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Rethinking Solutions: The Role of Third-Country Agreements in Europe's Migration Crisis

Cover Story by Zoe Raptis

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Staff

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Dear Reader,

In the field of international studies, the 2024 Global Issue arrives at a time when topics of utmost urgency, relevancy, and magnitude are abundant. At such a time, student voices are critical as emerging actors in the arena of international affairs journalism.

The mission of YRIS is to make sure these voices are heard and uplifted. We strive to publish outstanding pieces that provide original and nuanced analyses on important global issues - and the Global Issue is the result of our work. As you read, we hope that you, like us, recognize the risk we face in simplifying problems and solutions.

We would like to thank our contributing authors whose exceptional literature is the foundation of this issue. Your work is critical in supporting our efforts to maintain a journal of high quality scholarship on major events around the globe. From the complexity of the European migration crisis to a discussion on gender in South Africa, you cover an array of subjects that is not at all simple, but fundamental in informing meaningful global dialogue.

In addition, we would like to thank our Head Design Editor Estelle Balsirow, Design Team members Camille Roussel, Julia Niemiec and Yasmine Samolada, and the YRIS staff and board who helped make this issue happen. We are incredibly grateful and privileged to have a dedicated, passionate, and efficient team working with us. This year has been filled with a range of obstacles and successes, but your support has made navigating our endeavors infinitely easier.

The following work has been thoroughly researched, written, and edited by a remarkable group of young scholars. We hope that its insights and findings enhance and challenge your thinking on complex international issues. In the global context of today, it is critical that we keep our eyes and minds open to the ideas of our world's students.

Sincerely,
Hailey Seo and Beckett Elkins
Editors-in-Chief

ZOE RAPTIS

SAGHAAR WRIGHT

KILLIAN DALY

Essays

Rethinking Solutions: The Role of Third-Country Agreements in Europe's Migration Crisis

Introduction

Europe's shortcomings in managing solutions have been evident from the 2015 Syrian refugee crisis to the recent 2024 elections.

I argue that Europe's struggle persists because of the inherently "wicked" character of the migration crisis, especially considering issues of border security and migration weaponization. The European case is particularly unique in its common use of a mitigating "solution" to the migration crisis: third-country agreements. These agreements may come in different forms, but are generally a policy of externalization, which seeks to alleviate the problem of lax border security by deterring the influx of refugees and asylum seekers. I will conduct an evaluative policy analysis of these third-country agreements that answers two questions: First, how effective is the policy of third-country agreements in addressing the wickedness of the European migration crisis? Second, why is this policy so popular among European leaders?

Regarding the first question, my evaluation is based on two criteria: First, whether these agreements successfully achieve their primary aim of deterrence, and second, whether they adequately address the European migration crisis in the long run. I hypothesize that the policy of third-country agreements is ineffective on both grounds. These agreements, at best, deter refugees and asylum seekers aiming to enter European states only in the short run, failing to deal with its root causes. The short run-long run paradox is at play, as the policy may lead to the short run benefit of reducing the number of irregular migrants, but may exacerbate the possibility of long run failures. Even if some deterrence is achieved, the costs incurred outweigh any benefits. Furthermore, this policy propels additional wicked problems. The most significant harm of this policy is the weaponization of migration, when third-country partnerships grant the third countries disproportionate amounts of power. These partnerships are also ineffective due to hypocrisy costs from violating human rights and contradicting the liberal ideals many European states promote. However, hypocrisy costs are the least significant drawback, as other states, often guilty of similar policies, rarely impose them. The absence of condemnation is also due to strong anti-immigrant sentiment in Europe, so domestic and regional actors are not concerned with states acting hypocritically if it means keeping migrants out. Rather, hypocrisy costs are primarily enforced by human rights organizations, which wield comparatively less influence than states.

"The most significant harm of the policy is the weaponization of migration, when third-country partnerships grant the third countries disproportionate amounts of power."

For the second research question, I will employ a short run rather than a long run framework to display why the policy of third-country agreements is so popular among European leaders. I propose that European leaders are not ignorant that these agreements are only short-term solutions; in fact, this is part of the appeal of such a policy. These partnerships improve the optics of the proactiveness of states in dealing with migration challenges, accomplishing a sufficient temporary reduction in migration numbers. States are willing to bear the costs of such measures, considering that the alternative – structural reform – poses a

formidable obstacle that would conflict with the short-term political motivations of leaders. Thus, leaders respond to a crisis-by-crisis approach instead of considering long-term solutions, which I posit produces an inability to address the wicked problems at play.

The European Migration Crisis: A Wicked Problem

The framework of wicked problems was formulated by design theorists Horst Rittel and Melvin Webber by categorizing certain policy planning problems as "inherently wicked" when they embody ten characteristics.[1] A wicked policy problem defies straightforward solutions due to its interconnectedness with other problems and a multiplicity of stakeholders with conflicting interests and values. The European migration crisis is interwoven with many wicked problems, including border security, weaponization of migration, and poverty, and concern multiple conflicting values, such as in the disagreement within the EU. The crisis is also difficult to define and mutates over time, as illustrated by the differences between Ukrainian refugees in 2024 and Syrian refugees in 2015. The European migration crisis is more than a security problem. It is a " humanitarian crisis based in the suffering of individuals who [have] abandoned their homes; a geopolitical conflict ranging across countries and continents; a security threat for both receiving and transit countries; a potentially heavy financial burden on already overtaxed states; and the breakdown of collaboration in the network of EU member states."[2] The wicked character of the European migration crisis points to the difficulty of neatly defining and solving the crisis. For example, even if push factors are weakened, it is likely that migrants will always want to enter Europe. The solution to the crisis can never be right or wrong, but good or bad. The short-run perspective of political leaders categorizes this policy as "good" – which incidentally adds to the wickedness of the problem. Rather, in this paper, I argue that the policy of third-country partnerships falls into the "bad" category of solutions.[3] In my analysis, I will address the wicked problems of border security and the weaponization of migration.

1 Horst W. Rittel and Melvin M. Webber, "Dilemmas in a General Theory of Planning," *Policy Sciences* 4, no. 2 (June 1973): 160, https://doi.org/10.1007/bf01405730.

2 Karin Geuijen et al., "Creating Public Value in Global Wicked Problems," *Public Management Review* 19, no. 5 (August 25, 2016): 622, https://doi.org/10.1080/14719037.2016.1192163.

The Policy of Third-Country Agreements

The overarching framework of third-country agreements is that European destination countries use them as an externalization policy to deter irregular migrants.This aim is pursued by either moving migrants or shifting the responsibility of dealing with asylum claims to safe third countries. A third country is considered safe if it respects the principle of non-refoulement and treats an asylum seeker in accordance with accepted international standards, such as the Geneva Refugee Convention and Protocol.[3] An example of this policy's success is seen in Spain and Morocco's transactional migration agreement.[4] Adamson and Greenhill define "transactional forced migration" as the process surrounding "political deals intended to facilitate and/or forestall engineered cross-border population movements, wherein the parties to the deal do not include the displaced themselves."[5] In the Spain-Morocco example, "Morocco is…cooperating with its neighbour Spain in efforts to stem the flow of illegal migration by sea with the attendant humanitarian concerns."[6] On the other hand, a negative example is the infamous EU-Turkey deal, where Greece could return new irregular migrants to Turkey in exchange for six billion euros in financial support for Turkey.[7] The UK's current Rwanda Plan is an even more extreme case, where "anyone entering the UK illegally – as well as those who have arrived illegally since 1 January 2022 – may now be relocated to Rwanda" even if they have never set foot in the country.[8]

Deterrence

To evaluate the effectiveness of the third-country agreement policy, I will first examine whether the policy

3 "Safe Third Country," European Commission Migration and Home Affairs, accessed April 17, 2024, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/safe-third-country_en.

4 Kelly M Greenhill and Hugo Brady, "Arriving at a Crossroads: Can Europe Avoid Replaying the Policy Failures of the 2014-16 Migration Crisis?," *Georgetown Journal of International Affairs*, publ. online March 2024, https://gjia.georgetown.edu/2024/03/21/arriving-at-a-crossroads-can-europe-avoid-replaying-the-policy-failures-of-the-2014-16-migration-crisis/.

5 Fiona B Adamson and Kelly M Greenhill, "Deal-Making, Diplomacy and Transactional Forced Migration," *International Affairs* 99, no. 2 (March 6, 2023): 709, https://doi.org/10.1093/ia/iiad017.

6 Commission Communication on the monitoring and evaluation mechanism of the third countries in the field of the fight against illegal immigration. COM(2005) 352 final, of 28 July, paras. 5.1

7 Kelly M. Greenhill, "Open Arms behind Barred Doors: Fear, Hypocrisy and Policy Schizophrenia in the European Migration Crisis," *European Law Journal* 22, no. 3 (May 2016): 327, https://doi.org/10.1111/eulj.12179.

8 "Q&A: The UK's Policy to Send Asylum Seekers to Rwanda," *Migration Observatory*, accessed April 16, 2024,https://migrationobservatory.ox.ac.uk/resources/commentaries/qa-the-uks-policy-to-send-asylum-seekers-to-rwanda/.

"THE OVERARCHING FRAMEWORK OF THIRD-COUNTRY AGREEMENTS IS THAT EUROPEAN DESTINATION COUNTRIES USE THEM AS AN EXTERNALIZATION POLICY TO DETER IRREGULAR MIGRANTS."

fulfills its main objective: deterrence. The primary aim of the policy is to deter irregular migrants from entering European states. For example, the goal of the UK's Rwanda Plan is to "stop the boats" and "deter dangerous and illegal journeys," relying on the belief that asylum seekers will be deterred if faced with the risk of being sent to Rwanda.[9] Similar logic applies to all third-country agreements, as European leaders think the threat of being sent away from a European state will deter irregular migrants from making the journey in the first place. However, this policy rarely provides a stable long-term deterrence effect. Many scholars agree that "there is limited evidence to suggest that the Rwanda deal will reduce the number of small boats crossing the Channel."[10]

One of the critical reasons this policy fails to provide deterrence is due to the limited enforcement of these agreements. In 2015, the number of migrants arriving in Greece was approximately 885,386.[11] The EU-Turkey deal was intended to curb this, but only 2,140 people have been returned from Greece to Turkey after the deal.[12] Similarly, "just 20 percent of eligible Dublin cases were actually transferred between EU Member States."[13] Transfer rates are low due to practical challenges, but also legal obstacles, as many European states are subject to EU and international law, which prevents them from rejecting asylum seekers.

Another reason why deterrence fails in the long run is because it underestimates asylum seekers' persistence and determination to flee from persecution in their home countries. Gammeltoft-Hansen and Tan state: "Refugees remain resourceful despite the plight they are forced to endure, and may exhibit extraordinary resilience in their efforts to find safety and protection."[14] For example, in the hopes of finding safety in Europe, at least five people died in icy waters in January 2024 near northern France as they

9 Megan Specia, "Three Myths around the U.K.'s Rwanda Push for Asylum Seekers," *The New York Times*, publ. online January 2024, https://www.nytimes.com/2024/01/16/world/europe/uk-rwanda-asylum.html.

10 Marley Morris and Amreen Qureshi, "UNDERSTANDING THE RISE IN CHANNEL CROSSINGS," *Institute for Public Policy Research* (IPPR), 2019, pp. 23, http://www.jstor.org/stable/resrep53541.

11 Risk analysis for 2016 | Frontex, accessed April 17, 2024, https://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf, 6.

12 Angeliki Dimitriadi and Asli Selin Okyay, "Are Partnerships with Third Countries an Effective Way Forward for EU Migration Management?" *ELIAMEP*, November 2023, pp. 10, https://www.eliamep.gr/wp-content/uploads/2023/11/Perspectives-2-Migration.pdf.

13 Susan Fratzke, "International Experience Suggests Safe Third-Country Agreement Would Not Solve the U.S.-Mexico Border Crisis," *Migration Policy*, publ. online February 2022, https://www.migrationpolicy.org/news/safe-third-country-agreement-would-not-solve-us-mexico-border-crisis.

14 Thomas Gammeltoft-Hansen and Nikolas F. Tan, "The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy*," Journal on Migration and Human Security* 5, no. 1 (February 16, 2017): 43, https://doi.org/10.14240/jmhs.v5i1.73.

tried to traverse the English Channel to Britain.[15] Asylum seekers have to decide whether it is best to stay home where they know they will face persecution or risk fleeing to European countries where it is not certain if they will be granted refugee status. If lethal violence is the main push factor, asylum seekers will not be easily deterred.[16] The latter option is more appealing to asylum seekers, especially since European states have a reputation for not properly enforcing their deterrence measures. If third-country agreements do not effectively secure their main aim, then the policy does not truly ameliorate the wickedness of the European migration crisis.

