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DEMOCRATIC DEFICITS: PATHWAYS AND BARRIERS TO ELECTORAL REFORM IN CANADA

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Canadian federalism is founded on the recognition of distinct territorial identities, particularly as it relates to the province of Québec. Despite a substantial increase in Canada's demographic diversity since Confederation in 1867, the federal government remains relatively homogeneous in its demographic composition. The current electoral structure is based solely around territorial units, to the detriment of non-territorially based identities such as women, the LGBTQ+ community, and ethnic minorities. There are two system-level methods of electoral reform that could remedy this representational gap, each of which is applicable to the Canadian context: Proportional representation and reserved seats. This essay examines the cases of New Zealand and Uganda, which have implemented proportional representation and reserved seats, respectively, to argue that either of these reforms would ultimately increase the substantive representation of non-territorially based identities in the Canadian federal government. The essay also includes a discussion on the descriptive and substantive representation of minorities within each of these contexts. Historical Institutional theory is used to explain why New Zealand and Uganda were able to implement electoral reform, while Canada has yet to do so. In summation, the substantive representation of non-territorial identities in the Canadian federal government can be improved through the adoption of either proportional representation or reserved seats; however, this shift will require a critical juncture that would force the Canadian government to shift its current policy path away from a strictly majoritarian electoral framework.



Introduction

Canadian federalism is founded on the recognition of distinct territorial identities, particularly as this relates to the province of Québec.¹ While federalism was able to accommodate territorially-based cultural divides by allowing for increased subnational autonomy, the current national democracy fails to appropriately represent a diverse population.² In particular, non-territorial identities — such as women, the LGBTQ+ community, and ethnic minorities — remain underrepresented at the federal level.³ Federal parties have made efforts to run slates, which are more representative of the Canadian populace;⁴ however, this is not a strategy that has been universally adopted nor made mandatory.

This research paper proposes that there are two system-level electoral reform initiatives which can serve to increase non-territorial identity representation in the Canadian Parliament: the implementation of proportional representation, and the creation of reserved seats for underrepresented groups. There are a variety of methods through diversity can be promoted within elected institutions, and each is the responsibility of a different area of the political process. For example, while Canadian political parties may impose gender quotas for candidate slates, this is neither mandatory nor obligatory at the system-level. This paper examines proportional representation and reserved seats because they are methods of increasing representation that will apply universally across the federal electoral process.

New Zealand's 1993 adoption of proportional representation is examined because of the country's similarities to Canada such as their once shared use of the First-Past-the-Post (FPTP) electoral system and parliamentary government structure. The Ugandan Parliament, which boasts a broad approach to the use of reserved seats, is examined in the following section. Uganda was chosen as a case study due to the broad nature of its reserved seat system; the government currently reserves seats for women, youth, people with disabilities, and workers rather than a single underrepresented group. Uganda and Canada also currently utilize majoritarian electoral methods, suggesting that reserved seats are applicable within Canada's current electoral framework.

1 Ronald L. Watts, "The American Constitution in Comparative Perspective: A Comparison of Federalism in the United States and Canada," *The Journal of American History* 74, no. 3 (1987): 770.

2 Mebs Kanji and Antoine Bilodeau, "Value Diversity and Support for Electoral Reform in Canada," *PS: Political Science and Politics* 39, no. 4 (2006): 834.

3 "Canadian Parliament Primer," *CBC News*, CBC Radio-Canada, accessed October 30, 2019, <https://newsinteractives.cbc.ca/elections/federal/2019/commons/>.

4 Rachel Emmanuel, "Parties look to attract more female candidates," *iPolitics*, last modified October 17, 2019, accessed October 30, 2019, <https://ipolitics.ca/2019/10/17/parties-look-to-attract-more-female-candidates/>.



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Historical institutionalist theory is used to examine how New Zealand and Uganda were able to implement these measures as well as explain why Canada has failed to adopt electoral reform at the federal level. As a whole, this essay posits that Canada can increase the substantive representation of marginalized groups at the federal level through the adoption of either proportional representation or reserved seats but that this change will only come to fruition in the event of a critical juncture.

Historical Analysis of Canadian Federalism

The adoption of federalism in Canada arose out of the need to reconcile cultural differences between two distinct identities: the French, who resided in Lower Canada (also referred to as Canada East) and the English, who, along with settling in the now-Maritime and prairie regions, comprised a majority in Upper Canada (or Canada West). Tensions between the two groups became increasingly hostile after the union of Upper and Lower Canada in 1840, and this divide was prevalent in the discourse surrounding electoral institutions. English-Canadians desired a Rule by Population, which would grant them increased control over the colony's affairs, while French-Canadians favored a complete separation of the territories to allow for absolute autonomy within their distinct cultural contexts.⁵ These expressions of the future vision of Canada were also espoused by prominent politicians of the time, including Sir John A. MacDonald of Canada West and Sir George Etienne Cartier of Canada East. MacDonald was a proponent of unitary government, coinciding with the Anglo-majority's desire for Rule by Population, while Cartier advocated for a federal structure. Notably, many Francophones were not (and continue not to be) explicitly in favor of federalism; they simply desired cultural autonomy within their territorial region, regardless of governmental structure.⁶ After extensive negotiations that included political leaders and businessmen from Anglo- and Franco-Canada, the Canadian federation was ushered into existence with the passing of the British North America Act of 1867. The new framework for the government was a highly centralized federal state, a compromise between English and French interests.⁷

While the division between English and French Canada was primarily cultural in nature, it was underpinned by the assumption that a cultural identity necessitates a defined territory through which they can be represented in electoral governmental institutions. In other words, the location is a representation of cultural identity which appears to take precedence over other aspects of identity, particularly within institutionalized representative bodies. While the unique struggles associated with location and culture cannot be undermined, this approach fails to consider the experiences and representation of non-territorially based identities. The following

5 Watts, "The American Constitution in Comparative Perspective," 770.

6 Samuel LaSelva, *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements, and Tragedies of Nationhood* (Montréal.: McGill-Queen's University Press, 1996), 23.

7 Watts, "The American Constitution in Comparative Perspective," 770.





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section discusses the differences between descriptive and substantive representation between the case study subjects, New Zealand, and Uganda.

Descriptive and Substantive Representation

The use of the term 'representation' has been subject to scrutiny, including whether the representation of marginalized groups is descriptive or substantive. Descriptive representation can be operationalized as a situation in which "...a minority's representatives do not facilitate public policy coinciding with the group's preferences."⁸ Conversely, substantive representation necessitates that "...group representatives stand out for the group's interests as [they] reveal themselves in policy-making processes."⁹ For example, a 2007 study found that women elected in proportional representation electoral systems, including those in New Zealand, were more likely than those elected under majoritarian systems to believe that they have a specific responsibility to represent women in the government.¹⁰ In other words, their role in government was one of substantive, rather than descriptive, representation. However, descriptive and substantive representation can also be perceived as two evolutions within a multi-step process rather than two separate outcomes; when representation begins as descriptive, it can, in turn, lead to increased substantive representation within policy-making processes. Additionally, "[i]n what we might call a role model capacity, elected representatives of a group may broadly influence public perceptions of the group, and the public's and legislators' preferences concerning policies related to the group."¹¹ Phrased differently, descriptive representation can lead to substantive representation, which subsequently influences both public and political attitudes towards policies which directly affect the group. The shift from descriptive to substantive representation is ongoing in Uganda. While women's initial inclusion in the Ugandan parliament, after the ratification of the 1995 Constitution, was motivated by a politics of control rather than a feminist agenda, women MPs have been increasingly advancing feminist legislation and challenging patriarchal

8 Maoz Rosenthal, Hani Zubida, and David Nachmias, "Voting locally abstaining nationally: descriptive representation, substantive representation and minority voters' turnout," *Ethnic and Racial Studies* 41, no. 9 (2018): 1633.

9 Ibid.

10 M. Tremblay, "Electoral Systems and Substantive Representation of Women: A Comparison of Australia, Canada and New Zealand," *Commonwealth and Comparative Politics* 45, no. 3 (2007): 289.

11 Donald P. Haider-Markel, *Out and Running: Gay and Lesbian Candidates, Elections, and Policy Representation* (Washington D.C.: Georgetown University Press, 2010), 120.





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institutions.¹² In sum, even if a group's representation begins as descriptive, it can still lead to substantive representation. There are two potential pathways to achieving a more representative Canadian Parliament through electoral reform: the adoption of proportional representation and the implementation of reserved seats.

Pathways to Representation

Proportional Representation

Political Science discourse is rife with a heated debate over the merits of proportional representation (PR) versus majoritarian systems, such as First-Past-The-Post (FPTP), particularly as they relate to the representation of minority groups. In an FPTP electoral system, a candidate may be elected to office with a majority of votes, even if their vote share does not exceed 50%.¹³ A PR system can assume a variety of forms, such as List Proportional Representation (LPR) or Mixed-Member Proportional Representation (MMP). New Zealand utilizes the latter of these, which combines elements of proportional and plurality systems for a hybrid electoral process.¹⁴ In an MMP system, "...voters have a single MP who represents their riding, while other seats are distributed proportionately to total votes cast in the election."¹⁵ A recent study found that proportional representation does little to increase the representation of women in Parliament,¹⁶ while other scholars have found that women's representation has been shown to increase on a long-term basis after such reform has taken place.¹⁷ Despite the lack of consensus, there exists a multitude of academics who promote the merits of PR as it relates to non-territorial identity representation. The general argument dictates that the standard rules of PR render it easier to adopt gender quotas than the rules utilized in FPTP¹⁸ and that the incumbency rule is generally less significant in PR systems when compared to

12 Dina Refki, Diana Abbas, Bilge Avci, Eunhyoung Kim, Iris Berger, and Sue Faerman, "Erosion and Transformation in the Ecology of Gender: Women's Political Representation and Gender Relations in the Ugandan Parliament," *The Journal of Modern African Studies* 55, no. 1 (2017): 75.

13 "First Past The Post," *The Samara Centre for Democracy*, accessed on October 16, 2020, <https://www.samaracanada.com/samara-in-the-classroom/electoral-reform/first-past-the-post/>.

14 "Mixed-Member Proportional Representation," *The Samara Centre for Democracy*, accessed on October 24, 2020. <https://www.samaracanada.com/samara-in-the-classroom/electoral-reform/mixed-member-proportional-representation>.

15 Ibid.

16 Andrew Roberts, Jason Seawright, and Jennifer Cyr, "Do Electoral Laws Affect Women's Representation?" *Comparative Political Studies* 46, no. 12 (2012).

17 F. C. Thames, "Understanding the impact of electoral systems on women's representation," *Politics and Gender* 13 (2017).

18 Presumably, the same principle would also apply to other forms of identity.



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those with majoritarian rules. Given the generally homogeneous nature of Canada's current Parliament (male, Caucasian, and heterosexual), the lower efficacy of incumbency may, in turn, benefit marginalized groups.¹⁹ In summation, while there is debate over the effectiveness of varying types of electoral rules in increasing the representation of minorities in government, the scope of this paper is bound to the exploration of potential options for increasing this representation, rendering this an appropriate reformative measure to examine in the Canadian context.

Currently, Canada utilizes an FPTP electoral system, in which the candidate who gains the highest number of votes becomes the elected representative for their constituency, regardless of whether they achieved an absolute majority (50%+1) of votes. In their 2015 campaign, the federal Liberal Party pledged to reform Canada's electoral system within a year and a half of forming the government and subsequently formed a majority in Parliament. Following the election, the promise of electoral reform was further bolstered by Governor General David Johnston, who announced that removing the FPTP system was a priority for the government.²⁰ The Party never officially stated how electoral reform would be implemented or what system would be adopted in place of FPTP. Less than two years later, the Liberal Party revoked their support for electoral reform and removed such reform from the Minister of Democratic Institutions' mandate.²¹ A lack of consensus among the Canadian population was cited as the reasoning behind abandoning electoral reform, despite the absence of a nationwide referendum on the subject.²²

This is not to say that such a project would not be feasible in Canada; New Zealand has already undergone such a reformation, and due to their shared prior use of FPTP and parliamentary governmental structure, it can be perceived as a precedence-setting case for Canada. During the early 1990s in New Zealand, there was significant public disillusionment with the political process and the dominant two-party system as well as the notable underrepresentation of Maori and women in government.²³ In 1993, coinciding with the general election, the population of New Zealand was issued a referendum on electoral reform which included a Mixed-Member Plurality (MMP) system, as well as the option to retain FPTP. Similar to

19 Yann P. Kerevel, Austin S. Matthews, and Katsunori Seki, "Mixed-member electoral systems, best loser rules, and the descriptive representation of women," *Electoral Studies* 57 (2019): 154.

20 Tania Kohut, "What Trudeau said: A look back at Liberal promises on electoral reform," *Canada Global News*, last modified December 2, 2016, <https://globalnews.ca/news/3102270/justin-trudeau-liberals-electoral-reform-changing-promises/>.

21 *Ibid.*

22 Aaron Wherry, "Opposition accuses Trudeau of 'betrayal' as Liberals abandon promise of electoral reform," *CBC News*, February 1, 2017, accessed on November 5, 2019, <https://www.cbc.ca/news/politics/trudeau-electoral-reform-mandate-1.3961736>.

23 Jack H. Nagel, "What political scientists can learn from the 1993 electoral reform in New Zealand," *PS, Political Science and Politics: Washington* 27, no. 3 (1994): 4-5.; Vowles, "The Politics of Electoral Reform in New Zealand," 99-100.

Canada, New Zealand also operated under an FPTP system at the time and was subject to the recurring dominance of a two-party system (despite the existence of numerous minor parties). The referendum resulted in 46.1% of voters supporting the traditional FPTP system and a slim majority of 53.9% in favor of adopting MMP.²⁴ Public disillusionment with the political process and the dominant two-party system may have bolstered support for the implementation of MMP.²⁵ In 2011, New Zealand held another referendum on the future of MMP, and 58% of voters supported keeping the plurality system.²⁶ Women's representation in New Zealand's government has increased steadily since the electoral reform in 1993. In the last election held using the FPTP system in 1993, women carried 21% of parliamentary seats; in the 1996 election, this percentage grew to 29% and 33% as of 2011.²⁷ It is clear that there is precedence for the shift from FPTP to proportional representation as exemplified by New Zealand, which bears contextual similarities to Canada. Additionally, the shift to MMP may be more applicable to Canada due to the hybrid nature of the system, which combines elements of plurality and majoritarian electoral frameworks. In the section titled *Historical Institutionalism and Electoral Reform*, the factors contributing to this policy shift is outlined through a Historical Institutionalist theoretical approach along with the cases of Uganda and Canada.

Reserved Seats

Another potential method to increase non-territorial identity representation in the Canadian federal government is the adoption of reserved seats for underrepresented groups. Representational quotas, such as reserved seats, are generally seen as temporary measures meant to increase the presence of underrepresented groups in government, and there is little research on their long-term effects.²⁸ This paper proposes that this method of electoral reform would increase the representation of diversity within the Canadian government. However, given the lack of research on its long-term effects, it may be best suited as a temporary measure with FPTP remaining as the country's electoral system.

Reserved seats have been implemented in a variety of contexts and regions of the world; for example, over seventy countries have adopted a requirement for a

24 Jack Vowles, "The Politics of Electoral Reform in New Zealand," *International Political Science Review* 16, no. 1 (1995): 96.

25 *Ibid.*, 99-100.

26 "25 years since MMP referendum," New Zealand Parliament – Paremata Aotearoa, November 6, 2018, <https://www.parliament.nz/en/get-involved/features/25-years-since-mmp-referendum/>.

27 Sandra Grey, "MMP delivers for women," *Kia Tiaki: Nursing New Zealand* 17, no. 5 (2011): 37.

28 Amanda B. Edgell, "Vying for a Man Seat: Gender Quotas and Sustainable Representation in Africa," *African Studies Review* 61, no. 1 (2018): 190.

minimum level of women's representation in national government since the 1980s.²⁹ Uganda first introduced its quota system in 1989, and it was subsequently codified in the 1995 Constitution.³⁰ While the country did not allow political parties to operate during this time, the quota system was not affected after parties were reintroduced in 2006.³¹ The Ugandan case is unique due to the extensiveness of its reserved seat system. The Constitution dictates that Parliament should be comprised of "...one woman for every district [and] such numbers of representatives of the army, youth, workers, persons with disabilities and other groups as Parliament may determine."³² The current composition of the Ugandan Parliament includes 124 district women representatives, and 5 each from youth, persons with disabilities, and workers. The use of reserved seating is extended to local elections in Uganda, as well. Since the quota system was first introduced, women's representation in Uganda increased from nearly 0% in 1989 to 34% in 2016.³³

Research suggests that the implementation of reserved seats is reconcilable with an FPTP voting system, defying expectations that such an arrangement is difficult to achieve and maintain.³⁴ As exemplified here by Uganda, and seen in other countries such as France and India, the use of reserved seats is compatible with majoritarian electoral frameworks such as FPTP in Canada.³⁵ However, there is a lack of research on the long-term effects of reserved seats on levels of representation. In short, there is already international precedence for a country such as Canada to implement reserved seats for underrepresented groups without the need to alter its FPTP electoral rules, though there is a need for further research on the long-term effects of such reform.

Historical Institutionalism and Electoral Reform

New Zealand and Uganda's adoption of proportional representation and reserved seats respectively can be explained through a historical institutionalist framework, particularly through the mobilization of critical junctures. Canada's continued use of FPTP can also be explained within this framework through the concept of path dependency. Historical institutionalism maintains that historical precedence largely determines the policy options that are available to a government. Path dependency

29 Edgell, "Vying for a Man Seat," 186.

30 Edgell, "Vying for a Man Seat," 197.

31 Ragnhild L. Muriaas and Vibeke Wang, "Executive dominance and the politics of quota representation in Uganda," *Journal of Modern African Studies* 50, no. 2 (2012): 311.

32 "Composition of Parliament," Parliament of the Republic of Uganda, accessed on November 22, 2019, <https://www.parliament.go.ug/page/composition-parliament>.

33 Edgell, "Vying for a Man Seat," 197.

34 Skye Christensen and Gabrielle Bardall, "Gender quotas in single-member district electoral systems," *Politics, Groups, and Identities* 4, no. 2 (2016): 246.

35 *Ibid.*, 247.



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is a part of the historical institutionalist framework which posits that the longer that a government adheres to a certain policy path, the less likely it is to change its course. However, a government may change its policies, even those which have become solidified in the state's political culture, if met with a major catalyst that forces the government to reconsider its policy path. Such an event (or series of events) is referred to as a critical juncture.³⁶ This does not necessarily imply that a government will completely alter its policy path; it may also pursue a separate branch on the same policy path, which maintains the same core tenets but varies in some meaningful way from the original path.³⁷ In short, history has a significant effect on policy decisions available to a government in the present, but policy traditions can be overridden in the event of a critical juncture.

Critical junctures may arise out of an accumulation of variables. In New Zealand's case, the juncture which resulted in electoral reform was comprised of a variety of factors, both long-term and short-term. Long-term circumstances included partisan misalignment, public disillusionment with political institutions, and pressures toward economic reform, while short-term events included the increased use of mass media and changing party policies.³⁸ It can be argued that Canada is currently experiencing a share of these circumstances which preceded electoral reform in New Zealand. For example, a poll conducted before the 2019 federal election indicated heightened public disillusionment and mistrust of politicians, which is a comparable circumstance to the experience of the New Zealand populace before the referendum of 1993.³⁹ In summation, New Zealand's adoption of PR can be attributed to a variety of factors that constituted a critical juncture, disrupting the country's tradition of FPTP and pushing it to switch policy paths. The case of electoral reform in New Zealand shows that a country like Canada can indeed make the shift from FPTP to proportional representation but that this requires a critical juncture to occur.

Uganda's implementation of reserved seats (and the adoption of democracy) can also be explained through a historical institutionalist framework. The state's current constitution was born out of decades of political turmoil and upheaval, which was hallmarked by deep cleavages in the population along religious, regional, and ethnic lines. Following the Ugandan elections in 1980, the country experienced a civil conflict with up to an estimated 400,000 civilians losing their lives.⁴⁰ This conflict culminated in the implementation of a no-party system and subsequently,

36 Guy B. Peters, *Institutional Theory in Political Science: The 'New Institutionalism'* (London, UK: Continuum, 2005): 71-73.

37 Rianne Mahon, "Varieties of Liberalism: Canadian Social Policy from the 'Golden Age' to the Present," *Social Policy and Administration* 42, no. 4 (2008): 357.

38 Vowles, "The Politics of Electoral Reform in New Zealand," 96.

39 Éric Grenier, "Conflicted and worried: CBC News poll takes snapshot of Canadians ahead of fall election," *CBC News*, last modified June 30, 2019, accessed November 4, 2019, <https://www.cbc.ca/news/politics/cbc-election-poll-1.5188097>.

40 Nelson Kasfir, "No-party democracy' in Uganda," *Journal of Democracy* 9, no. 2 (1998): 53.





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the enshrinement of reserved seats for underrepresented groups within the 1995 Constitution. This period of conflict in the 1980s can be considered the juncture which ushered in the implementation of reserved seats. This assertion is also supported by existing literature which discusses the relationship between major conflicts and government representation.⁴¹

Canada's continued use of FPTP can also be explained through the mobilization of historical institutionalist theory. Whereas New Zealand and Uganda's electoral reform can be rationalized through critical junctures, Canada's electoral stagnation can be explained by path dependency. FPTP has been an institution in Canadian electoral proceedings for over 150 years. As historical institutionalism posits, the longer an institution is in place, the more difficult it becomes to alter. In addition, the country hasn't experienced a traumatic conflict, such as the case of Uganda, nor has it succumbed to the variety of pressures that resulted in New Zealand's referendum on electoral reform. In other words, the federal government has not experienced a critical juncture which would result in an alteration of its current policy path. However, as noted earlier, Canada appears to be exhibiting many symptoms of voter fatigue with the current system; further research is required as to why Canada has not experienced this juncture despite sharing numerous conditions with pre-reform New Zealand. In sum, historical institutionalist theory can be mobilized to explain New Zealand and Uganda's adoption of proportional representation and reserved seats respectively, as well as Canada's policy stagnation regarding electoral reform.

Conclusion

Despite Canada's diverse population, the federal government is relatively homogeneous in its composition. As the current structure of Canada's electoral system is based solely around territorial identities, in which candidates do not require an absolute majority of votes to be elected, non-territorially based identities are excluded from the federal framework. There are two system-level methods of electoral reform that could begin to remedy this representational gap, each of which applies to the Canadian context: proportional representation and reserved seats.

Historical institutionalism can be used to explain why New Zealand and Uganda adopted proportional representation and reserved seats respectively, as well as why Canada has retained its FPTP system; Canada has remained path-dependent because it has yet to experience a critical juncture such as those which caused New Zealand and Uganda to alter their policy paths. Under its structure, reserved seats automatically increase the representation of minorities. In addition, given that proportional representation is perceived as leveling the playing field for minorities seeking election, it follows that proportional representation can also increase the representation of minorities in elected bodies. Even if this representation

41 Melanie M. Hughes, "Armed Conflict, International Linkages, and Women's Parliamentary Representation in Developing Nations," *Social Problems* 56, no. 1 (2009): 174.





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begins as descriptive, the literature suggests that descriptive representation can lead to substantive representation in a two-step process, which in turn increases positive policy outcomes and electoral participation for the group in question. In conclusion, Canada would be able to increase the substantive representation of non-territorial identities in the federal government and better reflect the diverse nature of the Canadian federation through the implementation of either proportional representation or reserved seats. However, this shift will require a critical juncture which forces the Canadian government to alter its current electoral policy path.





THE MIGRATION-LIVELIHOODS NEXUS: EMERGING OPPORTUNITIES, EMERGING CHALLENGES IN RURAL ZIMBABWE

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Since 2000, when white-owned land was redistributed to indigenous blacks under a Fast Track Land Reform Program (FTLRP), issues such as financial and political crises, hyperinflation, unemployment, international sanctions, and political animosity between two major political parties are affecting migration patterns in Zimbabwe. Theoretically, FTLRP would have enabled the agrarian nation's previously disadvantaged blacks to improve their livelihoods through agricultural activities. However, areas that have been resettled under the FTLRP, such as the Sangwe farm, are now experiencing an increase in migration. Rooted in the Sustainable Livelihoods Framework (SLF) and drawing from in-depth interviews, this paper explores how migration has impacted the livelihoods of households on this farm. The argument is that while problems such as loss of labor, brain-drain, cultural disruption, and gender issues have emerged, migration has also created opportunities for the rural community. These opportunities include remittances, the acquisition of affordable farm and non-farm assets outside the country, access to much-needed foreign currency to purchase inputs, and the acquisition of knowledge on the production of plants that were not common in the lowveld.

Keywords: *Challenges, livelihoods, migration, opportunities, Zimbabwe*

Introduction

Because of its close link to human survival strategies, migration is one of the oldest phenomena in human history. The pursuit of livelihood opportunities motivates humanity to migrate. Migration is also linked to other categories of human security,





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namely political, socio-economic, environmental, health, community, and personal.¹ As a result, it has become one of the issues currently dominating the international development agenda. In developing countries, where industrial and economic development remains slow, migration produces long-term solutions to poverty and dependence on the state, particularly in rural areas. Consequently, numerous recent development interventions focused on how to ensure the safe, regular, and well-managed movement of people, in line with the United Nations' Sustainable Development Goals. Empirical evidence shows that some people would not have chosen to migrate had it not been for their need to meet basic standards of living (food, education, medical care, or clothing).²

In a country like Zimbabwe, where about 47 percent of the population is undernourished,³ increased human flows are explained by financial challenges (hyperinflation and unemployment) and political instability. Migration, which is no longer confined within the country's borders, has taken on an international character, with both rural and urban dwellers crossing borders to make a living. This migration has generated various opportunities alongside a number of economic challenges for the country.⁴ This article seeks to understand whether farms that were acquired for livelihood development under the government's Fast Track Land Reform Program (FTLRP) are similarly affected by migration. We (1) explore how migration has impacted the livelihoods of A1 households (Zimbabwe's smallholder farmer category), (2) identify the opportunities for and constraints on livelihoods development through migration patterns on the farm, and (3) put forward context-specific recommendations.

The article focuses on the Sangwe farm, which is one of the A1 farms that were acquired under the FTLRP. Through the program, both peasants and the state could reclaim lands that were previously controlled by white monopoly capital. The government program was developed because of the country's increasing poverty level. In fact, 60 percent of Zimbabwe's population, most of them black, lived on less than a dollar in the 1990s,⁵ and 75 percent of the population could no longer afford

1 Ana Devon, "Human security concept in political and academic circles," *Technical Journal* 8, no. 3 (2014): 309-313; Des Gasper, "The Idea of Human Security," in *Climate Change, Ethics and Human Security*, eds. Karen O'Brien, Asuncion Lera St. Clair and Berit Kristoffersen (Cambridge: Cambridge University Press, 2014), 23-46.

2 Clayton Hazvinei Vhumbunu, "Boosting food security and restoring local food systems in Zimbabwe through Staple Crops Processing Zones (SCPZs): A prescriptive approach." Paper presented at the Symposium on 'Food Security, Migration and Innovation in Senegal and Zimbabwe: Lessons for Africa,' (Dakar, June 2019); Susan Fratzke and Brain Salant, "Understanding the impact of livelihood opportunities and interventions on migration patterns" (UK: Department for International Development, 2018).

