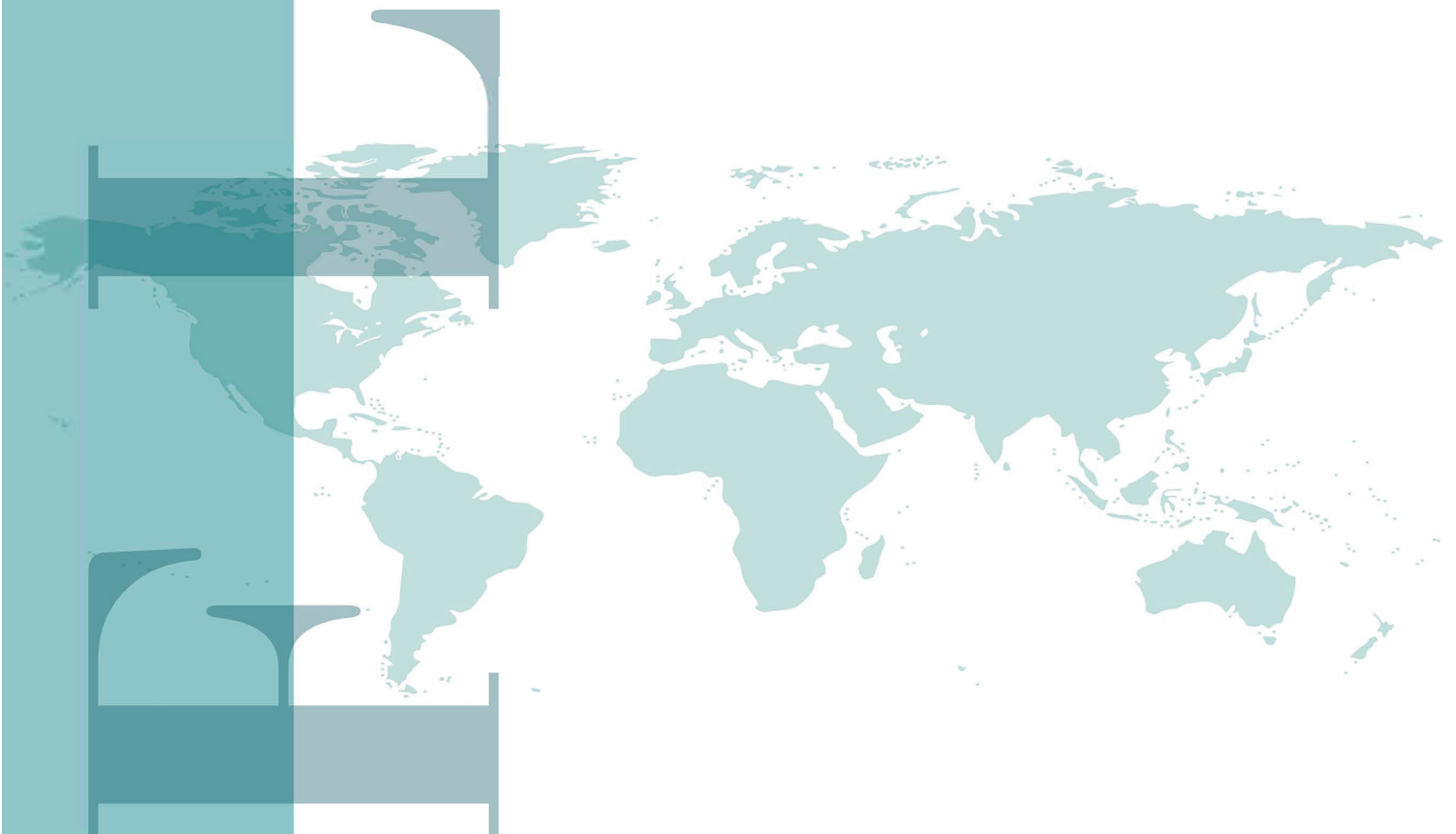


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How to Access Justice Through the Legal System – A Case for Inclusivity

Wanlin Zhong

Introduction

What is justice? The definition is subjective and contextual. From a macro perspective, justice is one of the basic needs of humanity – like shelter, education, healthcare, and other basic necessities of life that are advocated as fundamental human rights.¹ Access to justice coincides with the concept of inclusiveness that FLIA consistently advocates. United Nations Development Programme (UNDP) introduced the concept of Inclusive Governance in their 2007 report, which implied that all people, including gender, class, ethnic, and religious minorities, indigenous peoples and other disadvantaged groups, have the right to meaningful participation in governance processes.² This concept is necessary because several groups remain excluded socially till date, marginalized from national development, with few opportunities for redress. Issues such as homelessness, domestic abuse, educational or healthcare inequality and unemployment prevail in today's society, thereby merging the concept of justice with ensuring equal opportunity.

Effective legislation is a very important tool to improve the situation. Achieving justice is often regarded as the main aim or function of the law – it is the ideal or the ultimate goal towards which the law should strive. Thus, in our pursuit to enhance justice and basic civil rights of the whole society, law is a powerful weapon. The rights of different social groups are truly safeguarded when exclusionary policies or laws disappear.

Groups in society today can be constituted and classified according to common characteristics that are necessary for the system. For example, according to the main mode of social production, the society groups can be divided into nomadic social groups, agricultural social groups and industrial social group types; as per different age groups, they are divided into youth, middle age and old age; according to the type of occupation, they can be divided into further niche groups, etc. Therefore, based on the objective existence of various characteristics, such as occupation, social status, ethnicity, gender, age, education level, etc. all can be divided into different groups.

Among them, this paper will specifically discuss the protection of women's and children's

¹ Hon. Marilyn Warren AC, p2.

² UNDP report, p11.

rights, particularly their unfair treatment in society and exclusion from the subject of rights and protective mechanisms of existing laws, and the path to more inclusive laws in the future.

The Necessity to Achieve Justice for Women and Children

Women and children are the focus of this article due to the existing inequalities of these groups.

a. For Women

Women and girls make up half of the world's population and therefore half of the world's potential. Today, however, gender inequality is widespread, stagnating social progress.

For adult women, global estimates released by the World Health Organization (WHO) indicate that approximately one-third (35%) of women worldwide have experienced physical and/or sexual violence by an intimate partner or non-partner in their lifetime, and up to 38% of women's murders globally are committed by male intimate partners.³ But this corresponds to the fact that such violence is more covert and often judicially punished less than ordinary crimes. Women also earn 24% less on average than men in the global labor market, even when they are in the same jobs and positions as men.⁴ So it is easy to imagine how difficult it is for women to gain access to the same advancement as men.

For girls, the inequalities they face begin at birth and remain with them throughout their lives. In some countries, girls do not have access to health care or proper nutrition, resulting in higher mortality rates. Globally, approximately 15 million girls under the age of 18 get married each year - or 37,000 girls every day.⁵ In addition, early marriage affects girls' education. About one-third of developing countries are yet to achieve gender equity in primary education. In sub-Saharan Africa, Oceania and West Asia, girls still face barriers to primary and secondary school. In 29 countries in Africa and the Middle East, an estimated 133 million girls and women have undergone some form of female genital mutilation, a harmful practice that is likely to lead to excessive bleeding, infections (including HIV), complications in childbirth, infertility and death.⁶ In many countries, however, there are no laws to address these issues. Although the right to education is written into the constitution, those parents are not punished for withdrawing girls from school. In some countries, the age

³ Violence against women by WHO website, see <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

⁴ From *Why_it_Matters*, the UN report, p2.

⁵ *Id.*

⁶ *Id.*

of marriage is 15 for men and 9 for women, which means that what we generally condemn as "child marriage" is legal there, which is particularly ridiculous and tragic.

b. For Children

Children should enjoy the same basic rights as adults, as well as specific rights that recognize their special needs. Children are neither the private property of their parents, nor helpless objects receiving charity guarantees. They are also human beings entitled to their own rights.

The special emphasis on the rights of children is due to the fact that children have not been a group of concern for a long time in the history of humankind. One of the earliest charters for children was the Charter of the Rights of the Child, drafted in 1923, and the Declaration of the Rights of the Child adopted by the United Nations General Assembly in 1959. The real legal recognition of children's rights came in the 1980s, when the Convention on the Rights of the Child was formally adopted by the 44th General Assembly of the United Nations on November 20, 1989.

The number of children is a vulnerable population in relation to the society of adults. As adults formulate all rules and standards in society, children usually have no voice, vote, or decision-making power. Children are rarely represented as they can only gain their appropriate rights as a citizen after the age of 18 (or the specific age dictated in their domestic laws) and children's advocacies often go unspoken. Childhood is a crucial part of one's life, as it determines the kind of person one will become in the future. The way a child spends his or her childhood reflects the height of a nation, and the extent to which a country cares about its children is largely a reflection of its human development index ranking.

Despite important progress made in the achievement of the Millennium Development Goals (MDGs), some developing countries have been lagging behind. They have a higher risk of poverty and malnourishment, higher levels of child mortality, poorer health and higher rates of children out of school.⁷ The effects of these problems are often irreversible, especially for younger children, who are less able to seek support and are more likely to suffer long-term emotional and health damage, have impaired brain development, experience insecure attachments later in life, and are more likely to engage in aggressive and self-harming behaviors.

Therefore, this article is mainly focused on the groups of women and children, and areas

⁷ Marta Santos Pais's speech in New York, 24 April 2014, UN.

related to inequality in education, and targeted social and domestic violence, to reveal harmful exclusionary practices and surmise steps to defend their rights in a more inclusive way.

Inclusive Education

Education is a fundamental human right. It is one of the most powerful tools to enable upward social mobilization and societal integration for underprivileged children and adults. UNESCO data highlights that if all adults in the world could complete secondary education, the number of global people living in poverty would be halved. Education will close the gender gap that girls and women currently experience. A United Nations study showed that for every additional year women spend in school, infant mortality is reduced by 5 to 10 percent.⁸

a. Issues and Current Situation

Inclusive education ensures access to quality education for all students by effectively meeting their diverse needs in a way that is responsive, accepting, respectful and supportive.

Arguments for inclusive education are well supported and based on notions of equality and human rights. Under this practice all students, regardless of any challenges they may have, are placed in age-appropriate general education classes that are in their own neighborhood schools to receive high-quality instruction, interventions, and assistance that enable them to grasp the core curriculum.⁹

It is not only a policy requirement, but also a moral position which values and respects every individual while welcoming diversity as a rich learning resource. At present as the educational landscape is rapidly changing due to rising diverse learning demands of students with varying capabilities families, ethnic and cultural backgrounds, respect and equal commitment to all learners are more important than ever.¹⁰ The education system is required to support, among others, black and minority ethnic learners, children of migrant workers and of gypsies, travelers as well as disabled learners.

Although the importance of education is gradually recognized, there are still wide disparities in the educational attainment of children worldwide, and a lot of work remains to

⁸ What you need to know about the right to education, UNESCO, see <https://en.unesco.org/news/what-you-need-know-about-right-education>

⁹ Bui, Quirk, Almazan, & Valenti, 2010; Alquraini & Gut, 2012.

¹⁰ The notion explained by CSIE, see <http://www.csie.org.uk/inclusion/index.shtml>

be done to achieve the goal of inclusive education. Vertical comparison reveals discrepancies in the right to education due to varying levels of economic development and literacy across regions. Meanwhile, horizontal comparison suggests challenges to accessing education among those in similar economic circumstances due to their characteristics (e.g., gender, physical or mental disability).

i) Through Vertical Comparison

Vertical comparison demonstrates the variations in children's educational attainment across countries with different levels of development. The State of the World's Children 2016 report showed that the world has made remarkable achievements in saving children's lives, increasing their school attendance, and lifting them out of poverty. However, these achievements have been inequitable. According to the data, 262 million children and adolescents of primary and secondary education age are still not enrolled in school; only 1 in 5 countries in the world guarantee 12 years of compulsory education in law; 1 in 11 children are not enrolled in primary education; 1 in 5 adolescents are not enrolled in secondary education; and more than half of children of primary education age do not meet the minimum competency levels required by reading quality standards.

Educational inequalities are particularly pronounced across certain countries. In sub-Saharan Africa, for example, at least 247 million children (two-thirds of all children in the region) are trapped in multidimensional poverty and lack the basic conditions for their survival and development. In addition, nearly 60 percent of young people aged 20-24 in the poorest quintile in the region have less than four years of schooling. The report predicted that, based on this trend, by 2030, more than half of the world's 60 million children out of elementary school will come from this region.

ii) Through Horizontal Comparison

Disability is the single most serious barrier to education across the globe, as per horizontal comparison. According to data from UNICEF, nearly 50 percent of children with disabilities were not in school, compared to only 13 percent of their peers without disabilities.

The Global Burden of Disease survey found that an estimated 95 million (5.1 percent) of children have a disability, of which 13 million (0.7 percent) have a “severe disability.” Children with disabilities start school later and have lower retention and transition rates than children of the same age without disabilities. Disparities in the number of completers across age groups exist in both low- and high-income countries, and are particularly pronounced in

poorer countries. There are differences in the proportion of children with and without disabilities attending elementary school, ranging from 10 percent (India) to 60 percent (Indonesia). Disparities in the proportion attending secondary school range from 15 percent (Cambodia) to 58 percent (Indonesia). Even in some countries with high elementary school enrollment, such as Eastern Europe, many children with disabilities are not in school.

b. Measures Already Taken

Until now, many international conventions and national laws have attempted to achieve inclusive education. For example, in the UK, the legislation prohibits discrimination in education and supports inclusive education. The UK also has obligations under international human rights law to provide inclusive education for all children. Under the Equality Act 2010, it is unlawful for any education provider, including a private or independent provider, to discriminate between pupils on grounds of disability, race, sex, gender reassignment, pregnancy and maternity, religion or belief, or sex. At the international level, The UN Convention on the Rights of the Child has established four general principles – non-discrimination, the best interests of the child, optimal development, and participation of the child. The Convention also specifically covers the right to education in article 28 and 29. Finally, in the First Protocol (1952) to the European Convention on Human Rights, article 2 includes the right to education.¹¹ In short, there are precedents to addressing this issue.

c. What Still Needs to Be Done

Inclusive education is constantly being emphasized, but international conventions and domestic laws of developed countries often do not regulate underdeveloped countries well, and the true level of education in a country should not only be shown in cities, but also in rural areas. From this perspective, we are still not doing enough.

Legally, we should pay more attention to the implementation of the right to education. This can be done, for example, by creating an educational decree to regulate the relationship between the rights and obligations of children, parents, schools and other owners of educational institutions in education, and by using administrative norms to make schools pay attention to the equal right to education of different groups.

But at the same time, dissemination of ideas and funding are more important. The

¹¹ According to the article 2, No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

progress of education is a long process and, especially in countries where basic livelihoods are not guaranteed, education is often neglected, even if the law has a corresponding mandatory provision. This requires the UN and other countries to keep sending teachers and funding to improve local education, and to promote the importance of education so that more students have the opportunities and are willing to persevere.

d. Global inclusive education challenges during the COVID-19

After the schools closed, the classroom moved to a new video conferencing platform, which faced many difficulties and challenges, but it was the only way to continue teaching and learning for teachers and students living under the pandemic-proof restrictions.

However, the online virtual classroom remains an elusive dream for millions of children around the world. UNESCO data released in April 2020 revealed a huge digital divide in distance learning, with nearly 830 million students globally without access to computers. The situation is particularly acute in low-income countries, where nearly 90 percent of students in sub-Saharan Africa do not have a computer at home and 82 percent do not have access to the Internet. In other words, while a number of students in the U.S. and Japan are less productive because of online teaching, large percentage of students in Africa have lost the opportunity to continue their education forever. Tragically, even if the pandemic ends in the future, they will never return to school due to age, family burdens, and other factors.

Additionally, in many parts of the world, children rely on school feeding programs that provide them with their most important nutritional meal of the day – their lunch. Thus, school closures can even lead to significant increases in child mortality. Such effects would be unimaginable in European countries.

Against All Forms of Violence Against Women and Children

The Declaration on the Elimination of Violence against Women defines “violence against women” as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Violence against women, especially intimate partner violence and sexual violence, is a major public health issue and a practice that violates women's human rights.

The protection of children from all forms of violence is a concern from the post-2015 development agenda. The WHO, UNICEF, UNESCO, and the Office of the Special

Representative of the UN Secretary-General on Violence against Children jointly released the report *Global Status of Violence Prevention 2020*, which tracked progress in preventing and responding to violence against children in 155 countries. The report noted that while 88 percent of countries have enacted key laws to protect children from violence, only 47 percent of countries report that these laws are being strongly enforced. The report also included the world's first assessment of the killing of children under the age of 18, finding that a total of about 40,000 children were victims of homicide in 2017.

a. Issues and Current Situation

Gender-based violence, or violence against women and girls, is a global pandemic that affects 1 in 3 women in their lifetime. It is staggering that 35% of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence. Globally, 7% of women have been sexually assaulted by someone other than a partner, more than 38% of murders of women are committed by an intimate partner, and in total, 200 million women have experienced female genital mutilation/cutting.¹²

It is no exaggeration to say that the world plays out the tragedy of violence against women every day. In El Salvador, one woman fell victim to femicide every twenty-four hours on average in 2018. In Honduras, 6.2 out of 100,000 women were murdered as a result of femicide in 2019.¹³ The article covering these issues just mentioned two cases as examples to demonstrate the pervasiveness and invisibility of this violence. What a ridiculous scenario! Violence is widespread but not taken seriously, and this is an urgent situation in many regions of this world. For example, in *Şahide Goekce (deceased) v. Austria*, the complainant claimed that the State had failed to guarantee the right to life and physical integrity of Ms. Goekce, who had been killed by her husband after experiencing ongoing domestic violence that she had even reported to the police. The police were aware that her husband had a pistol and had threatened to kill her on several occasions. The case of *Fatma Yildirim (deceased) v. Austria* also involved a victim killed by her husband after repeated death threats, which she had reported to the police. The complainant claimed that the State had failed to take appropriate positive measures to protect the victim's right to life and physical integrity.

These examples demonstrate that the occurrence of domestic violence, in addition to the actions of the perpetrators, are often accompanied by the inaction of public officials, thereby excluding women from the framework of legal protection and simply treating these matters as internal familial conflicts. In fact, such practices are informed and enhanced by traditional

¹² World bank report, Gender-Based Violence, see at <https://www.worldbank.org/en/topic/socialsustainability/brief/violence-against-women-and-girls>

¹³ It means a targeted murder of a woman based on her gender.

attitudes. Simply put, domestic violence arises because the social culture and system give women less power than men. The family is considered to be a private sphere, preventing social and political control over family members. In addition, conventional gender roles often restrict women to unpaid housewives or trophy wives, while men are generally the breadwinners with quantifiable work and are respected in society. This economic disparity and lack of financial freedom places women in a vulnerable and subordinate position.