"IF LETHAL VIOLENCE IS THE MAIN PUSH FACTOR, ASYLUM SEEKERS WILL NOT BE EASILY DETERRED "

Nonetheless, this policy, at times, succeeds in yielding the desired deterrence effect in the short run. Although I questioned the EU-Turkey deal in achieving deterrence, it is undeniable that the numbers, albeit not significantly, went down when viewing irregular migration flows, painting this deal as a success in European policy circles.[17] However, third-country agreements as a policy will not provide sustainable or stable deterrence. The aspect of the EU-Turkey deal that contributed most to a decrease in flows was not safe third-country provisions, but rather interceptions of migrant boats in the Aegean by the Turkish Coast Guard.[18] According to Turkey's Ministry of the In-

15 Aurelien Breeden and Megan Specia, "At Least 5 People Die Trying to Cross Icy English Channel," *The New York Times*, publ. online. January 2024, https://www.nytimes.com/2024/01/14/world/europe/migrants-die-english-channel.html.

16 Helen Hintjens and Ali Bilgic, "The EU's Proxy War on Refugees," *State Crime Journal* 8, no. 1 (January 1, 2019), p. 87, https://doi.org/10.13169/statecrime.8.1.0080.

17 Dimitriadi and Okyay, "Are Partnerships with Third Countries an Effective Way Forward for EU Migration Management," p. 20

18 Susan Fratzke, "International Experience Suggests Safe Third-Country Agreement Would Not Solve the U.S.-Mexico Border Crisis," *Migration Policy*, publ. online February 2022, https://www.migrationpolicy.org/news/safe-third-country-agreement-would-not-solve-us-mexico-border-crisis.

terior, more than 79,000 migrants and refugees were intercepted attempting to cross into Greece during the first four months of 2019, dwarfing the number of people returned under the safe third country agreement.[19] If deterrence is best achieved through deals that involve interceptions, this is far from a sustainable, long-term solution that appreciates the wickedness of the migration crisis.

"IF DETERRENCE IS BEST ACHIEVED THROUGH DEALS THAT INVOLVE INTERCEPTIONS, THIS IS FAR FROM A SUSTAINABLE, LONG-TERM SOLUTION THAT APPRECIATES THE WICKEDNESS OF THE MIGRATION CRISIS."

Assuming deterrence is even effective under this policy, its efficacy is undermined if it does not adequately deal with the wicked problems interwoven in the European migration crisis. Gammeltoft-Hansen and Tan argue that "while specific deterrence measures may be successful in stemming a particular migration path in the short term…displacement of migration flows towards alternative routes often significantly, if not completely, undermine the effect over time."[20] They cite the EU-Turkey deal as showing that while the number of asylum seekers decreased along the Balkan route, the number of refugees and migrants using the Central Mediterranean route via Egypt or Libya dramatically increased during the same period.[21] Even the Spain-Morocco agreement, which is also viewed as a success, does not come close to dealing with the wickedness of migration. The moment Spain stops complying with Morocco's demands, the number of asylum seekers will instantly rise at the Spanish border. Already the EU's deal with Tunisia does not seem to provide a stable deterrent; MEP Jeroen Lenaers of the European People's Party has openly denounced lagging results as "arrivals continue to increase" after the conclusion of the deal.[22] Furthermore, countries

19 Ibid

20 Gammeltoft-Hansen and Tan, "The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy," p. 43.

21 Ibid

22 Mared Gwyn Jones, "Eu Lawmakers Clash over Controversial Tunisia Migration Deal," euronews, 2023, https://www.euronews.com/my-europe/2023/09/12/eu-lawmakers-clash-over-tunisia-migration-deal-denounce-lack-of-results.

face exorbitant costs with this policy. For example, Italy had to pay Libya five billion dollars in 2007 in a negotiation regarding irregular migration.[23] As of December 2023, the UK government has spent a total of £240 million on Rwanda.[24]

The policy of third-country agreements by European states problematically focuses on one criterion: reducing numbers. Viewing the European migration crisis from this perspective is a gross oversimplification of the complexity of the wicked problems at play. The wicked problem of border security in the European migration crisis requires policies that move beyond the logic of deterrence. The policy of third-country agreements is a crisis-by-crisis approach rooted in short run deterrence logic, which provides patchy results at best. European states should employ a more long-term, sustainable policy that addresses the root causes of irregular migration or focusing inwards on its asylum systems. As Moreno-Lax and Pedersen state: "The short-term European goal of preventing asylum seeker flows thereby risks compromising the stated long-term goal of tackling the root causes of displacement, which is sacrificed in the altar of externalised 'integrated border management.'"[25] Third-country agreements, despite their presentation as a new, innovative solution, have existed for decades, but the European migration crisis still exists and is mutating, proving this deterrence-based policy does not adequately address the crisis.

Weaponization of Migration

A key aspect of what makes wicked problems so complex is that attempted solutions "after being implemented, will generate waves of consequences over an extended – virtually an unbounded – period of time."[26] When evaluating a potential solution, I aim to determine if "the next day's consequences of the solution may yield utterly undesirable repercussions which outweigh the intended advantages or the advantages accomplished hitherto."[27] I posit that the policy of third-country agreements in at-

23 Gammeltoft-Hansen and Tan, "The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy," p. 44.

24 "Q&A: The UK's Policy to Send Asylum Seekers to Rwanda," *Migration Observatory*, accessed April 16, 2024,https://migrationobservatory.ox.ac.uk/resources/commentaries/qa-the-uks-policy-to-send-asylum-seekers-to-rwanda/.

25 Violeta Lax Moreno, and Martin Lemberg Pedersen, "Border-Induced Displacement: The Ethical and Legal Implications of Distance-Creation through Externalization," Questions of International Law (February 28, 2019), p.17,http://www.qil-qdi.org/border-induced-displacement-the-ethical-and-legal-implications-of-distance-creation-through-externalization/.

26 Rittel and Webber, "Dilemmas in a General Theory of Planning," p. 163.

27 Ibid

tempting to tackle the wicked problem of border security in the European migration crisis inadvertently creates another wicked problem: the weaponization of migration.

Greenhill underscores the compelling incentives for states to "create, manipulate, or simply exploit migration crises, at least in part, to influence the behavior of target states."[28] Coercive engineered migration is defined as "cross-border population movements that are deliberately created or manipulated by state or non-state actors in order to induce political, military and/or economic concessions from a target state or states."[29] Greenhill asserts that the incentives from coercive engineered migration are particularly compelling for weak states, as they lack the recourse for traditional methods of influence.[30] Thus, the threat of using migrants as weapons can be more effective than unsuccessfully attempting to extract concessions using military means.[31]

An infamous example of coercive engineered migration was in 2004 when the former leader of Libya, Muammar Gaddafi, demanded that the EU lift remaining sanctions and financially assist Libya in exchange for cooperation on the migration issue.[32] Third-country agreements as a policy are ineffective in addressing the wickedness of the European migration crisis as they grant the third countries disproportionate amounts of power, which can be used to weaponize migration. In 2008, Italy and Libya signed a migration deal, in which Italy agreed to pay Libya five billion dollars to stop the flow of African migrants to Europe.[33] This deal gave Gaddafi considerable leverage, and in 2010, he threatened to "turn Europe black" if the EU did not comply with his demands, including lifting arms sanctions and providing aid.[34] Additionally, during the 2011 Arab Spring, Gaddafi tried to deter the EU from providing support to the rebellion by warning that the EU would be "bombing a wall which stood in the way of African migration to Europe."[35] Despite Libya's threats, Italy did not learn its lesson, as the two nations signed a

28 Kelly M. Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy* (Ithaca and London: Cornell University Press, 2016), p. 2.
29 Ibid, 13
30 Ibid, 2
31 Ibid, 3
32 Ibid, 331
33 Mark Galeotti, "How Migrants Got Weaponized," *Foreign Affairs*, June 26, 2023, https://www.foreignaffairs.com/belarus/how-migrants-got-weaponized.
34 Kelly M Greenhill, "Morocco 'weaponized' migration to punish Spain. That's more common than you think," publ. online June 2021, https://www.washingtonpost.com/politics/2021/06/01/morocco-weaponized-migration-punish-spain-thats-more-common-than-you-think/.
35 "How Libya Holds the Key to Solving Europe's Migration Crisis," *BBC News*, publ. online July 2018, https://www.bbc.com/news/world-africa-44709974.

Memorandum of Understanding (MoU) on Migration in 2017. Italy supports Libya by intercepting migrants at sea, establishing temporary refuge within its borders to screen asylum seekers, and repatriating individuals willing to return to their countries of origin. The EU has also financially assisted Libya, allocating 57.2 million euros for "Integrated Border and Migration Management in Libya" since 2017.[36] Libya capitalized on Europe's migration crisis in 2015 by negotiating this deal following the blueprint set out by the EU-Turkey deal. According to Greenhill's theory, Libya acted as an opportunist, as it did not create the migration crisis, but carefully exploited it for its own gain.[37] As Greenhill states, "a crisis can help level the playing field, enhance the credibility of weak actors, increase the potency of their threats, and thereby improve their coercive capabilities."[38]

The problem with the policy of third-country agreements is that the third countries are aware of Europe's struggle to deal with migration, and can exploit Europe's weaknesses by continually asking for concessions. For example, Turkey used the migration crisis as leverage to reopen talks about its EU membership. I take it as far as to say that no partnership is safe from the threat of coercive engineered migration. Even the Spain-Morocco partnership has been subject to the weaponization of migration. This was seen in 2021, as the leader of the Polisario Front, Brahim Ghali, who was subject to a Moroccan arrest warrant for terrorist acts, was admitted for treatment in a Spanish hospital.[39] Morocco threatened Spain with "consequences," which included alleviating enforcement on the border with Ceuta, allowing thousands of migrants to enter Spain. This is an example of exportive engineered migration, as Morocco engineered migration to fortify a domestic political position.[40]

Despite the partnership between the two nations spanning decades, Morocco was undeterred from using migrants as an instrument to exert pressure on Spain. Spain and Morocco will continue to perpetuate the same pattern of engagement as they have done since the late 1990s, with Spain having to comply with Moroccan demands to curb irregular migration flows. In 2015, countries such as Egypt,

36 "Italy Reups Funding to Force Migrants Back to Libya," *Human Rights Watch*, publ. online February 2023, https://www.hrw.org/news/2023/02/01/italy-reups-funding-force-migrants-back-libya.
37 Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*, p. 30
38 Ibid, 23
39 Aritz Parra, "An Ailing Sahrawi Leader Shakes Spain and Morocco's Alliance," *AP News*, publ. online May 2021, https://apnews.com/article/europe-spain-morocco-africa-health-f14419ce2f00ea07b0ac5c1d5c49e83c.
40 Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*, p. 14

Jordan, and Lebanon tangentially benefitted from the post-2015 European fear, allowing them to negotiate migration deals without threatening refugee arrivals due to European trauma.[41] Europe will continue to expect migration crises, as seen in the influx of Ukrainian refugees and predictions of increased climate change migration.

European states must decide what wicked problem they want to prioritize. The policy of third-country agreements may address the wicked problem of border security, albeit, I argue, not effectively, but it further propels and ignites the wicked problem of weaponization of migration. It is undeniable that the Spain-Morocco partnership reduced the number of irregular migrants entering Spain. However, the question is: how sustainable is this deterrence effect, and is the cost of potential weaponization worth it? I have argued that this deterrence effect is far from sustainable, and if an over-30-year partnership is susceptible to weaponization, then all partnerships are under threat. Already, Tunisia is wielding significant power against the EU; in October 2023, Tunisian president Kais Saied rejected financial support from the EU, claiming that the money "was a small amount," and the EU "lacks respect."[42] The European Commission said it would disburse 127 million euros to Tunisia as part of their deal to curb illegal immigration to Europe.[43] However, Tunisia rejected what the EU announced, saying that "the proposal conflicts with the memorandum of understanding signed in July," which includes a pledge of 1 billion euros in aid.[44] During the dispute between the two parties, a record number of migrants arrived on the Italian island of Lampedusa from Tunisia and North Africa.[45] Migrant numbers have been rising in many places in Europe, but I still question if this was a coincidence and is

"WITHOUT THE THIRD-COUNTRY AGREEMENT IN PLACE, TUNISIA WOULD NOT HAVE BEEN ABLE TO WEAPONIZE MIGRATIONN AS EASILY AGAINST THE EU AND EXTRACT FINANCIAL CONCESSIONS. "

41 Kelsey P Norman, "The Post-2015 Migration Paradigm in the Mediterranean," Chapter. In *Reluctant Reception: Refugees, Migration and Governance in the Middle East and North Africa* (Cambridge: Cambridge University Press, 2020), 172.