3 Vhumbunu, "Boosting food security."

4 Ibid.

5 Sam Moyo, "The Land Question in Zimbabwe" (Harare: SAPES Trust, 1995).



basic food items during the same period.⁶ Before the FTLRP was implemented, a total of 11.8 million hectares of land was owned by a few large-scale commercial farmers producing for export, while over 70 percent of the indigenous population scrambled on 16.4 million hectares, most of which located in the dry lowveld region of the country.⁷ By October 2003, the FTLRP had replaced a problematic bi-modal system with an expanded tri-modal system which included about 150,000 A1 land beneficiaries and 20,000 middle-to-large-scale A2 farmers operating alongside agro-industrial estates.⁸ By the time the program was completed, land ownership by the large-scale commercial sector had reduced from 30 percent to 12 percent, and the small-scale agricultural sector had expanded from 54 percent to 71 percent.⁹

In Sangwe, unlike in most nearby farms in the Chiredzi district where the recuperation of lands was led by war veterans,¹⁰ the Gudo local community led the reclamation efforts on the basis of a long-standing dispute with Mr. Otterson. Mr. Otterson was a white commercial farmer whose Wildlife Conservancy had fenced off the indigenous people's traditional sacred sites (used for circumcision and rain rituals), the burial site of traditional leaders, as well as a sacred pool which provided fish as a supplementary source of food.¹¹ However, just like other farms across the country,¹² the Sangwe is now experiencing outward migration, which raises questions about the sustainability of household livelihoods on the farm. Some – mostly Westerners – have already argued that the FTLRP was an economic disaster which produced unplanned migration because of farmers' declining livelihoods.¹³

The following section discusses the nexus between migration and sustainable livelihoods. In the third section, the article focuses on the Sustainable Livelihoods Framework (SLF) as an important approach for understanding the

6 Gregory Elich, "Zimbabwe under siege" (African Business, 2002).

7 Raymond Wuta Mugandani, Amos Makarau, and Bryen Chipindu, "Re-classification of agro-ecological regions of Zimbabwe in conformity with climate variability and change," *African Crop Science Journal* 20, no. 2 (2012): 361-369.

8 Sam Moyo, "Changing agrarian relations after redistributive land reform in Zimbabwe," *Journal of Peasant Studies* 38, no. 5 (2011): 939-966.

9 Government of Zimbabwe, *Zimbabwe's Land Reform Program* (Harare, 2001).

10 Emmanuel Ndhlovu, "Relevance of Sustainable Livelihood Approach in Zimbabwe's Land Reform Program," *Africa Insight* 47, no. 4 (2018): 72-87.

11 Ibid.

12 Newman Tekwa and Jimi Adesina, "Gender, Poverty and Inequality in the Aftermath of Zimbabwe's Land Reform:

A Transformative Social Policy Perspective," *Journal of International Women's Studies* 19, no. 5 (2018): 45-62.

13 Medicine Masiwa and Lovemore Chipungu, "Land Reform Program in Zimbabwe: Disparity between Policy Design and Implementation," in *Post-Independence Land Reform in Zimbabwe: Controversies and Impact in the Economy*, ed. Masiwa M. (Harare: Friedrich Ebert Stiftung and Institute of Development Studies, University of Zimbabwe, 2004); Brain Raftopoulos and Ian Phimister, "Zimbabwe Now: The Political Economy of Crisis and Coercion," *Historical Materialism* 12, no. 4, (2004): 355-82.

impact of migration on the Sangwe farm's household livelihoods. The fourth section presents the methodology of the study; the fifth section describes the results. The last section proposes policy recommendations.

Examining the Migration-Livelihoods Nexus

The literature on the migration-livelihoods nexus has grown in the past decade,¹⁴ and academics and practitioners now agree that livelihood matters should be part of the migration and development agenda.¹⁵ If livelihood opportunities are not secured, development is impossible. Today, there are numerous features to the migration-livelihoods nexus that are accepted by the academic community. These have become standard approaches for practitioners, donor agencies, and policy institutions seeking to address how migration is linked to livelihood development. For instance, most agree that people would not migrate if their needs and wants had been met in their country or place of birth; these include proper medical care, education, clothing, shelter, and so on. Thus, migration possibly allows for people to fulfill these needs and wants elsewhere.

Literature suggests that migration is a widespread and acceptable part of existence.¹⁶ According to the Food and Agriculture Organization (FAO),¹⁷ migration contributes to the development of today's societies, and, thus, is an acceptable part of our shared history as it acts as a livelihood broadening strategy. Although an increasing number of migrants leave their homes due to conflicts, especially in Africa, the majority are pursuing better livelihood opportunities. Crush notes that many people today migrate to study, to find work, and to support their family members back home.¹⁸ Gasper suggests that migrants are sustainable livelihood development agents, as they send remittances back home which allow for their family members to either meet or improve their needs (whether financial, physical, social, human, or natural).¹⁹ Remittances enable family members to buy food (financial), buy property and farm equipment (physical), participate in social events (social), access education and medical care (human), and acquire resources such

14 Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca and London: Cornell University Press, 2013); FAO, *Migration, agriculture and rural development. Addressing the root causes of migration and harnessing its potential for development* (FAO: Rome, 2016); Asma Seemi Malik, "Rural urban migration; socio-cultural changes in Pakistan- preventive measures taken by government and civil society to control it," *Professional Med J* 22, no. 6 (2015): 674-682.

15 Jonathan Crush, *Linking migration, food security and development* (Cape Town: Southern African Migration Program, 2012).

16 Malik, "Rural urban migration."

17 FAO, *The linkages between migration, agriculture, food security and rural development* (The Food and Agriculture Organization of the United Nations, 2018).

18 Crush, *Linking migration, food security and development*.

19 Gasper, "The Idea of Human Security."

as land and water (natural). An increasing body of literature also points out that while conflict or lack of protection²⁰ can create a desire to migrate, it is usually the 'greener pastures' (better livelihood opportunities) argument that acts as a trigger.²¹ According to Zickgraf et al., the socio-economic position of an individual as well as their resilience capabilities determine their migration aspirations and patterns.²²

The FAO reports that more than 75 percent of the people who are food insecure across the world and whose livelihoods need urgent attention often live in rural areas and rely on rainfed agricultural activities.²³ Estruch, Schwebel, Suttie, and Hussein argue that conflicts, violence, and natural disasters drive migration and increase food insecurity.²⁴ However, many migrants, particularly from rural areas, are also forced to move due to factors that hamper livelihood development. In the absence of alternate strategies (i.e. credit, training, or financial services) that could improve livelihood and farming practices, people in rural areas migrate because of poverty and food insecurity. Lack of employment and other income-generating opportunities also result in migration from rural areas; this echoes the neoclassical theory's argument that migration (rural-to-urban) is a result of income inequalities between rural and urban areas and that should full employment be achieved, migration would cease.²⁵ Furthermore, inequalities between rural and urban areas in terms of basic services (health, education, and social protection) force rural community members to migrate in search of these services as they find it tough to manage risks (social, economic and environmental) within their own settings. Environmentally, extreme adverse weather conditions expose rural dwellers to increased livelihood challenges and motivate them to migrate.

The neoclassical theory was later supplemented by the human capital theory, which revealed the importance of individual preferences in migration decisions. Classical scholars such as Lewis postulate that in the context of similar average income between origin and destination countries, people may show different

20 FAO, "Migration, agriculture and rural development."

21 Catalina Herrera and David Sahn, "Determinants of internal migration among Senegalese youth," Social Science Research Network (SSRN Scholarly Paper; No. ID 2229584) (2013); Maria Hernández-Carretero and Jorgen Carling, "Beyond 'Kamikaze Migrants': Risk Taking in West African Boat Migration to Europe," *Human Organization* 71, no. 4 (2012): 407-416.

22 Caroline Zickgraf, Sara Vigil, Florence de Longueville, Pierre Ozer, and Francois Gemenne, "The Impact of Vulnerability and Resilience to Environmental Changes on Mobility Patterns in West Africa" (KNOMAD Working Paper 14, 2016).

23 FAO, "Migration, agriculture and rural development."

24 Elisenda Estruch, David Schwebel, David Suttie and Kathmandu Hussein, "Dynamic rural-urban linkages for decent rural employment" (FAO: Rome, 2017).

25 Allna De Brauw, Valerie Mueller, and Hak Lim Lee, "The Role of Rural-Urban Migration in the Structural Transformation of Sub-Saharan Africa," *World Development* 63 (2014): 33-42.

migration tendencies depending on education, skills, experience, and occupation.²⁶ This argument is extended in the expectancy value approach²⁷ as well as the planned behavior theory,²⁸ which argues that movement is the result of a decision process based on an individual's assessment (through expectations, values, and rules) of alternate locations.

Conventional interpretations of the link between migration and livelihood focus on the impact of migration on places of origin,²⁹ as well as on destination places in terms of livelihoods.³⁰ In the context of the places of origin, opportunities associated with migration include pressure alleviation or reduction on local labor markets, prospects of higher wages in agriculture, the emergence of female household heads who are empowered and are likely to prioritize food crop production, education, and health.³¹ The remittances sent home by migrants can potentially act as safety nets, relax liquidity restraints that exist in rural credit, and provide financial protection in the face of dysfunctional insurance markets.³² Remittances can generate investment in agriculture and other rural economic activities that have positive outcomes on livelihood. Migration also facilitates skill and technology transfer and can also create social networks beneficial for rural livelihood outcomes.³³

Regarding challenges in places of origin, scholars agree that migration often results in the loss of a younger, dynamic, and productive workforce whose agricultural labor is crucial for livelihood development.³⁴ Migration also contributes to brain drain, where vital skills and knowledge leave a community to develop in other areas.³⁵ Migration also leads to the emergence of default female household headship. According to Carvalho et al., it is usually the men who are first to leave,

26 Arthur W Lewis, "Economic development with unlimited supplies of labour," *The Manchester School of Economic and Social Studies* 22, no. 2 (1954): 139-191.

27 Martin Fishbein and Icek Ajzen, *Belief, attitude, intention, and behaviour: An introduction to theory and research*. Reading (USA: Addison-Wesley, 1975).

28 Icek Ajzen, *Attitudes, personality, and behaviour* (Chicago, USA: Dorsey Press, 1988).

29 Betts, *Survival Migration*.

30 Allna De Brauw, Valerie Mueller, and Hak Lim Lee, "The Role of Rural-Urban Migration."

31 FAO, "Migration, agriculture and rural development."

32 Malik, "Rural urban migration."

33 Anna Knoll and Andrew Sherriff, "Making Waves: Implications of the irregular migration and refugee situation on Official Development Assistance spending and practices in Europe. A study of recent developments in EU institutions, Denmark, Germany, the Netherlands and Sweden" (Brussels: European Centre for Development Policy Management, 2017)

34 Ibid.

35 Ibid.

thereby leaving women to be default heads of households.³⁶ Consequently, household livelihoods are threatened as most women, particularly those located in the patriarchal countryside, unfortunately lack the resources to make productive investment and improve on or sustain livelihoods. Migration can also generate a culture of over-dependence on remittances to the detriment of local productive livelihood systems.³⁷

According to the FAO, the international community must recognize the potential of agriculture and rural development for reducing human flows as well as the potential for migration flows to impact agriculture and rural development.³⁸ The FAO believes that intervention must focus on agricultural activities; the development of rural areas of origin; the building of displaced people's resilience (crisis context); the prevention of conflict; and the promotion of stability, safe migration (non-crisis), and the development potential of migration for food and nutrition security (remittances, skills, diaspora investment, and so forth).

Academic literature also informs us that migration and remittances do not necessarily represent solutions to agricultural transformation and to the much-needed livelihood development of the countryside.³⁹ Additionally, some scholars argued that policies designed for livelihood development have had minimal success in reducing either rural-urban or international migration⁴⁰ and that economic development can actually increase migration when a certain economic threshold is reached.⁴¹

In the context of A1 farms in Zimbabwe, the public generally perceives that migration resulted in stunted livelihood development. Accordingly, the 'new dispensation' government regime, which emerged on November 24, 2017, encouraged citizens to come back home and contribute to various aspects of this area, from the agricultural sector to nation-building. Government policies, such as the 'Zimbabwe is Open for Business' mantra, also attempted to lure foreign direct investment towards the country's agricultural sector. As mentioned above, many believe that a lack of livelihood opportunities in rural areas significantly contributed to migration. Presumably, if citizens were to come back, much of the challenges (including food insecurity) could be resolved. This assumption, however, ignores the fact that although migration presents various challenges, it also offers attractive livelihood opportunities for those resettled A1 households, such as in the lowveld, where low amounts of annual rainfall as well as high temperatures continue to

36 Ana Carvalho, Ulrich Schiefer, and Stephan Dünwald, "African peasants on the move: Turmoil between global dynamics, migration and food insecurity," *Cadernos de Estudos Africanos* 29 (2015).

37 Knoll and Sherriff, "Making Waves."

38 FAO, "Migration, agriculture and rural development."

39 Betts, *Survival Migration*; De Brauw, Mueller, and Lee, "The Role of Rural-Urban Migration."

40 FAO, "Migration, agriculture and rural development."

41 OECD, *Perspectives on Global Development 2016. International Migration in a Shifting World* (Paris: OECD Publishing, 2017).



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undermine households' efforts to develop their livelihood activities around agricultural activities. Literature focusing on the district Chiredzi shows that harsh agro-ecological conditions have encouraged citizens to adopt non-farming activities, conducted both within and outside the district as a way of supplementing household livelihoods.⁴² Migration has been one of the off-farm livelihood development strategies deployed by A1 households in the district. This study uses the SLF to understand the impact of migration on household livelihoods on the Sangwe farm.

The Sustainable Livelihood Framework (SLF)

The SLF is defined by Conway as the capacity of a system (a communal system, for instance) to be resilient and to be able to preserve its production or survival levels regardless of the level of disturbance it might have experienced.⁴³ In order to withstand the shock or disturbance, the system needs to be resilient rather than sensitive.⁴⁴ The 'resilience' aspect of the SLF refers to the capacity of a livelihood structure to 'bounce back' from disturbances (one example, in this case, would be unplanned migration from areas reclaimed under the FTLRP, such as the Sangwe), while sensitivity refers to the extent to which a system can endure antagonistic conditions.⁴⁵

Numerous early cross-disciplinary studies focusing on farming systems⁴⁶ as well as household and village studies influenced the SLF. However, the term 'sustainable livelihoods' was popularized in the 1990s.⁴⁷ The need for poverty reduction and practices that would guarantee human welfare, including food

42 Joseph Chaumba, "Opportunities for and Constraints on crop Production within Zimbabwe's fast track Resettlement Program: A Case Study of Fair Range Estate, Chiredzi District, South-Eastern Zimbabwe" (unpublished Masters of Philosophy Thesis, University of Western Cape); Hilda Muregerera, "The importance of communal rangelands: A case study of three districts in Zimbabwe" (unpublished PhD diss., Fort Hare University, 2009); Ndhlovu, "Relevance of Sustainable Livelihood Approach."

43 Gordon Conway, "The properties of agro-ecosystems," *Agricultural Systems* 24 (1987): 95-117.

44 Robert Chambers and Gordon Conway, "Sustainable rural livelihoods: Practical concepts of the 21st century" (Brighton: Institute of Development Studies, University of Sussex, 1992);

45 Nathan Bennett, "Sustainable livelihoods from theory to conservation practice: An extended annotated bibliography for prospective application of livelihoods thinking in protected area community research," *Protected Area and Poverty Reduction Alliance*, Working Paper (2010).

46 Norman Long, *Family and work in rural societies: Perspectives on non-wage labour* (London and New York: Tavistock, 1984); Joyce Mook, *Understanding Africa's rural households and farming systems* (Boulder: West View Press, 1986).

47 Bennett, "Sustainable livelihoods."



security, brought attention to livelihood frameworks.⁴⁸ A number of studies and reports by policy institutions and scholars shaped the canvas from which livelihoods approaches developed.⁴⁹ Firstly, people-centered approaches emerged in response to the inadequacy of the top-down, bureaucratic, and market-oriented approaches that defined development from the 1950s to the 1970s.⁵⁰ Arce argues that the SLF was established because policymakers and analysts considered the state to be ineffective in engendering development when compared to markets.⁵¹ Secondly, the World Commission on Environment and Development of the United Nations' Brundtland Report entitled *Our Common Future* (1987) provided a guideline for a people-centered, bottom-up development approach. From the report emerged the concept of 'sustainability,' a crucial term that continues to dominate the rural development discourse.

Although the origins of the SLF are found in the Brundtland Report and in Robert Chambers' collaborative works with Conway, the framework actually stemmed from previous studies that explored the differential capacity of rural folks to endure crisis (floods, droughts, pest outbreaks, and diseases).⁵² In fact, Hussein notes that people-centered development values, which are now part of the SLF, had been deployed in action operations (particularly food security interventions) by institutions such as the Food and Agriculture Organization of the United Nations.⁵³ Singh and Gilman claim that food security was at the center of livelihoods mechanisms long before the concept was formalized.⁵⁴ Chambers and Conway, however, are reputable for their construction of a development thinking framework that placed sustainable livelihood within an actor-oriented approach of development.⁵⁵ Their framework was both normative and practical⁵⁶ and could be applied wherever the welfare of the poor was prioritized.

48 Conway, "The properties of agro-ecosystems"; Chambers and Conway, "Sustainable rural livelihoods"; Bennett, "Sustainable livelihoods."

49 Chambers and Conway, "Sustainable rural livelihoods"; Gordon Conway, "The properties of agro-ecosystems"; The Institute of Development Studies, *Assessment of development results: Evaluation of UNDP contribution, Botswana* (United Nations Development Program, 2009).

50 Chambers and Conway, "Sustainable rural livelihoods."

51 Albeto Arce, "Value contestations in development interventions: Community development and sustainable livelihoods approaches," *Community Development Journal* 38, no. 3 (2003): 199-212.

52 Chambers and Conway, "Sustainable rural livelihoods."

53 Kathmandu Hussein, "Livelihood approaches compared: A multi-agency review of current practice" (London: DFID, 2002).

54 Naresh Singh and Jonathan Gilman, "Making livelihoods more sustainable," *International Social Science Journal* 162 (1999): 539-542.

55 Chambers and Conway, "Sustainable rural livelihoods."

56 Bennett, "Sustainable livelihoods."



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The idea behind the SLF is to support the relations between various livelihood aspects so that households can benefit from their effect when interlinked and when in unison. These aspects include the assets owned by households and the activities which allow households to maintain an acceptable living standard and to withstand the factors that assist or hamper their acquisition of assets and services. This framework is, therefore, more important in the livelihood discourse than it is in any other field. Hence, Farrington writes: “A livelihood comprises the assets (natural, physical, human, financial and social capital), the activities, and the access to these (mediated by institutions and social relations) that together determine the living gained by the individual or household.”⁵⁷ Importantly, the subject of the SLF is always the household. This article focuses on how households have been impacted by migration.

For livelihoods to be sustainable, living standards must be improved. The disastrous effects of turbulences, such as unplanned migration, must also be mitigated. This can be achieved through asset base creation. How, then, has migration impacted the assets of households? In this article, these asset categories are related to the five capitals of the SLF, namely the physical, financial, natural, human, and social capitals.⁵⁸ Since the production of A1 farming is usually directed to household consumption (although surplus might be sold), the SLF provides much help to our understanding of the livelihood status of the Sangwe households.

Research Method

Data was collected between October 2016 and February 2017 from a sample of 72 households. The total population slightly exceeds 215. The study gathered both quantitative and qualitative data. Because of its in-depth nature, only qualitative data will be presented in this article. To fill the gap created by the exclusion of quantitative data, supplementary *ad hoc* interviews with key informants were conducted between February and March 2019. The aim was to gain a comprehensive understanding of the impact of migration on the livelihoods of the Sangwe households. The various opportunities and challenges resulting from migration were identified, evaluated, and analyzed. Data was categorized using the SLF and is summarized in the next section. Permission to conduct the study was given by communal leadership institutions as well as by the participant A1 households on the farm.

Data Presentation

This section presents the findings of the study. Divided according to the five capital categories described in the SLF, the data exemplifies the opportunities and challenges of migration for the A1 households of Sangwe, resettled under the FTLRP.

57 John Farrington, “Sustainable livelihoods, rights and the new architecture of AID,” *Natural Resource Perspectives* 69 (2001): 10.

58 Ndhlovu, “Relevance of Sustainable Livelihood Approach.”



Human capital

Human capital includes the health (physical or mental), skills, and knowledge, which allow A1 households to develop or sustain their livelihoods either through farming or other non-farming activities.⁵⁹ Participants revealed that migration, both internal (within the country) and external, enabled household members to acquire new knowledge, such as the production of plants (beetroots and potatoes, *madhumbé* or yams) that are not common in the lowveld. Participants often chose to grow these crops around their wells, where the crops could be watered by the wasted water. Almost every households had these crops; an indication of knowledge sharing that has the potential to improve livelihoods on the farm. It was revealed that both educated, and less educated members migrated from the farm, particularly towards South Africa, in search of off-farm livelihood opportunities.

However, migration can have a negative impact on the human capital of areas of origin.⁶⁰ This negative impact is greater if the area of origin engages in labor intensive activities, such as agricultural activities, as is the case on the Sangwe farm. On the Sangwe, participants complained about the loss of younger, dynamic, and productive community members whose labor was crucial for agricultural production. Most of the participants headed households on behalf of children or relatives who migrated for employment or other activities. Participants were generally older, with the majority ranging from the age of 61 to 70. Considering the importance of human labor in subsistence farming on this A1 farm, this situation was detrimental to livelihood development. Moreover, mainly male members are migrating, creating cultural and family disruption within this traditional Shangane-dominated community. Increased unpaid female labor that is meant to subsidize the social reproduction of male labor-power in towns represents challenges not only for individual household livelihoods, but also for the rural economy. In this context, instability and political conflicts are likely to arise. Migration can thus become an obstacle for families that rely on subsistence farming, since human labor is critical for ploughing, weeding, harvesting crops, and looking after the livestock and flocks. In an agro-ecological dry area like the Sangwe, where all members are expected to engage in some form of livelihood development activity, the departure of the household's able-bodied members becomes a real challenge.

Natural capital

Natural capital consists of natural goods (land, soils, geology, air, water, and all living organisms). Natural capital is crucial to the success of A1 farming as it provides households with free services and goods, also referred to as ecosystem services. Land (and what can be produced on it) is vital to sustainable livelihoods, particularly for rural households. Because land can also be offered as collateral for loans, which

59 Ibid.

60 Knoll and Sherriff, "Making Waves."



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provide households with financial capital, the land value extends beyond its direct use in productive activities. Importantly, all the households interviewed owned their land under the A1 model.

According to the agro-ecological classifications of Zimbabwe, the Chiredzi district, in which the Sangwe farm is located, belongs to Region V. The region is characterized by low rainfall, poor soils with low agricultural potential, and high temperatures.⁶¹ Annual rainfall ranges from 450mm to 650mm per year, and the climate is commonly classified as hot and dry. Consequently, where irrigation systems are not used, crop production is not sustainable. Livelihood diversity in the region is highly limited by these conditions, and migration has emerged as one of the strategies adopted by the population to respond to the challenge. One participant mentioned:

*This place is problematic. It is difficult to make a harvest. It is a dry place without water. Without irrigation, we will all leave quietly one-by-one because we cannot die as we watch.*⁶²

Because of the absence of family members, less pressure is put on fertile soil, and less water is consumed. With smaller families to feed, crop spacing was increased to reduce competition for water and nutrients. The elderly family members also had more freedom to grow sorghum and *rapoko*, which are disregarded by other members of the family due to their taste and color but nevertheless are drought resistant. This guarantees that the household is always properly fed. Surplus sorghum was sold at the Grain Marketing Board for extra financial capital. Participants also indicated that the farming of smaller lands ensured that enough grazing land was left for livestock, which improved households' livelihoods.

In the absence of competition, participants also harvested *mopani* worms from the forest. The worms are eaten, and surpluses are sent to family members in towns and cities to sell, which brings extra revenue for the households. However, although migration reduced pressure on natural capital, recurrent droughts in the areas remain a challenge for food security.

Financial capital

Financial capital refers to the savings, loans, and credit that Sangwe's A1 households have access to. As a result of the current financial and political crisis, numerous community members are either in town or out of the country to pursue economic activities and build their financial capital. This peculiar situation mirrors that of the whole country, where the magnitude of migration has increased since the beginning of the 2000s. On the Sangwe farm, where almost every A1 household had an

61 Mugandani, Makarau, and Chipindu, "Re-classification of agro-ecological regions."
62 Participant, 05/11/2016.



average of two members away from home,⁶³ remittances became the most crucial capital used to meet household livelihood requirements. One participant reported that:

*The entire national reels today under currency shortages, and we do not know when and how it will end. Our family members in South Africa give us help beyond finance. Most people of this area migrate to South Africa. Besides cash, they also send food stuff (cooking oil, canned foods, rice, etc.) as it is either hard or crazy expensive to get most of the food items in the country at the moment. We also use the cash to obtain foods that can be acquired locally.*⁶⁴

Households used migration remittances as a strategy to expand their financial capital and invest in new livelihood strategies. Migration on the farm could thus be seen as an economic strategy. The belief that financial capital could improve household livelihoods raised migrants' aspirations on the Sangwe. Those with relatives in targeted destinations moved more quickly, much to the benefit of their households back home. One participant mentioned that:

*Many people in this eastern part of the country work in South Africa more than anywhere else due to the availability of job opportunities in that country. As a result, their relatives also migrate towards that country because of the support they already have from their relatives.*⁶⁵

It seems necessary to increase financial capital that motivates people to migrate and develop their household's livelihood. Additionally, remittances are used by family members back home to migrate and further contribute to the development of household livelihoods. Fratzke and Salant argue that the extent to which someone has access to finance, including remittances, is likely to determine whether he or she is able to migrate and meet the expenses of traveling.⁶⁶

The study also found that households used remittances to acquire additional inputs (fertilizer, seeds, and chemicals), develop farming technologies, and pay for extra labor needed for livestock care, land cultivation, weeding, and harvesting. In addition, remittance money was used to meet further household basic needs: education, clothing, housing and medication, paying bride price (*lobola*), circumcision and transport. Participants revealed that they had no access to loans or credit and that they often used their own money for farming, which made remittances indispensable. Thanks to the assistance of migrant relatives, some households also acquired the various types of assets and livestock listed in Table 1. For the A1 farmers

63 Informant D, 09/02/2019.

64 Informant C, 17/02/2019.

65 Informant D, 09/02/2019.

66 Fratzke and Salant, "Livelihood opportunities and interventions."

on the Sangwe, livestock is not only used as productive capital. Not drastically different from money or bank deposits, livestock represents a form of saving for the households. Participants reported that they used cellphones to communicate with relatives, other farmers (with whom they might engage in cooperative activities), and suppliers. The assets listed in Table 1 are often important modern-day farming requirements. However, most of the participants maintained that the money acquired from remittances was used to acquire immediate basic items rather than invested on the farm. This indicates that, since the 2000s, A1 households on the farm have not managed to secure sustainable and sovereign means of survival. Consequently, as others have argued in the past, one could claim that the FTLRP's primary goal was not to develop rural livelihoods, but to fragment communities who, if kept intact, would likely have pushed the current government out of office.⁶⁷ The absence of loan and credit facilities for A1 households, and the high dependence on remittances is indicative of the unplanned character of the reforms, which became somewhat of a burden on households already suffering.⁶⁸

Table 1: A1 migrant-related accrued assets and livestock

Farm Equipment	Non-Farm Equipment	Livestock, Flocks, Poultry
Ox Ploughs	Motorcycles	Cattle
Ox ridgers	Cars	Donkeys
Ox harrows	Bicycles	Sheep
Ox cultivators	Televisions	Goats
Harrows	Radios	Pigs
Scotch carts	Sewing machines	Poultry
Wheelbarrows	Table and chairs	
Hoe/shovels	Sofas	
Tractors	Solar panels	
Lorries	Cell phones	

Physical capital

The physical capital comprises transport, roads, markets, water supply, education, and health facilities which all enable A1 households to achieve a certain standard of living. Poor infrastructures are likely to affect human capital (poor education and health outcomes) or prevent farmers from accessing markets (e.g. lack of information or transportation). This study shows that remittances allowed household members to dig wells and drill boreholes to access water; some households grew cotton. However, because of bad road conditions, farmers had no way to sell their product. Using their own tractors (most of which transported from South Africa by migrant relatives), households were able to transport their cotton bales and livestock

67 Chaumba, "Opportunities for and Constraints on crop Production."

68 Ndhlovu, "Relevance of Sustainable Livelihood Approach."

to nearby markets in Fare Ranch, another farm with better infrastructures. There were also no schools on Sangwe farms. Consequently, some parents sent their children to boarding schools and others took them to South Africa so that they can receive a better education – educators were often protesting in Zimbabwe. Sending your children away secured the future livelihood of the younger generation. One key informant stated:

*Most of the parents in this area have taken their children to South Africa for better education. This enables the children to receive a better education. Those are some of the advantages of migration. We have a good number of degree holders now on the farm. Most of them were acquired outside the country as university education is cheaper in other countries than here at home.*⁶⁹

Thus, migration enables community members on the farm to access physical facilities and infrastructures that cannot be found at home. Thanks to the migration of relatives, those remaining could also get medicine for various diseases. In extreme cases, some migrants transported relatives to South Africa or larger cities for medical care. Medicines and chemicals for crops and livestock were also transported mainly from South Africa. Solar panels sent by members from the diasporic community were also used by participants mainly for lighting and charging cellphones. All these tools improved sustainable household livelihood on the farm.

