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Notre Dame Journal of Political Science
2024–2025 STAFF

Call for Papers

The *Notre Dame Journal of Political Science* will soon be soliciting papers from Notre Dame undergraduates! If you are proud of a paper from one of your classes or seminars, research projects, or even independent study, please submit it via the submission instructions which will be released in the Fall of 2025. Excerpts or drafts from in-progress senior theses are also welcome, and you may submit multiple papers if desired. Selected papers will be edited in collaboration with a team of Notre Dame students and published in a scholarly volume by the end of the Fall semester. This is a perfect opportunity to add a publication to your resume, and it is exclusive to Notre Dame students.

Letter from the Co-Editors

Dear Readers,

We are thrilled to share the Spring 2025 edition of the *Notre Dame Journal of Political Science*. This endeavor is possible only because of the dedication of our terrific staff. These individuals include our Content Editors, who selected and revised the articles in this publication; Reviewers, who managed tedious line-edits and maintained a consistent citation style; Digital Editors, who published this edition of the *Journal* on the *Beyond Politics* website; and Marketing Editor, who created this electronic publication. We believe that the *Journal* and *Beyond Politics* more broadly will succeed for years to come because of these individuals.

We are grateful to have received many submissions to be included in this semester's edition of the *Journal*—almost double the number from Fall 2024! The six essays in this semester's publication span a wide range of Political Science topics. They include considerations of why John Locke's *Letter on Toleration* endorses tolerance only toward some religions; how modernization impacts the correlation between self-expression values and democracy; interventions to enhance electoral participation in South Bend, Indiana; the history and contemporary ramifications of plea bargaining; whether institutions in China and Tanzania promote development; and the differences in wage-theft statutes between states.

As we end our tenure as Co-Editors-in-Chief, we are immensely proud of *Beyond Politics*' evolution over the past year. We expanded the number of articles in the Fall 2024 and Spring 2025 editions of the *Journal*, published editorials more consistently throughout each semester, and initiated a podcast on which Political Science professors are invited to share their research and expertise. We are also pleased to announce that current Content Editors, Lauren Cottrell and Colly Urdan, will serve as the 2025-2026 Co-Editors-in-Chief of *Beyond Politics*! Under their leadership, we are confident that *Beyond Politics* will continue to expand and engage responsibly with the most pressing political issues.

This edition of the *Journal* is again only possible because of our wonderful staff. We would also like to thank Dr. Steven Landis, our new faculty advisor, for his support and effort to increase the visibility of *Beyond Politics* now and in the future. On behalf of the *Beyond Politics* staff, we hope that you enjoy the Spring 2025 edition of the *Notre Dame Journal of Political Science*!

Zachary Geiger and Marko Gural
Co-Editors-in-Chief

Contents

How Can a Liberal Be So Intolerant? A Historical Approach to John Locke's *Letter on Toleration*

Jun Wei Lee

John Locke's views on toleration sit uneasily in the modern liberal canon. Political scientists like Michael Zuckert claim that Locke was the pivotal figure in "launching liberalism," establishing a tradition that grounds political legitimacy on the consent of the governed and insists on the value of the freedom of conscience.[1] Although Locke's 1689 *Letter on Toleration* valiantly defends religious toleration on the grounds that civil government cannot legitimately extend its authority "to the salvation of souls," its vehement intolerance of atheists and Roman Catholics risks embarrassing modern liberals who wish to apply his ideas today.[2] Was the 'father of liberalism' simply trapped by contemporary religious prejudices, or can we excavate more principled reasons for why Locke qualified his arguments for religious toleration? My essay answers this question by addressing two issues about the limits of Locke's tolerance. First, I adopt Quentin Skinner's historical contextualism methodology to analyze Locke's political theory. Instead of seeing Locke as solely contributing to abstract, philosophical debates over "timeless questions" (e.g., how tolerant should governments be?), I ask how and why his views on toleration developed in response to the specific political and religious problems that he wanted to solve during his time—the English Restoration.[3] Second, I ask whether we can appropriately judge Locke's toleration as *so* limited, as somehow falling short of modern liberal ideals of toleration.

I argue that Locke's toleration was limited because he saw religious toleration not as inherently virtuous, but as a necessary means for ensuring civil peace, attaining spiritual salvation, and resisting all forms of coercion. I first show that Locke's intolerance towards atheism and Catholics stemmed from a similar consideration: the need to create political stability. For Locke, political legitimacy was grounded on a natural law that guaranteed human equality, natural reciprocity, and the right to independently pass laws to ensure subject liberty. Locke was thus intolerant towards atheists who denied natural law and *ipso facto* threatened the moral foundations of Lockean politics. Moreover, his intolerance towards Catholics derived from its undermining of the stability of civil society, which was especially topical given the perceived threat of an English Catholic monarchy which pledged allegiance to the Pope and not the nation. Second, I contend that Locke advanced the logical contradiction that papal infallibility was necessary yet dispensable to Catholicism as a rhetorical ploy to distinguish his Protestant nonconformity, which should be tolerated, from politically subversive Catholics.[4] Third, I show how Locke mobilized an individualistic conception of spiritual salvation in the *Letter on Toleration* to critique the Anglican High Church's attempts to tyrannically enforce Protestant uniformity in the 1670s-80s. This point shows that Lockean toleration aimed to combat popular views about how coercion could justifiably be wielded to guide individuals towards salvation. Fourth, I claim that we should not judge Locke's toleration according to modern liberal standards since the former was constrained by a historical

[1] Michael Zuckert, *Launching Liberalism: On Lockean Political Philosophy* (Lawrence: University Press of Kansas, 2002).
[2] Duncan Bell, 'What Is Liberalism?', *Political Theory* 42, no. 6 (2014): 701; John Locke, *Two Treatises of Government ; and, A Letter Concerning Toleration*, ed. Ian. Shapiro, Rethinking the Western Tradition (New Haven ; Yale University Press, 2003), 219.
[3] Quentin Skinner, "Meaning and Understanding in the History of Ideas," in Visions of Politics, vol. 1 (Cambridge: Cambridge University Press, 2002), 57–89.
[4] John Marshall, *John Locke, Toleration and Early Enlightenment Culture* (Cambridge: Cambridge University Press, 2006), 690.

context that inextricably ties politics to theology. Finally, I reflect on how valuable historical contextualism is in explaining the applicability of Locke's thought today.

Locke's intolerance towards atheists must be contextualized within his overall anti-absolutist stance in politics. During the English Restoration, the English Parliament was dominated by the High Church, a group of Protestants that emphasized the importance of religious rituals, priestly authority, and Anglican sacraments in attaining spiritual salvation.[5] To reinforce their religious hegemony in politics, Anglican propagandists weaponized Filmer's 1680 *Patriarcha* to "flatter princes that they have a Divine Right to Absolute Power."[6] Since Charles II, the contemporary King of England, was in favor of enabling religious persecution against non-Anglican Protestants (e.g., Calvinists and Latitudinarians like Locke), Locke had to refute Filmer's defense of absolutist government.[7] That is, he had to propose "another rise of Government" that denied Filmer's theological justification of naturally hierarchical political communities (i.e., Genesis established Adam's "*Private Dominion and Paternal Jurisdiction*") while addressing Filmer's critique of contractualism that the state of nature is too speculative to ground political legitimacy.[8]

Locke's *Second Treatise* used natural law to block Filmer's language of absolutist politics. Locke's state of nature is governed by "a Law of Nature" grounded on all men "having Reason" to understand that they are God's "Workmanship" and therefore created free and equal.[9] God's natural law directs "*a free and intelligent Agent* [man] to his proper Interest:" attaining spiritual salvation.[10] Locke's state of nature is thus neither a hypothetical construct nor historical conjecture. It is instead an explication of mankind's God-given moral duties to preserve each other as God's property, punish those who attempt to breach natural equality, and help all men seek salvation.[11] Natural law and the state of nature are devices to determine government legitimacy. The end of Locke's commonwealth is to promulgate laws that aid the "*preservation of the Society* … of *every person* in it."[12] The legislative can never rightfully have "*absolute Arbitrary Power"* because that enables it to destroy its subjects as it pleases, contravening the ends of government.[13] Locke's natural law denies Filmer's absolutist theology. All men are naturally equal because we have the capacity for reason and can follow God's natural law. Our political communities exist to advance our moral obligation "to mutual Love."[14]

Locke cannot tolerate atheists because he grounded man's moral obligations and the ends of

[5] Mark Goldie, 'John Locke, Jonas Proast and Religious Toleration 1688–1692' (Cambridge University Press, 1993), 143–71.
[6] John Locke, Two Treatises of Government, ed. Peter Laslett, student ed., Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1988), 142; Mark Goldie, "John Locke and Anglican Royalism," Political Studies 31, no. 1 (1983): 71–75.
[7] Mark Goldie, "John Locke and Anglican Royalism," Political Studies 31, no. 1 (1983): 71–75; Iain Hampsher-Monk, A History of Modern Political Thought: Major Political Thinkers from Hobbes to Marx, 1st ed. (Oxford: Wiley-Blackwell, 1993), 69–70; John Marshall, "Latitudinarianism," in The Routledge Encyclopedia of Philosophy, ed. Edward Craig (London: Routledge, 1998), accessed March 31, 2025, https://www.rep.routledge.com/articles/thematic/latitudinarianism/v-1. https://doi.org/10.4324/9780415249126-DA049-1.
[8] Locke, *Two Treatises of Government*, 268; Hampsher-Monk, *A History of Modern Political Thought*, 76.
[9] Locke, *Two Treatises of Government*, 271, 309.
[10] Locke, 305.
[11] Locke, 270–71; John Dunn, The Political Thought of John Locke: An Historical Account of the Argument of the "Two Treatises of Government" (Cambridge: Cambridge University Press, 1969), 104–11.
[12] Locke, *Two Treatises of Government*, 356.
[13] Locke, 279, 358-59.
[14]Locke, 270; Timothy Stanton, "John Locke and the Fable of Liberalism," The Historical Journal 61, no. 3 (2018): 617.

political society on acknowledging natural law.[15] The atheist who denies God's existence denies natural law, and so has no motivation to enter political society to help preserve other men or protect their equality.[16] Atheists also have no duty to love others, and so have no reason to restrain their self-interested desires for others' benefit. They cannot be trusted to uphold "promises, covenants, and oaths, which are the bonds of human society."[17] Finally, the atheist has no reason to accept natural equality, so he will not prevent other parties from "establish[ing] domination over others," Locke's very critique of absolutism.[18] The atheist is antisocial, posing an existential threat to the moral foundations of Lockean politics. And since Locke's commonwealth exists to enforce natural law and secure the community's preservation, the civil magistrate must punish atheists.[19] True religion requires promoting "the rules of virtue and piety;" the atheist is intolerable for threatening the equality and sociality needed to preserve civil society.[20]

Given how Locke's toleration links to his politics, we should not compare it to modern liberal conceptions of the freedom of conscience. Since modern liberal political theory is secular, the question of whether atheists can love other men and be committed egalitarians is a non-starter.[21] Indeed, since modern states do not derive political legitimacy from natural law, religious beliefs are irrelevant to one's capacity for civic participation. There is no political reason not to extend freedom of conscience to atheists. However, the political problem during the English Restoration was exactly that religious beliefs justified political arrangements and one's ability to participate in political life. This was why Filmer's justification of political absolutism was persuasive to Locke's contemporaries: it provided a robust account of how theology justified giving a monarch unlimited political authority while denying any citizens the right to challenge his order. Since politics needed to be justified on theological grounds, Locke countered Filmer by appealing to a natural law that entailed natural equality and sociality. We should not judge Locke's toleration according to modern liberal standards since this unfairly neglects the reality that his conception was constrained by the unassailable links between politics and theology during the English Restoration.

Second, Locke's intolerance towards churches that pledge allegiance to foreign sovereigns stems from his desire to ensure the continuity of civil society, which exists to help men fulfill the ends of natural law. Locke's commonwealth exists to preserve "life, liberty, health," and material goods like land and money.[22] Crucially, natural law compels the commonwealth to secure worldly survival and liberty (i.e., the freedom from "restraint and violence from others"), the conditions required to attain the *uncoerced* faith needed for spiritual salvation.[23] To secure these conditions, Locke believed that governments must be free to create their own laws. Thus, governments dissolve when their independence is compromised through "subjection to a Foreign Power.[24]" Locke therefore advocates intolerance against churches that obey foreign sovereigns who

[15] Ian Harris, "John Locke and Natural Law: Free Worship and Toleration," in Natural Law and Toleration in the Early Enlightenment, ed. Jon Parkin and Timothy Stanton (Oxford: British Academy, 2013), 94.
[16] John Locke, Two Treatises of Government; and, A Letter Concerning Toleration, ed. Ian Shapiro, Rethinking the Western Tradition (New Haven: Yale University Press, 2003), 263.
[17] Locke, 246; John Dunn, 'The Concept of "Trust" in the Politics of John Locke' (Cambridge University Press, 1984), 288.
[18] Locke, A Letter Concerning Toleration, 246; Jeremy Waldron, God, Locke, and Equality: Christian Foundations of John Locke's Political Thought (Cambridge: Cambridge University Press, 2002), 228.
[19] Locke, *A Letter Concerning Toleration*, 218.
[20] Locke, 215, 244.
[21] Waldron, *God, Locke, and Equality*, 1–4.
[22] Locke, *A Letter Concerning Toleration*, 218.
[23] Locke, *Two Treatises of Government*, 306.
[24] Locke, *Two Treatises of Government*, 409.

have "absolute authority" over "the court and the church," such as Roman Catholics and Muslims.[25]

Read in historical context, the Roman Catholic threat was especially topical, as Locke's 1685 composition of a *Letter on Toleration* was informed by a larger transnational understanding of how Protestants could be threatened by an absolutist Catholic monarch. Locke, for example, was aware through his correspondence with Philipp Limborch, a Dutch Protestant theologian, that the 1685 revocation of the Edict of Nantes enabled King Louis XIV to persecute Huguenots in France.[26] Furthermore, the succession of Charles II by James II, an openly devout Catholic, stoked English fears about similar Catholic tyranny.[27] Locke's intolerance against Catholicism was therefore not against any of its religious practices (i.e., their "sacred rites or ceremonies") but rather its subversive potential of creating religious allegiances that took priority over Catholics' duties within the commonwealth.[28] Lockean intolerance logically extends from natural law: religious doctrines cannot undermine the commonwealth's worldly ends.