42 Bouazza Ben Bouazza and Sam Metz, "Tunisia Rejects European Funds and Says They Fall Short of a Deal for Migration and Financial Aid," *AP News*, publ. online October 2023, https://apnews.com/article/tunisia-europe-migration-851cf35271d2c52aea067287066ef247.

43 Ibid

44 Tarek Amara, "Tunisia Rejects EU Financial Aid, Casting Doubt on an Immigration Deal | Reuters," *Reuters*, publ. online October 2023, https://www.reuters.com/world/tunisia-rejects-eu-financial-aid-casting-doubt-an-immigration-deal-2023-10-02/.

45 Ibid

potentially proof of Tunisia weaponizing migration against the EU. Without the third-country agreement in place, Tunisia would not have been able to weaponize migration as easily against the EU and extract financial concessions. The agreement increased Tunisia's legitimacy at the negotiating table of migration diplomacy. Hence, threats to alter or suspend third-country agreements in response to political disagreements or disputes can create a dynamic where migration becomes a tool for exerting influence. Due to geographical limitations, Rwanda may not directly weaponize migration by sending migrants to the UK, but still has the power to cause instability in the region and potentially threaten the UK. As Greenhill's research shows, coercers achieved at least some of their objectives in about three-quarters of the cases. In more than half the cases, coercers obtained all or most of what they sought."[46]

Hypocrisy Costs

Another significant cost of third-country agreements is hypocrisy costs. Greenhill defines hypocrisy costs as "those symbolic political costs that can be imposed when there exists a real or perceived disparity between a professed commitment to liberal values and norms and demonstrated actions that contravene such a commitment."[47] In fact, third-country agreements create a lose-lose situation: if the European state fails to keep unwanted immigration out, it fails the policy's original aim of deterrence. However, if European states do manage to keep migrants out, this is usually a result of illiberal means, potentially incurring hypocrisy costs. I want to ensure that I do not appear contradictory by introducing the drawback of hypocrisy costs to the policy, as even if deterrence is not effective, hypocrisy costs may still be incurred because human rights organizations have criticized European states for making deals with authoritarian leaders.

Hathaway argues that the right of states to remove refugees is conditional if the safe third country implements and respects the rights of the refugee under the Refugee Convention or any other legal instruments.[48] I use Hathaway's formulation of the expectations of safe third countries and the principle of non-refoulement as a baseline to determine if third-country agreements have abided

46 Kelly M Greenhill, "Morocco 'weaponized' migration to punish Spain. That's more common than you think," June 1, 2021, https://www.washingtonpost.com/politics/2021/06/01/morocco-weaponized-migration-punish-spain-thats-more-common-than-you-think/.

47 Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*, p. 4

48 James C. Hathaway, "The Rights of Refugees under International Law," 2005, pp. 332-3 https://doi.org/10.1017/cbo9780511614859.

by human rights expectations. For example, the EU-Turkey deal rested on the notion that Turkey is a safe third country. However, Turkey's safe third-country status has been questioned, mainly due to the surge in Turkish state violence against minorities since 2017.[49] Greek courts in early 2018 found that Turkey was not a safe third country, delaying the number of migrants that could be sent back.[50] Thus, the deal was ineffective in offering sustainable deterrence and displayed hypocritical behavior. Hypocrisy costs were incurred as the Greek national court condemned state behavior for violation of human rights, thereby highlighting the discrepancy between the liberal values European states must obey by law versus the restrictive agenda leaders want to pursue. The UK's Rwanda Plan is an even more extreme example, as the UK's Supreme Court has declared the policy unlawful, and the European Court of Human Rights has also stopped the first scheduled flight taking asylum seekers to Rwanda.[51] The policy also goes against the principle of non-refoulement due to the severe risk asylum seekers would face if returned to their home countries.[52] Instead of listening to the Supreme Court, the government tried to create legislation to enforce its Rwanda Plan. The UK is one of the leading proponents of liberal democracies globally, yet this policy goes against the values it espouses.

The MoU between Libya and Italy is laden with human rights abuses. Firstly, Libya is not a party to the UN Refugee Convention and Protocol, which already raises legal and ethical questions about whether migrants should be sent to Libya. The United Nations High Commissioner for Refugees (UNHCR) expressed concern, stating that "it is far from clear that Italy has taken the necessary precautions to ensure that it is not sending back any bona fide refugees to Libya, which cannot be considered a safe country of asylum."[53] Additionally, the UNHCR stated that refugees being removed from Libya to their country of origin

49 Hintjens and Bilgic, "The EU's Proxy War on Refugees," p. 85

50 Dimitriadi and Okyay, "Are Partnerships with Third Countries an Effective Way Forward for EU Migration Management?" p. 10

51 "Q&A: The UK's Policy to Send Asylum Seekers to Rwanda," Migration Observatory, accessed April 16, 2024,https://migrationobservatory.ox.ac.uk/resources/commentaries/qa-the-uks-policy-to-send-asylum-seekers-to-rwanda/

52 Emilie McDonnell, "UK Supreme Court Finds UK-Rwanda Asylum Scheme Unlawful," *Human Rights Watch*, publ. online November 2023, https://www.hrw.org/news/2023/11/15/uk-supreme-court-finds-uk-rwanda-asylum-scheme-unlawful.

53 UNHCR Press Release, 'UNHCR deeply concerned over Lampedusa deportations', 18 Mar. 2005.

"IN FACT, THIRD-COUNTRY AGREEMENTS CREATE A LOSE-LOSE SITUATION: IF THE EUROPEAN STATE FAILS TO KEEP UNWANTED IMMIGRATION OUT, IT FAILS THE POLICY'S ORIGINAL AIM OF DETERRENCE."

violates the principle of non-refoulement.[54] Both Italy and the EU have provided technical and financial support to Libya to stop migration flows to Europe, but a UN report states the migrants that are intercepted at sea and sent back face "murder, enforced disappearance, torture, enslavement, sexual violence, rape, and other inhumane acts… in connection with their arbitrary detention."[55] Similarly, an International Criminal Court prosecutor stated crimes against migrants in Libya "may constitute crimes against humanity and war crimes."[56] Human rights organizations such as Human Rights Watch have argued that the EU and Italy are thus complicit in such crimes.[57] Hence, the Libya case study is a salient example of exposing the hypocrisy displayed by European leaders, as "the anxiety over a refugee invasion from Africa reveals the contradictions present in Europe today, where, on the one hand, the moral imperative of universal emancipation is proclaimed, but on the other, policies and practice continue the trend of refusing a safe haven to the very refugees they have helped to create."[58]

Hence, European states are seen as hypocritical as they advocate for human rights protection on the world stage, yet are knowingly putting migrants in a situation where their rights are violated. Even now, the EU faces scrutiny for atrocious human rights abuses in Tunisia by EU-funded security forces. Moreno-Lax and Pederson argue that "EU border externalization entrenches forms of undemocratic governance in third countries, empowering undemocratic actors, transforming their relative weight within domestic structures, and weakening democratic channels of scrutiny, accountability, and power control."[59] Hence, the EU may espouse democratic values and condemn authoritarianism, but concerning migration, they are more than willing to shift the responsibility to third countries and embolden their undemocratic, illiberal practices

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54 Ibid

55 "Italy Reups Funding to Force Migrants Back to Libya," Human Rights Watch, February 1, 2023, https://www.hrw.org/news/2023/02/01/italy-reups-funding-force-migrants-back-libya.

56 Ibid

57 Ibid

58 Marco Scalvini, "Humanitarian Wars and Rejected Refugees," OpenDemocracy website, 17 April 2011, accessed 17 April 2024, http://www.opendemocracy.net/marco-scalvini/humanitarian-wars-and-rejected-refugees.

59 Moreno and Pedersen, "Border-Induced Displacement: The Ethical and Legal Implications of Distance-Creation through Externalization," p.17

to keep migration out of Fortress Europe. As stated by Galeotti, European states are "underscoring a fundamental point, that authoritarian regimes can get not only a free pass from the EU on many issues but also lucrative assistance, so long as they continue to keep migrants out."[60] Nonetheless, I argue that hypocrisy costs are an insignificant drawback of the policy relative to other impacts, including the weaponization of migration. My reasoning is based on strong anti-immigrant sentiment in the countries where this policy is used. For example, Pew Research Center data suggests that "Greeks and Italians are…the most likely to be concerned about immigration from outside the EU (84% and 76%, respectively)."[61] I am not arguing that European states are predominantly anti-immigrant, but rather that migrant camps in European states are common, and current populist governments in Europe thrive on anti-immigrant sentiment. Migration has moved from low politics to high politics and is now at the center of many political debates.[62] The Leave campaign during Brexit partially derives its success from exploiting xenophobic views on migration in British society.[63] As stated by Greenhill, "popular political discourses within the EU draw upon traditional nationalistic sentiments and xenophobic assertions that current waves of migrants and refugees reduce national living standards by siphoning away social resourc-

"THE MOU BETWEEN LIBYA AND ITALY IS LADEN WITH HUMAN RIGHTS ABUSES."

es from 'real' citizens, taking employment away from more qualified applicants, bringing tensions from their home state with them and committing a disproportionate amount

60 Mark Galeotti, "How Migrants Got Weaponized," *Foreign Affairs,* June 26, 2023, https://www.foreignaffairs.com/belarus/how-migrants-got-weaponized.

61 Jacob Poushter, "Refugees Stream into Europe, Where They Are Not Welcomed with Open Arms," Pew Research Center, April 24, 2015, https://www.pewresearch.org/short-reads/2015/04/24/refugees-stream-into-europe-where-they-are-not-welcomed-with-open-arms/.

62 Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*, p. 5

63 Eugene Quinn, "The Refugee and Migrant Crisis: Europe's Challenge," Studies: An Irish Quarterly Review 105, no. 419 (2016): 275–85. http://www.jstor.org/stable/24871398, 275

of crime."[64] It is irrelevant if migrants pose a real threat, because "if they are perceived as fundamentally threatening to their security, culture or livelihood, anxious and motivated individuals and groups will mobilize to oppose their acceptance."[65] Due to migrant opposition, hypocrisy costs are less of a drawback to the policy of third-country agreements as many European citizens, particularly those who border the Mediterranean, are not concerned with migrant rights or hypocritical state action, so it is less likely costs will be imposed.

"NONETHELESS, I ARGUE THAT HYPOCRISY COSTS ARE AN INSIGNIFICANT DRAWBACK OF THE POLICY RELATIVE TO OTHER IMAPACTS, INCLUDING THE WEAPONIZATION OF MIGRATION."

Likewise, while European states are acting hypocritically, it does not mean hypocrisy costs are incurred. For the cost to be incurred, another actor needs to condemn the state for displaying hypocritical behavior. However, this policy is used globally from the US to Australia, thereby shielding European states from hypocrisy costs as many states themselves engage in the same behavior. Thus, it is usually human rights groups that condemn European states for their hypocritical behavior, which holds less weight.

The Policy's Popularity Among European Leaders

This paper has primarily focused on evaluating the effectiveness of third-country agreements and concluding that the policy fails to address the wicked problem of border security, in turn, creating significant drawbacks, such as the weaponization of migration and hypocrisy costs. This raises the question: why is the policy so widespread in Europe? For this section, I focus on the perspective of the European leaders who created and implemented the policy.

Democratic countries are all plagued by short-termism. Offe argues in *Europe Entrapped* that democratically elected governments cannot address the structural

64 Kelly M. Greenhill, "Open Arms behind Barred Doors: Fear, Hypocrisy and Policy Schizophrenia in the European Migration Crisis," European Law Journal 22, no. 3 (May 2016): 317–32, https://doi.org/10.1111/eulj.12179, 323.

65 Ibid, 324

issues afflicting the EU because citizens are focused on the short-term, stating "the problem is one of 'time inconsistency': The implementation of promising long-term strategies is obstructed by the failure of 'presentist' electorates fixated on a short-term time horizon to grant them green light, unless political leaders can persuade their constituencies to adopt a more far-sighted perspective."[66] Politicians' primary goal is to get elected and to stay in power, so when it comes to migration management, politicians are not incentivized to devise policies focused on a long-term perspective on migration that addresses structural and wicked problems. As Streeck puts it, "long-term solutions are not even attempted because short-term problems take priority; holes keep appearing that can only be plugged by making new holes elsewhere."[67] In the case of the policy of third-country agreements, the "new holes" are the wicked problem of migration weaponization.

