robust high-tech and industry-based Israeli economy built primarily by Ashkenazi elites.

In response to this perceived Charedi threat to the Israeli way of life, secular and predominately Ashkenazi opposition parties such as Yesh Atid ("there is a future") campaign on the reduction of child allowances, ultra-Orthodox stipends, and other policies that permit Charedim to insulate themselves from mainstream Israeli society while still collecting benefits from the state.⁶⁷ Should left-wing parties defeat Prime Minister Benjamin Netanyahu's conservative coalition in the next Israeli parliamentary election, child allowances will likely be reduced significantly, with certain benefits tied to desired social outcomes such as participation in the military or workforce. Eurocentric Israeli governmental elites have proven in the past that they are willing to limit even other non-European Jewish birthrates in order to a maintain what they believe to be

"IN 1998, ISRAEL BOASTED 23 IN VITRO FERTILIZATION CLINICS, THE HIGHEST PER CAPITA IN THE WORLD. HOWEVER, THE CLINICS WERE LESS ACCESSIBLE FOR ARAB WOMEN, WHO OFTEN LIVED IN MORE REMOTE AREAS OF THE COUNTRY."

an ideal ethnic equilibrium: for instance, many Ethiopian Jewish women, most of whom were airlifted to Israel in a 1991 covert rescue mission, received state-sponsored vaccinations of

59 Tal, *The Land is Full*, 131.

60 *Ibid.*, 131.

61 "Eat, Pray, Don't Work," *The Economist Online*, June 25, 2015, www.economist.com/news/middle-east-and-africa/21656207-israel-cannot-afford-keep-paying-ultra-orthodox-men-shun-employment-eat.

62 Tal, *The Land is Full*, 132.

63 Israel Democracy Institute, *Statistical Report on Ultra-Orthodox Society in Israel* (Jerusalem Institute for Israel Studies, 2016), 16.

64 "Eat, Pray, Don't Work," June 25, 2015.

65 Israel Central Bureau of Statistics, *Fertility Rates*, 1.

66 "Eat, Pray, Don't Work," June 25, 2015.

67 Lior Dattel and Tali Heruti-Sover, "Israel's Welfare Ministry Vows to Prevent Haredim from Living off Child Benefits," *Haaretz*, March 3, 2014, www.haaretz.com/israel-news/premium-1.538280.

the long-acting contraceptive Depo-Provera, ostensibly without their knowledge or consent, over a period of many years.⁶⁸ Thus it is conceivable that, faced with a growing Charedi population, secular Ashkenazi parties like Yesh Atid will not hesitate to reverse seven decades of Israeli pronatalist policy. Since no future waves of European immigrants are expected to arrive in Israel, Western Jewish leaders may see no choice but to enact anti-natalist policies targeting the Charedim, lest they lose control of Israel's historically secular, cosmopolitan society to a conservative and economically unsustainable ultra-Orthodox majority.

PRONATALISM, DEMOGRAPHY, AND THE PALESTINIAN QUESTION

While the rise of the Charedim threatens to alter domestic life in Israel, Palestinian Arab demographics challenge the Jewish State's sovereignty and ambition in the international arena. Israeli Jews can no longer rely on pro-Jewish population policies to maintain demographic superiority within their UN-defined borders; most of the laws codifying some form of reproductive discrimination against Israeli Arab families have been eliminated or modified so that all citizens enjoy equal access to the benefits of child allowances, ART, and other reproductive healthcare services.⁶⁹ Accessibility remains the main barrier to entry for Israeli Arabs, as government offices and more advanced health centers tend not to be located in predominantly Arab regions, and cultural norms frequently limit Arab women's activities without the permission of their male relatives.⁷⁰ However, non-Israeli Arabs living in the occupied territories of the West Bank and Gaza do not possess rights to any pronatalist financial benefits or healthcare coverage,⁷¹ and hawkish Jewish leaders have no desire to expand these programs to the Territories and potentially increase Arab birthrates. For many years, Palestinians' high population growth constituted a form of resistance against the Israeli occupation; Yasser Arafat was once quoted as saying, "[The Israelis] are concerned about our children and the Palestinian woman, who bears yet another Palestinian every ten months... [she] is a

biological bomb threatening to blow up Israel from within."⁷² Moreover, women living in the occupied territories often had difficulty accessing contraception and abortion, since many medical relief organizations and charities that provided care in the region did not offer these options to their patients, and Israeli-funded contraception or family planning clinics were met with suspicion and frequently went unused.⁷³ However, in spite of these factors, population growth rates in the Palestinian Territories have in fact trended downwards in the past several decades. The total fertility per woman in the West Bank in 2014 was 2.83,⁷⁴ while in the Gaza Strip this number was 4.24.⁷⁵ In comparison, Jewish fertility per woman in Israel was 3.13 in 2015.⁷⁶ Israeli demographer Dov Friedlander and his colleagues noted parallel downward fertility trends between Israeli Arabs and their brethren in the Territories and postulated that the non-Israeli Arab birthrate decline was similarly due to postponed marriages, higher educational attainment, and integration of Arabs into the Israeli economy and society as discussed above.⁷⁷ Thus it appears that, on the whole, Israel's demographic goals in the Palestinian Territories have been achieved even without direct anti-natalist policy intervention in the region.

