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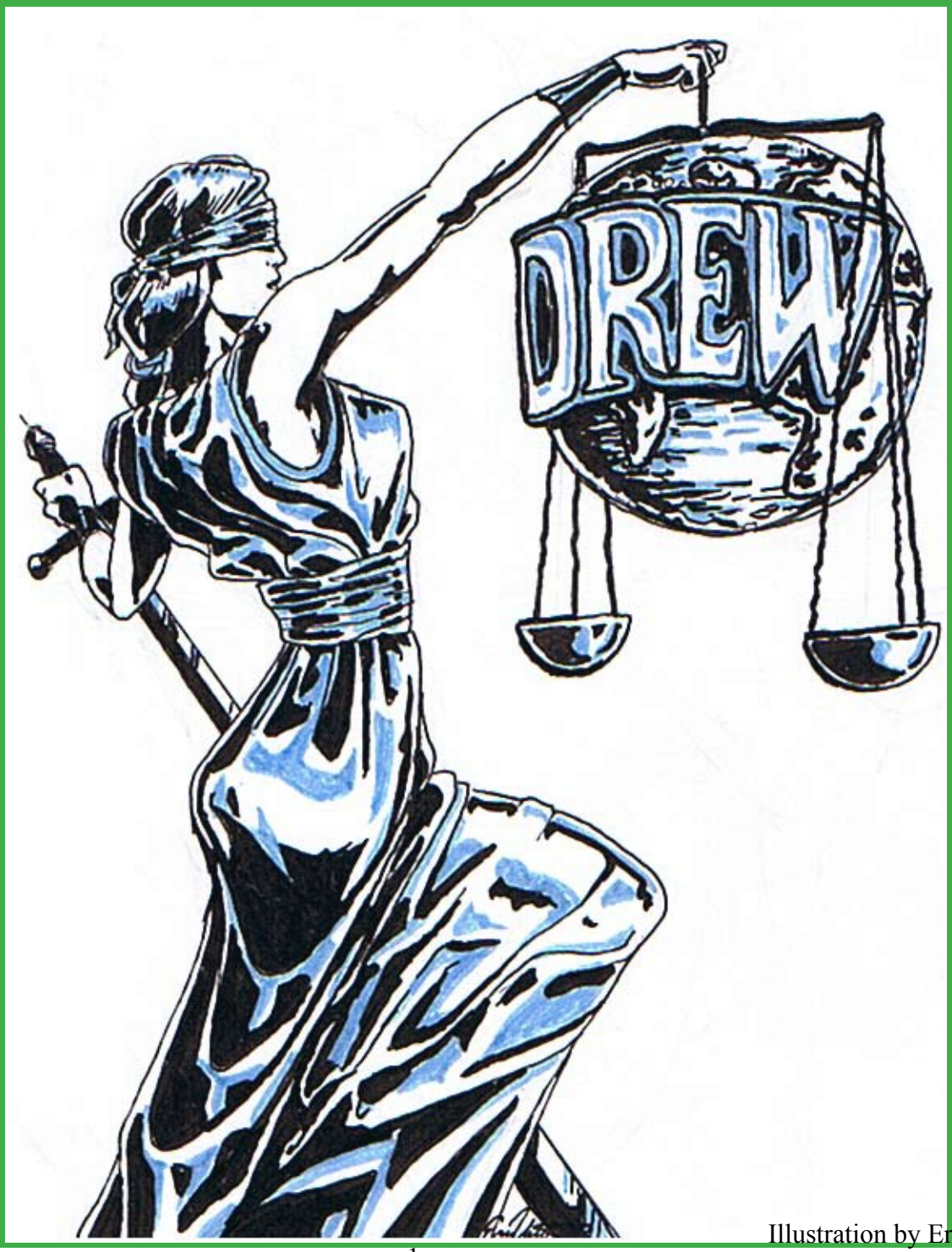

Illustration by Eric Valosin

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The Struggle with Immigration Reform

Robert Wnorowski

Welcome to America!

But how welcoming is America to foreigners? Immigration into the United States has existed for centuries. Europeans, Africans, Asians, and most recently Hispanics have all immigrated to the U.S. to seek asylum or to work toward a better life. Nonetheless, the increase of immigration throughout the years has given rise to various forms of restrictions—some harsher than others. Since the 1900s, the efforts of numerous actors and pressure groups have forced America's immigration policies into a phase of incremental reform. Despite the efforts of various groups, immigration policy has evolved incrementally—if at all. Therefore, the need for an innovative policy is necessary.

How has immigration changed?

Looking at immigration trends throughout the years is important in understanding the incremental changes that immigration and its policies have undergone. The U.S. performed the first census in 1790 and the results showed that nearly one million blacks and four million Europeans resided in the U.S. (Encyclopedia Britannica). From 1820 to 1975, roughly 47 million people came to the U.S., which translates into 8.3 million from the western hemisphere, 2.2 million from Asia, and 35.9 million from Europe (xreferplus). During that time, the top sources of immigration were Germany (6.9M[1]), Italy (5.2M), Ireland (4.7M), and Mexico (1.9M) (xreferplus). Overall, the Euro-dominated trend maintained equilibrium, despite a drop in immigration during the Great Depression and WWII (xreferplus).

However, the past immigration trend faced a large and rapid change in 1976 after Mexico became the leading source of immigration (720K), followed by Vietnam (425K) and the Philippines (379K) (xreferplus). The fact that previously leading European states did not make the top ten shows the degree of change. In all, 60 million people immigrated to the U.S. during the 18th and 19th centuries (Encyclopedia Britannica).

Large influxes of immigrants and Mexico's current dominance in immigration rankings continued in the coming years and currently exist. Strikingly, the increase of Hispanics, defined by the U.S. Census Bureau as a "person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin," rose by nearly 60% from 1990 to 2000. The rate increased again from 35.3M in 2000 (Encyclopedia Britannica) to 38.8M in 2002 (U.S. Census Bureau). By 2003, there were 39.9M Hispanics—13.7% of the U.S. population—and the U.S. Census Bureau projects that by 2050, there will be 102.6M Hispanics, accounting for nearly a quarter of the U.S. population. Currently, immigrants make up

1 "M" stands for million and "K" stands for thousand.

12.1% of the U.S. population (Encyclopedia Britannica). If the Bureau's projections are correct, Hispanics will more than double the current number of immigrants in the U.S. In turn, they will become the leading "minority" group in the U.S. Based on the "punctuated equilibrium" concept of political scientists, Frank Baumgartner and Bryan Jones, one can argue that such a sudden burst in immigration, which was fairly at equilibrium, has forced pressure groups to voice out concerns. This puncture has led the government and its agencies to take action by creating, adopting, implementing, and enforcing immigration restrictions.

What are the problems and politics surrounding immigration?

Before bureaucrats implement an immigration policy to combat the problem, researchers and analysts need to discover the core reasons for the influx of immigrants into the U.S.—especially Mexicans from across the border. Political scientists, Wayne Cornelius and Marc Rosenblum, believe the answers can be divided into rational actor approaches and structural factors.

In rational terms, Cornelius and Rosenblum argue, "When the returns to labor are sufficiently high in foreign markets, such that the expected increase in wages exceeds the cost of migration, rational individuals choose migration" (100). Therefore, if immigrants feel their financial situation would be better in America, it is only rational to cross the border in order to reach those better wages. This is a simple case of maximizing one's benefits while reducing one's costs. In 2000, Mexicans with five to eight years of schooling earned $11.20 per hour in the U.S., whereas they were earning $1.82 in Mexico (Encyclopedia Britannica). It is reasonable for a Mexican to risk the $1.82 in hopes for earning the $11.20 in America.

It is a common saying that immigrants do jobs Americans do not and will not do: In 2000, 6.5% of Mexican immigrants worked in farming, fishing, and forestry compared to 0.5% of the native workforce (Encyclopedia Britannica). If immigrants had not filled those positions, the fields of farming, fishing, and forestry would be left without workers. Therefore, immigrants have nothing to lose by coming to America. The benefits outweigh the costs of migrating to the U.S. Unless the U.S. government finds a way to counter or address this, immigrants will continue to enter the U.S. In short, the U.S.-Mexican wage gap is among the top reasons for "undocumented migration" from Mexico to the U.S. (Cornelius and Rosenblum 100).

In terms of structural factors, the global economic structure lures immigrants to the U.S. The globalization of economic markets is said to lower the cost of migration by creating "new linkages between migrant-sending [Mexico] and migrant-receiving [U.S.] states"

(101). Therefore, as the world becomes globalized, it is easier for the migrant-receiving nation to lure in immigrant workers by offering "better" salaries and other welfare services. Additionally, the global economic structure makes it simpler for foreigners to enter a country because countries are increasing their economic dependency on one another. Thus, maintaining an economic relationship between the U.S. and Mexico aids in the increase of immigration.

According to Cornelius and Rosenblum, the following are among the top consequences of immigration: overpopulation, low immigrant education levels harm school systems, low contribution (0.2%) to U.S. GDP, over dependence on social welfare services, security threats post 9/11, and fiscal drainage by using more services than contributing via taxes (103-104). In all accounts, Cornelius and Rosenblum paint the immigrant population as "free-riders," who come to the U.S. to benefit from the freedoms and services provided. Because of their low education and lack of stable finances upon arrival to the U.S., immigrants contribute less (via taxes and skills) than they obtain. Hence, it is the idea of a better life that lures immigrants into the U.S., and U.S. welfare services that assure their wellbeing.

Ways to define the problem of increased immigration.

In addition to the reasons for the sharp increase in immigration, researchers need to define the underlying problem accordingly. Increased immigration can be defined as an economic concern, since immigration has made up about half of the job growth in the '90s and added 2.3 million new workers (Encyclopedia Britannica). However, as previously stated, most immigrants end up using the U.S. rather than contributing to it. Furthermore, political scientist Nathan J. Kelly considers increased immigration as increasing inequality because immigrants earn less and are less skilled than Americans (874). By luring in immigrants, the United States decreases financial equality, for immigrants have to work harder to make a living.

When addressing and trying to fix economic concerns, politicians stumble into what political scientist Deborah Stone calls a "policy paradox." In her book, Policy Paradox, she writes, "Paradoxes are nothing but trouble…something cannot be two different things at once…a paradox is just such an impossible situation, and political life is full of them" (Stone 1). According to political scientist Peter Andreas, the U.S. is doing exactly what Stone says is impossible to do. The U.S. is policing its borders while promoting U.S.-Mexican economic integration via the North American Free Trade Agreement[2] (Andreas 593). Therefore, according to Andreas, "…the apparent paradox of U.S.-Mexico integration is

2 NAFTA is a 1992 trade pact that gradually eliminated most tariffs and trade barriers on products and services passing between the United States, Canada, and Mexico—creating a free-trade bloc (Encyclopedia Britannica).

that a barricaded border and a borderless economy are being created simultaneously" (593). The U.S. needs to determine whether a fenced and constantly monitored border can coexist with a "borderless economy" (593).

Immigration can also be defined as a social (civil rights) issue, in which it is vital to protect the rights of the immigrants—regardless of legal/illegal status. According to the New York Times article, Judge Ends Immigration Rule, the Immigration and Naturalization Service[3] tried to ban foreign homosexuals from entering the U.S. (B8). Such a violation of civil rights was struck down by the courts on the basis that the rule "violated the constitutional rights of free speech and association for homosexuals" (B8). Although such a violation happened 25 years ago, it demonstrates the importance of protecting civil rights when creating immigration rules. As it will be described later, many of the earlier immigration policies were racist and restrictive based on nationality. When policy is created, it is vital to ensure it does not become anti-Hispanic or anti-immigrant.

Lastly, immigration can be viewed as a defense (safety) matter, especially after extreme focusing events such as the 9/11 terrorist attacks. As prior history has shown, any time an attack on U.S. soil occurs, whether it is by Muslim radicals or by the Japanese during WWII, the issue of immigration and security arises. According to political scientist Christopher Rudolph, the 9/11 attacks were a major focusing event that brought to light the connection between international migration and security. Rudolph wrote, "… all 19 of the terrorists exploited loopholes in existing laws to infiltrate the United States" (603). The 9/11 attacks demonstrate that security does not only mean protection from international threats, but also protection from internal threats brought about by foreigners. Thus, to counter the punctured [security] equilibrium (Baumgartner and Jones) caused by 9/11, the U.S. enacted the PATRIOT Act, which increased inspection of visa applications and enforced borders (Rudolph 616). Additionally, according to Andreas, the reason for protecting and monitoring borders is "to confront a perceived invasion of 'undesirables,' particularly illegal immigrants, drug traffickers, and other clandestine transnational actors" (591). It is after a catastrophic focusing event, that the U.S. reexamines the issue of immigration and security. Ultimately, those three lenses of viewing immigration (social, economic, and defense) need to be addressed in order for Congress to pass a policy that satisfies the different actors involved in immigration policy reform.

Who is involved?