Social capital

Migration trends created various networks which improved livelihood opportunities. On the Sangwe farm, these networks include political and communal-based cooperatives rooted in cultural beliefs, religion, and other social attributes which constitute social capital. Social connections with returning migrants (*majoni-joni*) also gave rise to migration aspirations as livelihood success stories and migration experiences were communicated. Families also migrated to reunify with those already abroad and migrants were reported as ‘facilitators’ who provided financing (through remittances) or information on migration opportunities to those who aspired to migrate. All these activities were important for livelihood development on the farm.

This study also found that migrants formed transport cooperatives which allowed for them to send goods back home. Some households on the farm had received valuable groceries from relatives through Small Business Enterprises such as *Paisa* and *Courier24*, while others received goods through *malaichas* (informal goods transportation businesses). Cross border buses, but, more importantly, taxis had also become important for the transportation of goods, especially from South Africa. Through these transportation networks, migrants shared information with their relatives about food scarcity and prices, types of chemicals needed on the

69 Informant B, 14/02/2019.



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farm as well as information on remittances, which contributed to the efficiency of production activities on the farm. A key informant mentioned that:

People in the diaspora share information on how to send money back home to ensure that their members are fed. This enable livelihoods to be resilient. The situation is currently very bad in the country.⁷⁰

Currency shortages in Zimbabwe – both foreign and national – remain acute. Only the emergence of initiatives such as the *Eco-cash mobile* allows for many A1 households to access basic livelihood needs, such as food. A number of digital banking services, such as the Western Union, *Mukuru.com*, and *mama money* (based in the diaspora) also enable migrants to send remittances back home. Whether the current government (which promises a ‘new dispensation’) will build up on these available developments and invest in other technology-driven solutions that enable economic revival and speed up social development remains to be seen.

Lastly, members who migrated to towns and cities within Zimbabwe often tried to develop relationships with political leadership structures which have to potential to help their relatives back home secure seeds, fertilizers, and affordable equipment. Because of their migrant relatives’ relations with politicians, some A1 households received recommendation letters for access to assets (inputs, free maize seeds, and fertilizers) from authorities involved in the government’s rural development program. Such connections were important in ensuring the development of household livelihoods, especially in 2016 when there was a drought across Southern Africa.

Conclusion and Recommendations

Migration in Zimbabwe has increased in recent years, including cases that start from resettlement areas. There have been competing interpretations about the 2000s land redistributions, with the international community (that is, mainly European and American countries) arguing that redistributions equated to an economic disaster which produced food insecurity, unemployment, lack of agricultural production, and declining livelihoods. Increasing migration patterns – as many seek to escape hunger, poverty, and underdevelopment – appears to give value to this interpretation. On the Sangwe farm, every household had at least two members that had migrated, either to nearby towns, to South Africa, Botswana or beyond. In this specific case, migration appeared to produce both negative and positive livelihood outcomes for the community, which is in accordance with reviewed academic literature. Nevertheless, further analysis is needed to fully understand the implications of rural-urban migration on A1 household livelihoods. From the analysis, it can be concluded that livelihood development opportunities can be a key motive for migration in reclaimed households of the drier and drought-prone district of Chiredzi, where frequent droughts and economic meltdowns have affected crop production and animal rearing.

70 Informant E, 10/03/2019.





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Instead of discouraging migration, intervention strategies should promote and design policies that make migration a pillar of the livelihood development system in agro-ecologically dry areas, such as the Sangwe. There is also a dire need for the adoption of sustainable livelihood development approaches that are migration and nutrition sensitive. Additionally, intervention should focus on infrastructure development and encourage migrants to invest in farming as a livelihood development strategy. Irrigation farming and other sustainable livelihood capitals, including financial capital (loans, savings, credit, and so forth) should also be prioritized. Water supply facilities, such as dams and boreholes, could therefore be built and diaspora capital, secured. Moreover, interventions should focus on supporting digital banking services, such as the *Western Union*, *Mukuru.com*, *Eco-cash* and *Mama Money*, which enable migrants to send remittances back home. Likewise, networks such as *Paisa* and *Courier24*, which deal with the cross-border transportation of goods from South Africa, should be strengthened. Finally, there is a need to mobilize Sangwe farmers around the production of more drought-resistant crops such as castor beans (for sale) and cassava and sorghum (for consumption). Considering that men are more inclined to migrate, future research should focus on the leading role of women in household sustainable livelihood systems. Perhaps another methodology would be better suited to such research.





GLOBAL SKILLS: ARTICULATING THE INTERNATIONAL STUDIES SKILLSET AND ITS VALUE

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While the popularity of international studies as a discipline reflects the attractiveness of the field of study and its utility in an age of globalization, students of international studies can, like many social science and humanities students, struggle to articulate the suite of skills and competencies that they have developed during their tertiary level studies. Although concepts such as “soft skills,” “enterprise skills,” and “21st-century skills” have been of use, we argue that “global skills” as outlined by Douglas Bourn is a more comprehensive articulation of the international studies skill and competency set. In this collaborative article, we 1) describe the field of international studies and its virtues; 2) outline the problem of art students’ difficulty in articulating their skillset and professional value; 3) introduce Bourn’s concept of “global skills”; 4) contribute to the concept of “global skills” by elaborating on the need for critical self-reflection of one’s subject position and by outlining the value of systems thinking; 5) provide a reflective case study that illustrates how the global skills and the international studies skillset was highly valuable for one graduate’s cross-cultural engagement; and then conclude with final remarks on the value of international studies.

Keywords: *International Studies, Humanities, Global Skills, Employability, and Careers.*

Introduction

The field of international studies is one of considerable popularity for university students. It is an interdisciplinary field in the humanities and social sciences that holds an understandable attraction to students who are interested in world affairs. This includes those students who wish to make a positive contribution to the many





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and diverse issues they read and hear about, and which impact their own lives and the lives of others near and far. However, like many students and graduates of the arts, humanities, and social sciences, those in international studies have sometimes found it difficult to be able to articulate the skillset they have developed during their degree. From the perspective of a career educator (as one of this article's authors is), the ability to articulate one's skill set is significant not only in terms of conveying the value of that skill set to potential employers, crucial though that is. It is also a matter of the student's or graduate's capacity to perceive their own professional identity and the unique and valuable assets they have to draw on as they consider opportunities, navigate challenges, and develop and evolve in their careers.

This collaboratively authored article highlights the personal and professional value of international studies and also commends the concept of "global skills" as outlined especially by Douglas Bourn as relevant to students and graduates of international studies. We believe that enabling students and graduates of international studies to be able to explicitly express their competencies will be of considerable value to them in their career journey, as well as enable them to personally appreciate what they have accomplished through their studies.

Section I briefly discusses international studies as a field of study and some of its virtues; Section II outlines the "problem" of humanities and social science students' common inability to appreciate their career-relevant skillset; Section III introduces Bourn's "global skills" framework; Section IV considers some of the potentially problematic elements of the concept of global citizenship which constitutes Bourn's global skills and advocate for a critical self-awareness of positionality and the value of systems thinking, and Section V looks at a case study of how one of the present authors undertook a thesis in international studies *in situ* in Indonesia and effectively made use of the international studies skillset.

I: International Studies

A degree in international studies can be regarded both as a "generalist" degree and yet also as a specialized degree. It is general in the sense that unlike some other degrees where there is a clear imagined career destination – such as if one were to study journalism, podiatry, law, or accountancy – the avenues for future work that international studies make possible is broad and seemingly unspecific. As alluded to in the previous section, this breadth and non-specificity can make the skillset developed in international studies seem diffuse and hard to articulate, and therefore be undervalued, even by students of international studies – a situation that this article addresses.

However, international studies can also be viewed as a specialized degree,¹ and seeing it as such is important to affirming its value. The fields of international

1 Des Cahill, "Celebrating international studies at RMIT: The First Ten Years," *Here Be Dragons* 7, 2020, 32.



studies and global studies – which this article will treat as synonymous² – are inherently interdisciplinary,³ and at some universities, subjects that contribute to an international studies degree are a bricolage of existing courses from other disciplines including (but not limited to) history, anthropology, political science, and gender studies. This may contribute to a sense that international studies is a diffuse and, in a sense, “undisciplined” science - an issue that is revisited in Section IV. But the key to international studies is the frame of reference it deploys. Whereas psychology’s frame is the psyche (of ostensibly the individual), and sociology’s frame is a society, international studies of course has an international and global frame of reference. This frame of reference is one that requires the cultivation of ways of thinking and cognitive dispositions that enable international studies students and scholars to competently grapple with the issues they have at hand.

The international or global frame requires an understanding that governments, policies, and laws can differ profoundly between countries, and that each country will have different relationships and histories with other countries, and these relationships can shift again depending on which political party is in power. And then, requiring perhaps an even greater level of sophistication is the appreciation of culture and cultural difference. Differences in worldviews, values, and cosmologies can be considerable and can be difficult to fully appreciate. However, an appreciation of such differences can just be the start, because a further layer of nuanced understanding is required to appreciate the fact that individuals from a given society rarely embody all the traits associated with the culture of that society.⁴

Even still, encounters with these differences can challenge deeply held beliefs about right and wrong, and even put into question things that seemed true in ways that, without the cross-cultural encounter, would never have occurred to a person that they could be put into question. Issues of cultural relativism can be difficult to navigate,⁵ even for scholars with decades of cross-cultural experience. And then, overlaid upon this is the issue of linguistic difference and the fact that foreign language competence is important in developing sophisticated insight into another society.

Skills developed through the study of the above may well be conceptualized as “soft skills,” a term that speaks to their important capacities for adaptability

2 The authors are aware that some people will regard these fields as different. However, they are related and often treated as essentially the same fields by others.

3 Eve Darian-Smith and Philip C. McCarty, *The Global Turn: Theories, Research Designs, and Methods for Global Studies* (Oakland: University of California Press, 2017).

4 As noted by Sjoerd Beugelsdijk and Chris Welzel, “Usually, it is impossible to replicate dimensions of cultural variation found at the aggregate level *across* countries in the same shape at the individual level *within* countries.” Sjoerd Beugelsdijk and Chris Welzel, “Dimensions and Dynamics of National Culture: Synthesizing Hofstede With Inglehart,” *Journal of Cross-Cultural Psychology* 49, no. 10 (2018): 1498.

5 Michael F. Brown, “Cultural Relativism 2.0,” *Current Anthropology* 49, no. 3 (2008): 363-383.



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and flexibility across divergent careers, situations, and applications. However, the quality of “softness” can also seem to signify a certain amorphousness, a lack of tangibility, and an absence of rigor and strength. This second set of associations would misrepresent the value, and even the nature, of the international or global frame acquired through study, which is a complex, disciplined mindset that is both rigorous and informed. Another challenging aspect of its seeming “softness” is that it can be regarded as “unfixed”, though not because it lacks form, but rather because it is in a state of constant engagement and evolution. It even has aspects that are meaningfully characterized as modes of imagination (as in Orgad’s assertion that “global imagination is cultivated by a process of the ongoing construction of views, images, understanding, desires, and scripts about the world”).⁶ Compounding all of these challenges is the peculiar reality that these skills and capabilities, however strategically acquired and cultivated, may not be easily articulated or even fully perceived by those who can claim them among their professional assets. We consider this phenomenon in the Graduate Case Study in section V of this article.

Although the skills discussed in this article can sometimes be considered as nice-to-have rather than essential, we maintain that their utility cannot be seen as inferior to so-called “hard skills.” The evidence for this is to be found in the many failed ventures and projects that floundered not because the engineering blueprints were faulty, or the objectives ignoble, or technology inadequate. Rather, the failures speak directly to the need for a better informed and more nuanced engagement with the local context and the array of stakeholders needed to make a success of it⁷ – an issue also revisited in Section IV. Thus, although an international studies degree can seem general in the sense that the skillset is of use to an array of endeavors and areas of work, it is also specialized because the higher-order understanding and competence developed through international studies are focused on a real and important set of competencies.

And yet, as with other humanities and social science students and graduates, articulating this skillset for international studies students can be and has been, challenging. Although concepts such as “soft skills,” “enterprise skills” and “21st-century skills” have been important in filling that breach, students in fields like that of international studies have, as we will now see, sometimes struggled to understand the job and career-relevance of the skills they have developed.

II: Arts, Humanities and the Social Sciences: The Career (Dis)Connect

A 2013 study supported by the Australian Government’s Office for Learning and Teaching (OLT) revealed that Bachelor of Arts (BA) graduates across Australia do

6 Orgad cited in Bourn, *Understanding Global Skills for 21st Century Professions*, 116.

7 Jill Anne Chouinard and Rodney Hopson, “A Critical Exploration of Culture in International Development,” *Canadian Journal of Program Evaluation* 30, no. 3 (2016): 248-276.



not appreciate their skillset and harbor concerns about their employability.⁸ Led by researchers at the University of Adelaide, the study gathered insight on the issue of BA graduates' employability from the perspective of the graduates themselves as well as the academics that taught them, and the companies that employ them. Among the discipline areas covered in the study were international studies, politics, history, and international relations, thus the report's findings are highly relevant to this article's discussion of interdisciplinary field international studies.

A significant finding of the study is that while BA degrees are designed to equip graduates with highly desirable skills, including critical thinking, problem-solving, and communication, the graduates themselves are not aware of these skills (or not adequately appreciative of them) and fail to highlight them to potential employers. Instead, the participating graduates in the study believed that employers prefer graduates of vocational disciplines whose training explicitly aligns with the needs of certain industries. The comparison was commonly drawn between BA graduates and engineers.

The study focussed explicitly on the perceived employability of individuals who possess an undergraduate qualification in the arts and, while it notes that an undergraduate qualification in the arts should not be just viewed as a "job ticket,"⁹ students, academics, and employers all noted that there are ways to address employability issues for BA graduates. The study sought recommendations from the three stakeholders – the students, their teachers, and their potential future employers – with a view as to understanding how best to enhance a Bachelor of Arts graduate's chances of attaining employment post-graduation. The recommendations include explicitly defining and assessing key graduate skills, providing training in CV writing and interview presentation, and democratizing professional practice opportunities, among others.

The employers surveyed in this study hail from the top three employer sectors of BA graduates: educational institutions, government departments, and retail or wholesale businesses. This list from which the study draws¹⁰ represents a variety of sectors that do not necessarily require employees to possess postgraduate qualifications. While some areas of work in international studies require postgraduate qualifications, and indeed this study indicates that a subset of BA graduates pursues graduate studies, this study seeks to address the relative employability of BA graduates based on the skills learned in their undergraduate qualification.

As the study clearly shows, individuals with a BA qualification possess the skills desired by their top three employer sectors and can obtain employment in these sectors without a postgraduate qualification. Importantly, this study highlights the disconnect between this reality and the students' perceived ability

8 Nick Harvey and Mosharefa Shahjahan, *Employability of Bachelor of Arts graduates*, report for the Australian Government Office for Learning and Teaching, Canberra, 2013.

9 *Ibid.*, 135.

10 *Ibid.*, 204-205.

to obtain employment and, indeed, their employability in general. The study seeks to address the perceived unemployability of BA graduates by addressing some of their, and their potential employers', key concerns: namely skills recognition, skills demonstration, and performance in recruitment processes. It might be worth noting here that the notion that students should "study something else" was *not* one of the recommendations, indicating that the issue is not so much the arts, humanities, and social sciences, but how the degree and its graduates fit into the labor market or how they can articulate their relevance.

To understand how these recommendations might address the issue of BA graduate employability, it is first important to understand what the "issue" in fact is. The OLT study asserted that the term "employability" is loaded, inconsistently defined, and ever evolving. For this study, the researchers defined "employability" as:

*achieving and demonstrating appropriate knowledge, skills, and attributes to obtain initial employment, maintain employment, and move to new employment if required.*¹¹

A simple way to measure the employability of BA graduates is to consider the proportion of graduates employed. When doing this, the OLT study found that 77% of the participating BA graduates were employed at the time of the study.¹² This proportion of workforce participation paints a picture of a highly employable degree. Why, then, is the employability of graduates of degrees such as international studies periodically up for debate? The way graduate employment outcomes are reported can have a dramatic impact on how employable graduates from various disciplines look on paper. Two commonly used metrics are the proportion of full-time engagement among a cohort and the time elapsed between graduating and attaining full-time employment.^{13,14}

If the OLT study looked only at the proportion of graduates *full-time* employed, that 77 drops to just over 50%.¹⁵ Furthermore, the study neatly displays the issue of time: the longer after graduation one measures workforce participation, the greater the percentage of the cohort one finds engaged in full-time work.¹⁶ This points to

11 Harvey and Shahjahan, "Employability of Bachelor of Arts graduates", 21.

12 Ibid., 70.

13 Matti E. Lindberg, "At the Frontier of Graduate Surveys – Assessing participation and employability of graduates with master's degree in nine European countries," *Higher Education* 53 (2007): 623-644.

14 Alison Pennington and Jim Stanford, "The Future of Work for Australian Graduates: The Changing Landscape of Employment Transitions in Australia," The Australia Institute Centre For Future Work, Canberra, 2019, https://www.futurework.org.au/the_future_of_work_for_australian_graduates.

15 Ibid.

16 Harvey and Shahjahan, "Employability of Bachelor of Arts graduates," 71-72.

an important point: if a metric for employability is regarded as related to achieving full-time employment in the shortest possible amount of time post-graduation, BA graduates can sometimes not fare well. For a term with diverse definitions, discussions of employability can paint an unduly bleak picture for BA graduates. We believe this ignores the individual and social benefits of part-time and casual engagements, and the myriad reasons why a graduate might initially take these roles. It also says nothing of job satisfaction. Acknowledging these deficits in the concept of “employed” and “employable” acknowledges the changing world of work and the reality that full-time roles may not be available, cyclical, or, indeed, may not be initially desirable for many individuals.

The OLT study’s discussion of employability for BA graduates highlights an important variable: one’s ability to achieve and demonstrate the appropriate skills to attain, maintain, and change employment. Employers surveyed noted that, specifically, recruitment choices are made based on a candidate’s “fit for the role” but that, more broadly, there are several key skills that they desire in a candidate. The top desired skills are, among others: (1) oral and written communication skills, (2) problem-solving skills, and (3) teamwork¹⁷

Ideally, candidates would be able to articulate and demonstrate these skills to employers by undertaking work-integrated learning, having previous work experience, and studying two majors to enhance subject-matter knowledge.¹⁸ However, while the graduates were able to identify in themselves the same key skills that employers desire, they believed that the best way to demonstrate their employability is by undertaking further study, taking practical classes on employment provision, and integrating the subjects of their art with those from technical disciplines.¹⁹ This indicates that graduates (and probably their teachers alike), while aware of their skills, might be under-valuing them, and are not able to demonstrate them effectively to employers. This paper seeks to contribute directly to this problem.

The OLT study demonstrated what is quickly becoming common knowledge: that employers are looking for graduates with what has been often termed “soft skills.” Generalist degrees, such as that of international studies, are where these skills are taught in abundance. Soft skills have undergone several incarnations in recent times, with “enterprise skills,” “employability skills,” and “21st-century skills” gaining popularity as concepts that cover similar ground to soft skills. Philip Hanlon, the President of Dartmouth, advocates a rebranding of soft skills to “power skills” to demonstrate their true potential.²⁰ Semantics aside, soft skills are highly demanded.

While concepts such as enterprise skills and 21st-century skills have sought to outline more clearly the career-relevance of skills, some of which were captured

17 Harvey and Shahjahan, “Employability of Bachelor of Arts graduates,” 144.

18 Ibid., 156.

19 Ibid.

20 Anant Agarwal, “Data Reveals Why the ‘Soft’ in ‘Soft Skills’ is a Major Misnomer,” *Forbes*, October 2, 2018, <https://www.forbes.com/sites/anantagarwal/2018/10/02/data-reveals-why-the-soft-in-soft-skills-is-a-major-misnomer/#7598c6446f7b>.

previously as “soft skills,” there has emerged another concept that captures even better the skillset cultivated during an international studies degree. In Section III, this article will present Douglas Bourn’s concept of “global skills” as a fitting articulation of the skillset of students in international studies degrees. Bourn’s work on global skills has the potential of enabling students and international studies teachers to understand and frame their competencies in more career-relevant ways and gain a better appreciation for an important skillset which is also easy for a student to take for granted and under-appreciated. While this articulation is particularly useful for students of international studies, it is not limited to them. Indeed, according to Oxford University, global skills are becoming “essential” for individuals and groups to have meaningful and productive engagement in schools, workplaces, and society in general.²¹ By undertaking a degree focused on developing expertise in global skills, BA graduates, and international studies students, in particular, are well equipped to succeed and serve in an increasingly globalized society. And it is to these global skills, and what constitutes them, that we now turn.

III: Global Skills

The use of terms such as “21st-century skills” or “soft skills” are often prescribed as competencies that can be effectively applied in a contemporary professional setting. However, globalization is not just economic; it has social, cultural, and political dimensions as well. Graduates are living in a world that requires them to meaningfully engage with the world around them. As Douglas Bourn argues, there is now a need to accurately locate skills needed “within the context of globalization.”²² Although other authors have discussed the concept of “global skills”, Bourn has gone furthest in articulating and promoting the term in recent years.²³

Bourn’s development of the concept and framework of “global skills” relies on the acknowledgment not only of the changing world of work, but the different economic, social, cultural, environmental, and technological phenomena that are interacting with one another. As global skills can acknowledge these interdependent global forces, they equip students with a broader awareness of what globalization entails and how they might respond to it. In the context of our discussion of the utility of global skills as a conceptual framework for articulating the competencies of international studies graduates, Bourn presents a framework for this in Chapter 6 of *Understanding Global Skills for 21st Century Professions*. The seven key abilities he describes as constituting global skills are:

21 Oxford University Press, “Global Skills: Creating Empowered 21st Century Citizens,” *Oxford University*, (2019): 6.

22 Douglas Bourn, *Understanding Global Skills for 21st Century Professions* (Switzerland: MacMillan Palgrave, 2018), 11

23 See Zlatica Kraljevic, *Borderless Leadership: Global Skills for Personal and Business Success*, (Milton: CRC Press, 2018).

- Ability to see the connections between what is happening in your community and the communities of people elsewhere in the world.
- Recognition of what it means to live and work in a global society, and of the value of having a broad global outlook which respects, listens to, and values perspectives other than one's own.
- Ability to understand the impact of global forces on one's life and the lives of other people, and what this means in terms of a sense of place in the world.
- Understanding the value of ICT (Information Communications Technology] and how best to use it, in a way that is self-reflective and critical, that questions data and information.
- Openness to a continuous process of self-reflection, critical dialogue, and questioning one's assumptions about the world.
- Ability to work with others who may have different viewpoints and perspectives, being prepared to change one's opinions as a result of working with others, and seeking cooperative and participatory ways of working.
- Confidence, belief, and willingness to seek a more just and sustainable world.²⁴

The present article cannot undertake the detailed elaboration of these traits that Bourn does in his book. However, it is likely that many international studies students, despite having accrued the abilities above explicitly and implicitly through their studies, would not realize that the above are valued by employers.

The concept of "global skills" is an advance beyond technical competencies or a code of conduct to be applied in a meeting room or workplace, although they are vital there too. They encompass "social forms of interaction" and the "ability to understand and make sense of the world around us."²⁵ As global skills embrace technical, interdisciplinary, and social skills, they essentially address more than just the "needs of employment" and address "all aspects of society."²⁶ Thus, not only will graduates be required to work under conditions created by globalization, but they will also need *to live* in and with those conditions. The incorporation of both *working and living* reinforces the need to understand one's role and position in the global environment.

Due to its emphasis on globalization, the development of global skills for international studies students and graduates is underpinned by a "global outlook." As students are encouraged to envision the world as a network of symbiotic relationships, consisting of people and practices in other contexts and locations, they adopt an approach to learning that seeks to understand the viewpoints of others and how they interpret their realities. Further, as international studies students who are better able to understand "what is happening in the world", they can consider their role and contribution within it, and indeed the appropriate role of their organization

24 Bourn, *Understanding Global Skills for 21st Century Professions*, 124-125.

25 Ibid., 2.

26 Ibid.

of employment.²⁷ A result of this reflection can be the development of a sense of global responsibility or “global citizenship.” Crucially, this develops the ability to explore the complexities of the world and to see oneself as a member of a global society. As graduates encounter issues of social justice, equity, and environmental challenges,²⁸ they may well consider their wellbeing but can consider the wellbeing of their community (in whatever way they wish to define this), communities in other areas of the world, and global wellbeing for generations now and into the future.

It follows then that what are considered necessary contemporary skills should no longer be measured against their “efficiency” in some form, but rather, how graduates “make sense” of the world.²⁹ International studies students and graduates become active participants in the experiences they encounter, can identify some of the broader processes at play, and reflect upon how a situation came into being. Drawing from Ulrich Beck, Bourn notes that global skills are not just *what* people learn, but *how* and *where* they learn too. To this point, Bourn argues that global skills rely on a shift “beyond interculturalism” and mere exposure to other cultures. By practically engaging with and reflecting upon intercultural experiences, students who develop global skills, which would include international studies students, can recognize that “cultural norms are not generic and context matters.”³⁰ Awareness of different beliefs, experiences, and perspectives, and identifying how these have been shaped by historical, cultural, or socioeconomic factors, are needed to contribute to authentic interactions. Developing the skills to engage with such diversity, such as the “unfamiliar” or the “other,” also positions the individual in the exchange and forces them to consider their role and contribution to the world. This process of self-reflection ensures that encounters with others are meaningful and equips graduates with the skills to collaborate well in diverse teams and environments.

As they reflect and challenge their knowledge, individuals who have developed global skills can develop and employ critical thinking. The significance of critical thinking as a global skill is amplified as technological advances driven by globalization begin to rely on new tools for communicating and sharing information - such as the Internet or social media platforms. Familiarity with ICT may be a requirement for most jobs in the contemporary world but utilizing such tools responsibly and ethically involves more than competency. Rather than focusing on “how” to use such tools, Bourn emphasizes that a significant consideration emerges on “how best” we might use them.³¹ By utilizing critical thinking, those competent in global skills can make assessments about the significance of digital tools, and ask questions about how and why we use them; what their effect is as a mode of communication; how are narratives constructed and framed; and how information may be received and what responsibility the author/user has in that process. Further,

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- 27 Bourn, *Understanding Global Skills for 21st Century Professions*, 190.
 28 Ibid., 290.
 29 Ibid., 18.
 30 Ibid., 146.
 31 Ibid., 127.

when this process is guided by a sense of global justice, those who possess global skills can understand an issue in both its local and international contexts, and to appreciate the diversity of stakeholders who need to be engaged when addressing that issue.