If Locke's intolerance against Catholicism was couched exclusively in their allegiance to the Pope, then an interesting puzzle emerges in interpreting Locke's corpus of religious writings. Catholicism necessarily requires its believers to accept the Pope's absolute sovereignty. Why, then, was Locke so concerned with differentiating "intolerable" Catholics—those who accepted papal authority—and "tolerable" Catholics—those who adhered to Catholic religious practices without this political assumption? For example, in Locke's 1674 *Particular Test for Priests*, he explicitly claims that if English priests renounce papal infallibility and his authority to challenge their sovereign, the "only true supreme lord on earth," then they ought to be tolerated and allowed to serve in England without taking the then-compulsory Anglican sacrament.[29] Locke continued to distinguish in the 1685 *Letter on Toleration* that the theological content of religious practices is in itself an insufficient reason for advocating intolerance: only those who hold politically subversive beliefs should be persecuted. Indeed, Locke tolerated religious practices, even what he personally thought were sinful ones like Catholic idolatry, so long as they were "not prejudicial to other men's rights" or undermined the commonwealth's stability.[30] Furthermore, his explicit naming of only "Mahometans" and not Catholics for pledging allegiance to foreign rulers suggests his desire to portray papal obedience as an inessential doctrine of Catholicism, and that perhaps Catholics could renounce absolute papal sovereignty while retaining their religious identity.[31]

However, it is also clear that Locke personally understood that Catholics who renounced papal authority were not Catholics at all, maintaining in the *Letter on Toleration* that Catholics, by virtue of their religious commitments, employ a "frivolous and fallacious distinction between the court and church" (i.e., we cannot easily separate the Pope's politics from Catholicism's doctrines), even if they claim to renounce papal infallibility.[32] Why, then, would Locke articulate such a nuanced view on Catholic intolerance if he knew that the very distinction he was trying to establish was conceptually impossible? The current literature on Locke's views on religious toleration cannot answer this question since Locke scholars tend to take his writings on

[25] Locke, *A Letter Concerning Toleration*, 245–46.
[26] John Locke, *A Letter on Toleration*, ed. Raymond Klibansky, trans. J. W. Gough (Oxford: Clarendon Press, 1968), xvii.
[27] Hampsher-Monk, *A History of Modern Political Thought*, 69.
[28] Locke, *A Letter Concerning Toleration*, 235.
[29] John Locke, Political Essays, ed. Mark Goldie (Cambridge: Cambridge University Press, 1997), 222–24; Marshall, John Locke, Toleration and Early Enlightenment Culture, 689.
[30] Locke, *A Letter Concerning Toleration*, 238.
[31] Locke, 245–46.
[32] Locke, *A Letter Concerning Toleration*, 245.

Catholicism at face value. For example, John Marshall claims that Locke's desire to distinguish between "tolerable" and "intolerable" Catholics (i.e., those who do and do not accept papal infallibility, respectively) is evidence for his desire to carve out a space for Catholic toleration contingent on their renouncing their politically subversive beliefs.[33] Similarly, Goldie thinks that Locke's desire to implement a Catholic Test in 1688, which would force Catholics to renounce papal infallibility to serve in public office, is testament to his tolerationism towards Catholicism.[34] Common to these views is the idea that Locke's alleged desire to tolerate Catholics led him towards logical absurdity, that papal infallibility is at once a necessary yet dispensable part of Catholicism. The challenge, then, is this: can we see Locke as anything more than a muddled thinker on Catholicism?

The answer, I propose, can only be understood if we see the *Letter on Toleration* not as Locke's contribution to a timeless debate in political theory on the extent to which governments ought to be religiously tolerant, but rather a targeted response to the specific historical circumstances of English Restoration politics. The historical context surrounding the *Letter on Toleration* indicates that Locke was not just worried about Catholic tyranny, but also the religious absolutism of the Anglican High Church. As mentioned, the High Church had been aggressively attempting to extend its religious hegemony in English parliamentary politics since the 1670s. First, the 1673 Test Act coerced Protestant nonconformists into accepting High Church dominance by requiring that public officers take the Anglican sacrament yearly.[35] Second, the Anglican episcopacy had been preserving its political power by convincing Charles II to allow religious persecution of nonconformists.[36] Indeed, Mark Goldie notes that the High Church justified such persecution to Charles II by claiming that Protestant nonconformists (i.e., non-Anglican Protestant) grounded resistance against absolute monarchy on natural law—an originally Catholic concept applied most famously in politics by Aquinas and Suarez—and therefore they should be persecuted just like Catholics.[37] Third, High Churchmen like Jonas Proast justified religious intolerance by arguing that outward force (e.g., civil penalties) was "neither useless nor needless" for helping nonconformists attain salvation.[38] Fourth, High Churchmen accused Latitudinarians like John Tillotson, the Archbishop of Canterbury and Locke's close associate, of heresy to persecute them.[39] The 1689 Toleration Act suspended penal punishments against religious nonconformity, but it produced no permanent solution to these threats.[40] Accordingly, when Locke supervised the *Letter of Toleration's* English publication in 1690, he had two simultaneous threats to contend with: the fear (shared with the High Church) of James II's Catholic absolutism, and the fear of High Church intolerance and the Toleration Act's limited success in challenging it.[41]

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[33] John Marshall, *John Locke, Toleration and Early Enlightenment Culture* (Cambridge: Cambridge University Press, 2006).
[34] Goldie, "John Locke, Jonas Proast and Religious Toleration 1688–1692," 159.
[35] Mark Goldie, "John Locke, Jonas Proast and Religious Toleration 1688–1692," in The Church of England c.1689–c.1833: From Toleration to Tractarianism, ed. John Walsh, Colin Haydon, and Stephen Taylor (Cambridge: Cambridge University Press, 1993), 156–59.
[36] Locke, *A Letter Concerning Toleration*, 251; Goldie, 'John Locke and Anglican Royalism', 76.
[37] Goldie, 'John Locke and Anglican Royalism', 76.
[38] Richard Vernon, ed., "Proast: The Argument of the Letter Concerning Toleration, Briefly Considered and Answered (1690)," in Locke on Toleration (Cambridge: Cambridge University Press, 2010), 59; Goldie, "John Locke, Jonas Proast and Religious Toleration 1688–1692," 165.
[39] Goldie, 'John Locke, Jonas Proast and Religious Toleration 1688–1692', 151.
[40] Goldie, 156.
[41] Locke, *A Letter on Toleration*, 43.

The *Letter on Toleration* deployed two distinct strategies to deal with these threats. First, he employed the rhetoric of popery, a common Protestant argument against the rise of an English Catholic monarch. Popery was the claim that Catholics could not rule England because their allegiances were to the Pope and not their subjects. The Anglican episcopacy had also successfully employed this argument against James II's attempts to enshrine religious liberty in 1688 because they were afraid that religious liberty freed public officials from taking the Anglican sacrament and enabled the ascendancy of Catholic priests into Parliament.[42] Locke in the *Letter on Toleration* thus continued this anti-popery rhetoric, signaling his intent to form a Protestant united front that promoted Catholic intolerance.

Yet Locke was equally eager to push for religious tolerance for nonconformists, a position that the High Church was unwilling to grant because it had associated nonconformist resistance theory with having Catholic origins. Accordingly, he had to devise a way to convince the High Church that Protestant nonconformism should not be meaningfully compared with Catholicism at all, or at least that their belief in natural law cannot be a sufficient reason to justify intolerance against nonconformists. Locke was therefore at pains to insist that what made Catholicism intolerable was *popery alone*. His entire argument of Catholic priests deserving toleration if they denounced papal infallibility was not intended as a logically sound one at all, or at least one that was actually concerned with expanding toleration to Catholic priests. Rather, Locke's rhetoric was an attempt to convince the High Church that if Catholicism's *only* sin was accepting absolute papal sovereignty, then they should tolerate nonconformists since they held no similar subversive beliefs. A political theorist who reads Locke's writings isolated from the historical context of Reformation politics sees a logically incoherent Locke, one who views papal infallibility as at once an essential yet dispensable notion of Catholicism. But with the appropriate historical sensitivity, a new portrait of Locke appears. Far from a muddled thinker, Locke was a true politician who wanted to have his cake and eat it too: to support the High Church against James II's attempts at (Catholic) religious toleration while simultaneously hoping to convince the High Church to be tolerant against nonconformists.[43]

Why would Locke employ such indirect rhetoric to the High Church instead of stating outright that nonconformists should be tolerated since they held no subversive views? The answer is once provided by historical context. Since contemporary Protestants commonly assumed that Catholicism necessitated popery, no High Churchmen reading Locke's writings would plausibly have taken Locke to be advocating for Catholic toleration.[44] In 1689, Locke learned of the High Church's extreme intolerance against the nonconformists. Indeed, the Toleration Act passed that May resulted from failed negotiations between nonconformists and the High Church for more extensive conceptions of religious toleration. The Act had initially included a clause for religious comprehension, which nonconformists had been advocating for since this would allow them to rejoin the Church of England without converting to Anglicanism.[45] The High Church, however, refused to support the Toleration Act until the comprehension clause was removed because it viewed nonconformists as intolerable owing to their heretical beliefs. It therefore forced Parliament to pass the Toleration Act without comprehension to create a united Protestant front against the looming threat of James II.[46] Locke therefore probably understood that the High Church could not be convinced to accept comprehension through philosophical argumentation—that is, a logical demonstration of how nonconformists hold no

[42] Goldie, 'John Locke and Anglican Royalism', 76.
[43] My sincere thanks to Eli Bernstein for pointing out Locke's nuanced position towards the High Church.
[44] Goldie, 'John Locke and Anglican Royalism'.
[45] Goldie, 'John Locke, Jonas Proast and Religious Toleration 1688–1692', 156.
[46] Goldie, 'John Locke, Jonas Proast and Religious Toleration 1688–1692', 157.

heretical or subversive beliefs. Thus, he resorted to the rhetoric of popery to fearmonger the High Church into believing that only politically subversive (Catholic) beliefs were intolerable. Had the High Church accepted Locke's rhetorical appeal, he would have succeeded in promoting toleration for nonconforming Protestants, as heresy alone would have been an insufficient reason to deny comprehension.

My interpretation of Locke's subtle political maneuvering best accounts for Locke's abhorrence in the *Letter on Toleration* of the High Church's intolerance against nonconformists. In the *Letter*, Locke presented three latitudinarian features of spiritual salvation that allowed him to mount an attack on the High Church's religious tyranny. First, against the High Church's insistence of religious ritual and dogma, Locke's latitudinarianism was doctrinally minimalist—only what the Bible "declared, in express words" is necessary for salvation.[47] Second, in contrast to the High Church's emphasis on priestly authority, Locke argued that salvation can only be achieved through individual belief, which is involuntary and cannot be "compelled by outward force."[48] Third, natural law separates the jurisdiction of the commonwealth and church: the former can only protect worldly interests; the latter must only promote otherworldly salvation through protecting what men judge as forms of worship acceptable to God.[49]

Locke, therefore, critiques the High Church for tyranny and immorality. The Test Act derived its validity from the High Church "lay[ing] down certain propositions [i.e., the Anglican sacrament] as fundamental" for salvation, although it was "not in the Scripture;" Locke derided such insistence as heresy, reversing the High Church's accusation of Latitudinarians.[50] *Contra* Proast, imposing worldly penalties to coerce religious belief is ineffectual and tyrannical. For Locke, the Test Act and episcopal efforts to encourage religious persecution demonstrate the High Church's "insatiable desire of dominion": they were using the commonwealth to influence church affairs, thus illegitimately infringing subjects' liberties and subverting the ends of civil and ecclesiastical authority.[51] Finally, Locke castigates the High Church for teaching that "faith is not to be kept with heretics" and that kings can be disposed of through excommunication, exactly what High Churchmen threatened against William III in 1689 to prevent him from revoking the Test Act or passing the Comprehension Bill.[52] In presenting the High Church as placing their religious allegiances over their political ones, Locke wanted to suggest that the High Church's stance on religious intolerance made them no different from popery, exactly the threat that they were afraid of.[53] If the High Church wished to be consistent in resisting Catholic absolutism, then according to Locke, it ought to be tolerant of nonconformists. Navigating through the intricacies of religious toleration during the English Restoration, Locke emerges as a genius political rhetorician, one who masterfully employed the contemporary political vocabulary of popery to attempt to convince the High Church to adopt his agenda of religious toleration.