Thirty years ago, gender-based violence against women was largely invisible and its harms were unrecognized. Women were expected to suffer in silence because domestic violence was viewed as a private issue, shielded from state-based mechanisms. Not a single mention was made of gender-based violence in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the primary women's human rights treaty adopted by the UN General Assembly in 1979. But today, in the 21st Century, with flexible division of labor and technological advances, jobs are becoming more mentally, rather than physically demanding. Women are gradually participating in society and earning income, thus no longer completely dependent on their families. More and more women are realizing the need to fight for the rights they lacked before. While these changes have improved the status of women in some countries and raised awareness on gender inequality, millions continue to suffer. This calls for the power of law, local authorities, as well as the international community, to protect women's legal and human rights.

Gender-based violence is not only a social issue, but also an important topic of inclusive governance, which has immense potential in today's world where political, economic and social issues are intertwined. Such violence is not only devastating for survivors of violence and their families, but also entails significant social and economic costs. In some countries, violence against women is estimated to cost countries up to 3.7% of their GDP – more than double what governments spend on education.¹⁴

b. Measures already taken

a) Criminalize violence against women

If the perpetrators are likely to face strict legal procedure for their actions, this kind of violence would occur less frequently. In this way, law plays an important symbolic role as it renders such violent behavior socially unacceptable. The associated sanctions can serve a deterrence function and reduce the incidence of violence. Legislation can also be responsive

¹⁴ World bank report, Gender-Based Violence, see at <https://www.worldbank.org/en/topic/socialsustainability/brief/violence-against-women-and-girls>

to victims, by providing protection and access to support services. This legal progress is complementary to social sustainability and inclusion.

In the U.S., each state has passed its own domestic violence laws, and state laws covering domestic violence range from court injunctions to protect victims from violence, to custody of children after a divorce between the parties, to police decisions to arrest perpetrators under criminal laws. At the same time, Congress passed the Violence Against Women Act, a law that requires states to respect protective orders issued by other state courts, allows victims to file lawsuits in federal court, and allows law enforcers to pursue perpetrators of domestic violence across states. For example, in a family where one of the parties has been harmed by domestic violence, he or she can ask the court to issue a temporary injunction, also known as an emergency protection order, prohibiting the violent party from having contact with him or her, such as from coming to his or her home, workplace, school, or even the school where the children go and the places he or she frequents, and to prevent further violence. If the violence continues, the victim can notify the police for investigation.

As we can see, the federal government and the states are actively promoting the protection of victims and the punishment of domestic violence perpetrators. Such comprehensive laws and their effective implementation make legal intervention more accessible in this country. Society also actively encourages victims to seek legal protection and bring lawsuits.

b) A successful case: the change of family law in Fiji

We aim to make a strong commitment to preventing and eliminating violence in families, schools and public spaces; ending violence against women and incidents related to child; reducing crime, violence, and exploitation against women and children; eliminating discriminatory laws, policies and practices; building a strong culture of non-violence; and calling for effective, accountable and transparent institutions and justice systems. This is also what governments must pursue to achieve inclusive governance.

The case in Fiji provides an inspiring example. Prior to 2003, women and children faced systemic discrimination under Fiji family law. Fiji's biased legal practices had legitimized violence against women and were based on rigid concepts of women's roles within the family. Fortunately, through the efforts of domestic feminist organizations, law commissions, and other forces, from 1991 to 2003, Fiji finally passed the Family Law Act in October 2003. During this decade-long struggle, the leading organizations speculated that a campaign on family issues, rather than women's rights, would have a stronger public appeal. They also tenaciously found, informed, and mandated women's groups, and used the power of social

media to attain solidarity from women in other countries. The organizations reached out to the Ministry of Women and Culture working within government, presenting new proposals in each parliamentary session.

The resulting Act is based on a no-fault principle of divorce, utilizes a non-adversarial counselling system and a specialist Family Division of the Court which prioritizes children's needs and parental support. It mitigates discrimination against women by granting them rights to enforceable custody and financial support for them and their children. It requires the recognition and implementation of major UN human rights conventions relevant to family law.¹⁵

c. What Still Needs to be Done

The law works in tandem with politics and economics, which makes its efficacy contingent on the country's level of development (as evident in the case study of U.S. above).

In economically underdeveloped countries and regions, governments and police are often the products of patriarchy, and hold regressive beliefs that underplay women's status in the family and dismiss domestic violence against women as ordinary family quarrels. In such cases, merely seeking legal change is insufficient, because the ruling class does not possess a sense of "legal right". Northern Triangle is one such example. Impunity for men is rampant across the Northern Triangle. The vicious cycle of violence and impunity puts victims of non-fatal gender-based violence in an impossible situation, without recourse to institutions or systems that can hold their abusers accountable.¹⁶ Similarly, in some rural areas of China, men's patriarchal dominance is still considered justified, as their so-called family rules supersede the local legislation. When a wife asks for a divorce, she is often threatened by her husband, or even worse, physically assaulted; but the local police generally neglect these issues.

Therefore, for these countries, in addition to changing the laws, it is more important to develop the economy. This is why the World Bank, an international organization that provides economic assistance, has included "Social Sustainability and Inclusion" among its goals. While providing economic assistance, special attention should be paid to providing more employment opportunities and jobs for women. Only if they can first leave their families to achieve financial, physical, and emotional independence will they be able to continue the fight

¹⁵ UNICEF report, p66.

¹⁶ The Northern Triangle: The world's epicenter for gender-based violence, see at <https://www.atlanticcouncil.org/issues/>

for more rights.

d. Alert: COVID-19 makes conditions worse

Currently, with COVID-19 still in widespread contagion, human society is grappling with extraordinary circumstances. The present review reveals that similar to the previous pandemics and epidemics, there has been an alarming rise in the incidents of gender-based violence during the COVID-19 pandemic. According to the World Health Organization (WHO), domestic violence is on the rise and has even become a secondary disaster of the pandemic, which can be described as a “shadow epidemic”.

On the one hand, due to the pandemic, unemployment and alcohol consumption rates are much higher, which may serve as a trigger for those with violent tendencies. On the other hand, the self-quarantine of people at home makes the occurrence of domestic violence more invisible, therefore more intractable for the victims. Even when trying to seek help, women may be wary of being discovered by their abuser, anxious about the possibility of contracting the new coronavirus outside their homes, and uninformed of available local services; and the perpetrators, who would have been taken away under normal circumstances, are not detained by police during the pandemic due to slower trial processes.

Please note that this is not a silly assumption – this actually happened. In March 2021, a virtual St. Joseph County District Court preliminary examination was interrupted because the defendant was found to be at the same home as the alleged victim while the hearing took place. During this domestic violence case in Michigan, US, the plaintiff seemed constantly nervous in the livestream. Once Judge Jeffrey Middleton recognized that there was something amiss, he asked the police to inspect the plaintiff's home to ensure her personal safety. Upon arrival, the police caught the defendant in the woman's home, attempting to threaten her through the trial. He was eventually arrested on the spot and disqualified from posting bail.

Overall, the pandemic has raised the stakes for women's safety everywhere. Heightened stress, the breakdown of social and protection networks, and reduced access to services all increase women's risk of violence, thus necessitating urgent protective measures.

Inclusiveness and Civil Law

Jiajian Xu

Introduction

The inclusiveness of the law is a vital part of an inclusive society, and is defined as a legal system that can overcome the systematic exclusion of disadvantaged groups. Legislative processes and implementation often overlook indigenous people, refugees, women, and other under or unrepresented segments of the population. Some foundations and governments have acknowledged and tackled this issue, but often with unsatisfactory outcomes. This article will examine some of these actions and analyze their success and failure, to shed some light on the inclusive legal system and society that we want to promote.

Intellectual Property

Intellectual Property (IP) rights of indigenous people

Existing issues

IP rights are designed to reward innovation to ensure greater incentive to make intellectual contributions to society. However, IP rights, such as copyrights and patents, are specially designed and only conditionally bestowed by the IP system. Indigenous people's rights and traditional innovations are often threatened under the system, mainly found in developed countries.

There are two types of traditional innovations: traditional knowledge and traditional cultural expression. This part will illustrate how they conflict with modern IP laws, and thereby operate contrarily to the rights of indigenous peoples.

Traditional knowledge is defined as understandings or skills developed by indigenous people. For example, the medical usage of a local plant is typical traditional knowledge. Traditional knowledge has great value in the field of medicine and agriculture, but it can seldom meet the legal standard to secure a patent. According to modern patent law, a patent has to be new, involve an inventive step, and be capable of industrial application. However, while traditional knowledge may be retained within an indigenous group, it cannot meet the requirement of 'new', since it has existed for generations. Moreover, traditional knowledge cannot be attributed to a single inventor, since the initial inventor is usually an ancestor or an entire group. As a result, companies may utilize traditional knowledge in their products without paying a license fee to the indigenous group.

The most common form of misappropriation of traditional knowledge is called 'biopiracy'. One famous example of biopiracy is the rosy periwinkle case. The plant, rosy periwinkle,

is the source of the valuable anti-cancer vinca alkaloids, Vincristine and Vinblastine, which were commercialized in the 1960s and generated great revenues for Eli Lilly, a large international pharmaceutical corporation. However, Eli Lilly discovered the plant only after research that uncovered its traditional usage amongst rural populations in the Philippines. While Eli Lilly did invest in extracting the required ingredient from the plant, the indigenous people undoubtedly played an important role in this process but received no benefit at all.

Similar conditions exist with traditional cultural expression, which includes music, dance, art, designs, handicrafts, and narratives. Most modern literature, music, and movies use or adapt these traditional cultural expressions and realize great profits; however, those profits are not properly shared with the indigenous groups that create and retain these cultural expressions. This is because modern copyright law usually requires the work to be attributed to one author, which is difficult to identify in the case of traditional cultural expression.

A famous example of misappropriated traditional cultural expressions is the song ‘El Cóndor Pasa’. Peruvian composer Daniel Alomía Robles wrote this song based on traditional music he collected across the Andes. Its melody was later used by Paul Simon of Simon & Garfunkel, under the title ‘If I Could’. The song subsequently achieved top music rankings worldwide and inspired more than 4,000 versions. The monetary value it generates cannot be estimated, but the original owners received no benefit at all.

Existing mechanisms or programs

On the international level, two agreements address the issue of traditional knowledge – The Convention on Biological Diversity (CBD), and its 2010 Nagoya Protocol. The CBD mainly deals with biological resources, which is one major form of traditional knowledge. While the major objective of CBD is to promote sustainable development, it also recognizes the need to preserve and maintain knowledge, innovations, and practices of indigenous and local communities from the point of view of conservation and sustainable use through fair and equitable sharing of benefits. The 2010 Nagoya Protocol adds a practical dimension, by stating that the utilization of traditional knowledge should be contingent on prior consent and involvement of indigenous and local communities based on mutually agreed terms. There should be fair sharing of benefits among the community, with due consideration to community protocols and customary laws.

In addition to the CBD and Nagoya Protocol, protection on the domestic level can also be effective. Some countries, such as Australia and New Zealand, use or modify existing IP laws to protect traditional knowledge; others, such as the Philippines, create sui generis rights for traditional knowledge. Some countries have directed their efforts beyond legislation, like India, which has created a digital library to keep a record of domestic traditional knowledge.

Success and failure of existing programs

The existing mechanisms are a constructive starting point to overcome the conflict between traditional knowledge and modern IP laws, and to distribute benefits to the affected indigenous group. All these are consistent with the idea of inclusiveness and equitable benefits for disadvantaged groups. However, the design and practice of these mechanisms consist of certain limitations.

The ‘accessing and benefit sharing’ (ABS) system created by the two international treaties mentioned above have some practical issues. While companies and governments that develop traditional knowledge and cultural expression may fully intend to impart adequate benefits, they usually find it difficult to clearly attribute the benefit to a certain group. This was evident when the South African Government and some international drug companies tried to develop a diet pill based on the San people’s (an indigenous group) knowledge of a plant called ‘hoodia’. Although the developers were willing to fairly distribute the benefit, they later discovered that many other indigenous groups, some even beyond South Africa, utilize the plant.

Another issue is that the ABS system still relies on the IP system as the determinative source of the benefit, but as stated above, traditional knowledge does not fit well within the IP law framework. Even if traditional knowledge can be patented or copyrighted, the benefit can be provided only until the IP rights expire, which would exclude shares for future generations. An accompanying issue is that most benefit-sharing systems only pay attention to distribute material benefits, but seldom communicate with the indigenous community on whether and how their traditional knowledge or cultural expression should be used. A famous example is the Australian case, *George Milpururru v. Indofurn*. This case was presented by a number of living indigenous artists and representatives of the indigenous community who alleged that the respondent company had appropriated their cultural expression to use on carpet designs. Specifically, they claimed that the expression ‘concerned creation stories of spiritual and sacred significance’ to the indigenous community. The court ruled that there was ‘culturally based harm’ in terms of distress, embarrassment, and contempt within the indigenous group. Hence, this case emphasizes the importance of delineating the proper use of traditional knowledge, rather than merely focusing on the benefit-distribution process.

Suggested new framework

Although the basic premise of the existing benefit-sharing programs is compelling, its practicality gives rise to several issues. In order to meet human needs in this field, a number of improvements should be adopted.

First, the modern IP system does not fit well with the protection of traditional knowledge, and the international framework (CBD and Nagoya Protocol) is not practical enough. The scope and rights of traditional knowledge should initially be clearly identified in law. Second,

the indigenous people are often unfamiliar with the idea of 'intellectual property' and its potential benefits, let alone how to commercialize traditional knowledge. To solve this issue, local governments should send volunteers to communicate with indigenous groups and impart the necessary expertise. Third, indigenous groups should play a greater role in key decisions regarding the commercialization process of their traditional knowledge, including whether to commercialize the IP or not, how to commercialize the law, and how to divide the benefit. In conclusion, increasing communication between indigenous groups and local governments is an important step towards achieving inclusiveness.

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Access to medicine and intellectual property

Existing issues

One of the significant debates on intellectual property is how to balance IP rights and human rights. While major international pharmaceutical corporations do develop beneficial drugs that cure previously incurable diseases, the patent system also makes the cost of accessing those drugs prohibitively high, especially for developing countries. Although fewer than five percent of medicines on the World Health Organization (WHO) Model List of Essential Medicines are patented, many new drugs, particularly those designed to deal with the most severe public health crises, such as HIV, and COVID, are subject to patent control.

Many developing countries, including India, do not list drugs in the scope of the patent in their domestic patent law. However, after the signing of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), all WTO members now have to provide new drugs with patent protection, according to Article 27 of TRIPS. The TRIPS Agreement grants a 'compulsory license', which offers some policy leeway for producing drugs in developing countries. Using this mechanism, governments can 'license' the patent to a third party without the consent of the patent owner with only a 'reasonable' patent fee, which has the effect of lowering the drug price on the domestic market.

However, according to Article 31(f) of the TRIPS Agreement, any use under a compulsory license shall be predominantly for the supply of the domestic market. This is problematic for many developing countries, particularly in Africa, that do not have domestic manufacturing capacity and therefore cannot utilize the compulsory license mechanism.

Existing mechanisms or programs

The international society quickly identified this issue. On 30 August 2003, the WTO Decision on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health created a temporary waiver of Article 31(f). On 6 December 2005, the WTO made permanent the waiver system so that Article 31(f) would not be applied. The agreement was hailed as an achievement that would make it easier for developing and least-developed countries to import cheaper drugs made under compulsory licenses, if they are unable to manufacture the medicines themselves.

So far, this waiver has been used only once by Rwanda. In July 2007, Rwanda notified the WTO Council that it intended to use the waiver system to import an HIV drug called TriAvir with the assistance of Canada. Canada also provided notice that the compulsory license would be given to the generic drug company Apotex. This program enabled Rwanda to import 260,000 packs of TriAvir over two years, which Apotex provided on a non-profit basis.

Success and failure of existing programs

This waiver mechanism has proven to be an accessible option for a least-developed country like Rwanda, as it does not have to provide any evidence to prove that it lacks manufacturing capacity. However, this mechanism still consists of loopholes, which explain its one-time use till now. Even Apotex announced that it would not take part in this mechanism again due to the onerous waiver procedure.

For Rwanda, the major issue is that the compulsory license is granted on a case-by-case basis and only for a limited period. As a result, after the two-year period, Rwanda has to go through the entire process again. Another significant issue is that the TRIPS Agreement does not require the least developed countries to provide patent protection to pharmaceutical products until 2033. In addition, the mechanism falls short in aiding least developed countries with the transfer of technology and capacity building.

The process for Apotex is further tedious since it must adhere to the requirements of both the WTO Council and the Canadian Government. Apotex also needs to take measures to prevent its product from being sold to other countries. For this purpose, Apotex had to create a website with all the information and develop an alternative packaging approved by Canadian regulators to prevent the re-exportation of the products. While Apotex made no profit on this project, it would face great loss if the patent owner were to decide to reduce the price or donate

the medicine. This shows that the mechanism fails to provide enough incentive for the producer.

Suggested new framework

The analysis above reveals that the compulsory license system needs some improvement. First, although taking part in the compulsory license will enhance a pharmaceutical company's image, either greater incentive or a reduction in the producer's risk is necessary. For example, the importing country and the producer can enter into a contract, therefore lowering the risk. Another possible solution is to allow the company to invest in the country that requires assistance. This would not only lower the burden of shipment, but also add the incentive of future possible revenue.

Second, the process of issuing a compulsory license should become less burdensome. While the whole process needs to be monitored to protect the legitimate rights of the rightful patent owner, some of the work can be allocated to international organizations such as the WHO, to increase flexibility. Also, organizations like WHO should actively participate in lowering the price of life-saving drugs by ensuring adequate communication between the patent owner, governments, and patients.

Aside from the compulsory license, more focus on technological assistance is necessary. With commensurate production capacity, least developed countries can produce the drug for themselves without a patent before 2033. Therefore, international pharmaceutical companies or developed countries can invest in the least developed countries, familiarizing the latter with modern production and technological capabilities.

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Inclusiveness and Dispute Settlement

Introduction

For an inclusive society, everyone should have equal access to a reliable dispute settlement mechanism to prevent issues from escalating into a severe conflict. Equal access means not only equality of substantive laws, but also equality of procedural laws. However, some minority groups are often excluded from equal judicial and dispute resolution processes, especially women and indigenous groups. Sometimes the dispute settlement mechanism is not per se unequal, but substantial barriers and obstacles make the mechanism *de facto* discriminatory for these minority groups. According to an UNDP study, typical examples of these barriers include lack of legal knowledge, language barriers, economic constraints, lack of media attention, and political instability.