Bourn's global skills uphold the values of global justice, which will align well with many international studies students. Global skills are not only set within a globalized world; they address the impact of global processes on people and societies. They rely on reflection, introspection, awareness of others, and acknowledgment of one's positionality. These are important regardless of whether the decisions under deliberation are focused on the self or one's place of work. Underpinning these skills is a "sense of visioning" on how to achieve a "more just and sustainable world."³² As students consider how to improve quality of life, their "ability to see" connections between the local and the global allow for a wide lens view of world issues. Ideally, this empowers graduates to effectively engage in society and feel confident about creating positive change.³³ Because it is the case that the only constant thing in life is change and that change is necessary in any sphere, from business to politics, and society, the next section tackles how international studies students and graduates can understand their place as an agent of change

IV: Global Citizenship, Positionality, and Systems Thinking

Understanding change and seeking to influence change positively in any organization requires a sophisticated understanding of the wider context. This in turn requires analytical tools to facilitate a systematic assessment of that context and the most important elements to consider, which may not necessarily be the most obvious ones. Also beneficial would be a disposition towards seeing oneself in a global context as a global actor.

One element of Bourn's exposition on "global skills" that can resonate well with international studies is the emphasis on global citizenship, a concept that has gained increasing traction with diverse organizations ranging from Oxfam to UNESCO.³⁴ Bourn writes, "If one term has become the symbol of this movement to promoting learning and engagement for global social change, it is global citizenship."³⁵ This term, he goes on to note, puts an "emphasis on new forms of citizenship that take account of our globalized multicultural world, in which people work across cultures and economies around the world."³⁶

However, "citizenship" can potentially be a problematic concept because within national contexts it has tended to revolve around questions of rights rather than rights *and* obligations. Reference to global citizens can also conjure images of

32 Bourn, *Understanding Global Skills for 21st Century Professions*, 189.

33 Ibid., 125.

34 Ibid., 4-11; 100-101.

35 Ibid., 271.

36 Ibid.

people of privileged categories and fortunate circumstances gaining access to the lands and cultural experiences of others, while those others have little in the way of similar opportunity, and indeed may face hostility should they seek entry as asylum seekers, refugees, or other kinds of migrant.

This paper does not suggest that Bourn advocates for a naïve conceptualizing of global citizenship. Nevertheless, it must be emphasized that an important theme in an international studies education must be a critical awareness of what is often termed positionality, or one's subject position. Teaching this in any context will be challenging and potentially confronting.³⁷ In a context like Australia with a settler-colonial history and thorough-going displacement of Indigenous peoples from their lands and both cultural and human destruction,³⁸ these important discussions can generate feelings of guilt among young people.³⁹ Where students aspire to make the world a better place, a critical exploration of the history and practice of international development can also confound and cripple those aspirations.

Part of the process of working through this is a critical reflection on our "good intentions," where they come from, at whom are they directed, and the shape they take.⁴⁰ But while this reflection needs to be critical, it should not imply that the result of this reflection is to dispense with them, as implied by the idiom that "the road to hell is paved with good intentions." In cross-cultural and development contexts, what is intended as beneficence can be characterized, often quite fairly, as being paternalistic, patronizing, and depending on the ethnic and national background of the person, possibly stemming from a "white savior complex."⁴¹ For those with the desire to be of service but who have become aware of the problematic dynamics of "international development," and the need to be self-aware of one's privilege and the importance of avoiding contributing to problems, finding a route through this fraught terrain can be very difficult. This is especially the case when admonitions – the need for which is not being doubted here – outline *only* what is problematic and seldom give directions on what can be positively accomplished.

37 Katherine B. Hankins and Robert A. Yarbrough, "Positionality and Active Learning: Confronting Privilege in Field-Exercise Design," *Journal of Geography* 107, no.4-5 (2009): 186-193; Gina C. Torino, "Examining Biases and White Privilege: Classroom Teaching Strategies That Promote Cultural Competence," *Women & Therapy* 38, no.3-4 (2015): 295-307.

38 Julian Lee, Hariz Halilovich, Ani Landau-Ward, Peter Phipps and Richard J. Sutcliffe, *Monsters of Modernity: Global Icons for our Critical Condition* (Leeds: Kismet Press), 47-70.

39 Michael J. Halloran "Indigenous Reconciliation in Australia: Do Values, Identity and Collective Guilt Matter?," *Journal of Community & Applied Social Psychology* 17 (2007): 1-18.

40 Leigh Mathews, "Kent Goldsworthy: The Commodification of Good intentions," *The Good Problem*, podcast audio, 4 April, 2020, <https://www.leighmathews.com/podcast-episodes/kentgoldsworthy>.

41 Robtel Neajai Pailey, "De-centering the 'White Gaze' of Development," *Development and Change* 51, no. 3 (2020): 729-745.

While there is some virtue in a “solutions-focused” approach to some problems, the increasingly popular phrase does reflect the common linear equation:

problem + intervention = solution and better situation

The straightforward fix to complex situations (that can *appear* simple) is deeply ingrained in many people and is the basis of many industries and companies whose products are framed and sold as fixing life problems and is also to be found in the good intentions behind aspirations to fix other nations’ problems. In an article titled “Western do-gooders need to resist the allure of exotic problems”, Courtney E. Martin writes that, “There is real fallout when well-intentioned people attempt to solve problems without acknowledging the underlying complexity” and meanwhile domestically in the US “we’ve got plenty of domestic need.”⁴² But Martin’s conclusion is not that young people should not engage with others beyond their national borders:

*...I’m not arguing that staying close to home inoculates kids, especially of the white, privileged variety, like me, from making big mistakes. But don’t go [overseas] because you’ve fallen in love with solvability. Go because you’ve fallen in love with complexity. Don’t go because you want to do something virtuous. Go because you want to do something difficult. Don’t go because you want to talk. Go because you want to listen.*⁴³

An enlightening exposition that addresses issues around the apparent solvability of other people’s problems is Clare Talwalker’s chapter “Fixing Poverty,” in which she describes her experiences in teaching students at UC Berkeley. She notes that many of her students have arrived “at college having already taken up arms for a particular cause.”⁴⁴ Concerning her class on poverty, Talwalker writes:

*What can it mean for a student to care about poverty as a general and global problem and to seek ways to redress it? Care of this kind—the kind that comes from the embrace of universal problems and generalizable moral positions—is itself a sort of power and privilege, and it tends to lead people to solutions— utilitarian solutions—that are not attentive to the things that are distinctive about a place and a people.*⁴⁵

42 Courtney E. Martin, “Western do-gooders need to resist the allure of ‘exotic problems’”, *The Guardian*, April 23, 2016, www.theguardian.com/global-development-professionals-network/2016/apr/23/western-do-gooders-need-to-resist-the-allure-of-exotic-problems.

43 Ibid.

44 Ananya Roy, Genevieve Negrón-Gonzales, Kweku Opoku-Agyemang, and Clare Talwalker, *Encountering Poverty* (Berkeley: University of California Press, 2016), 122.

45 Ibid., 124.

As part of her class, Talwalker emphasizes an engagement with issues of “power, place, and history,” and she seeks to draw students’ thinking and focus away from utilitarian ways of thinking about “fixing poverty”. Instead, she focuses students on developing a deep engagement with a community and its history. She also ensures students reflect on their positionality. She finds that when students do this, they imagine more sophisticated ways to engage with communities where poverty was prevalent. “In each case,” writes Talwalker, “this meant backing away from a programmatic approach and a concrete goal and instead opening up to the unpredictability of what other people think and do.”⁴⁶

A framework that seeks to guide users away from linear utilitarian thinking is systems-thinking, which Bourn commends.⁴⁷ Systems thinking is a methodical approach to conducting a holistic inquiry into a phenomenon and which attempts to open up the focus to include the wider context in which it occurs, and to also shift thinking away from entities and towards the *relationships* between entities. For international studies, the ability to think broadly and holistically is relevant, and a methodical approach to doing so is of great value. Systems thinking and the related field of complexity theory⁴⁸ also have the advantage of being part of a tradition of academic thought that students and teachers in international studies can connect with if they wish. At the same time, systems thinking is also commended by those seeking practical ways to approach international projects involving diverse stakeholders.⁴⁹ The theme of practicality in systems thinking brings some groundedness and inclusion that the concept of global citizenship can often seem to lack.

A patient, inclusive, and dynamic approach to engaging with others on projects and plans is of course not easy⁵⁰ and would likely frustrate the desires of some people and organizations to “just get on with it.” However, the long history of failed and misguided endeavors in international development and other realms is a testament to the need for another route which systems thinking and global skills can help cultivate, and which can make significant contributions to the field of international studies. The need for this is hard to doubt in a self-evidently global world where even intra-national and highly local issues are inevitably impacted by global forces and currents. Thus, cautious and critical international and global competencies are much needed in a context where bilateral and international engagement, cooperation, and sophisticated mutual understanding are crucial in so many domains, ranging from

46 Roy, Negrón-Gonzales, Opoku-Agyemang, and Clare Talwalker, *Encountering Poverty*, 144.

47 Bourn, *Understanding Global Skills for 21st Century Professions*, 246.

48 Jean G. Boulton, Peter M. Allen, and Cliff Bowman Cliff, *Embracing Complexity: Strategic Perspectives for an Age of Turbulence* (Oxford: OUP, 2015).

49 Duncan Green, *How Change Happens*.

50 Kimberly Bowman, John Chettleborough, Helen Jeans, Jo Rowlands and James Whitehead, *Systems Thinking: An Introduction for Oxfam programme staff* report for Oxfam, GB, <https://policy-practice.oxfam.org.uk/publications/systems-thinking-an-introduction-for-oxfam-programme-staff-579896>.

international security to business and trade, to human health and welfare, to name but a few.

V: Graduate Case Study

How the global skillset and the competencies developed in an international studies degree come together to enable students and graduates to sensitively navigate a globalized and culturally diverse world is of course tested when applied in contexts outside the classroom. To illustrate this, this article will explore the experience of one of the present authors, Madeline McGarvey, who in 2019 received an Australian New Colombo Plan (NCP) Scholarship to undertake a research project in Indonesia.

As an NCP Scholar, McGarvey completed a semester at a university in West Java, wrote an Honours thesis on medical pluralism, interned at a maternal health clinic in Bali, and studied Bahasa Indonesia in several islands across the archipelago. McGarvey recalls needing to draw on the skills that she cultivated throughout her international studies degree, both during the application rounds of the scholarship program and whilst in-country.

To obtain the competitive NCP scholarship, McGarvey needed to have a clear understanding of her skills and the capacity to clearly and convincingly convey these skills to panelists. In essence, she needed to have the terminology and the language – as advocated by Bourn⁵¹ – to express her core competencies. She remembers struggling with this at first as so many of the skills that she had developed were acquired both subtly and incrementally; they had become such a part of the self that she could barely recognize them, nor remember a time without them. McGarvey recalls the utility of revisiting a journal-based assignment she was required to submit as part of a long-term internship, which constitutes a mandatory component of her international studies degree. This assignment and the compulsory internship *per se* had helped McGarvey to become an “active” and reflective learner and to engage in practices of deep, critical, and formative self-reflection, whereby the tacit knowledge she acquired was raised to a more conscious and explicit level.

McGarvey notes that in both her application process and several similar application processes that McGarvey has coached people through, there is a notable temptation for students to prioritize hard skills over soft skills. Students often name subjects that they have studied or essays that they have written, as a way of conveying their explicit knowledge, whilst neglecting to mention their implicit knowledge. If soft skills are mentioned, it is usually a passing reference to “written and communication skills,” which fails to concretely capture their high-order processing and nuanced critical thinking abilities. Within McGarvey’s peer group, there is a failure to articulate the value of what can be seen as a generalist degree; this is something that has been seen by McGarvey’s employers as a tangible advantage and who recognize – even if not explicitly – the value of global skills. These skills have allowed her to pivot between organizations, topics, and geographies. Before

51 Bourn, *Understanding Global Skills for 21st Century Professions*.

undertaking her program of study and research in Indonesia, McGarvey was not well versed in maternal healthcare nor did she have an established knowledge of Indonesian culture. For McGarvey, although this caused initial apprehension, she gradually realized that being work-ready (and research-ready) is less about *what* one already knows, and more about *how* one thinks. She brought into her Indonesian program fundamental competencies regarding culture, language, and society which she could readily leverage to become a sensitive and effective participant in her program of work, study, and research in Indonesia.

Being a generalist can come as a competitive advantage, especially in the complexity of the 21st century, where information, organizational needs, community desire, and evidence-based practices are rapidly shifting, and where both employees and leaders need to be able to integrate new knowledge, quickly and meaningfully. The ability to handle the uncertainties of late modernity, and to act decisively yet thoughtfully in the face of ambiguity is a key global skill. It also dovetails neatly with another global competency: the ability to understand complexity theory and engage with systems methodologies. McGarvey was able to work on innovative, health care initiatives only because she was primed by her degree. Having spent three years considering the complex interplay of factors that contribute to intractable social problems allowed her to recognize and map place-based determinants and systemic barriers to community wellbeing, alongside her team in Indonesia.

In addition to having a “generalist” or versatile skillset and being able to understand systems thinking and complexity theory, being able to critically analyze is an indispensable global skill. McGarvey’s thesis investigated the ways that global and local forces have shaped the discourses, beliefs, and practices of a 21st century medically plural health setting. To capture the creative, reflexive, and the idiosyncratic manner in which local forces had accepted, integrated, and rejected particular global flows, McGarvey needed to be able to watch, note, challenge, and dissect that which was in front of her, and to filter her findings through an analytic lens.

She also needed to be acutely aware of her positionality and privilege, which was emphasized in the previous section, especially when operating in cross-cultural contexts. McGarvey knew that to make a valuable contribution to the literature and to uphold her research commitments to justice and beneficence, she needed to scrutinize her privilege and regularly examine her biases and their implications. She needed to continually question the reasons for, and implications of, her research findings, asking herself whether her research accurately represented the community she was working with, and how her conclusions could, or could not, affect other people. Having taken subjects that explored issues of colonialism, ethnocentrism, and the problematization of development, meaning that – although one can always be better informed – McGarvey was better equipped than she would otherwise have been to challenge her assumptions and consider the assumptions of those around her. McGarvey is adamant that she would not have been able to exercise this level of self-reflexivity had it not been modeled to her by lecturers, tutors, and peers throughout her international studies degree.

McGarvey also sees emotional intelligence as a key skill in all spheres of global professional and personal life. This includes the ability to understand one’s inner world and the inner worlds of those they work with; the capacity to be sensitive to

other people's needs; to listen deeply; and to communicate constructively. McGarvey found this skill invaluable when broaching emotionally charged conversations, navigating sensitive issues, and creating a sense of psychological safety with her colleagues, research participants, and supervisors. It is what allowed her to receive invitations to conferences, to witness the work of midwives, to be invited to culturally significant events, and ultimately, to be gifted personally and professionally transformative experiences in Indonesia.

Finally, McGarvey says that the adoption of a growth mindset was an invaluable asset for her, both whilst in Indonesia and upon her premature return home. She notes that the ability to frame experiences as opportunities for development, coupled with a commitment to staying open, curious and receptive to new ideas, is key to staying adaptable, resilient, and employable in our dynamic, global era. This case study exemplifies how international studies degrees – with their emphasis on critical thinking, self-reflexivity, and 'active' learning – can equip students to face the complexity and ambiguity of working life in the 21st century.

Conclusion

This article outlined the importance of articulating and appreciating the particular skillset developed and championed by graduates of international studies. More specifically, it highlighted Bourn's concept of "global skills" as a framework for capturing the competencies cultivated in students of international studies, and further, have sought to contribute to the understanding of "global skills" by identifying systems thinking and critical self-reflexiveness as additional core components of such a skillset.

For the authors, the value in naming, describing, and indeed, celebrating the abilities and skills of international studies graduates go beyond the more immediate and perhaps, material benefits of doing so (i.e. in supporting and enhancing the employment outcomes of our graduates). The argument comes at a time when, in the current local context of Australia (in addition to elsewhere), the value of humanities and social science degrees is under siege. In Australia, at the time of writing in late 2020, the federal government has passed legislation to "reform" tertiary education by substantially increasing the cost of degrees that (in its misguided view) lack career relevance. By contrast, degrees that are seen as "job-relevant" (largely "STEM" courses) will have their fees significantly reduced. In announcing the new policy, titled "Job-Ready Graduates," the federal Education Minister Dan Tehan (himself a humanities graduate) was quoted as saying that the government wanted to "incentivize students to make more job-relevant choices."⁵²

The rhetoric surrounding the shift in policy in Australia speaks to the impoverished understanding of what it means to be 'job-ready' consequent of

52 Anisa Purbasari Horton, "Why Australia is doubling fees for Arts degrees", *BBC*, July 29, 2020, <https://www.bbc.com/worklife/article/20200728-why-australia-is-charging-more-to-study-history>.



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university education, a perspective that is apparent in many countries today. Referring to the US tertiary education environment, Tim Marshall points out that, “A strictly technical education may carry a short-term promise (a job), but it also carries a long-term peril of not being well prepared for ongoing change. Instead of teaching students narrow skills, we need to prepare them with the skills to think, communicate, collaborate, design, and make their—and our—futures.”⁵³ As Marshall notes, in a world increasingly shaped by the transformative dynamics of emerging technology and innovation, what is needed are not only graduates who can develop such technologies but in addition – and perhaps even more so – those who possess the skills to critically understand and reflect on the meaning of these developments across local and global contexts.

In asserting the specificity of what may appear general, and in articulating the “global skills” needed for a globalized world, this paper offers a much-needed counter-narrative to that currently being advanced by some in positions of political (and financial) power about the value of programs such as international studies. In a world where even the most localized challenges are affected by the global and imbued with added complexity as a result, the skills of a culturally competent, critically engaged, and justice-focussed workforce are worth investing in.

53 Tim Marshall, “STEM may be the future-but liberal arts are timeless”, *Quartz*, February 28, 2018, <https://qz.com/1215910/stem-may-be-the-future-but-liberal-arts-are-timeless/>.





THE INVISIBLE BUT INDISPENSABLE PARTNERSHIP: UNDERSTANDING THE CHINA FACTOR IN JAPAN-TAIWAN RELATIONS

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This paper examines Taiwan and Japan's shared threat perception of rising China in the 21st century by focusing on the indirect security link under the framework of the US-Japan Security Treaty (1960) and Japan and Taiwan's evolving position in the disputes over the Senkaku/Diaoyutai/Diaoyu islands. Understanding that threat perception is a process rather than a distinguishable event, this paper analyzes Japan and Taiwan's official statements and documents to determine how both countries view China as the "infringer" in the 21st century. China's assertiveness in the past decade has been perceived as aggressiveness by both Taiwan and Japan. Because of their indirect security link, the two countries share the perception of threat even when China's aggression is only directed toward one side. The shared threat perception has pushed the two countries closer to one another, forming an unofficial partnership in hedging China. If China's democratization is an impossible dream, then Japan and Taiwan firmly believe in maintaining the status-quo indefinitely both in terms of the unification question and the post-Cold War power structure of the Far East. China's behavior has become unpredictable and the two countries' threat perception has increased significantly.

Introduction

China's controversial new national security law for Hong Kong came into effect on June 30, 2020. The new law criminalizes any act of secession, subversion, terrorism, and collusion with foreign or external forces. It is seen as China's final effort to crack down on the ongoing pro-democracy movement in the city. The law undermines the principle of "one country, two systems," that promised to preserve separate legal and political systems within China and protect Hong Kong's independent judiciary system, as well as freedom of speech and the right to assemble. When the British handed over the territory in 1997, China promised to respect its integrity for at least



50 years. The critics of the law have labeled it as “the end of Hong Kong.”¹ Hong Kong authorities have recently arrested hundreds of protesters and activists, including media tycoon Jimmy Lai, politician and activist Agnes Chow, and a 15-year-old girl waving a Hong Kong independence flag during a protest. Consequently, there are growing fears about Taiwan — which Xi’s administration sees as “an inalienable part of China”² — becoming the next target of China’s belligerence.³

The United States, Australia, Canada, and the United Kingdom immediately criticized the law, publishing a joint statement expressing “deep concerns.”⁴ These countries, alongside Germany, proposed to pass legislation to accept political refugees from Hong Kong. In contrast, China’s neighboring countries in Asia (such as South Korea, India, Russia, Vietnam, Singapore, and Thailand) — generally dependent on China’s economic power and under the influence of its “sharp power”⁵ — responded with deafening silence, except for two nations: Japan and Taiwan. Taiwan, who has its own dispute with China, expressed its dismay openly and firmly and also proposed to accept political refugees. Japan, although hesitant at first, later joined the G7 Foreign Ministers’ Statement on Hong Kong and the joint statement adopted at the UN Human Rights Council by some other 26 countries.⁶ The question is: what makes the two Asian countries different from the rest of China’s neighbors? Like other countries, Japan and Taiwan rely on China’s economic power and cannot ignore China’s “sharp power”. Wouldn’t it be more profitable for their national interest to stay silent and be on good terms with China? What does their position say about them? Does it affect how they perceive one another? With the Japan–China Joint Communiqué of 1972, Japan severed its official diplomatic ties with Taiwan and, since then, have only been maintaining nongovernmental relations. But what is the current nature of their relationship? Why are Japan and Taiwan’s strategies in

1 “Hong Kong security law: What is it and is it worrying?” *BBC*, June 30, 2020, <https://www.bbc.com/news/world-asia-china-52765838>.

2 “White Paper — The One-China Principle and the Taiwan Issue,” Embassy of the People’s Republic of China in the Kingdom of Norway, Accessed June 28, 2020, <https://www.fmprc.gov.cn/ce/ceno/eng/ztxw/twwt/t110655.htm>.

3 “‘We’re next’: Hong Kong security law sends chills through Taiwan,” *The Japan Times*, July 7, 2020, https://www.japantimes.co.jp/news/2020/07/07/asia-pacific/hong-kong-security-law-taiwan/#.Xz4j_y2B2u4.

4 “Joint Statement on Hong Kong,” U.S. Department of State, May 28, 2020, Accessed August 29, 2020, <https://www.state.gov/joint-statement-on-hong-kong/>.

5 Sharp power refers to authoritarian governments’ effort to “pierce, penetrate, or perforate the political and information environments in the targeted countries” through media, academia, think tanks, and culture. See more in Christopher Walker & Jessica Ludwig, “The Meaning of Sharp Power,” *Foreign Affairs*, November 16, 2017, <https://www.foreignaffairs.com/articles/china/2017-11-16/meaning-sharp-power>.

6 “Joint Statement on Hong Kong”; “UN Human Rights Council 44: Cross-regional statement on Hong Kong and Xinjiang,” GOV.UK, June 30, 2020, Accessed August 29, 2020, <https://www.gov.uk/government/speeches/un-human-rights-council-44-cross-regional-statement-on-hong-kong-and-xinjiang>.



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dealing with China so similar? This paper attempts to answer these questions by examining Taiwan and Japan's mutual threat perception of China and by exploring the invisible but indispensable unofficial partnership between the two countries.

The first part introduces a theoretical framework of the threat perception theory, while the second part provides the Taiwanese perspective on the unification question. After providing a short historical background of the two countries' relations, the last part analyzes the China factor in Japan-Taiwan relations, specifically in two areas: (1) the US-Japan security alliance, and (2) maritime disputes. This paper argues that Taiwan and Japan have moved closer to one another because of their shared threat perception of rising China in the 21st century. They both perceive the other as a crucial partner in hedging China because both wish to maintain the unification status-quo indefinitely.

Theoretical Framework: Threat Perception Theory

According to Robert Jervis (1977), threat perception is a characteristic of subjective security based on one's estimate of another's power or willingness to cooperate.⁷ Because it is subjective, whether or not one perceives the other's action as threatening depends on the perception of one's power and vulnerability, history of friction or cooperation, and similarity or difference in values. Raymond Cohen (1978) analyzed the conditions under which one perceives threat by dividing the process into two stages: observation and appraisal. Observation is the first stage where the decision-maker selects which signal to pay attention to from a pool of various contemporary events. Whether verbal or nonverbal, official or unofficial, in the perspective of the decision-maker, if that signal strongly suggests an infringement "of rules of the game governing relations between the actors involved," then it is recognized as a threat.⁸ Rules of the game (i.e. universally accepted rules of behavior that harmonize the mutual expectation of participants) prevent unwelcome conflicts in situations where there is no means of direct and free communication.⁹ Appraisal, the second stage, refers to the anticipation of the consequence and the selection of an explanation or a solution to the threatening signal. When one infringes the rule, its behavior becomes unpredictable to the observer who would conclude that the infringement is "a challenge to the existing balance of relations as a whole," aiming at domination and aggression.¹⁰ Barbara Farnham (2003) further showed that regime types, domestic political norms, and democratic norms can also be strong indicators in the

7 Robert Jervis, "Cooperation under the Security Dilemma," *World Politics* 30, no.2 (1978): 175.

8 Raymond Cohen, "Threat Perception in International Crisis." *Political Science Quarterly* 93, No.1 (Spring, 1978): 100.

9 Cohen, "Threat Perception," 103-105.

10 Ibid., 101, 107.



perception of threat.¹¹ Understanding that the threat perception is a process, and not a distinguishable event, this paper analyzes Japan and Taiwan's official statements and documents to determine why Japan and Taiwan's strategies in dealing in China are so similar and if the threat perception of China brought the two countries closer.

The Taiwanese Perspective: The "1992 Consensus"

To understand Taiwan's perspective on the unification question, different interpretations of the "1992 Consensus" between Taiwan and China should be examined. The "1992 Consensus" is a formula "strategically constructed" by the Kuomintang (KMT) of Taiwan and the Communist Party of China (CCP) "to shelve their differing positions concerning which government is the legitimate" sole representative of "China". In a historical meeting, both parties agreed to "respect and accept" each other's interpretation of the "One China" principle.¹² The Consensus, negotiated by the CCP's Association for Relations Across the Taiwan Strait (ARATS) and KMT's Strait Exchange Foundation (SEF), also allows for China and Taiwan to cooperate in other practical areas.¹³ For the CCP, "One China" represents the People's Republic of China (PRC). For the KMT, it refers to the Republic of China (ROC). However, from 2019, China has been attributing a new meaning to the principle: "one country, two systems model for Taiwan," pressuring the current Tsai Ing-wen administration (Democratic Progressive Party, DPP) to adopt the Hong Kong model.¹⁴ Taiwan never agreed to this interpretation and sees itself as a *de facto* independent state. The Tsai administration does not approve Xi's new interpretation of the "1992 Consensus," nor her predecessor's "One China, Respective Interpretation" formula. In response to China's new stance, President Tsai published a new guideline, stating:

I want to emphasize once again that the government I lead is committed to maintaining cross-strait peace and stability, and supports normal cross-strait exchanges. However, we resolutely oppose "one country, two systems" and refuse any transitional arrangement that would lead to forced unification. This is not a choice between war and peace, but a choice between maintaining the status quo of the Republic of China's independent national sovereignty

11 Barbara Farnham, "The Theory of Democratic Peace and Threat Perception," *International Studies Quarterly* 47, no. 3 (2003): 395-415.

12 Shirley A. Kan, "China/Taiwan: Evolution of the "One China" Policy—Key Statements from Washington, Beijing, and Taipei," Congressional Research Service, October 10, 2014.

13 Yu-Jie Chen and Jerome A. Cohen, "China-Taiwan Relations Re-Examined: The '1992 Consensus' and Cross-Strait Agreements," *University of Pennsylvania Asian Law Review* 14, no. 1 (2019): 14.

14 Elaine Hou and Evelyn Kao, "Xi's '92 consensus' speech challenges status quo: pundit," *Focus Taiwan*, January 6, 2019. <https://focustaiwan.tw/politics/201901060010>.