Today, we tend to read the giants of political theory in an ahistorical fashion. Canonical works are often represented as texts responding to allegedly eternal questions that grip humanity (e.g., how tolerant should we be?), and their authors are often presented as political philosophers primarily concerned with offering similarly timeless answers. In our contemporary world, marked by a worrying global increase in governments citing religious

[47] Locke, *A Letter Concerning Toleration*, 222.
[48] Locke, 219.
[49] Locke, 218–20.
[50] Locke, 252–53.
[51] Locke, 224,250; Locke, *Two Treatises of Government*, 356.
[52] Locke, *A Letter Concerning Toleration*, 245; Goldie, 'John Locke, Jonas Proast and Religious Toleration 1688–1692', 156–57.
[53] Goldie, 'John Locke, Jonas Proast and Religious Toleration 1688–1692', 168.

reasons to "harass, intimidate, or restrict people," it is tempting to apply arguments made by past thinkers to defend the value of religious toleration in the present.[54] Yet my essay has shown that the problems that Locke faced—of how to ground politics on religion and towards achieving spiritual salvation—are fundamentally different from modern liberal ones. If liberals wish to defend the value of religious toleration today, we cannot rely on the authority of Locke's arguments, but should instead craft novel arguments suited to the uniqueness of our secular political arrangements. Just as importantly, we ought not to judge Lockean toleration as falling short of contemporary ideals of toleration since the two rely on fundamentally different languages of political justification. To label Locke as the "father of liberalism" does more to bastardize his thought than honor his intentions for advocating for toleration in the first place.

Furthermore, a historical approach to analyzing Lockean toleration reveals to us the poverty of seeing political philosophy as simply the exercise of theoretical system-building. Today, we so easily deride political discourse for being overly rhetorical and containing little intellectual substance. Yet perhaps because contemporary analytic philosophy prides itself on logical consistency and creating purely rational justifications for its conclusions, we hardly ever suspect that great political theorists like Locke would use rhetoric instead of purely logic to advocate for religious toleration. It is therefore time for us to recognise that even the best philosophers of the past move beyond logic to make political points, an insight that we lose if we continue reading theory that is decontextualized from history.

However, the question remains. Why do we see Locke as a liberal who "anticipates" today's more tolerationist ideals? Scholars who adopt the methodology of historical contextualism hope to stress the inapplicability of Locke's ideas to current contexts. John Dunn, for example, insists that because Locke's political, religious, and ethical views were inextricably linked to his Christian beliefs (e.g., about natural law and how to attain salvation), we cannot apply his arguments to contemporary secular politics.[55] Similarly, Duncan Bell has shown that Locke only became credited as the "father of liberalism" from the 1930s-50s because American scholarship interpreted "liberalism as an ideology centered on religious toleration" in opposition to more intolerant totalitarian ideologies like fascism.[56] These scholars therefore engage in myth-busting, hoping to show that Locke should not be seen as a liberal, and attempts to paint him as such owed more to the practical exigencies of resisting ideological currents of totalitarianism rather than the compatibility of Locke's arguments with modern liberal ones.

Historical contextualism is only helpful in showing how the liberal canon has been historically constructed, and why we should dislodge Locke from it. What this methodology cannot explain is why Locke, rather than other intellectuals (Thomas Burnet, Philipp Limborch, etc.) advocating for similar tolerationist positions, was chosen to be the ideological bastion of a liberalism centered on religious toleration.[57] What about Locke's arguments was so uniquely convincing that later generations of liberals were inspired to declare themselves as his intellectual descendants? The history of political thought, I think, should be enriched by political theorists asking why the texts we call "classics" or "canonical" continue to inspire

[54] Samirah Majumdar, "Government Restrictions on Religion Stayed at Peak Levels Globally in 2022," Pew Research Center, December 18, 2024, accessed April 1, 2025, https://www.pewresearch.org/religion/2024/12/18/government-restrictions-on-religion-stayed-at-peak-levels-globally-in-2022/.
[55] John Dunn, "What Is Living and What Is Dead in the Political Theory of John Locke?" in Interpreting Political Responsibility (Princeton, NJ: Princeton University Press, 1990), 9–13.
[56] Bell, 'What Is Liberalism?', 692-701.
[57] John Marshall, *John Locke, Toleration and Early Enlightenment Culture* (Cambridge: Cambridge University Press, 2006).

us long after their solutions cease to apply to current contexts.

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A Closer Examination of the Positive Correlation between National Support for Self-Expression Values and Democracy

Molly Wu

In recent decades, political scientists have increasingly examined the connection between cultural norms and democratic stability, recognizing how the prevalence of self-expression values can significantly shape a nation's political landscape. According to Dahlum and Knutsen, self-expression values measure "the extent to which individual choice and freedom are appreciated and prioritized."[1] A strong endorsement of personal choice and freedom fosters greater alignment with democratic principles such as the freedom of speech, political participation, and the protection of diversity and minority rights. Meanwhile, survival-based values that prioritize basic materialistic needs threaten self-expression values, as they lead individuals to favor authoritarian governments that provide immediate relief from dire economic conditions. Thus, nations that exhibit more substantial support for self-expression values tend to demonstrate greater support for democracy; in turn, self-expression values contribute to the long-term stability of a democratic regime. This essay examines the hypothesis above by drawing the necessary connection between modernization and economic security, which increases educational equality and civic engagement, and the importance of formal institutions in upholding democratic ideals.

Currently, there are two sound justifications for this hypothesis: the Revised Theory of Modernization and the Supply-Demand Theory. First, the Revised Theory of Modernization ties socio-economic development into shifts in cultural values. When individuals are self-sufficient, they tend to develop self-expression values and strive for autonomy, self-realization, and social diversity. Both the Black Lives Matter campaigns and the # MeToo movements are prime examples of the prioritization of self-expression values. On the other hand, when individuals struggle with resource scarcity, such as wealth, natural resources, and educational opportunities, they tend to develop survival-based values. This sense of insecurity and uncertainty characteristic of survival-based values leads individuals to favor order and control over open-mindedness and personal freedom.[2] The second theory generalizes to the supply-demand relationship of freedom within democratic systems. Institutional structures provide the "supply" of freedoms while individuals' values and expectations generate the "demand." According to Nisbet and Stoycheff, as the public's demand for specific freedoms grows, democratic institutions are pressured to adapt, fostering alignment, or "congruence," between institutional offerings and societal expectations.[3]

To begin, increased economic security often correlates with strong support for democracy: self-expression values are considered a natural extension of this support. As nations modernize, they simultaneously undergo a causal chain of processes such as industrialization, urbanization, and political incorporation. Such processes reasonably contribute to greater access to information, education, and improved quality of

[1] Dahlum, Sirianne, and Carl Henrik Knutsen. "Democracy by Demand? Reinvestigating the Effect of Self-Expression Values on Political Regime Type." British Journal of Political Science 47.2 (2017): 437–461. Web. Accessed 8 Nov. 2024.
[2] Inglehart, Ronald, and Christian Welzel. "How Development Leads to Democracy: What We Know About Modernization." *Foreign Affairs*, vol. 88, no. 2, 2009, pp. 33–48. *JSTOR*, http://www.jstor.org/stable/20699492. Accessed 8 Nov. 2024.
[3] Nisbet, Erik C., and Elizabeth Stoycheff. "Let the People Speak: A Multilevel Model of Supply and Demand for Press Freedom." Communication Research, vol. 40, no. 5, 2013, pp. 720–41, https://doi.org/10.1177/0093650211429117. Accessed 17 Nov. 2024.

life.[4] When individuals' basic needs are more securely met, they are more likely to prioritize "higher-order" values, like self-expression values, instead of survival-based values. In fact, modernization has initiated a new trend in which an individual's ideological priorities begin to shift. Therefore, it could be argued that "a steady increase in the overall wealth of the society is a basic condition sustaining democracy,"[5] as when individuals with high levels of economic stability are more likely to be risk-averse and reject authoritarian alternatives to democracy.

Meanwhile, a certain level of financial security fosters an environment in which self-expression values can flourish as individuals feel more enabled and empowered to prioritize autonomy instead of struggling with the fundamental means to survive. In his work, Arat highlights urbanization as one of the aspects that stem from modernization and considers it to be "a factor stimulating education, which in turn accelerates media growth and eventually democratic development"[6]. As the use of media becomes widespread, an average individual is then able to absorb a diversity of information, a condition that creates a fertile ground for self-expression values. As self-expression values proliferate, individuals increasingly perceive autocratic regimes as improper and even illegitimate, ultimately "forcing regime liberalization."[7] This sequence reinforces a virtuous cycle between modernization, economic stabilization, and the cultivation of self-expression values, and ultimately support for democracy, which validates the hypothesis that self-expression values not only emerge alongside democracy but also help sustain its stability over time.

In particular, evidence from V-Dem and Freedom House suggests that economic security effectively leads to broader civic engagement, indicating strong self-expression values. According to V-Dem, on a scale of 0 to 4, the educational equality indicator of the U.S. is 2.59, while that of China is 1.28: a notable disparity. One possible explanation for China's lower score could be the unequal distribution of educational resources. Although China's economic landscape has improved, regional economic imbalances and poverty in rural areas remain serious challenges for the equal distribution of educational resources. Rural areas in China, more specifically, frequently lack the same educational infrastructure as their urban counterparts. Conversely, the U.S. has been able to allocate more resources to strengthen its public education system, and efforts have been made to reduce educational disparity across school districts. Schmidt found that , "the higher the education level, the higher the preference for self-expression values, the greater the demand for liberal notions of democracy."[8] This understanding reveals that the U.S. is operating on a consensus about the importance of democratic principles, and that the nation as a political entity is likely to reject authoritarian alternatives to democracy.[9] As education cultivates self-expression values by guiding individuals to explore the complexity of society, it also increases their civic engagement, which is quintessential to a stable democracy. In sum, the evidence above confirms the hypothesis that stronger self-expression values—fostered

[4] Przeworski, Adam, and Fernando Limongi. Modernization: Theories and Facts. World Politics, vol. 49, no. 2, 1997, pp. 155–183. Cambridge University Press. DOI: 10.1353/wp.1997.0004. Accessed 13 Nov. 2024.
[5] Arat, Zehra F. "Democracy and Economic Development: Modernization Theory Revisited." *Comparative Politics*, vol. 21, no. 1, 1988, p. 21, https://doi.org/10.2307/422069. Accessed 15 Nov. 2024.
[6] Ibid.
[7] Dahlum, Sirianne, and Carl Henrik Knutsen. "Democracy by Demand? Reinvestigating the Effect of Self-Expression Values on Political Regime Type." *British Journal of Political Science* 47.2 (2017): 437–461. Web. Accessed 8 Nov. 2024.
[8] Schmidt, Carmen Elisabeth. "Values and Democracy in East Asia and Europe: A Comparison." *Asian Journal of German and European Studies*, vol. 3, no. 1, 2018, https://doi.org/10.1186/s40856-018-0034-9. Accessed 13 Nov. 2024.
[9] Hadenius, Axel, and Jan Teorell. "Cultural and Economic Prerequisites of Democracy: Reassessing Recent Evidence." *Studies in Comparative International Development*, vol. 39, no. 4, 2005, pp. 87–106, https://doi.org/10.1007/BF02686166. Accessed 13 Nov. 2024.

through access to education—lead to greater support for democracy and a rejection of authoritarian alternatives.

An additional V-Dem data set found that "average people's use of social media to organize offline action," on a scale of 0-4, the U.S. scores 3.76 while China scores 1.48. While the # MeToo movement – an online political campaign that aims to publicize sexual harassment and gender inequality in the workplace – became a global phenomenon, the degree to which citizens from different nations engaged with this movement varied significantly. For example, Corinna Lim, a prominent activist and lawyer in Singapore, reports that fewer women in Singapore than in the West are willing to publicly share their experiences of sexual abuse largely because "the government has avoided full-blown debates on the issue, fearing to involve, even antagonize, the silent majority."[10]. Cultural norms in Singapore, embedded in generational gender inequality and unregulated cases of sexual abuse, have discouraged and even censored the open discussion of gender issues. In other words, even when self-expression values begin to emerge, they are likely to be actively suppressed by Singapore's formal institutions, which promote undemocratic or authoritarian ideals.[11] Due to institutional efforts to discourage self-expression values and undermine domestic movement, Singapore's situation is comparable to that of China; according to Freedom House, on a scale of 0 to 1, the freedom of domestic movement in the U.S. is 0.86, while that of China is 0.21. Despite global interconnectedness, a nation's unique historical context and cultural norms shape its institutional design and may inhibit open discourse and democratic engagement.

Arguably, formal institutions could provide a foundation for self-expression values to flourish. Contrary to Singapore's case, if formal institutions are operated on the basis of democratic principles, they offer the necessary safeguards for individuals to express themselves fully and participate in civic affairs. Given different historical contexts and developmental trajectories, nations abide by a variety of cultural norms that shape their formal institutions. Accordingly, the extent to which a particular nation's formal institutions promote democratic principles, such as self-expression values, could vary in fascinating ways. For instance, many Asian countries, including China and Singapore, could find their roots in Confucianism, which "stresses the importance of hierarchies and social relationships."[12] Confucianism's more rigid culture naturally gives rise to traditional, conservative values, paving the way for authoritarian governance. The emphasis on social hierarchy compromises individual freedom and civil rights, which "[aligns] with an elite-directed government rather than one driven by civil society."[13]According to the V-Dem dataset "power distributed by sexual orientation," on a scale of 0 to 3, the U.S. scores 2.25 while China scores 0.32. Restricting certain minority groups' chances of obtaining a position of power allows the Chinese political trajectory to reflect a broader restriction on diversity of thought. Meanwhile, this dataset underscores the substantive role that political structures play in either facilitating or restricting the representation of certain populations.[14] In another dataset by V-Dem, "Freedom of Academic

[10] Chan, Ying-kit. "Toxic Masculinity in Singapore: National Service, Sexual Harassment, and the #MeToo Movement." *East Asia (Piscataway, N.J.)*, vol. 39, no. 3, 2022, pp. 225–38, https://doi.org/10.1007/s12140-021-09379-6. Accessed 15 Nov. 2024.
[11] Ibid.
[12] Schmidt, Carmen Elisabeth. "Values and Democracy in East Asia and Europe: A Comparison." *Asian Journal of German and European Studies*, vol. 3, no. 1, 2018, https://doi.org/10.1186/s40856-018-0034-9. Accessed 13 Nov. 2024.
[13] Ibid.
[14] Borge, Lars-Erik, et al. "Public Sector Efficiency: The Roles of Political and Budgetary Institutions, Fiscal Capacity, and Democratic Participation." *Public Choice*, vol. 136, no. 3/4, 2008, pp. 475–95, https://doi.org/10.1007/s11127-008-9309-7. Accessed 20 Nov. 2024.

and Cultural Expression," on a scale of 0 to 3, the U.S. scores 3.62 while China scores 0.12. This dataset reinforces the idea that the elite-directed government is oftentimes authoritarian and tends to preserve hierarchical values and suppress progressive viewpoints. This is particularly relevant to self-expression values as they are more prevalent in democracies where individual freedoms are robustly enshrined in formal institutions. Thus, the role of democratic institutions in supporting self-expression confirms the hypothesis that societies valuing self-expression are closely linked to formally democratic institutions.