Existing issues

In some countries, the dispute settlement mechanism discriminates between the majority and the minority. Theoretically, modern laws usually treat equality as a basic principle and seek to eliminate discrimination. However, customary laws and laws that directly govern the relationship between the ruling class and indigenous peoples are more likely to contain discriminatory clauses. For example, the Islamic Penal Law of Iran equates a man's testimony to those of two women and establishes different minimum age of criminal liability for boys and girls. These examples demonstrate discrimination in procedural law and substantial law respectively. The land rights law of the Adivasis, a local indigenous group in the Chittagong Hill Tracts of Bangladesh, is another example. While recognizing some traditional land rights of the indigenous group, the law limits their land rights to solely residential and domestic purposes, unlike normal land rights of the ruling class.

Even the less discriminatory laws are often implemented unfairly, particularly during the dispute settlement process, due to the lack of minority representation amongst legal enforcement and dispute settlement officials. The Adivasis of Bangladesh, for example, complain about the “strong institutional bias, racism and corruption” within law enforcement agencies, which includes not only refusing to accept complaints, but even filing false criminal charges against them.

Even if there is no discrimination on the legal or practical level, indigenous people usually prefer traditional dispute resolution practices to formal ones, as the latter involves several

other practical difficulties. First, the indigenous community usually lacks the knowledge of the basic pertinent laws. While locals would pursue the modern court as a favorable venue for dispute settlement because of its authority and well-designed judicial system, indigenous people would relatively trust their local dispute settlement mechanism due to its familiarity and predictability. Second, there are usually language barriers for indigenous people to access formal justice. Without adequate grasp of the indigenous community's traditional language, judges and lawyers may struggle to convey their claims, leading to costlier litigation. Third, formal laws and dispute settlement mechanisms may not recognize some indigenous groups' traditions and disputes. This is especially apparent in family law, criminal law, and other local concerns.

Existing mechanisms or programs

To solve the difficulties and barriers the minority groups encounter when accessing dispute settlement, one solution would be to create a separate, hybrid court for them, incorporating both the formal and customary justice systems. India's attempts to develop alternative dispute resolution serves as an example.

In the late 19th century, India established an institution called Panchayati Raj in rural areas to serve as the local dispute settlement mechanism. Upheld by religious, caste, and community heads, this system used the British model of adjudication and procedure, which was inaccessible to the locals. In 1950, an improved system called Nyay Panchayati was created, in which statutory laws rather than indigenous rules are applied, and the judges are elected rather than nominated by the upper class. Eventually, legal service institutions and family courts parallel to the formal judicial system were established for the indigenous people. However, this movement to centralize dispute settlement failed; the locals could not adapt to the shift from their local dispute settlement mechanism to this alternative one, even if the latter was designed to be more up-to-date, well-purposed, and equal.

Another mechanism worth mentioning in India is the Nari Adalats, an informal court aimed to protect the rights of the poor, particularly women who suffer from domestic violence. One major advantage of Nari Adalats as compared to other dispute settlement mechanisms in India is its low cost. The system is operated by volunteers and waives the procedural requirement of formal courts, thus lowering the cost of resolving a dispute. As Nari Adalats can solve a case with less than 1000 Rupees, it is viewed as the most accessible option for women in the local community. Nari Adalats is also less time-consuming and avoids religious or social hierarchy in the process. In addition, members of the proceeding are selected as per the petitioner's background to ensure a more considerate procedure.

While the mechanism of Nari Adalats works well, it also has some drawbacks. Firstly, as an informal mechanism, the resolution obtained is not as strong as a court ruling, and the process is personally-oriented, according to different volunteers who handle a specific case. Secondly, the system is primarily designed to resolve domestic violence cases, thereby

limiting broader applications like assisting the minority population to integrate into the formal dispute settlement system.

Suggested new framework

The example and analysis above indicate that the existing mechanism may not integrate traditional and formal legal systems in a beneficial way for the masses. Undoubtedly, the formal system is usually more comprehensively designed than the traditional ones, in theory and practice. But with the minority groups struggling to access the formal system directly, a balance between the formal and traditional systems is necessary.

To achieve this balance and protect the rights to justice for these minority groups, two recommendations should be championed. First, the formal legal system should recognize and apply certain traditional laws that do not contradict modern human rights, especially when one or both sides of a dispute are indigenous people. By respecting and acknowledging such traditional laws, minority groups can expect to have more predictable and acceptable rulings. Moreover, minority groups should be able to actively participate in legislation and the judicial process to continue reinforcing this hybrid system. Second, more support must be given to minority groups when they demand justice from the formal dispute settlement mechanism. Local and international organizations can work together to provide the necessary help for them, which includes teaching basic legal knowledge, advisory service for independent cases, monetary support for lawyer and court fees, and language translation when necessary. The formal system should also make special arrangements in cases related to minority groups to ensure a less costly and less time-consuming formal dispute settlement process.

Environmental Inclusivity

Olivia Whatley

What is environmental inclusivity, and why do we need it? Currently, millions are being displaced from their homes due to rising global temperatures and sea levels as a result of climate change. People are experiencing more hurricanes, floods, and droughts, the effects of which are exacerbated by existing systems of racism and poverty. Such environmental exclusivity leads to biased decisions by businesses and governments, which in turn affects marginalized people.

On a smaller scale, environmental inclusivity aims to empower those who have been made victims of their local environment due to pollution, poor infrastructure, and radiation. This paper will provide research for environmental inclusivity using the environmental justice movement and prominent climate voices such as the UN and NASA. It will also cover issues like climate change, environmental racism, environmental classism, intersectionality, disaster relief, sustainable rebuilding, and reveal steps to create a more environmentally inclusive future.

Environmental Inclusivity and Environmental Justice Defined

Environmental Inclusivity is accessibility to improving one's environment¹ and is very similar to the popular environmental justice movement. It "should not only lessen the burden of pollution on the poor, but also encourage equitable access to wilderness and open spaces for all—an approach we call "environmental inclusion."² Environmental justice seeks to defend those who have experienced harm from their environment due to their social class or ethnicity; environmental inclusivity takes it a step further to ensure safety, health, and accessibility to resources for those marginalized individuals.

Climate Change

Since the Industrial Revolution, humanity has experienced enormous development through fossil fuels like oil and coal, but at the cost of the earth.³ When these fossil fuels are burned, they release greenhouse gases such as carbon dioxide and methane, which trap heat inside the earth once they are released into the atmosphere.⁴ The end of the last Ice Age and the

¹ Inclusion Cornwall, Environmental Inclusion, Inclusion Cornwall (2021), <http://inclusioncornwall.co.uk/what-is-inclusion/environmental-inclusion-2/>.

² Nives Dolšak and Aseem Prakash, *Environmental Inclusion: A Moral Imperative and Political Necessity*, Stanford Social Innovation Review (Feb. 26, 2016), https://ssir.org/articles/entry/environmental_inclusion_a_moral_imperative_and_political_necessity#.

³ Union of Concerned Scientists, *Climate Change*, Union of Concerned Scientists (2021), <https://www.ucsusa.org/climate>.

⁴ Union of Concerned Scientists, *Climate Change*, Union of Concerned Scientists (2021), <https://www.ucsusa.org/climate>.

beginning of our modern climate era 11,700 years ago⁵ has witnessed human activity increasing by more than 250 times.⁶ Ice cores drawn from Greenland, Antarctica, and tropical mountain glaciers, tree ring records, ocean sediments, and sedimentary rocks confirm this alarming rate of environmental degradation.

Since the industrial revolution, global temperature has risen by 2.12 degrees Fahrenheit. Much of this warming has occurred in the past 40 years, with the last seven years declared the hottest years on record.⁷ Though 2.12 degrees may not seem like a lot, this global temperature rise has set off a chain of events that is catalyzing catastrophe across several regions. It has caused the polar ice caps in Greenland and Antarctica to melt at an unprecedented rate, which in turn has caused global sea levels to rise.⁸ Due to temperature increase, oceans have started heating up and acidifying, killing coral and many other forms of marine life. We have also witnessed a significant increase in famines, floods, and hurricanes.

The World Meteorological Association's 2020 Climate Change report states, "The global mean temperature for 2020 (January to October) was 1.2 ± 0.1 °C above the 1850–1900 baseline, used as an approximation of pre-industrial levels. 2020 is likely to be one of the three warmest years on record globally." Till then, 2016 was the warmest year ever recorded, following which areas worldwide have experienced temperatures grossly fluctuating from the average.⁹ The global levels of carbon dioxide, methane, and nitrous oxide have respectively increased by 148%, 260%, and 123% since the greenhouse gases' pre-industrial levels.

The reduction in greenhouse gas emissions in 2020 due to the COVID-19 pandemic has not effectively reduced their overall rising levels.¹⁰ In 2019 and 2020, ocean temperatures reached a record high, but by September 2020, the sea ice level was the second-lowest on record.¹¹ "For the first 10 months of 2020, the Arctic stands out as the region with the largest temperature deviations from the long-term average. Contrasting conditions of ice, heat, and wildfires were seen in the eastern and western Arctic."¹² 2020 was also a year of widespread flooding in Asia and Africa. In addition to being an unusually warm year across the globe, 2020 also saw droughts and enormous wildfires in South America. Large wildfires also devastated parts of California,

⁵ NASA, *Climate Change: How Do We Know?*, NASA (2021), <https://climate.nasa.gov/evidence/>.

⁶ The Anthropocene equation Owen Gaffney, Will Steffen

⁷ NASA, *Climate Change: How Do We Know?*, NASA (2021), <https://climate.nasa.gov/evidence/>.

⁸ World Meteorological Organization, *State of Global Climate 2020 Provisional Report*, World Meteorological Organization (2020), https://library.wmo.int/doc_num.php?explnum_id=10444.

⁹ World Meteorological Organization, *State of Global Climate 2020 Provisional Report*, World Meteorological Organization (2020), https://library.wmo.int/doc_num.php?explnum_id=10444.

¹⁰ World Meteorological Organization, *State of Global Climate 2020 Provisional Report*, World Meteorological Organization (2020), https://library.wmo.int/doc_num.php?explnum_id=10444.

¹¹ World Meteorological Organization, *State of Global Climate 2020 Provisional Report*, World Meteorological Organization (2020), https://library.wmo.int/doc_num.php?explnum_id=10444.

¹² World Meteorological Organization, *State of Global Climate 2020 Provisional Report*, World Meteorological Organization (2020), https://library.wmo.int/doc_num.php?explnum_id=10444.

Oregon, and Australia. Unprecedented extreme cold and snow were seen in 2020 across North America, with the most recent example in Texas and the southern parts of the United States in 2021. All of these events are the result of climate change spurred by predominantly human sources. If we do not keep the global temperature within the 2 degrees Celsius limit, we will face extreme further consequences and a global crisis like never before.¹³

Environmental Racism

“Environmental racism refers to the institutional rules, regulations, policies or government and/or corporate decisions that deliberately target certain communities for locally undesirable land uses and lax enforcement of zoning and environmental laws, resulting in communities being disproportionately exposed to toxic and hazardous waste based upon race. Environmental racism is caused by several factors, including intentional neglect, the alleged need for a receptacle for pollutants in urban areas, and a lack of institutional power and low land values of people of color.”¹⁴ It is a well-documented fact that people of color disproportionately experience industrial pollution, hazardous waste, and other poor environmental conditions. An example of this is Cancer Alley, the stretch of the Mississippi River between Baton Rouge and New Orleans, Louisiana. Cancer Alley houses over 150 petrochemical plants.¹⁵ The most common petrochemical is plastic. Cancer Alley got its name after the media and local inhabitants noticed several residents dying of different kinds of cancers.¹⁶ “Most of Cancer Alley’s residents are impoverished African-Americans who live near, or next to, petrochemical plants. This is no coincidence. There is little evidence that communities of color move to sites where toxic waste facilities and landfills are located. Rather, toxic waste sites are often sited in primarily poor and African-American neighborhoods”¹⁷

This is just one example of environmental racism. Reasons that communities of color are disproportionately affected by pollution include Jim Crow laws, zoning laws, and the “Environmental Protection Agency’s (EPA) unequal enforcement of federal environmental laws based on the race of the community affected.”¹⁸ There are many such instances in the United States, including toxic sewage in Uniontown, Alabama, and toxic waste in many Native American

¹³ Union of Concerned Scientists, *Climate Change*, Union of Concerned Scientists (2021), <https://www.ucsusa.org/climate>.

¹⁴ Greenaction for Health and Environmental Justice, *On the Frontlines of Environmental Justice: The Founding of Greenaction for Health and Environmental Justice*, Greenaction.org (2021), <http://greenaction.org/our-story/>.

¹⁵ Idna G. Castellón, *Cancer Alley and the Fight Against Environmental Racism*, 32 Vill. Envtl. L.J. 15 (2021), <https://digitalcommons.law.villanova.edu/elj/vol32/iss1/2>.

¹⁶ Idna G. Castellón, *Cancer Alley and the Fight Against Environmental Racism*, 32 Vill. Envtl. L.J. 15 (2021), <https://digitalcommons.law.villanova.edu/elj/vol32/iss1/2>.

¹⁷ Idna G. Castellón, *Cancer Alley and the Fight Against Environmental Racism*, 32 Vill. Envtl. L.J. 15 (2021), <https://digitalcommons.law.villanova.edu/elj/vol32/iss1/2>.

¹⁸ Idna G. Castellón, *Cancer Alley and the Fight Against Environmental Racism*, 32 Vill. Envtl. L.J. 15 (2021), <https://digitalcommons.law.villanova.edu/elj/vol32/iss1/2>.

reservations.¹⁹ Genocide against Native Americans continues in modern times through environmental racism and injustice.

Environmental Classism

Similar to environmental racism, environmental classism also excludes people from a safe and inclusive environment – in fact, the two issues often overlap. “Petrochemical companies intentionally place their facilities in towns with established poor communities of color, meaning that toxicity follows poor, segregated communities, not the other way around.”²⁰ Environmental classism is defined by New Mexico Health as:

The results of and the process by which implementation of environmental policy creates intended or unintended consequences which have disproportionate impacts (adverse or beneficial) on lower-income persons, populations, or communities. These disparate effects occur through various decision-making processes, program administration (e.g. Superfund clean-up schedules), and the issuance regulatory actions such as compliance inspections and other enforcement measures such as fines and penalties, and administrative and judicial orders. (nmhealth.org)

The Story of Flint, Michigan

A famous example of this is the water crisis in Flint, Michigan. Flint is the home of General Motors and experienced an economic boom until the 1980s when oil prices and auto imports rose, while population plummeted by over 100,000. Those who are left, “a majority of whom are African-American, and about 45 percent of its residents live below the poverty line. Nearly one in six of the city’s homes has been abandoned.”²¹ In order to address this economic distress, the state of Michigan replaced the city’s government with an Emergency Manager.²² This removed the sense of accountability of elected officials, which led to decision-making that did not adequately protect the citizens of Flint.

¹⁹See Daniel Brook, *Environmental Genocide: Native Americans and Toxic Waste*, The American Journal of Economics and Sociology, Jan., 1998, Vol. 57, No. 1 (Jan., 1998), pp.105-113.

²⁰ Idna G. Castellón, *Cancer Alley and the Fight Against Environmental Racism*, 32 Vill. Envtl. L.J. 15 (2021), <https://digitalcommons.law.villanova.edu/elj/vol32/iss1/2>.

²¹ Melissa Denchak, *Flint Water Crisis: Everything You Need to Know*, National Resources Defense Council (Nov. 8, 2018), <https://www.nrdc.org/stories/flint-water-crisis-everything-you-need-know#sec-summary>.

²² Lindsey J. Butler, Madeleine K. Scammell, and Eugene B. Benson, *The Flint, Michigan, Water Crisis: A Case Study in Regulatory Failure and Environmental Injustice*, ResearchGate Environmental Justice (Aug. 2016), pp. 1-6.

In another measure to save money, the water supply was switched to the Flint River, which caused corrosive water to contaminate the water with lead and bacteria.²³ This violated the *Safe Drinking Water Act*²⁴ and the *Lead and Copper Rule* under the *Safe Water Drinking Act*.²⁵ After the evidence of lead in the water was proven, the government still turned away from providing aid.²⁶ Finally, in 2016, after international press coverage and a hard battle fought between the people and the government, pipes and service lines were replaced.²⁷ In 2019, Michigan's government assured the residents that the water is safe to drink but many remain skeptical.

Native American and indigenous peoples have experienced the overlap of these problems abundantly, because "Native Americans live at the lowest socioeconomic level in the United States."²⁸ The intersection of environmental racism and classism is also accompanied by sexism and colonialism.²⁹ "In the United States, Native American women face unique health risks because of the presence of uranium mining on or near their reservations (The uranium is used for nuclear energy)."³⁰ According to one report, at the Pine Ridge Reservation in South Dakota, in only one month in 1979, 38% of pregnant women experienced miscarriages compared to the national average of 10-20%. There were also high rates of babies born with cleft palates and other congenital disabilities.³¹ So, how do we build a more environmentally safe and healthy world? The answer to that is through inclusivity.

What We Need to Do

Environmental inclusivity not only empowers the marginalized, but is also the answer to building a more sustainable and healthier environment. The current environmental movement is not very diverse,³² as people of color are often excluded from programs to build a better environment that would benefit them the most. Therefore, the environmental movement needs to

²³ Lindsey J. Butler, Madeleine K. Scammell, and Eugene B. Benson, *The Flint, Michigan, Water Crisis: A Case Study in Regulatory Failure and Environmental Injustice*, ResearchGate Environmental Justice (Aug. 2016), pp. 1-6.

²⁴ S.W.D.A 42 U.S.C. §300f et seq. (1974)

²⁵ L.C.R 40 CFR 141.80 et seq. (1991)

²⁶ Lindsey J. Butler, Madeleine K. Scammell, and Eugene B. Benson, *The Flint, Michigan, Water Crisis: A Case Study in Regulatory Failure and Environmental Injustice*, ResearchGate Environmental Justice (Aug. 2016), pp. 1-6.

²⁷ Lindsey J. Butler, Madeleine K. Scammell, and Eugene B. Benson, *The Flint, Michigan, Water Crisis: A Case Study in Regulatory Failure and Environmental Injustice*, ResearchGate Environmental Justice (Aug. 2016), pp. 1-6.

²⁸ See Daniel Brook, *Environmental Genocide: Native Americans and Toxic Waste*, *The American Journal of Economics and Sociology*, Jan., 1998, Vol. 57, No. 1 (Jan., 1998), pp.105-113.

²⁹ See Karen J. Warren, *Ecofeminism Women Culture Nature*, Indiana University Press, p.4 (1997).

³⁰ See Karen J. Warren, *Ecofeminism Women Culture Nature*, Indiana University Press, p.10 (1997).