*or being unified by China.*¹⁵

*We must take advantage of the international circumstances favorable to Taiwan and join forces with the world community to counter the Chinese Communist Party's aggression aiming to destroy our sovereignty.*¹⁶

Japan-Taiwan Relations

While official diplomatic ties between Japan and Taiwan have ceased in 1972, the two nations have been maintaining a steady relationship through informal mechanisms. In the 1972 joint communique between Japan and the PRC, Japan recognized the government of the PRC “as the sole legal Government of China.”¹⁷ But again, Japan made only indirect references to the Taiwan issue, stipulating that “[t]he Government of the People’s Republic of China reiterates that Taiwan is an inalienable part of the territory of the People’s Republic of China,” and that Japan “fully understands and respects this stand of the Government of the People’s Republic of China.”¹⁸ Japan positions itself as a non-actor in the Taiwan issue.

Japan’s policies toward Taiwan in the post-1972 has been based on the principle of separation between economy and politics (*seikei bunri*). Japan maintained private contacts with high level Taiwanese officials mainly for economic purposes, which does not contradict PRC’s “one-China” principle. But because Japanese political objectives align with the country’s economic interests, Japan could often disguise political matters as economic matters. Because of the private nature of the informal contacts between the two countries, the PRC has been unable to chastise this comportment.¹⁹

Moreover, after the democratization of Taiwan, which ended the KMT’s one-party authoritarian regime, a new Taiwan-centric national identity discourse arose among the elites and rapidly spread to the public.²⁰ Pressured by China on the unification question, the elites had to delay the issue indefinitely. One strategy to achieve this was the Taiwanization campaign, which emphasized the distinct

15 “President Tsai convenes National Security Meeting, finalizes strategy and mechanisms for responding to PRC’s ‘one country, two systems model for Taiwan’,” Office of the President Republic of China (ROC), March 11, 2019, <https://english.president.gov.tw/News/5656>.

16 Ibid.

17 “JOINT COMMUNIQUE BETWEEN THE UNITED STATES AND CHINA,” Wilson Center Digital Archive, Accessed June 28, 2020. <https://digitalarchive.wilsoncenter.org/document/121325>.

18 Ibid.

19 Phil Deans, “Taiwan in Japan’s Foreign relations: Informal politics and virtual diplomacy,” *The Journal of Strategic Studies* 24, no. 4 (2001): 152-156.

20 Yinan He, “Identity Politics and Foreign Policy: Taiwan’s Relations with China and Japan, 1895-2012,” *Political Science Quarterly* 129, no. 3 (Fall 2014): 472.

identity and history of Taiwan. Major revisions were made in textbooks: Taiwan's multiethnic nature was highlighted, and the legacy of the Japanese colonization was reevaluated to stress its more positive aspects.²¹ In contrast, the atrocities carried out by the authoritarian KMT were emphasized. This unique history of Taiwan is what separates Taiwanese people from the Chinese. It has become the cornerstone of the Taiwan-centric identity discourse. Taiwan stands out as the only country to remember positively Japan's colonial past. When compared to China and South Korea – who are in constant dispute with Japan over the issue of history textbooks, the imperial flag, politicians' visit to the Yasukuni Shrine, forced labor, and the "comfort women" reparations – Taiwan's positive interpretation of the colonial past is heartwarming for the Japanese people.²²

However, the aforementioned history of Japan-Taiwan relations cannot explain either why both countries' strategies in dealing with China are so alike, or whether or not they share a threat perception from China. Japan and Taiwan do not have official diplomatic ties nor do they form a security alliance that legally binds one country to the other. Therefore, in order to analyze their *observation* and *appraisal* of the threat perception of China, the indirect security link between the two nations under (1) the US-Japan Security Treaty, and (2) their handling of maritime disputes should be examined.

Japan-Taiwan Relations under the US-Japan Security Treaty

The framework of the Treaty of Mutual Cooperation and Security between the United States and Japan (1960) indirectly links Japan's security to Taiwan. The two countries, thus, form a strategic alignment. After World War II, Japan renounced its right of belligerency and has been relying on the US for its security. Considering the Japan Self-Defense Forces (JSDF), Japan remains a *de facto* armed country, although its ability "to develop an independent strategy" is tied to the US.²³ In the Treaty, the two parties agreed to "consult together from time to time regarding the implementation of this Treaty, and, at the request of either Party, whenever the security of Japan or international peace and security in the Far East is threatened."²⁴ While the treaty doesn't specify the exact boundaries of the Far East, it likely encompasses all East Asian and South East Asian countries, most importantly China, Taiwan, and the two Koreas. Throughout the Cold War, along with the North Atlantic Treaty Organization

21 He, "Identity Politics and Foreign Policy," 484.

22 Taipei Economic and Cultural Representative Office in Japan, published in December 26, 2019. Accessed June 26, 2020. https://www.roc-taiwan.org/jp_ja/post/69207.html.

23 Soeya Yoshihide, "Taiwan in Japan's Security Consideration," *The China Quarterly* 165 (2001): 130.

24 "TREATY OF MUTUAL COOPERATION AND SECURITY BETWEEN JAPAN AND THE UNITED STATES OF AMERICA," Ministry of Foreign Affairs of Japan, Accessed June 28, 2020. <https://www.mofa.go.jp/region/n-america/us/q&a/ref/1.html>.



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(NATO) alliance, this treaty had represented the cornerstone of the US defense strategy against the Communist bloc. Now, even after the Cold War, as alliances persisted and strengthened, the treaty has become one of the most threatening factors for China and has shaped the country's behavior and strategies in the Far East.

The "One-China Principle" is the foundation of the Chinese government's legitimacy. According to the principle, foreign countries' involvement in the Taiwan issue equates to interference in China's internal affairs. It contends that reunification with Taiwan is "Chinese people's just struggle to safeguard China's sovereignty and territorial integrity, and its basis, both *de facto* and *de jure*, is unshakable." Moreover, it unwaveringly maintains that "[a]ll the facts and laws about Taiwan prove that Taiwan is an inalienable part of Chinese territory."²⁵

The Taiwan issue is of concern for both Japan and the US. While the joint communiques (1972, 1978, and 1982) between the PRC and the US recognized that the PRC is the sole legal government of China, they only acknowledge (i.e. recognize the reality), rather than firmly claim, "that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China."²⁶ Communiques stipulate that the US doesn't challenge this position, which creates a space for the US to remain strategically ambiguous in regard to the Taiwan issue. The 1979 Taiwan Relation Act (TRA) further enables this strategic ambiguity. The act doesn't stipulate that the US is required to defend Taiwan. However, it does indicate that "it is the policy of the United States to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan."²⁷ It is unlikely that the US will defend Taiwan if Taiwan provokes China by unilaterally declaring independence. Yet, if the PRC tries to forcefully unify Taiwan, the US would have to get involved to protect the legitimacy of its military presence in East Asia post-Cold War and to defend its economic and security interests in the area.²⁸

Taiwan plays a vital role in Japan's security. As expressed in the 1969 joint communique between Prime Minister Eisaku Sato and President Richard Nixon, "the maintenance of peace and security in the Taiwan area" is "a most important

25 "White Paper — The One-China Principle and the Taiwan Issue."

26 "JOINT COMMUNIQUE BETWEEN THE UNITED STATES AND CHINA," Wilson Center Digital Archive, Accessed June 28, 2020. <https://digitalarchive.wilsoncenter.org/document/121325>.

27 "Taiwan Relations Act," American Institute in Taiwan, Accessed June 28, 2020. <https://www.ait.org.tw/our-relationship/policy-history/key-u-s-foreign-policy-documents-region/taiwan-relations-act/>.

28 China passed the "Anti-Secession Law" in 2005 establishing a framework that justifies military action against Taiwan's independence.



factor for the security of Japan.”²⁹ Against the backdrop of the third Taiwan Strait crisis and China’s increasing nuclear tests, the 1997 revision of the Guideline for Japan-US Defense Cooperation established a legitimate framework for bilateral defense cooperation in “areas surrounding Japan.” It stipulates that “situations in areas surrounding Japan will have an important influence on Japan’s peace and security,” whilst remaining equivocal about exact boundaries. The Guideline states the areas are “not geographic but situational.”³⁰ The role of JSDF was also expanded to rear area support. Hence, if China uses force to unify with Taiwan, Japan would likely be dragged into a war regardless of its wishes.³¹

According to the framework presented in the US-Japan Security Treaty, Japan and Taiwan form a strategic “alignment”. In other words, the two states “may expect to have each other’s support in disputes or confrontations with particular other states,” such as China.³² Despite Chen Shui Bian (DPP) administration’s efforts, Taiwan failed to transform the alignment into a formal alliance. However, from the 2000s, there has been a steady increase of unofficial contacts between the two countries over security issues. Exchanges have taken place between retired Japan Self-Defense Forces (JSDF) personnel and Taiwanese military personnel during unofficial events, such as academic conferences.³³

Because of the indirect security link, Japan cannot firmly support China or Taiwan in regard to the Taiwan issue. In Japan’s perspective, as the importance of the Japan-China relations increases, the significance of the Japan-Taiwan relationship also increases. This is demonstrated in the Diplomatic Bluebook, which is published annually by the Ministry of Foreign Affairs of Japan. The 2016 Bluebook, stated that the relationship with China is “one of the most important bilateral relations.”³⁴ Since 2018, the Bluebook also stopped mentioning that the two nations “have many political and social differences” and that “it is inevitable that there will be friction and conflict between the two countries,” a sentiment that was first expressed in the 2013 Bluebook.³⁵ As for Taiwan, the Bluebook stresses that the relationship with Taiwan is unofficial and nongovernmental. However, in the 2000s, the document started

29 “Joint Statement of Japanese Prime Minister Eisaku Sato and U.S. President Richard Nixon,” The World and Japan Database, Accessed June 28, 2020. <https://worldjpn.grips.ac.jp/documents/texts/docs/19691121.D1E.html>.

30 “The Guidelines for Japan-US Defense Cooperation (September 23, 1997),” Ministry of Defense, Accessed June 28, 2020. https://www.mod.go.jp/e/d_act/us/ampo/19970923.html.

31 Qingxin Ken Wang, “Taiwan in Japan’s relations with China and the United States after the cold war,” *Pacific Affairs* 73, no. 3 (Fall 2000): 372-373.

32 Brian Bridges and Che-po Chan, “Looking North: Taiwan’s Relations with Japan under Chen Shui-bian,” *Pacific Affairs* 81, no. 4 (Winter 2008-2009): 578.

33 *Ibid.*, 588.

34 Ministry of Foreign Affairs of Japan, <https://www.mofa.go.jp/mofaj/gaiko/bluebook/index.html>.

35 *Ibid.*



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emphasizing the importance of their economic relations. In 2013, the word “partner” first appeared.³⁶ Starting from 2015, Japan recognized that “Taiwan shares basic values such as freedom, democracy, basic human rights, and the rule of law, and has close economic relations” and is “an important partner and important friend of Japan.”³⁷ In the recent 2020 Bluebook, Japan added that Taiwan is an “extremely” important partner.³⁸

It is in the best interest of Japan — as it is in the interest of Taiwan and the United States — to avoid an Armageddon-like war situation in the cross-Taiwan Strait. Japan, thus, benefits from maintaining the status quo, in which Taiwan is able to behave as a *de facto* independent state. Taiwan could achieve a *de facto* independence by indefinitely delaying the unification question and gradually raising the cost of war (through deeper commitment from Japan and the US, and increased economic and cultural exchange with other countries).

Japan-Taiwan Relations in Maritime Disputes

The 2008-2010-2012 territorial and maritime disputes over the Senkaku/Diaoyutai/Diaoyu Islands (hereinafter Senkaku/Diaoyutai or Senkaku/Diaoyu Islands) exemplify Japan and Taiwan’s shared threat perception of rising China. The three countries share maritime boundaries, and all three parties claim sovereignty over the islands. Other than being strategically important, the islands are close to major shipping routes, provide rich fishing grounds, and lie near potential natural gas and oil deposits.³⁹ According to the San Francisco Peace Treaty (1952), Japan denies that there can be any dispute over its sovereignty claims. The Japanese Coast Guard (JCG) consequently patrols the maritime area. While the disputes have been going on for years, they escalated to an unprecedented level in 2010 when Japan detained a Chinese captain in the disputed area, which provoked massive anti-Japanese protests across China. This coincided with China surpassing Japan in GDP and overtaking Japan as the world’s second-biggest economy. Not only do the incidents highlight the regional power transition from Japan to China, they also demonstrate Taiwan’s cautious balancing against an “increasingly assertive China.”⁴⁰

To understand the three countries’ evolving stance on the issue, we should first consider the 2008 incident between Taiwan and Japan. In 2008, president Ma Ying-jeou (KMT), perceived as an anti-Japanese figure who participated in the

36 Ministry of Foreign Affairs of Japan, <https://www.mofa.go.jp/mofaj/gaiko/bluebook/index.html>.

37 Ibid.

38 —, May 19, 2020, <https://www.nikkei.com/article/DGXMZO59278130Z-10C20A5PP8000/>.

39 “How uninhabited islands soured China-Japan ties,” *BBC*, November 10, 2014, <https://www.bbc.com/news/world-asia-pacific-11341139>.

40 Philip Yang, “China-Japan-U.S. Relations after Diaoyutai Incident: Taiwan’s Perspective,” *Tamkang Journal of International Affairs* 14, no. 3 (2011): 45.



Baodiao (defend the Diaoyutai Islands) movement as a student, came into office. On June 10th, a Taiwanese fishing boat sank near the islands after colliding with a JCG patrol ship. Japan rescued and returned the 15 people on board but detained the captain for questioning. Dozens of people gathered in the *de facto* Japanese embassy in Taipei, demanding his immediate release, burning flags and shouting slogans. Although the captain was released three days later, the situation escalated into a territorial dispute. The Presidential Office released an official statement claiming that the Diaoyutai Islands are part of Taiwan's territorial waters.⁴¹ A few days later, Taiwanese activists on a private boat guarded by 9 Taiwanese Coast Guard vessels approached the islands to assert Taiwan's sovereignty over them.⁴² A second group, which included a KMT legislator, was set to depart for another trip but decided against it after a call from the Presidential Office persuaded them that the Ministry of Foreign Affairs of Taiwan (MOFA) needed more time to negotiate and that there was no need for escalating tensions.⁴³ Although the debates focused on attribution (i.e. who ran into whom and who was responsible for the collision), the MOFA planned to put fishing rights on the negotiation agenda.⁴⁴ Pundits advised the government that "properly dealing with the incident could strengthen ties between Taiwan and the US-Japan alliance" and could further benefit "Taiwan strategically in the region". Damaged Japan-Taiwan relations would mean that both countries are "playing into the hands of the PRC."⁴⁵ Japan later apologized to the captain by sending the deputy chief representative of the *de facto* Japanese embassy to his house with an official letter.

The 2010 incident was a dispute between Japan and China. On September 7th, a Chinese fishing boat approached the disputed Senkaku/Diaoyu Islands and collided with a JCG patrol ship. The JCG ship ordered the boat to stop for inspection, but the captain refused. It chased and stopped and inspected the boat, eventually arresting the captain and 14 crew members for obstructing public duty. While the crew members were released a few days later, the captain remained detained. China, enraged, demanded that the captain be released immediately. It suspended all ties, from official governmental contacts to cultural exchange events, with Japan, and more importantly, it abruptly stopped the export of rare-earth elements, which are crucial to Japan's high-tech sector. After 2 weeks, on September 24th, Japanese local prosecutors released the captain. They stated that "considering the effect on the people of our nation and on China-Japan relations, we decided that it was not

41 "Sinking puts spotlight on Diaoyutais," *TAIWAN TODAY*, June 20, 2008, <https://taiwantoday.tw/news.php?unit=10,23,45,10&post=14865>.

42 Shih Hsiu-Chuan and Flora Wang, "Officials drop plan to visit Diaoyutais," *Taipei Times*, June 18, 2008, <http://www.taipeitimes.com/News/taiwan/archives/2008/06/18/2003415043>.

43 Hsiu-Chuan & Wang, "Officials drop plan."

44 "Sinking puts spotlight."

45 *Ibid.*

appropriate to continue the investigation.”⁴⁶ This incident sparked anti-Japanese protests across China, and it took repeated efforts from Japan to mend the damage.

For Japan, the detention of the captain was an unprecedented action. In previous cases, the JCG patrol ship would simply warn Taiwanese or Chinese boats that approached the islands. Even if crew members were arrested, as in 2008, the local prosecutors would issue a fine and release them after a few days. Such action testifies to Japan’s anxiety in regard to China’s rapid navy build-up, China’s lack of transparency in military spending, and the increase of China’s naval surveillance in the disputed areas. Japan wanted to establish *de jure* jurisdiction over the islands by prosecuting within the confines of its domestic laws.⁴⁷ However, Philip Yang contends that, although Japan caved in, China was ultimately the one that had to pay the price for its disproportionate reaction to the incident,⁴⁸ which undermined its efforts to build trust and reassure neighboring countries that its rise is peaceful and respects the liberal international order.⁴⁹

Taiwan, as it did in 2008 and 2012, shunned China’s invitation to act in unison against Japan. The 2012 incident was a dispute between Japan and China. Japan purchased three isles of the disputed islands, which sparked massive anti-Japanese protests across China. Taiwan’s Ma administration declined China’s invitation to act together. President Ma, who desired good relations with China, preferred to keep his distance from territorial disputes. However, in order to have a stronger case for the Senkaku/Diaoyu Islands dispute in an international judicial forum, China needs Taiwan’s help in providing authentic historical documents, such as the original Shimonoseki Treaty (1895) and other official documents that show the ROC’s position from 1949 to 1971.⁵⁰ Here, Taiwan has leverage, which makes China hesitant to settle the dispute through international institutions. Instead, as of 2012, China has been sending more government and private vessels into “Japan’s territorial Sea” (near the islands), as seen in the data from JCG (Picture 1). Japan considers those intrusions a clear violation of its sovereignty and believes that China is attempting to “change the status quo through force or coercion.”⁵¹

46 Yang, “China-Japan-U.S. Relations,” 49.

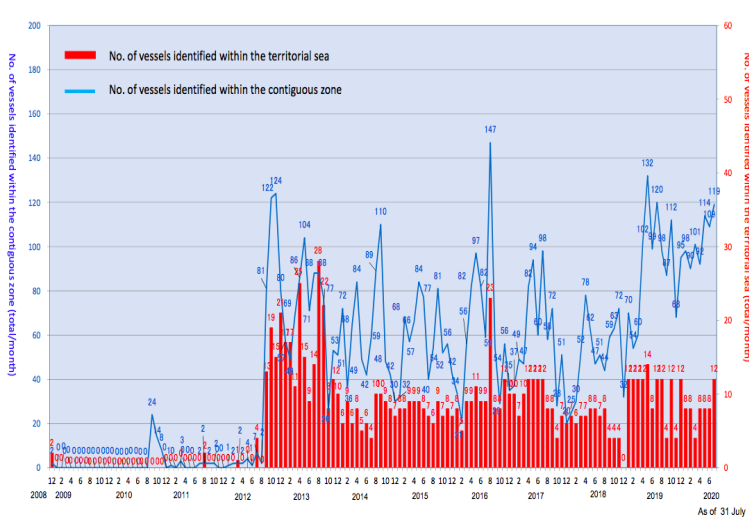
47 Ibid., 59.

48 Ibid., 84.

49 Ibid., 81.

50 Hui-Yi Katherine Tseng, “The Taiwan Dilemma in the Diaoyu/Diaoyutai/Senkaku Islands Sovereignty Dispute,” *American Journal of Chinese Studies* 21 (2014): 124.

51 “Trends in Chinese Government and Other Vessels in the Waters Surrounding the Senkaku Islands, and Japan’s Response,” Ministry of Foreign Affairs of Japan, August 5, 2020, Accessed August 20, 2020, https://www.mofa.go.jp/region/page23e_000021.html.



[Picture 1] The numbers of Chinese government and other vessels that entered Japan's contiguous zone or Japan's territorial sea surrounding the Senkaku Islands as of July 31, 2020. (Source: Japan Coast Guard & Ministry of Foreign Affairs of Japan)

Taiwan's stance in the three incidents demonstrates its efforts to constrain China and maximize its maneuvering space. Strategically, Japan is a crucial partner because of the indirect security link that unites both countries. During the Ma administration, Taiwan and Japan deepened their partnership by signing various cooperation agreements: the Agreement on flights between Sonshan and Haneda (2009), the Memorandum on Promoting Exchange and Cooperation (2010), the Open Skies Agreement (2011), the Agreement on Mutual Recognition of Electrical Production Clarification (2012), the Taiwan-Japan Fisheries Agreement (2013), the Agreement on Sea Search and Rescue Cooperation (2013), and others.⁵² Throughout the same period, the cross-strait relations stabilized and Taiwan was able to induce deeper commitment from Japan. The Fisheries Agreement (2013), which involved the overlapping exclusive economic zones (EEZs) around the Senkaku/Diaoyutai Islands, was a historic achievement, not just because it took 17 rounds of talks over 17 years, but also because of what the agreement represents. A "without-prejudice clause" ensures that the agreement does not undermine either nations' sovereignty claims. Unlike any other fisheries agreements, it also stipulates that it

52 Tse-Kang Leng and Nien-chung Chang Liao, "Hedging, Strategic Partnership, and Taiwan's Relations with Japan Under the Ma Ying-jeou Administration," *Pacific Focus* 31, no. 3 (December 2016): 371.



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aims to “ensure peace and stability in the East China Sea” and “promote friendly and reciprocal cooperation.”⁵³ Moreover, the agreement demonstrates Taiwan’s effort to elevate its status in the international sphere by taking part as a “responsible stakeholder” committed to furthering peace in the Far East, which in turn raises the country’s legitimacy as a *de facto* independent state in the eyes of the international community.⁵⁴

Conclusion

China’s increased assertiveness throughout the last decade has been perceived as growing aggressiveness by both Taiwan and Japan. Because of an indirect security link, the two nations share the perception of threat even if China’s aggression is directed toward one side. The shared threat perception has pushed the two countries closer. They are now forming an unofficial partnership in hedging China. Regarding unification and the post-Cold War structure of the Far East, Japan and Taiwan firmly believe in maintaining the status-quo indefinitely. It follows that, according to both countries, China’s behaviors in the Senkaku/Diaoyutai/Diaoyu disputes represent acts of “infringement” of rules of the game, which have historically maintained peace and governed relations in the Far East. China’s behavior has become unpredictable and Japan and Taiwan’s threat perception has increased significantly, which explains their anomalous position in Asia with regards to the new Hong Kong Security Law. Although both countries hope to maintain a peaceful and normal relation with China, infringement on the status quo represents a challenge for the existing system and is likely to be interpreted as Chinese aggression or domination. Japan draws the line at the Taiwan issue.⁵⁵ When China increases its assertiveness and aggressiveness towards Taiwan, Xi’s administration inadvertently increases the possibility of Japan’s official rearmament.

Other factors contributing to mutual threat perception should be further noted. Firstly, as emphasized in the Japanese Diplomatic Bluebook, both Japan and Taiwan share “basic values such as freedom, democracy, basic human rights, and the rule of law.” As Farnham argues, regime types, domestic political norms, and democratic norms are strong indicators in the *observation* and *appraisal* of perception of threat. When juxtaposed against China’s undemocratic one-party system, shared values increase the level of mutual perception of threat. Secondly, the historical memory of Japan’s colonization of Taiwan plays an important part in the two countries’ mutual understanding of the political context. After the decolonization of Taiwan, positive

53 “The Taiwan-Japan Fisheries Agreement — Embodying the Ideals and Spirit of the East China Sea Peace Initiative,” Ministry of Foreign Affairs, Republic of China (Taiwan), August 2013.

54 “The Taiwan-Japan Fisheries Agreement — Embodying.”

55 Andrea A. Fischetti and Antoine Roth, “Taiwan is where Japan draws the line,” *Tokyo Review*, July 25, 2020, <https://www.tokyoreview.net/2020/07/taiwan-is-where-japan-draws-the-line/>.





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memories of the colonization were used to shape a Taiwan-centric national identity.⁵⁶ Taiwan, thus, stands out among Japan's neighbors (i.e. China and South Korea) as the only country to remember positively its colonial past.

Shared threat perception is yet to be theorized and explored further. This paper used the China factor in the Japan-Taiwan relations as a case study and found that the indirect security link between Japan and Taiwan is an important factor in their mutual understanding of threat perception. Although dealt with only slightly, democratic values and mutual understanding of a certain historical narrative also appear to be contributing factors. More case studies should be examined to theorize the shared perception of threat and understand how it encourages cooperative behavior between states.

56 Yanan He, "Identity Politics and Foreign Policy: Taiwan's Relations with China and Japan, 1895-2012." *Political Science Quarterly* 129, no. 3 (Fall 2014): 472.





THE INDIAN DETERMINATION OF JAMMU AND KASHMIR: A CRITICAL APPRAISAL OF HISTORY, SOVEREIGNTY, AND JUS GENITIUM

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Jammu and Kashmir is the northernmost region of the Indian subcontinent. For more than eight decades, it held a special status under the domestic jurisdiction of India. This status empowered it to have its constitution and to modify the applicability of any laws passed by the center—India. This special status owed much to both the municipal laws of India and customary International Law. However, On August 5, 2019, when the Republic of India revoked this status, Pakistan and its allies alleged that India had violated International Law. This article argues and demonstrates that the Republic of India has not violated International Law but respected it by accessing the regions through formal means. To demonstrate this theory, this article will first analyze the sovereign evolution that Jammu and Kashmir have undergone historically. Then, the role of the UN, and the bilateral affairs of India and Pakistan in the context of Jammu and Kashmir are emphasized. The principle of jus gentium qua self-determination will be applied to discuss the changed trilateral relationships between Jammu, Kashmir, and India. Finally, the article concludes by demonstrating that the revocation of the special status and formal accession made by India is a concern of India's internal affairs alone, contrary to what has been alleged by Pakistan and its allies.

Introduction

Small indeed the country may seem by the side of the great plains that extend in the south, and confined the history of which it was the scene. And yet, just as the natural attractions of the valley have won it fame beyond the frontiers of India, thus too the interest attaching to its history far exceeds



*the narrow geographical limits.*¹

Jammu and Kashmir is a mountain region at the crossroads of India, Pakistan, China, and Afghanistan. On a cartographic plane, it appears remote and landlocked, extending for no more than ninety miles, isolated by successive ranges of the Himalayan Mountains high above the plains of the sub-continent.² The Mughals who conquered the region in 1586 called the region *Jannat*—³ paradise, praising its snow-capped mountains, sunny gardens, and romantic households. However, for more than seven decades since, the valley has become a paradise lost—its people's lives, entrenched in the bitter sovereignty dispute between India and Pakistan, its land—a witness to the constant bloodshed.

The question of sovereignty holds a special position in the history of Jammu and Kashmir. Since, 1947, the region has been under the Republic of India. The relationship between both the [States]⁴ of Jammu and Kashmir and India has been guided by the terms of accession that the monarch of Jammu and Kashmir signed with India. This treaty of accession gave the state of Jammu and Kashmir a pseudo-autonomy over its internal affairs while ceding powers of defense, communication, and external affairs to India. However, over time, the relationship of both states became bonded inextricably; therefore, the slow withering of the treaty became inevitable. On 5 August 2019, the Government of India issued a presidential order under Article 370 of the Indian constitution, and annulled the 72 years long recognition of the autonomy of the State of Jammu and Kashmir⁵ The same day the Republic of India passed a Bill bifurcating and reducing Jammu and Kashmir into two separate Union Territories.⁶ According to the Republic of India, these incidents were matters of its domestic concerns alone. The bifurcation and reduction of

1 * BA.LLB (Hons.) student at the National University of Advanced Legal Studies, India. The author wishes to thank Ananth Krishna S, Rahul Nair, Giri Aravind, and Aswin C. Panicker for their valuable feedbacks and suggestions. Kalhana, *Kalahana's Rajatarangini: A Chronicle of The Kings of Kashmir*, trans. M. A Stein (1900), xxiv.

2 Victoria Schofield, *Kashmir in Conflict: India, Pakistan and the Unending War* (London: Bloomsbury Academic, 2002), 1.