Hence, in order to sustain a democracy, political structures that encourage values of self-expression are critical because they provide the accountability and ethical foundation necessary for democratic governance to thrive. These political structures, whether it be the judiciary branch or independent agencies, are not only responsible for implementing laws but also for integrating democratic principles into the societal and cultural norms. According to V-Dem, on a scale of 0 to4, the U.S. scores 3.36 for "institutional autonomy" while China scores "0.94." Clearly, there is a stark contrast between the efforts of the U.S. national government and those of China in promoting autonomy on the institutional level. Even when individual opinions deviate from prevailing cultural norms, political structures serve as mechanisms for protecting individual expression. As Van Direl argues, "It is the government's task to guarantee the values of an open, democratic constitutional state [...]. Values are created by society itself, and society also ensures that they are supported," underscoring the role of government and society in cooperatively upholding democratic ideals.[15] Again, in order to obtain long-term democratic stability, political structures and citizens must work collaboratively as "the character of the organization itself and of the natural persons who are employed form the identity of the organization."[16] Because individuals are often viewed as extensions of their nation's cultural heritage, such as Confucianism in many Asian societies, they exert a profound, and more importantly, direct influence on the form and character of their government.

In conclusion, based on datasets from V-Dem and Freedom House, this essay discusses the positive correlation between support for self-expression values and support for democracy, considering the impact of modernization and economic stability in shaping self-expression values and the critical role of formal institutions in protecting democratic principles. Understanding how self-expression values are conducive to the long-term stability of democracy, lawmakers shall emphasize policies that cultivate personal freedom, open-mindedness, and civic engagement. Thus, a potentially relevant research topic could be to investigate the degree to which self-expression values positively impact voter turnout, civic engagement, and volunteerism. While this essay has primarily focused on the contexts in which individuals support both self-expression values *and* democracy, democratic backsliding —or the erosion of formal institutions— may arise if they fail to do so. This debilitation of democratic institutions[17] may incline individuals to gravitate towards a populist leader who prioritizes personal freedoms but disregards democratic procedures. Therefore, it is worthwhile to further examine public policies that effectively prevent democratic backsliding while safeguarding self-expression values.

[15] Van Driel, Petra. "Ethics and Digital Transformation: The Role of Democratic Institutions." *European Conference on Management, Leadership & Governance*, Academic Conferences International Limited, 2019, pp. 509–11, https://doi.org/10.34190/MLG.19.046. Accessed 15 Nov. 2024.
[16] Ibid.
[17] Bermeo, Nancy. "ON DEMOCRATIC BACKSLIDING." *Journal of Democracy*, vol. 27, no. 1, 2016, pp. 5-19. *ProQuest*, https://login.proxy.library.nd.edu/login?url=https://www.proquest.com/scholarly-journals/on-democratic-backsliding/docview/1771758539/se-2.

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Hadenius, Axel, and Jan Teorell. “Cultural and Economic Prerequisites of Democracy: Reassessing Recent Evidence.” *Studies in Comparative International Development*, vol. 39, no. 4, 2005, pp. 87–106, https://doi.org/10.1007/BF02686166. Accessed 13 Nov. 2024.

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Nisbet, Erik C., and Elizabeth Stoycheff. “Let the People Speak: A Multilevel Model of Supply and Demand for Press Freedom.” *Communication Research*, vol. 40, no. 5, 2013, pp. 720–41, https://doi.org/10.1177/0093650211429117. Accessed 17 Nov. 2024.

Pemstein, Daniel, Kyle L. Marquardt, Eitan Tzelgov, Yi-ting Wang, Juraj Medzihorsky, Joshua Krusell, Farhad Miri, and Johannes von Römer. 2024. “The V-Dem Measurement Model: Latent Variable Analysis for Cross-National and Cross-Temporal Expert-Coded Data”. V-Dem Working Paper No. 21. 9th edition. University of Gothenburg: Varieties of Democracy Institute.

Przeworski, Adam, and Fernando Limongi. *Modernization: Theories and Facts*. World Politics, vol. 49, no. 2, 1997, pp. 155–183. Cambridge University Press. DOI: 10.1353/wp.1997.0004. Accessed 13 Nov. 2024.

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Voter Accessibility Policy in Indiana and Nationwide Voter Accessibility Policy

Madeline Hutson

Improving voter accessibility remains a critical challenge for many American cities, and South Bend, Indiana presents a compelling case study for examining potential interventions towards enhancing electoral participation. While voter turnout in South Bend has historically aligned with national averages, significant disparities persist across neighborhoods and demographic groups, suggesting that structural barriers continue to impede equitable access to the ballot box. This research examines how South Bend can implement a comprehensive strategy to increase voter accessibility through two key mechanisms: an expansion of automatic voter registration and absentee voting options. The importance of this research is underscored by recent studies indicating that voting accessibility directly impacts voter participation rates, particularly among historically marginalized communities, working-class voters, and individuals with disabilities. Research by the Brennan Center for Justice suggests that automatic voter registration has been shown to add millions of eligible voters to the rolls in states where it has been implemented, while expanded absentee voting options have proven crucial for ensuring ballot access during unexpected disruptions to in-person voting.[1]

Current Voting Accessibility Policy in South Bend, IN

Indiana's voting accessibility policies present a mixed picture, combining some relatively accommodating features with significant restrictions that place it among the more restrictive states for voter access. While the state offers a 28-day early voting period (longer than the national average of 23 days) its implementation is limited by minimal requirements for early voting locations and restricted hours of operation.[2] Indiana maintains one of the nation's stricter voter identification laws, requiring government-issued photo ID with specific criteria regarding name conformity and expiration dates. The state's registration system also imposes notable barriers, with a 29-day registration deadline before the election, a cutoff that ranks among the earliest nationally, and the absence of both automatic and same-day voter registration options that have been adopted by numerous other states.[3]

Perhaps most notably, Indiana's absentee voting policies place it among the minority of states that still require specific excuses for mail-in voting. While 27 states and the District of Columbia have adopted "no-excuse" mail voting policies, and eight states conduct their elections primarily by mail, Indiana maintains strict criteria for absentee ballot eligibility, including age requirements, disability status, work commitments, and religious obligations.[4] This approach stands in stark contrast to states like Colorado, Washington, and Oregon, which have implemented universal mail voting systems alongside automatic registration processes. When compared to national trends, Indiana's policies align more closely with restrictive states like Texas and Mississippi than with states at the forefront of voting accessibility. The lack of state-level requirements for poll transportation access,

[1] "Automatic Voter Registration | Brennan Center for Justice," www.brennancenter.org, n.d., https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-reform/automatic-voter-registration.
[2] "Early In-Person Voting," www.ncsl.org, June 13, 2023, https://www.ncsl.org/elections-and-campaigns/early-in-person-voting.
[3] "Voter Registration Deadlines," www.ncsl.org, n.d., https://www.ncsl.org/elections-and-campaigns/voter-registration-deadlines.
[4] National Conference of State Legislatures, "The Evolution of Absentee/Mail Voting Laws, 2020 through 2022," NCSL, October 26, 2023, https://www.ncsl.org/elections-and-campaigns/the-evolution-of-absentee-mail-voting-laws-2020-through-2022.

limited early voting location requirements, and strict identification and registration deadlines create multiple barriers to voter participation. While Indiana does maintain certain accessibility requirements, such as ADA-compliant polling places and accessible voting machines, the overall framework of voting policies suggests significant room for modernization and expansion of access, particularly in areas where other states have successfully implemented more inclusive voting systems.

Indiana has implemented one of the strictest voter ID laws in the United States, requiring voters to present a current, government-issued photo identification to cast a ballot.[5] This law, upheld by the Supreme Court in 2008, has sparked debate about its potential impact on voter turnout, particularly among elderly, low-income, and minority voters. While some research suggests stringent ID rules may negatively affect turnout, the complexity of electoral laws and voting behavior makes it challenging to draw definitive conclusions.[6] In response to concerns about low voter turnout, some states have implemented automatic voter registration laws, where eligible individuals are automatically registered to vote when interacting with certain government agencies, such as a department of motor vehicles. As of 2016, only 65% of eligible American citizens reported being registered to vote, with actual turnout at 55.7%, significantly lower than many other developed democracies.[7] When compared to national trends, Indiana's policies align more closely with restrictive states like Texas and Mississippi than with states at the forefront of voting accessibility. The lack of state-level requirements for poll transportation access, limited early voting location requirements, and strict identification and registration deadlines create multiple barriers to voter participation. While Indiana does maintain certain accessibility requirements, such as ADA-compliant polling places and accessible voting machines, the overall framework of voting policies suggests significant room for modernization and expansion of access, particularly in areas where other states have successfully implemented more inclusive voting systems.

Policy Implementations to Improve Voter Participation in Indiana

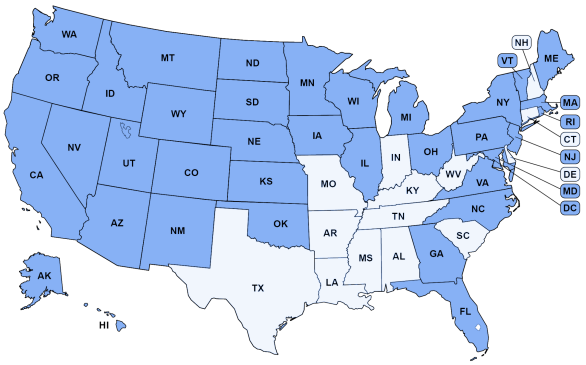
1. No-excuse Absentee Voting

No-excuse absentee voting is a voting policy that allows any registered voter to request and cast an absentee/mail-in ballot without having to provide a specific reason or excuse for why they can't vote in person on Election Day. Indiana is in the minority, still requiring an excuse to be eligible for absentee voting.

Research suggests that no-excuse absentee voting can have positive effects on voter turnout and accessibility. Studies have found that implementing no-excuse absentee voting significantly increases turnout in presidential elections.[8]

[5] Matt A. Barreto, Stephen A. Nuño, and Gabriel R. Sanchez, "The Disproportionate Impact of Voter-ID Requirements on the Electorate—New Evidence from Indiana," PS: Political Science & Politics 42, no. 01 (January 2009): 111–16, https://doi.org/10.1017/s1049096509090283.
[6] Robert S. Erikson and Lorraine C. Minnite, "Modeling Problems in the Voter Identification—Voter Turnout Debate," Election Law Journal: Rules, Politics, and Policy 8, no. 2 (June 2009): 85–101, https://doi.org/10.1089/elj.2008.0017.
[7] Elizabeth M. Hyde, "A Bipartisan Policy for Democracy: Why Automatic Voter Registration Is Right for Indiana," Indiana Law Review 52, no. 3 (December 17, 2019): 481–510, https://doi.org/10.18060/23840.
[8] Roger Larocca and John S. Klemanski, "U.S. State Election Reform and Turnout in Presidential Elections," State Politics & Policy Quarterly 11, no. 1 (February 15, 2011): 76–101, https://doi.org/10.1177/1532440010387401.

Figure 1. Availability of No-excuse Absentee Voting



Movement Advancement Project, 2024

This voting method, along with other convenient voting reforms, can improve overall turnout and promote greater voting equality among socio-economic classes as well as racial and ethnic groups.[9] No-excuse absentee voting is particularly beneficial for voters with disabilities, who are more likely to vote by mail when this option is available.[10]

The adoption of no-excuse absentee voting has been influenced by factors signaling the necessity for greater voting convenience in states, although partisanship has not played a significant role in its implementation.[11] These findings highlight the potential of no-excuse absentee voting to enhance democratic participation and accessibility for diverse groups of voters.

The ACLU of Virginia made a compelling case for no-excuse absentee voting in their 2019 press release, arguing that restricting absentee voting to in-person only created significant barriers for many Virginia voters. According to their analysis, this limitation disproportionately affected several key demographics, including minority communities, rural residents, voters with disabilities, and working families. The organization highlighted how geographic and logistical barriers effectively excluded qualified voters from participating in the democratic process.