³¹ See Karen J. Warren, *Ecofeminism Women Culture Nature*, Indiana University Press, p.10 (1997).

³² Rachel Jones, *the environmental movement is very white. These leaders want to change that*, *National Geographic* (July 29, 2020), <https://www.nationalgeographic.com/history/article/environmental-movement-very-white-these-leaders-want-change-that#close>

be spearheaded by people who have been marginalized so their voices are heard.³³ “It’s also critical that we diversify our educational institutions and the faculty who teach environmental, conservation and science courses. Of course, our traditional large environmental organizations and foundations must also follow suit: diversifying their staff, their boards, their programs, and their communications. Our movement must reflect our changing demographics.”³⁴ Environmental peacebuilding is an example of intersectional environmentalism where women across regions can help build a better world.³⁵

Legislative and Structural Change

The United Nations has been one of the leaders in combating climate change. With the Paris Climate Agreement, the UN has created a legally binding international treaty to limit global warming to below 2 degrees Celsius, and preferably below 1.5 degrees.³⁶ “Implementation of the Paris Agreement requires economic and social transformation based on the best available science. The Paris Agreement works on a 5-year cycle of increasingly ambitious climate action carried out by countries. By 2020, countries submit their plans for climate action known as nationally determined contributions.”³⁷ The UN also works to strengthen institutions by developing environmental legislation and providing technological and legal assistance to countries that might need it.³⁸ This is one step to creating a more environmentally inclusive world: by strengthening and collaborating with influential institutions and engaging in international diplomacy to halt this global threat.

In 2017, President Trump pulled the United States out of the Paris Agreement. This has resulted in the country’s greenhouse gas emissions to be at least 3% higher in 2030 than they would have been if the US had stayed in the agreement.³⁹ This also instigated the rollback of 50 climate policies and environmental protective policies. Some of these revoked policies enabled certain greenhouse gases like methane to become unregulated, while also strengthening the coal

³³ See Karen J. Warren, *Ecofeminism Women Culture Nature*, Indiana University Press, p.70 (1997).

³⁴ Adrianna Quintero, *The Importance of Inclusion in the Environmental Movement*, Columbia Journal of International Affairs (Feb. 13, 2020), <https://jia.sipa.columbia.edu/importance-inclusion-environmental-movement>.

³⁵ Keina Yoshida, Lina M Céspedes-Báez, *The nature of Women, Peace and Security: a Colombian perspective*, International Affairs, Volume 97, Issue 1, January 2021, Pages 17–34, <https://doi.org/10.1093/ia/iiaa173>.

³⁶ UNCC, *The Paris Agreement: What is the Paris Agreement?*, United Nations Climate Change (2021), <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>.

³⁷ UNCC, *The Paris Agreement: What is the Paris Agreement?*, United Nations Climate Change (2021), <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>.

³⁸ United Nations, *Strengthening Institutions*, UN Environmental Program (2021), <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/strengthening-institutions>.

³⁹ Climate Action Tracker, *Effect of the US withdrawal from the Paris Agreement*, Climate Action Tracker (Jan. 11, 2019), <https://climateactiontracker.org/press/effect-of-the-us-withdrawal-from-the-paris-agreement/>.

and gas industries.⁴⁰ Fortunately, the U.S. rejoined the Paris Agreement in 2021 under the Biden Administration.

Another example of governments taking the initiative to combat global warming is China's new goal to become carbon neutral by 2060,⁴¹ which means that China will achieve zero net carbon emissions by then. Subsequently China, currently the world's top polluter,⁴² will have to drastically change their recent emissions trends. This will result in shifts in the economy too, as people learn to commute, live, and eat more sustainably. While China is yet to release further details, the pledge echoes the Paris Agreement, of which China is a member. In addition to governments and the UN, there are also many other non-profit, non-governmental organizations and think tanks like Greenpeace⁴³, Sierra Club⁴⁴, the Nations Resources Defense Council⁴⁵, EarthJustice⁴⁶, and World Resources Institute⁴⁷ that fight for environmental inclusivity on behalf of marginalized communities.

Grassroots Change

Another approach is a “bottom-up” approach or a “grassroots” approach. This enables excluded individuals to actively participate in making their environment, and the rest of the world, a better place. In this way, power and justice are given directly to the people instead of passing through potentially corrupted channels. “By setting one class, gender, and species above the others, we are alienating ourselves from our ecological reality.”⁴⁸

Ecosystems require a large and diverse variety of organisms, including humans. In order to create a more inclusive reality, we cannot rely on a western model of individualism. By following a relatively collectivist model, we can tear down barriers and ensure a healthier

⁴⁰ Climate Action Tracker, *Effect of the US withdrawal from the Paris Agreement*, Climate Action Tracker (Jan. 11, 2019), <https://climateactiontracker.org/press/effect-of-the-us-withdrawal-from-the-paris-agreement/>.

⁴¹ Steven Lee Myers, *China's Pledge to Be Carbon Neutral by 2060: What It Means*, The New York Times (Sept. 23, 2020), <https://www.nytimes.com/2020/09/23/world/asia/china-climate-change.html>

⁴² Steven Lee Myers, *China's Pledge to Be Carbon Neutral by 2060: What It Means*, The New York Times (Sept. 23, 2020), <https://www.nytimes.com/2020/09/23/world/asia/china-climate-change.html>.

⁴³ Greenpeace International, *About Us*, Greenpeace.org (2021), <https://www.greenpeace.org/international/>.

⁴⁴ Sierra Club, *Change Powered By The People*, Sierra Club (2021), <https://www.sierraclub.org/>.

⁴⁵ National Resources Defense Council, *About*, NRDC.org (2021), <https://www.nrdc.org/about>.

⁴⁶ EarthJustice, *About Us*, EarthJustice.org (2021), <https://earthjustice.org/about>.

⁴⁷ World Resources Institute, *What We Do*, WRI.org (2021), <https://www.wri.org/our-work>.

⁴⁸ See Karen J. Warren, *Ecofeminism Women Culture Nature*, Indiana University Press, p.131 (1997).

planet.⁴⁹ Steps such as activism, community building⁵⁰, and education enable regular people to bring change to their communities. Additionally, divestment⁵¹, boycotting, and initiating legal action can promote environmental justice.

Sustainability

Sustainable farming is one way to reduce greenhouse gas emissions. Sustainable farms prevent depletion of the earth's nutrients by limiting soil reuse – a practice that generally leads to land wastage and increasingly worse conditions for the earth and livestock. Sustainable farming also coincides with bioregionalism, which calls for societies to become more closely involved with their ecosystems at home.⁵² This is a common practice amongst several native communities. For instance, the Eagle clan of the Gitskan and Wetsuwet'en, "the original people in the area of northern British Columbia who have lived there for upwards of ten thousand years, who have a hundred-year forest plan"⁵³ participate in the forest economy of British Columbia because they understand the ecosystem better than anyone. Bioregionalism focuses on improving environmental conditions at home, instead of seeking a better world away from home.⁵⁴ As communities restore their respective ecosystems, their actions can collectively lead to a better earth.

The meat industry is one of the biggest sources of greenhouse gases and takes up one-third of the earth's fresh water supply.⁵⁵ For every gram of beef produced, 221 grams of CO₂ is emitted.⁵⁶ Simply reducing or eliminating meat and dairy consumption altogether is a powerful way for the individual to help reduce greenhouse gas emissions. With a carbon footprint this big, it is concerning that the world leaders have not enforced tighter restrictions; although the Paris Climate Agreement does address this issue. The United States' restoration as a member to the Agreement will hopefully ensure that the country, which has the world's largest beef industry, will establish tighter restrictions.⁵⁷ In order for the human race to survive, countries must follow

⁴⁹ See Karen J. Warren, *Ecofeminism Women Culture Nature*, Indiana University Press, p.131 (1997).

⁵⁰ <http://www.cbecal.org/>

⁵¹ Fossil Free: South Africa, *Divestment: From ending apartheid to ending the age of fossil fuels*, Fossil Free: South Africa (April 21, 2017), <https://gofossilfree.org/southafrica/divestment-from-ending-apartheid-to-ending-the-age-of-fossil-fuels/>.

⁵² See Karen J. Warren, *Ecofeminism Women Culture Nature*, Indiana University Press, p.132 (1997).

⁵³ See Karen J. Warren, *Ecofeminism Women Culture Nature*, Indiana University Press, p.137 (1997).

⁵⁴ See Karen J. Warren, *Ecofeminism Women Culture Nature*, Indiana University Press, p. 132(1997).

⁵⁵ See P.W.Gerbens-Leenes, et al., *The water footprint of poultry, pork and beef: A comparative study in different countries and production systems*, Water Resources and Industry Volumes 1–2, 25-36 (March–June 2013).

⁵⁶ Georgina Gustin, *As Beef Comes Under Fire for Climate Impacts, the Industry Fights Back*, Inside Climate News (Oct. 21, 2019), <https://insideclimatenews.org/news/21102019/climate-change-meat-beef-dairy-methane-emissions-california/#:~:text=For%20every%20gram%20of%20beef,straining%20resources%20and%20consuming%20land.>

⁵⁷ U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (Dec. 12, 2015).

the restrictions in the Paris Climate Agreement or pass similar legislation like the “Green New Deal.”⁵⁸ The current ecological state necessitates a departure from the status quo measures taken by most of the countries in the world.

Sustainable Rebuilding

Building communities sustainably, especially rebuilding after disasters, is one of the best ways to ensure less exclusivity. Rebuilding with peace is our only option in order enter the future sustainably. This is what Environmental Peacekeeping is. “Environmental peacebuilding comprises the multiple approaches and pathways by which the management of environmental issues is integrated into and can support conflict prevention, mitigation, resolution, and recovery.”⁵⁹ This can be recovery from natural disasters, war, and tensions between lands. “At the micro-level, effective and sustainable management of environmental issues is critical for achieving water security, food security, and access to agricultural inputs at the end of any conflict. An emphasis on governance is vital if environmental infrastructure has been destroyed during violent conflict. Disaster risk reduction is also crucial if secure livelihoods are to be built. At the macro level, water and other natural resources are key to the provision of basic services.”⁶⁰ Sustainability is key to avoid problems that would put anyone in danger, especially due to their race, ethnicity, class, or gender.

An example of this is in the upper-watershed of the Coatán and Suchiate rivers bordering Guatemala and Mexico.⁶¹ Environmental degradation and climate change in the area are increasing the risk of flash floods, hurricanes, and tropical storms. Moreover, deforestation and severe erosion have also affected water retention. Environmental degradation has severely impacted the quality of life in this population dense region. With the help of the International Union for Conservation of Nature, the locals have created “micro-watershed councils” to coordinate watershed management. “Driven by the need to expand livelihood options to reduce poverty, these community councils have led to the diversification of farming systems, including terracing of degraded slopes and reforestation through the introduction of agroforestry. Communities are investing their labor and capital in restoration of natural infrastructure. As self-

⁵⁸ G.N.D, H. RES. 109, 116th Cong. (2019), <https://www.congress.gov/116/bills/hres109/BILLS-116hres109ih.pdf>.

⁵⁹ Tobias Ide, Carl Bruch, Alexander Carius, Ken Conca, Geoffrey D Dabelko, Richard Matthew, Erika Weinthal, *The past and future(s) of environmental peacebuilding*, International Affairs, Volume 97, Issue 1, 1–16 (January 2021), <https://doi.org/10.1093/ia/iiaa177>.

⁶⁰ Tobias Ide, Carl Bruch, Alexander Carius, Ken Conca, Geoffrey D Dabelko, Richard Matthew, Erika Weinthal, *The past and future(s) of environmental peacebuilding*, International Affairs, Volume 97, Issue 1, 1–16 (January 2021), <https://doi.org/10.1093/ia/iiaa177>.

⁶¹ Emma Jowett, *Opportunities for Green Recovery and Reconstruction*, The Green Recovery and Reconstruction Toolkit (2010), https://reliefweb.int/sites/reliefweb.int/files/resources/GRRT_-_Toolkit_Guide_0.pdf.

organization expands, communities are becoming better equipped to adapt to climate change and are less sensitive to severe storms.”⁶²

Conclusion

Environmental inclusivity is our last resort for surviving climate change. It is also the only answer to protecting marginalized communities with safe drinking water and relief from cancer-causing pollution near their homes. Climate change is an ominous threat to humanity, enhanced by the inadequate and irresponsible actions of those in authority. Laws must be modified to reduce every country’s carbon emissions. Sustainable farming has to be adopted to work *with* the earth, instead of against it. A more inclusive future is the only way to tear down the barriers that put people in danger. We must advance sustainably with those of every class, race, gender, ethnicity to nurture this planet that we all share.

⁶² Emma Jowett, *Opportunities for Green Recovery and Reconstruction*, The Green Recovery and Reconstruction Toolkit (2010), https://reliefweb.int/sites/reliefweb.int/files/resources/GRRT_-_Toolkit_Guide_0.pdf.

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<https://www.nationalgeographic.com/history/article/environmental-movement-very-white-these-leaders-want-change-that#close>.

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Realism and Internationalism After the Invasion of Ukraine

Christopher Morton

Introduction

When Russia invaded Ukraine in February 2022, many analysts mourned the end of the post-World War II “rules-based” global order. The main rule is the taboo against wars of conquest or aggression against sovereign nations. Looking back through the 375 years of the Westphalian nation-state system, this rules-based order had many iterations, but the main thread has been that powerful nations honored these rules in the breach, and the rules were meant to prevent large wars. The post-war version of this order mainly served to avoid nuclear conflict between the main superpowers, while smaller nations were still at the mercy of larger ones. The dissolution of the Soviet Union made it appear as if a new era of liberal internationalist cooperation was at hand. In retrospect, this now appears to have been an illusion stemming from the US victory in the Cold War, with the world returning slowly to the historical norm.

“Will the liberals of the world be able to hold off the wolves? Strengthen democracy and preserve the rules-based world order?” - David Brooks, New York Times, February 17, 2022¹

“The optics of the President of Russia, a permanent member of the U.N. Security Council, announcing the invasion of a sovereign nation during an emergency meeting of its members—presided over by Russia’s U.N. ambassador, no less—were stark: the ultimate repudiation of the rules-based world order that the organization embodies.” - Charlie Campbell, Time Magazine, February 24, 2022²

“Russia’s unprovoked assault on Ukraine constitutes an egregious violation of a fundamental norm of the rules-based order – the prohibition of aggression against sovereign states.” - The Atlantic Council, March 16, 2022³

The above quotes, made before, during, and after Russia’s invasion of Ukraine on February 24, indicate that analysts and pundits in the United States and its allies were anxious that Russia was not just attacking Ukraine, but something called the “rules-based world order.” What is (or was) this order, and what were (or are) the rules, and to whom do the rules apply?

¹ Brooks, David, 2022, February 17, The Dark Century, *The New York Times*.

<https://www.nytimes.com/2022/02/17/opinion/liberalism-democracy-russia-ukraine.html>

² Campbell, Charlie, 2022, February 24, How Russia’s Invasion of Ukraine Could Change the Global Order Forever, *Time*. <https://time.com/6150874/world-order-russia-ukraine/>

³ The Atlantic Council, 2022, March 16, State of the Order: Assessing February 2022.

<https://www.atlanticcouncil.org/uncategorized/state-of-the-order-assessing-february-2022/>

A Brief History of the World Order 1648-1945

International law is understood to have begun with the 1648 Treaty of Westphalia.⁴ The treaty ended the Thirty Years' War, a brutal conflict between various German princes and the Holy Roman Empire that grew into a continent-wide battle between the Bourbon and Hapsburg dynasties. The treaty functionally created the world system of nation states that we currently live in, although the states party to the treaty do not resemble the generally ethnically and linguistically coherent (to a certain extent) territories of today, but were defined by the area that one ruler could proclaim and defend as their own.⁵

Although the Treaty of Westphalia ended this particular war, Europe suffered through several more wars throughout the rest of the 17th and 18th centuries. A major advance in the construction of this global order was the Concert of Europe, a system of consultation between European monarchs after the French Revolution and the final defeat of Napoleon Bonaparte in 1815.⁶ The major challenges to this order came from a series of internal revolutions in 1830 and 1848,⁷ with the major powers engaging only in the Crimean War and the Franco-Prussian War during the next century. One of the consequences of Prussia's defeat of France in 1871 was the Paris Commune, possibly the first successful socialist revolution which maintained a government for two months.⁸ What Karl Marx grandiosely called the "specter of communism" in his Communist Manifesto actually did freeze conflict between the major European powers for more than 40 years.⁹

If this history seems Eurocentric, that is because the most important world historical event during this period was the European conquest of most of the rest of the world, whether for settlement (the Americas) or economic exploitation (Africa and Asia). The maintenance of the European balance of power then extended to this conquest with the Berlin Conference and the Scramble for Africa in this period of relative peace in Europe. Most of Africa was split among the major European powers between 1884 and 1914, which essentially completed this process of conquest that began when Christopher Columbus landed on Hispaniola in 1492.¹⁰

Although many historians treat the genesis of World War I as a mystery, clearly this global scramble for advantage within what Emmanuel Wallerstein came to recognize as a World system

⁴ Krasner, Stephen D., 2001, Rethinking the sovereign state model, *Review of International Studies*, 27(5), 17-42.

⁵ *Ibid.*

⁶ Hobsbawm, Eric, 1962, *The Age of Revolution: 1789-1848*, First Vintage Books Ed. Vintage Books.

⁷ *Ibid.*

⁸ Hobsbawm, Eric, 1975, *The Age of Capital: 1848-1875*, First Vintage Books Ed. Vintage Books.

⁹ Hobsbawm, Eric, 1987, *The Age of Empire: 1875-1914*, Vintage Books.

¹⁰ Hopkins, A. G., 2019, Rogue empires and Europe's scramble for Africa: Rogue empires: Contracts and conmen in Europe's scramble for Africa, *Journal of African History*, 60(1), 141-142.

was a significant factor. Three of the major pillars of this long-standing system (the Romanovs, Habsburgs, and Ottomans) being swept aside by World War I, and the system's inability to reconstitute itself in the aftermath together were a major factor in causing World War II.¹¹

The Modern Order

Out of the ruins of World War II, the basis for a new, rules-based order was created. Even before the creation of the United Nations later in 1945, the Nuremberg Principles, agreed to by the victors, outlawed wars of aggression and then were placed in the original United Nations Charter.¹² Although the UN General Assembly barred wars of conquest by defining aggression in 1974, this resolution was non-binding.¹³

Wars of aggression and conquest then became the highest and most serious violation of international law. The goal was to prevent a replay of Hitler's conquest of Europe and the Japanese rapid seizure of European and American Asian colonies. The enforcement mechanism of this supreme law was left to the newly-created United Nations Security Council (UNSC), which consisted of the United States, the Soviet Union, the United Kingdom, France, and China as permanent members. The problem was that any enforcement action was subject to a veto by any of these permanent members. With the world quickly sorting into two opposing camps split between capitalist and socialist states, a new version of the old European balance of powers was recreated. The only successful UNSC resolution to defend an invaded country was the Republic of Korea after being invaded by the socialist Democratic People's Republic of Korea. This was only successful because the Soviet Union was boycotting the Security Council at the time.¹⁴ (China was then represented by the Taipei-based Republic of China, the losing power in the Chinese Civil War; the People's Republic of China replaced them in 1971).¹⁵

The true success of the Security Council was preventing nuclear war between the nuclear powers. The phrase "Cold War" hides the fact that a similar scramble for spheres of influence recreated itself, but this time only between two powers, as the United States and the Soviet Union

¹¹ Hardy, James D., Jr. & Hochberg, L. J., 2003, The Eagle Soars: A Comment on Wallerstein's "The Eagle Has Crash Landed," *International Journal of Commerce and Management*, 13(3), 73-82

¹² Lawrence, Frank, 1989, The Nuremberg Principles: A Defense for Political Protesters, *Hastings Law Journal*, 40(2). 397-436.