I now examine the statements of European leaders to showcase how short-term political perspectives connect with the externalization policy of third-country agreements. Meloni states in regard to her support of the MoU with Tunisia that "work[ing] on the external dimension and stop[ping] the illegal departures of immigrants" is "the only way to seriously address the problem."[68] She argues that "this is what European citizens are asking of us."[69] European leaders recognize that citizens want solutions, and leaders believe third-country agreements can yield short-term, tangible results. Von der Leyen echoes Meloni, stating that "irregular migration is a European challenge" that "needs a European answer."[70] This European answer is not the dramatic structural reform of Europe's asylum systems or improving legal pathways to residency or citizenship. Instead, externalization persists as the preferred approach and will likely remain so: "We want our agreement with Tunisia to be a template. A blueprint for the future. For

66 Claus Offe, *Europe Entrapped* (Cambridge: Polity Press, 2015), p. 42.

67 Wolfgang Streeck, *Buying Time: The Delayed Crisis of Democratic Capitalism* (London: Verso, 2014), 14.

68 "President Meloni's Press Statement during Her Visit to Lampedusa with President von Der Leyen," www.governo.it, September 17, 2023, https://www.governo.it/en/articolo/president-meloni-s-press-statement-during-her-visit-lampedusa-president-von-der-leyen/23599.

69 Ibid

70 "Press Statement by President von Der Leyen with Italian Prime Minister Meloni in Lampedusa," European Commission - European Commission, September 17, 2023, https://ec.europa.eu/commission/presscorner/detail/en/statement_23_4502.

partnerships with other countries in the region."[71] The UK is following suit, as Sunak states, "In order to fully solve this problem, we need a deterrent. We need to be able to say pretty simply and unequivocally that if you come to our country illegally, you won't get to stay."[72] For European leaders, "an immediate reduction in irregular arrivals is sufficient for a deal to be considered successful, and a partner country to be cooperative and effective."[73] While I criticize the EU-Turkey deal and the Italy-Libya partnership, in EU circles, these deals are considered a success when merely considering a short-term number. Now Italy is facing the same problem it did in 2023, but with Tunisia rather than Libya. It is the same story with slightly different characters, as European leaders continue to use the policy of third-country agreements as a temporary fix to reduce numbers.

European leaders are not ignorant that the policy of third-country agreements is a short-term solution. Migration was a central issue in the June 2024 elections, where right-wing, anti-immigrant parties thrived. As stated previously, European citizens, particularly those who border the Mediterranean, are not open to refugees and asylum seekers, and "pundits, politicians and even some policy makers may argue that migrants who are from different religious, linguistic and ethnic backgrounds than the majority in their newly adopted homelands are a danger to societal security."[74] For instance, during the 2015 migration crisis, a median of 59% across 10 EU countries voiced concern about the prospect of increased terrorism, and 50% believed refugees are a burden to society because they take jobs and social benefits that would otherwise be available to citizens of each nation.[75] Mediterranean states in par-

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71 "Tunisia migration deal a model for others, EU's von der leyen says" | Reuters, July 23, 2023, https://www.reuters.com/world/tunisia-migration-deal-model-others-eus-von-der-leyen-says-2023-07-23/.

72 Eleni Courea, "Rishi Sunak Defends Rwanda Plan during GB News Q&A Session," *The Guardian*, publ. online February 2024, https://www.theguardian.com/politics/2024/feb/12/sunak-defends-rwanda-plan-to-doubtful-tv-audience.

73 Dimitriadi and Okyay, "Are Partnerships with Third Countries an Effective Way Forward for EU Migration Management?" p. 20

74 Greenhill, "Open Arms behind Barred Doors: Fear, Hypocrisy and Policy Schizophrenia in the European Migration Crisis," p. 323.

75 Jacob Poushter, "European Opinions of the Refugee Crisis in 5 Charts," *Pew Research Center*, publ. online September 2016, https://www.pewresearch.org/short-reads/2016/09/16/european-opinions-of-the-refugee-crisis-in-5-charts/.

ticular saw refugees from Syria and Iraq as a major threat.[76] The Pew Research Center concluded that these negative views toward refugees are tied to negative views about Muslims.[77] This explains why Ukrainian refugees in 2022 were more welcomed than Syrians in 2015.

Refugees and asylum seekers are not always viewed as people in desperate need of protection, but as a national liability infringing on cultural identity and economic opportunities. European leaders, instead of trying to change the perceived negative image of migrants, capitalize on this xenophobic sentiment and use it to justify their externalization policies. Overwhelmingly, regardless of one's position regarding refugees, most Europeans believed that the EU did a poor job in handling the 2015 refugee crisis. This includes a staggering 94% of Greeks and 88% of Swedes.[78] Disapproval was high among many segments of society but exceptionally high among people with favorable views of the anti-immigrant parties in Britain (UK Independence Party), Germany (Alternative for Germany), and the Netherlands (Party for Freedom).[79] European leaders recognize now that they should take a hard line on migration and assure the public there will not be a repeat of 2015. This is why the policy of third-country agreements is so appealing: politicians need a fast reduction in numbers, and it does not matter if it's not sustainable. More sustainable policies addressing the problem's wickedness, such as expanding legal channels for migrants to access the EU's labor market, are not as politically desirable as the immediate impact of third-country agreements.

If the policy of third-country agreements is more about optics than about effectively dealing with the European migration crisis, this begs the question of whether the policy is an instrument of political theater. In his book *Border Games,* Andreas outlines in Chapter 1 his thesis of border enforcement as political theater.[80] The book focuses on the US-Mexico border, but Andreas describes the border as a "political stage" that can also apply to the European context.[81] In essence, Andreas observes that actors enforce certain policies not because of their practical effectiveness but for their symbolic significance. The policy of third-country agreements is not just to prevent migrants from coming to Europe, but also to send a message to the public about the government's commitment to border security. If

76 Ibid
77 Ibid
78 Ibid
79 Ibid
80 Peter Andreas, *Border Games* (Cornell: Cornell University Press, 2022), p. 7.
81 Ibid

we assume the policy of third-country agreements is more about optics, then this explains why leaders care less about incurring hypocrisy costs. If this policy is "for show," then it does not matter how effective the policy is. It only matters if the public believes their leaders are doing something about combating the migration crisis.

Conclusion

By viewing the European migration crisis as a microcosm of a wicked problem or as a wicked problem itself, I determined that the policy of third-country agreements fails to treat the crisis as a long-term structural issue. Firstly, I evaluated the policy's effectiveness on its intended aim of deterrence and concluded that third-country agreements do not provide a sustainable, long-term deterrent effect. The policy deters migrants only in the short run, and even then, results are patchy at best, as seen by the small number of migrants returned from Greece to Turkey under the EU-Turkey deal. Next, I assert that the policy of third-country agreements in trying to address the wicked problem of border security exacerbates the wicked problem of weaponization of migration. I argue that this is the most critical drawback of the policy, as its wickedness entails a whole host of other problems, and involves a short run-long run trade-off. Lastly, I argue that the policy incurs hypocrisy costs, a drawback that is less significant compared to the weaponization of migration due to anti-immigrant sentiment in Europe overriding human rights concerns.

For my second research question, my analysis was rooted in short run rather than long run logic, as I viewed the policy from the perspective of the leaders who implement these agreements. I concluded that the policy fulfills the short-term political aims of the politicians promoting the policy. European leaders prioritize being proactive in tackling migration crises and curbing migration flows, albeit for a limited period. The policy of third-country agreements is seen as a politically effective solution as by the time the problem resurfaces, a different political actor may be in the position of power.

Recent developments with the EU's MoU with Tunisia show that this policy appears to be here to stay. The deal with Tunisia already is displaying issues of weaponized migration and hypocrisy costs. Moving beyond the logic of deterrence will be a challenge, but it is the only way to tackle the wickedness of the European migration crisis. Unless Europe shifts its mindset to the long run perspective, these wicked problems will only persist.

Saghaar Wright

Framing the Rape Crisis in South Africa

Introduction

"We've been standing here for 26 seconds, and nobody has been raped."

[1]

On the 2nd of February 2000, the late Minister of Safety and Security went on an American broadcast show called 60 Minutes, to talk about the rape crisis in South Africa, and made the above comment. Often heralded as one of the worst displays of leadership from a politician, his casual dismissal of the gravity of the rape epidemic, in favour of better 'aesthetics' for South Africa in front of Americans, illustrates the massive failure of the South African government to curtail this crisis. This essay will analyse scholarship on the rape crisis, in an attempt to not only illustrate it as a 'crime' committed by individuals to individuals, but to expand upon the wider political and social

1 Tshwete, Steve. 2000. 60 Minutes. Chicago.

context in which it is committed with such frequency in South Africa. Particular focus will be given to the following points; how rape 'manifests' in the contemporary South African context; rape's conceptual point of origin and how it has evolved into its contemporary manifestation; what factors have encouraged this evolution; the groups of people 'rape' most affects (physically as well as socially); and finally various contradictions within 'rape scholarship'. The goal of this essay is to do what the Minister of Safety and Security failed to do, which is to provide a nuanced and well-researched perspective on rape in South Africa, framing this crisis within the broader context of the law, the lived experiences of women, coloniality, and race.

The introduction to this essay suggests that rape is not merely a crime committed in isolation but a societal complex phenomenon with social and political implications for the victims and communities in which it occurs. However, when discussing how the problem of rape manifests in the modern South African context, it is best to begin with its criminal (legal) definition. Including a legal definition is valuable because it sets a baseline for analysing how rape manifests in South African society. South Africa's legal definition of rape reflects the state's current position on what is considered rape, which shapes how rape is understood and prosecuted in society. Furthermore, South African rape laws have evolved over time (as is illustrated below). Including a definition allows this essay to discuss changes in legal approaches to rape and how these changes affect its manifestation in society, such as the expansion of the definition to focus on the lack of consent as its most critical aspect. Most importantly, a legal definition offers a point of comparison for discussing the gaps between legal frameworks and societal experiences of rape.

"SOUTH AFRICA'S DEFINITION OF RAPE HAS SINCE EVOLVED, HEAVILY INFLUENCED BY ENGLISH LAW "

Rape in South Africa was traditionally legally defined under common law as a male engaging in sexual intercourse with a female without her consent.[2] While rooted in Roman-Dutch law, South Africa's definition of rape has since evolved, heavily influenced by English law. Unlike Roman-Dutch law, which required violence as part of the crime, South African law, following the English approach, emphasized lack of consent as the key element.[3] In 1999, the South African Law Commission (later renamed the

2 Rumney, Phil. 2009. "Attitudes, Rape, and Law Reform in South Africa." Journal of Criminal Law, 4.

South African Law Reform Commission in 2002) proposed a Bill on Sexual Offences, suggesting the term 'coercive circumstances' replace 'lack of consent'.[3] The Commission argued that this shift would focus less on the victim's subjective mindset and more on the power imbalance during the incident.[4] However, the current Sexual Offences and Related Matters Amendment Act 32 of 2007 defines rape as missing both voluntary and uncoerced agreement, combining elements of both consent and coercion into the definition.[5] The full definition of rape in the act reads, "Any person ('A') who unlawfully and intentionally commits an act of sexual penetration with a complainant ('B'), without the consent of B, is guilty of the offence of rape".[6]
In summary, this definition, which emphasizes the lack of consent and considers coercive circumstances, illustrates how the state acknowledges the complexities of sexual violence, prioritizing power dynamics and gender hierarchies over mere physical acts. This framework fundamentally shapes societal understanding and legal prosecution of rape, signalling a progressive shift from earlier definitions that focused on violence and male perpetration alone. At first glance, one might assume that the society which housed such a holistic and comprehensive definition of rape, would be a society without a rape crisis, as surely this piece of legislature automatically translates into the appropriate practices and adequate infrastructure to address the problem of rape. However, the lived experiences of survivors often reveal a disconnection from these ideals the legal definition seems to suggest. It is the gap between South Africa's progressive and inclusive legal framework and the widespread prevalence of rape, as well as other forms of gender-based violence, that represent how the rape crisis manifests uniquely in the modern South African context.