With an issue like immigration policy, it is good to view the issue through the

3 INS is a former agency of the Justice Department that administered and enforced immigration policies. It ceased to exist in 2003 after being combined into the Department of Homeland Security (xreferplus).

lense of the group theory because there are numerous active actors involved. One of the first mobilized groups that attempted to influence immigration policy reform was the Immigration Restriction League of 1894, which was composed of Boston lawyers, professors, and philanthropists (xreferplus). The group was concerned with the large increase of immigrants and urged Congress to adopt a literacy test for immigrants. Congress passed it in 1897; however, President Grover Cleveland vetoed it under the basis that it violated civil rights (xreferplus). That was 1897. Today, there are Americans pushing for similar legislation by making English the official language, or requiring immigrants to be fully knowledgeable of the English language before becoming citizens. Such concepts that existed over 110 years ago still exist today. Hence, people's perceptions of immigrants have only incrementally evolved, as have policy ideas.

Anti-immigration groups, such as NumbersUSA, are vocal about stopping immigration. Cornelius and Rosenblum wrote, "Contemporary anti-immigration groups frequently emphasize ecological capacity and national-identity concerns" (107). These groups argue that the U.S. is already overpopulated. Additionally, they stress the importance of preserving our American culture and ideals. "America for Americans" has become a common motto/mission for such groups. Civil liberties organizations such as ACLU, on the other hand, push for pro-immigration policies (107). These groups want to protect the rights of the immigrant. In turn, they are strong advocates for limiting restrictions on immigration. Furthermore, they stress how mass deportation and the current policy proposals do not address the issue of keeping families intact (MPI). For example, it becomes a thin line when the parents are Mexican while the two-year-old boy is an American citizen by birth. Anti-immigration groups might argue that the parents brought the issue upon themselves by illegally sneaking into the U.S. However, the idea of breaking up families by sending the parents to Mexico, or also deporting the two-year-old American citizen is a social concern that has not been addressed sufficiently by the federal government.

Religious groups, especially the Roman Catholic Church, are also pushing for fair immigration reform. Cardinal Roger M. Mahoney of the Los Angeles Archdiocese has been vocal in the issue of immigration (B12). The Catholic Church, which preaches compassion, has held rallies to support immigrants who are fighting overseas—but do not have citizenship (B12). Mahoney said if immigrants are free to die for the U.S., they should be granted citizenship (B12). The presence of the Catholic Church is particularly influential in immigration reform regarding Mexico because Mexico is largely Catholic.

Economic interest groups

like worker's unions have also been vocal on this issue. According to, Restricting Immigration, a 1904 New York Times article, president of the United Mine Workers John Mitchell publicly stated, "No matter how decent and self-respecting and hard-working the aliens [are], they are invading the land of Americans…America for Americans should be the motto…" (6). However, current labor unions choose to organize immigrants as "new members rather than persist with efforts to block their entry…" (Cornelius and Rosenblum 106-7). Unlike before, the labor movement is now calling for amnesty for illegal immigrants and an end to most sanctions against employers who hire them (Greenhouse A26).

Political parties are an interesting case when looking at immigration policy. Aside from the typical notion that Republicans support the business sector, whereas Democrats support "the people," there is no clear division between both parties on this issue. Mexican immigration has skyrocketed and remains at an alarming rate. Political parties, however, have not taken a direct stance, and instead are playing on both sides of the fence. Both Democrats and Republicans want to keep the immigrant vote, especially the Hispanic vote. In turn, they are attempting to create policies that appease both immigrants and "patriots." Because both parties are playing politics, "…policy shifts are likely only when immigrant communities become swing districts at the national level, causing parties to pursue pro- or anti- immigration voters" (Cornelius and Rosenblum 107). For example, a Republican might be pro-immigration if the majority of his district is immigrant, while a Democrat might be less pro-immigrant, if his entire district is composed of white nationalists (and vice-versa).

Ultimately, the voices of the aforementioned groups and many others are vital when creating a constitutionally fair and all-encompassing immigration policy. The interests of businesses, unions, immigrants, citizens, and politicians need to be met. Cornelius and Rosenblum wrote it best, "This diverse set of group demands produces cross-cutting cleavages…" (107). Overall, the cleavages that cut across party lines are the best approach to creating immigration policy.

Why some prior proposals worked and others failed?

According to Baumgartner and Jones, policies shift from "one apparent point of equilibrium to another such chimera, lurching from periods of relative stability during periods of intense change" (1053). Such policy shifts and incremental changes in policy (usually based on the time period) will become apparent after examining pre-2000 immigration policies. Hence, by applying the incremental theory, one can see the gradual process immigration policy has undergone, and the numerous overlaps within "newly" proposed policies.

Immigration legislation

began slowly in the 19th century. The Chinese Exclusion Act of 1882[4] was the first major immigration law restricting access into the United States (xreferplus). Although the Chinese composed 0.002% of the U.S. population, Congress passed the act to appease workers' demands and address concerns about maintaining white "racial purity" (xreferplus). The law eliminated Chinese immigration for ten years and made the Chinese ineligible for naturalization (xreferplus). Although the act maintained "racial purity," it was racist and unconstitutional. This reflects back to the problem of assuring civil rights when creating immigration policy.

A second attempt on immigration reform was the Immigration Act of 1924, which established an annual quota of 150,000 immigrants (Encyclopedia Britannica). Unlike the previous act, this one did not target one specific race or nationality. The quotas established for each country were based on the number of persons of a national origin, who were living in the U.S. in 1920 (Encyclopedia Britannica). The system of quotas once again violates the issue of civil rights by regulating how much of what race/nationality is allowed to enter. As a result, the policy was tweaked with the passing of the Immigration Act of 1965. The updated policy abolished the "discriminatory quotas" and substituted a system based on family preference (xreferplus). It allowed 170,000 people to enter from the Eastern Hemisphere and 120,000 from the Western, but relatives of individuals already in the U.S. were exempt (xreferplus). The policy, however, backfired as more immigrants started migrating to the U.S. (xreferplus).

In the '80s and '90s, policies were further "liberalized" when President Ronald Reagan granted amnesty to illegal aliens (xreferplus). During this time, the main policy was the Immigration Reform and Control Act of 1986, which imposed penalties on employers who hired illegal immigrants. However, the Act offered amnesty to those immigrants who had been in the U.S. since 1982 (Chiswick 101). According to Research Professor Barry R. Chiswick, presidents Ford, Carter, and Reagan cut across party lines to endorse the basic outline of IRCA (101). It passed for two reasons: to counter Congress' abolishment of the "braceros" program[5] (xreferplus) and to reduce the number of illegal immigrants who entered the U.S.—majority of who were Mexicans[6] (Chiswick 103). One of the major flaws of the act was that it did not penalize the illegal immigrants (113). Blanket amnesty is unfair to those immigrants who took the official and long path to citizenship.

4 In 1892, the law was renewed for another 10 years, and in 1902 Chinese immigration was made illegal (xreferplus). In 1943, it was finally repealed (xreferplus).

5 The "braceros program" was Congress's response to the requests of agricultural interests in the Southwest by allowing "temporary workers" from Mexico into the U.S. after 1952. The policy, ironically, led to an increase of illegal workers. It is viewed as an earlier form of a "guest worker" program (xreferplus).

6 93.9% of illegal immigrants to arrived (under this act) were ultimately apprehended (Chiswick 103).

Because IRCA and Reagan's amnesty policy did not solve America's problem of immigration (since it is still a problem today), the era of immigration restrictions has just begun.

Can 'current' proposals work?

There are post-2000 proposals floating around Congress regarding immigration. The top ones include 2005's H.R. 4437, 2005's McCain-Kennedy Bill (1033) and 2006's Comprehensive Immigration Reform Act (S2611), 2006's Secure Fence Act (6061), and 2007's STRIVE Act (1645). After reading key points of each proposal, one can tell that some ideas, such as temporary guest worker programs and English proficiency tests, trace back to the early and mid 1900s. This shows that immigration policy change is indeed incremental, and not necessarily innovative.

Table 1 below summarizes the five initiatives—, all which contain similar ideas. All aim to boost border control, but differ on the exact methods (wall, fence, border officers, and censors). Because border control solves the problem of defense discussed earlier, each bill has contained a plan addressing the issue. Moreover, out of the hundreds of bills proposed in Congress, the Secure Fence Act was passed by both chambers and signed into law by President Bush. This demonstrates that the one issue Democrats, Republicans, and the President agree on is a border fence. Hence, Rep. King's bill was made into law. However, the bills differ on what to do with immigrants and illegal immigrants. Whereas Sensenbrenner's bill takes a very strict approach regarding illegal immigrants and those who assist them, Specter and Gutierrez are less penal. In turn, their bills propose initiatives that integrate immigrants into the U.S. workforce. However, none of the bills below addresses the issue of dividing families, which is among the top social issues of immigration. It is also interesting to note that during the 109th Congress, Republicans dominated immigration policy reform as seen by the bill sponsors. Now, during the 110th Congress, one of the first bills out (STRIVE Act) is by a Democrat. Despite numerous proposals, none is ground breaking. Each Bill Simply builds upon the previous draft.

The 'better' option: Can it work?

Presidents have set the agenda regarding immigration policy in prior years. For Democratic President Clinton, border control was a low priority; as a result, he recommended reducing Border Patrol agents (Andreas 594). In turn, Republicans blasted Clinton. Senator Alan Simpson said, "The first duty of a sovereign nation is to control its borders. We do not…" (594). As a result, by 1993, Clinton adopted a Republican proposal and increased the number of agents to 600 (594). Although the recent Secure Fence Act appeases Simpson's concern by giving the U.S. more control over its borders, more must be done to fix the economic and social aspects of immigration.

H.R. 4437 (2005)
Rep. James Sensenbrenner [R-WI] Passed in House by vote of 239-182 (with 13 not voting) construct 700 mile barrier along the U.S. Mexican border expand electronic verification of Social Security numbers eliminate electonic verification of Social Security numbers Eliminate the visa lottery program “Illegal Presence” in U.S. is an aggravated felony those who assit illegal immigrants are subject to 5 years in prison 92% Republicans Supported 82% Democrats opposed Never became a law
McCain-Kennedy 2005** Sen. John McCain [R-AZ] legalization via temporary 6 year visa to illeal immigrants, and after they pay back taxes and a fine, and prove English profliency, they can apply for permanent residency amends IRCA to reimburse states for pre-convcition fees of illegal immigrants improve border controls reimburse hopsitals for providing care to illegal immigrants Never became a Law
S. 2611 (2006)** Sen. Arlen Specter [R-PA] controls borders by increasing entry inspectors by not less than 500 increase border patrol by 2,4000 (‘07-’11) vitrual fence, collect, alien fingerpirnt, tunnel prevention, surveillance unlawful to hire illegal immigrants, temporary guest worker program (3-yr admission with one 3-yr extension Passed Senate 62-36 (Aye- 23R, 37D, 2I) Nay-32 R, 4D) (Didn’t vote- 2D)

Secure Fence Act (2006)**
Rep. Peter King
[R-NY]

-take control of borders via surveillance with personnel and
technology like unmanned aerial vehicles, sensors, satellities, radar, and camera

-create checkpoints, all weather access roads, vehicle barriers

- 2 layers of reinforced fencing, lighting, barriers, and sensors

Passed HOUSE 283-138

(AYE-219 r, 64 d)

(Nay- 6R, 131D, 1I)
(Didn't vote 5R, 5D)

Passed Senate
Signed into Law

Strive Act
(2007)**
Rep. Luis Gutierrez
[D-ILP
-increase border security

mandates the Dept. of Defense Share surveillance equipment with the Dept. of Homeland Security

-Utilize unamnned aerial vehicles for surveillance

-mandate the U.S. Gov. to cooperate with Mexico
travel documents to include biometric data
tougher crime penalties

temporary visa of 3 yrs. and one time 3-yr. extension
earned citizenship (work for 5 yrs. pay a fee, become English proficient) 6 yr. visa for illegals who made preence by June 2006

Introduced Still Active

*Data from Joel S. Fetzer's Why Did House Members vote for H.R. 4437?
**Data from the Library of Congress <http://www.loc.gov/index.hml>

Republican President George Bush has taken a leading role in setting the agenda by proposing his own comprehensive immigration plan during his State of the Union Address to Congress. Although it is far from perfection, Bush's Plan for Comprehensive Immigration Reform should serve as the model from which congressional representatives attempt to curb increasing immigration rates. According to the White House website, Bush believes his plan can be simultaneously lawful, economically dynamic, and welcoming. Bush's plan calls to secure borders, enhance worksite enforcement, create a temporary worker program, fix the issue of illegal immigration, and promote assimilation.

Border security is a top priority in Bush's plan. The White House website said, "We have more than doubled border security funding from $4.6 billion in FY2001 to $10.4 billion in FY2007. We will also increase the number of Border Patrol[7] agents by 63%…to nearly 15,000 at the end of 2007." Furthermore, there will be 18,000 agents by the end of 2008. To keep up to date with technology, Bush's plan also calls to improve communications, expand manned/unmanned aerial vehicles, improve detection and fencing technologies, add vehicle barriers, fix patrol roads, and add lighting (White House). Barrier and detection technologies will assist the agents by allowing them to catch illegal immigrants more efficiently[8]. Once caught, illegal immigrants will not be simply released, but placed in special housing units, until their government officials are contacted (White House).