The ACLU's press release specifically detailed how the existing system created multiple obstacles for voter participation. In rural areas, voters often faced challenges reaching registrar offices located on the opposite side of their county. Urban voters without personal vehicles frequently struggled with limited public transportation options to reach distant absentee voting sites. Additionally, the organization emphasized how restricted registrar office hours posed particular challenges for voters with inflexible work schedules or childcare responsibilities. Through this comprehensive analysis, the ACLU of Virginia demonstrated how expanding to no-excuse mail-in voting would help ensure more equitable voting access

Opposition to no-excuse absentee voting often centers on several key concerns, though research and real-world evidence consistently refute these arguments. The primary objection focuses on fears of increased voter fraud, yet multiple studies demonstrate that mail voting fraud is exceptionally rare. The Brennan Center's analysis found fraud rates between 0.0003% and 0.0025%, while Oregon's two-decade experience with universal mail voting has yielded only about a dozen proven fraud cases out of more than 100 million ballots cast. States have implemented robust security measures, including signature verification, ballot tracking systems, and strict chain of custody procedures, which have proven highly effective at maintaining election integrity. Critics also argue that mail ballots face higher rejection rates and create excessive administrative burdens. However, research shows that while mail ballots initially have higher rejection rates, these numbers decrease significantly as voters gain

[9] Michael Ritter, "Accessible Elections and Voter Turnout," Accessible Elections, October 22, 2020, 51–68, https://doi.org/10.1093/oso/9780197537251.003.0004.
[10] Peter Miller and Sierra Powell, "Overcoming Voting Obstacles," American Politics Research 44, no. 1 (May 28, 2015): 28–55, https://doi.org/10.1177/1532673x15586618.
[11] Daniel R. Biggers and Michael J. Hanmer, "Who Makes Voting Convenient? Explaining the Adoption of Early and No-Excuse Absentee Voting in the American States," State Politics & Policy Quarterly 15, no. 2 (February 11, 2015): 192–210, https://doi.org/10.1177/1532440015570328.

experience with the system and states implement ballot curing processes. The cost argument has also been debunked, as states like Colorado have actually reported savings of $6 or more per voter after transitioning to expanded mail voting.[12] While there are initial implementation costs, the long-term financial benefits often outweigh these investments through reduced spending on polling places and poll workers.

Perhaps most notably, claims about partisan advantage have been thoroughly disproven by research, including studies from Stanford University that found no significant partisan impact from expanded mail voting.[13] Even in conservative states like Utah, which uses universal mail voting, Republican candidates continue to win most races. The argument that voters prefer in-person voting has also been challenged by recent voting patterns, including record-breaking mail ballot usage in recent elections and high satisfaction rates in states with established mail voting systems. Importantly, most states maintain in-person voting options even with no-excuse absentee systems, allowing voters to choose their preferred method. The evidence overwhelmingly suggests that no-excuse absentee voting successfully expands voting access while maintaining election security through comprehensive safeguards and modern tracking systems.

2. Automatic Voter Registration

Automatic Voter Registration (AVR) is a system in which eligible individuals are automatically registered to vote when they interact with certain government agencies, such as the Department of Motor Vehicles or through social services offices. This process streamlines voter registration by transferring necessary information directly to election officials, removing the need for individuals to take separate steps to register. Automatic Voter Registration (AVR) has shown positive effects on voter turnout and registration rates. Studies indicate that AVR leads to a small but positive impact on overall voter registration and turnout.[14] Specifically, Automatic Re Registration (ARR) for people who have changed addresses, turnout increased by 5.8 percentage points, with significant effects on Republicans and nonpartisans.[15] AVR has been widely adopted in the US to address low voter turnout, which lags behind other developed democracies.[16] However, research also reveals unintended consequences, such as a significant decrease in partisan voter registration rates in states with back-end AVR systems.[17] Despite these challenges, AVR is considered a bipartisan policy that can potentially increase voter participation and diversify voter rolls.[18] The implementation of AVR continues to evolve, with ongoing research examining its impacts on various aspects of the electoral process.

Reports from the Institute for Responsive Government, Demos, and the Brennan Center for Justice emphasize the transformative benefits of Automatic Voter Registration (AVR). By electronically updating voter rolls when individuals interact with government agencies, AVR ensures

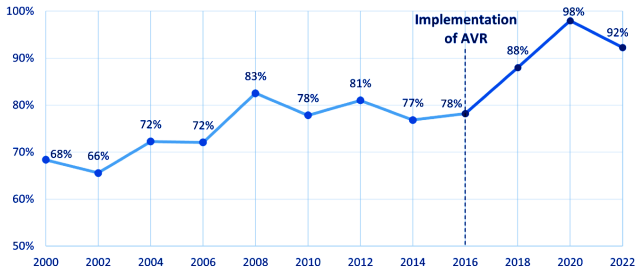
[12] "Colorado Voting Reforms: Early Results," Pewtrusts.org, March 22, 2016, https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/03/colorado-voting-reforms-early-results.
[13] May Wong, "New Research on Voting by Mail Shows Neutral Partisan Effects | SIEPR," siepr.stanford.edu, April 16, 2020, https://siepr.stanford.edu/news/new-research-voting-mail-shows-neutral-partisan-effects.
[14] Gujar, Ketaki. "Zooming Past Motor-Voter: An Analysis of How Automatic Voter Registration Policies Impact Voter Turnout in the United States." (2020).
[15] Seo-Young Silvia Kim, "Automatic Voter Reregistration as a Housewarming Gift: Quantifying Causal Effects on Turnout Using Movers," American Political Science Review, October 11, 2022, 1–8, https://doi.org/10.1017/S0003055422000983.
[16] Elizabeth M. Hyde, "A Bipartisan Policy for Democracy: Why Automatic Voter Registration Is Right for Indiana," Indiana Law Review 52, no. 3 (December 17, 2019): 481–510, https://doi.org/10.18060/23840.
[17] Ellen Seljan, Todd Lochner, and Alex Webb, "The Partisan Costs of Automatic Voter Registration," Electoral Studies 82 (April 2023): 102591, https://doi.org/10.1016/j.electstud.2023.102591.
[18] Gujar, Ketaki. "Zooming Past Motor-Voter: An Analysis of How Automatic Voter Registration Policies Impact Voter Turnout in the United States." (2020).

that voting records remain accurate and up-to-date, reducing errors and eliminating outdated or duplicate entries. This streamlined system minimizes election day issues by reducing the need for same-day registration or provisional ballots, which can cause delays and confusion at the polls. Additionally, AVR saves significant resources by cutting the costs associated with processing paper forms and mailing to incorrect addresses, providing substantial financial relief to election officials.[19]

Advocates like Demos further highlight how AVR promotes civic participation by removing barriers to registration, making the process more inclusive and equitable.[20] By automatically identifying eligible voters through existing government records, AVR builds a foundation for universal voter registration and a more accessible electoral system. The Brennan Center for Justice echoes these points, emphasizing that AVR simplifies voter registration for both voters and officials, making the process more convenient and less error-prone. Overall, these reports argue that AVR is a critical step toward creating a modern, efficient, and fair electoral system that enhances voting rights and increases participation.

In Georgia, within the first four years after AVR's implementation, the active voter registration rate increased by 20 percentage points to 98% of eligible voters in 2020, up from 78% in 2016.[21]

Figure 3. Active Registered Voters as a Percentage of Eligible Voters in Georgia



The Center for Election Innovation & Research, 2023

Opponents of Automatic Voter Registration argue that AVR could increase ineligible voter participation and lead to duplicate registrations, undermining election integrity. However, evidence from states with AVR does not support these claims. AVR systems verify eligibility using existing government databases, ensuring that only qualified individuals are registered. Oregon's implementation of AVR found no significant increase in ineligible registrations, and the state experienced no spike in voter fraud. Moreover, manual systems are often more prone to errors, such as misspelled names or incorrect addresses, which AVR's electronic transfers can reduce.

Improving voter accessibility in South Bend, Indiana, requires modernizing its voting policies and addressing structural barriers that disproportionately impact marginalized communities. By implementing strategies such as automatic voter registration, expanded absentee voting options, and enhanced early voting access, the city can increase participation rates and ensure a more equitable electoral system. Evidence from other states demonstrates that these reforms improve voter turnout, streamline election processes, and reduce administrative burdens

[19] "How Automatic Voter Registration Would Change America | Demos," Demos, June 5, 2015, https://www.demos.org/blog/how-automatic-voter-registration-would-change-america.
[20] "How Automatic Voter Registration Would Change America | Demos," Demos, June 5, 2015, https://www.demos.org/blog/how-automatic-voter-registration-would-change-america.
[21] Seo-Young Silvia Kim, "Automatic Voter Reregistration as a Housewarming Gift: Quantifying Causal Effects on Turnout Using Movers," American Political Science Review, October 11, 2022, 1–8, https://doi.org/10.1017/S0003055422000983.

without compromising election integrity. Addressing these challenges is not only a practical necessity but also a fundamental step toward strengthening democracy and empowering all citizens to participate fully in the political process.

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The Neglected Ninety-eight

Matthew Amante

Glitz and glamor. Well-dressed men and women arguing vociferously against or in the defense of a client. A judge sitting above the fray, cloaked in black as he or she evaluates the case. Suddenly, a new piece of explosive evidence comes out of nowhere that radically alters the case to its core. These are all aspects of the popular depiction of what law is like: The Ace Attorneys or Suits of the world. However, the truth for most defendants could not be any further. Contrary to popular belief, only 2% of cases ever reach the inside of a courtroom. That means only 2% of defendants have their experiences even somewhat represented by courtroom dramas. The vast majority of cases are decided by plea bargains. Plea bargains, as defined by Cornell Law, are "agreements between the prosecution and the defendant where the defendant agrees to plead guilty to the charges against them" in exchange for lesser criminal charges.[1] The way this system is set up disproportionately affects lower-income individuals and minorities, doing a disservice to justice.

This paper will begin with a section outlining the purported goals of plea bargaining and why it is currently failing that mission. Second, this paper will discuss the history of plea bargaining. Third, it will discuss how plea bargaining actually works and certain powers given to prosecutors which make it possible. Fourth, it will analyze the legal scholarship behind whether or not plea bargaining itself infringes on the constitutional rights of Americans. Finally, this paper will review current efforts towards plea bargaining reform, including those that have been successful (and those that have not), and steps to move forward towards true criminal justice in the state of Indiana.

The Case for Plea Bargaining

Proponents of plea bargaining generally argue that bargaining benefits the defendant as well as the prosecution. For the defendant, according to the United States Department of Justice, agreeing to a plea bargain may "reduce his [or her] exposure to a more lengthy sentence."[2] Defendants may also agree to plea bargains because they want to avoid a lengthy trial process, publicity that a trial may bring, or to avoid potentially having a more serious crime put on their record. Prosecutors generally engage in plea bargains because "they have far more cases than can possibly be tried."[3] Prosecutors, who in some cases like in large cities, are dealing with thousands of cases, believe that plea bargaining can reduce workload by avoiding trial.

Critics of these arguments assert that neither address the main concern with plea bargaining: that it constitutes a miscarriage of justice. Prosecutors often choose plea bargains when they believe that a conviction in a court of law is unlikely, or that the evidence against a certain defendant is thin. As Albert Alschuler wrote in his paper "A Nearly Perfect System for Convicting the Innocent," "One can easily discover real-world cases in which prosecutors fearful of defeat at trial have struck bargains allowing defendants facing potential life sentences to plead guilty to misdemeanors."[4] Defendants guilty of grizzly crimes can plea down to lower punishments simply due to prosecutors' fear of losing the case. On the

[1] *Legal Information Institute*, "Plea Bargain," *Legal Information Institute*, accessed April 1, 2025, https://www.law.cornell.edu/wex/plea_bargain.
[2] "*U.S. Department of Justice*, "Plea Bargaining," *U.S. Attorneys | Plea Bargaining | United States Department of Justice*, last modified May 12, 2023, https://www.justice.gov/usao/justice-101/pleabargaining.
[3] Paul Bergman, "The Pros and Cons of Plea Bargaining," *Nolo*, last modified April 11, 2023, https://www.nolo.com/legal-encyclopedia/the-benefits-plea-bargain.html.
[4] Albert W. Alschuler, "A Nearly Perfect System for Convicting the Innocent," *Chicago Unbound*, accessed April 1, 2025, https://chicagounbound.uchicago.edu/public_law_and_legal_theory/602/.

other hand, defendants can easily be pressured by prosecutors using lengthy prison sentences as a scare tactic to get defendants to agree to plead guilty, even if they in fact did not commit the crime. For example, if a defendant who is truly guilty of second degree murder is threatened with a first degree murder charge (which in Indiana could mean the death penalty), he or she is much more likely to plead guilty to avoid the possibility of death. Additionally, people innocent of any crime often feel that their best chance at making it out of prison or jail as fast as possible is to admit to a lesser crime for fear of getting convicted of a greater crime.

The History of Plea Bargaining

The plea bargaining system, in fact, did not always exist. Specifically, plea bargaining as we know it today did not exist prior to the Civil War. When it did begin to gain traction, appellate courts fought hard against the practice. In 1877, the Wisconsin Supreme Court saw pleas as "hardly, if at all, distinguishable in principle from a direct sale of justice."[5] In the eyes, plea bargaining is essentially nothing more than a business negotiation. Instead of fighting in trial, plea bargaining sees both sides weigh the odds of success and failure and reach a compromise. This "sale" of justice relinquishes the ideals of a trial as a fact-finding and justice-seeking process in favor of what might be more feasible. As former Chief Justice of the Supreme Court Warren Burger put it, "An affluent society ought not be miserly in support of justice, for economy is not an objective of the system."[6] As Justice Burger states above, the true purpose of a trial—to seek justice—should not be tainted by the realities and desires of the economy: to finish cases as quickly as possible to keep expenses to a minimum.