As is mentioned above, the current lived experience of women in South Africa in regard to sexual violence stands in great contrast to the progressive and inclusive ideals of legislation on rape. In 2010-2011, reported rape cases reached 56,272 annually, though the true number is likely much higher due to the practice of under-reporting.[7] It is further estimated that one in three South African women will be raped in their lifetime.[8]

3 Rumney, "Attitudes, Rape and Law",5.
4 Rumney, "Attitudes, Rape and Law",5.
5 Rumney, "Attitudes, Rape and Law",5.
6 Africa, The Republic of South. 2007. "Sexual Offences and Related Matters Amendment Act." Johannesburg.
7 Buiten, Denise. 2016. "Framing the problem of rape in South Africa: Gender, race, class and state histories." Current Sociology 2.
8 Buiten, "Framing the problem of rape" 2.

Additionally, levels of non-consensual and coerced sex, which may not always be recognized by victims as rape, are alarmingly high.[9] South African academic, Pumla Dineo Gqola, elaborates further on this contradiction in the manifestation of rape and other forms of gender-based violence in South Africa, "The Republic of South Africa, therefore, has the contradictory situation where women are legislatively empowered, and yet we do not feel safe in our streets or homes. Truly empowered women do not live with the haunting fear of rape, sexual harassment, smash and grabs and other violent intrusions into their spaces, bodies and psyches."[10] Gqola rightfully suggests that although the legislation aims to protect women, in practice it has not lessened the violence South African women experience at all. She vehemently denies the idealistic reality the legislature seems to point at, saying, "A genuinely gender-progressive country is without the gender-based violence statistics that South Africa has, making South African women collectively a majority (at 52 per cent) under siege."[11] As is substantiated above, legislature on rape in South Africa is progressive, in that its definition is victim centric. It focuses on 'lack of consent' and coercive circumstances as being the most critical part of the crime, as opposed to violence, the relationship between the perpetrator and victim, penetration etc. However, these liberal, feminist values enshrined in the legislation, have little to no bearing on the lived experiences of women in South Africa, as the rape statistics for only the first quarter of 2024 are at a staggering 9252 reported cases.[12] It this contradiction of one highest rates of rape in the world against the backdrop one of the most progressive Constitutions and subsequent pieces of legislation in the world, that illustrate the uniqueness of how rape manifests in contemporary South Africa.

Rape has come to be commonly understood within South Africa, as having evolved as a symptom of the patriarchy.[13] Social scholarship has shifted away from earlier interpretations of rape as an act driven by sexual desire or individual pathology, focusing instead on its roots in systemic power imbalances.[14] Patriarchy is seen as the foundation from which the social and gendered dynamics of rape have emerged, framing it not just as a violent act

9 Buiten, "Framing the problem of rape" 2.

10 Gqola, Pumla Dineo. 2007. "How the 'cult of femininity' and violent masculinities support endemic gender-based violence in South Africa." African Identities 5 (1): 3.

11 Gqola, "The 'cult of femininity'", 116.

12 Kgosana, Rorisang. 2024. "CRIME STATS | Crimes against women rise, many rapes happened in schools." Times Live, 30th August: 1.

13 Buiten, "Framing the problem of rape" 3.

14 Buiten, "Framing the problem of rape" 3.

"IN THE SOUTH AFRICAN CONTEXT, RAPE IS WIDELY VIEWED AS A SYMBOL OF PATRIARCHAL OPPRESSION AND A MANIFESTATION OF THE ONGOING QUEST FOR GENDERED POWER."

but as an expression of deeply entrenched power relations. Scholars have long argued that rape is a tool used by men to uphold patriarchal dominance, creating a climate of fear among women to sustain male authority, particularly when in environments where male power is perceived to be under threat.[15] This view reframes rape as a social construct linked to patriarchal systems, evolving in response to shifting power dynamics. In the South African context, rape is widely viewed as a symbol of patriarchal oppression and a manifestation of the ongoing quest for gendered power.[16] It serves as an indicator of the persistent patriarchal hierarchies that continue to define post-apartheid South Africa, despite formal advancements in women's constitutional rights and the widespread adoption of liberal human rights discourse. The evolution of this understanding underscores the contradiction between the government's progressive stance on gender equality and the lived reality of gender-based violence faced by many women, as is elaborated on in the previous paragraph. The 'patriarchy theory' is a plausible conceptual point of origin for rape to have

"ABDICATION IN PALESTINE WOULD BE REGARDED IN THE MIDDLE EAST AS SYMPTOMATIC OF OUR ABDICATION AS A GREAT POWER."

evolved from, however it does present certain problems when applied to the South African context. South African scholars have argued that 'while useful, western aetiological models that highlight the anger, fear and inadequacy of individual men or the monstrosity of patriarchy as central to the "story" of why men rape, fail to provide sufficiently nuanced explanatory or analytical frameworks for the current South African experience of pervasive sexual violence'.[17] The 'patriarchy theory' is also problematic as it has a tendency to feed into assumptions that some societies are, inherently, more patriarchal than others, and that countries with a high level of rape, such as South Africa, are therefore more 'patriarchal'.[18] These assumptions can tie into colonial discourses of third world countries

15 Buiten, "Framing the problem of rape" 2.
16 Buiten, "Framing the problem of rape" 2.
17 Moffet, Helen. 2006. "These Women, They Force Us to Rape Them': Rape as Narrative of Social Control in South Africa." Journal of South African Studies 32 (1): 2.
18 Buiten, "Framing the problem of rape" 4.

as being inherently patriarchal and violent, sidestepping broader issues of context and history. For these reasons, this essay will not use 'the patriarchy' as the conceptual point of origin when discussing how rape has evolved into its contemporary manifestation discussed above, but rather colonialism.

To frame rape and its evolution within the context of colonialism, and in keeping with this essay's pattern of using definitions of rape as the base line for analysis, the definition of rape during the 19th century colonial period can be used. In the colonies, rape was often defined as an illegal act of reproduction.[19] Up until at least 1845 in the Cape, a man could only be convicted of rape if the prosecution could prove that ejaculation had occurred— both "emission as well as penetration" were required.[20] This made prosecuting rape more difficult in the Cape compared to England, where, after 1828, rape victims no longer had to prove ejaculation. This legal discrepancy between the colony and the metropole reveals how racial hierarchies were maintained through the control of sexual relations.[21] Illegal reproduction, particularly involving a black man and a white woman, was seen as a direct threat to the foundations of colonial society. This illustrates the extent to which black male sexuality was demonised, colonial South Africa was not interested in protecting women from rape by black men, but rather they were interested in preventing black men from reproducing with white women because this threatened the racial purity and social order that colonial South Africa sought to maintain. The primary concern was not the protection of women, but the preservation of white supremacy through controlling interracial sexual relations. By framing black male sexuality as dangerous and predatory, colonial authorities used rape laws as a tool to reinforce racial boundaries and prevent the mixing of races, which they viewed as a direct threat to the colonial hierarchy.

The legacy of colonial rape laws continues to shape how rape is handled in contemporary South Africa. While modern legal frameworks, such as the Criminal Law (Sexual Offences and Related Matters) Amendment Act, have expanded the definition of rape to include non-penetrative acts and recognize the role of consent, echoes of colonial logic persist in societal attitudes and the administration of justice. The historical framing of black male sexuality as dangerous and predatory continues to influence present-day

19 Scully, Pamela. 1995. "Rape, Race and Colonial Culture." American Historical Review 100 (2): 343.
20 Scully, "Rape, Race and Colonial Culture" 343.
21 Scully, "Rape, Race and Colonial Culture" 343.

racialized narratives of sexual violence, where black men are often disproportionately perceived as perpetrators. This racialized perception affects policing, media portrayals, and judicial processes, reinforcing harmful stereotypes. Furthermore, the colonial preoccupation with controlling women's reproduction is reflected in contemporary discourses on gender-based violence, where the burden often shifts to victims to "prove" their lack of consent, reminiscent of the evidentiary burdens of ejaculation proof in colonial Cape law. The colonial obsession with maintaining racial hierarchies through the control of sexuality also finds echoes in how marginalized communities, especially black women and queer individuals, experience systemic neglect in the pursuit of justice for sexual violence. Therefore, while South Africa's legal definitions and procedural safeguards have shifted, the socio-political underpinnings of how rape is understood, prosecuted, and discussed remain haunted by colonial ideologies of race, gender, and control.

Similarly, the concept of rape in this colonial period also evolved as a tool used to subjugate black women. In the nineteenth-century Cape, rape laws allowed for the death penalty in severe cases, such as the rape of 'a girl still unmarriageable' (pre-menstruation), married women, or by men in positions of authority—most of these categories possibly serving as a proxy for whiteness (native marriages were not recognised by white society so black women were treated as 'unmarried', and a black man could never be in a position of authority).[22] In Cape Dutch settler society, women's honour was tied as much to the men of their families as to themselves, and this concept of honour and status played a crucial role in how rape cases were handled. It influenced whether a rape was reported, how it was evaluated, and the severity of punishment given to the perpetrator.[23] Black women in the colonies were not given any honour, as they were the 'colonies most degraded category', as a result of them being twice removed from society (in their race and gender) and so their rape cases were never considered deserving of full legal protection.[24] In fact, some scholars have gone as far as to categorise black women as 'unrapable' during the colonial period, as they have pointed out that before the abolishment of the death penalty in South Africa, no white man had ever hung for rape, and the black men that had hung for rape,

22 Scully, "Rape, Race and Colonial Culture" 343.

23 Scully, "Rape, Race and Colonial Culture" 343

24 Coetzee, Azille. 2017. "Facing the sexual demon of colonial power: Decolonising sexual violence in South Africa." European Journal of Women's studies 14 (1): 5.

had only been convicted of raping white women.[25] In the entire history of the death penalty (343 years) in South Africa, not a single rapist of black women was punished, at least never to the extent that rape of white women was punished.[26] This illustrates the colonial legal system's focus on preserving racial and gender hierarchies, which meant that black women's experiences of rape were not considered significant, as their social status was already devalued. This lack of recognition for black women's dignity and humanity reinforced the idea that they were 'unrapable', since the colonial power structure only prioritized protecting white women's purity and honour, often using rape laws as a tool to control interracial relations rather than to seek justice for black women. In summary, it can be suggested that the contradictory contemporary manifestation of rape in South Africa, evolved not as a result of the patriarchy precisely, but rather as a result of colonial social structures that legitimized violence against marginalised groups. These social structures were built to dehumanise black men and women and are still present in the contemporary manifestation of rape today, which could explain why rape persists as an ongoing crisis (rape is still viewed as an individualised personal crime, or because of misogyny inherent in patriarchal systems, and not as a weapon of oppression inherited from the colonial era). In order to develop infrastructure and resources to combat rape, solving the problem of rape first needs to be understood as part of the greater project of decolonisation.

"... DECOLONIZING THE APPROACH TO RAPE WOULD MEAN RETHINKING THE ENTIRE SYSTEM OF JUSTICE..."

Decolonization calls for the dismantling of inherited colonial power structures that continue to render black women and other marginalized groups invisible in the eyes of the law and society. It demands that rape be reframed as a tool of structural violence, rather than as an isolated act of deviance or moral failure. The colonial construction of black women as "unrapable" persists today in how the legal system, media, and public discourse often delegitimize the experiences of marginalized survivors. The over-policing of black men as "inherently dangerous" also reflects colonial logics that pathologized black masculinity. Therefore, decolonizing the approach to rape would mean rethinking

25 Coetzee, "Facing the sexual demon" 5.
26 Coetzee, "Facing the sexual demon" 8.

the entire system of justice, from how survivors are treated in police stations and courtrooms to how perpetrators are prosecuted. This includes dismantling the racialized logic that frames rape as an "exceptional" crime when it crosses racial or class boundaries but treats intra-communal violence with indifference.

Moreover, a decolonized approach to rape would focus on community-based solutions rather than relying on punitive state mechanisms, which themselves are products of colonial control. Restorative justice models, survivor-centred support systems, and community-driven accountability processes are all essential components of this reimagined framework. Addressing rape as part of the broader project of decolonization also requires educational reforms that confront the colonial roots of gender-based violence and challenge the normalization of sexual violence in marginalized communities. This means developing a consciousness that sees rape not as an individual "crime of passion" but as part of a broader continuum of violence rooted in colonial domination. By recognizing rape as a colonial legacy, it becomes clear that addressing it requires more than tougher laws or higher conviction rates—it requires dismantling the entire colonial order that made rape a tool of domination in the first place.