¹³ Wilmshurst, Elizabeth, 2008, Definition of Aggression, *United Nations Audiovisual Library of International Law*,
<https://legal.un.org/avl/ha/da/da.html>

¹⁴ United Nations Command, n.d., History of the Korean War, <https://www.unc.mil/History/1950-1953-Korean-War-Active-Conflikt/#:~:text=June%2027%2C%201950%3A%20United%20Nations,peace%20on%20the%20Korean%20Peninsula>.

¹⁵ Office of the Historian, Foreign Service Institute, 2006, Foreign Relations of the United States, 1969-1976: Volume XVII, China 1969-1972, *United States Department of State*.
<https://history.state.gov/historicaldocuments/frus1969-76v17>

fought for spheres of influence which spawned many civil wars. Generally, peacekeeping operations sponsored by the UNSC were only placed when parties in conflict had negotiated their own peace, and only then when both Americans and Soviets also agreed. In this period, the Soviet Union invaded Hungary, then-Czechoslovakia, and Afghanistan, the United States intervened in the Vietnamese civil war and invaded the Dominican Republic, Grenada, and Panama, Morocco invaded and annexed Western Sahara, Israel invaded and annexed parts of Jordan and Syria, while Indonesia invaded and annexed East Timor. Two of the most brutal dictators of the Cold War era, Pol Pot of Cambodia and Idi Amin of Uganda, were actually deposed by invasions by Vietnam and Tanzania, respectively (with Vietnam subsequently being invaded by the People's Republic of China), rather than by international cooperative action.¹⁶

Realism vs. Liberalism

This international dynamic between the two main global powers changed after the dissolution of the Soviet Union. Before looking at the changes that arose from this new global reality, I think it is important to look at the different models of international relations that informed the actors on the world stage.

The dominant theory of international relations since the dawn of the nation-state is realism, which holds that states are the main component of the international system without any higher authority, and that states act in a rational self-interest in order to keep power for the purpose of preserving themselves against other states' aggressions or interests.¹⁷ The international system's instabilities were caused by states acting irrationally, such as Hitler's conquest of most of Europe, or from phenomena outside the system of nations, like the two major bookends of what historian Eric Hobsbawm called the "long 19th century," the French and Russian Revolutions.¹⁸

Realism was the overarching theory behind all great power agreements from the Treaty of Westphalia until the end of World War II. Of course, one of the major powers of the postwar era saw itself as the rightful leader of a world Communist movement. Its commitment to world revolution vacillated over time. At the time of its creation, the Soviet Union held the overthrow of this global system and its replacement with socialism as its *raison d'être*. This founding goal was functionally discarded in 1922 with the death of Vladimir Lenin and the last cinders of post-World War I revolutions in Europe finally blowing out. Stalin and subsequent leaders of the

¹⁶ Arnold, Guy, 2016, *Wars in the Third World Since 1945*, Bloomsbury Publishing.

¹⁷ Rivera, W. A., 2016, Squandered opportunity: Neoclassical realism and Iranian foreign policy, *The Middle East Journal*, 70(1), 155-157.

¹⁸ Hobsbawm, Eric., 1996, *The Age of Extremes: A History of the World, 1914-1991*, Vintage Books.

Soviet Union subscribed to the realist outlook with the hope of preserving the Soviet Union and building “socialism in one country,” previously a non sequitur in Marxist theory.¹⁹

After World War II, there were several revolutions around the world, most notably the Communist Party victory in the Chinese Civil War, France’s defeat by its own colonies in Vietnam and Algeria, and revolutions throughout the developing world in Latin America, Africa, and Asia. Although these revolutions were the expressions of these countries’ national and social aspirations, both the United States and the Soviet Union acted as if they were incidents in the global game of balance of power within the international system.

The main competition for realism is liberalism. Liberalism focuses on international conflict reduction by building international institutions, deepening trading ties between nations, and spreading liberal democracy. Obviously, the most notable example is the United Nations, but the United States and its allies created other institutions such as the North Atlantic Treaty Organization (NATO), the European Economic Community which eventually became the European Union, and the Organization of American States. These institutions did create a level of integration such that old opposing European powers such as Britain, France, and Germany going to war to be absolutely unthinkable. The liberal schema of international relations, however, reached its zenith after the end of the Cold War.²⁰

The End (and Return) of History?

The dissolution of the Soviet Union and the fall of communism throughout Eastern Europe led many to think that liberal democracy and free market had won its final victory, exemplified in Francis Fukuyama’s “End of History” hypothesis.²¹ The ideological struggles of the long 19th and short 20th centuries were over. Liberal democracies and free and open markets were to become the norm, and even the largest outlier, the People’s Republic of China, was achieving incredible growth and development through market economic reforms, and its transition to a liberal democracy, while not necessarily imminent, was simply a matter of time. Liberalism had replaced realism as the new foundation of international relations.

However, with Russia’s invasion of Ukraine, it became clearer that this final and total victory of liberalism was an illusion. One of the main problems of liberalism is that its focus on international cooperation was just that – *international*, not *supranational* cooperation. International organizations are made up of nation-states and do not have independent enforcement

¹⁹ Burgis, Ben, 2022, April 10, If You Want to Understand Marxism, Read G.A. Cohen, *Jacobin*. <https://www.jacobinmag.com/2022/04/marxism-materialism-history-ga-cohen-analytic-philosophy>

²⁰ Allison, Graham, 2018, Jul, The myth of the liberal order, *Foreign Affairs*, 97, 124-133.

²¹ Hage, Jerald, & Hollingsworth, Rogers, 1993, The End of History, or a New Crisis? [Review of The End of History and the Last Man., by F. Fukuyama], *Contemporary Sociology*, 22(2), 199–202

capabilities outside of the cooperation of those member states. Functionally, these organizations are led by major powers, and predominantly in the last 30 years, this has been the United States.²²

Two major developments accelerated a return to realism becoming the major framework of international relations yet again. The first was the People's Republic of China rising economically and politically to be perceived as a new superpower in competition with the United States. China's integration into global capitalism did not, in fact, bring liberal democracy, but a retrenchment of the control of the Chinese Communist Party. China also used its economic power to gain influence in parts of the world through investment in the developing world without any demands for economic retrenchment or austerity by governments of countries receiving the investments.²³

The second, and the one that brings us to the current situation, is the Russian Federation's assertion of its own strategic interests, especially in the successor states of the Soviet Union. In the 1990s, economic policies promoted by the United States caused Russia to sink into an economic and social collapse, as free market reforms in the former Soviet Union mainly meant former Communist Party officials seizing state property to enrich themselves. Some states in Eastern Europe joined both NATO and the European Union. Although seen as a liberal expansion of trade and democracy by bringing these countries into international organizations, those outside viewed it as a realist move for the powers of the US and Europe expanding their sphere of influence and extending their power.²⁴

In 2008, George W. Bush offered NATO membership to Georgia and Ukraine, two former Soviet republics that were both parts of the Russian Empire for centuries. Vladimir Putin, the leader of the Russian Federation since 2000, ordered an invasion of Georgia. Unlike the current invasion of Ukraine, this war was very quick and Russia captured and created two new "republics" out of Abkhazia and South Ossetia. Russia also began openly trying to influence politics in Ukraine. Putin was now interpreting the eastward expansion of NATO as an existential threat to Russia, even if this was a rational perception or not.²⁵

The Ukraine situation came to a head in 2014, when then Ukrainian President Viktor Yanukovich chose to accept a loan from Russia on better terms than those offered by the International Monetary Fund (IMF) to assist with a budget crisis. The Ukrainian speaking population then rebelled and drove Yanukovich out of office during the Euromaidan protests,

²² Rivera, *Ibid.*

²³ Rachman, Gideon, 2007, Feb 20, The hard evidence that China's soft power policy is working, *Financial Times*

²⁴ Lukyanov, Fyodor, 2010, Russian Dilemmas in a Multipolar World, *Journal of International Affairs*, 63(2), 19-XI.

²⁵ Kingsley, Patrick, 2022, March 19, Ukraine Reminds Georgia of Its Own War with Russia: That Creates a Dilemma, *The New York Times*. <https://www.nytimes.com/2022/03/19/world/europe/ukraine-georgia-war.html>

with fear of permanent Russian domination fueling the rebellion. The new President, Petro Poroshenko, elected via an election that excluded many Russian-speaking majority parts of the Ukraine, rejected the Putin loan and accepted the IMF. Russia in turn annexed the Crimean Peninsula in the south of Ukraine and supported separatists in the Russian-speaking majority regions of the Donbass and Luhansk.²⁶ Putin's actual reason for taking the huge risk of invading Ukraine now may be like World War I, a mystery for historians to ponder until more information becomes available. However, whether the goal is to annex the Ukraine or install a pro-Russian puppet government, Russia is asserting its interest on the international stage, using force to gain power for the purpose of self-preservation – a classic great power move.

Conclusion

Diniz and Proença made the argument in 2015 that the material basis for realism in international relations had gone.²⁷ Unfortunately, this now appears to be false. The basic unit of the global system is still the nation-state. Until this changes, the world will still be guided by the strategic needs, desires, and whims of powerful nations. The system created by the Treaty of Westphalia did arise in the aftermath of the end of feudalism and prefigured industrial global capitalism. As long as we live in this current world system without any supranational oversight of larger, more powerful nations' treatment of smaller nations, great power competition and the use of the less powerful countries as their pawns in this competition will continue, and liberalism's moment now seems to be a mirage that has now faded away.

²⁶ Bigg, Matthew Mpoke, 2022, March 24, A timeline of the tensions between Russia and Ukraine, *The New York Times*. <https://www.nytimes.com/2022/02/18/world/europe/russia-ukraine-timeline.html>

²⁷ Diniz, Eugenio, and Proença, Dominico Jr., 2015, January, The collapse of the material foundations of Westphalian International Law, *Revista de Sociologica e Politico*, (23) 54. 9-20. <https://www.scielo.br/j/rsocp/a/yB57gC3kjq9ZyNdmMvvQ5bM/?format=pdf&lang=en>

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Blockchain and How It Will Revolutionize the Global Economy, World Trade, and Investment

Josh Clarke

Abstract

The process in which our current world trade system exists is one that lacks the technological savviness to coordinate seamless trade interactions across borders. The process is extremely complicated, involving sometimes hundreds of different actors to fulfill trade orders. Trade actors need to sign off on documents that can take days to weeks to be verified and transferred to the corresponding person. The mountains of paperwork that are required in international trade impede the verification process of important documents and the distribution of goods from important actors. As a result, it creates a timely and cost ineffective model. However, if international trading organizations and government entities were to introduce the mass use of blockchain technologies, while also utilizing applications on the network such as smart contracts to fulfill international trading orders, it would have the potential to reduce the trading costs significantly, as well as the transportation and logistic aspects of world trade. By doing this, it would enable participants to submit necessary documentation in the trade and customs procedures that facilitate the process to become more efficient, transparent, and ensure the security of trade data. This article will examine how blockchain is beneficial in world trade by establishing how the network and its applications can assist in supply chain management. It will also address how blockchain can facilitate international trade by cutting out the middleman. While examining the current policy regulations concerning international trade, we reach the conclusion that, if a mass adoption of blockchain technologies were to be introduced, it would facilitate world trade by assisting the supply chain management process, reducing the timely procedures that affect efficiency and the overall cost on world trade for all actors.

Introduction to Blockchain and Smart Contracts

Traditionally when sending documents such as PowerPoints and Microsoft word documents through the web, we only receive a copy of the original work which in many cases is fine, because that is all we are looking for. When it comes to more complicated transactions especially financial or legal ones, it is important that we are receiving the original document or an authentic payment. For instance, when buying a product online, the seller wants to ensure that the purchaser's cash is authentic. Once they send you the money, it is very important that they no longer have it. This problem is known as the double spending problem, and cryptographers have struggled with this for years. It is one of the main reasons the global trade markets are controlled through huge intermediaries such as government organizations, banks, and credit card companies that ensure there is a level of trust in the economy. These huge intermediaries perform tasks such as credit checks, the identification of people, and authentication of transactions. However, the

overarching problem is that they are centralized, meaning that they are increasingly susceptible to being hacked. Companies and large government institutions such as JP Morgan and the US Federal Reserve found this out the hard way.¹ Hence the introduction to blockchain. Blockchain is a decentralized digital ledger of transactions that are stored in a permanent and near inalterable way using cryptographic techniques.² It is referred to as permanent and nearly inalterable because the mechanism, such as proof of work (Pow) and proof of stake (PoS) that are behind the technology, protects the network from cyber-attacks. It also uses a peer-to-peer (P2P) system that allows everyone with the right equipment and knowledge to see the process. It fosters transparency in the market. In almost all cases, interactions and transactions on the blockchain must be verified by each of the precious 'blocks' to ensure its authenticity. Just to give an idea of how difficult it would be to penetrate and tamper with the blockchain, a hacker would need to successfully tamper with all blocks on the chain, and redo the proof of work for each block while taking control of more than 50% of the peer-to-peer network within a matter of seconds, to successfully hack or tamper with the chain.³ Now, within blockchain technology, one particular lay application is known as a smart contract. Essentially, a smart contract is a computer program that executes a form of conditions once certain terms are met. It can be used to automate any process and in relation to trade and it can reduce transactions costs.⁴ It is a digital contract that is verified on the blockchain network, though these types of contracts and their terms can vary. What is important to note is that this type of automation in the process can drastically reduce the overall cost in the supply chain and logistics of international trade. Though blockchain and smart contracts are relatively new forms of technology, some government organizations and intermediaries use this type of technology in the financial world. The problem is that many of these organizations and intermediaries use different forms of blockchain technology, which creates digital islands that prevent them from interacting with one another. For example, looking at four of the most well know blockchain networks, Bitcoin, Corta, Ethereum and Fabric, anyone holding assets on these platforms cannot exchange between one another without paying high gas fees which are essentially the cost of doing the transaction on the network or because they are not compatible.⁵ If, however, there is a mass adoption of one Blockchain or the network is developed to a point where trading actors can exchange assets with miniscule gas fees, it has the ability to drastically reduce the supply chain costs, as well as drastically increase the speed of international transactions.

¹ Tapscott, Don (2016, September 16th) *How the blockchain is changing money and business*. TED. https://www.ted.com/talks/don_tapscott_how_the_blockchain_is_changing_money_and_business

² Ganne, E. (2018). *Can blockchain revolutionize international trade?* World Trade Organization. Retrieved March 22, 2022, from https://www.wto.org/english/res_e/booksp_e/blockchainrev18_e.pdf

³ Tapscott, Don (2016, September 16th)

⁴ Ganne, E. (2018).

⁵ DiCaprio, A Harvard CMSA (2019) Centre of Mathematical Sciences; Blockchain in Global Trade. YouTube. <https://www.youtube.com/watch?v=KhxbJfjP6MQ>

Why is Blockchain Useful in Trade?

In this section we discuss why the introduction of blockchain technologies and smart contracts in international trade can be a useful tool. For starters, blockchain technologies in trade have the ability to significantly improve supply chains in numerous ways. They will enable faster and more cost-efficient delivery of products, provide traceability and coordination between vendors, aid access to financing trade, and significantly reduce the amount of paper used within the industry.⁶ Its value is almost immeasurable. By using a decentralized database that stores the assets and transactions of its users with a peer-to-peer network, it allows for a level of transparency that the industry has never seen before. First, blockchain networks can and will enable a faster and more cost-efficient delivery of products by verifying transactions in minutes compared to days, weeks, or even months that the traditional trading process takes. In doing so, the blockchain verifies its users while allowing them to upload the necessary documentation digitally, rather than sending mountains of paperwork by courier. The introduction of blockchain technologies further allows its actors to share, upload, and verify key information within minutes, hence drastically reducing the amount of time it would take for any two actors to initiate the trade process. In terms of supply chain and logistics, it makes an immense difference. Current actors in trade processes, such as shippers, forwarders, airlines, and others associated with the delivery process, have always had a difficult time with record keeping, traceability, fraud, and high costs.⁷ Applying blockchain enables these users to control the physical and digital information in a secure and efficient manner. Some notable companies that have already introduced blockchain technologies for delivery are Maersk, IBM, Walmart, Amazon, and UPS. The implementation of blockchain technology for Maersk was done to track the movement of goods from the main source, see the status of customs, check related documents, and view shipment manifests.⁸ What they found was a drastic increase in information flow, such as access to vital information pertaining to goods. It showed in real time the benefits of using blockchain and how logistics can be improved in the trading process. In addition, it was noted in the Harvard Business Review that the financial ledgers currently in place do not reliably allow all parties in a transaction to see the supply chain that is the relevant flows of information, inventory, and money. A blockchain system eliminates these blind spots.⁹ These blind spots make it very difficult, almost impossible to detect errors in real time, such as missing shipments or duplication of payments. Even when an error is

⁶ Ganne, E & Patel, D. (2020). *Blockchain & DLT in Trade: Where Do We Stand?* Trade Finance Global & World Trade Organization. Retrieved March 22, 2022, from https://www.wto.org/english/res_e/booksp_e/blockchainanddlte.pdf

⁷ Kfoury, B (2021). *The Role of Blockchain in Reducing the cost of Financial Transaction in the Retail Industry*. Retrieved March 22, 2022, from http://ceur-ws.org/Vol-2889/PAPER_02.pdf

⁸ Kfoury, B (2021).