3 Sunil Sharma, "Kashmir and the Mughal Fad of Persian Pastoral Poetry," in *Borders: Itineraries on The Edges of Iran*, eds. Stefano Pello (USA: Boston University, 2016), 183-202.

4 Though, with the formal accession, Jammu and Kashmir became a part of India, it still had some autonomy over the region—giving way to a pseudo-statehood—distinguishing it from rest of the India; Navnita Chadha Behera, *Demystifying Kashmir* (Washington: Brookings Institution Press, 2006), 104-145.

5 "Instrument of Accession of Jammu and Kashmir," *Jammu and Kashmir Law*, accessed March 4, 2020, http://jklaw.nic.in/instrument_of_accession_of_jammu_and_kashmir_state.pdf; "The Constitution (Application to Jammu and Kashmir) Order, 2019," *E- Gazette*, accessed March 4, 2020, <http://egazette.nic.in/WriteReadData/2019/210049.pdf>.

6 "The Jammu and Kashmir Reorganization Bill, 2019," *PRS India*, accessed March 5, 2020, <https://www.prsindia.org/billtrack/jammu-and-kashmir-reorganisation-bill-2019>.



Jammu and Kashmir created a huge outcry among Pakistan and its allies. They questioned the validity of India's actions, condemning and demanding an immediate withdrawal of political moves made by India in Jammu and Kashmir.⁷ There is no doubt that the sudden change in the pseudo-autonomy of a region that was long under international observations would call forth much attention. However, to allege that the government of India has annexed the region of Jammu and Kashmir would be an erroneous conception of the special status that was enjoyed by the region under both International Law and India's constitutional framework.

This article will assert that the autonomy enjoyed by the region of Jammu and Kashmir was a provisional measure forged temporarily for the attainment of the longer objective—Formal Accession with India. To understand this, the article will analyze the historical aspects of Jammu and Kashmir, and the evolution of its sovereignty that has undergone a radical change over time. It will discuss UN interventions and the subsequent impasse situation that existed between India and Pakistan for the claim over Jammu and Kashmir, and the slow erosion of Article 370 of India's constitution that granted the pseudo-autonomy to Jammu and Kashmir. The incidents before and after abrogation and bifurcation will be examined to endeavor the justification of formal accession under International Law, and will vindicate all the allegations condemning the Republic of India. Finally, this article hopes to demonstrate that the Republic of India has not violated International Law, but has instead respected it by formally acknowledging the accession and thus, bringing an end to the long-standing international impasse.

Historical Background of Jammu and Kashmir

Sovereignty is a political concept that refers to dominant power or supreme authority. Historically the [Regions]⁸ of Jammu and Kashmir have witnessed a multitude of struggles between civilizations attempting to establish a sovereign regime—but none were strong enough to retain the mountain lands without fear of external intervention. The history of Jammu and Kashmir, for this article, has been divided into two stages: the Treaty of Amritsar, and the Instrument of Accession stage. Both

7 "Pakistan condemns announcements on J-K, summons Indian envoy," *The Tribune*, January 24, 2020, <https://www.tribuneindia.com/news/archive/pakistan-strongly-condemns-india-s-announcements-on-j-k-813353>; "China condemns India's division of Jammu and Kashmir", *Tamil Guardian*, December 5, 2019, <https://www.tamilguardian.com/content/china-condemns-india-s-division-kashmir>.

8 Until 1846, both the regions of Jammu and Kashmir were ruled by two different sovereign powers—while the valleys of Kashmir were controlled by the Maharaja Ranjit Singh, the plains of Jammu was under the control of his rival Maharaja Gulab Singh. It was only in 1846, when the valley was bought by the Maharaja Gulab Singh that both the regions were merged.; "Treaty of Amritsar" (*hereinafter*, Amritsar Treaty), *Jammu and Kashmir Law*, accessed March 6, 2020, http://jklaw.nic.in/treaty_of_amritsar.pdf.; Samir Ahmed Bhat, "State formation in colonial India", *International journal of scientific and research publication* 6, no. 2 (2016): 153-156.



these stages carry preeminent importance for its present status.

Treaty of Amritsar

Sovereignty has been defined as the political and legal basis for the international personality of a state.⁹ It provides the state with supreme control over its internal and external affairs.¹⁰ The region of Jammu and Kashmir has always been in a state of sovereign evolution. The twelfth century Poet Kalhana, in his epic work *Maharajatarangini* (Chronicle of Kings), describes how, since time immemorial, the valley's rulers came into contact and conflict with their neighbors. This holds for Kashmir's subsequent history. Kashmir's first period of "imperial" history begins in the third century BC with the rule of Asoka, whose empire extended from Bengal to the Deccan, Afghanistan to Punjab, and included Kashmir.¹¹ The second occupation of Kashmir happened in the first century AD, when the Kushans from the Chinese frontiers invaded the whole of North India.¹² In 1586, after a power struggle, Akbar conquered the valley.¹³ The period thereafter is regarded as the modern history of Kashmir.¹⁴ Later, with the Persian invasion of Delhi, the Mughal's hold on Kashmir slowly deteriorated.¹⁵ In 1751, the Afghans, ruled by Ahmed Shah Durrani, absorbed Kashmir into their expanding empire.¹⁶ However, the south of Kashmir was occupied by the Sikhs, and in 1819, they were also successful in taking final control of the whole of Kashmir.¹⁷ The Sikhs acknowledged the Supremacy of the British Empire and in return, the British agreed for borders of the region to be drawn at River Sutlej.¹⁸ However, after the death of Maharaja Ranjit Singh,—the then Sikh ruler of Kashmir— the British-Sikh relationship fell apart. In 1846, Sikhs engaged in a war with the British Empire on the banks of River Sutlej, leading to their subsequent defeat and rise of the British in the valley.¹⁹ In the same year, the ruler of Jammu Maharaja Gulab Singh (a feudatory of Ranjit Singh) was welcomed by the British as

9 Jana Maftei, "Sovereignty in International Law," *ACTA UNIVERSITATIS DANUBIENSIS. JURIDICA*, 11, (2015): 11.

10 Harvey Starr, *Anarchy, Order and Integration: How to Manage Interdependence*, (Michigan: University of Michigan Press, 1999), 76.

11 Schofield, *Kashmir in Conflict: India, Pakistan, and the unending war*, 1-8.

12 Ibid.

13 Sir Walter Roper Lawrence, *The Valley of Kashmir*, 181.

14 Schofield, *Kashmir in Conflict: India, Pakistan, and the unending war*, 1-6.

15 Ibid, 3-9.

16 Ibid, 4.

17 Parmu, *A History of Sikh Rule in Kashmir, 1819-1846* (University of Michigan Press, 2006), 36.

18 Schofield, *Kashmir in Conflict: India, Pakistan, and the unending war*, 3-9.

19 Amarpal S. Sidhu, *The First Anglo-Sikh War* (2013);

Robert A. Huttenback, "Kashmir as an imperial factor during the reign of Gulab Singh (1846-1857)," *Journal Of Asian History* 2 , no. 2 (1968): 77-108.



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an ambassador for his neutral stand in the Anglo-Sikh war, and subsequently entered the Treaty of Amritsar with him. Under this treaty, Maharaja Gulab Singh bought the region of Kashmir for a sum of seventy-lacs of rupees, thereby establishing the princely state of Jammu and Kashmir under the suzerainty of the British Empire.²⁰ This could be the first time that the sovereignty of a state had been sold to any person. From then forward, Gulab Singh held the title of Maharaja of both Jammu and Kashmir.

Instrument of Accession

*The destinies of our Indian empires are covered with thick darkness...It may be that the public mind of India may expand under our system till it has outgrown that system; that by good government we may educate our subjects into a capacity for better government...Whenever it comes, it will be the proudest day in English History.*²¹

British administration of India began as early as the nineteenth century with the English East India Company's assumption of governance under Charter Act 1833.²² After the First War of Independence in 1858, governance was formally transferred from the English East India Company to the Crown — specifically, Queen Victoria—who was formally declared as the “Empress of India.”²³ The British ruled India as nine provinces of the British Empire. Under the doctrine of paramountcy, they were also responsible for the Defence and foreign relations of 584 princely states, including the princely state of Jammu and Kashmir.²⁴ British imperial policy towards the princely State of Jammu and Kashmir was guided primarily by fear of Russian advancement towards India through the Pamir mountains, as well as of events in the expansion of Turkestan, the eastern part of which was under the nominal rule of China.²⁵ The political awareness of Jammu and Kashmir owes much to the responsible government movement against the British in the opening decades of

20 R. S. Gull, “The man who purchased Kashmir,” *Kashmir Life*. Accessed December 10, 2019, <https://kashmirlife.net/the-man-who-purchased-kashmir-issue-15-vol-07-81400/>.

21 Jane Samson, *The British Empire* (Oxford: Oxford University Press, 2001), 134.

22 M. B. Hooker, “The East India Company and the Crown 1773-1858,” *MALAYA LAW REVIEW* 11, no. 1 (1969): 31-37.

23 Miles Taylor, *Empress: Queen Victoria and India* (Connecticut: Yale University Press, 2018), 167-191.

24 Julian Arthur Beaufort Palmer, *Sovereignty and Paramountcy* (Michigan: University of Michigan Press, 2006), 28-57.

25 Schofield, *Kashmir in Conflict: India, Pakistan, and the unending war*, 10.



the twentieth century.²⁶ These movements provided the people of British India an opportunity to express how they should be governed. During World War I, most of the princely state of India had demonstrated their unpredicted allegiance towards the British Empire by providing utmost support to the Crown.²⁷ “They have shown that our quarrel is their quarrel...they were a profound surprise and disappointment to the enemy; and a cause of delight and pride to those who knew beforehand the Princes’ devotion to the Crown.”²⁸ In Kashmir— Maharaja Pratap Singh, the new ruler of Jammu and Kashmir, placed all his troops at the disposal of the British,²⁹ which fought forces in Africa, Egypt, Mesopotamia, and France. Following the death of Maharaja Pratap Singh, Maharaja Sir Hari Singh ascended to the throne and introduced various measures which caused further discontent over the already disaffected subjects of Jammu and Kashmir. Several campaigns were organized against him by both the Hindus and Muslims.

The Government of India Act 1935 marked the beginning of the next stage in deliberations over how India should be self-governed. By the end of World War II, it was evident that independence was near, as India witnessed a peak in Anti-British campaigns. However, the “form” of Independence was initially uncertain. The Indian National Congress led by Jawaharlal Nehru advocated a multi-ethnic-democratic form of government. Conversely, Mohammad Ali Jinnah was adamant that India should be divided into two nations: the Muslim majority Pakistan, and the Hindu majority of India. In the end, the communal divide and religious hatred nurtured by the British administration to maintain authority could not be overcome, and the one nation theory of unified India was abandoned, and instead, a two-nation theory was adopted. On August 15, 1947, India was partitioned into the dominion of India and dominion of Pakistan:

This was a moment of both triumph and tragedy. Of triumph, because the freedom for which hundreds had toiled and died, was won. Of tragedy, because the dream of freedom for a united India vanished when on 3 June 1947, the prime minister of India announced his acceptance of [the] partition of India with “no joy in my heart.”³⁰

26 These activities were headed mainly by the Indian National Congress, founded in 1885, and the Muslim League, which was established in 1906; Altaf Hussain Para, *The Making Of Modern Kashmir: Sheikh Abdullah And The Politics of The State* (London: Routledge, 2019); Tara Chand, *History of Freedom Movement In India* (2017).

27 Schofield, *Kashmir in Conflict: India, Pakistan and the unending war*, 15.

28 Ibid; Montagu and Chelmsford, *Report on Indian Constitutional Reform*, MSS Eur C 264/42, IOIC, 14122 (Apr. 1918).

29 Christopher Snedden, *Understanding Kashmir and Kashmiris* (London: Hurst Publication, 2015), 81.

30 Seervai, *Constitutional Law of India* (4th ed., 2015), 1.

The princely states, although impacted by a partition, were not incorporated into either dominion. The princely states had three options—to join one of the two new “dominions” of India and Pakistan, or to declare Independence³¹ (though Lord Mountbatten, the last British administrator of India insisted that the third option was only nominal).³² A large majority of Indian States were enveloped by the region of India, and so, geographically decided their fate. The Ruler of Jammu and Kashmir—Maharaja Hari Singh was a Hindu ruler, and opposed the idea of joining Pakistan, but was equally reluctant to the idea of joining India; the fear of losing power haunted him,³³ and so, he entered into a standstill agreement with Pakistan.³⁴ However, a Muslim revolt in the Poonch region and an invasion of Kashmir by Pathan tribesmen from Pakistan on October 22, 1947 forced Maharaja Hari Singh to turn towards India for help.³⁵ On October 26, Maharaja Hari Singh appealed to the Governor-General of India for military intervention, and, on the same day, executed an instrument of accession, thereby conceding the sovereignty of Jammu and Kashmir to the Indian dominion.³⁶ Accordingly, Indian troops were dispatched to Kashmir, which rolled-back the invaders from inside the valley to the borders.

International Affairs

The issue of Kashmir was internationalized even before it was submitted under the UN—while accepting the instrument of accession from Maharaja Hari Singh. The Maharaja wrote that once the invading forces had been expelled and law and order restored, the accession should be ratified by “a reference to the people.”³⁷ Similarly, on November 2, 1947, Nehru, as the first Prime Minister of India, drew the attention of the world nations by declaring the Indian Government’s pledges to the People

31 Sumantra Bose, *Contested Lands: Israel-Palestine, Kashmir, Bosnia, Cyprus, And Sri Lanka* (Boston: Harvard University Press, 2007), 166.

32 Ibid.

33 B. Farell, “The Role of International Law in Kashmir,” *Penn State International Law Review* 21, no. 2 (2003): 297.

34 Ibid.

35 The invasion caused the death of more than 2000 Muslims. This incident further incited the anti-Maharaja elements in *Poonch* and *Mirpur*. On 24 October 1947, they formed the Provisional Azad Government, which came into to being right before accession; Snedden, “The forgotten Poonch uprising of 1947,” *India Seminar*, accessed January 10, 2020, https://www.india-seminar.com/2013/643/643_christopher_snedden.htm.

36 With the execution of this document Maharaja Hari Singh submitted to the dominion of India, its sovereign powers of defense, foreign affairs, and communications; “Instrument of Accession of Jammu and Kashmir (*hereinafter*, Instrument of Accession),” *Jammu and Kashmir Law*, accessed March 6, 2020, http://jklaw.nic.in/instrument_of_accession_of_jammu_and_kashmir_state.pdf; A. G. Noorani, *Article 370: A Constitutional History of Jammu and Kashmir* (Oxford: Oxford University Press, 2014), 19-50.

37 Adarsh Sein Anand, “Accession of Jammu and Kashmir,” *Journal Of The Indian Law Institute* 43, no. 4 (2001): 461.

of Kashmir and to the world that it would conduct a referendum under international auspices such as the UN.³⁸

Role of the United Nations

Although India was (and is) a member of international organizations such as the League of Nations and the United Nations, it was not regarded as a sovereign state under the General International Law while its internal and external relations were dependant on the British Government and Parliament.³⁹ Only with the coming into force of the Indian Independence Act, 1947 India could finally become a full-fledged member of the International Community. Within months of its membership to the UN, India brought the issue of Kashmir before UN Security Council and alleged that Pakistan had assisted in the invasion of Kashmir by providing military equipment, training, and supplies to the Pathan warriors.⁴⁰ Pakistan denied these allegations, and in turn, accused India of their involvement in the massacre of Muslims in Kashmir, aggression against Pakistan, and questioned the validity of the Maharaja's accession to India.⁴¹ Pakistan further requested the Security Council to appoint a commission to secure a cease-fire and to ensure the withdrawal of outside forces, along with conducting a plebiscite for determining Kashmir's future. Thereafter, the Security Council (without addressing the initial issue of Kashmir) adopted a resolution establishing the United Nations Commission on India and Pakistan (UNCIP).⁴² The purpose of the Commission was to make findings of fact according to Article 34 and to act as a mediating influence.⁴³ The UN also issued a resolution for the self-determination of Kashmir and to conduct a plebiscite.⁴⁴ The resolution put forward the retreat of both Pakistan and Indian troops from Kashmir. However, as both the parties feared that a retreat would lead to a strategic advantage to the other, troops from both States were stationed before the UNCIP even reached Kashmir, a

38 Pranay Gupte, *Mother India: A Political Biography Of Indira Gandhi* (2009), 268; Andrew Whitehead, "Kashmir looks for local lessons in Scottish referendum," *BBC*, accessed February 20, 2020, <https://www.bbc.com/news/world-asia-29204977>; Gowhar Geelani, "When Nehru promised Kashmir freedom, why is India still in denial?," *The Express Tribune*, accessed February 24, 2020, <https://blogs.tribune.com.pk/story/41513/when-nehru-promised-kashmir-freedom-why-is-india-still-in-denial/>.

39 Lassa Oppenheim, *Oppenheim's International Law* (Sir Robert Jennings and Sir Arthur Watts Eds., 8th Ed., 2009): 209.

40 Letter from the Representative of India to the President of the Security Council (Jan 1, 1948), U.N. Doc. S/628 (1948). In its complaint, India indicated that it would resolve the accession issue once conditions in Kashmir allowed.

41 Letter from the Minister of Foreign Affairs of Pakistan to the Secretary General (Jan. 15, 1948), U.N. Doc. S/646/Corr. 1 (1948).

42 Ibid.

43 Article 34 authorizes Security Council to investigate a dispute that might endanger international peace; S.C. Res. 39, U.N. Doc. S/654 (1948).

44 S.C. Res. 47, U.N. SCOR, 3d Sess., 286th Mtg., U.N. Doc. S/726 (1948).



complete disregard for the proposed resolution.

After taking into view the prevailing conditions, the UNCIP proposed a significant resolution which provided for three essential steps in sequential order. First, they stipulated that Pakistan must withdraw all its forces and tribesmen from Jammu and Kashmir and assist in creating conditions for the people to express their choice without fear or intimidation of Pakistani presence in the region.⁴⁵ After this, only then would the Government of India conditionally take steps to gradually withdraw its forces (India would be allowed to retain adequate troops for law and order to meet against external threats).⁴⁶ Finally, after satisfying these two conditions, only then would the Government of India, with its machinery, then be responsible for conducting a fair and free plebiscite under UN supervision for the entire State of Jammu and Kashmir.⁴⁷ Pakistan rejected this resolution as it did not suit its interest in occupying Jammu and Kashmir by force and subterfuge.⁴⁸ Instead, Pakistan further engaged in stationing its troop illegally in areas it already occupied, augmented its strength by signing deals with China and bartered away portions of its occupation, consequently changing the demographic pattern in areas like Gilgit Baltistan and Pakistan-occupied-Kashmir.⁴⁹ In 1949 a cease-fire line was drawn,⁵⁰ and the commission eventually disbanded in favor of individual representatives.⁵¹ Until today, a plebiscite has not been achieved even after the frequent renewal of UN security resolutions.⁵²

Bilateralism

The first India-Pakistan War occurred in the spring of 1948 following the incidents of tribal invasion that brought Jammu and Kashmir to India, and only ended at the agreement of a ceasefire in January 1949. After, almost the whole of Jammu and Kashmir (including Ladakh) was under India's control while Pakistan gained little from this illegal act of attempted annexation.⁵³ Again, in 1965, a second Indo-Pakistani war ignited, resulting from the infiltration of thousands of Pakistan-supported armed

45 United Nations Commission on Indian and Pakistan, *Resolution for a Cease-Fire Order and Truce Agreement*, U.N. SCOR, 3d Sess., at 3, U.N. Doc. S/995 (1948).

46 Ibid.

47 Ibid.

48 "Pakistan had rejected the very security council resolution of 1948—the very resolution that it swears by now," *Financial Express*, Accessed March 5, 2020, <https://www.financialexpress.com/india-news/pakistan-had-rejected-the-u-n-security-council-resolution-of-1948-the-very-resolution-it-swears-by-now/362555/>

49 Ibid.

50 S.C. Res. 91, U.N. SCOR, 6th Sess., 539th Mtg., U.N. Doc S/2017/Rev.1 (1951).

51 S.C. Res. 80, U.N. SCOR, 5th Sess., 470th Mtg., U.N. Doc. S/1469 (1950).

52 Josef Korbel, "The Kashmir Dispute and the United Nations," *INT'L ORG.* 3, 282-83 (1949). Josef Korbel was one of the members to the commission.

53 Bose, *Contested Lands*, 168.



freedom fighters (known as *Mujahideen*) into the Indian-held Kashmir. This fighting lasted for 17 days and ended in a stalemate.⁵⁴ The Security Council's attempt at ending the 1965 war was mainly concentrated on maintaining the status quo and still, no call for a plebiscite was made even.⁵⁵ The first round of Kashmir negotiation was urged by the Soviet Union in 1965, where both India and Pakistan met at the Soviet city of Tashkent.⁵⁶ Despite this, the Tashkent agreement was only another attempt to revert to the status quo and though several proposals were made, Pakistan's interest remained solely on Kashmir, which India refused to discuss.⁵⁷ The Tashkent Agreement was successful in achieving constructive mediation but was ultimately a failure in settling the Kashmir dispute. A third war broke out between India and Pakistan in 1971, when India entered East Pakistan based on a humanitarian intervention,⁵⁸ and only ended when India unilaterally declared cease-fire, resulting in the birth of Bangladesh.⁵⁹ By this time India had already become a regional power and aimed to confine the discussion of Jammu and Kashmir bilaterally between itself and Pakistan. In 1972, both countries met in the resort town of Shimla with the prime ministers of both countries agreeing and signing the Shimla pact, which provided that:

*the two countries put an end to the conflict and confrontation that have hitherto marred their relations and work for... a friendly and harmonious relationship and... durable peace on the subcontinent... reconciliation [and] good neighbourliness.*⁶⁰

They further agreed that:

in Jammu and Kashmir, the Line of Control resulting from the cease-fire of 17 December 1971 shall be respected by both sides... Neither side shall seek to alter it unilaterally, irrespective of mutual differences and legal interpretations. Both sides... undertake to refrain from the threat or use of

54 Bose, *Contested Lands*, 174.

55 S.C. Res. 211, U.N. SCOR, 20th Sess., 1242nd Mtg., U.N. Doc. S/6694 (1965). Security Council requested that India and Pakistan should engage in negotiation and mediation in an attempt to settle the underlying dispute.

56 Sarbjit Johal, *Conflict and Integration in Indo-Pak Relations* (Michigan: University of Michigan Press, 2008), 126-128.

57 Verinder Grover and Ranjan Arora, *Partition of India, Indo-Pak Wars and Uno* (Verinder Arora and Ranjan Arora Eds., 1999), 450.

58 United Nations High Commission, *The State of World Refugees*, 2000 (Oxford: Oxford University Press, 2000), 68.

59 Richard Sisson and Leo Rose, *War And Secession: Pakistan, India, and The Creation Of Bangladesh* (1990), 234.

60 Shimla Agreement, <https://people.unica.it/annamariabaldussi/files/2015/04/Shimla-Agreement-July-2-1972.pdf>.

*force in violation of this Line.*⁶¹

The agreement ended by stating:

*both Governments agree [to]... meet again at a mutually convenient time in the future.... to discuss the modalities and arrangements for the establishment of durable peace and normalization of relations.*⁶²

After this, the 1980s and 1990s were filled with various insurgency movements, anti-India protests, and conflicts between the Indian army and Islamic militants in Jammu and Kashmir that resulted from release of a great deal of Pakistan trained militants and weapon energy into India.⁶³ To end the long-standing scuffle and to develop better relations, in February 1999, India's Prime Minister Atal Bihari Vajpayee made a diplomatic visit to Pakistan on the first-ever bus service connecting Delhi to Lahore,⁶⁴ resulting in the sensational Lahore declaration. The Lahore declaration was a silver lining in the relationship between both countries,⁶⁵ and reiterated their determination to implement the Shimla agreement in "letter and spirit." The governments agreed to "intensify efforts to resolve all issues, including [...] Jammu and Kashmir" based on an "agreed bilateral agenda."⁶⁶ However, the emergence of this good relationship was not to be and ended abruptly when Pakistani military units infiltrated the Line of Control (LOC) in Kargil while the Lahore Declaration was being signed. As retaliation, in May 1999, India launched a massive land and air strike to evict the infiltrators,⁶⁷ with the hostilities only ending by President Clinton's persuasion of Nawaz Sharif—the Pakistani prime minister- to withdraw.⁶⁸

61 Shimla Agreement, <https://people.unica.it/annamariabaldussi/files/2015/04/Simla-Agreement-July-2-1972.pdf>.

62 Ibid.

63 Joy Aoun et al., "Religious Movements, Militancy, and Conflict in South Asia cases from India, Pakistan, and Afghanistan," *Center for Strategic and International Studies*, accessed February 1, 2020, https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/120713_Aoun_ReligiousMilitancy_Web.pdf

64 Bose, *Contested Lands*, 187.

65 Since, then both countries were vested in testing nuclear weapons throughout 1990s. Their relations had been characterized by antagonism and recrimination because of the armed conflict in Indian controlled Kashmir, with India blaming Pakistan for abetting the insurgents and Pakistan accusing India of heavy-handed repression; Imtiaz Rafi Butt, "The silver lining for Pakistan," *The Nation*, accessed February 27, 2020, <https://nation.com.pk/23-Mar-2018/the-silver-lining-for-pakistan>.

66 "Lahore Declaration February 1999," *Ministry of External Affairs*, accessed February 16, 2020, <https://mea.gov.in/in-focus-article.htm?18997/Lahore+Declaration+February+1999>.

67 Srinath Raghavan, "J and K autonomy and after," *Seminar* 45 (2020): 725.

68 Crisis in Pakistan, *Gov Info*, accessed March 30, 2020, <https://www.govinfo.gov/content/pkg/CHRG-106shrg61870/html/CHRG-106shrg61870.htm>.

The relationship further deteriorated as a result of the 2001 attacks of the Indian government by Islamic militant organizations such as Lakshae-Taiba and Jaishe Mohammed, who are allegedly based out of Pakistan. These incidents brought both countries to the brink of nuclear war. Adding to it, the 2008 Mumbai attacks, the 2016 Pathankot attack, and the 2019 Pulwama attack heightened the nationalist rhetoric on both sides, resulting in the collapse of the India-Pakistan bilateral relationship with little chance (if ever) of recovering.

An Internal Matter?

As claimed by India, the issue of Jammu and Kashmir has always been a matter of its domestic concern. However, this was not always the case. While it is true that the region of Jammu and Kashmir has become a part of India, this owes much to the slow erosion of Article 370, and the incidents prior and after the presidential rule in the territory. To discuss, the following section will be divided into two: (1) The erosion of Article 370, and (2) The division of the region into The Union Territory of Jammu and Kashmir, and The Union Territory of Ladakh. It will deal with the dawdling merger of the region with India and discuss the present status of the territory.

Erosion of Article 370

Between May 1947 and August 15, 1947, almost all the princely states signed the instrument of accession with either India or Pakistan (whether by pressure or for diplomacy). Kashmir was not much different. However, when Maharaja Hari Singh conceded the sovereignty of Jammu and Kashmir to India, the terms of the treaty provided the concession only with regards to foreign affairs, defense, currency, and communication. In March 1948, Maharaja appointed an interim government in the State with Sheikh Abdullah as prime minister,⁶⁹ and tasked to frame a constitution for the State. At the same time, the government of India was preparing its constitution.⁷⁰ As part of this process, the princely states were invited to send their representatives to India's constituent assembly, and Sheikh Abdullah and his colleagues joined the Indian constituent assembly as members in May 1949. Over the next five months, they negotiated Kashmir's future relationship with India. Accordingly, a conclusion was reached to only incorporate the provisions in the Constitution of Kashmir that adhered to the original instruments of accession. It was also decided that Kashmir's constituting assembly when formed, would decide all other matters.⁷¹

69 Khandelwal, *Pledge for an Integrated India*, 252.

70 Bose, *Contested Lands*, 187.

71 Rahul Tripathi, "Instrument of accession: from 1947 till date," *Economic Times*. Accessed January 20, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/instrument-of-accession-from-1947-till-date/articleshow/70546147.cms?from=mdr>.