In order to elevate this essay's previous point of rape being a tool of oppression against black men and women, both in physical and social ways, this essay will further detail how the concept of rape is used to form the social identities of black women and men. To begin with how it affects black men in South Africa, rape is often framed as a problem of 'South African' men, with race frequently left unmentioned. Many empirical studies on masculinity and rape refer to 'South African men' or simply 'men' in their titles and findings, yet, upon closer examination, their research samples tend to focus on poor, black men, typically from rural or urban areas.[27] While race and class clearly inform sampling choices, explicit discussions of race are often absent, and its presence is only implied through references to colonialism and apartheid.[28] This silence is not race-neutral, as 'men'—especially violent men—are implicitly conflated with black men, particularly those from the working class.[29] The identification of 'problematic masculinity' predominantly in black working-class contexts reinforces this bias. For instance, a widely publicized study stating that up to one in four

27 Buiten, "Framing the problem of rape" 8.
28 Buiten, "Framing the problem of rape" 8.
29 Buiten, "Framing the problem of rape" 8.

'South African men' admit to raping a woman was based on a sample of poor black men from townships.[30] Other commonly cited literature reviews on rape also always seem to cluster their research in provinces with predominantly black populations, such as the Eastern Cape, Limpopo, Mpumalanga, and the Northern Province, rather than in the Western Cape, Gauteng, or KwaZulu Natal, which have higher concentrations of white and other racial groups, despite high levels of rape in these regions as well.[31] While rape statistics are reported across all provinces, research tends to be concentrated in black communities, and specifically on black men. This reinforces stigmas about black men, inherited from the colonial period, through which their sexuality and ultimately their greater personhood, are demonised as being 'bestial and predatory'.[32]

Black females and their sexuality are structured as the counterpart for black males and their sexuality, 'namely as always already raped and therefore unrapable both in law and in social understanding.'[33] Their 'unrapable' identity is deeply rooted in the racist and patriarchal legal and social systems established during colonialism and apartheid. This legacy persisted even into apartheid and beyond, where the rape of black women became so normalized that it was largely ignored by social workers, doctors, police, and even the victims themselves.[34] As Gqola pointed out, rape was so prolific against black women that it was simply accepted by society.[35] Rape during colonialism and apartheid served as a weapon of control, not just by state agents but across society, reflecting the deeply entrenched racial and gender hierarchies.[36] The enduring impact of this colonial legacy is echoed in the words of colonial judge Menzies, who noted that women in the 'lowest ranks' suffer less degradation from rape than women of higher status, underscoring how the legal system viewed black women as less deserving of protection and dignity.[37] This inheritance continues to shape the power dynamics in South Africa today, where black women are most likely to be raped, not because of any inherent traits of black men, but due to a history of marginalization and the assumption that the suffering of black women matters least.[38]

30 Buiten, "Framing the problem of rape" 8.
31 Buiten, "Framing the problem of rape" 8.
32 Coetzee, "Facing the sexual demon" 8.
33 Coetzee, "Facing the sexual demon" 8.
34 Gqola, Puma Dineo. 2015. "What's race got to do with rape." In Rape: A South African Nightmare. Aukland: Mf Books Joburg 17.
35 Gqola, "What's Race got to do with rape" 17.
36 Gqola, "What's Race got to do with rape" 17.
37 Scully, "Rape, Race and Colonial Culture" 342.
38 Gqola, "What's Race got to do with rape" 17.

In the effort of providing a nuanced argument for the purposes of this essay, this paragraph will be dedicated to various contradictions in rape literature and discourse. In the previous pages of this essay, it was mentioned that while the death penalty still existed within South African courts, no black or white man had hung for the rape of a black women.[39] Black men had only hung for the rape of white women.[40] As this essay suggests, this takes black women out of the equation as victims of rape. Following the logic of the political and social system of the colonial period, which informed its legal framework, black women could not be raped. Or when they were raped, it was not a crime. However, this pattern of logic also leaves white men incapable of being rapists, as no white man had hung for the crime of rape. According to colonial thinking, white men were not capable of raping anyone. As is substantiated above, contemporary rape scholarship seems peculiarly fixed on portraying poor black men as their rapists, meaning that this is yet another colonial injustice that has persisted in modern South Africa (the omission of white men and their equal, if not bigger, capacity to rape).

During the colonial period, white men sat at the top of the hierarchy of power and maintained their seat through developing a complex racial and sexual economy, in which black women (being both 'black' and 'women') are the most subordinate.[41] It is this system that has allowed white men in South Africa to have historically not been seen as rapists (because of the narratives they constructed around race and power) which framed sexual violence in ways that excluded their own actions from being labelled as rape.[42] In colonial and post-emancipation South Africa, black women's bodies were viewed as property, particularly the property of white men, and their sexual abuse was rationalized as part of maintaining white supremacy. As was elaborated previously, the criminal records of the time focused on constructing black men as violent aggressors and black women as inherently sexual, while omitting the sexual violence perpetrated by white men.[43] Illustrated in cases like the Booysen petition, where white men defended a black man accused of rape, their actions were not about racial solidarity but rather about preserving their own racially constructed sexual rights over black women.[44] In this way, white men were able to deny the honour and personhood of black women, ensuring that their own sexual violence

39 Scully, "Rape, Race and Colonial Culture" 356.
40 Scully, "Rape, Race and Colonial Culture" 356.
41 Scully, "Rape, Race and Colonial Culture" 356.
42 Scully, "Rape, Race and Colonial Culture" 356.
43 Scully, "Rape, Race and Colonial Culture" 356.
44 Scully, "Rape, Race and Colonial Culture" 356.

was neither recognized nor punished, further entrenching the view that they were not capable of being rapists. Including white men into the discussion of rape, is essential as it provides a more nuanced and complete look at rape in South Africa and fills in longstanding contradictions and commissions in popular discourse.

"BY FAILING TO CONFRONT THE ROLE OF WHITE MEN IN THE CONTUNUM OF SEXUAL VIOLENCE, SOUTH AFRICAN DISCOURSE ON RAPE REMAINS INCOMPLETE..."

The colonial legacy of framing white men as "incapable of being rapists" continues to influence contemporary discourse on rape in South Africa. Public narratives, media portrayals, and even academic literature tend to disproportionately focus on black men as perpetrators of rape, often portraying them as hypersexual, violent, and predatory. These framing echoes colonial ideologies that pathologized black masculinity while constructing white men as rational, moral, and beyond reproach. As a result, the sexual violence perpetrated by white men is frequently rendered invisible or downplayed in public discourse. Discussions about rape in South Africa often centre on poor, marginalized black men, reinforcing stereotypes and diverting attention from the violence committed by white men, particularly those in positions of power. This racialized framing affects how rape cases are reported, prosecuted, and perceived by society, as white men are less likely to be publicly associated with the image of a "rapist," even when evidence exists to the contrary. It also shapes the experiences of survivors, as victims of white male perpetrators may face additional hurdles in having their cases believed or taken seriously. By failing to confront the role of white men in the continuum of sexual violence, South African discourse on rape remains incomplete, reinforcing the colonial myth of white moral superiority while continuing to pathologize black men. To develop a more comprehensive understanding of rape, it is essential to expose and challenge the historical roots of these narratives, ensuring that white men are no longer exempt from the accountability that is so forcefully applied to black men. Decolonizing the discourse on rape requires broadening the scope of analysis to include all perpetrators, regardless of race, and dismantling the colonial logic that continues to shape modern perceptions of sexual violence.

In conclusion, the rape crisis in South Africa cannot be understood solely as a series of isolated acts of violence, but rather as the product of deeply entrenched historical, social, and legal structures rooted in colonialism and apartheid. The normalization of rape, particularly against black women, is an inheritance of these eras, where racist and patriarchal systems devalued their bodies and lives. The failure to address this crisis by figures like the late Minister of Safety and Security, exemplifies the ongoing neglect in acknowledging and confronting the broader societal and structural forces that sustain this violence. This essay has aimed to provide a more nuanced analysis of rape in South Africa, considering not only its contemporary manifestations but also its origins and evolution within systems of power, inequality, and racial injustice.

Addressing this crisis requires more than superficial responses; it necessitates a recognition of the historical legacies of violence and an unwavering commitment to dismantling the intersecting systems of oppression that perpetuate it. Only through such an understanding can meaningful change be envisioned for the future.

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The Geopolitics of AI Regulation: Europe's Artificial Intelligence Act in Context

Introduction

October 3, 2024:

Technology is where national interest, human progress, education, innovation, culture, and economic development all converge.

-- Mohammed Soliman, Director,

Emerging Technology, The Middle East Institute[1]

On August 2, 2024, Europe's AI Act entered into force, becoming the world's first comprehensive legal framework on the issue of artificial intelligence. Operative across all 27 of its member states, the legislation provides a holistic set of rules for all players in the AI ecosystem --from developers to exporters and deployers.

Though the Act got scant press in the US, it is clearly the opening salvo on what real legal proscrip-

1 Mohammed Soliman, "Tech Containment Is Core to Washington's Cold War 2.0 Strategy," *The National Interest*, October 27, 2022 https://nationalinterest.org/blog/techland-when-great-power-competition-meets-digital-world/tech-containment-core-washington's

tions will look like for any business engaging in generative AI. Enforcement will be punitive – with fines of up to 35 million euros or 7% of global annual revenue (whichever is higher)—so even a large company operating outside the EU will likely contour to its agenda to avoid extraterritorial issues.

As landmark legislation, it will cast an enduring shadow. AI will soon affect nearly every field of human endeavor. Recent studies suggest that worldwide artificial intelligence may add $2.6 trillion to $4.4 trillion annually to global economic output in the coming decade.[2] AI is already altering the geostrategic landscape, as China deploys it in its military modernization and the US seeks to rebalance this unprecedented new threat to the existing international security architecture.

Indeed, AI's promise of epochal transformations portends effects that can't yet be fully comprehended. To its credit, the EU has risen to the challenge of setting up preliminary guard rails.

"HOW DOES THE ACT DEFINE ARTIFICIAL INTELLIGENCE?"

By designing a regulatory framework based on human rights and fundamental values, the EU believes it can develop an AI ecosystem that is inherently safer and more likely to not harm anyone. In this way, the EU aspires to be the global leader in safe AI.

However, important questions remain. How does the act define artificial intelligence? How does it build on European legal precedent in its effort to protect its citizens? How does it compare to the Chinese and American approaches to AI regulation?

From a geopolitical perspective, does the act ultimately help the US in the long run, forging a broader consensus as the West competes globally with China for a new era of technological supremacy?

The Act's Definition of AI and Risk

Originating from a European Commission proposal

2 "The economic potential of generative AI: The next productivity frontier," *McKinsey Digital*, June 14, 2023, https://www.mckinsey.com/capabilities/mckinsey-digital/our-insights/the-economic-potential-of-generative-ai-the-next-productivity-frontier

aimed at a "human-centric" approach to artificial intelligence, the final Act --a text totaling 50,000 words-- is divided into 113 Articles, 180 recitals, and 13 annexes.[3]

It categorizes AI systems based on their potential harm, aiming to ensure scrutiny, oversight, and --in extreme cases-- outright bans on those products deemed dangerous.

In earlier policy iterations, the European Commission's definition of AI was criticized for being too broad. It was eventually modified to approximate the existing OECD definition and now focuses on two key characteristics of AI systems. Article 3(1) spells it out explicitly:

1. **An "AI system" is a machine-based system designed to operate with varying levels of autonomy.**

2. An AI system exhibits adaptiveness after deployment and can infer --based on either explicit or implicit objectives-- from the input it receives, how to generate outputs. (These can be predictions, content, recommendations, or decisions that can influence physical or virtual environments.)

This issue of inference is key. In its Recital 13, the act is explicit in that does not cover "systems that are based on the rules defined solely by natural persons to automatically execute operations." Thus, the capacity of an applicable AI system to infer is what takes from the more commonplace data processing. It enables learning, reasoning, and can fashion new modeling on its own. The techniques that enable this type of inference while building an AI system include:

1. machine learning mechanisms that learn from data to achieve certain objectives.
2. logic-based approaches that infer from encoded knowledge or symbolic representation of the task to be solved.

With this definition in mind, the AI Act then classifies these autonomous systems according to their risks to society, creating a uniform framework across all EU countries:

Banned AI: Some AIs are prohibited due to the unaccept-

3 "The EU Artificial Intelligence Act: Up to date developments and analyses of the EUAI Act" https://artificialintelligenceact.eu/ai-act-explorer/

able risks they pose. These include systems used for government or corporate "social scoring," certain biometric systems (like those for emotion monitoring at work), or games or bots that could encourage unsafe or compulsive behavior in children.

High-Risk AI: These include applications like medical AI tools, critical infrastructure, credit loans, or recruitment software. They must meet strict standards for accuracy, security, and data quality, with ongoing human oversight to avoid profiling and personal identification.