However, even given the declines in Palestinian Arab birthrates, the current Israeli administration still views Palestinian population dynamics as a threat: sustained Arab population growth thwarts right-wing politicians' plans to secure demographic (and thus political) hegemony in all of "Eretz Israel," including the West Bank and the Gaza Strip. In 2000, Israeli scholar Sergio DellaPergola estimated that in Israel plus the Palestinian Territories combined, Jews comprised 55.1% of the population and Arabs 44.9%.⁷⁸ There is a high likelihood of demographic parity within a few generations due

72 Gad Gilbar, "The Palestinians: Demographic and Economic Developments 1986-1990," in *Middle East Contemporary Survey* 15, ed. Ami Ayalon (Westview Press, 1991): 315.

73 Portuguese, *Fertility Policy*, 165-166.

74 U.S. Central Intelligence Agency, World Factbook: West Bank, November 14, 2017, www.cia.gov/library/publications/the-world-factbook/geos/we.html.

75 U.S. Central Intelligence Agency, World Factbook: Gaza Strip, November 14, 2017, www.cia.gov/library/publications/the-world-factbook/geos/gz.html.

76 Israel Central Bureau of Statistics, *Fertility Rates*, 1.

77 Friedlander, *Population Policy*, 252-253.

78 Sergio DellaPergola, "Demographic Trends in Israel and Palestine: Prospects and Policy Implications," in *The American Jewish Year Book* 103, ed. David Singer and Lawrence Grossman (American Jewish Committee, 2003), 18.

68 Phoebe Greenwood, "Ethiopian Women in Israel 'given Contraceptive without Consent,'" *The Guardian*, February 28, 2013, www.theguardian.com/world/2013/feb/28/ethiopian-women-given-contraceptives-israel.

69 Tal, *The Land is Full*, passim.

70 Ibid., 203.

71 Friedlander, *Population Policy*, 247.

to the Palestinians' "population momentum";⁷⁹ the relatively large proportion of young people in the Arab population, who will soon bear their own children, indicates upward-trending future growth. Yet in order for Israel to maintain its dual Jewish and democratic nature with any credibility, its population must be majority-Jewish. In fact, demography has often been cited as the main reason for Israel to support a two-state solution:⁸⁰ in order to retain its legitimacy as arguably the sole democracy in the Middle East in the face of a growing Palestinian population, the nation must cede away territory primarily populated by Palestinian non-Jews. In 2005, when former general Ariel Sharon narrowly retained control of the Likud Party and thus the Office of Prime Minister, he warned his party against the threat of Netanyahu's far right-wing faction that was seeking to forge a "Greater Israel" through occupation and settlement of the West Bank and Gaza: "It is impossible to have a Jewish, democratic state and at the same time to control all of Eretz Israel. If we insist on fulfilling the dream in its entirety, we are liable to lose it all. Everything. That is where the extremist path takes us."⁸¹ U.S. Secretary of State John Kerry echoed these words following the failed Obama-era peace negotiations, saying that if Israel rejected a two-state solution, "[it] can either be Jewish or democratic—it cannot

be both—and it won't ever really be at peace."⁸² The demographic problem that troubled early Israeli leaders has returned once more, but its implications today are even more dire. The decision to retain the territories or to relinquish them—which must be made soon, before population parity—will define Israel either as a principled democratic nation or as an oppressive occupying force.

CONCLUSION

Israel's historically pronatalist agenda has manifested itself in a variety of incentives—economic, political, and social—that boosted Ashkenazi Jewish birthrates while simultaneously limiting population growth among Arab Palestinians and even occasionally among non-European Jews. These policies, coupled with intensive immigration campaigns, maintained Ashkenazi supremacy in Israeli political and cultural life for nearly seven decades. However, current population trends foreshadow a new Israeli political and social reality in which highly religious Charedi officials, who seek to fundamentally alter Israel's Ashkenazi-dominated Western economy and way of life, gain greater political power and popular support, and in which the choice between a two-state solution and the violation of Israel's dual Jewish and democratic nature becomes increasingly urgent.

79 Tal, *The Land is Full*, 215.

80 Ehud Barak, "We Must Save Israel From Its Government," *The New York Times*, December 1, 2017, www.nytimes.com/2017/12/01/opinion/ehud-barak-israel-netanyahu.html.

81 Chris McGreal, "Sharon Narrowly Survives Attempt to Oust Him as Likud Leader," *The Guardian*, September 26, 2005, www.theguardian.com/world/2005/sep/27/israel.

82 Ian Schwartz, "Kerry: Israel Can Either Be Jewish Or Democratic, It Cannot Be Both," *RealClearPolitics*, December 28, 2016, www.realclearpolitics.com/video/2016/12/28/kerry_israel_can_either_be_jewish_or_democratic_it_cannot_be_both.html.

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