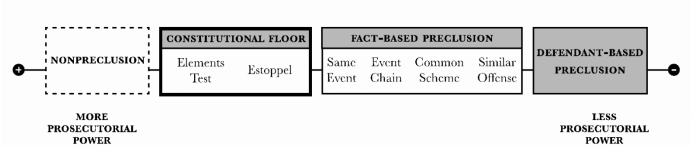
The Law Around Plea Bargaining

In order to further examine the errors of plea bargaining, it is important to understand the law surrounding plea bargaining itself. The Supreme Court said it best in 2012 when it declared "plea bargaining . . . is not some adjunct to the criminal justice system; it is the criminal justice system."[7] Many people and even scholars assume that the practice—and the prosecutorial power over sentencing more generally—is lawless. By nature, plea bargaining exists more within the gray area untouched by the law rather than as a function of the law. This concept makes it more difficult to understand how a plea bargain reform movement would work. Reformers cannot functionally campaign for a reduction in prosecutorial power in the same way they can petition for a referendum to a state constitution on issues like abortion or gun rights. However, as Columbia Law Review notes, there are in fact regulations governing prosecutorial power: the "law of criminal procedure."[8] Criminal procedure governs concepts such as the law of joinder and severance, the law of preclusion, the law of cumulative sentencing, the law of pretrial charge review, the law of dismissal and amendment, and the law of lesser offenses. To explain this idea, this paper will talk about another criminal procedure: charge bargaining. This practice allots prosecutors the power to bargain with defendants over which charges they will bring against the defendant and which they will not. This power is not directly given to prosecutors. However, it has been derived by the constitutional power given to prosecutors to decide which charges are and are not brought against defendants. This right therefore implies that, if prosecutors can drop charges at whims, they must have the power to

[5] Dylan Walsh, "On Plea Bargaining, the Daily Bread of American Criminal Courts," *The Atlantic*, May 3, 2017, https://www.theatlantic.com/politics/archive/2017/05/plea-bargaining-courts-prosecutors/524112/.
[6] Walsh, "On Plea Bargaining."
[7] Nina Totenberg, "Supreme Court Rules on Plea-Bargain Rights," *NPR*, March 22, 2012, https://www.npr.org/2012/03/22/149126033/supreme-court-rules-on-plea-bargain-rights.
[8] *Columbia Law Review*, "The Hidden Law of Plea Bargaining," *Columbia Law Review*, July 2, 2018, https://columbialawreview.org/content/the-hidden-law-of-plea-bargaining/.

drop charges in the course of negotiation. This gray area is where the law of criminal procedure lives. While a sliding scale exists between giving the prosecutors too much and too little power, "too often our criminal justice system gets that balance wrong, tolerating an unacceptable excess of prosecutorial power, and with it an unacceptable excess of incarceration, doled out in troublingly unequal ways."[9]

This paper will delve into another role in which criminal procedure affects defendants: the law of preclusion. The law of preclusion governs how a prosecutor is able or unable to file additional charges against the same defendant if they have already filed a case against that defendant. The only law the states have to abide by in this case is the extremely narrow law of double jeopardy, which states that one cannot be tried for the same exact crime twice. Therefore, in states where double jeopardy is the only protection afforded defendants, prosecutors, when trying someone for multiple different crimes, can put a defendant through several trials instead of trying all of their accused crimes at the same time. This power increases the financial and time incentives on defendants to plead guilty, lest they not only potentially face more prison time at trial but a whole new trial entirely. Additionally, prosecutors can use this power of preclusion to hurt defendants by giving them the same trial. For example, if a defendant is being tried for two crimes, and one of them might show the defendant in an unfavorable light, for example rape, prosecutors may try this charge along with another, unrelated charge like robbery. Prosecutors might take this course of action in order to prompt the jury to think worse of the defendant and be more likely to find him or her guilty on the robbery charge. In every state except Montana, even if prosecutors know about multiple charges at the same time, they do not have to file the charges together and can decide at different times when they want to file them.



Additionally, prosecutors in plea bargains almost always have discretion on cumulative punishment. This concept means that, if a defendant is pleading guilty to a robbery for five years and assault for ten years, are they going to go up for ten years (with the 5 years of the robbery served at the same time as the assault charge) or for fifteen (with the two sentences served consecutively)? This power largely excludes the judge, who often grants "time-served" as an adjunct to recognize the time a defendant has gone through trial or spent in jail, from the decision-making process. Prosecutors therefore can inflate how much time a defendant might be facing by stacking charges on top of each other. This concept creates a chain around the neck of the defendant from which only a guilty plea may be able to save them.

A final demonstration of prosecutorial power is the ability to get defendants to waive their rights to an appeal. As an example, Ashley Townsend, facing twenty years to life in prison, was offered a plea bargain that would have reduced his possible sentencing down to ten to fifteen years. However, as a condition of his plea, Townsend would have also had to "waive his right to appeal his conviction, any sentence under 300 months, and almost every other possible path to judicial review of his conviction and sentence."[10] Ultimately, "The waiver basically required Townsend to give up rights that he did not know he had to contest his sentence."[11] Prosecutorial waivers against compassionate reentry is a real and pervasive issue. The Justice Department under Merrick Garland put an end to the practice, but that

[9] *Columbia Law Review*, "The Hidden Law of Plea Bargaining."
[10] *Harvard Law School*, "Plea Bargaining and Mass Incarceration Go Hand in Hand. We Need to End Both," *Harvard Law School*, May 3, 2023, https://hls.harvard.edu/clinic-stories/analysis/op-ed/plea-bargaining-and-mass-incarceration-go-hand-in-hand-we-need-to-end-both/.
[11] *Harvard Law School*, "Plea Bargaining and Mass Incarceration Go Hand in Hand. We Need to End Both."

decision does not stop future Attorneys General from reversing the decision, nor does it stop state prosecutors from continuing to use the pre-trial waivers as a tactic as the status under the current AG remains uncertain.

The Constitutionality of Plea Bargaining

If prosecutorial discretion through the lens of criminal procedure is how plea bargaining works, then why should reformers want to change it in the first place? Is this system not specifically perpetuating the goals of our criminal justice system? The answer is no. The purported goal of our criminal justice system is justice. Many critics have noted that the main type of "justice" this system partakes in is punitive. Offenders are punished for their crime instead of looking at repairing the harm done or even transforming the reasons why the offender did what they did. However, even looking at the definition of "justice" in this system—alloting someone a "deserving" punishment relative to their crime—plea bargaining often fails. Everyone in this system is purportedly granted a right to a trial. According to the Sixth Amendment, "the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right of an impartial jury" shall not be infringed upon.[12] However, this violation is exactly what plea bargaining does. Plea bargaining inherently gets rid of a right to a trial by pressuring defendants to waive their right. It also takes away the right to a jury as defendants who agree to a plea bargain will not have their case heard and decided by a group of their peers. Their fate is instead decided by a prosecutor, who oftentimes has little or nothing in common with the defendant. The Supreme Court has already ruled on this issue of plea bargaining and its constitutionality, stating in 1969 that it was inherent to criminal procedure.[13]

I believe that the Court was wrong in their assessment. Supporters of plea bargaining argue that, like other rights, a defendant should be able to waive their right to a trial and to a trial by a jury of their peers if they so desire. That, however, is not the relevant argument. Other rights like the Fourth Amendment right to privacy can be waived. However, with plea bargaining, the Court errs because it fails to take into enough account the state the defendant is in when they agree to these plea bargains. The philosophy behind this reasoning is already taken as fact in other aspects of law. For example, as the Supreme Court decided in Miranda vs. Arizona, confessions taken without the proper due diligence and under coercion are not valid evidence. The power imbalance in that case, between the police and a defendant, is well defined and understood. What is less examined is the power imbalance between a prosecutor and a defendant in plea bargaining. Unlike defendants, the lives of prosecutors are not put on hold pending a trial. They are not thrown in jail where their only hope of getting out is possibly paying bond (where they will still have to deal with lengthy trial processes) or pleading. Instead, they have the power to choose how the case will go, what charges will be brought, whether charges will be brought as one trial or multiple, and how many years they want for sentencing. In most cases, a power imbalance this striking would get a contract thrown out as coercive. In some disturbing cases, prosecutors instead use their powers to threaten the families of defendants in order to secure guilty pleas. That chain of events is exactly what happened to Viken Keuylian, who pled guilty to wire fraud due to a threat by prosecutors to indict his sister if he did

[12] *Legal Information Institute*, "Sixth Amendment," *Legal Information Institute*, accessed April 1, 2025, https://www.law.cornell.edu/constitution/sixth_amendment.
[13] Doug Lieb, "Vindicating Vindictiveness: Prosecutorial Discretion and Plea Bargaining, Past and Future," *The Yale Law Journal*, accessed April 1, 2025, https://www.yalelawjournal.org/note/vindicating-vindictiveness-prosecutorial-discretion-and-plea-bargaining-past-and-future.

not plead guilty.[14] Another instance took place in U.S. vs. Pollard where a man pled guilty to attempting to give national security information to a foreign government. He did this because prosecutors attempted to link the plea of his wife with his own. If he pled guilty and served life, her punishment would have been reduced. While most people would consider threatening the wife of someone in order to get a plea illegitimate, in these cases of plea bargaining, it is not not only allowed but understood as necessary. As the Law Journal for Social Justice succinctly puts it, "In the business world, we tolerate these tactics [threats, manipulation, scare tactics, promises], but should we expect them from the government officials upholding our justice system"?[15]

Expounding on this idea, while defendants are often given rivalrous legal counsel (in the form of public defenders), these accommodations are often woefully inadequate in assuring a fair and balanced trial. The Supreme Court understood the important role public defenders and defense attorneys in general have in plea bargaining when they handed down their decisions in Padilla vs. Kentucky and Hill vs. Lockhart. In these decisions, the Court decided that ineffective assistance of counsel occurs when a defense attorney causes a defendant to agree to a plea deal that may not be in their best interest, violating their Sixth Amendment rights. With these cases, the Court established how important it was for defendants to be able to receive effective counsel during the plea bargaining process. Unfortunately, most defendants who need the assistance of public defenders are not receiving effective counsel. Public defenders, often overstretched due to a lack of other public defenders, regularly take on hundreds of cases at once. For one example, Jack Talaska, a public defender in Louisiana, ended up being the defense attorney on nearly 200 felony convictions at the same time. That is the equivalent of the work of around five attorneys being done by one.[16] According to the American Bar Association's investigation into the Louisiana public defense system, dubbed the "Louisiana Project", public defenders face 150,473 new cases per year.[17] In a state with often only 1-3 public defense offices per county, that is simply not enough. Overworking public defenders to the point where they cannot give more than a few hours to felony cases means their workload is adversely affecting their ability to give their clients an adequate defense. This issue, unfortunately, is not restricted to Louisiana. According to the Bureau of Justice Statistics, "In 2007, 964 public defender offices across the nation received nearly 6 million indigent defense cases."[18] Many public defenders end up quitting their jobs to either work in the private sector or on the prosecutorial side where they get more discretion on which cases to take on with their larger team.

Defenders of the current system may argue that plea bargaining helps alleviate the burden of the already tired justice system, with all of its backlogs and year-long procedures. However, the point remains that, since plea bargaining has not existed forever, it does not necessarily need to exist.

[14] *Cato Institute*, "Coercive Plea Bargaining: An American Export the World Can Do Without," *Cato Institute*, accessed April 1, 2025, https://www.cato.org/commentary/coercive-plea-bargaining-american-export-world-can-do-without.
[15] *Law Journal for Social Justice at Arizona State University*, "The Good, the Bad, and the Ugly of Plea Bargaining," *Law Journal for Social Justice*, March 18, 2022, https://lawjournalforsocialjustice.com/2022/03/22/the-good-the-bad-and-the-ugly-of-plea-bargaining/.
[16] Richard A. Oppel and Jugal K. Patel, "One Lawyer, 194 Felony Cases, and No Time," *The New York Times*, January 31, 2019, https://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html.
[17] *American Bar Association*, "Louisiana Indigent Defense Report," *American Bar Association*, accessed April 1, 2025, https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf.
[18] Lynn Langton, "Public Defender Offices, 2007 - Statistical Tables (Revised)," *Bureau of Justice Statistics*, accessed April 1, 2025, https://bjs.ojp.gov/library/publications/public-defender-offices-2007-statistical-tables-revised.

While the Court was right in stating that plea bargaining is the current system that we exist in, it failed in understanding that this fact need not mean that no alternative is possible. In fact, the easiest way to reduce the strain on the judiciary would be to reduce the number of people entering the system instead of increasing the speed by which they pass through. Of course, if this idea were in fact the goal, there would not have been a sudden surge in the number of imprisoned people precisely at the same time as the percentage of cases being pled increased; from 1977-2013 the percentage of federal cases that were pled went from 75% to 97%.[19] Plea bargaining has not increased due to a sudden increase in incarceration. In fact, it is the rise of plea bargaining that has allowed for the historic and unprecedented sequestration of Americans into prisons.

Prosecutorial-Focused Reforms

To reform the plea bargaining system, we must look at two different types of solutions: treating the symptoms and getting to the root of the issue. The entire root of the issue is the mechanisms and incentives that exist which both entice prosecutors to pursue plea bargains and corner defendants into accepting them. As the Brennan Institute notes, prosecutorial success is often marked by things unrelated to the purported goals of the criminal justice system, like justice. Instead they are noted by things like conviction rates and lengths of sentences. This framing gives prosecutors who may want to be more lenient with their bargains or even send the case to trial less incentive to do so. The Brennan Institute argues that, even subconsciously, prosecutors may be more cutthroat with their negotiations because of these incentives.[20] Additionally, as noted above, oftentimes dealing with defendants is an economic decision for prosecutors. It is often more expedient to send someone to prison rather than give them community-based resources. One way to reform the system, therefore, would be to take away these incentives. Larry Krasner, a district attorney in Philadelphia, believes one way to do this would be to not require a cash bail for minor crimes.[21] He further wants to publicize the actual costs a prosecutor makes for taxpayers by imprisoning someone for longer. For example, if it costs $10,000 to lock someone up for a year in state prison, and a prosecutor negotiates with a defendant for four years, they would have to publicize that this bargain cost the taxpayers $40,000. Therefore, instead of incentives leading to prosecutors wanting longer sentences for defendants, they would instead want shorter sentences. These concepts, which attack the very reasons why prosecutors go after long sentences and attempt plea bargains in the first place, may finally start to make a dent in the amount of plea bargains administered in the first place.