Employer accountability is another component of Bush's plan. To prevent employers from taking advantage of illegal immigrant workers, Bush's plan calls for stricter fines for employers who hire illegal immigrants (White House). This portion of Bush's plan would help address the social issue of exploiting workers by paying them less than average. It is a way to look out for the wellbeing of the immigrant. Bush's reforms in the workforce appear to be effective because more than 4,300 arrests have been made at worksites in 2006—seven times more than in 2002 (White House). Therefore, if effectiveness is measured by arrests, then this component has been an effective part of Bush's plan. To help businesses verify the legal status of their employers, Bush also calls to create tamper-proof ID cards for every legal foreign worker (White House). This card would be uniform across the U.S. and in turn, corporations would have no excuse in unknowingly hiring an illegal immigrant (White House).

Bush recognizes that immigrants play a role in the U.S. workforce and economy. In turn, it might be detrimental (to businesses and the economy) to seize and deport all illegal

7 6,000 National Guard units are also assisting by operating surveillance systems, analyzing data, installing fences, and building patrol roads (White House).

8 In this instance, efficiency could be measured by how many illegal immigrants agents have caught in a particular time.

immigrants. To meet the needs of businesses, immigrants, and the U.S. economy, Bush proposed creating a temporary worker program—a variation of an idea that has existed for several decades (White House). According to the White House website, Bush's temporary worker program would have three principles: Americans have priority over guest workers, the program is temporary, and the numbers of guest workers allowed into the program would depend on the economic market (White House). The workers under temporary status would pay a one-time fee to register, abide by the rules, and return home after their period expires (White House). There would be an opportunity for renewal, and in the future, only people outside the U.S. may join the temporary worker program (White House). Hence, employers would be allowed to hire guest workers only when Americans do not want to fill the job. Finally, when the economy is doing well and workers are needed, there would be a larger number of guest workers than there would be if the economy was sluggish and jobs were scarce (White House).

The fourth portion of Bush's plan addresses amnesty and mass deportation. The White House website said, "We must bring undocumented workers already in the country out of the shadows." Though Bush shares Reagan's ideology, he refuses to pass blanket amnesty for everyone. Bush believes amnesty would invite further lawbreaking, and would be unfair to immigrants who spent years waiting to become citizens legally (White House). In turn, Bush proposes a "rational middle ground," which includes fining those who entered illegally or overstayed their visas (White House). Additionally, illegal immigrants would have to learn English, pay their taxes, pass a background test, and hold a job for several years before being *considered* for legal status (White House). Although it appears to be an extensive concept, it might not appeal to illegal immigrants who only want to find work in the U.S. He or she will not feel inclined to come out of the shadows in order to be fined, forced to learn English, forced to pay taxes, et cetera—just to be considered for legalization.

The final component of Bush's plan involves assimilation, and aims to appease the "patriots" who argue that America is for Americans. Bush believes, "Every new citizen has an obligation to learn the English language and the customs and values that define our Nation, including liberty and civic responsibility, appreciation for our history, tolerance for others, and equality" (White House). Such a component to Bush's plan makes sure immigrants know the values that are associated with America. By knowing and accepting American values, immigrants can add to the unity of this nation.

The president's role as an agenda setter ends there. It is now in the hands of Congress to disregard or heed the president's advice, formulate a policy, adopt

it, and implement it. Congress began to implement the president's proposal on immigration by enacting the Secure Fence Act, which addressed the U.S.'s broken borders. Whether through deportation, amnesty, or variations of a guest worker program, it is now up to Congress to formulate a policy that addresses the illegal immigrants currently in the U.S.

Can the 'better' option work?

Bush's plan addresses a large portion of the problems and concerns mentioned previously. It benefits the business sector, addresses components of civil rights, takes into account current citizens, and addresses security. Additionally, because bills proposed contain aspects of Bush's plan, such as border security and a temporary guest worker program, the plan represents the interests of both parties. Bush's plan would solve security issues by building a border fence. By not allowing amnesty, it is fair to immigrants who took the lengthy and legal means to citizenship. By establishing a path to citizenship, the plan gives illegal immigrants the opportunity to become legal immigrants and then citizens. Additionally, the guest worker program aids the immigrants in starting better lives for themselves. It also looks out for corporations who depend on foreign workers to fill jobs Americans do not want. Therefore, Bush's plan appears ideal, for it fixes the flaws of previous policies and addresses social, economic, and defense issues discussed earlier.

The plan, however, fails to be all encompassing. It appears slanted in favor of Mexicans and South Americans. How will a fence on the southern border prevent illegal immigrants from Poland, Iraq, Malawi, or China to enter the U.S.? Will the worker program allow people from Brazil, Ireland, Ghana, India, or Hungary to temporarily work in the U.S.? The media could be blamed in part for framing the issue as a problem with 'illegal Mexican immigrants; however, it is Bush's job to explain the ways his plan applies to non-Mexican and non-South American countries.

There are also persons who consider the U.S.'s preferential treatment of certain immigrant groups throughout the years as acceptable and beneficial. Former top House Democratic aide on Latin American issues, Pamela S. Falk said, "The lesson to be learned is that U.S. immigration policy has to make choices. To choose one group over another is a harsh reality, yet it's the fuel for the engine that drives the American economy and American foreign policy" (Schmitt WK5). If Mexican workers help the U.S. economy, more than German immigrants, then according to Falk's statement, Mexicans should be the preferred immigrant group. Additionally, if allowing more Mexicans than Germans enhances the U.S.'s foreign policy with Mexico, then preferential treatment makes sense. Although Mexican immigrants constitute a larger portion of the workforce

than German immigrants do, for the sake of equality, immigration policy should encompass all races and nationalities. Until the looming questions of equality are addressed, opposition to Bush's plan will exist.

Kathleen Newland, co-director of the Migration Policy Institute in Washington, finds Bush's plan a "small step in the right direction," but one that falls short (MPI). According to her, it does not address family reunification. She wrote, "The waiting period for legal entry by the immediate family of legal permanent residents (green card holders) from the most common countries of origin stretches for years" (MPI). If a husband, who holds a green card, is in the U.S., it might take several years for his wife to legally enter the U.S. This becomes unbearable to most people, and therefore they opt to enter illegally. Newland proposes that Bush admit close relatives of legal permanent residents "expeditiously" (MPI). This would address the remaining social concern that was previously discussed.

How effective is the American policymaking process regarding immigration?

Baumgartner and Jones have stated that policies and policy-making processes shift from "one apparent point of equilibrium to another such chimera…" (1053). It is apparent how immigration policy has shifted throughout the years. From racially restrictive policies to blanket amnesty to Bush's comprehensive plan, the policies changed incrementally, but the ideas have not. Proposals for blanket amnesty existed during Reagan's administration and still exist today. Variations of guest worker programs can be traced back to the "braceros" program during WWII. Cornelius and Rosenblum wrote that it is "no small irony…that today's strongest migratory systems were initiated through deliberate, government-sponsored recruitment of 'guest workers'…" (102). Has the U.S. learned its lesson? Will Bush's guest worker program also entice more people to migrate to the U.S.? That is a question only time will tell because even if immigration policy were enacted next week, it would take years before an accurate evaluation could be made. Kelly said it best when it comes to immigration policy, "Once a law is enacted, it takes time for it to be initially implemented. Some laws take effect quickly while the full implications of other laws are phased in over years" (874). Implementation via our bureaucratic agencies will take several years to iron out kinks—to assure the policy is plausible and cost efficient. It is not cost efficient to instill a policy that costs billions of dollars if the benefits are too minute to calculate. To prevent the flaws of previous policies, controlled implementation (great precision in the policy, great oversight of the policy) is the best method. A vague policy would create loopholes as to who can and cannot migrate, while poor

oversight might lead to improper implementation.

Ultimately, immigration policy is an issue that needs immediate attention. However, its gradual evolution appears to not be working. An innovative and comprehensive policy that addresses all concerns needs to be created. To do so, the interests of all pressure groups need to be addressed. Working with pressure groups, and allowing them to make recommendations can help create an immigration policy that is fair and all encompassing. Adopting Bush's plan to control borders and allowing immigrants to work toward citizenship can function as a temporary bandage to the problem. Nonetheless, it might take an unexpected focusing event to trigger a puncture in the U.S.'s current immigration policy—overhauling the system entirely.

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Homosexuality & Toleration

By

Flora Manship

The following account comes directly from a document of the United States Supreme Court and describes the case of *Lawrence v. Texas* (2003):

In short, Texas police arrested two men for engaging in a private, consensual sexual act because a Texas anti-sodomy law prohibited it. On June 26, 2003, the Supreme Court ruled in favor of the petitioners, concluding:

> Petitioners' right to liberty under the Due Process Clause gives them the full right to engage in private conduct without government intervention. The Texas statute furthers no legitimate state interest, which can justify its intrusion into the individual's personal and private life. (*Lawrence et al v. Texas*)

This case relates directly and pertinently to the concept of tolerance as a practice in society. The governing majority of Texas acted intolerantly toward members of a minority group. The real gravity and importance of the situation lies on the fact that the law was used as an instrument to restrict members of society—infringing upon the two men's identities, autonomies, and rights to privacy. Toleration can be considered in terms of four different but related areas that pertain to the dilemma of this case: minority discrimination, privacy for all citizens, moral pluralism, and autonomy.

Minority discrimination plays a large role in explaining this case and in comprehending the necessity for tolerant society (rather than a discriminatory one). It is my opinion that discrimination is an outstanding problem in our society that stems from traditionalism and what Ross Harrison describes as "subjective offensiveness."

Traditionalism causes discrimination because humans naturally cling to history and their past to remove factors of uncertainty about the future. Racism is the most common example: African Americans still deal with being seen and treated as inferior to whites because of their history of enslavement. The discrimination from traditionalism creates a double-edged sword because blacks did not choose to be enslaved. On the contrary, oppression in the past is what causes oppression in the present and future. The oppressed people are only helpless pawns. By applying this concept to the case, homosexuality has been viewed as historically taboo. In a day and age that is supposed to be welcoming of diversity, discrimination against homosexuals is continuously fueled by the traditionalist view of homosexuality as a sinful act. In the *Bowers* case, plaintiffs attempted to find legitimate defenses for their condemnation of homosexuality in asserting traditionalism. Ironically, that argument became moot because the case dealt specifically with laws against gay sex. While traditionalism might explain why discrimination against homosexuals exists, it is a weak argument for justifying a law restricting the

sexual act. First, early American sodomy laws were not aimed directly at homosexuals but rather at non-procreative sexual activity. Second, laws targeting same-sex couples did not develop until the last third of the twentieth century. Lastly, of those laws, few were enforced against consenting adults in private. For the most part, the laws were aimed at condemning criminal acts of violence and non-consent. The traditionalist view's attempt to back up the law is not evident.

T.M. Scanlon also refutes traditionalism by stressing the importance of the evolution of mores (socially accepted morals) over time. Ideas that were "wrong" and completely socially unacceptable 100 years ago might be acceptable today, especially if society wants to pride itself on tolerance. Scanlon writes in opposition to the law, "What is objectionable about the 'legal enforcement of morals' is the attempt to restrict individuals' personal lives as a way of controlling the evolution of mores" (192). Scanlon would oppose the law restricting gay sex because it is an attempt by the government to restrict homosexuality.

"Subjective offensiveness" is another cause of minority discrimination. This term, coined by Ross Harrison, refers to a type of offensiveness that, for example, party A might believe that party B represents—although the actions of party B are not "offensive," or harmful to society (Harrison 14). Consequently, if party A could live life from the standpoint of party B, it might come to understand why party B acts the way it does. Harrison writes:

> There is how it looks directly to us [party A]; and here we see something noxious that, as such, should be stopped if we have the power. But we can also appreciate that it looks different from different positions; no doubt, it seems different to its perpetrator [party B]. (15)

However, party A cannot change what it is, or change the unpleasantness it feels whenever it sees party B. The problem that arises in society occurs when party A is the dominant social group. For example, in Texas, if party A represents all the heterosexuals that possess influence over the government, and party B is the group of homosexuals who wish to practice intimacy in private, then we can observe the scenario of the case. Party B is being punished for pursuing its God-given lifestyle because party A sees it as subjectively offensive, and party A has all the power. This depicts the situation in *Lawrence v. Texas*. Therefore, homosexuality is only subjectively offensive, because the practice does not harm society as a whole. Harm is the only characteristic that would qualify it as objectively offensive. Joseph Raz writes that J.S. Mill's Harm Principle, "asserts that the only purpose for which the law may use its coercive power is to prevent harm" (Raz 156). Furthermore, toleration of this intercourse does not undermine heterosexual intercourse in any way. Scanlon writes, "The advocacy of toleration denies no one their rightful place in

society. It grants to each person and group as much standing as they can claim while granting the same to others" (197). Simply put, I believe that only practices that are actually objectively offensive to society—rape, murder, hate speech—require laws preventing them. Laws restricting subjectively offensive practices, such as homosexuality, are an instance of minority discrimination in the United States.