Moderate-Risk AI: This category includes front-facing systems like chatbots and AI-generated content. They must make explicit to users they're interacting with AI. Content like deepfakes should be labeled that they have been artificially made. Transparency and labeling are key.

Low risk: Most AI systems (spam filters and AI-enabled video games, etc.) will face no enforcement scrutiny under the Act, but developers may voluntarily adopt to specific guidelines.

It lays down further conditions required to develop and deploy trusted AI systems, both for developers when processing personal data during the development phase, and for users who may seek to pour personal data into a system during the deployment phase.

Its Timeline: The Ban, the Code of Practice, Harmonization

The AI Act entered into force on August 2, 2024, though most of its rules faze in at different times over the course of the next 2 years. In February 2025 the ban on prohibited practices goes into effect, and later that August all regulatory bodies --the AI Office, European AI Board, etc.-- must be in place. On August 2, 2026, full enforcement arrives, with each member state having set up a regulatory agency at the national level.

In terms of the ban, certain companies have already started to modify their product rollout based on the Act. Meta will not release an advanced version of its Llama AI model in multimodal form in the EU, citing the "unpredictable" behavior of regulators.

"...THE ACT IS CLEARLY BUILT ON SOME OF EUROPE'S MOST DEFINING LEGISLATION. IN MANY WAYS, IT CONTINUES THE TRAJECTORY OF THE EU'S MOST AMBITIOUS WORK."

Likewise, on August 8th, the social media platform X agreed to pause using European user data to train its AI system, after the Irish High Court found that the personal data of millions of EU users were being fed as input into Grok, its AI search tool, in Spring 2024 without any opt-out option available until July.

The European Commission has launched a year-long consultation on a "Code of Practice on GPAI Models", with AI developers and academics invited to submit their perspectives on a final draft. This will also set the parameters of the "AI Office," the enforcement agency that gives teeth to the AI Act.

Human Rights and Europe

Critics have been quick to suggest that, as Europe is home to only two of the twenty top tech platform companies, its AI regulation is some form of "sour grapes" protectionism. However, this view is flippant. Yes, there are ongoing battles between the US and EU -- issues of data privacy, digital taxation, and antitrust—but the Act is clearly built on some of Europe's most defining legislation. In many ways, it continues the trajectory of the EU's most ambitious work.

The European Convention on Human Rights was signed in Rome on November 4, 1950, by the twelve member states of the Council of Europe. Enforced by the European Court of Human Rights in Strasbourg, the Convention was a milestone in international law.

It was the first legal entity to give binding force to some of the rights stated in the 1948 Universal Declaration of Human Rights. It was also the first treaty to establish a supranational court to ensure that the parties fulfilled their responsibilities, and which could challenge decisions taken by their own national courts. (Any individual, group of individuals, company, or NGO can petition the Strasbourg Court, once all lower venues have been exhausted.) It has now become an urtext for EU relations. To even join the Council of Europe, a state must first sign and ratify the ECHR.

The convention itself has sixteen protocols, with article 8 the most pertinent here. Article 8 provides the right to one's "private and family life, his home and his correspondence", with caveats related to public safety, morality, national security, and the economic well-being of

the country.[4] This article clearly provides a right to be free of unlawful searches, but as it protects a "private and family life," it also clearly provides the direction of a broader interpretation.

This "right to privacy" was not in the UN's 1948 Universal Declaration of Human Rights. The fact that it is given explicit prominence in European law is telling. Europe's focus on privacy has obvious touchstones in its 20th-century history. The Nazi regime abused personal data to identify and annihilate its selected out-groups. Ruthless surveillance tactics further evolved with East Germany's Stasi and the postwar Warsaw Bloc secret police in general. Governmental data collection practices have a dark past on the continent, and thus the right to data privacy is now closely tied to the issue of human dignity in Europe than perhaps the US.

"Human-centric Digitization"

In 1981, the Council of Europe created the world's first international treaty to assure data protection. This convention applied certain rules to the "automatic processing of personal data" and is probably the foundational basis of the EU's 2018 General Data Protection Regulation (GDPR).

"IN 1981, THE COUNCIL OF EUROPE CREATED THE WORLD'S FIRST INTERNATIONAL TREATY TO ASSURE DATA PROTECTION."

The GDPR calls for a certain transparency in processing personal data, curtailing the quantity and restricting it to certain purposes. It designates a "privacy by design" protocol that requires companies to ingrain the GDPR rules into their initial design of services.

The "right to be forgotten" is perhaps the most

4 Charter of Fundamental Rights of the European Union, *Official Journal of the European Communities,* December 18, 2000, p 10

unique obligation related to the GDPR. This gives any person the right to force platforms to "delink" their name from information that is no longer valid. The Court of Justice of the EU played a key role in shaping this issue through its landmark Google Spain case (2014), in which Mario Costeja Gonzalez, a Spanish citizen, requested that the search engine remove results that linked him to a bankruptcy that had been resolved 15 years prior. The court judged that Google must honor all requests to pull content proven to be invalid or out-of-date from its search algorithm.

The GDPR is the world's toughest data privacy law, and it has a long reach. Any corporation anywhere, if they collect data on EU citizens, can see massive penalties. Responding to a rise in cyber breaches and cloud computing, when tracking cookies was becoming insidious, the regulation had an immediate impact. The now ubiquitous "opt-in for cookies" notification is a product of the law, as tech platforms have adhered to its aims even in the US to avoid extraterritoriality issues.

"...THE LAW DID SUCCEED IN CREATING A BROADER GLOBAL CONSENSUS, A "SHARED VISION OF HUMAN-CENTRIC DIGITIZATION."

In this way, the law did succeed in creating a broader global consensus, a "shared vision of human-centric digitization." As EU Commission VP Josep Borrell described at the time:

> The 1948 Universal Declaration of Human Rights established the dignity of the individual, the right to privacy and to non-discrimination, and the freedoms of speech and belief. It is our common duty to make sure that the digital revolution lives up to that promise.[5]

The GDPR's enforcement arm, the European Data Protection Board, requires that each member state establish a "data protection authority" to enforce its rules. Fines can reach 20 million euros or 4% of a company's total annual turnover.

The AI Act does not modify the GDPR but builds on it.

5 Josep Borrell & Margrethe Vestager, "Why Europe's Digital Decade Matters," p 1

The Brussels Effect

Despite massive lobbying against the GDPR before its passing, most of the big tech platforms have now embraced the regime. Meta chose to extend many GDPR protections globally to the company's 2.8 billion Facebook users. Google revised its privacy policy based on it, and Apple now carries out OS impact assessments globally according to GDPR protocols. Microsoft has gone further, implementing the GDPR's "privacy by design" and baking it into the early development of its products.

This appears to be yet another example of "The Brussels Effect." These tech giants know that the size of the EU consumer market is simply too big to ignore. The second-largest economy on earth, Europe has an affluent population of 450 million and a GDP of $17.5 trillion. They enjoyed stunning success: Google is 90% of search in the 27-member union; Apple rakes in a quarter of its global revenue there; and Meta's Facebook has 410 million monthly active EU users.

"AS OF 2024, MORE THAN 150 COUNTRIES HAVE ADOPTED DOMESTIC PRIVACY LAWS, AND MOST OF THEM RESEMBLE THE GDPR IN SOME WAYS."

The Brussels Effect can be clearly seen in the adoption of EU laws by foreign nations around the world. As of 2024, more than 150 countries have adopted domestic privacy laws, and most of them resemble the GDPR in some ways. It has essentially become the norm in many parts of the world as governments see it as an easy template for their own regimes.[6]

This can be seen on every continent. Brazil's data privacy laws of 2018 emulate the GDPR's broad definition of personal data. Nigeria's Data Protection Bill of 2023 often uses exact parlance in sections, though with caveats about public morality.[7] India's PDPB bill, though withdrawn in 2021, was quite similar. With so many countries

6 Paul Schwartz, "Transatlantic Data Privacy, 106 *Georgetown Law Journal.* 115, 122 (2017), p 122

7 Mercy King'ori, "Nigeria's New Data Protection Act, Explained," *Future of Privacy Forum*, June 28, 2023
https://fpf.org/blog/nigerias-new-data-protection-act-explained/

now operating with GDPR-like rules, it becomes harder for those nations creating data laws to justify a marked difference from the global norm.

The effect is even seen in the corporate structure of a few firms. Meta, for example, altered its corporate structure --shifting its Africa, Asia, Australia, and Middle East divisions out of its Irish corporate entity and placing them within its US legal structure. This thus keeps African or Asian users from seeking legal addresses under the EU's GDPR.

Anu Bradford has made the point that the Brussels Effect of the GDPR works precisely because it targets the "inelastic" aspect of the market –consumers living in a jurisdiction, and not fleet-footed capital.[8] But it does work to capital's advantage on one level. Companies always prefer standardization over customization, particularly since compliance is onerous. Customization for too many countries is unappealing, costly, and involves more legal fees for the tech giants. In some way, GDPR does work to tech's advantage in bringing legal clarity to a large, 27-member state zone.

The desire for an "adequacy decision" from the EU might also explain the GDPR adoption worldwide. Those nations with privacy laws deemed "adequate" by GDPR standards can be allowed data transfers from the EU. This obviously helps with a foreign nation's corporate competitiveness, providing more business opportunities in the zone. Canada, New Zealand, Argentina, Uruguay, and Israel are a few of the notable countries granted decisions. Ironically, the US doesn't have an adequacy decision from the EU, a fact that has placed the legality of the data flows between the US and EU in contention and has been the subject of numerous lawsuits.

AI Convention and AI Act: Velvet Glove, Iron Fist?

The theoretical basis for the AI Act appeared five years ago. In 2019, the European Commission published "The Ethics Guidelines for Trustworthy AI." This document – which stated that "AI systems should not unjustifiably subordinate, coerce, deceive, manipulate, condition, or herd humans" – arguably set the course for the AI Act. It stresses the importance of a human-centric artificial intelligence, in which "natural persons" must be able to "over-

8 Bradford, *Digital Empires*, p 327

"OVER THE PAST SEVERAL YEARS, CHINA HAS MOVED TO IMPLEMENT SOME OF THE WORLD'S TOUGHEST REGULATIONS ON DATA AND AI."

ride" algorithms when needed to protect "fundamental rights."

In June 2023, more than a year before the AI Act was signed, the Council of Europe unveiled its inaugural draft of the "AI Convention on AI and Human Rights." Comprising 34 articles, the document –like others by the Council-- aims to formulate a broader open-ended framework of standards, not just within Europe. Its focus: data privacy, protection against discrimination, and the potential misuse of AI deployment. Like the GDPR, it aims to create a regulatory path that other nations may follow.
In these articles, we can clearly see the founding principles of the EU AI Act. However, two other articles are also designated: each party must provide effective remedies for human rights violations, and each must have the ability to prohibit those systems that are incompatible with the convention's core principles.

This EU approach is focused on securing the individual and collective rights of citizens in a digital society. They proactively ensure that often opaque AI processes won't harm a society's democratic political culture or trammel fairness in the distribution of its benefits.
The European Declaration on Digital Rights and Principles for the Digital Decade, adapted in December 2022, proclaims that "people are at the center of the digital transformation" and emphasizes "the importance of democratic functioning of the digital society and economy." All technological solutions should:

1. Benefit everyone and improve the lives of all people in the EU.
2. Technological solutions should also respect people's rights, enable their exercise and promote solidarity and inclusion."[9]

This political statement is interesting in its humanist focus. It identifies "democracy, fairness, and fundamental rights" as key values guiding EU policymaking.

Pre-eminence: China's Approach to AI

In contrast to the EU, China has developed its own AI policy, one that is less rights-driven and focused more on sovereignty, economic development, and implementation. It follows from Beijing's belief, clearly written in

9 Bradford, *Digital Empires*, p 106

both its "Dual Circulation" and "Made in China 2025" policies, that emerging technologies and high-tech manufacturing will be key to twenty-first century dominance.

Due to state funding, powerful tech firms, and select universities like Tsinghua, the country has emerged as a major player in machine learning and AI research. Notable players in the sector include:

Huawei: AI chips and telecommunications infrastructure

Baidu: Autonomous driving / natural language models.

Alibaba: E-commerce algorithms / cloud computing

Tencent: AI-driven social media & medical imaging / healthcare solutions.

01.AI: This Chinese unicorn startup is pushing the LLM envelope with its open-source model Yi-34B.

Between 2014 and 2023, China filed over 38,210 AI patents, more than all other nations combined.[10] Even the US military is playing catchup with China's PLA on the AI front, which is developing a new type of "intelligentized" warfare, looking to create wholly unmanned, swarm combat systems and better situational awareness.[11] The DoD's Replicator Program is something of a "Hail Mary" effort by the US to get to the Chinese level in AI-enabled swarm drones.