However, even deeper to the root of the issue is the mechanisms which allow prosecutors this influence over the outcomes of cases in the first place. One way to change this issue would be to treat plea bargains like business negotiations, as prosecutors do. Businesses generally do not want employees to talk about their salary to each other. The reason is quite simple: the more they talk the more they might realize that one of them is getting paid more for the same job. Likewise, prosecutors do not want defendants to discuss the results of their plea bargains. If you and someone else are both on trial for armed robbery and the other person strikes a bargain for a five year sentence, you might be bewildered when the same prosecutor

[19] *Prison Legal News*, "Dramatic Increase in Percentage of Criminal Cases Being Plea Bargained," *Prison Legal News*, accessed April 1, 2025, https://www.prisonlegalnews.org/news/2013/jan/15/dramatic-increase-in-percentage-of-criminal-cases-being-plea-bargained/.
[20] *Brennan Center for Justice*, "Plea Bargaining and Effective Assistance of Counsel after Lafler and Frye," *Brennan Center for Justice*, accessed April 1, 2025, https://www.brennancenter.org/our-work/research-reports/plea-bargaining-and-effective-assistance-counsel-after-lafler-and-frye.
[21] Zach Weissmueller, "Can Larry Krasner Fix Philly's Crime Problem?" *Reason*, January 21, 2023, https://reason.com/2023/01/21/can-larry-krasner-fix-phillys-crime-problem/.

offers you fifteen years. That is why some legal scholars, who call the plea bargaining system a black box, call for this proverbial box to be opened wide.[22] Ways to "open up" this box may include mandating that prosecutors announce more openly, with proper removal of certain identification, the crimes and sentences of people who pled guilty for certain crimes. By allowing other defendants facing similar charges to see what potential time they could get out of plea negotiations, it better changes the balance of power by tilting it back a bit more towards the defendant.

Another way to affect change is to abolish minimum sentencing laws. The effect minimum sentencing laws have on plea bargaining can be hard to understand, but its impact can not be understated. Minimum sentences scare defendants who might otherwise go to trial. At trials without minimum sentences, defendants know that, no matter what, their story, unique facts about their upbringing, and their thought processes may be taken into account by humans, mainly the jury or judge. Minimum sentences take the human element out of the equation and give defendants a big number to stare at as the "best case" if they were to be convicted. With minimum sentences, a defendant is either acquitted or found guilty where he or she must serve a sentence "at a minimum." Without it, a sliding scale between the two could exist as to what might happen to the defendant. An effective change specific to the state of Indiana would be to bring the ban on pre-trial waivers of a right to appeal to the state. Precedent already exists for this change, namely the ban placed on the federal level under former Attorney General Garland. Restrictive plea bargains without the right to appeal inherently remove safeguards within the criminal justice system which exist to protect defendants from over-bearing prosecutors.

Defendant-Focused Reforms

However, a change to minimum sentencing law is by no means realistic. Entrenched in our culture is a deep need for politicians and policy makers to be "tough on crime" which is usually demonstrated by minimum sentencing laws. Repealing minimum sentencing laws, therefore, is usually a deathblow to the political career of those who decided to finally pull the band-aid off due to how topics of criminal justice are taught in institutions like schools and through the media. In Indiana, tough on crime language is strong. To emphasize this point, Indiana is one of only three states that revoke a person's right to vote once they are incarcerated, regardless of the crime they committed. This idea stands in stark contrast to most other states which revoke the rights of individuals convicted of felonies only.[23] Reforms focused on the prosecutorial side of the coin are consequently unlikely to pass. Therefore, the rest of this paper will focus on reforms centered on the defendant which may be more feasible.

One of the main reasons defendants plead guilty is financial concerns. Going to trial is expensive. Paying for a lawyer is expensive. Paying for childcare while you go to trial is expensive. Unfortunately, the current literature on solutions in that nature is a bit more sparse than one would like. One possible solution to this problem would be free-shuttling to and from trials. A perhaps wider-reaching and therefore unlikely solution would be Indianapolis requiring companies in Indiana to offer paid time off to its employees in order to allow them to attend trial, and go to hearings. Currently, according to Indiana Labor Law, no regulation currently exists that forces companies to pay

[22] Henry Gass, "A Step toward Better Justice: Prying Open the 'Black Box' of Plea Deals," *The Christian Science Monitor*, January 12, 2022, https://www.csmonitor.com/USA/Justice/2022/0112/A-step-toward-better-justice-Prying-open-the-black-box-of-plea-deals.

[23] *Collateral Consequences Resource Center*, "50-State Comparison: Loss & Restoration of Civil/Firearms Rights," *Collateral Consequences Resource Center*, accessed April 1, 2025, https://ccresourcecenter.org/state-restoration-profiles/chart-1-loss-and-restoration-of-civil-rights-and-firearms-privileges/.

employees while they are at trial.[24] Some companies do this of their own volition, but most do not. Defendants, who are often in the lower income brackets, cannot afford to miss weeks of work. They often live paycheck to paycheck and therefore feel forced to plead guilty lest they starve. Another possible proposal would be to expand the Head Start program to better compensate people who are on trial. Head Start is a federal program aimed at subsidizing healthcare costs for people below the poverty line who meet certain criteria.[25] While piggybacking off of this program whose main goal is to help with the effects of poverty, there currently does not exist any other framework more closely aligned with the goals of this proposal. The main reasoning behind this proposal is that, when someone needs to go to trial, it is often hard for them to find or even afford adequate childcare for all of the days that they need it. This concern is another one that pushes defendants towards pleading guilty. By providing them with resources, we can better address this need.

Another reason why defendants plead guilty even when they should not is the often terrible conditions they are forced to live in while in prison. According to ACLU Indiana, prisoners are often forced to live in conditions with rampant black mold and overcrowding.[26] Inmates are often crowded into rooms with triple-bunk beds when they should not be. These conditions coalesce into a terrible dilemma for defendants. Even if they know they are innocent, and will be found innocent, are they willing to go through this terrible experience for months or years as their case drags on? Additionally, the conditions in prisons may scare defendants who are currently in jail. Brutal stories from inside penitentiaries spread like wildfire in the news, which may scare defendants into pleading in hopes of reducing the time they spend in prison–in part to avoid those conditions. The main issue with this process is that for many defendants, due to cash bail, they have to stay in jail throughout the process, often including their plea negotiations. Living in filth, how can their decision to waive their right to a trial not be seen as tainted? According to the Vera Institute, doing a meta analysis on the literature surrounding coercive plea bargaining, "There is a strong association between pretrial detention and guilty pleas."[27] In order to address this issue, a common-sense improvement in Indiana's criminal justice system would work wonders. One proposal via the ACLU of Indiana would stop revocations of parole for people due to technical violations of the conditions of that parole. This small fix would do wonders to addressing Indiana's 77% of prisons that are overcrowded, in large part due to technical parole violators.

In the past fifteen years, Indiana has recognized that its prison population is unsustainable. Thus, they have twice sought to reform their criminal procedure, in 2013 and 2015. In 2013, the Indiana Criminal Justice Institute was tasked with making a yearly report on the state of Indiana's criminal justice system. According to the report, as was stated above, around 34% of adults in Indiana Department of Corrections facilities were there due to technical violations. Looking elsewhere, we see that the recidivism rates for

[24] Luis Batongbakal, "Indiana Labor Laws: A Complete Guide to Wages, Breaks, Overtime, and More for 2025," *Workyard*, December 13, 2024, https://www.workyard.com/us-labor-laws/indiana-labor-laws.
[25] *ChildCare.gov*, "Head Start and Early Head Start," *ChildCare.gov*, accessed April 1, 2025, https://childcare.gov/consumer-education/head-start-and-early-head-start.
[26] *ACLU of Indiana*, "Indiana's Jail Overcrowding Crisis," *ACLU of Indiana*, August 24, 2022, https://www.aclu-in.org/en/news/indianas-jail-overcrowding-crisis.
[27] *Vera Institute of Justice*, "Reshaping Prosecution Initiative," *Vera Institute of Justice*, accessed April 1, 2025, https://www.vera.org/ending-mass-incarceration/criminalization-racial-disparities/prosecution-reform/reshaping-prosecution-initiative.

inmates released in 2019 is about 30% by 2022.[28] This rate is actually significantly lower than many other states. This fact is relevant because repeat offenders are often treated much worse in the plea bargaining process than first-time offenders. According to Russell Covey at the University of Florida's Levin College of Law, "plea bargaining effectively reduces the standard of proof for repeat offenders."[29] When repeat offenders are brought to the proverbial table for plea bargaining, the sentencing arithmetic is often much worse for them. All of the calculations of being sentenced less due to no prior convictions are thrown out of the window, and instead defendants have to consider potential "three strike laws" which may further skyrocket the sentence they are facing. Due to these factors, repeat offenders often end up pleading to evidence that would likely not meet the burden of proof required at an actual criminal trial.

The mere existence of this report is a sign that some moderate reforms are possible in Indiana. The report also notes mental health and drug services provided to incarcerated people. Mental health and drug services, by addressing root causes of delinquency, reduce the strain on the criminal justice system by reducing recidivism. As an example from the report, 93% of jails reported having substance abuse programs. However, even if these numbers are true, it is unlikely that these programs get proper funding or are adequately effective at solving the problems that prisoners face. On top of substance abuse programs, the state created a program titled "Recovery Works" which provides vouchers for "criminal justice-involved individuals" without insurance to receive mental health and drug abuse services. There are between 35,000 to 40,000 people currently involved with the Indiana Department of Corrections, either as an inmate or on parole. Of those, Recovery Works received about 4,000 applications for vouchers. Of course, the above number fails to account for the large number of formerly incarcerated people who need services. Expanding the reach of Recovery Works, therefore, could have significant impacts on reducing the power of plea bargains by lowering recidivism further and therefore limiting the overcrowding problem that Indiana prisons face. Unlike other proposed solutions, this one has a strong feasibility component due to the fact that the program already exists and simply needs an expansion of its capabilities through increased funding. Simply reducing the number of people coming back into the criminal justice system would allow for public defenders to give defendants a better defence by lowering the amount of people those defenders have to represent.

Pre-trial diversion programs, if done right, could be an effective remedy to reduce the number of people incentivized to make plea bargains. Instead of pleading to a lower charge, diversion programs often allow individuals to avoid charges altogether and instead commit to certain criteria, like drug rehabilitation or mental health services. However, any potential pre-trial programs should not fall under the classification of post-plea, which allows for diversion only after a defendant pleads guilty. These post-plea diversion can create the same negative stigma and potential negative job implication of being "guilty" of a crime would apply, even if the sentencing did not occur. Other issues arise, namely that pre-trial diversions in the state of Indiana are "completely at the prosecutor's discretion."[30] With this logic, prosecutors could easily hand out zero pre-trial diversion programs if they so choose, making the entire experiment ineffective. Therefore, new regulations mandating a diversion process for many minor crimes would have to be in place in order for a substantive effect

[28] *Indiana Prosecuting Attorneys Council*, *Diversion and Deferral Guidelines*, approved February 22, 2019, accessed April 1, 2025, https://www.in.gov/ipac/files/Diversion-and-Deferral-Guidelines-approved-February-22,-2019.pdf.
[29] Russell D. Covey, "Longitudinal Guilt: Repeat Offenders, Plea Bargaining, and the Variable Standard of Proof," *SSRN*, February 7, 2011, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1753262.
[30] *Indiana Prosecuting Attorneys Council*, *Diversion and Deferral Guidelines*.

to take place. Additionally, according to current Indiana code, even the operation of the program will be within the oversight of the presiding attorney. However, changes to the system to grant more power to defendants could create real and tangible results. According to the Bureau of Justice Statistics, an increase in pre-trial diversion programs could allow people to "better [] obtain gainful employment" by allowing them to go back into society.[31]

Education of the general public is another feasible solution that could work well in alleviating the issues surrounding plea bargaining. One stark advantage that prosecutors have over defendants is knowledge of the judicial system. Public defenders are meant to bridge the gap between the two, but they are not enough. Defendants, after all, are the final decision makers when it comes to their case. That means prosecutors can throw every dirty trick in the book at defendants, who likely have little to no legal knowledge at all, in hopes of getting a more "desirable" outcome. Creating state civic and educational standards surrounding the legal process would give defendants a much more powerful hand when it comes to defending themselves. Additionally, educating the public on the current injustices throughout the criminal justice system might allow for more nuanced and productive conversations and reform to take place. Indiana already has a framework for civic education, namely "Indiana Code 20-30-5-4", so expanding it to include the judicial system would be much simpler than other proposed solutions. Learning how to navigate the legal system is just as important to being an informed citizen as knowing other civic knowledge, and therefore should be treated as such.

When we consider the current state of plea bargaining, it's important to look at a more macro scale, as this issue affects the entire criminal justice system as a whole. The reason why prisons are overcrowded is because prosecutors can easily get thousands and thousands of defendants to plead guilty through plea bargains. Plea bargains are the rotten foundations from which our mass incarceration state protrudes. They are necessary for the entire system to continue to propagate itself. It feels so entrenched and "natural" to our legal system because it is. As the earlier quote from the Supreme Court notes states, "plea bargaining . . . is not some adjunct to the criminal justice system; it is the criminal justice system."[32] However, if we begin to uproot this rotten foundation, the whole house will come tumbling down.