Privacy is the next major component of this case to be considered relative to toleration. What is controversial about this case is that the government intervened and attempted to control the most private of human conduct—sexual behavior—in the most private of places—the home. While there is no definitive right to privacy written expressly in the Constitution, privacy is a right that has indeed come to be valued at the utmost level in our society—often considered a fundamental human right. Albert Weale writes:

> A society may go […] and say not only that the law should not restrict certain types of conduct, it should also positively protect the ability of an individual to choose his or her conduct in certain matters. The areas of life in which we might expect a special concern for individual differences are those where the meaning of the activity is especially significant for individuals. Sexual practices, the practice of one's religion and the ability to watch, read or listen in private to whatever one wants will be the core of that realm in which individuals should be allowed to pursue their own way of life. (17)

It is important to remember that the right to privately engage in a sexual act contributes to a person's identity. Weale's statement supports the idea that individual differences should be accepted and supported in all of those areas that contribute to identity. Furthermore, the opportunity for "subjective offensiveness" should not arise when these practices are conducted privately, because no one who becomes personally offended is ever forced to see them. Conversely, if anyone happens to see, he or she should not be able to take advantage of this invasion of privacy and indict the persons involved, as in the case we are considering. The sexual act in this case was conducted consensually and privately. There was no flagrancy about these men's actions. They were not attempting to incite a sexual rebellion or to undermine the power of the government. The only objective in their practice was to promote their own satisfaction and happiness, without harming anyone or forcing anyone to observe what they were doing. In *Becoming Free*, Emily R. Gill writes:

> When we protect rights to family relationships, we do so neither because of their direct contribution to the public welfare nor because we prefer traditional households but because these rights are so central to individual life and happiness. (197)

Society should protect rights to sexual relationships in a similar way. Privacy, in this instance, is

an inalienable right that was wrongly alienated.

The concept of moral pluralism is essential to the purpose of toleration, especially in the case we are considering. James Bohman makes two relevant points on this matter. First, he writes, "Any feasible ideal of democracy must face the unavoidable social fact that the citizenry of a modern state is heterogeneous along a number of intersecting dimensions, including race, class, religion and culture" (Bohman 111). This heterogeneity is a way of explaining moral pluralism in a society. The fact that Bohman suggests a democracy must face this pluralism also makes the point that the democracy must come up with a suitable way to deal with it. Bohman also writes, "The need for toleration in any modern polity, whether democratic or not, emerges from general facts of modern societies, in particular 'the fact of pluralism'[…] the diversity of moral doctrines in modern societies" (113). Toleration is the only way to address pluralism in a manner that is fair for all citizens. Homosexuality composes the said heterogeneity of society. Rather than respecting moral pluralism through toleration, the Texas state court abandoned the ideal of a tolerant society and adopted the vision of a partial society ruled by the governing majority.

What can be observed in this case, then, is what Raz calls "competitive pluralism," which "not only admits the validity of distinct and incompatible moral virtues, but also of virtues which tend, given human nature, to encourage intolerance of other virtues" (164). Is heterosexuality versus homosexuality an example of competitive pluralism? Considering that heterosexuality seems to encourage intolerance of homosexuality, in many instances, we can observe competitive pluralism here. However, competitive pluralism only asserts that one virtue tends to encourage intolerance of another. This fact itself could be deemed another cause of minority discrimination. However, members of a tolerant society should suppress this tendency and encourage tolerance of all virtues—as long as they are not objectively offensive to our society. Scanlon effectively sums up what "the tolerant person's attitude" should be when he or she recognizes moral pluralism in society and the necessity for toleration:

> Even though we disagree, they are as fully members of society as I am. They are as entitled as I am to the protections of the law, as entitled, as I am to live as they choose to live. In addition (and this is the hard part) neither their way of living nor mine is uniquely the way of our society. These are merely two among the potentially many different outlooks that our society can include, each of which is equally entitled to be expressed in living as one mode of life that others can adopt (192).

Bohman supports the argument for toleration in

democracy by stressing that democracy itself promotes pluralism. Bohman additionally states that if toleration is the only equitable way to handle pluralism fairly among citizens, then democracy inherently necessitates toleration. Bohman writes, "Constitutional democracy and freedom of expression, promote rather than inhibit the development of further pluralism" (114). Because democracy itself created the need for toleration; toleration cannot be denied.

What constitutes an efficient tolerant attitude to deal with this societal, moral pluralism? Some contemporary writers point to neutrality as a suitable form of toleration in certain matters. In this specific case, and in others related to the tolerance of homosexuality, neutrality is sufficient. Defining neutrality as a form of toleration can initially be taxing. Goodin and Reeve comment, "…'neutrality' can be associated with a number of other concepts which have an evaluative element. As we have seen, two such notions are 'equal treatment' and 'indifference'" (Goodin 2). Weale equates neutrality with equal respect and writes, "Equal respect may only require that we remove any obstacles in the way of people pursuing their own way of life, intentionally leaving them free to do whatever they wish" (30). Neutrality includes neither open support nor condemnation of a practice, but rather an indifferent stance, which does not involve itself in the controversy at hand. Open support of homosexuality is optimal for a healthy, happy community, but neutrality is suitable enough to ensure societal stability on this matter. If the Texas government had upheld a policy of neutrality towards homosexual intercourse, then these men's personal satisfaction, privacy, and autonomy would not have been violated. Weale explains:

> Equal respect for people's sexual practices probably only requires neutrality in this sense. The abolition of laws forbidding certain types of sexual acts between consenting adults in private is likely to be sufficient to secure a regime of neutrality with respect to sexual matters. (30)

Furthermore, neutrality is a more agreeable way for the subjectively offended persons to tolerate. They do not feel as though they are being forced to become activists in favor of a practice they oppose, but rather they can quietly continue to be personally opposed, insofar as no harm is acted upon anyone.

The last topic that we will consider is autonomy. Raz writes, "The ruling idea behind the ideal of personal autonomy is that people should make their own lives. The autonomous person is a (part) author of his own life; …no one can control all aspects of his life" (156). Autonomy is often seen as the freedom of individualism and is closely related to the idea of freedom of expression, because expression contributes to identity and defines personal autonomy. In her book *Becoming Free*, Gill directly addresses the

Bowers v. Hardwick case. She explains how homosexual activity can be a form of expression that should be protected in our society. There are two conflicting opinions on the better way to define the homosexual practice in order to defend it as freedom of expression. The first idea states that individual autonomy should justify privacy and freedom in intimate relationships. In short, a homosexual man should be able to conduct himself sexually in whatever manner he wishes. The second idea argues that these relationships are better defended when they are considered for their intrinsic value or social importance, rather than autonomy and individual choice. For example, a homosexual should be able to conduct himself freely sexually, not because it is a matter of freedom of choice, but because there is much social, intrinsic importance in his fulfillment of his personal needs and desires. Homosexuality can and should be defended for both reasons, in respect of both autonomy and of social importance, because both are convincing arguments.

Gill cites the conflicting opinions from the *Bowers* case to portray both sides of this argument: "Not only do majority and minority diverge in *Bowers* on the basis of what values are to be defended, but also interpreters diverge on the proper grounds for defending them (198). According to Gill, Blackmun's argument focuses "on individual autonomy as the justification for freedom in intimate relationships" (198). However, "Michael Sandel would answer these questions by suggesting that an autonomy-based defense of privacy is itself problematic" (198).

Although Raz writes that "to be autonomous a person must not only be given a choice but that he must be given an adequate range of choices," (Raz 156) Gill later notes, "The connection between heterosexual and homosexual relations is not that both are the products of individual choice but that both realize important human goods" (Gill 199).

Gill provides support to both arguments, and therefore both arguments' legitimacies become apparent. In support of the argument of autonomy and expression, Gill writes, "The sexual component that inheres in certain intimate associations […] is a species of free expression that might be interpreted to fall under First Amendment protection" (203). Gill also provides an argument of intrinsic value as a defense:

> Engagement in homosexual sodomy is not itself a fundamental right. But engagement in an intimate association that may or may not include that practice *is* such a right, carrying both intrinsic value and social importance, and as such, it and its components are constitutionally protected. (203)

Not all writers on this subject agree with Gill. Erin Kelly and Lionel McPherson argue that social importance and intrinsic value are not essential defenses of freedom of expression. Their

argument too is convincing. From "On Tolerating the Unreasonable":

> In any case, an appeal to the prospects of progress does not provide the best justification for toleration. What justifies freedom of expression, for instance, is not the possibility that it advances our collective welfare; we need not believe that the opportunity for white supremacist expression promises any benefit to society. Rather, what justifies a range of views and practices – and requires toleration of those views and practices—is their compatibility with the greatest range of equal basic rights and liberties for all. Call this the 'compatibility requirement.' (42)

Rather than seeking a defense of the right to freedom of expression, Kelly and McPherson classify the social welfare of toleration altogether. They suggest abandoning the search for defenses of expression and instead embracing the knowledge that toleration as a practice benefits society.

In conclusion, society established the existence of minority discrimination in this country and around the world. One of the causes of this discrimination, traditionalism, is not a good argument against these men's case because the law the men allegedly violated was not rooted in traditionalism and it experienced a habit of non-enforcement in the past. Traditionalism transgresses "the evolution of mores," what Scanlon considers to be a necessity to a successful, tolerant society. Harrison's subjective offensiveness, the second cause of minority discrimination, is what happened to cause this case. Those who were subjectively offended by homosexuality were the same people in control of the laws, and as a result, the powerless minority had to suffer criminalization. The reason homosexuality is subjectively offensive (only unpleasant to some) rather than objectively offensive (actually harmful to society) is because the homosexual intercourse of this case was consensual, private. It was harmful to society in no way whatsoever.

Privacy is a topic that is vital to this case. Freedom of private sexual practice is at the core of fundamental individual rights that the government should have no power or right to restrict. Weale cites sexual practice as an area of life that must be given special concern to individual differences. Weale believes it is an act, which is important to persons who experience it. The right to privacy forms an important contribution to identity that must be valued greatly. Gill stresses the importance of democracy in protecting family relationships because they are central to individual identity and happiness. Sexual relationships should be dealt with in the same way.

After recognizing the moral pluralism of our society, toleration is the only effective method to address pluralism—the homogeneity of values in society—in a way fair to all citizens. Although "competitive pluralism"

does exist, and thus intolerance is inherently promoted, citizens should recognize and counter this intolerance with the betterment of society in mind. Neutrality, as introduced by Weale, can be a satisfactory form of tolerance, especially in matters pertaining to sexuality, as this case does. This neutrality entails equal respect for all people, with no infringements on anyone's personal freedoms or choices. If the Texas government had utilized neutrality rather than intolerance and aggression, these men would have never been arrested.

The last topic of toleration is autonomy. Individual autonomy should justify these men's rights to homosexuality in conjunction with justification from their intrinsic values and social importance. Gill conveys the social importance of these men's intimacy:

> An intimate association deserves special protection for its members' freedom of association, which 'reflects the realization that individuals draw much of their emotional enrichment from close ties with other. Protecting these relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty.' (202)

The two homosexual men in this case should have had all the liberty to pursue their own sexuality for all of these aforementioned reasons together. Minority discrimination needs to be conquered in this country and elsewhere. The men did have an implicit right to privacy, especially in their private home. When considering the moral pluralism of this nation, one needs to recognize the need for toleration. In turn, toleration, would respect these men's collective autonomy and right to make their own choices and engage in them privately—without becoming victims of a state's minority discrimination.

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The Right to Counsel: The Ultimate Game of Poor Man Out

Suggested Reforms to the Indigent Defense System

By Victoria Webbe

Millions of court cases pass through the criminal justice system every year in the United States. Many of the charges associated with these cases carry prison sentences, or even potential capital punishment. The right to counsel in these cases ensures a fair and speedy trial and is clearly stated in the Sixth Amendment. This right has also been re-affirmed in countless Supreme Court decisions. Still other Supreme Court decisions have expanded this right, drawing from the right to equal protection under the law, as promised by the Fourteenth Amendment, to force states to guarantee counsel even to those who cannot afford a private attorney. According to the Supreme Court, all people have the right to an effective counsel during any court procedure that could potentially lead them to the loss of liberty. Providing this effective and knowledgeable counsel for all defendants, regardless of wealth, is in the interest of justice and also benefits society as a whole. Unfortunately, many states structure their indigent defense systems in ways that seem to favor the state budget more than justice.

There are three main systems of indigent defense popularly used in the states (although some do work with mixed versions on occasion). First, the Contract System has local firms bid on the flat fee they will receive for a year of indigent defense service. This tends to overload attorneys and also does not necessarily provide the motivation to work passionately on every single case. The Assigned System is not much of an improvement. Seen as a service to the community, any lawyer in the state can be called to serve on an indigent defendant's behalf, regardless of specialty. Lack of motivation is also a problem in this system. This is an unpaid service, leaving only the passion of the individual attorney to dictate efficacy of defense. The most egalitarian method is the Public Defenders System, which is an organized group of lawyers who are paid by the state to act as counsel. Unfortunately, these offices are often poorly funded, and lack any serious central planning by the government.

In the 1970s, the Institute of Law and Justice issued what they saw as the standards of indigent defense systems. Unfortunately, due to inadequate systems, much of the representation of indigent defendants falls short of these minimums.

Then, in 2000, the Justice Department conducted a National Symposium on Indigent Defense, which produced a report, *Improving Indigent Justice Systems through Expanded Strategies and Innovative Collaborations*. This report suggests a centralized defense system, much like the Public Defenders System already used in many states. However, the report also encourages many

changes to this system. More funding, the use of technology and the internet so that these central defense offices can communicate and help one another when possible, and other ideas were all suggested changes. Through these measures, the report hoped that the standards of indigent defense that have been set down in previous government reports would finally be obtained on a general scale. The Justice Department recognized that the indigent defense system, as it exists in the United States today, is unacceptable, and clearly does not do as much good as it potentially could (http://www.ojp.usdoj.gov/indigentdefense/icjs.pdf). This report makes excellent suggestions on how to change that.