Based on the meetings convened, when India's Constitution was adopted in 1949, Kashmir was given a special status under Article 370 of India. Article 370 stipulates that other articles that give power to the central government would be applied to Jammu and Kashmir, only with the concurrence of the State's constituent assembly. Article 370 was a temporary provision in the sense that its applicability was intended to last only until the formulation and adoption of Jammu and Kashmir's constitution. However, in 1956, the constituent assembly of Jammu and Kashmir dissolved itself without making further recommendations on either the adoption or abrogation of Article 370, thereby leaving an indelible imprint on the Indian constitution. Article 370 records a "solemn compact"⁷² protecting the rights of the 1947 instrument of accession. Article 370 provided the state of Jammu and Kashmir with the autonomy of governance inside its region. However, some laws in Jammu and Kashmir could be considered as misogynistic and violative under *jus cogens*. An example of such a law is that a Kashmiri woman loses her rights to property in Kashmir when she marries an outsider.⁷³ Thus, in respecting Jammu and Kashmir's sovereignty under Article 370, India was to overlook the gross violations of gender equality and human rights. In light of this, the gradual erosion of Article 370, was inevitable both for the sake of respecting human rights, and to extend the principles of gender equality that was part and parcel of the Indian Constitution.⁷⁴

When Article 370 was originally made, only two articles of the Indian constitution applied to the state of Jammu and Kashmir. All the other provisions of the Indian Constitution were applied, with modifications and exceptions stipulated by the President of India.⁷⁵ The first of such order was the presidential order of 1950, officially known as The Constitution (Application to Jammu and Kashmir) Order, 1950. It specified the subjects and articles of the Indian constitution which

72 A. G. Noorani, *Article 370: A Constitutional History of Jammu and Kashmir*, 1.

73 Jill Cottrell, "Kashmir: The vanishing autonomy", in *Practicing Self Governments: A Comparative Study Of Autonomous Regions*, edited by Ghai and Woodman (Cambridge: Cambridge University Press, 2013), 163-199; ("The landmark Declaration, adopted by the General Assembly on 10 December 1948, reaffirms that "All human beings are born free and equal in dignity and rights" and that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, ... birth or other status.") "Gender equality," *United Nations*, <https://www.un.org/en/sections/issues-depth/gender-equality/>.

74 Article 370 was an elixir for the Jammu and Kashmir Constitution; it gave the legislature an apparent power to modify application of any laws passed by the Centre. Thus, it was both in good faith and for the welfare of the under privileged there, the abrogation was inevitable.; "Full text of document on govt's rationale behind removal of special status to JandK," *The Hindu*, accessed February 28, 2020, <https://www.thehindu.com/news/national/full-text-of-document-on-govts-rationale-behind-removal-of-special-status-to-jk/article28821368.ece>.

75 Bodh Raj Sharma, "The Special Position of Jammu and Kashmir in the Indian Constitution," *The Indian Journal Of Political Science* 19, no. 3 (1958): 284.

was consistent with the Instrument of Accession.⁷⁶ The second order was passed in 1952 that amended Article 370 by replacing the phrase “Maharaja of Jammu and Kashmir” to the “Legislative Assembly of the State as the *Sadr-i-Riyasat*.”⁷⁷ This was a symbolic step in the history of Jammu and Kashmir as it led to the further abolition of the monarchy in the state. In 1954, the third presidential order came into force. It was a comprehensive agreement seeking to implement the 1952 Delhi agreement.⁷⁸ Accordingly, fundamental rights under the Indian Constitution were extended to Jammu and Kashmir with some modifications and reservations. Simultaneously, Article 35A was also added to the constitution. This was added per the presidential order of 1954 and empowered the state government to legislate on privileges of permanent residents concerning aspects of immovable property, settlement in the state, and employment.⁷⁹

In addition to these original orders, 47 other presidential orders were made between 1956 and 1994, making various other provisions in the Constitution of India that became applicable to Jammu and Kashmir. These orders were issued with concurrence with the government of the Jammu and Kashmir and not that of the dissolved constituent assembly. This practice of applying for the presidential order in concurrence with the state government became a customary practice as it was deemed that no other body in the state was competent to give assent.⁸⁰ It is noteworthy, that among these 47 orders made, some of the presidential orders were issued while the state was under the President’s rule and without the concurrence of a state government.⁸¹ These incidents of the application of presidential orders in the state of Jammu and Kashmir evidenced that Article 370 was already in the process of erosion and was made more obvious when in 1963, Nehru said in a parliamentary debate, that:

*Kashmir’s autonomy has been eroded... and many new things have been in the last few years... which has made the relation of Kashmir with union of India very close... So, we feel that this process of erosion of Article 370 [that] is going on... we should allow it to go on.*⁸²

76 “Constitution Application Orders,” *Jammu and Kashmir Law*, accessed March 15, 2020, <http://jklaw.nic.in/jk1950order.pdf>

77 “Constitution (Application to Jammu and Kashmir) Order 1950,” *Jammu and Kashmir Law*, accessed March 16, 2020, <http://jklaw.nic.in/jk1950order.pdf>.

78 Arguably, it went further than the Delhi Agreement in some respects. Ghai and Woodman, *Practicing self government*, 171–172.

79 Mohan Krishen Teng, *State Government and Politics, Jammu and Kashmir* (Michigan: University of Michigan, 2007), 68-119.

80 A. G. Noorani, *Article 370: A Constitutional History of Jammu and Kashmir*, 9-11.

81 Ghai and Woodman, *Practicing self governments*, 173–175.

82 Lok Sabha debates, vol XII, 27 NOV 1963, cols. 1231-32

The Union Territory of Jammu and Kashmir and the Union Territory of Ladakh

On 5 August 2019, the Home Minister Amit Shah of India, announced in the upper house of the Parliament of India that the President of India had issued the Constitution (Application to Jammu and Kashmir) Order, 2019 (C.O. 272), and thereby, the Constitution (Application to Jammu and Kashmir) Order, 1954 stands overridden. It was a historical move from India's part, allowing the Constitution of India to be made applicable to the whole of Jammu and Kashmir without any restrictions. This order was made by the President of India with the "concurrence of the government of the state," and the "governor appointed by the Union government."⁸³ The presidential order, 2019 also added clause 4 to the four sub-clauses of Article 367 of the Indian constitution, thereby adding the interpretation of state government to include the governor.⁸⁴ This was in adherence to the prevailing state practices, since some of the presidential orders issued after 1954 when the state was under presidential rule was made applicable through the concurrence of the governor of the state and not the state government.⁸⁵ After the passing of the presidential order, 2019 before the Rajyasabha, the government, through a resolution passed, issued a constitutional order which replaced the original text of Article 370 with a new text that allowed the amendment of the Article.⁸⁶ On the same day, a bill was introduced in the parliament, the Jammu Kashmir Reorganization Bill, 2019. The bill intends to convert the State of Jammu and Kashmir into two separate territories, namely, Union Territory of Jammu and Kashmir, and the Union Territory of Ladakh.⁸⁷ The Bill was passed by both houses of the parliament and the Union Territory of Jammu and Kashmir, and the Union Territory of Ladakh came into being on October 31, 2019, thereafter known as the National Unity Day of India.⁸⁸

International Law in Jammu and Kashmir

The issues concerning a change in the status of Jammu and Kashmir cannot be satisfactorily addressed unless the impact of international law is also analyzed and explained in its most methodical form. This section will demonstrate that in the

83 K. Venkataramanan, "How the status of Jammu and Kashmir is being changed," *The Hindu*, accessed February 27, 2020; Pranab Dhal Samanta, "Article 35A ceases to exist," *The Economic Times*. Accessed March 30, 2020.

84 "The Constitution (Application to Jammu and Kashmir) Order, 2019," *E-gazette*, accessed March 27, 2020, <http://egazette.nic.in/WriteReadData/2019/210049.pdf>.

85 Ghai and Woodman, *Practicing self governments*, 173–175.

86 The government brings Resolution to Repeal Article 370 of the constitution, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=192487>

87 A State is a constituent division that has separate government. Whereas a Union territories are small administrative units governed directly by the Centre.

88 "The Jammu and Kashmir Reorganization Act, 2019," *E-gazette*, accessed March 10, 2020, <http://egazette.nic.in/WriteReadData/2019/210407.pdf>.

changed circumstances, the international institutions which were once revered to be the chief interests in determining the status of Jammu and Kashmir are no longer relevant. It will further establish that even if conceded to the principle of international law, the law of the comity of nations that envisages mutual respect and acceptance for other countries' laws and political system is not against, but in favor of India's accession of Jammu and Kashmir.

Self-Determination

Self-determination is an important principle under contemporary international law.⁸⁹ The principle in its most lucid sense recognizes the right of people to determine one's political future.⁹⁰ As a most promising doctrine with broad application, it has always played an integral role in determining the status of Jammu and Kashmir in the international sphere.⁹¹ The most common criticism raised against India when the accession was announced was also based on this principle.⁹² The most common criticism raised against India when the accession was announced was also based on this principle.⁹³ However, the principle of self-determination is not an absolute principle and critiques of India have fail to account the relevance of self-determination in Jammu and Kashmir within the context of its changed circumstances.⁹⁴ Self-determination presents limitations,⁹⁵ and the validity of the claim to self-determination must be evaluated by addressing the following concerns. The first concern is whether the region is a non-self-governing one. A region that is geographically separate from the administering state, and colonies of colonial governments are considered as non-self-governing regions.⁹⁶ The relationship between India and the state of Jammu

89 Oppenheim, *International Law*, 445.

90 Castellino, *International Law and Self-Determination*, 110-19.

91 Farell, "Kashmir," 314.

92 "European Parliamentary members condemn India for denying Kashmiris right to self-determination," *The International News*, accessed February 27, 2020, <https://www.thenews.com.pk/latest/528380-european-parliament-condemns-india-for-denying-kashmiris-right-to-self-determination>.; Mona Bhan et al., "The International community must intervene on Kashmir," *Open Democracy*, accessed February 11, 2020, <https://www.opendemocracy.net/en/international-community-must-intervene-kashmir/>.

93 "European Parliamentary members condemn India for denying Kashmiris right to self-determination," *The International News*, accessed February 27, 2020, <https://www.thenews.com.pk/latest/528380-european-parliament-condemns-india-for-denying-kashmiris-right-to-self-determination>.; Mona Bhan et al., "The International community must intervene on Kashmir," *Open Democracy*, accessed February 11, 2020, <https://www.opendemocracy.net/en/international-community-must-intervene-kashmir/>.

94 Lauterpacht Research Centre For International Law, *International Law Reports*, 115, 150 (E. Lauterpacht Et al. eds., Cambridge Univ. Press, 1999).

95 Ibid.

96 Josef Brink, *Non-Self Governing Territory*, 316-321; David Raic, *Statehood and The Law of Self-Determination*, (Kluwer Law, International 2002), 206.

and Kashmir is not that of the colony and the colonial government. The Constitution of India grants power to the Jammu and Kashmiri election commission to oversee the establishment of electoral roles as well as to conduct elections to both legislative council and legislative assembly.⁹⁷ Before bifurcation, there were 87 assembly constituencies and six parliamentary constituencies in Jammu and Kashmir,⁹⁸ and Jammu and Kashmir has a history of sending elected members to the lower house of Parliament since 1967.⁹⁹ The only time elections were not held was in 1990 due to security concerns.¹⁰⁰

The principle of self-determination is linked to the notion of representative government and declares that states who comply with the principle must have a government representing the whole population of their region without distinction between race, creed or color.¹⁰¹ Self-determination takes place whenever the people of a given territory can freely elect the government of their choice.¹⁰² The people of Jammu and Kashmir have been exercising this right from 1956 onwards by electorally selecting their representatives in the state government and from 1956 in the Parliament. India is a union of states that grants the Parliament — the collective of representatives from all of the states (of which even the state of Jammu and Kashmir is an active member) — the power to make crucial decisions for the whole of India. This includes the power to either unite, divide, diminish, and alter any of the states under it for administrative convenience. Thus, to argue that the division of Jammu and Kashmir into two union territories would harm their historic rights of self-governance would hold no water since there have been no separate states of Jammu and Kashmir, to begin with. By actively engaging in the political administration of India, Jammu and Kashmir have already acceded to the Union, though, it was once limited by growing concerns about its autonomy. However, as it currently stands, Jammu and Kashmir have no separate existence from India. Therefore, the division of Jammu and Kashmir into two union territories is a domestic political move by the Indian government without any actual implications for the international community.

The second concern is whether the groups claiming self-determination form “people” under international law. The term “people” has been defined by different

97 “Parliamentary Constituencies,” Chief Electoral Officer, http://ceojammukashmir.nic.in/Parliamentary_Constituencies.htm.

98 Rahul Kanwal, “Its delimitation next in Jammu and Kashmir says BJP,” *India Today*, accessed February 27, 2020, <https://www.indiatoday.in/india/story/it-s-delimitation-next-in-jammu-and-kashmir-says-bjp-1577994-2019-08-06>.

99 Mayil Vaganam, “A survey of elections in Kashmir,” *Institute Of Peace And Conflict Studies*, accessed February 27, 2020, http://www.ipcs.org/comm_select.php?articleNo=717.

100 *Ibid.*; Edgar Thorpe And Showick Thorpe, *General Studies Paper 1* (2020), 2-3; Ibp Usa, *India Country Study Guide Volume 1 Strategic Information and Developments*, 217.

101 Thomas D. Musgrave, *Self Determination And National Minorities* (Oxford: Oxford Univ. Press, 2000), 98.

102 Borris Meissner, *The Right of Self Determination After Helsinki And Its Significance For Baltic Nations* (1981), 382.

scholars in various ways. In the post-war period, among many third world countries, decolonization was considered to be the only aspect of self-determination, and hence, within this context, the term “people” is confined to the population living in a non-self-governing region.¹⁰³ A much broader definition of “people” is contained in the representative government theory of self-determination. As Rosalyn Higgins notes, self-determination refers to “the right of [a] majority within a generally accepted political unit to exercise power. In other words, it is necessary to start with stable boundaries and to permit political change within them.”¹⁰⁴ Another accepted form of defining “people” is along the ethnic lines, since, there is an accepted practice by the UN General Assembly to divide territories when ethnic differences portend future instability.¹⁰⁵ Even if conceded to any of these definitions, a general device to distinguish people of Jammu and Kashmir from the rest of India is not possible, with a population of 44 percent Hindus, 68.31 percent Muslims, 0.28 percent Christians, 0.09 percent Buddhists, and 0.02 percent Jains. If people are equated with the State, it would mean that through the instrument of accession and the general elections conducted that the state has conceded to the region of India. The people of Jammu and Kashmir already exercise their right to vote by participation in general elections and hence, the representative definition also does not help demarcate the “people” separately. Finally, the people of Jammu and Kashmir are not inherently different from the people of India, nor do they constitute a trait or characteristic confined only to Jammu and Kashmir. The sovereignty of the region has always been in constant evolution from as early as the first century AD. Thus, the unitary concept of “self-determination” is inadequate, for Jammu and Kashmir especially.¹⁰⁶ The third concern is whether the region is integral to the state concerned. The principle of self-determination should not be equated with the right to secede.¹⁰⁷ Secession is against the principle of territorial integrity of a nation, and to concede to any fractions of a population the right of withdrawing from a community to which they belong would be to destroy the order and stability within states and would introduce anarchy in international life. It would be to uphold a theory incompatible with the very idea of the state as a territorial and political entity.¹⁰⁸ The Union of India, as well as the Preamble and Section 3 of the erstwhile constitution of Jammu and Kashmir, defines Jammu

103 Rigo Sureda, *Evolution of Right of Self Determination*, 215.

104 Musgrave, *Self-determination*, 152.

105 *Resolution adopted on the report of the ad hoc committee on the Palestinian question*, [https://undocs.org/A/RES/181\(II\)](https://undocs.org/A/RES/181(II)).

106 Ved P. Nanda, Self-determination and secession under International Law, *Denver Journal of International Law* 29, no. 4 (2001): 305-326.

107 The Aaland Islands, Question: Report Submitted to the Council of the League of Nations by the Commission of Rapporteurs (1921) *League Doc. B7. 21/68/106*, 27.

108 *Ibid.*

and Kashmir as an integral part of India.¹⁰⁹ Since 1964, the region of Jammu and Kashmir, and India has become indissolubly bound to each other. To concede to any claim for secession from India would be against India's much-established territorial integrity that lies in the unity of its states. In his famous speech made in 1994, the then Prime Minister P. V. Narasimha Rao stated that Kashmir will always remain an integral part of India.¹¹⁰ A similar comment was also made by Pandit Nehru as well. Another factor to be considered while analyzing the deeply entrenched territorial bond between India and Kashmir is who seeks for a separate state of Kashmir. The claim for a separate Kashmir is made by the prohibited separatist groups such as the Plebiscite and *Mujahadeen*—both with a proven history of backdoor support and training from inter-services intelligence of Pakistan.¹¹¹ The positive international law does not recognize the right of national groups. This is true in the case of Jammu and Kashmir as well. Giving heed to such claims made by such organizations would defeat the purpose of international law.

The final concern is whether the region is “geographically and economically” bound to the State concerned. The “fabled state” of Kashmir lies in mountain ranges separating the overpopulated plains of India from the endless steppes and deserts of Central Asia.¹¹² It shares boundaries with the Indian states of Himachal Pradesh, and Chandigarh in the south. Though this region has been described as one of the world's primary strategic pivots, the nexus of continents, empires, and civilizations,¹¹³ due to its sprawled demarcations, it faces an imminent threat from the states of Pakistan, China, and Afghanistan (though is not economically bound to any of these states).¹¹⁴ But, India's interest in the region dates back to the 1947 Instrument of Accession, and beyond—driven by both strong cultural and security bonds. Economically, Jammu and Kashmir are the largest recipient of grants from the central government, totaling

109 Kash. Const. preamble; “J and K shall be an integral part of India,” *Minister of External Affairs*, accessed March 20, 2020, <https://www.mea.gov.in/articles-in-indian-media.htm?dtl/15748/JK+is+and+shall+be+an+integral+part+of+India>; “Kashmir is an integral part of India say Deoband clerics,” *Economic Times*. Accessed January 27, 2020, <https://economictimes.indiatimes.com/news/politics-and-nation/kashmir-an-integral-part-of-india-say-deoband-clerics/articleshow/6729157.cms?from=mdr>.

110 John Thor Dahlburg, “India, Pakistan exchanges Harsh words on Kashmir,” *Los Angeles Times*. Accessed February 27, 2020, <https://www.latimes.com/archives/la-xpm-1994-08-16-mn-27741-story.html>.

111 Arthur S. Banks et al., *Political Handbook of The World 1998* (2016): 707.; “Order.” Ministry of Home Affairs, (Apr. 8, 2002), https://mha.gov.in/sites/default/files/BanJudgment_09042002.pdf.

112 Eric S. Margolis, *War at The Top of The World: The Struggle Of Afghanistan, Kashmir And Tibet* (2002): 53.

113 Ibid.

114 The part of Kashmir illegally occupied by China is called Aksai Chin, and that illegally occupied by Pakistan is Azad Kashmir.; Robert G. Wirsing, *Boundary and Territory Briefing* (Clive Schofield Ed., 1998), 1-18.

an amount of US\$812 million per year.¹¹⁵ In an attempt to improve the infrastructure of the region, the Indian government has commenced work on the Kashmir Railway project at a cost of more than US\$2.5 billion as early as in 2002.¹¹⁶ The Associated Chambers of Commerce and Industry of India (ASSOCHAM) is also working with the union and the state government of the Jammu and Kashmir region to set up industrial parks and special economic zones to attract investments.¹¹⁷ Another major source of income of the region is from Hindu pilgrims who visit the *Vaishno Devi* and *Amar Nath* Temple of Jammu and Kashmir annually.¹¹⁸ The region of Jammu and Kashmir is both economically and geographically bound to India, and it is not economically or geographically viable for the region of Jammu and Kashmir to secede from India.¹¹⁹ Even if a small nationality did initially secede, it would in all probability be drawn back into the larger state and eventually rejoin it.¹²⁰ Economic viability and military defense are major considerations for a State's survival.¹²¹ With a major threat to territorial security from both Pakistan and China, the concept of self-determination would only act as a source of political instability and domestic disorder.

Shimla Agreement and Bus Diplomacy

With the formal accession of Jammu and Kashmir to India, the requirement of bilateral negotiations between India and Pakistan as a means to resolve territorial disputes has become obsolete. The matter of Jammu and Kashmir has become India's domestic concern alone.¹²² This means that the Shimla agreement and bus diplomacy ("Lahore Declaration") will not be a factor in future negotiations between India and Pakistan on Jammu and Kashmir. The assessment augurs well in the historical regard since the agreement by both countries to veto the status quo has done more harm than good. The Shimla agreement intended for a workable resolution to eliminate interference through an agreed plan of action. But, such a mechanism to resolve disputes as agreed by the parties was not followed in its absolute sense. Pakistan has at multiple times violated the Shimla agreement. On

115 "Economy," Jammu and Kashmir Government, <https://jk.gov.in/jammukashmir/?q=economy>

116 Ibid

117 Ibid.

118 Ibid.

119 Jones Et. Al., "Economic Development as a Tool to Reduce Secessionism in Jammu and Kashmir," *University of Wisconsin*, <https://minds.wisconsin.edu/bitstream/handle/1793/43875/southasia.pdf?sequence=1&isAllowed=y>

120 Buccheit Lee C., *Secession*, 54.

121 Musgrave, *Self determination*, 27.

122 "India's Proposition on J and K hasn't changed: MEA reacts to UN Chief's remarks in Pakistan," *India Today*,. Accessed February 27, 2020, <https://www.indiatoday.in/india/story/india-s-position-jammu-kashmir-has-not-changed-mea-reacts-un-chief-remarks-pakistan-1647115-2020-02-17>



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February 1999, when the Lahore Declaration was being signed with a reiteration of “the determination of both countries to implement the Shimla Agreement in letter and spirit,” Pakistani military units had already infiltrated the LOC in Kargil which led to the fierce fight that claimed the lives of 519 Indian personnel.¹²³ Moreover, this was not the only occasion when Pakistan had violated the treaty. The multiple violations of ceasefire agreements have constituted the withering of the treaty from its absolute form. Therefore, an argument that India has violated the Shimla agreement will not suffice since the terms of the agreement have already been violated by the other party, invalidating the whole of the agreement, or giving India a higher position to suspend its operation at its will.¹²⁴

The validity of UN Resolutions on Kashmir

The United Nations has, at multiple times, unsuccessfully attempted to resolve the Kashmir dispute. The major reason for its failure to mediate during the 20th century is attributed both to cold war politics and their inability to take binding action. However, this nowhere means that the UN has the right to intervene in Kashmir matter anymore. Article 2 (7) of the UN charter provides that the United Nations should not intervene in matters which are exclusive to the domestic jurisdiction of a state. The UN has issued numerous resolutions on Kashmir through both the General Assembly and through the Security Council from 1948 onwards. These resolutions emphasize a need for a plebiscite and focus on the self-determination of the people of Kashmir. Historically, none of these resolutions have attained any progress in reconciling the dispute between states in the region of Kashmir. As Professor Sumantra Bose points out “[the] UN long ago became irrelevant to the resolution of Kashmir,”¹²⁵ and United Nations resolution which cannot progress into law becomes materially non-binding.¹²⁶ This applies to resolutions made for Jammu and Kashmir as well. The material changes that have happened to Kashmir ever since the signing of the Shimla agreement and the years forward have materially altered the nature of Kashmir into a state under the Union of India. A similar position was also taken by Kofi Annan, the UN Secretary General on a visit to the subcontinent in 2000. According to him, the old Security Council resolutions that call for a plebiscite were unenforceable and essentially defunct, since India has squarely opposed the plebiscite for the past 50 years, and the Pakistani conception of the plebiscite limits the choice to the two

123 Kanti. P. Bajaipai et al., *Kargil and after Challenges: Challenges for Indian Policy* (2001), 53.

124 Oppenheim, *International Law*, 205.

125 Bose, *Contested Lands*, 200.

126 Bruce Cronin and Ian Hurdin, *UN Security Council And Politics of International Authority* (2008), 50-71.; *Towards the UN Reform: New Threats, New Responses*, (The Warsaw Report of The Regional Conference In Support Of The High Level Panel On Threats, Challenges And Change Appointed By UN Secretary General, Warsaw, 24-25 May 2004), 80-93.



options of the late 1940s and early 1950s. Such an exercise would *a priori* exclude the first preference—independence—of millions on both sides of the LOC. In reality, Pakistan has used the plebiscite demand simply as a strategic weapon against India in the propaganda war over Kashmir. In 2004, Musharaff also publicly acknowledged that it is pointless to “flog the dead horse of the plebiscite” and that an alternative path to settling Kashmir must be found.¹²⁷

Conclusion

For more than eight decades, the region of Jammu and Kashmir has enjoyed a special status under the domestic jurisdiction of India. This status owed much to both the municipal law, and the international law. However, by revoking Article 370 of the Indian Constitution, the government of India has formally accessed the territory of Jammu and Kashmir. Therefore, from henceforward, any question on the determination of Jammu and Kashmir should be guided by the municipal law of India. The allegations made by both Pakistan and its allies that the Republic of India has violated international law, is no longer sound. On the contrary, the Republic of India has both respected and adhered to the principles of international law. The root of plebiscite and self-determination, howsoever, alluring they may appear have become both an obsolete and a dangerous formula for addressing the issues of Kashmir. Any more applications or claims made of this nature on Jammu and Kashmir would be tantamount to an uncalled intervention into the territorial integrity of the state. The sovereignty of Jammu and Kashmir has always been in a form of evolution from the fifth century AD to the formal accession made by the union of India on 5 August, 2019. This paper has established that India’s formal accession of Kashmir complied with international law and that the UN resolutions of Kashmir for self-determination and plebiscite are no longer valid in light of the material change of circumstances. The formal accession of Jammu and Kashmir demonstrates a transition from bitter acrimony to a delicate domestic compromise. Nonetheless, its effective victory relies on the acceptance from the part of the world’s nations to respect its domestic act. Until then, peace and harmony will only be a mere sham in the covet of international law.

127 Bose, *Contested Lands*, 190.



THE CRIMINALIZATION OF BLACK MIGRANT WOMEN IN ITALY: ISSUES AND ANSWERS

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Gendered and racialized individuals are often members of communities that are generally more likely to see the criminal justice system work against them. Taking the specific case of Black women migrants in Italy, this essay attempts to answer the following questions: What kind of agency do Black migrant women in Italy have through their engagement with law, and how can those migrants show agency within the constraints of a criminal justice system that generally does not work in their favor? To answer these questions, it is important to review the sociological context of migration in Italy, identify the limitations and downfalls of the Italian criminal justice system in relation to Black women migrants, discuss specific case studies related to the experience of Black migrant women in the Italian criminal justice system, and emphasize the relevance of restorative justice and intercultural law initiatives in the Italian context. The argument is that by establishing solidarity networks through migrant associations and, therefore, making cases of injustices and discrimination public, migrant women force both the legislators and the Italian public to think of new ways to uphold justice and interpret the law. Two practices will be discussed extensively throughout this paper: restorative justice and intercultural law.