⁹ Gaur, V and Gaiha, A (2020) Building a Transparent Supply Chain. Harvard Business Review. <https://hbr.org/2020/05/building-a-transparent-supply-chain#:~:text=Blockchain%20can%20greatly%20improve%20supply,and%20aiding%20access%20to%20financing>

sourced, it is difficult to trace where it occurred. Conversely, the implementation of blockchain technologies would capture all flow within the supply chain, making it extremely easy to pinpoint any errors.¹⁰

Blockchain in trade acts as a form of an open infrastructure where it stores all kinds of data and assets that can range from trade history, ownerships, titles of intellectual property, certificates, real world objects, and forms of identification. So, adopting widespread use of blockchain technologies in trade can lower the uncertainty of transactions globally. Transparency is important, as any actor or consumer in an interaction does not want their data or product tampered with, but they do want to ensure that they can trust whoever they are dealing with.¹¹ Currently, that is a difficult process because of how many actors are involved in a transaction. But blockchain technologies create a shared reality across non-trusting entities because not everyone needs to know each other or trust each other in a transaction, as the blockchain will monitor, validate and complete the process. Vendors and a multitude of companies can interact using the same databases without trusting each other, because in real time the digital certificates, transactions and assets move through the blockchain while being verified.¹²

How Blockchain is Facilitating International Trade

Blockchain technologies can affect all aspects of international trade, ranging from finance to customs procedures, and provenance (origin) of goods.¹³ The ability to reduce the time it takes for cross border transactions and its heavy reliability on third party lending and insurance is one of blockchains selling features. It can easily facilitate cost reduction, expedite the customs procedures, and boost both global trade volumes and economic output more than the worldwide eliminations of tariffs.¹⁴ Blockchain also can act as a mechanism to improve the detection of illicit trade flows and deter illegitimate efforts to circumvent trade rules.¹⁵ An example of this would be avoiding trade quotas or other restrictions by altering the country's origin of a product or any measure taken by an exporter to evade anti-dumping or countervailing duties. Blockchain further facilitates international trade, as most purchasers importing goods from other countries generally

¹⁰ Gaur, V and Gaiha, A (2020) Building a Transparent Supply Chain. Harvard Business Review. <https://hbr.org/2020/05/building-a-transparent-supply-chain#:~:text=Blockchain%20can%20greatly%20improve%20supply,and%20aiding%20access%20to%20financing>

¹¹ Warburg, Bettina (2016, June 4th) *How Blockchain will radically transform the economy*. TED. https://www.ted.com/talks/bettina_warburg_how_the_blockchain_will_radically_transform_the_economy

¹² Warburg, Bettina (2016, June 4th)

¹³ McDaniel, C and Norberg, H (2019) *Can Blockchain Technology Facilitate International Trade?* Mercatus Research retrieved March 22, 2022 <https://www.mercatus.org/system/files/McDaniel-blockchain-trade-mercatus-research-v2.pdf>

¹⁴

¹⁵ McDaniel, C and Norberg, H (2019)

wish to pay upon receipt of the merchandise in order to verify the products' physical integrity on arrival. By contrast, exporters prefer to be paid as soon as they ship the goods. Currently, to bridge this gap, a credit or guarantee of payment is generally required.¹⁶ This gap is filled by third parties and large intermediaries, such as government organizations, banks and insurance companies, that take on the risk that if the transactions fall through, they become responsible. The World Trade Organization estimates that 80 percent of global trade relies on trade finance or credit insurance and, if the use of blockchain technologies is adopted, it can increase the transparency across the trade process, which would decrease the risk and in turn expand the supply of credit available.¹⁷

These are just a few ways that blockchain technology can facilitate international trade. In addition, the simplification and modernization of customs procedures, commonly known as trade facilitation, has emerged as an important area for improvement of the world's trading system. Nearly all modern free trade agreements, both bilateral and regional, have a trade facilitation chapter, and the World Trade Organization has an entire trade facilitation agreement devoted to eliminating red tape at national borders in order to streamline the movement of goods.¹⁸ For instance, the international shipping industry carries 90 percent of the world's trade in goods and still largely relies on paper documentation. Looking forward and stripping down custom processes should be up for consideration as the world economic forum estimates that reducing supply chain barriers such as customs process could increase global GDP by nearly 5 percent and trade by 15 percent, increases up to six times greater than the effect of removing tariffs.¹⁹ As can be seen, one of the current problems facing international trade procedures is the customs producers process, as these practices differ globally, since each government typically has different rules and procedures regarding importing and exporting goods.

Blockchain allows data to be stored in a secure and transparent way that allows access to all parties involved and makes it tamperproof. Facilitating world trade allows for the previous paper documentation to be recorded in a secure digital format that provides real time information on transactions between all supplier networks in the supply chain.²⁰ In all trade, but most importantly international trade, logistics are integral in reducing overall costs and improving the efficiency of transactions. Using blockchain technologies to trace goods can't eliminate, but certainly can reduce, the logistical costs and the safeguard operations from the beginning to the end of a transaction, further facilitating an economic and cost-effective transaction. Next, blockchain addresses the challenges of cross-border data exchanges between public agencies or

¹⁶ McDaniel, C and Norberg, H (2019)

¹⁷ McDaniel, C and Norberg, H (2019) *Can Blockchain Technology Facilitate International Trade?* Mercatus Research retrieved March 22, 2022 <https://www.mercatus.org/system/files/McDaniel-blockchain-trade-mercatus-research-v2.pdf>

¹⁸ McDaniel, C and Norberg, H (2019)

¹⁹ McDaniel, C and Norberg, H (2019)

²⁰ Ganne, E. (2018). *Can blockchain revolutionize international trade?* World Trade Organization. Retrieved March 22, 2022, from https://www.wto.org/english/res_e/booksp_e/blockchainrev18_e.pdf

authorities and private companies. All of this data exchange is predominantly on paper and can take days and up to weeks for it to cross the necessary desks to initiate the trade process. Blockchain flat out removes paper transactions altogether, eliminating the cost for paper, couriers and other costs that arise as a result of using paper. It also allows for the transfer of payments to be exchanged more quickly and cheaply for all parties involved. It reduces and can even eliminate the need for a letter of credit, as the blockchain can verify and execute a contract based on the terms of an agreement through a smart contract. The World Trade Organization views blockchain impacts on global trade as revolutionary.²¹ This perception is grounded on blockchain's ability to remove diverse trade barriers. The WTO also suggests that the technology can enhance intellectual property rights administration. For instance, blockchain is expected to facilitate and promote government procurement processes from fight against frauds to public contracts management. One of the factors attributed to reducing expenditure in international transactions is the removal of third parties, like insurance service providers. In doing so, the level of trust that can be obtained by international trading partners using blockchain can guarantee a secure trading process which further facilitates international trade.²²

Policymakers and How the Law Would Need to Change

Mass implementation of blockchain technologies in international trading markets of course has its upsides. However, for mass adoption to occur, policy makers across the globe would have to agree on many terms and conditions. Though it is a decentralized technology with no overarching power, the argument can be made that there would be certain state actors who would want to ensure that the use of blockchain technologies would always work to their advantage. This is what leads us to ask the questions: What is changing because of blockchain? What are the challenges of implementing it? The current legal and regulatory environment outlines that trade transactions must require a written undertaking and for it to be signed by the person undertaking to pay, two things blockchain cannot do, as its all-digital format lacks the ability for a physical signature by the two parties. The continued use of a rule book limits scalability because all parties must sign onto abiding by a single rule book. This is a tricky situation, as each country has different trade rules and regulations, standards, and practices. This leads to the question whether for wide scale adoption of blockchain to work, would there also need to be multitude of actors willing to sign off on a single shared rulebook? In addition, who

²¹ Ganne, E. (2018). *Can blockchain revolutionize international trade?* World Trade Organization. Retrieved March 22, 2022, from https://www.wto.org/english/res_e/booksp_e/blockchainrev18_e.pdf

²² Derindag, F & Tsarev, R (2020). *International Trade and blockchain technologies: implications for practice and policy* IOP Conference Series: Earth and Environmental Science. Retrieved March 22, 2022, from <https://iopscience.iop.org/article/10.1088/1755-1315/421/2/022051/pdf#:~:text=As%20a%20digital%20record%2C%20blockchain,other%20without%20a%20third%20party>

would govern the blockchain and its multitude of layers such as the participant layer, business network layer, and internet layer? Do you force all members to update? Who decides that and when?²³ Beside the factors raised by those questions, we must also examine the issues that are present to the firms and state actors that will incorporate the use of blockchain technologies as they can span multiple jurisdictions; crypto assets; data protection; privacy compliance and cyber-attacks.²⁴ Policymakers should be urged to implement policies to increase the usage of blockchain technology by creating an enabling environment.²⁵ How can they accomplish that? They can accomplish this by removing tariffs. Currently, tariffs are used as a way to restrict imports, since they are a duty or tax that is imposed by one nation on the imported goods or services of another nation to make them less attractive to the domestic consumer. Tariffs are also a political tool that is used to control the number of imports that flow into a country and to determine which nations will be granted the most favorable trading conditions. If policy makers shift to this way of thinking by implementing the mass adoption of blockchain technologies, not only can it reduce the number of tariffs that are being used, but also it can even the playing field in international trade, allowing consumers to buy from who they want to buy from, and eliminating nations with competitive advantage because they have been deemed to have the most favorable trading conditions.²⁶ Policy makers in the European Union believe that implementing blockchain technologies can notably make a difference in international trade. They believe that it would certainly strengthen the provenance and intellectual property rights of goods, in turn reducing the risk of illicit goods and counterfeit goods that currently enter the supply chain. Blockchain technologies can provide authorities with accurate information as to when a good has been damaged/tampered with on the supply chain. It also would improve transparency and traceability by enabling all participants to record their transactions and sharing this information in the network.²⁷ This type of technology and its implementation by policy makers would uphold consumer protection and trust by providing consumers with detailed information on goods and contribute to the sustainability work of businesses. It would improve the application and correct duty of VAT payments and revenue collection within trade and policy, and reduce the total time goods are in transit by automating tasks that are typically accomplished through manual means

²³ DiCaprio, A Harvard CMSA (2019) Centre of Mathematical Sciences; Blockchain in Global Trade. YouTube. <https://www.youtube.com/watch?v=KhxbJfjP6MQ>

²⁴ Salmon, John and Myers, Gordon *Blockchain and Associated Legal Issues for Emerging Markets* International Finance Corporation World Bank Group. Retrieved March 22, 2022, <https://www.ifc.org/wps/wcm/connect/da7da0dd-2068-4728-b846-7cffd1fd24a/EMCompass-Note-63-Blockchain-and-Legal-Issues-in-Emerging-Markets.pdf?MOD=AJPERES&CVID=mxocw9F>

²⁵ Siddik, M. N. A., Kabiraj, S., Hosen, M. E., & Miah, M. F. (2021). Blockchain Technology and Facilitation of International Trade: An Empirical Analysis. *FIIB Business Review*, 10(3), 232–241. <https://doi.org/10.1177/2319714520968297>

²⁶ World Trade Organization Tariffs

²⁷ European Parliament 2018.2085(INI) on Blockchain: a forward-looking trade policy https://www.europarl.europa.eu/doceo/document/A-8-2018-0407_EN.html#top

by reducing both the costs and the carbon footprint of the logistics industry.²⁸ Policy makers globally would have to come together to develop rules and regulations to strip down international trading barriers that currently exist so that a mass adoption of blockchain technologies could be adopted. In doing so, it would reinvent a costly and time ineffective industry that needs to be revamped for the benefit of producers and consumers worldwide.

To conclude, a further examination of global trade policy needs to be done to fully understand the differences between international trading actors and how the implementation of blockchain technologies and smart contracts can be used to improve and facilitate global trade. Based on the research provided, it has been clearly demonstrated that a global trading system that uses blockchain technologies and smart contracts can seamlessly coordinate trade interactions across borders. In doing so, we can improve the supply chain and eliminate third party intermediaries that impede trading processes. It also can cause a massive reduction on the carbon footprint caused by excessive paper usage in the industry. As blockchain technologies and smart contracts develop, we can only hope to see government organizations shift in a direction that looks to adopt these technologies in hopes of facilitating international trade.

²⁸ Salmon, John and Myers, Gordon *Blockchain and Associated Legal Issues for Emerging Markets* International Finance Corporation World Bank Group. Retrieved March 22, 2022, <https://www.ifc.org/wps/wcm/connect/da7da0dd-2068-4728-b846-7cffcd1fd24a/EMCompass-Note-63-Blockchain-and-Legal-Issues-in-Emerging-Markets.pdf?MOD=AJPERES&CVID=mxocw9F>

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Reintegration of ex-combatants in Colombia

Christopher Morton

After over 50 years of civil wars, Colombia reached what was meant to be a lasting peace agreement in 2016. Despite a defeated referendum to ratify the agreement, and direct hostility from a subsequent government, the agreement still remains in place. The main instrument to build this lasting peace is a disarmament, demobilization, and reintegration (DDR) program overseen by a United Nations peace mission. Colombia's attempt at a previous DDR program of right-wing paramilitaries failed because the implementation was faulty. However, there is a path for successful implementations of DDR programs, and possible changes in Colombia's political leadership may increase the chances of success.

Introduction

Gabriel García Márquez, Colombia's Nobel Laureate in Literature, wrote his masterpiece *One Hundred Years of Solitude* about one village's repetitive cycles of revolution and reaction. As one of the signature works of the Latin American "magical realism" genre, its resonance comes from Colombia's postwar history as an unending nightmare of civil war.

The first of many phases of civil conflict in Colombia was "*La Violencia*," a ten-year war that was sparked by the assassination of Liberal Party presidential candidate Eliécer Gaitán in 1948. 250,000 to 300,000 people were killed between 1948 through 1958, when the Liberal and Conservative parties made peace.¹

Thousands of members of the Liberal and Communist Parties of Colombia fled to the countryside during the first civil war.² After growing frustration at being excluded from Colombia's political life and the perceived discounting of peasant and working-class perspectives, some of these internal political refugees formed two major guerilla insurgent groups in the mid-1960s: the National Liberation Army, known by its Spanish-language acronym ELN, and the Revolutionary Armed Forces of Colombia, known as FARC.³ I will primarily discuss FARC here.

¹ BBC News, 2018, August 8, Colombia profile - Timeline. <https://www.bbc.com/news/world-latin-america-19390164>

² Karl, Robert A., 2016, October 1, Here's the century-long history behind Colombia's Peace Agreement, *Washington Post* <https://www.washingtonpost.com/news/monkey-cage/wp/2016/10/01/heres-the-century-long-history-behind-colombias-peace-agreement-with-the-farc/>

³ Felter, Claire & Renwick, Danielle, 2017, January 11, Colombia's Civil Conflict. Council on Foreign Relations. <https://www.cfr.org/backgrounder/colombias-civil-conflict>

For 50 years, the war between FARC and Colombian governments of both parties waxed and waned through many phases too numerous to discuss in detail. The FARC began as a peasant-based guerilla insurgency, similar to many that roiled South and Central America during the Cold War. After the end of the Cold War and the demise of the Soviet Union, the war continued as a front in the United States' War on Drugs, as FARC used profits from Colombia's lucrative illicit cocaine trade for funding to continue and intensify its struggle.⁴ Finally, in 2012, after a period of successful counter-narcotic policing and counter-insurgency warfare by the government, FARC came to the negotiation table.⁵

In 2016, a cease-fire was announced between FARC and the administration of Colombian President Juan Manuel Santos of the Social Party of National Unity, a successor of the old Liberal Party. A peace agreement was signed in September of that year. Soon after, a nationwide referendum was held to ratify the peace agreement, but it was narrowly defeated. However, FARC and the Santos administration maintained the cease-fire, and a slightly modified agreement was passed by the Colombian legislature later that year.⁶ After a 50-year struggle with no clear victor that took the lives of 220,000 Colombians and internally displaced approximately another 7 million people,⁷ Colombia set about the herculean task of trying to create a lasting peace.

DDRs and Building a Lasting Peace

Obviously, one of the prime human security concerns in a post-conflict society is peacebuilding. Like many human security concepts, it does not have a specific hard-and-fast definition. Peacebuilding refers to the efforts by both governments and civil society to address impacts and root causes of conflict at all levels - international, national, and local.⁸

The main pillars of peacebuilding in the agreement signed by the government and FARC are reintegration of FARC ex-combatants into the political and economic life of Colombia, disarmament of FARC members with security provisions from the government to maintain the peace, finding solutions to the problem of Colombia's cocaine trade (which financed FARC for long periods of the conflict) including crop eradication, and a system to attempt to find the truth about what happened to victims of the conflict, as well as justice for victims of both FARC and

⁴ Miroff, Nick, 2016, August 24, The staggering toll of Colombia's war with FARC rebels, explained in numbers, *Washington Post*. <https://www.washingtonpost.com/news/worldviews/wp/2016/08/24/the-staggering-toll-of-colombias-war-with-farc-rebels-explained-in-numbers/>

⁵ *Ibid.*

⁶ Felter, Claire & Renwick, Danielle, 2017, January 11, Colombia's Civil Conflict. Council on Foreign Relations. <https://www.cfr.org/background/colombias-civil-conflict>

⁷ Miroff, *Ibid.*

⁸ Alliance for Peacebuilding, What is Peacebuilding? <https://allianceforpeacebuilding.org/what-is-peacebuilding>

government violence.⁹ I will focus here on those that concern the reintegration of ex-combatants from FARC.

Reintegration of ex-combatants, operationalized by the United Nations as disarmament, demobilization, and reintegration (DDR) processes, are transitional programs designed to prepare the way for a lasting peace in a post-conflict society. The focus of DDR programs is removing the weapons from combatants and removing combatants from military structures. After this transition out of militarization, these programs work to reintegrate people back into the social, economic, and political life of the country.¹⁰

The demobilization process is overseen by the United Nations Verification Mission (UNVMC) in Colombia and three institutions created by the Peace Agreement: the Commission for Monitoring, Promoting and Verifying the Implementation of the Final Agreement, the National Reintegration Council, and the National Commission on Security Guarantees.¹¹ Many government ministries, especially the Reintegration and Normalization Ministry (ARN in Spanish), and many civil society sectors of Colombia are also participants in the process.¹²

The first step of the process was the demobilization of FARC members. Between 6,000-7,000 ex-combatants assembled into 23 hamlets and 7 camps, known as “transitional verification and normalization zones”.¹³ When this was completed, minors were turned over to UNICEF for reintegration.¹⁴ After this process, disarmament began with the laying down of arms followed by the registration and destruction of arms.¹⁵ The next step is the more difficult reintegration process.