The Federal Government has a responsibility to uphold individual rights as set down in the U.S. Constitution and one of these rights is the right to counsel, clearly addressed in the Sixth Amendment:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial and to have the Assistance of Counsel for his defense.

The right to counsel for indigent defendants in the states can then be found when the Sixth Amendment is combined with the Fourteenth Amendment, which states:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

These amendments were in existence, however, for several decades before the case law developed to support that claim.

Johnson v. Zerbst re-affirmed the federal statute of the right to counsel in 1938. Justice Black stated in the court opinion for this case, "The [...] 'right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law'" (Johnson v. Zerbst, 304 U.S. 458 (S. Ct., 1938)). Justice Black words describe the very esoteric nature of the criminal justice system, and, although Black does not state this himself, this complexity is clearly one of the reasons for an indigent defense system. It is seems fair to say that the typical person, who cannot afford their own legal defense probably is not well-educated, making the workings of the criminal justice system even more elusive than it is for the average person.

It was not until almost thirty years later that case law was established in favor of indigent defense. In 1963 the case of *Gideon v. Wainwright* established that there is a right to counsel in the states for defendants who cannot afford to pay for representation in "offenses which, as the one involved here, carry the possibility of a substantial prison sentence" (Gideon v. Wainwright 372 U.S. 335 (S. Ct., 1963)). This was the

first in a long list of cases that extended this right to juveniles, to appeals of right, to arraignments, in post-arrest interrogations, in line-ups and in several other situations all of which bolster the defendants' rights in the criminal justice system. "The *Gideon* decision represents the apex, both normatively and functionally, of an adversary process that accords indigent defendants a measure of equality in a criminal proceeding" (Garcia 10), and this equality has become ingrained, to a certain extent, in today's culture.

There were two final cases, both in 1984, which further defined the right to counsel. In *Strickland v. Washington,* it was decided that "the proper standard requires the defendant to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" (Strickland v. Washington 466 U.S. 668 (S. Ct. 1984)). The other case, *U.S. v. Cronic*, decided on the same day, essentially re-stated this. "These case do not negate the Supreme Court's overall commitment to the *Gideon* decision, but they are a clear warning that challenges to the lawyer's competence must be of a grievous nature and so prejudicial as to deny the defendant a fair trial" (Wice 7). These two decisions are, in part, the reason why faulty indigent defense systems are being permitted in states where the price of indigent defense seems much more important than the quality. With such strong restrictions on competency claims, the defendants can be left with little to no recourse if their representation does not work to the best of their abilities. However, reform is possible without overturning the cases. First, though, the problematic systems used in some states must be dealt with.

After conducting a National Survey of Indigent Defense Systems, the Bureau of Justice Statistics established that, in 1999, 4,174,079 indigent cases were handled by criminal defense services in the 100 largest counties in the United States. (http://www.ojp.usdoj.gov/bjs/pub/pdf/idslc99.pdf). With so many indigent cases, one would hope there were enough lawyers to handle the cases. Unfortunately, while the National Advisory Commission's suggested maximum of cases per attorney per year is 400, which is not always an obtainable goal. One California county in 1999 contracted the indigent defense work for the year out to a three person firm. The firm ended up handling over 5,000 cases, which means a minimum of 1,600 cases per attorney for that year (http://www.ojp.usdoj.gov/indigentdefense/icjs.pdf). This is one of the many problems with the Contract System.

The reason this system is appealing to many government officials is because it operates on a fixed rate. At the beginning of the year, law firms bid for the contract, and the lowest flat fee then gets to provide indigent defense for the courts. This is ideal for budgeting; however, it is not so ideal for the actual trial work. First of all,

the danger of getting spread very thinly over all of his or her cases very much exists. When there are that many cases to deal with, it makes doing any one of them very effectively into quite an ordeal. Also, what can happen is that there are so many cases waiting for space in the single lawyer's schedule that the prisons end up filling up, but not quite emptying at the speed which they could.

There are reports from a jail in Georgia that prisoners for simple crimes such as burglary were being held in jail for a full year before going to trial (http://www.ojp.usdoj.gov/indigentdefense/icjs.pdf). Incidents like these are harmful to society as a whole. If prisons are going to start becoming so full with waiting prisoners, then more tax dollars are going to need to be spent on new prisons and on new prison staffs. Doesn't it seem to make more sense to channel this money into a central defense system that can avoid this problem all together? It is a social harm, but it is also a serious miscarriage of justice seeing as it clearly violates the spirit of the right to a speedy trial mentioned in the Sixth Amendment. The system as a whole does not do enough to satisfy the adversarial balance between the prosecutor and the defense. In the long run, this loss of truly effective counsel is not justified by the dollars saved each year through the flat fee contract.

Another potential system with just as many problems as the Contract System is the Assigned Council System. More than 50% of the counties in the United States rely on this system, as of 2000 (http://www.ojp.usdoj.gov/indigentdefense/icjs.pdf), and with good reason. This method makes serving as a public defender an obligatory act without pay. It is justified as a service to the community where a lawyer is selected from a large, all-inclusive list of practicing lawyers in the area.

Unfortunately, not only is this an unpaid task, it is also a non-discriminating task, meaning the state does not differentiate between a divorce attorney and a criminal attorney. Anyone is a possible defense attorney, in spite of the area of law the person is actually practicing. True, any legal advice is better than no legal advice, but it hardly seems equitable to be providing one indigent defendant with a criminal lawyer while another defendant is receiving advice from a corporate attorney who has not stepped foot inside a courtroom in ten years. On top of this, because it is forced pro bono work, there is no incentive, no motivation to work as effectively as possible. Other, more pressing cases may take precedence over indigent defendants because the other cases are paying for the attorney's services, and is thus are viewed as far more important. The lack of experience in a lawyer as well as the lack of motivation may be constitutionally permissible, but common sense should show that there is indeed much room for reform.

The final of the three

systems is gaining in popularity, which is the Public Defenders System. It is this system that the U.S. Department of Justice suggests reforming. The main problem with the Public Defenders System, in terms of efficacy, is that it is typically a low paying job. Thus, it does not attract or maintain high numbers of attorneys. This is a problem because, as with the Contract System, there is the potential for overextension. The obvious solution to this is to increase funding, but there are other suggested improvements that the U.S. Department of Justice makes.

These problems within the indigent defense system have not gone unnoticed over the decades by the people who experience it first hand. However, it has often been looked over by legislators who would rather attend to more popularized problems. Getting the public eye on the problem was one of the intentions of the report that was compiled in 2000 at the behest of the Attorney General Janet Reno and the U.S. Department of Justice. The report ultimately suggests that a centralized defense system be established within counties, much like the prosecutors' office, only meant to handle indigent defense cases. As a vital part of the judicial system, equal funding should be provided for all criminal justice systems and something should be done to use technology to make building a case less time consuming.

These plans seem to be operating under the assumption that "[…] a fair trial requires a certain balance of power between the prosecution and the defense. To the extent that the government has and spends the resources necessary to secure a conviction, so must the defendant have a lawyer to combat the prosecution" (Garcia 9). With that in mind, it seems necessary to offer defendants representation that comes with a much stronger guarantee of efficacy and experience than the current system does. The constitution appears to support this line of thinking. The right to a fair trial, for example, suggests that there exist this equal balance between the defense and the prosecutor. The Supreme Court has held time and time again that indigent defense is important throughout the case, not simply at trial. Clearly, the Court appreciates how necessary legal advice is to the average person.

Most people know the Miranda Rights. Included in those rights is: "You have the right to an attorney. If you desire an attorney and cannot afford one, an attorney will be obtained for you before police questioning" (http://www.abanet.org/publiced/practical/criminal/miranda_rights.html). Indigent defense, much like the rest of the Miranda Rights have become an essential part of today's legal culture. There is, however, plenty of room for reform. The methods that many counties use are far from the most effective methods. The problem can best be solved as the government takes on greater responsibility for its poorer citizens.

Establishing a centralized defense system would strengthen the judicial system overall. This is important because the less effective a defendant's experience with his or her court appointed attorney is a negative one, then this probably happens relatively often. This would lead to a break down of respect society has for the judicial system as a whole. These reforms will ensure that only the truly guilty are taking up a seat in jail. In a country that imprisons such a high percentage of the population (in comparison to other countries), any actions taken to alter that should be welcomed. These are reforms that will inevitably benefit both indigent defendants and society as a whole.

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What *Brown v. Mississippi* Meant For Us

By Flora Manship

The main purpose of our legal system is to preserve the precious human values that are essential to the democratic system in which we live. Throughout the history of the United States, however, certain implementations of that same legal system have served to infringe upon, and unduly restrict, those human rights and values. One such example is the use of interrogative coercion to elicit "voluntary" confessions from suspects. While there are many degrees to coercion, this instance is an unjust infringement of the right to due process that is guaranteed by our Constitution. The 1936 Supreme Court case *Brown v. Mississippi* is a highly important and influential case in our nation's history, because it was the first case in which the unjust use of torturous coercion to elicit a confession was identified and rectified by the court. *Brown*'s contemporary legacy has been omnipresent over the past 100 years with every new case on coercive interrogation that reaches courtrooms today, as well as the recent issue of the treatment of detainees at Guantánamo Bay.

What happened to the three defendants in the *Brown* case was simply brutality. Responding to suspicions about what they believed was his involvement in a murder, police deputies sought out the first defendant, Ellington, in his home and accused him of the crime. After he denied any involvement, the policemen subjected him to the following treatments: repeated hangings to a tree, incessant questioning, and whipping. They then returned him to his home in a state of severe pain. Days later, the deputies returned to the man's home and arrested him. During the course of delivering him to the county prison, the men subjected him to more ill treatments, including severe whippings and a promise that they would continue until he confessed to the murder (*Brown*).

After arresting the two other defendants, Brown and Shields, policemen delivered them to the same prison. That night, the same deputies forced the two men to strip and whipped them incessantly, cutting away the flesh on their backs, and in a similar manner to Ellington, forced them to confess as well. They also continued whipping the men until Brown and Shields altered their confessions to the exact details that the deputies demanded (*Brown*).

There are a few separate details of this case that are worth noting. First, the convictions on which these three men were charged were based solely on the aforementioned confessions and no other forms of evidence. Second, the policemen all admitted to the whippings; not a single witness denied the treatment (*Brown)*. Therefore, it can be said that this case does not relate so much to an instance of discreet police coercion of a suspect and a claim of voluntary admission, but rather an instance of all parties

admitting to their misdeeds and yet still contending that it was a just exercise of their rights as protectors of the legal system. That fact makes it all the more outrageous that in the not-so-distant past torturous police brutality was actually seen as acceptable by those who conducted it.

A final point is the strong racist overtone within the case. As we are all aware, many crimes, especially in the past century, were popularly pointed to as being committed by black people. Our nation's racism has caused us to often look to skin color as the explanation for many crimes. In *Brown*, after being questioned regarding the severity of Ellington's whippings, the deputy's response was, "Not too much for a negro; not as much as I would have done if it were left to me" (*Brown*).

The major controversy represented in *Brown* was whether or not admission of confessions extracted solely from the use of police coercion was a violation of the due process clause of the 14th amendment. The Supreme Court decided that it was: "It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners, and the use of the confessions thus obtained as the basis for conviction and sentence was a clear denial of due process" (*Brown)*.

The case prompted a movement of studies about false confessions and why they occurred. Many people speculate as to the reason why anyone would confess to something that they didn't do. The answer is that there are many reasons. In *Brown*, these men were being tortured, whipped mercilessly – let alone the other mental abuses – and were told that the beatings would literally not stop until they did confess. Richard Leo would classify these as Stress-Compliant False Confessions, confessions that occur when the suspect chooses to escape the experience that has become "intolerably punishing" (Soree). It is clear then, that these confessions were undoubtedly *not* voluntary.

Studies emerged on the topic of voluntariness, and the courts adopted new tests to determine the admissibility of voluntary confessions. Popularized after *Brown* was the idea that confessions should only be allowed to be admissible if they were offered as products of "free and independent will" (Leo). With that idea came the notion that confessions elicited from unfair police methods should be excluded to discourage odious police interrogation behavior. Richard Leo wrote of the logic in these voluntariness standards, "These underlying purposes - reliability, protecting free will, and fundamental fairness - roughly correspond to the three goals of the adversary system: promoting truth-finding, protecting individual rights, and checking state power" (Leo).