Keywords: *migration, gender, criminalization, agency, restorative justice, intercultural law*

Introduction

The criminal justice system is an incredibly complex and well-oiled machine, and although it generally aims to maintain social order and safety through the isolation of those deemed dangerous, there has been an increase in the cases of injustice and wrongful convictions that are, in many places, discrediting and taking value away from that very system that both the media and the academic community have pointed out. Gendered and racialized individuals are often members of communities that are usually more likely to see the criminal justice system work against them. Taking the specific case of Black women migrants in Italy, this essay attempts to answer the



following questions: What kind of agency do Black migrant women in Italy have through their engagement with law, and how can those migrants show agency within the constraints of a criminal justice system that generally does not work in their favor? The argument is that by getting involved in migrant associations and, thus, making their claims public, migrant women force both the legislators and the Italian public to think of new ways to practice justice and interpret the law. Here, restorative justice and intercultural law initiatives will be given greater attention. It is only recently in academia that restorative justice and intercultural law have been linked to migration. Despite race and gender inequalities issues within the context of criminal justice making for a lot of academic research, restorative justice and intercultural law research texts in the contexts of gender and migration are unfortunately still very hard to find.¹ Moreover, while the role of gender in migration has been gaining traction in academia, few research projects focused on the importance of law in the process.² To answer this question, it is important to 1) review the sociological context of migration in Italy, 2) identify the limitations and downfalls of the Italian criminal justice system in relation to Black women migrants, 3) discuss specific case studies related to the experience of Black migrant women in the Italian criminal justice system, and finally, 4) emphasize the relevance of restorative justice and intercultural law initiatives in the Italian context.

Literature Review

“Migrant,” throughout this essay, should be understood as anyone who has crossed an international border to reach Italy. In line with Luibheid and Cantu’s view of the migrant category, no distinctions will be made between legal migrants, refugees, asylum seekers, or undocumented migrants, as “such distinctions do not reflect empirically verifiable differences among migrants, who often shift from one category to another.”³ Moreover, as De Giorgi explained, the process of criminalization and illegalization of migrants in Italy exists, or takes place, regardless of migrants’ actual legal status.⁴ In other words, migrants, especially Black migrants, because they are racialized, are likely to be arrested or intercepted by police officers despite having legal documents; the line between illegality and legality becoming so thin that it

1 Theo Gavrielides, “Bringing Race Relations into the Restorative Justice Debate: An Alternative and Personalized Vision of “the Other,” *Journal of Black Studies* 45, no. 3 (2014): 216-246.

2 Kitty Calavita, “Gender, Migration, and Law: Crossing Borders and Bridging Disciplines,” *International Migration Review* 40, no. 1 (2006): 104-132.

3 Eithne Luibheid and Lionel Jr. Cantu, “Introduction,” in *Queer Migrations: Sexuality, U.S. Citizenship, and Border Crossings* (Minneapolis: University of Minnesota Press, 2006): introduction.

4 Alessandro De Giorgi, “Immigration control, post-Fordism, and less eligibility: A materialist critique of the criminalization of immigration across Europe,” *Punishment & Society* 12, no. 2 (2010): 147-167.

appears irrelevant in the context of this paper. In fact, in Italy and elsewhere in Europe, “immigrant ‘legality’ and ‘illegality’ are institutionally constructed conditions [that] are not as clearly distinguishable and mutually exclusive as the widespread anti-immigration rhetoric would have them.”⁵ Therefore, rather than a logic of legality, it appears as if it is the perception of danger that drives migrants’ criminalization from an Italian perspective. According to Fabini, Italian police officers “do not limit themselves to a finding that the migrant is undocumented. In reports, they always identify elements other than the lack of papers. ‘Illegality’ per se is under-enforced.”⁶

This paper’s focus on Black women migrants in Italy is motivated in part by the fact that, historically, there has been a tendency to see migration as a customarily male phenomenon despite evidence of extensive female primary migration.⁷ Moreover, if the presence of Black male migrants in Italy has historically provoked violent responses such as protests and racial attacks, the presence of Black migrant women – whether they come from Sub-Saharan regions, from North African countries, from Eritrea or Cape Verde – has generally been ignored by the Italian public.⁸ Black migrant women in Italy are rendered invisible and thus either ignored or discriminated against within the context of the law. As Andall points out, a “lack of acknowledgment of a migrant community or group also implies a lack of response to their specific needs and problems.”⁹

The researcher recognizes that it is impossible to talk about Black women migrants as a homogenous social group – the attitudes, cultural references, education, financial situation, status, gender, or political background can vary significantly – and attempts to be wary of different intersectional identities throughout this paper. Moreover, when talking about race and Black migrant women, the text does not embrace a biological interpretation of racial categories. It uses race and the power structures that the term is infused with to refer to the social and political process that “racializes” particular groups and communities.¹⁰ Lastly, by emphasizing the intersectional experiences of migrant women of color, this paper avoids essentializing the male/female dichotomy, recognizing that the categories of gender are politically and socially constructed. However, as Calavita points out, the male/female dichotomy is difficult to ignore or avoid in a legal context, considering that “the gender binary is solidly entrenched in the law, where it is repeatedly shored up as a taken-for-granted social reality.”¹¹ More details on the particular experience of Black women migrants in Italy are given further in the paper.

5 Ibid., 158.

6 Giulia Fabini, “Managing illegality at the internal border: Governing through ‘differential inclusion’ in Italy,” *European Journal of Criminology* 14, no. 1 (2017): 55.

7 Jacqueline Andall, “Women Migrant Workers in Italy,” *Women’s Studies Int. Forum* 15, no. 1 (1992): 41.

8 Ibid.

9 Ibid., 42.

10 Gavrielides, “Bringing Race Relations,” 222.

11 Calavita, “Gender, Migration, and Law,” 106.

Generally speaking, as numerous scholars correctly emphasized, legal policies are often framed without proper knowledge of the distinctive experiences of female migrants. As Fitzpatrick and Kelly argue, it is likely that “legal regulation of migration reproduces and exacerbates the social and cultural inequalities that disempower female migrants.”¹² What the researcher attempts to avoid, however, is victimizing women in the criminal justice system. Rather, as scholars have done in the past, they want to emphasize migrant women’s agency when negotiating and navigating a normative and rigid justice system. One might think that norms and laws cannot and will not change. However, as Ricca observes, the cultural and practical embedding of norms allows for changes to occur without breaking the legal normative system.¹³ Nevertheless, Hudson recognizes that the power of the criminal justice system lies in its ability to impose an identity of “other” – what we could label its “othering power” – so that marginalized or criminalized groups can be moved “outside the constituency of justice.”¹⁴ Therefore, when a court discriminates based on race, gender, or immigration status, whether it is against the victim or the offender, it reveals its acceptance of persistent social narratives that embrace the notion of “other”, of “unworthy”, of “illegal”.¹⁵ When Black migrant women are victims of a crime, we must also acknowledge the numerous disincentives – such as “structural constraints, [...] language barriers, perceived racism in the criminal justice system and social service agencies, and lack of adequate ethnocultural services”¹⁶ – to engaging with the criminal justice system.

This paper asserts that by establishing solidarity networks and making cases of injustices and discrimination public, migrant women force both the legislators and the Italian public to think of new ways to uphold justice and interpret the law. Two of those practices will be discussed extensively throughout this paper: restorative justice and intercultural law. Understood as “an ethos with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest

12 Joan Fitzpatrick Katrina R. Kelly, K, “Gendered Aspects of Migration: Law and the Female Migrant,” *Hastings International and Comparative Law Review* 22, no. 1 (1998): 48.

13 Mario Ricca, “Intercultural law, interdisciplinary outlines: Lawyering and anthropological expertise in migration cases before the courts,” *E/C Rivista Telematica dell Associazione Italiana di Studi Semiotici* (2014): 2.

14 Barbara Hudson, “Beyond white man’s justice: Race, gender and justice in late modernity,” *Theoretical Criminology* 10, no. 1 (2006): 33.

15 David B. Thronson, “Of Borders and Best Interests: Examining the Experiences of Undocumented Immigrants in U.S. Family Courts,” *Texas Hispanic Journal of Law & Policy* 11 (2005): 54.

16 Baukje Miedema and Sandra Wachholz, “A complex web: Access to justice for abused immigrant women in New Brunswick,” *Canadian Woman Studies* 19, no. 1-2 (1999): executive summary.

dialogue”¹⁷, restorative justice in Italy has a long history. Indeed, from the late 1960s to the early 1980s, Italy endured a period of political violence and terrorist attacks, followed by instances of reconciliation and dialogues between perpetrators and victims which helped pave the way towards the construction of a positive single shared memory of the past.¹⁸ However, the relation between restorative justice and immigration in Italy remains largely unexplored. Nevertheless, scholars¹⁹ agree that restorative justice can deliver more effective results in diverse and unequal societies. When linked to immigration, it might appear difficult to see how restorative practices can work, considering that the relation between the offender and the victim is blurred, or more complex. Yet, Sullivan argues that “restorative justice processes can be applied to offenses where there is no immediately identifiable victim, like the crime of entering a country without authorization or overstaying one’s visa without aggravating factors.”²⁰ The potential for restorative justice in Italy, therefore, exists in “the openness of the process to differing cultural sensibilities and to addressing relations of inequality.”²¹ Unquestionably, migrants and the criminal justice system could benefit from incorporating restorative justice practices in their relationship.

Finally, this paper tackles the legal relevance of cultural differences, or, namely, intercultural law. Because cases of discrimination based on race, gender and immigration status are numerous in Italy and have been covered extensively in the media, Italian legislators now have to assess how to better integrate different ways of life within the normative structure of the criminal justice system.²² The Italian state is familiar with similar practices, as it was involved in intercultural educational reforms that aimed to meet the needs of immigrant children.²³ The objective of intercultural law would thus be to overcome ignorance on the part of migrants about cultural and legal meanings, and from legislators and the public about the patterns of judgment and behavior of “the other.”²⁴ Such initiatives, as are discussed in the paper, should not be taken once the cases of discrimination and injustice already arrived before courts.

17 Theo Gavrielides, *Restorative justice theory and practice: Addressing the discrepancy* (Helsinki, Finland: Heuni, 2007), 139.

18 Anna Cento Bull, “Working through the violent past: Practices of restorative justice through memory and dialogue in Italy,” *Memory Studies* (2018).

19 Kathleen Daly, “Restorative justice in diverse and unequal societies” *Law in Context: Socio-Legal Journal* 17, no. 1 (2000); Michael J. Sullivan, “A restorative justice approach to legalising unauthorised immigrants,” *Restorative Justice* 5, no. 1 (2017).

20 Sullivan, “A Restorative Justice Approach,” 75.

21 Daly, “Restorative Justice,” 183.

22 Ricca, “Intercultural law.”

23 Anthony J. Liddicoat and Adriana Díaz, “Engaging with diversity: the construction of policy for intercultural education in Italy,” *Intercultural Education* 19, no. 2 (2008): 137-150.

24 Ricca, “Intercultural law.”

Limitations

As with any other text, this particular research work is bound to face limitations. Firstly, there is a danger of positing restorative justice as the perfect solution to, or the exact opposite of retributive justice — a distinction that, according to Daly, cannot be empirically sustained.²⁵ Secondly, Sullivan identifies practical barriers to the application of restorative justice to immigration: 1) “the summary use of deportation by immigration officials as a first line of defense against immigration offenses, without the possibility of allowing an immigrant to make amends for entering the country illegally”; and 2) “the criminalization of illegal entry as a way for government officials to avoid processing asylum claims.”²⁶ One should be wary of such limitations before contemplating restorative justice as a lasting alternative to retributive justice for Black women migrants in Italy.

The Sociological Context of Black Migration in Italy

Although historically, Italy’s demographics have been influenced by the large transatlantic and European migration of its citizens, it is only in the past 50 years that Italy truly came to be recognized as a country of immigration. Patterns of immigration to the Southern European country have been far from static, and if the experience of certain migrant groups to Italy has been studied extensively in academia, our knowledge about Black women migrants remains fairly limited. Generally, the movement of female migrants to Italy began in the 1970s, with most of these women being autonomous primary migrants.²⁷ Despite the introduction of strict migration control policies at the time, there was still a high demand for low wage female labor in manual service jobs, such as domestic work or the nursing profession. Women’s migration to Italy was also motivated by the large informal and underground Italian economy, Italy’s aging population, and the country’s geographical condition as Europe’s southern border.²⁸ Largely ignored until the 1980s, migration to Italy began to affect public consciousness in the late 1980s. This slow response to immigration can partly be explained by the fact that women represented a significant portion of Italy’s migratory body in its early stages: women were not a visible force, as their lives were often confined to the limits of their employers’ homes.²⁹ In fact, although Black women migrants, coming primarily from Nigeria and Somalia, mostly migrated to Italy before men did, their arrival fortunately did not result, as they did for Black

25 Daly, “Restorative Justice.”

26 Sullivan, “A Restorative Justice Approach,” 74-75.

27 Jacqueline Andall, *Gender, migration and domestic service: The politics of black women in Italy* (Routledge, 2000).

28 Federico Oliveri, “Migrants as activist citizens in Italy: understanding the new cycle of struggles,” *Citizenship studies* 16, no. 5-6 (2012): 796.

29 Andall, *Gender, migration and domestic service*.

male migrants, in any form of demonstration and racial attacks.³⁰

Consequently, in its early stages, Black women migration to Italy was not seen as representing a threat to the Italian society and its labor market; these migrants were in fact “filling a vacuum left by Italian women”³¹ that were eager to assert their role in society by working outside the home and gaining political recognition.³² However, in the late 1980s, Italy experienced a growing level of intolerance towards Black women migrants. The gendered attributions through which women migrants were rendered invisible and men were seen as deviant and threatening were challenged following the emergence of sex-work-related migrations of Black women: “The contrast between these ‘new’ migrants, many of whom soon became visible as street prostitutes, and the ‘old’ ones, less noticeable and domesticated, caused a major rupture in the public perception of female migrants, who were now also identified as a threat.”³³ Although it is clear that only a minority of Black women migrants work as prostitutes, the involvement of some Black migrants in prostitution had and continues to have negative implications for women migrants in Italy.³⁴

The Criminalization of Black Migrant Women in Italy

Over the past two decades, criminalization has arguably become the default way to deal with migration, with states increasingly closing and controlling their border by establishing limits to legal entrance, but most importantly, by “enacting and enforcing criminal norms against those foreigners who happen to violate these limits.”³⁵ Three general trends can now be observed: “the increasingly harsh criminal consequences attached to violations of laws regulating migration, the use of removal as an adjunct to criminal punishment in cases involving noncitizens, and the rising reliance on criminal law enforcement actors and mechanisms in civil immigration proceedings.”³⁶ As of 2013, Italy had the largest difference in Europe between the number of foreigners in prison (1,203/100,000) and Italians (71/100,000), meaning that migrants were incarcerated 16.9 times more than Italians.³⁷ And if the imprisonment rate of Italian nationals was at 51.5 in 2007, it was at 74.3 for foreigners during the

30 Andall, “Women Migrant Workers in Italy,” 42.

31 Ibid., 43.

32 Lorgia García-Peña, “Being black ain’t so bad... Dominican immigrant women negotiating race in contemporary Italy,” *Caribbean Studies* (2013), 148.

33 Isabel Crowhurst, “Caught in the victim/criminal paradigm: female migrant prostitution in contemporary Italy,” *Modern Italy* 17, no. 4 (2012): 496.

34 Andall, “Women Migrant Workers in Italy.”

35 Alessandro Spena, “A Just Criminalization of Irregular Immigration: Is It Possible?” *Criminal Law and Philosophy* 11, no. 2 (2017): 352.

36 Jennifer M. Chacón, “Managing migration through crime,” *Columbia Law Review Sidebar* 109 (2006): 135-136.

37 Claudia Mantovan, “Cohesion without participation: immigration and migrants’ associations in Italy,” *Patterns of Prejudice* 47, no.3 (2013): 257.

same year.³⁸ These statistics are astonishing, and it is imperative to problematize why migrants in Italy and across Europe are increasingly criminalized and often hyper-incarcerated. The processes of criminalization and illegalization of migrants appear to point toward a new model of punitive regulation of migrations, in which immigration law *and* the criminal justice system work together to reproduce the immigrants' vulnerability and exploitability.³⁹ Women migrants of color are also more likely to experience the harmful consequences of the merger between criminal and immigration enforcement.⁴⁰ In Italy, popular discourse on immigration is now joined with rhetorics of crime in such a way that "migrant populations are popularly viewed as clandestine or "illegal" and therefore prone to criminal behavior."⁴¹ This culture of hostility and criminalization is locally produced and understood but it also naturally makes its way into the interpretation and the application of laws within the national criminal justice system. Consequently, the increased policing of national and internal borders has made Black migrant women primary victims of this new punitive model where recourse to criminal law is considered to be an unproblematic way of dealing with migration issues.⁴²

Apart from the legal criminalizing frame of Black women migrants, there exist several other discursive strategies that essentialize and racialize migrants while portraying them as a threat.⁴³ Evidently, Black migrant women in Italy are racially marked subjects and, as such, are affected by discourses of race and criminalization. The Italian discourse on migrant criminality resides primarily in the areas of drugs and prostitution. It is common, for example, for Black Nigerian women, to be seen as sex workers and drug traffickers by the Italian public.⁴⁴ It is worth mentioning, however, that even if prostitution is perceived by the Italian public as typically foreign, available statistics show that prostitution by Eastern European women is far more common in the country.⁴⁵ Yet, although prostitution is legal in Italy, its practice implicitly criminalizes all Black migrant women both in the mind of the public and in the mind of the criminal justice system and of the people responsible for its enforcement. Discrimination and criminalization of Black women migrants are thus very much endorsed by the current Italian legislation, which asks, for example, of foreign citizens to show their documents on request to officials or face a punishment of up to six months imprisonment. A 21-year-old Black woman

38 De Giorgi, "Immigration control," 155.

39 Ibid., 158.

40 Pooja Gehi, "Gendered (in) security: Migration and Criminalization in the Security State," *Dukeminier Awards: Best Sexual Orientation and Gender Identity Law Review* 12 (2012): 363.

41 Asale Angel-Ajani, "The racial economies of criminalization, immigration, and policing in Italy," *Social Justice* 30, no. 3 (2003): 48.

42 Spena, "A Just Criminalization."

43 Oliveri, "Migrants as activist citizens," 800.

44 Angel-Ajani, "The racial economies of criminalization."

45 Ibid.

interviewed by Andall (2002) after being stopped by the police stated:

*There were three of us, three Eritrean girls and by mistake ... we did not have all our papers on us. They stopped us and took us to the police station. I can even comprehend that they did this to check out our status, but don't keep me there for five hours and don't take my fingerprints and don't treat me as if I were the last of the prostitutes.*⁴⁶

Such an example suggests that being Black and being Italian are still perceived as being mutually exclusive categories and that Italian legal policies continue to be framed “with inadequate knowledge of, and responsiveness to, the distinct experiences of female migrants.”⁴⁷

On Women’s Agency: Women Migrant Associations in Italy

As of now, this article focused primarily on how Black migrant women are criminalized by a criminal justice system that is bound to work in their disfavor. However, although the current Italian legislation limits migrants’ participation in Italian political and legal life by not allowing political rights (e.g. voting rights) to non-EU citizens, Black women migrants in Italy are not only reacting to situations that are beyond their control. Rather, they often show agency and are active participants of a political and criminal system that seeks to illegalize and criminalize their existence. Taking the case of migrant women associations, this section will analyze how Black migrant women in Italy perform solidarity and influence the normative political and legal structures of the country.

Black migrant women’s involvement with the Italian legal system remains limited to non-conventional forms of implication as “the nature of migrant participation is closely linked to the political and discursive opportunity structures available to these social groups where they live and act.”⁴⁸ In this context, migrant women unfortunately still face multiple barriers of entry for political participation. However, historically, women migrant associations have proven to be an effective way to challenge legal categories and practices of criminalization and illegalization. Three phases have been identified in the development of women migrant associations in Italy: 1) the development of associations encouraged by Italian authorities to mediate politically between the state and migrant groups in the 1980s, 2) the mid-1990s withdrawal of migrants from said associations and the establishment of more ethnic and gender-based women organizations controlled by the migrants themselves, and 3) the current reconfiguration of these associations for political and legal purposes.⁴⁹ Such

46 Jacqueline Andall, “Second-generation attitude? African-Italians in Milan,” *Journal of ethnic and migration studies* 28, no. 3 (2002): 400.

47 Fitzpartick and Kelly, “Gendered Aspects of Migration,” 48.

48 Mantovan, “Cohesion without participation,” 254.

49 *Ibid.*, 262.

associations, besides providing several services and forms of support and training for immigrant women, contribute greatly in “bridging a gap between migrant women associations and historical feminist associations of Italian women that until that time had remained rather separated worlds.”⁵⁰ These associations also contributed in changing discriminatory legislation against migrant women. The organization Almaterra, based in Turin, writes, on its website: “Our goal is to accompany migrant women on a journey of awareness of their rights and duties, through learning the Italian language and knowledge of the laws and history of the host country. [...] Through socialization, attempts are made to contrast the conditions of exclusion and marginality of the group, helping migrant women to acquire tools for personal strengthening and skills that lead to the activation of empowerment processes.”⁵¹ Actions for Non-EU Migrants, one of the organization’s flagship project, aims to help immigrant women navigate Italian legal and bureaucratic procedures. The project is organized around intercultural mediation activities that promote both the social integration of migrant women and their radical fight against practices of exclusion in housing, work, justice, education, and health. Participation in such organizations should be understood as “acts of ‘fearless speech’ (Foucault 2001), which create migrants as ‘actors answerable to truth against hypocrisy.’”⁵² In fact, by speaking out and taking action within these associations, migrant women are denouncing the hypocrisy of the Italian criminal justice system and the unjust functioning of the Italian society. A good example of that would be the “Manifesto” written by an association of migrant women in Bologna after the women discovered that there “was a ‘discrepancy between ideology and reality’ when it came to officials’ support of integration, and that the City of Bologna did not always deliver on the reality side of the equation.”⁵³ The “Manifesto” prioritizes legal status, criminalization and social security protection. In this context, migrant women’s acts of citizenship are based on self-critical mechanisms of democratic law that they activate to prove that their claims to rights and legal representation are legitimate.⁵⁴

Discussion: Restorative Justice and Intercultural Law in the Italian Context

It is no surprise that the illegalization of Black migrant women within the Italian criminal justice system hinders their integration by stigmatizing and removing them from society – whether it is by putting them into prisons, or, as is the case for non-citizens, detaining and, eventually, deporting the offender without consideration for

50 Tiziana Chiappelli, “Migrant women in Italy between exclusion and active participation. A gender perspective in inclusion processes,” *Comparative Cultural Studies-European and Latin American Perspectives* 1, no. 2 (2016): 43.

51 Almaterra Torino, <http://www.almaterratorino.org/it/associazione>.

52 Oliveri, “Migrants as activist citizens,” 802.

53 Calavita, “Gender, Migration, and Law,” 122.

54 Oliveri, “Migrants as activist citizens,” 803.

his/her family or community connections.⁵⁵ Why should criminal justice be considered in terms of sameness of treatment when the experiences of female migrants in Italy are so very different from those of white Italian citizens? How do we make sure that law ensures that Black migrant women's experiences receive contextualized consideration from judges, that the principle of least restrictive measures is applied, and that the current hyper-incarceration rate of Black migrant women decelerates?⁵⁶ At present, the criminalization of Black migrant women is a contextual gendered and racialized phenomenon that exists independently from a *perceived* increase of migrants' crime rate. Here, I would first like to discuss the possibility of moving law towards a restorative justice model; something that, implicitly, migrant women have done through their engagement with migrant women associations.

Because Italian citizens are both angered by a lack of control over immigration policy outcomes and more likely to develop positive attitudes towards immigrants if they engage with them,⁵⁷ restorative justice processes can generally be seen as a viable alternative to the criminalization of migrants in two distinct ways: 1) victim-offender mediation where there is an individual victim who has been directly harmed by a migrant's actions (whether it is drug trafficking, prostitution, or an unauthorized migrant's use of false document); 2) "community reparative boards to address the more diffuse harms arising from entering and remaining in a country without authorization."⁵⁸ The apparent disconnect between potential restorative justice sentencing practices and the relentless coercive punishment of Black migrant women exists because of the exclusion of women's narratives in the practice of sentencing law.⁵⁹ Moreover, the criminal legal discourse marginalizes Black migrant women, who often have language barriers and less knowledge about the criminal legal system of their country of residence. So-called 'crimes of migration', which could also be considered 'crimes of despair' – here we can think of violations of the immigration law, forging of legal documents, providing shelter to undocumented relatives⁶⁰ – could thus be dealt with by Italian community reparative boards who, under the guidance of judicial professionals, would implement restorative justice initiatives where migrants and communities' "argue that they have suffered harm, need repair and want to become involved as volunteers to express their views, help decide on appropriate sanctions, and facilitate community service and reintegration activities."⁶¹

55 Sullivan, "A Restorative Justice Approach," 79.

56 Gillian Balfour, "Falling between the cracks of retributive and restorative justice: The victimization and punishment of Aboriginal women," *Feminist Criminology* 3, no. 2 (2008): 115.

57 Sullivan, "A Restorative Justice Approach," 80.

58 *Ibid.*, 70.

59 Balfour, "Falling between the cracks," 102.

60 De Giorgi, "Immigration control," 158.

61 Sullivan, "A Restorative Justice Approach," 79.



Secondly, it seems imperative to discuss the potential that intercultural law practices represent for Black migrant women in the Italian context. Perhaps unknowingly, migrant women associations in Italy, by continuously providing training for cultural mediators, are indeed paving the way for such practices to be implemented at a national level. The legal intercultural approach is designed to assess “how to better integrate different ways of life with laws, rules and practical schemes of behavior.”⁶² Judicial activities are unquestionably influenced by communicative shifts taking place within society. Consequently, if the legal language itself and the institution that supports the Italian criminal justice are inalterable, legislative production and, specifically, the interpretation of legality and by extension, of criminality, has the potential to change greatly. One could, therefore, argue that the long-lasting clash of identities between Black migrant women in Italy and the Italian community is likely to affect the construction of new subjectivities. In this context, legality and criminality should not be seen as “concepts definitively forged”, but rather as “guesses permanently open to revision and verification.”⁶³ For legal intercultural approaches to take form, however, lawyers and jurists, need to be sensitive to the cultural and legal background of migrants. If such sensitivity is shown towards the migrant’s experience, migrants would likely be more prone to “use available legal tools rather than be wary of them a priori, thus condemning themselves to a sort of legal clandestine condition, lived socially underground.”⁶⁴ A commitment to inclusive uses of law in the Italian context would consequently respond to the large demand for legal protection from migrants and would act as an obstacle to the criminalization of Black women migrants by both the criminal justice system and the Italian public.

Conclusion

Law and legality were not always given so much importance within Italian society. In fact, the importance of law has come to represent a new national solidarity following the decline of corruption in the country in the late 1990s; today, the arrival of “illegal” migrants is unfortunately perceived as a sign of Italy’s national decline and an increased commitment to law and order from police forces and the criminal justice system is continuously making the lives of migrants harder to navigate.⁶⁵ In order to better integrate migrants into Italian society and to put a stop to the criminalization of Black migrant women in the country, socio-legal research, as well as the Italian society as a whole, must start to think of and invest in innovative and inclusive forms of legal practices. To achieve such goal, more financing should be made available to women migrant organizations, which are already paving the way towards reform. Black migrant women, through their involvement in ethnic and gendered-based migrant associations, are in fact taking an active role in defending

62 Ricca, “Intercultural law,” 1.

63 Ibid., 6.

64 Ibid., 41.

65 Angel-Ajani, “The racial economies of criminalization,” 54.





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migrants' legitimate claims to rights and legal representation. We hope that such initiatives of cultural mediation and legal training, when expanded and developed further, will contribute to a much-needed rethinking of the Italian justice system that is in line with the idea of restorative justice and intercultural law. Knowing that this research is somehow preliminary and that such initiatives are still limited within the Italian context, further research could address the differentiated access that Black migrant women coming from various educational, economic, social, and cultural backgrounds could have to said initiatives. Perhaps, restorative justice and intercultural law may work differently for women with upper-class backgrounds or higher educational attainment. Answering these questions, however, is beyond the scope of this paper.