Although the homicide rate in Colombia generally declined in the period between the cease-fire and the implementation of the peace agreement, there was a surge in violence against social and human rights activists.¹⁶ Anywhere from 65 to over 100 activists and social leaders were killed in the period from mid-2016 to mid-2017.¹⁷ The United Nations’ Office of the High Commissioner for Human Rights in Colombia believed that the increase in violence was directly related to the demobilization of FARC, as the assassinations occurred primarily in areas that were

⁹ Beittel, June S, 2015, March 31, Peace Talks in Colombia. Congressional Research Service. <https://fas.org/sgp/crs/row/R42982.pdf>

¹⁰ United Nations Disarmament, Demobilization, and Reintegration Resource Center. <https://www.unddr.org/>

¹¹ United Nations Verification Mission in Columbia, 2022, April 4, *Report of the Secretary-General*. https://colombia.unmissions.org/sites/default/files/04.04.22_eng_infographic_reportmar2022.pdf

¹² *Ibid.*

¹³ Flisi, Isabella, 2017, February 13, The Reinteraction of Former Combatants in Colombia, *Oxford Research Group*. <https://www.oxfordresearchgroup.org.uk/blog/the-reintegration-of-former-combatants-in-Colombia>

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Cosoy, Natalio, 2017, May 19, Why has Colombia seen a rise in activist murders? BBC News. <https://www.bbc.com/news/world-latin-america-39717336>

¹⁷ *Ibid.*

formerly controlled by FARC.¹⁸ Most of the victims were likely either killed due to some connection to FARC, or by criminal organizations trying to establish control in areas vacated by FARC.¹⁹

The Political Background

2018 brought not just a change of presidents in Colombia, but a complete realignment of electoral politics. The traditional Conservative and Liberal parties collapsed in the first round of voting, with two new coalitions advancing to the final round, with the far-right coalition Democratic Center's Ivan Duqué trouncing a left-wing coalition Colombia Humana, led by a former member of the M-19 guerilla group, Gustavo Petro, by a margin of 54% to 42% of the vote.²⁰ Duqué and his mentor, Alvaro Uribe, the President of Colombia prior to Santos, were prominent campaigners for the No vote in the national referendum on the peace agreement with FARC.²¹ Renegotiation of the peace agreement was a major part of the Democratic Center's electoral platform.²²

The effect of Duqué's negative attitude to the peace agreement can be examined by looking at the current state of one of the major pillars of the reintegration campaign - the Training and Reincorporation Territories, or ETCR in Spanish. These are the spaces set up by the peace agreement for the reintegration of demobilized FARC militants. President Duqué threatened to end the funding of the ETCRs and dissolve them in August 2019. Novelists Jonathan Levi and Marta Orrantia visited one of these spaces, Caño Indio, near the border with Venezuela, where the former Frente 33 of the FARC demobilized in an effort to build a new life as civilians.²³ They farm a plot of 850 acres, as well as run small businesses around the ETCR, and work on education and learning new skills for the job market to give them options on whether to stay and work the land or move to a city.²⁴

The violence against social activists has continued, with 400 of them being killed between mid-2017 to mid-2019. 130 ex-combatants have also been killed in this time period.²⁵ Many ex-combatants feel under threat from former paramilitaries, narco-traffickers, and members of other

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Hylton, Forrest and Tauss, Aaron, 2018, June 29, Change and Continuity in Colombia's Politics. *North American Congress on Latin America*. <https://nacla.org/news/2018/06/29/change-and-continuity-colombian-politics>

²¹ Parkin Daniels, Joe, 2018, June 18, Ivan Duque wins election to become Colombia's President, *The Guardian*. <https://www.theguardian.com/world/2018/jun/18/ivan-duque-wins-election-to-become-colombias-president>

²² *Ibid.*

²³ Levi, Jonathan and Orrantia, Marta, 2019, August 13, The Broken Promise of Colombia's Peace Deal, *The Nation*. <https://www.thenation.com/article/colombia-farc-guerilla-peace-treaty/>

²⁴ *Ibid.*

²⁵ *Ibid.*

armed left-wing groups that refused to disarm. These continued attacks, combined with Duqué's threats about dissolving the ETCRs, have caused many younger ex-combatants to flee them.²⁶ Other FARC formations have also taken up arms again, citing Duqué's refusal to following through with the government's end of the peace agreement.²⁷ In June 2019, however, the Colombian Constitutional Court ruled against Duqué and the mandate for the ETCRs was continued through at least the end of August 2020. Also, the FARC leadership, now the head of a legal political party, has also reaffirmed its commitment to the peace agreement.^{28 29}

In the last three years, Colombia has seen many consequential political events. Two waves of large general strikes, in 2019³⁰ and 2021,³¹ rocked Colombia. Although a proposed pension reform in 2019 and a tax reform in 2021 by the Duqué administration were the sparks for the protests, the government's lack of support for the peace process was also cited by many protesters as a reason for their disgruntlement.³²

It is not a surprise that a country attempting to end a 50-year conflict would face a legion of challenges. Some of these arise from the Colombian context, and some are shared by all countries seeking to reintegrate ex-combatants. The political context described above is a challenge to the tenuous peace process. Having a presidential administration that is not committed to the peace process as it stands can be a threat to the continuation of reintegration, as ex-FARC combatants have and may continue to lose faith in the possibility of a peaceful future in Colombia. However, a presidential election is scheduled for late May 2022, with Duqué stepping down and the rule of his Democratic Center coalition may be coming to an end.³³

Past Attempt at a DDR in Colombia

The reintegration of FARC members is not the first time Colombia has attempted a reintegration program. The first came at the other end of the political spectrum. In 2003, then-President Alvaro Uribe began a demobilization program for the United Self-Defense Forces of Colombia (AUC in Spanish), a far-right paramilitary group that was held to be responsible for the majority of war atrocities in Colombia between the period of 1997-2002.³⁴ This did not lead

²⁶ *Ibid.*

²⁷ Parkin Daniels, Joe, 2019, August 29, Former Farc commanders say they are returning to war despite 2016 peace deal, *The Guardian*. <https://www.theguardian.com/world/2019/aug/29/ex-farc-rebels-announce-offensive-despite-peace-deal-colombia-video>

²⁸ Parkin Daniels, 2019, *Ibid.*

²⁹ Levi and Orrantia. *Ibid.*

³⁰ Parkin Daniels, *Ibid.*

³¹ Turkewitz, Julie, and Villamil, Sofia, 2021, May 21, Colombia's Police Force, Built for War, Finds a New One. *New York Times*. <https://www.nytimes.com/2021/05/12/world/americas/colombia-protests-police-brutality.html>

³² Parkin Daniels, 2019, *Ibid.*

³³ Osborn, Catherine, 2022, March 18, Colombia's Left Finds Its Footing. *Foreign Policy*, <https://foreignpolicy.com/2022/03/18/colombia-legislative-elections-presidential-primaries-gustavo-petro/>

³⁴ Kaplan, Oliver and Nussio, Enzo, 2018, Explaining Recidivism of Ex-combatants in Colombia. *Journal of Conflict Resolution*, 62(1). 64-93.

to a stable, long-term peace in Colombia. Looking at the failures and successes of this period can shed light on the tactics that would bring a better outcome for the demobilization of the FARC.

As noted by Ralph Rozema, there are five preconditions needed for a successful DDR program:

1. Security sufficient enough so that ex-combatants feel safe enough to relinquish weapons;
2. The inclusion of all warring parties;
3. A binding political document, e.g., cease-fire or peace accord;
4. A comprehensive approach to DDR, including economic, political, and social reintegration; and
5. Sufficient funding for the process.³⁵

Most of these preconditions were not met in the AUC reintegration, although the AUC demobilization did lead to a dramatic decrease in violence.³⁶ First, the DDR included only the AUC and deserters from FARC and ELN. The process also coincided with an intensified offensive against the left-wing guerilla groups. Second, no binding law was passed until well after the DDR program began, and it did not include specific benchmarks for demobilization or set clear responsibilities for governmental organizations. Finally, there was limited funding for social and economic reintegration, which left ex-combatants vulnerable to the lure of drug trafficking, which is ever present in Colombia.³⁷ By studying the failures and successes of this first process, some recommendations for Colombia's reintegration process can be made going forward.

The epidemic of murders of social leaders and ex-combatants over the last three years since the cease-fire with FARC have shown that there is insufficient security being provided by the government, which has led to some leaving the ECTRs. A human rights adviser to the previous President Santos, Paula Gaviria, put her finger on the problem when she told the BBC that nothing will change until there are investigations and prosecutions of the perpetrators of these killings.³⁸

One way that Colombia stands out from other DDR programs is that it has now twice attempted to demobilize and reintegrate ex-combatants in a piecemeal fashion. This is due to the extremely fractious nature of Colombia's civil war(s). Although this would likely have to wait for another presidential administration, a comprehensive and all-inclusive attempt at a lasting

³⁵ Rozeman, Ralph, 2008, August, Urban DDR-Processes: Paramilitaries and Criminal Networks in Medellín, Colombia, *Journal of Latin American Studies*, 40(3). 423-452

³⁶ Denissen, Marieke, 2010, April, Reintegrating Ex-Combatants into Civilian Life: The Case of the Paramilitaries in Colombia, *Peace & Change*, 35(2). 328-352

³⁷ *Ibid.*

³⁸ Cosoy, *Ibid.*

peace will need to be undertaken, encompassing not just left-wing guerilla groups such as the ELN and FARC renegade factions, but also including still-extant right-wing paramilitary groups and violent narco-trafficking gangs.

The integration process itself is a key to building a lasting peace. The FARC is politically reintegrating, as the peace agreement gives them five seats in both chambers of the Colombia legislature, despite polling only 0.33% in the 2018 election.³⁹ The fact that they participated in the elections was the success; how long the ten seats will be guaranteed is unclear for now, but by participation in the election, FARC was normalized as an electoral political entity, which reduces the chances for violence flaring again.

Conclusion

Kaplan and Nussio's study of past attempts at reintegration in Colombia found that the most successful and complete reintegrations occur when ex-combatants are able to place themselves in areas with high levels of community participation and lower levels of violence. Communities that had suffered violence, whichever faction caused it, were more likely to shun ex-combatants. This leads to ex-combatants organizing their new social lives around other ex-combatants, rather than with the community at large, which left them more vulnerable to disenchantment with the reintegration process, which sometimes led to return to their old life, whether through other paramilitary or guerilla groups or by joining criminal gangs.⁴⁰

In practice, this means that the best chance for long-term success with the current DDR operation is to encourage FARC members to integrate themselves, with the help of the government into communities that did not suffer a high-level of violence during the civil wars, and with higher levels of community participation. Further, programs that increase the community participation at-large, and not just among ex-combatants, frequently make an impact in the success of a reintegration process.⁴¹

If this sounds like a common-sense program to build any lasting peace, that is the point. There is no magic wand that will wipe away the effects of 50 years of war. To build lasting peace in Colombia, or any country, the political process will need to deal not just with the damage caused by violence after it ends, but build a country without the conditions that led to the violence in the first place. But just because it is common-sense, that does not mean it will be anything but a long-term difficult task.

³⁹ Parkin Daniel, 2018, *Ibid.*

⁴⁰ Kaplan, Oliver and Nussio, Enzo, 2018, Community counts: The social reintegration of ex-combatants in Colombia, *Conflict Management and Peace Science*, 35(2). 132-153.

⁴¹ *Ibid.*

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Abolition as the Future of Nuclear Arms Control

Christopher Morton

Abstract

With Russia's invasion of Ukraine and the threat of nuclear weaponry becoming a real possibility, the nuclear weaponry threat has come back into global focus. The current arms control regime of nuclear non-proliferation has been a success in creating a taboo against new countries seeking nuclear arms, the fact that more countries have gained nuclear weapon capacity has shown that non-proliferation has become exhausted as a policy goal in global governance. In 2020, a treaty banning nuclear weapons came into effect as international law. Although no nuclear powers have signed, this shows that disarmament can be a more fruitful avenue in global nuclear arms control.

Introduction

Since the United States' first use of nuclear weapons on two Japanese cities in August 1945, humanity has lived under the Damocles' sword of nuclear annihilation. Global consciousness of the dangers of nuclear combat has waxed and waned over the years, through the Cold War and the "War on Terror." Two waves of developments in the last few years have once again brought this danger back into the spotlight. During the Trump administration, the signatories to the main pillar of the bilateral arms control regime between the largest nuclear powers, the Strategic Arms Reduction Treaty (START) declined to extend the treaty; the United States unilaterally pulled out of the Joint Comprehensive Plan of Action (JCPOA) with Iran.¹ North Korea has continued apace with the development of a nuclear weapons program. In recent days, the Russian invasion of Ukraine has put the fears of nuclear conflict front and center yet again, with Russia threatening that the use of nuclear weapons is on the table if NATO were to involve itself militarily in the War.² This threat illustrates once again that the current nuclear arms control regime recognized by the great powers is not working, and a new one is needed. Fortunately, such a framework exists already.

¹ O'Hanlon, Michael E., Einorn, Robert, Pifer, Steven, and Rose, Frank A., 2020, March 5, Experts Assess the Nuclear Non-Proliferation Treaty, 50 Years after It Went into Effect, Brookings Institute. www.brookings.edu/blog/order-from-chaos/2020/03/03/experts-assess-the-nuclear-non-proliferation-treaty-50-years-after-it-went-into-effect/.

² Paybarah, Azi, 2022, March 22, A Kremlin spokesman says Russia could use nuclear weapons if there is 'an existential threat for our country', *New York Times*. <https://www.nytimes.com/2022/03/22/world/europe/russia-nuclear-weapons-cnn.html>

The Current Regime

The current regime of global nuclear arms control is the Treaty on the Non-Proliferation of Weapons (NPT). The NPT has been in effect since March 1970.³ The treaty bans development of nuclear weapons for all countries *except for* the five current powers (the United States, the then-Soviet Union, the United Kingdom, France, and the People's Republic of China). Compliance with the NPT is administered by the International Atomic Energy Agency (IAEA). In the 52 years since its initial ratification, four countries have gained nuclear military capacity (Israel, India, Pakistan, and North Korea). The total number of nuclear weapons worldwide has decreased by 85 percent from its peak in 1980,⁴ but there has been no progress on nuclear non-proliferation since the early 1990s after South Africa ended its nuclear weapon program and acceded to the NPT.⁵ After more than 30 years without progress, it is clear that the non-proliferation regime has become exhausted, and the time has come to focus on total global nuclear disarmament as the focus of a new regime.

That is not to say that the NPT has been a total failure. Its greatest success is the establishment of non-proliferation as the norm and creating a taboo on nations seeking nuclear weapon capacity.⁶ However, there is an inherent hypocrisy baked into the NPT regime. The five nuclear powers in 1970 were allowed to keep their weapons and create their own arms control agreements, albeit with the hope of eventually reaching total nuclear disarmament, although without any guarantees or timelines in the treaty.⁷

NPT Shortcomings

Although there were many campaigns for nuclear disarmament, mainly among civil society groups in the US and its allies in Western Europe, the genesis of the NPT came from more realist goals of the two main superpowers of the 1960s, the US and the Soviet Union. These superpowers accepted the proliferation of nuclear weapons, believing that as long as their allies had them, they were essentially supplemental to their own arsenals.⁸ Two events, the Sino-Soviet split of the global Communist movement and France's (temporary) departure from NATO, made

³Weiss, Leonard, 2017, Safeguards and the NPT: Where our current problems began, *Bulletin of the Atomic Scientists*, 73(5). 328-336.

⁴Kutchesfahani, Sara Z., June 2018, The NPT at 50: A Staple of Global Nuclear Order. Arms Control Association. <https://www.armscontrol.org/act/2018-06/features/npt-50-staple-global-nuclear-order>

⁵Narang, Vipin, 2016/17, Winter, Strategies of Nuclear Proliferation: How States Pursue the Bomb, *International Security*, 41(3). (110-150)

⁶Davenport, Kelsey, Puglieri, Jana, and Topychkanov, Petr, 2017, Nuclear Disarmament Summits: A Proposal to Break the International Impasse. *Bulletin of the Atomic Scientists*, 73(4), 264–270.

⁷*Ibid.*

⁸Coe, Andrew J. and Vaynman, Jane, 2015, Collusion and the Non-Proliferation Regime. *Journal of Politics*. 77(4). 983-997.

the superpowers realize that possession of nuclear weapons gave them greater sovereignty and freedom of action on their own behalf in security matters.⁹ Although the NPT did not require China and France to disarm, it did create the norm of non-proliferation so that other countries would not “go rogue,” so to speak.

Despite its realist origins, the NPT is an example of the liberal ideology of international relations.¹⁰ The signatories hope to accomplish their security goals regarding nuclear weapons through cooperation with each other and compliance with the NPT regime. However, those with or seeking nuclear weapons are acting on a realist framework, both because they want the power of the nuclear threat, and because they perceive that they face existential threats to their states.¹¹

Israel, North Korea, and Iran are examples of states that have not signed the NPT due to rational security concerns. Israel has faced three invasions from neighboring states in the nuclear era.¹² While North Korea and Iran are frequently portrayed as villains by the US foreign policy establishment (and not always without good cause),¹³ they both have genuine existential concerns from exterior threats. North Korea is bordered by two nuclear states and another that has guarantees of military protection by a third. The US fought a war in North Korea from 1950 to 1953, and seriously considered the use of nuclear weapons in that conflict.¹⁴ The Truman administration had already used nuclear weapons and it was before there were large thermonuclear weapons, so the nuclear threat from the US was legitimate and very real. Although Truman ultimately decided against their use, his administration did engage in an aerial bombardment campaign which killed approximately 3 million North Koreans and devastated the country’s infrastructure.¹⁵ Iran fears the threat from Israel’s nuclear arsenal as well as being named part of George W. Bush’s “Axis of Evil.” Furthermore, Iran no longer felt that there was a partner in the Trump administration after the departure from the JCPOA, although the process of restarting it is making some progress in the new Biden administration. Regardless of one’s feelings about the moral stature of these state’s governments, their desire for nuclear weapons as a deterrent to perceived existential threats is not irrational.

⁹ *Ibid.*

¹⁰ Ahmed, Ashfaq, 2017, The Philosophy of Nuclear Proliferation/Non-Proliferation: Why States Build or Forgo Nuclear Weapons, *Trames*, 21(4). 371-382.

¹¹ *Ibid.* Narang

¹² BBC, 2019, April 9, Israel profile - Timeline.
<https://www.bbc.com/news/world-middle-east-29123668>

¹³ Frum, David, (2022, January 29, The Enduring Lessons of the “Axis of Evil” Speech, *The Atlantic*.
<https://www.theatlantic.com/ideas/archive/2022/01/axis-of-evil-speech-frum-bush/621397/>

¹⁴ Cumings, Bruce, 2004, *North Korea: Another Country* (Paperback ed.), New York: The New Press

¹⁵ *Ibid.*

A Way Forward

A multilateral agreement for total nuclear disarmament, however, does not require reinventing the wheel. The NPT itself calls for complete and total nuclear disarmament by all countries, even if at an unspecified later date.¹⁶ Although the stock of nuclear weapons has decreased, the number of nations possessing nuclear weapons has increased. The NPT also accepted a two-tier system of nuclear and non-nuclear states. A new legally binding Treaty on the Prohibition of nuclear weapons has been proposed by the United Nations General Assembly that would totally outlaw any development, possession, or use of nuclear weapons.¹⁷ On October 24, 2020, the number of countries that ratified this new treaty surpassed the threshold of 50 countries, making the treaty international law.¹⁸ Nuclear weapons, then, are technically totally illegal, but none of the nuclear powers were party to the treaty or the original talks in 2017. The rest of the world will need to take the lead in changing the norms around nuclear weapons.