Cases regarding this broad topic of voluntariness and false confessions are still coming up in courts today. While the most

recent ones cite more psychological interrogation abuses rather than physical torture, the effects are often the same. A question worth asking is why this tragedy of unjust exploitation of power is still occurring. Leo notes that, while courts have developed the voluntariness standards and tests, it is important to note that they are only guidelines and that they are not a litmus test; therefore, case-by-case considerations of voluntariness and admissibility are, at most, discretionary (Leo). Therefore, to begin with, there are no definite restrictions provided by the courts to curtail police behavior. In order to gain a sense of behavior that is not only unrestricted but often even promoted, we only have to look at the common guidelines for interrogating a suspect that policemen are taught with even today. There is a current manual for police interrogation that authoritatively outlines nine steps for police to follow. Some of the steps include: claiming to possess evidence (unreal, if need be) that proves the suspect's guilt, condemning the victim, and claiming that denial of the guilt will be futile (Soree). All of these actions have been documented as tactics used in cases of false confessions. This is no coincidence. While the tactics have certainly been used in catching true confessions as well, criminal law author Nadia Soree contends that the danger lies in people believing that the tactics will only and always produce true confessions, never questioning the possibility that the effects of the tactics, especially when taken to extremes, can have on the unsuspecting innocent person.

One of the most interesting responses from legal scholars was a solution to the "behind closed doors" problem of police interrogations. Noting the difficulty in enforcing degrees of brutality in interrogations and also the laborious process that the court must always go through to ensure voluntariness and admissibility, Westling and Waye proposed videotaping the interrogations (Westling, 494). One law scholar notes, "Police compliance with the law is one of the most important aspects of a democratic society. ... Everything about policing makes this exercise of discretion hard to monitor and control" (Skogan, 66). This solution of videotaping seems logical and fair and most importantly would safeguard the suspect's right to silence. In numerous cases of false confessions, details reveal that the suspects are usually repeatedly questioned even after requesting an attorney. Videotaping interrogations would solve those misdeeds. Furthermore, videotapes would effectively capture every second of the interview. Many times 45-second false confessions are videotaped, but police purposely leave out approximately 10 hours of brutal questioning leading up the suspect's confession. Police also often coerce the suspect into an initial confession, and then continue to badger the person until they tweak their story so that

all the facts fit. Having the entire process on tape for review would mean easier access to viewing all of the holes and inconsistencies in a story, and little chance for the story to be changed. The videotape would serve as an excellent means for review on behalf of the judge in deciding the admissibility of confessions.

Although much of the societal response came from legal scholars and historians who critically studied false confessions in order to hopefully prevent them from occurring in the future, the incidence of similar events occurring did not necessarily slow down. While cases of true physical torture are probably less prevalent today in this country (although certainly not extinct), more advanced forms of mental, emotional, and psychological tactics have emerged, many proving just as damaging or even perhaps more so than those in *Brown*. In considering these cases, the contemporary significance of *Brown* is brought to light. The precedent set in *Brown*, though not always upheld, is widely utilized in understanding these more recent cases.

The infamous 1989 Central Park jogger case is a contemporary version of the same injustice. Five black teenage boys were convicted after each confessed to the rape and attempted murder of the victim, a young white investment worker. They each spent 13 years in prison when, in 2002, a DNA test confirmed that actual attack had been committed by a convicted serial rapist (Hancock). It turned out that none of the five boys had played any role whatsoever in the crime. A question appears as to how the American criminal justice system could have made such a mistake.

A newspaper columnist described, "The story was like a centrifuge. Everyone was pinned into a position – the press, the police, the prosecution – and no one could press the stop button" (Hancock). This case was so highly publicized that a frenzied media played an enormous role in literally convincing the public only what it wanted to hear: that five troubled Harlem youths brutally raped and left for dead a rich white suburbanite and then "voluntarily" confessed. It took 13 years before anyone even cared to consider the truth. Similar to *Brown*, the boys had been coerced by police into confession to the rape and murder. They were intensely interrogated for over 30 hours. The boys were struck, verbally abused and told that they could go home only when they had confessed. Furthermore, everyone in a position of power seemed content to ignore the inconvenient discrepancies and inconsistencies in each boy's confession, differences about the murder scene and the weapon, as well as the time scheme (Hancock). And just as in *Brown*, the entire case of the prosecution rested on the confessions; not a shred of evidence was found against them.

Although the cases are similar, what *Brown*'s outcome did for the Central Park jogger

case was to provide it with a basis in a knowledge that false confessions can occur. Although it took investigators over 13 years and more advanced forensic technologies to seek out the truth, *Brown* provided everyone involved with at least a foundation for trying to understand what had happened. And the jogger case served as one closer step in an exposé of the malpractices of police interrogations and the danger that can occur when some figure of power becomes too convinced in his or her infallibility. Hopefully it also served to open the public's eyes slightly more to the racism embedded within the justice system.

The *Brown* case served as an important starting point for us to consider the likelihoods of false confessions elicited by torture or forceful coercion. Psychology professor Saul Kassin writes, "Modern police interrogation is something of a steamroller. It produces confessions from the guilty, but it also puts the innocent at risk" (Bennett, 1). In striving to uphold the values of a deeply democratic and just society, it is vital that we pay attention to these potential threats to due process and, therefore, rightful justice. The issue in *Brown* and the precedent set by the case will always be pertinent to the meaning of justice in this country, especially in the current wake of the terrorism panic and the public's urgency to place blame. *Brown* also exposed the effects of racism in restriction of due process. In order to ensure true democracy in this country, we must always pay attention to the warning signs that were highlighted in the *Brown* case and the numerous cases on false confessions that are always surfacing, warning signs regarding racism, scapegoat theory, and unethical police tactics.

This issue is highly controversial today with the stories surrounding alleged detainee abuse at the military base in Guantánamo Bay, Cuba. One report claims that a group of Kuwaiti men were forced into confessing allegiance to the Taliban after being tortured by U.S. officials at the detention center. The men claimed to have been sexually assaulted and sodomized, electrocuted, and beaten with chains. The report – just one of many similar exposés that have been recently released about Guantánamo – further likened the devastating living conditions to physical and mental torture (*Agence*). One man claimed the torture was so intense that it caused him to confess to having personally met with Osama bin Laden, when in reality he had been working at a discount appliance store (Frankel, 12).

What people must realize is that these horrifying tactics that would qualify as war crimes are essentially as similarly destructive as those in the *Brown* or Central Park jogger cases. People must also realize that all of the aforementioned torture cases were committed by American policeman and military men, who were supposed to *protect* liberty and justice. Yet with these

abuses being committed here, we must admit that abuse is abuse, and torture is torture, and it does not matter if these atrocities are occurring in Iraq, or Afghanistan, or Sudan, or the United States; we are all just as guilty. On one hand, in the United States we have an advanced democratic government and complex legal system meant to preserve justice, but on the other hand we still see Americans acting as they are toward Guantánamo detainees. A Muslim chaplain spoke eloquently of the problematic divergence of justice and injustice that many people are ignoring in this country: "So here we see American justice, or the potential for American justice, but we have to take this back to just three weeks ago when three prisoners down in Guantánamo committed suicide. Here we have an indication that prisoners down in Guantánamo would rather commit suicide and die rather than wait for American justice. And this is really disturbing" (Yee).

While there is certainly a difference between torture to elicit a confession and torture just for the sake of torture, they are both tactics used for one common purpose: to get what the perpetrator wants. This is why the case of *Brown v. Mississippi*, the first Supreme Court case to cite torturous interrogations and condemn them, exposes a threat to democratic principles larger than simply unethical police conduct. It relates to a larger question of where the use of torture will end, or rather, what it will lead to, and that is something that, as citizens of a civilized nation, we cannot afford to ignore.

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United States of America v. Ignacio Ramos and the Fourth Amendment Rights of Non-Citizens in the United States

By Paul Aufiero

The United States criminal justice system acts under the banner of the Constitution. The rights given to American citizens under the Bill of Rights are meant to protect their civil liberties. The Fourth Amendment serves in protecting citizens from unlawful search and seizure and from the force of police officers acting without reasonable suspicion. The legal question in the case of the *United States v. Ignacio Ramos and Alonso Compean* EP: 05-CR-856 is whether or not he acted justly in firing his weapon at Osvaldo Aldrete-Davila in respect to his reasonable suspicion and the Fourth Amendment rights of the victim. Complicating matters, however, is the fact that Mr. Aldrete-Davila is a Mexican citizen and was in the United States at the time of the incident illegally. Therefore, beside the constitutional question of a Fourth Amendment rights violation by the border patrol agent, there is the legal issue of whether or not that constitutional right applies to Mr. Aldrete-Davila. This paper will focus on this Fourth Amendment right and will show that, based on the facts of the case and United States criminal justice policy, rights set by the Fourth Amendment of the United States Constitution were in fact violated by Ignacio Ramos and Jose Compean and they were convicted as such. However, because of the citizenship of Osvaldo Aldrete Davila, there is a clear discrepancy in the legal system as to whether or not such rights should apply.

On February 17, 2005, in El Paso, Texas, Osvaldo Aldrete-Davila was seen driving illegally across the border from Mexico to the United States. Border patrol agent Jose Compean called in a report which was picked up by other agents in the area, among them Ignacio Ramos. Ramos pursued the van in an illegal high speed chase before it finally stopped after orders to do so in both English and Spanish. Witness Oscar Juarez states that there was no clear indication made by Ramos that the van should stop. Eventually, Aldrete-Davila made it past Compean and continued running towards the border back into Mexico. Discussion in court was raised as to the reasons why he would run so quickly from agents. In the van, agents found about 700 pounds of marijuana after the incident. Aldrete-Davila was given partial immunity by the United States government for this so that he would testify to the events of the day. Compean had no way of knowing this at the time, but fired rounds at him regardless, according to witness testimony, though none hit Aldrete-Davila.

Ramos then fired his weapon and the bullet struck Aldrete-Davila in the buttock but did not stop him. Aldrete-Davila himself testified in court that he did not give the agents any reason to fire their weapons at him.

Q. Did you stop?
A. Yes. I stopped

with my hands up.

Q. Both hands?

A. Yes

Q. What was in your hands, sir?

A. Nothing.

Q. Did you show him your palms?

A. Yes. I had my palms up.

Q. What was your intention at this point in time?

A. Give up and be arrested (EP: 05-CR-856 VII, 106-107).

Based on this testimony and an eye-witness account from Mr. Oscar Juarez, the State showed evidence to conclude that Ramos' gunshot to the back of the fleeing Aldrete-Davila was not based on any amount of reasonable suspicion and was a rights violation. "And for a law enforcement officer, under color of law, to shoot a fleeing individual in the back without cause, proper cause, it's a violation of their Fourth Amendment right, which are the last counts of the indictment" (EP: 05-CR-856 VI, 204). The jury convicted Ramos and Compean, among other counts, of deprivation of rights under the color of law.

Counsel for Mr. Ramos claims differing circumstances in Ramos' cause for shooting Aldrete-Davila. Counsel argues that the shooting was justified and that Ramos was only acting in accordance with his duty to secure the border from illegal activities and entry into the United States. Counsel discusses the innocence of Aldrete-Davila in the eyes of Ramos that day, causing him to open fire.

> It was a justified shooting of a suspected drug trafficker who led authorities on a chase, who refused to follow instructions to surrender, who got into a wrestling match with a fellow agent, that is, Mr. Compean, and who brandished what appeared to be a gun (EP: 05-CR-856 VI, 205).

Ramos testifies in the trial that he thought Aldrete-Davila was holding a gun at the time he was fleeing and was engaged in a shoot-out with Compean, explaining the shots from Compean's weapon. Furthermore, Counsel claims that Aldrete-Davila was viewed by agent Ramos as hostile because of his disregard for orders to stop. These pieces of testimony are the circumstantial pieces of evidence that Counsel outlines as reasons of justification for firing at him as he fled the agents.

Counsel addresses the count of the charge of deprivation of the rights under the color of law by using these aforementioned pieces of testimony to show that Ramos was acting as a law enforcement agent and was doing his job in a quick and heated situation that did not allow calm contemplation and analysis.

> That you will hear evidence that the reasonableness of the agent's belief must be viewed from the perspective of the officer on the scene who may often be forced to make split-second decisions in circumstances that are tense, unpredictable, and rapidly evolving. Reasonableness is not to be viewed from the calm vantage point of hindsight (EP: 05-CR-856 VI, 206).

The argument is that Ramos used his perception of the scene and the circumstances to decipher the extent of danger posed by Aldrete-Davila. The fact that he was suspected of drug-smuggling weighed on the decision to fire, as did his non-compliance to agents' orders to stop. Indeed, such circumstances may be left to the agent's perception. A

question remains, however, of the reasonable force necessary in handling such a situation. The circumstances presented to Ramos that day were few, but he fired on Aldrete-Davila nonetheless. Counsel cites reasonable suspicion of hostility and drug trafficking as Ramos' cause for firing his weapon that day. However, the judicial policy on a law enforcement officer's allowance for force based on the reasonableness of suspicion has been discussed by the United States Supreme Court and precedents have been set in accordance with the rights of a citizen's Fourth Amendment due process.

A case was heard in 1985, in *Tennessee v. Garner*, 471 U.S. 1 that dealt with the question of reasonable force for law enforcement officers. "As a result, the critical question in *Garner* was whether deadly force could be a reasonable means to effect the arrest of an unarmed, nonviolent, fleeing felony suspect" (Wiggin III). The case dealt with a police officer who used deadly force to apprehend a suspect who was unarmed but fleeing. The police officer fired his weapon to secure the arrest. The fleeing individual, a teenage boy, died from the sustaining injuries. However, the officer's actions were perceived as legal as he was acting under his interests and those of the state, in attempting to stop a crime.