Over the past several years, China has moved to implement some of the world's toughest regulations on data and AI. In contrast to the EU's focus on state oversight regarding data privacy, fairness, and "human guidance," Beijing's policies make frequent reference to the necessary balance between "security" and "development." For years China has been implementing the public facial recognition systems and "social scoring systems" that are now clearly outlawed by the EU AI Act. More machine learning and artificial intelligence will give these suppressive measures additional teeth.

As early as 2017, China began placing AI as a new strategic pillar within its national agenda. That year, the

10 Amber Jackson, "China Steams Ahead of the US in the AI Patent Race," *Technologymagazine.com*, July 07, 2024
https://technologymagazine.com/ai-and-machine-learning/china-steams-ahead-of-the-us-in-the-ai-patent-
race

11 Jiayu Zhang, "China's Military Employment of Artificial Intelligence and Its Security Implications," *The International Affairs Review*, August 2016
https://www.iar-gwu.org/print-archive/blog-post-title-four-xgtap

State Council unveiled its "New Generation Artificial Intelligence Development Plan," with the aim of making the mainland the world's AI leader by 2030.[12] Like Made in China 2025, this act is comprehensive and focused on harnessing multiple drivers: economic growth, national security, and enhanced social services. The plan's emphasis is on seizing the strategic initiative, creating the speedy diffusion from theory to application across multiple spheres, and finding dominance through innovation by 2030.

After ChatGPT exploded on the world stage in late 2022, China was one of the first nations to issue targeted regulations on generative AI, releasing its "Interim Measures for the Management of Generative AI Services." These set out restrictions on LLM (large language model) training and outputs of LLMs and require AI services "with the capacity for social mobilization" to carry out a security assessment and file pertinent algorithms with state regulators before being made public.

Because of these "Measures," since 2023, all LLMs developed by China's tech platforms must gain state approval before going public. In response to this, Apple pulled nearly a hundred apps that offered AI chatbot service from its China store before the measures became enforced.

China's AI strategy –which seeks all developments to align with state objectives while maintaining strict control over information— could further entrench geostrategic splits as it is exported to the Global South. According to Rutgers University Fellow Shaoyu Yun:

Even if China doesn't outpace the U.S. in developing the latest AI models, its applications can still significantly impact the geopolitical landscape. By integrating AI into areas like biotechnology, industrial engineering, and state security, Beijing can export its controlled AI systems to other authoritarian regimes. This would not only spread China's model of governance but also consolidate its influence in regions antagonistic to Western ideals.[13]

In this regard, the issue of AI lies not in its novelty but in its strategic deployment in the service of state

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12 Graham Webster, "Full Translation: China's 'New Generation Artificial Intelligence Development Plan' (2017)," Stanford University's *Digichina*, August 1, 2017 https://digichina.stanford.edu/work/full-translation-chinas-new-generation-artificial-intelligence-development-plan-2017/

13 Shaoyu Yun, "China's AI Gambit: Old Tricks for a New Game," *The Diplomat*, June 10, 2024 https://thediplomat.com/2024/06/chinas-ai-gambit-old-tricks-for-a-new-game/

control. For Yun, China's approach suggests a fundamental rule in international relations: for new technology to alter a balance of power, it doesn't need to be pre-eminent or the world's best. It just needs to be the most effectively wielded.

AI Regulation, American Style

Enforceable regulation does not yet exist in the US at the national level, but there have been developments. In mid-2023 the White House obtained a set of voluntary commitments on AI risk from fifteen big firms at the cutting edge of the industry. It also released its "Blueprint for an AI Bill of Rights" which sets out a preliminary approach to data privacy and safety.

More prominently, on October 30, 2023, the Biden administration announced its "Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence."[14] This order is focused on national security and misinformation: the US government must be informed of any developer tests that show a risk to national security, and the National Institute of Standards and Technology (NIST) will set standards for "red team" testing (i.e. testing to break the AI models pre-launch to expose problems). It also tasks the Commerce Department to create "watermarking" for AI-generated content so that Americans can recognize deepfakes and know that the communications they receive (particularly from government bodies) are authentic.

In addition, the order created a new entity –the US AI Safety Institute—which will explore AI safety across "national security, public safety, and individual rights." Housed in the National Institute of Standards and Technology (NIST) that has been created, with a leadership team appointed in April 2024 by the Commerce Department, this institute will not be an enforcement agency, but a policy center.[15]

Biden's EO suggests how US policy will unfold: it will be industry-friendly, offering a voluntary shift by

14 Tate Ryan-Mosley, & Melissa Heikkila, "Three things to know about the White House's executive order on AI," *MIT Technology Review*, October 30, 2023 https://www.technologyreview.com/2023/10/30/1082678/three-things-to-know-about-the-white-houses-executive-order-on-ai/

15 U.S. Artificial Intelligence Institute, NIST.gov

https://www.nist.gov/aisi

business to best practices, and rely on –like what happened with crypto over the past decade—the various executive agencies to craft their own rules (with input from NIST).

Though hailed as a step forward, the EO remains more carrot than stick. The watermarking technologies that the EO points to are not yet built and may be difficult to ensure. Also, the order does not actually require the tech platforms to use these technologies or even require that AI companies adhere to NIST standards or testing methods. Most of the EO relies only on voluntary cooperation.

Unlike the EU's AI Act which was passed at the highest level of government, or its AI Office, which will be an enforcement agency operative by August 2, 2025, the US Safety Institute appears to be more of a policy center, one that can be marginalized or "institutionally captured" by whatever political party that is in power.

This approach remains friendly to tech, emphasizes self-regulation, and has no punitive measures. It also ignores the bigger issue of training models to minimize foreseeable harm outside of national security issues. According to chief ethics scientist Margaret Mitchell, this is a "whack-a-mole" approach, responding to emerging problems instead of requiring best data practices for the start: "The biggest concern to me in this is it ignores a lot of work on how to train and develop models to minimize foreseeable harms."[16]

At present, the US is unlikely to pass any AI legislation at the national level in the foreseeable future. The 118th Congress (2023-2024), notable for its political infighting, may end up as the least productive legislative session in US history.

Interestingly, though, there has been a lot of state-level action. Sixteen states had enacted AI legislation, with more than 400 AI bills introduced at that level in 2024, six times more than in 2023.[17]

Colorado is the first state in the nation with an AI law on the books that will be enforceable. The Colorado

16 Tate Ryan-Mosley, & Melissa Heikkila, "Three things to know about the White House's executive order on AI," *MIT Technology Review*, October 30, 2023 https://www.technologyreview.com/2023/10/30/1082678/three-things-to-know-about-the-white-houses-executive-order-on-ai/

17 Grant Gross, "The complex patchwork of US AI regulation has already arrived," *CIO.com*, April 5, 2024 https://www.cio.com/article/2081885/the-complex-patchwork-of-us-ai-regulation-has-already-arrived.html

Artificial Intelligence Act is at its core anti-discrimination legislation, focusing on any bias caused by AI in the context of a "consequential decision" –specifically any decision that can "significantly" impact an individual's legal or economic interests, whether it be employment, housing, credit, lending, educational enrollment, legal services, and insurance. (In many ways, it is stricter but also more nebulous than the EU's restrictions on social scoring, and there is now pushback by Colorado businesses that fear its wide mandate will trigger lawsuits.)

Other major states like California, Connecticut, New York, and Texas, are starting the process. In February, the California State Legislature introduced Senate Bill 1047, which would require safety testing of AI products before they are released. It would require AI developers to prevent deployers from creating any derivative models that could cause harm. Last year, Connecticut passed Senate Bill 1103 which regulates state procurement of AI tools. This emerging patchwork of state laws could be tough for companies –even the tech titans-- to manage. That is why major players like Microsoft, Google, and OpenAI have all called for regulations at the national level, feeling that this growing number of state laws will crimp the adoption of AI due to the perceived compliance burden. According to Adrienne Fischer, a lawyer with Basecamp Legal, a Denver law firm monitoring state AI bills: "This fragmented regulatory environment underscores the call for national laws that will provide a coherent framework for AI usage."[18]

Conclusion: Techno-Democracies Unite

In the regulatory discourse of both China and the EU, there is always the unspoken actor: the US. Whereas China's process is designed for national economic success vis a vis a truculent American hegemon, the EU's process is focused on protecting its unique sense of culture and rights-centered governance from overriding big-tech dominance.

Indeed, for the EU, its contests with the US about data privacy, digital taxation, and antitrust have been going on for nearly three decades. In many ways, the Europeans have been playing catch up to the "move fast and break things" libertarianism of US tech since the mid-1990s,

18 Grant Gross, "The complex patchwork of US AI regulation has already arrived," *CIO.com*, April 5, 2024
https://www.cio.com/article/2081885/the-complex-patchwork-of-us-ai-regulation-has-already-arrived.html

when the opening chapter of the internet began.

For decades, the US has urged other nations to deploy a non-regulatory, market-oriented approach to tech. The very first effort at an international consensus to digitization embodied this laissez-faire attitude. In 1997 the Clinton administration's framework for global electronic commerce codified that "markets maximize individual choice and individual freedom" and its 2000 EU-US Joint Statement assured that both parties agreed "that the expansion of electronic commerce will be essentially market-led and driven by private initiative."[19]

However, as the scope and power of the tech platforms became so central to daily life in the developed world, a governance issue has arisen.

Software has now "eaten" many societal processes whole. Digital providers often replace –at least in de-facto, operative ways-- local governments as rule setters via their terms of service and community norms. As a result, these global tech companies often provide consumers with digital resources more effectively than some smaller nations, a trend which becomes even more extreme with AI.

Geopolitically, there will be growing differences between how authoritarian and democratic nations will promote—or weaponize—their AI industries. Because China operates more as a state-capitalist society, its regulatory model reflects its focus on top-down control and national power. Its own historical sense of a "Middle Kingdom" centrality has kept it at odds with the US-led, Brittan Woods-derived, international order.

As it seeks to become the world leader in most strategic technologies within the decade, China is pouring money into AI development. An Australian "tech competitiveness" think tank recently stated that the mainland is now the world leader in research on almost 90% of critical technologies, essentially switching places with the US in two decades due to heavy state funding.[20] It is also making a concerted push to bring the developing world to its tech table. Via Huawei, it has been quick to outmaneuver the West and fund many regimes in the developing world with

19 Anu Bradford, *Digital Empires*, p 266

20 Adam Hancock, "China takes lead in critical technology research after 'switching places' with US," *VOA News*, September 10, 2024
https://www.voanews.com/a/china-takes-lead-in-critical-technology-research-after-switching-places-with-us/7779603.html

their digital buildouts. It has ambitious projects in Asia and Africa, the "100 smart cities movement" in Indonesia being a perfect example.[21]

Domestically, the US often operates by post-facto litigation and piecemeal actions from different states. Its political process at the national level is often buffeted by powerful lobbying. Pressure from lobbyists and the money-driven nature of politics in the US often means the deepest pockets will hold sway. Without proactive regulation, reckless AI initiatives clearly risk privacy, covert social scoring, and quiet disenfranchisement. This could lead to disaffection with the Western model.
This has seriously troubling implications for the United States and its allies. As Anu Bradford has suggested: "the delays that come with democratic rulemaking . . . allow China to quickly operationalize in the absence of democracy."[22]

EU regulation may save the US from itself in many ways. Europe's AI Act could help implement a broader consensus among Western powers and their allies. Technological cooperation among allies will be essential for geopolitical reasons, but also for better visibility and coherence at the business level. Corporations like to avoid the compliance costs, obviously, but the AI Act will also foster the same type of "adequacy decision" coherence that has happened via the GDPR for value-sharing corporations hoping for business access.[23]

Creating a broader consensus between the Western democ racies and its allies is exactly what is needed as the systemic rivalry with China emerges. A rights-driven model will be more compelling to a larger swath of the world, including Japan, South Korea, Brazil, and India.
Just as the EU's Convention of Human Rights was both a statement of values and a rebuke of what was happening behind the Iron Curtain at the time, the AI Act makes crystal clear in its values the contrast between what a 21st-century rights-driven "techno-democracy" will look like *vis a vis* a 21st century, state-centric "techno-autocracy."

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21 "Can Indonesia Achieve '100 Smart Cities' by 2045?" *YCP.com*, August 21, 2024
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22 Bradford, *Digital Empires*, p 365

23 Grant Gross, "The complex patchwork of US AI regulation has already arrived," *CIO.com*, April 5, 2024
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