Getting from the here and now to a world free from the nuclear menace will be a herculean task, even with international law on its side. Many non-nuclear powers are taking the lead in starting the next step in the process. Currently, there is no political momentum to join in such a nuclear ban treaty. As recent events in the Ukraine show, things can change rapidly.

As the only country to have used nuclear weapons, and the main global hegemonic power, the United States bears a special responsibility to show that it would be willing to negotiate disarmament with both other nuclear powers and aspiring nuclear powers. This would require a paradigm shift in deterrence from “mutually assured destruction” to “mutually assured abstinence.”¹⁹ Leadership would have to be pressured from civil society groups and social movements similar to the movement to abolish slavery 150 years ago,²⁰ or the anti-nuclear movement of the 1980s led by the Committee for a Sane Nuclear Police (SANE)²¹ to hold

¹⁶ *Ibid.* Davenport, Puglieri, and Topychkanov.

¹⁷ United Nations Office for Disarmament Affairs, 2017, Treaty on the Prohibition of Nuclear Weapons. <http://disarmament.un.org/treaties/t/tpnw>

¹⁸ Gladstone, Rick, October 25, 2020, Treaty of Prohibition of Nuclear Weapons Passes Important Threshold, *New York Times*. <https://www.nytimes.com/2020/10/25/world/americas/nuclear-weapons-prohibition-treaty.html>

¹⁹ Pretorius, Joellen, 2017, Ban the bomb by...banning the bomb? *Bulletin of the Atomic Scientists*, 73(3). 201-203.

²⁰ *Ibid.*

²¹ FitzGerald, Frances, 2000, *Way Out There in the Blue: Reagan, Star Wars, and the End of the Cold War* (Paperback ed.), New York: Touchstone.

political leadership accountable. The spark that would ignite such a movement is unknown, but the kernel of nuclear disarmament as a goal is necessary for such a spark to light a fire.

The threat of nuclear annihilation has been a human reality for over 75 years now. Although the end of the Cold War de-escalated the threat, no real progress towards limiting the number of nations with nuclear weapons has been made since then. The current regime of nuclear arms control, the 1970 NPT, has exhausted itself as the pivot from non-proliferation to disarmament as not been made; nuclear powers do not want to give up their remaining nuclear arms, and this hypocrisy sets the tone for those countries that perceive existential threats to develop nuclear weapons programs. The NPT's greatest success has been in establishing non-proliferation as the global norm. In an increasingly unstable world situation, the time has come to strengthen the norm from non-proliferation to total disarmament. The possibility of a future for humanity may depend on it.

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<https://www.nytimes.com/2022/03/22/world/europe/russia-nuclear-weapons-cnn.html>

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Fostering an Inclusive Justice System in the Canadian Legal Profession

Josh Clarke

Abstract

This paper aims to uncover the inequalities that lay within the Canadian legal justice system that affect marginalized groups in Canada. It will look to uncover how policy and legislation in Canada have created a poor legal aid system neglecting a multitude of social groups. It will also examine how our governing bodies such as the courts need to do a better job at fostering an inclusive justice system by better understanding Canada's diverse society. Access to justice in Canada has been an urgent problem facing the legal profession for many years now. The high cost and time involved in undertaking the legal processes, in addition to restraints of a cultural and geographical sense caused by social exclusions and bias, greatly affect a diverse group of people in Canada. These problems run deep in our legal system as it has become increasingly difficult to retain a lawyer in Canada if you rely on legal aid. It is even more difficult to obtain legal aid in Canada if you lack the knowledge about what legal aid is available in Canada and if it is available to you. Upon further discussion, it will become clear that the inequalities run high in the Canadian justice system, and we all need to work together in fostering a more inclusive justice system.

Introduction to Canada's Current Legal System and Processes

One of the most pressing issues facing the current legal system in Canadian society is access to justice. The extremely high costs and time involved in undertaking any legal process is one that is extremely pressing on those with certain cultural, geological, and socioeconomic restrictions caused by marginalization, social exclusion, and bias.¹ Examples of this are marginalized communities such as the LGBTQ community, people of color, and women. Far too often, people of these communities and backgrounds are left to fend for themselves in a thick world of difficult language and social biases. Even the legal processes that have been designed to lower costs for individuals facing these conditions are often unheard of unless you are familiar with the legal sphere. Alternative dispute resolution methods such as mediation, which is more economical than traditional litigation, has been introduced; however, the mediator has no power to decide for you. Hence, if the two parties are in a situation where they cannot come to an agreement, the issues remain unresolved, and all that time and money has been wasted. This is just one of the many failures in the Canadian justice system. If it continues down the same path,

¹ Johansen-Hill, Z & Owen, C (2019), Diversity and Inclusion in the legal profession
<https://law.usask.ca/documents/research/deans-forum/Topic-1---Diversity-and-Inclusion-in-the-Legal-Profession---Policy-Discussion-Paper---Final.pdf>

it will continue to fail the working poor. These are the people who are unable to afford lawyers and end up pleading guilty or representing themselves in court. It has become very clear that the people who tend to need legal aid services the most and have lower incomes can't afford to hire a lawyer privately. Subsequently, the entire introduction to the legal aid program in Canada was to aid and promote access to justice for the economically disadvantaged persons and help them ensure that the Canadian justice system is fair, efficient, and accessible, in addition to being created to maintain public confidence in the justice system.²

Legal aid programs in Canada currently receive contribution funding from the Federal and Provincial governments to aid the services of economically disadvantaged persons. This is something that Canadian society believes in and is one of the underlying principles of its democracy. It is also imperative to outline that Canada's democracy is built upon serving two additional principals. The first is that we elect those who govern us, and the second is that our democratic system is based on the rule of law under which access to justice is a fundamental characteristic. Canada believes that the rights of individuals should not be curtailed merely because they lack the resources to defend themselves. As such, those who do not have the same access to financial resources as people in higher socioeconomic classes often find themselves the victims of the greatest attacks on their rights. Even with the implementation of legal aid programs, clinics, and alternative dispute resolution methods, the Canadian justice system is failing the economically disadvantaged immensely. And without a doubt, we can see that this idea of a functioning democracy is being threatened as those people it was created to protect turn out to be the victims, finding themselves with nowhere to turn, often self-representing and pleading guilty to unsubstantiated charges.

Creating a Diverse Society

To further understand Canada's justice system, it is very important to understand how and why it was developed, in addition to the principles of democracy Canada was built upon. In doing so, it will help understand that Canada's diverse population must be included in order to foster an inclusive justice system for all. Canada has a very diverse society and, for it to be able to provide access to justice, it must provide relevant and responsive services to society's most vulnerable. With the acceleration of Canada's demographic diversity since the late 1960s, there has been a shift in the country's immigration policy to reflect that. Many of the challenges faced include economic instability and language barriers that prevent individuals and families from accessing and receiving the necessary legal aid that they require. Federal and Provincial policies have aimed to ensure that all people residing in Canada can receive full participation in the justice system. These range from acts such as The Charter of Rights and Freedoms, The Federal Employment Equity Act, The Accessibility for Ontario's with Disabilities Act, as well as Provincial and Federal Legal Aid Services. These Statutes and Acts are aimed to protect the people of Canada and

² Department of Justice Canada (2019), On the Review of Canada's Criminal Justice System, <https://www.justice.gc.ca/eng/fund-fina/gov-gouv/aid-aide.html>

especially those subject to marginalization. They have the intent of full participation for each and every individual, regardless of place of origin, color, creed, or race.³ Unfortunately, even with legal practices such as these in place, the current system disproportionately targets individuals from specific demographic groups, especially black and indigenous Canadians.⁴ The system is ill-suited to deal with the realities of vulnerable and marginalized groups, including people with mental illness or substance use issues.⁵ Consequently, Canada's current justice system is often ill-equipped to address the fundamental social issues that affect Canada's poor, such as poverty and homelessness. These vulnerable individuals enter the system mainly because of their circumstance and lack of options. Even if they manage to get out of the justice system, they often end up returning to the system with similar issues or worse, clearly outlining that Canada lacks the fundamental recourse to protect its most marginalized citizens.⁶

It is a very difficult process to govern and judge in a diverse society, as outlined by the Honorable Beverly McLachlin, P.C., Chief Justice of Canada. She stated that Canada was born as a diverse society comprising three groups, the aboriginal nations, the French settlers of Acadia and Quebec, and the English-speaking people from England, Scotland, and the United States.⁷ The country is continuously becoming more and more diverse and, according to a recent census, one in five Canadians were born outside of Canada and nearly one in six are visible minorities. In two of our largest cities, Toronto and Vancouver, Caucasians are in the minority.⁸ As a judge, she believes that there are three challenges of judging in a diverse society. The first is that there needs to be this sense of an informed approach when it comes to judging in a diverse society. Many of those who appear before the court, regardless of being a witness or litigant, will often be very different from the judge presiding over that case. These differences include lived experiences and values, perspectives, and language barriers. All these factors can impact the ability for a judge to appreciate the circumstance of the situation, assess their credibility, and craft the appropriate remedy.⁹ Second, she believes that there needs to be a better understanding of the social context, and that the issues that are brought before the court may be different, entirely novel, or familiar, but presented in a new way with new implications. For a judge to understand the social context of the case and the individuals before him or her, it can be detrimental to the

³ Legal Aid Ontario, March 29th, 2022, Diversity and Inclusion: An important piece of the “access to justice” puzzle. <https://www.legalaid.on.ca/2019/10/16/diversity-and-inclusion-an-important-piece-of-the-access-to-justice-puzzle/>

⁴ Department of Justice Canada (2019), On the Review of Canada's Criminal Justice System, <https://www.justice.gc.ca/eng/fund-fina/gov-gouv/aid-aide.html>

⁵ Department of Justice Canada (2019), On the Review of Canada's Criminal Justice System, <https://www.justice.gc.ca/eng/fund-fina/gov-gouv/aid-aide.html>

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

outcome of their case.¹⁰ Third, she believes that the bench needs to be reflective of the diversity of the population in Canada. All legal issues that come before the court are complex in nature. The problems are polycentric, and she refers to a metaphor by Professor Lon Fuller and the idea of a spider web to describe such problems. Not only does one need to sort out the different and intersecting strands of the web, but one must also proceed knowing that to pull one strand is to set up a new complex dynamic that impacts on the other strands. Sometimes subtly, sometimes dramatically.¹¹

Canada's Legal Justice System

One of the first legal aid programs in Canada was implemented in the 1950s in Ontario. It was created for people who needed legal help, and they were essentially all accepted upon an application form and sent to local committees for assignment of lawyers to eligible clients.¹² Though with minimal changes over the years from the 1960s through the 1990s, the Ontario Government and Law Society of Upper Canada decided that the current plan was not adequately meeting the demand for legal aid. They opted and chose to run a system similar to the one in England and Scotland where private lawyers represent clients on legal aid certificates and are paid for their services on the basis of fair compensation for their work. However, this program has continued to fall short in providing equal access to justice for the poor.¹³ Though it was seen to provide significant benefits to financially needy people, it did not ensure legal service to all who need it. The plan had serious gaps because often the individuals who needed assistance were not even aware of their legal rights and, if they were, they were not always willing to seek out assistance for those rights. Consequently, the plan in reality mainly helped those in need of serious legal help for criminal defenses. And though we can see individuals on the poorer side experiencing criminal charges, the bulk of inquiries or help needed stems from lower income families seeking legal advice for family and civil law disputes. An example being tenants' disputes, and though they cost very little in terms of dollars needed for legal advice, these situations often become a matter of survival for these families. These gaps in the system also failed to address the lack of proper resources to deal with disputes, such as unemployment insurance, welfare, pensions, immigration, workmen's compensation, all issues that require not only legal advice, but also effective advocacy.¹⁴ The cutbacks in that legal aid program were due to the changing economy in Canada, where money and resources were reallocated to promote growth in the economy, shifting its focus away from legal aid benefits. Fast forward to the legal aid system we have in Canada today, we see it is almost entirely based on an individual's income level.

¹⁰ Ibid.

¹¹ Ibid.

¹² Community Legal Clinic/ Legal Aid Ontario March 31st, 2022, <https://www.communitylegalclinic.ca/about-us/history-of-legal-aid-in-ontario/>

¹³ Ibid.

¹⁴ Ibid.

Today, and specifically in Ontario, to qualify for legal aid, you essentially need little, or no money left after you pay for your basic necessities such as food and housing to qualify. However, for you to qualify for Legal Aid Ontario (LAO), they will consider both your case and your finances to determine eligibility, and only then will you receive a legal aid certificate which can be used as a type of voucher to hire legal aid. Of course, they offer other services, such as free legal information, advice, and support from lawyers to explain what you need to fill in, in terms of documentation, and when you must appear in court, etc. But one of the current problems for people seeking legal aid is that not all lawyers accept legal aid work. So, an individual wanting to use their legal aid certificate must find eligible lawyers and firms willing to do the work. This can be very difficult depending on where you live, as the closest firms may be out of your living district, and if you don't have access to a vehicle, there may be no public transportation route to take you where you need to be. However, it is important to note that many types of individuals can benefit from legal aid services now. For example, people accused of a criminal offense, single parents seeking child support from ex-partners, victims of domestic violence, parents seeking custody, support or access of children, people who identify as First Nation, Metis or Inuit, people who are experiencing mental health or addiction issues, and refugees seeking Canadian immigration status or immigrants facing deportation.¹⁵ The changes in the legal aid system have developed to create a more accepting and understanding system for the individuals it is designed to help. Although regardless of all the help legal aid can provide, it still has not addressed the growing gaps in justice, and we can see across Canada people going to court on their own without a lawyer and many people giving up on seeking justice through the legal system.¹⁶

How to Foster a More Inclusive Justice System in Canada

Now that we have addressed some of the underlying issues in the Canadian justice system and who they greatly affect, it is important to address how we can create change and see Canada propel in a new way when it comes to fostering a more inclusive justice system for all. It has been noted that marginalized groups such as black and indigenous peoples are greatly affected by the biases in the legal system, but what is a way in which we can tear down this barrier to create a fair justice system? For starters, we need to reevaluate how and who can apply for legal aid programs. It is clear that there is a chunk of the population that lacks access to such an essential service. There needs to be a country-wide initiative that outlines the rights of those who are eligible for legal aid and encourages them to seek help if they need it. The Provincial and Federal Governments have to do a better job at educating people in Canada where and when to seek legal help. Initiatives can include school programs where students are educated on their rights, so when

¹⁵ Legalline March 28th, 2022, <https://www.legalline.ca/legal-answers/what-is-legal-aid-and-who-is-eligible/#:~:text=To%20qualify%20for%20legal%20aid,if%20you%20own%20a%20home.>

¹⁶ The Canadian Bar Association, Equal Justice Balancing the Scales. March 27th, 2022. <https://www.cba.org/CBA-Equal-Justice/About/The-Issues>

they graduate and if they need to seek legal counsel, they have a baseline of how and where to find it. In addition, it can be done through school assemblies where parents are invited and educated on the topic by professionals. This would be especially beneficial in lower income communities and school districts where many of those people who would seek out legal aid can be reached. Next, there needs to be a change in the eligibility criteria for legal aid, especially a cost effective one that can reach the people who fall within the gap. Currently, individuals can receive legal aid across Canada if their income is under \$20,000. Yes, this is a good baseline, however it fails to reach the individuals and families that make above \$20,000. Expenses range from family to family and, though someone can be making \$50,000 a year, the average salary for a Canadian, that does not leave a lot of wiggle room for legal expenses after a mortgage payment, car payment, groceries and other household expenses, as a single person or family. The creation of a plan that focuses on helping people in legal troubles ranging from estate to criminal cases can be developed to ensure that help is being reviewed before someone is asked to cut a cheque. It is possible for Canadians to see a legal benefit with their employers that covers a portion of legal expenses similar to their supplemental health insurance. Just to give an idea of the accessibility to legal aid in Canada, Alberta's legal aid is not available to anyone making over \$20,000 a year, Ontario's threshold is \$18,000,¹⁷ British Columbia's is \$19,500, and Quebec's is \$22,750. This clearly outlines that there is an entire class of people who doesn't even qualify for legal aid. The comparison can be made that those people trying to obtain legal assistance in Canada is not much different from those people in the United States who are trying to get medical coverage but cannot afford it.

Next, we can drive for a shift in those who practice the law in Canada, being such a diverse country. We need to see better representation of those who are marginalized in the system. For instance, existing research demonstrates that, while half of law students are females, just over a third of active lawyers are women. Further, the percentage of lawyers in Saskatchewan, for example, who identify as indigenous, is significantly lower than the percentage of the overall population. Not to mention, there is not data on how many lesbian, gay, bisexual, transgender and queer lawyers are in the profession. Current barriers to the legal profession for equity seeking groups exist, as do questions of how to foster an inclusive justice system by ensuring the legal profession is representative of Canadian society and thereby meets its wide-ranging needs.¹⁸ Being able to foster an inclusive justice system means ensuring that inclusion is a practice that is actively developed and maintained. There is this idea of psychological experience of inclusion, which is similar to that of the imposter syndrome, where an individual feels they are inadequate or not

¹⁷ Graveland., B December 6th, 2019, A broken System: Canadians can't afford lawyers but don't qualify for legal aid. <https://globalnews.ca/news/6263618/a-broken-system-canadians-cant-afford-lawyers-but-dont-qualify-for-legal->

¹⁸ Johansen-Hill, Z & Owen, C (2019), Diversity and Inclusion in the legal profession <https://law.usask.ca/documents/research/deans-forum/Topic-1---Diversity-and-Inclusion-in-the-Legal-Profession---Policy-Discussion-Paper---Final.pdf>

worthy enough to be in their position.¹⁹ This can be seen in the legal profession as individuals from equity seeking groups face the pressure to not only achieve a high level of competence as a lawyer, but also to fit into firm culture or to hide parts of their culture or identity. With doing so, this contributes to the slow pace of the legal profession in increasing diversity.²⁰

¹⁹ Johansen-Hill, Z & Owen, C (2019), Diversity and Inclusion in the legal profession
<https://law.usask.ca/documents/research/deans-forum/Topic-1---Diversity-and-Inclusion-in-the-Legal-Profession---Policy-Discussion-Paper---Final.pdf>

²⁰ Ibid

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