> In using deadly force to prevent the escape, Hymon was acting under the authority of a Tennessee statute and pursuant to Police Department policy. The statute provides that 'if, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all the necessary means to effect the arrest.' Tenn. Code Ann. [471 U.S. 1, 5] 40-7-108 1982) (I,3).

According to Tennessee law, the officer was acting under all necessary procedures, given the circumstances of the situation. However, the case was brought to trial by the boy's father, where it the trial court's decision was confirmed by the Court of Appeals for the Sixth Circuit to the United States Supreme Court, where it was reversed.

The Supreme Court held that the aforementioned Tennessee statute was unconstitutional. "The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against, as in this case, an apparently unarmed, non-dangerous fleeing suspect; such force may not be used unless[…] the officer has probable cause to believe that the suspect poses a significant threat of death or serious injury" (471 U.S. 1). In ruling on the unconstitutionality of the statute, the *Garner* Court defined that officers of law enforcement have a high degree of reasonableness before apprehending or firing upon an individual. The police officer in Tennessee did not have this degree of reasonableness and thus, under those terms laid out by the Court, acted unjustly towards the boy he shot and killed.

The *Garner* Court used the Fourth Amendment as the basis for the ruling that it is unconstitutional in the criminal justice system to use

deadly force without reasonable suspicion. A suspect must be apprehended within the context of sufficient reasonableness. The holding, section (a) states in part,

> Apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement. To determine whether such a seizure is reasonable, the extent of the intrusion on the suspect's rights under that Amendment must be balanced against the governmental interests in effective law enforcement (471 U.S. 1).

Therefore, if the officer is acting in an interest that supersedes that of the government's interest in apprehending suspects, the rights of the individual are being eroded by unreasonable force. The case of *Garner* demonstrated the necessity of control in what force could be considered reasonable in apprehending a fleeing suspect.

The policies addressed in the *Ramos* case by the state and the counsel for Ramos are adherent to the ones set forth in *Garner* and numerous other cases. The allowance for force of law enforcement officers depends on the reasonableness of a threat posed by an individual. The shooting of Aldrete-Davila would have been justified had it been based on a reasonable threat. "[…]if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threaten infliction of serious physical harm, deadly force may be used if necessary to prevent escape[…]" (McGuinness Sec. VII, C). This policy is the basis for what Ramos and Counsel assert happened on February 17, 2005. Ramos claimed to have seen a "shiny object" in Aldrete-Davila's hand as he was running from the scene. However, beside Aldrete-Davila's testimony that he was holding and wearing nothing that would give off a shiny appearance, there is no tangible evidence or witness account to support Ramos' claim.

Therefore, the issue of an officer's perception of a situation comes into focus. The *Garner* case opened this issue in attempting to bring to light the officer's reasons for firing.

> However, the constitutional interest balancing test applied by the court in Garner allows consideration of the "totality of circumstances" which warrants an officer to consider a vast array of facts, circumstances and inferences which may give rise to an officer's reasonable belief that the suspect poses a risk to officers and citizens. Ramos had no reasonable suspicion of a threat that would tolerate the use of deadly force (McGuinness Sec. VII, C).

Officers must, by definition of their job, assess circumstances in situations in order to quickly make judgments and handle security. However, they must also assess the situations correctly for the pervasiveness of justice. It is important that an officer not mistake a situation, such as a fleeing individual, for something serious that threatens "infliction of serious physical harm." Circumstances must always give way to a high degree of reasonableness so that a concurrent degree of reasonable force is used to secure a problematic event.

Ramos did not adhere to

such guidelines when he fired and struck Aldrete-Davila. The totality of the circumstances of that day, despite suspected drug-trafficking and a fleeing suspect, did not allow the use of possible deadly force. Aldrete-Davila would have had to obviously possess a weapon for the shooting to be justified. In the case of *Ford v. Childers* 855 F.2d 1271 (7th Cir. 1988), police officers witnessed a man commit an armed robbery in a bank. Upon exiting and seeing the police officers, the man, Ford, fled. Childers fired his revolver at the fleeing Ford and hit him in the back. The Seventh Circuit held that, "In view of the totality of the information Officer Childers possessed when he fired at Ford… Childers' actions under the circumstances were objectively reasonable as a matter of law" (855 F.2d 1271). The shooting was justifiable because Ford was running from a bank after being viewed with a weapon. A reasonable threat was perceived by the officers and subsequent force was used.

Such was not the case for Ramos, however. The circumstances did not justify the action. The state discusses this in their closing argument. "As all law enforcers should have, they should have the right to protect themselves. But they have to do so when it's warranted" (EP: 05-CR-856 XV 21). Evidence in trial showed that the actions of Ramos and Compean that day were unjustified. Ramos testifies during the State's questioning as to the lack of obvious threat posed by Aldrete-Davila and his reliance on perceived threat.

> Q: Okay. It wasn't a threatening gesture?
> A: No.
> Q: What he was trying to do was get back south?
> A: Maybe at the time.
> Q: Well, was there another time you saw him do something else that was threatening?
> A: No, ma'am
> (EP: 05-CR-856 XIII 52-53).

The threat Ramos acknowledged from Aldrete-Davila which caused him to fire his weapon was based on circumstantial perception and not on what he could directly see at the time. One count of his and Compean's conviction rests on this evidence that the Fourth Amendment rights of Aldrete-Davila were in fact violated because the use of force by the agent's was based on a lack of reasonableness in their suspicion of Aldrete-Davila as he fled. This lack of adherence to criminal justice policies of the United States as law enforcement officers is a reprehensible action.

An underlying legal issue in *United States v. Ignacio Ramos and Jose Alonso Compean* is that of how these constitutional rights built into the United State criminal justice system apply to non-citizens in the United States. It has been well established that the agents did, in fact, infringe on Aldrete-Davila's Fourth Amendment rights. However, it is unclear how these rights apply to him as he is a Mexican national and not a citizen of the United States. This is a topic that is increasingly of concern to United States Courts as the country finds itself with a rapidly increasing population of non-citizens. It

should be clear that all peoples are protected under the Universal Declaration of Human Rights, adopted by the United Nations in 1948. Included in the document are articles that grant every human being rights to be, basically, free under the eye of humane law.

Particular to this case is Article Nine, where "No one shall be subjected to arbitrary arrest, detention or exile" (UDHR 9). From a human rights perspective, which is a blatant perspective of U.S. criminal justice policy, it was inhumane for Aldrete-Davila to be pursued and stopped with no reasonable cause for doing so. In an article for the St. John's Law Review, Kiera LoBreglio advocates for the United States to adhere to these global human rights standards.

> Using the Canadian and European focus on human rights as a guide, United States immigration legislation as a whole must be revisited and overhauled in order to address the changing needs of American society and its economy and to safeguard the fundamental rights of the migrants who fulfill those needs (LoBreglio).

There are many calls for the United States to shift its border policy and subsequent immigrant policies to a more humane position from those who view it as inhumane and unconstitutional. It is necessary, then to understand exactly what the current policy is towards the constitutional rights of non-citizens.

The closing arguments of the State in the Ramos case include a section devoted to the violation of Aldrete-Davila's constitutional rights, although he is a Mexican national. "…Osvaldo has a right, secured by the Constitution or laws of the United States[…] we all have that right not to be shot at without good reason" (EP: 05-CR-856 XV 24-25). The State rests a count of the indictment on the constitutional rights of Aldrete-Davila. Therefore, these rights must be included in the Constitution. However, they are not. Nowhere does the United States Constitution mention the rights of non-citizens. Instead, the United States has adopted various procedures over the years to include the rights of non-citizens in the legal system without making an actual amendment to the Constitution.

The extent of these rights, however, is minor compared to those enjoyed by citizens of the United States. Furthermore, although these rights are binding in the criminal justice system, they are not intrinsic as they might be if they were granted by the United States Constitution.

> In fact the constitutional rights that we enjoy on a daily basis are enjoyed by all immigrants, including undocumented immigrants, at least in terms of the criminal process[…] they have the right[…] Fourth Amendment rights[…]that we are used to in criminal proceedings. But it's correct to say that they certainly have fewer rights, and that their condition remains always precarious (Aleinikoff 3).

Non-citizens in the United States do have many of the rights afforded to U.S. nationals; however, they are not directly defined by the Constitution, as concluded by the State. The rights themselves are constitutional, but the rights of non-citizens to enjoy them are

not. These rights are mandated by Congress in laws and statutes of the criminal justice system. Under such U.S. laws, as well as those set out by the Universal Declaration of Human Rights, Aldrete-Davila's personal rights and well-being were certainly infringed upon on February 17, 2005, regardless of his citizenship.

The case of the *United States v. Ignacio Ramos and Jose Alonso Compean* has not made it to the Court of Appeals yet. Only the initial trial court has rendered its verdict and passed sentence. Many are advocating for the Presidential pardon and ultimate release of Ramos and Compean citing that they were doing their job in protecting the border from illegal immigrants. It is foreseeable that this case could become a rallying cry in the ongoing passionate debate in America as all people adhere to an increasing immigration rate. Unfortunately, many are using and will continue to use the case to say that the United States criminal justice system is harsh on law enforcement and accommodating to immigrants, legal or otherwise, out of political correctness.

However, the facts of this case show that the United States criminal justice system, no matter who is coming before it, does not waver in the face of political debate. As the discourse rages on in the government as to how to adapt to the new trends in the United States population, it is important that the roles of the criminal justice system be defined.

Osvaldo Aldrete-Davila's rights, though he was in this country illegally, have been granted by the United States through the presiding rule of the Constitution. Agents Ignacio Ramos and Jose Compean violated those rights based on the Fourth Amendment and their conviction reflects the stability of the criminal justice system in the United States that all people have the rights to security and to not be assaulted by unreasonable force. As this case progresses through the United States judicial system, it is reasonable to assume that such a policy will be upheld.

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Whose decision is it any way?

By Arnold Kawuba

"The chair is bolted to the floor near the back of a 12-ft. by 18-ft. room. You sit on a seat of cracked rubber secured by rows of copper tacks. Your ankles are strapped into half-moon-shaped foot cuffs lined with canvas. You are now only moments away from death" (Andersen). Capital punishment, also known as the death penalty, is a concern that causes heated debates on both national and international levels. Most democratic countries have taken steps to abolish capital punishment, but America is one of the few countries where capital punishment continues. People have different views on capital punishment. Some pressure groups have called for abolishing capital punishment in the United States because it is not common in Europe and it embodies a trend of racism. On the other hand, supporter of capital punishment argue that removing the death penalty is like removing prisons.

Some experts have strong opinions toward abolishing capital punishment in the United States, while others argue that the death penalty is a suitable and fair punishment. In the articles, "International Attention to the Death Penalty: Texas as a Lightening Rod" and "Death by Discretion: Who Decides Who Lives and Dies in the United States of America?" by John Quigley and Lucy Adams, both authors argue against capital punishment. Both authors state that the death penalty violates a basic human right—the right to life. Furthermore, Kurt Andersen's article, "An Eye for an Eye," supports the arguments of both Quigley and Adams. Andersen states that the death penalty is also an infringement of the eighth amendment, which states that no cruel and usual punishment can be imposed on a person (Andersen). On the other hand, Wesley Lowe's article, "Pro Death Penalty," states that abolishing this penalty will lead to a rise in the crime rate. To sustain Lowes' argument, in the article, "Innocence by the Numbers…," David Ferge draws statistics from 1960-1964, the four years when the death penalty was abolished. Lowe cites that during those four years, there were 9,140 murder cases. (Pro Death Penalty). Given the articles by the authors, arguments on both sides can be justified. However, those in support of the abolishment of capital punishment have stronger and more widely accepted reasons on national and international levels.

Capital punishment is not widely imposed abroad, especially in democratic nations. In fact, in the Americas, capital punishment is only practiced in the United States and a few Caribbean islands (Quigley 1). Countries in Europe are trying to abolish capital punishment completely. European institutions such as the European Union or the Schengen States have demanded member countries to outlaw the practice. In his essay, Quigley asserts, "The states of Eastern Europe currently seeking admission to European institutions

have been pressured to abandon capital punishment as a sign of their adherence to the rule of law" (Quigley1). Hence, countries in Europe are trying to make capital punishment illegal.

It is also important to note that other countries are taking a stance on this issue. For example, Quigley describes Mexico's position on the issue. Quigley recounts the time when a citizen of Mexico was killed because Texas laws allow it. In turn, the Mexican president rejected an invitation to visit George W. Bush at his ranch in Texas. By doing so, President Juan-Raul Garza of Mexico demonstrated that he opposes capital punishment.

Groups have also argued that there is a trend of racism embedded in the death penalty. Some states in America that do not support capital punishment have found cases where there was a violation of the eighth amendment. More importantly, they have found instances of racism. In the essay, "Death by Discretion…," Adams argues that racism plays a large part in today's death penalty sentences. She states that 97.5 percent of the prosecutors and jurors are Caucasian (Adams 390). Adam states, "the Jefferson Parish Attorney's office uses preemptory strikes to remove African-Americans from juries at more than three times the rate it does to exclude whites…by virtue of this, six black defendants have been tried and sentenced to death by all-white juries" (392). Although Quigley does not provide tangible reasons for why the death penalty should be abolished, Adams complements his argument.

To further the argument of race and the death penalty, Andersen of TIME Magazine examines whether the system is fair to minorities. Based on his article, the system is not fair. He discusses the morality of the death penalty and highlights a rather provocative question:

> Is the death penalty an effective, much less a necessary, deterrent to murder? Is it fair? That is, does it fall equally on the wealthy white surgeon represented by Edward Bennett Williams and the indigent Black with court-appointed (and possibly perfunctory) counsel? Most fundamental, is it civilized to take a life in the name of justice? (Andersen)

Going a step further than Adams' examination of race, Andersen suggests that if the death penalty is supposed to promote justice, then is it 'just' to impose the death penalty? Those who do not believe it represents justice believe it should be abolished.

Although people have justified the abolishment of the death penalty, others have formed a case in favor of capital punishment. One of the most prevalent arguments posed by those not in favor of the death penalty entails the notion that innocent people have been killed because of the death penalty. In "Innocence by Numbers" Ferge develops a counter argument to this argument. Via statistics, he shows that the number of errors found after the death penalty has been imposed is less than the number of people found guilty after death. He states:

> […] the conviction of the innocent is essentially unheard of in our system of criminal justice. Let's assume...that there were 4,000 people in prison who weren't involved in the crime in any way. During that same 15 years, there were more than 15 million felony convictions across the country. That would make the error rate 0.027 percent—or, to put it another way, a success rate of 99.973 percent. (Ferge)

Other groups have also argued that abolishing capital punishment is like getting rid of prisons (Pro-death Penalty). Criminals will not consider the consequences of their actions because they know that they will not lose their lives. Statistically, states that abolished the death penalty have a higher crime rate than those that support capital punishment. In support of this notion, Lowe states that when capital punishment was abolished "the number of annual murders in the United States skyrocketed from 9,960 to 23,040, a 131 percent increase" (Pro Death Penalty).

Given statistical numbers, a wide gap still exists between those who favor capital punishment and those who oppose it. Both arguments have valid points; nonetheless, people will always hold differing viewpoints on this issue. Parts of the world have completely outlawed capital punishment because it is not a characteristic of democracy. America, on the other hand, has refused to follow the rest of the world. What sort of democracy does America model for the rest of the world, if the electric chair or other means of ending people's lives are still widely used in certain parts of the country? America has tried to justify an answer to this question. However, one more question remains: Whose decision is it any way?

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Globalization: The Global South's dependence on the Global North and the problems associated with this relationship

By Christian Ciobanu

Throughout the twentieth century, industrialized countries transitioned from their national economies to a global economy. Political scientists and economists first noted these economic changes when North American countries signed the North American Free Trade Association. This trade association required North American countries to lower trade tariffs between themselves, which allowed trade to transcend their national borders. Eventually, as more members of the Global North began to integrate their national economies into a global one, they expressed the desire to create new trade routes with their former colonies, such as Latin America and Africa (i.e. The Global South). However, the economies of the South were undeveloped. Therefore, members of the South could not engage in economic transactions within a global economy. This forced the North to provide them with capital. As the South accepted these large amounts of capital to industrialize its economies, scholars noticed that drastic changes began occurring in the South. Because these drastic changes were caused by the South accepting loans from the North, scholars began to question the North's intentions to liberalize the economies of the South. Consequently, scholars contend that the process of globalization caused numerous problems for the South, while the North has been benefiting from globalization.

Political scientists and economists describe several key advantages of globalization. They drew conclusions about factors that prompted the North to influence the South to integrate its national economies into a global one. One key advantage is the process of arbitrage. As expressed by Jeffrey Frankel in "Globalization of the Economy," arbitrage is the economic principle in which countries simultaneously purchase a product at a cheap price and sell it a higher price in a commodity market (314). As explained in *Principles of Macroeconomics*, by Karl E. Case and Ray C. Faire, when countries engage in arbitrage, exchange rates for a particular good adjust until the price for a good becomes the same in each country. This economic principle is the Purchasing Power Parity Theory. For example, "[…] if it takes 10 times as many Mexican pesos to buy a pound of salt in Mexico as it takes the U.S. to buy a pound of salt in the United States, then the equilibrium exchange rate should be 10 pesos per 1 dollar" (430). Therefore, the process of arbitrage creates exchange rates that allow the price of a product to be constant in each country.

A second key advantage of globalization is floating exchange rates. According to Martin Wolf's "Will Globalization Survive," when countries adopt floating exchange rates, it is less likely for an economic disaster in one country of the world to affect

the economy of another country. The reasoning is that a country's currency is not pegged to another one (330). The rationale behind this economic notion is based on the Argentina Crisis in the 1990s. As mentioned in "Pegged for Failure? Argentina's Crisis," by Javier Corrales and James Mahon, this government pegged its currency, the peso, to the U.S. dollar. When Argentina pegged the peso to the U.S. dollar, it relinquished its ability to implement any form of fiscal expansionary policies (72). If the government issued any new pesos, then its exchange rate with the U.S. would change because the value of one U.S. dollar can only support a limited amount of pesos. Therefore, if the Argentinean government supplied its economy with more pesos, then the value of the U.S. dollar would be unable to support it. This would devalue a peso, which in turn would cause deflation. As explained in the article, when the U.S. dollar appreciated, Argentina became burdened with debt. As its interest rates rose, Argentina could not expand its money supply to lower its interest rate. This led to a stagnant economy, in which its currency devalued. When the currency devalued and the U.S. dollar appreciated, these two economic situations affected the exchange rate with the U.S. dollar—the value of a peso became almost worthless (74). Thus, scholars based their theory about floating exchange rates on the problems that Argentina faced when it pegged its currency to the U.S.'s currency.

After scholars discovered why the North wanted to engage in economic transactions with the South, scholars analyzed the role of the fiduciary institutions that the Global North created to help the Global South liberalize its markets into a global economy. One of these institutions is the World Trade Organization. According to "Understanding the WTO: the Agreements," this organization encourages most countries to lower trade barriers between themselves by engaging in the practice of the Principle of Reciprocity (WTO). As described by Pevehouse and Goldstein, the Principle of Reciprocity states that if a country places a trade tariff on one country, it would be applicable to all countries. Finally, this association follows a protocol known as the Generalized System of Preferences, which allows smaller countries to erect short-term trade tariffs on imports (323). Consequently, the World Trade Organization imposes several protocols onto a country in order to help liberalize their economies.

Because the World Trade Organization ascribes to the Generalized System of Preferences, it believes that it is harmful for a country to erect long-term trade tariffs. As specified by Case and Faire, when a country imposes a trade tariff on the import of a particular good, domestic industries are able to develop an acquired comparative advantage over foreign firms in a domestic market. The reasoning is that the

tax imposed on imports causes the imports to become more expensive than domestic products (405-406). As a result, a nation cannot produce a specialized good. Moreover, when a country places a trade tariff on a particular industry, a country is unable to specialize in a particular good because it has to produce a good that another country has a comparative advantage over. Thus, the country is engaging in an inefficient production of a good (410). For instance, as Case and Faire present in a hypothetical model of the International Financial Market, firms in an exporting country have a comparative advantage of textiles over a country that imports goods. However, when the importing country places a trade tariff on imported textiles, then the price of imported textiles becomes higher than the price of a domestically produced textile. Because the price for a domestically produced good is low, domestic firms are able to generate a profit. However, these profits are at a loss of efficiency because the firms in the domestic market do not have comparative advantage when making textiles as opposed to firms in other countries (410). In theory, by forcing countries to lower trade tariffs, the World Trade Organization's procedures allow them to enjoy the benefits of a global economy and to stimulate their firms to specialize in a particular industry.

In actuality, there are numerous disadvantages for a country to ascribe to the WTO protocols. As expressed by Dani Rodrik in International Politics, economists like Michael Finger estimate that a country within the South will pay 150 millions dollars (the yearly budget for a country in the South) in order to implement WTO agreements (349-450). According to Finger, some scholars conclude that it could be more beneficial for members of the South to spend their yearly budget on creating welfare programs for their citizens and/ or creating programs that attract local investors. In fact, if the South could attract local citizens, then it could reduce the amount of foreign direct investments from the North. This would cause the region to lowers its dependency with the North. Consequently, the WTO's protocols cause fiscal problems that discourage a nation from spending its budget on creating programs for its citizens.

Another problem with the WTO is that since the North has more political power than the South in the WTO, the North can use the WTO's protocols to influence the decisions of a government in the South. For instance, as Rodrik mentions, in 1997, South Africa passed legislation to allow imports of cheaper medical drugs to combat AIDS, but the North pressured the South African government to reverse its decisions and continue to purchase the same goods from its original suppliers. The North's argument was that South Africa was violating the WTO's protocol about intellectual property rights by trying to purchase drugs from a supplier other than the one that

WTO assigned (350). According to Rodrik, the North was using the WTO's protocol about intellectual property rights because the firms that supply South Africa with medical drugs were located in the North. Because these firms were located in the North, the countries in the North increased their overall wealth (i.e. Gross Domestic Product) by taxing the profits these firms generated by supplying medical aid. Therefore, even though it would be economically beneficial for some countries in the South to select a cheaper supplier of goods, the North will use the WTO's protocol to further their own endeavors.

The International Monetary Fund is a fiduciary institution that provides economic assistance to countries. Historically, the IMF provided loans to Western European economies that collapsed after World War II, but it has now begun to provide loans to the South. As mentioned by Pevehouse and Goldstein, the structure of the IMF is based on a weighted voting system in which the voting power of a state is dependent on the quota that it has within the World Bank (351). Essentially, this means that Global North controls the IMF. More importantly, as stated by Pevehouse and Goldstein, once the IMF creates a loan package for a country, the IMF requires it to sign the IMF Conditionality Agreement. This agreement stipulates that countries must reduce their inflation in order to accept a loan (520). Therefore, the IMF is a global institution that has changed its role overtime to help countries liberalize their markets.

Leaders of the Global South contend that many of their economic problems are contributed to the IMF's Conditionality Agreement. When a country agrees to lower its inflation rate, it reduces its state spending on industries and goods. The IMF wants countries to lower their inflation rates in order for the loan to be effective; the value of a country's currency cannot be inflated (522). Moreover, as extrapolated from *Introduction to Macroeconomics*, in order for the IMF's loans to be successful in the South, exchange rates and the overall price level in the country need to be lowered (274). For example, when Egypt agreed to receive loans from the IMF, they were forced to remove state-owned flourmills and to reduce an annual subsidy of 750 million dollars. Consequently, this economic policy inflated the price of Egyptian bread. When the Egyptian government attempted to lower its inflation rate to meet the IMF's requirements, the price for bread rose to the price it was selling in the global commodity markets. Because the price of bread increased, Egyptians rioted in the streets of Cairo (522). One can extrapolate that when the Egyptians rioted, the Egyptian government questioned whether its citizens would try to revolt against the state. Consequently, the IMF procedures to help the South caused members of the South to increase prices and to lower their inflation rates, which can cause political instability

within a region.

As the economies of the South continued to decline in value, the economies of the North experienced an influx of wealth. Firstly, the members of the Global North have been increasing their GDP because their firms have been outsourcing labor to the South and have been selling products to new global markets. According to Microsoft Encarta's "Globalization," many firms, such as technology firms, have outsourced labor to countries like India, where the cost of labor is substantially cheaper than in the United States. The cost of labor is cheaper in the South because there are fewer regulations than in the U.S. (Encarta). By outsourcing labor to the South, firms reduce expenditures, which results in a reduction of the price of a good. Because the good is cheaper, more consumers purchase it. Furthermore, since some factors of production are produced at another site, outsourcing affects a country's Gross National Product. As previously stated, because these countries are competing in a global market, U.S. based firms can sell more products to different consumers. Thus, the U.S. Gross Domestic Product increases.

The North has also been creating enclave economies within the South in order to lower one of its factors productions, which allows it to increase its GDP. According to Pevehouse and Goldstein, an enclave economy describes the process by which investors invest in the South's infrastructures that are used to extract a natural resource from the South at a low price (472). For instance, in Angola, Chevron extracts oil while providing a share to the Angolan government, which does not use their shares to help impoverished citizens (472). Consequently, the Global North benefits from the Angolan economy at the expense of the Global South.

Scholars analyze trends in the U.S.' GNP and GDP to determine how much of its wealth can be contributed to globalization. According to "Financial Forecast Center's Historical Economic and Market Data," the U.S. GNP was 11,077.974 in 2005 and 9,887.7 as of 2000 (Financial Forecasters). Furthermore, according to Microsoft Encarta's "U.S. Trade and Gross Domestic Product," the U.S.'s GDP was 12,479.4 in 2005 and 9,872.9 in 2000 (Encarta). Based on that economic data, the U.S.'s GDP increased by 26 percent and the U.S.' GNP increased by 12 percent. Therefore, according to Martin Wolf, 10 percent of the U.S.'s GDP is accounted to globalization (328). Finally, based on data from Duke University's "Globalization and Dimensions," the U.S. GNP levels in the 1990s—at least 20 percent of the U.S. GNP—is accounted to globalization.

In summary, scholars assume that every country can benefit from being part of a global economy. However, the protocols of the major fiduciary institutions allow the North to benefit from globalization as the South

experiences severe problems. Therefore, scholars contend that a global economy only benefits the North and harms the South.

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