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[32] Totenberg, "Supreme Court Rules on Plea-Bargain Rights."

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Equality or Economy? A Comparison of Nation-Building and Development in China and Tanzania

Dylan Hockx

Introduction

Institutions are attempts by elites to solve the problems of the past, but they are not always the solution. In the context of nation-building, institutions reflect the tropes and rhetoric adopted by elites when trying to create the "myth" of a nation.[1] This paper will compare Chinese and Tanzanian nation-building policies to analyze whether the persistence of past elite choices through institutions helps or hinders a country's development. The countries' modern institutions and socioeconomic conditions reflect this path dependence and allow for an analysis of the effects of past choices. Within this paper China will be considered as a country in the Global North due its modern GDP, influence in the global economy, and growth rate. China and Tanzania offer a rich comparison in the context of nation building. Both had to contend with nation-building in the face of considerable ethnic diversity and tensions, and through their respective single-party governments, implemented comparable policies. This paper will argue that Tanzania's consistent commitment to assimilation proved more successful than Chinese policies for developing harmonious interethnic relations. While some of China's policies on ethnic relations were similar to Tanzania's, their treatment of ethnic groups was plagued by inconsistency. The disconnect between the rhetoric of Chinese elites and the policies and institutions they created, as well as an inconsistent ideological sway between ethnic integration and forceful ethnic assimilation was ineffective at improving ethnic relations. But, the discussion is nuanced when economic development is considered, raising the question of whether the development of a nation requires a moral commitment to equality, or a forceful commitment to the economy.

China and Tanzania Today

China is a state that has experienced fast and drastic changes in ethnic makeup throughout its history. China's second to last dynasty – the Ming – was ruled by the Han ethnicity, who took over from the Mongol group of the Yuan dynasty. China's final dynasty, the Qing, "differed greatly from the preceding Ming Dynasty in the multiethnic nature of its political authority and institutional structure being ruled by an Inner Asian people, the Manchus."[2] The Manchu's were a fringe minority group who ruled an empire which included large Han, Mongol and Tibetan ethnic groups. After the collapse of the Qing dynasty in 1911, China's "transition from empire to nation-state has been characterized by remarkable political chaos and violence," especially along ethnic lines.[3] Today, China officially recognizes 56 ethnic groups within its nation.[4] But, since 1911, Chinese ethnic relations have been characterized by retaliation against the majority Han race. China today has a strong Han majority percentage-wise (91%), but a significant number (over 100 million) of minorities that cannot be ignored.[5] Contemporary ethnic tensions are reflected by the political activism of ethnic groups, especially those granted some degree of geopolitical autonomy such as the Tibetan race of the Tibet Autonomous Region and the Uyghurs of

[1] Ernest Gellner, *Nations and Nationalism* (United Kingdom: Cornell University Press, 1983).
[2] Eric Han, *Contestation and Adaptation: The Politics of National Identity in China* (New York: Oxford University Press, 2016), pg. 26.
[3] Eric Han, *Contestation and Adaptation: The Politics of National Identity in China* (New York: Oxford University Press, 2016), pg. 29.
[4] Central Intelligence Agency, *The World Factbook: China* (2024), available at: https://www.cia.gov/the-world-factbook/countries/china/.
[5] Ibid.

the Xinjiang Autonomous Region.[6] The Chinese state response to ethnic tensions has displayed a serious fear of separatism and an inconsistent back and forth between a rhetoric of a unified, multiethnic China and policies of forceful integration and assimilation. Nevertheless, China has a strong sense of national identity, places a large emphasis on the use of a single, simplified script for writing and a standardized Mandarin language (*putonghua*), and strongly emphasizes its culture and long history.[7]

Tanzania provides a valuable comparison to the Chinese situation. In the context of nation-building, Tanzania is known as a paradigmatic success story when it comes to quelling ethnic tensions. It has a history of ethnic harmony in the post colonial era, largely due to the strong and consistent assimilationist policies employed by Tanzanian elites.[8] Factors such as colonialism, land and population size, and historical differences play into the contrast in ethnic tensions between China and Tanzania, but elite choices were also instrumental in shaping these differences. In contrast to China, Tanzania's ethnic groups and relations cannot be divorced from the tribal context within which they formed. Tanzanian elites in the past were all leaders of their respective tribes, and leaders of the contemporary nation faced the challenge of building a cohesive national identity within a people that had always considered themselves as members for a tribe–not a nation. For example, the CIA factbook considers Tanzania to be uncommonly ethnically homogenous. According to the CIA factbook, Tanzania is 99% African of which 95% is Bantu.[9] This characterization, however, does not accurately capture the true ethnic and tribal diversity that Tanzanian nation-builders had to tackle. The Bantu ethnolinguistic group alone consists of over "130 tribes."[10] This fact has led many scholars to conclude that Tanzania is composed of over 130 ethnic groups, making an important distinction between the ethnolinguistic parent group and the different ethnic groups that may exist within.[11] The Sukuma group is considered the largest ethnic group in Tanzania today, but only captures around 16% of the population, while no other group makes up more than 5% of the population.[12] This is a notable contrast to the 95% Han majority of China. But, despite being far less ethnically homogenous, "When asked the open-ended question, 'Which specific group do you feel you belong to first and foremost,' only 3 percent of Tanzanians responded in terms of an ethnic, language, or tribal affiliation."[13] The difference in policies, institutions and outcome in China and Tanzania is stark.

In the context of development, Tanzania, in contrast to China, represents an example of successful ethnic politics and the development of interethnic equality. But, this social development pales in comparison to the extreme economic development of the Chinese state, which Tanzania does not come close to replicating. These differences raise questions about the relationship between nation-building and ethnic relations, the role of past elite choices and lasting institutions in

[6] Eric Han and Chung Paik, "Ethnic Integration and Development in China," *World Development* 93 (2017), https://doi.org/10.1016/j.worlddev.2016.12.010, pg. 32.
[7] Defu Wan, "The History of Language Planning and Reform in China: A Critical Perspective" (2014), pg. 66.
[8] E. Miguel, "Tribe or Nation? Nation Building and Public Goods in Kenya versus Tanzania," *World Politics* 56, no. 3 (2004).
[9] Central Intelligence Agency, *The World Factbook: Tanzania* (2024), available at: https://www.cia.gov/the-world-factbook/countries/china/.
[10] Ibid.
[11] S. Rwengabo, *Nation Building in Africa: Lessons from Tanzania for South Sudan*, Mandela Institute for Development Studies (MINDS) Youth Dialogue, (Dar es Salaam, Tanzania: 2016), pg. 19.
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[13] E. Miguel, "Tribe or Nation? Nation Building and Public Goods in Kenya versus Tanzania," *World Politics* 56, no. 3 (2004).

shaping the contemporary state of ethnic relations and the specific factors that led to the differences between China and Tanzania. They also lead to a question about the definition of development, and whether economic prosperity or ethnic harmony is more important to the construction and development of a nation.

In his article "Ethnicity and Democratization in Myanmar," Ian Holliday, provides a systematic representation of the options available to multi-ethnic states faced with the issue of consolidating multiple ethnic groups into a single nation-state. According to Holliday, "multi-ethnic states face two overwhelmingly important matters relating to the *map* and the *law of the land*".[14] In relation to the *map of the land*, states must decide whether the territory of the state "will be mapped on to one national identity using the established formula of one language, one nation, one state" or whether they will allow for "ethnic markers and divisions within the state."[15] With regards to the *law of the land*, states must decide whether ethnic groups will be entitled to legal protection throughout the land, or only in certain parts.[16] Based on these two issues, Holliday generates the below 2x2 matrix which represents four options available "for structuring a multi-ethnic state."[17]

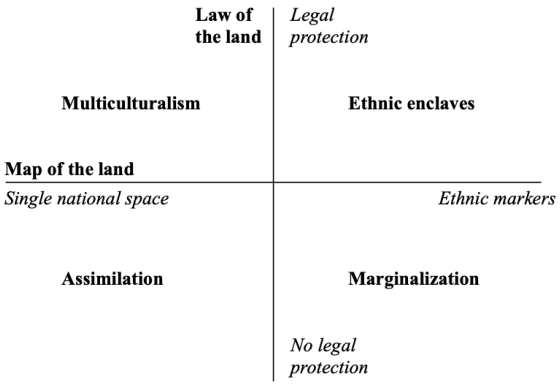

Figure 1: Structuring a Multi-ethnic State[18]

For this paper, the top right and bottom left quadrants will be most important, since Tanzania adopted assimilationist policies, while China attempted both assimilation as well as integration (labeled above as ethnic enclaves). Ethnic integration is characterized by a *map of the land* which includes ethnic markers, as well as a *law of the land* which offers legal protection to ethnic groups within these separated areas. According to Holliday, this policy "adheres to a notion of separate but equal."[19] The exact opposite of ethnic integration is, thus, assimilationism, reflected by their opposition in the table above. Assimilationist policy does not offer ethnic groups any legal protection or special treatment, but instead attempts to adopt minority ethnic groups into the majority culture. The policies adopted by China and Tanzania were more nuanced than the definitions above and neither countries' policies would fall into the far corners of the table. But, the table helps to determine and define the ideologies which drove the policies and choices of both countries' elites when structuring their multi-ethnic nation-states.

Case Study One: China

China has a history of tension between ethnic groups, and prior to the 1911 collapse of the Chinese imperial state, Chinese elites had a history of adopting assimilationist attitudes towards ethnic minorities. During the age of imperialism, the political makeup of the Chinese state was organized "in multilayered administrations incorporating both central codes and locally patterned

[14] I. Holliday, "Ethnicity and Democratization in Myanmar," *Asian Journal of Political Science* 18, no. 2 (2010), https://doi.org/10.1080/02185377.2010.492975, pg. 114.
[15] Ibid.
[16] Ibid.
[17] Ibid.
[18] I. Holliday, "Ethnicity and Democratization in Myanmar," *Asian Journal of Political Science* 18, no. 2 (2010), https://doi.org/10.1080/02185377.2010.492975, pg. 115.
[19] I. Holliday, "Ethnicity and Democratization in Myanmar," *Asian Journal of Political Science* 18, no. 2 (2010), https://doi.org/10.1080/02185377.2010.492975, pg. 115.

authority."[20] Elite decisions were based on the prevalence of Confucianism, which occupied a role in China similar to that of "a pervasive monolithic religion."[21] Elites believed in a distinction between *Hua* (true Chinese) and *Yi* (Barbarians) asserting the ethnic superiority of the Han majority. But Confucianism also allowed for *Yi* to become *Hua* by adopting the Confucian way.[22] In fact, *civilizing the barbarians* was a goal of Confucian teaching. Thus, Chinese elites made it their mission to civilize ethnic minorities and adapt them into the larger society "by culture rather than by birth."[23] This assimilationism not only laid the foundation for Chinese treatment of ethnic minorities, but complicated contemporary ethnic relationships due to the fact that both "the Mongols during the Yuan dynasty and the Manchus during the Qing Dynasty" became "legitimate rulers of China" through conformation.[24] This created a sharp contrast between the histories and contemporary positions of important ethnic groups in China. Previously powerful ethnic groups saw their history rewritten by the new elites, and the superiority of the Han majority became the new status quo, reflecting Hobsbawm's assertion that "nationalism requires too much belief in what is patently not so."[25] The constant switch of ethnic groups in power led to many Chinese ethnic groups feeling that their own history was being forgotten. Hobsbawm quotes Ernest Renan who states that "getting its history wrong is part of being a nation.' But when history has been "gotten wrong" so many times, it becomes increasingly difficult for fringe ethnic groups to align with the fabricated nation of the ethnic majority.[26] Thus, assimilationism runs deep within historical Chinese politics and national consciousness, setting the stage for conflict with policies implemented after 1911 as the new government attempted to create the sociolinguistically unified society that was deemed necessary for nationalism.[27]

During nation-building, Chinese elites initially dangled the carrot of ethnic group autonomy and a China of unified ethnic enclaves in front of ethnic groups, but ethnic policies were consistently inconsistent, increasing interethnic tensions and animosity towards the Chinese government and–by association–the Han majority group. Sun Yat-sen, founder of the Kuomintang party and the Republic of China (ROC), initially advocated for an ethnically unified China that would be integrationist, rather than assimilationist. He adopted "a slogan of national unification (*minzu zhi tongyi*)" and "started to promote the concept of the Chinese nation as comprising five nationalities (*wuzu gonghe*)", declaring "the right of self-determination…for all the nationalities inhabiting China."[28] A trope that captures this side of Chinese nation-building is the first flag of Sun's Republic of

[20] *Empire at the Margins: Culture, Ethnicity, and Frontier in Early Modern China*, ed. Pamela Kyle Crossley, Helen F. Siu, and Donald S. Sutton (Berkeley: University of California Press, 2006).
[21] Eric Han, *Contestation and Adaptation: The Politics of National Identity in China* (New York: Oxford University Press, 2016), pg. 28.
[22] Ibid.
[23] Stevan Harrell, "Linguistics and Hegemony in China," *International Journal of the Sociology of Language*, no. 103 (1993), pg. 101.
[24] Eric Han, *Contestation and Adaptation: The Politics of National Identity in China* (New York: Oxford University Press, 2016), pg. 28.
[25] E. J. Hobsbawm, *Nations and Nationalism Since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1992), pg. 12.
[26] Ernest Renan. "What Is a Nation?" In *Qu'est-ce qu'une nation?*, translated by Ethan Rundell. Paris: Presses-Pocket, 1992. Originally delivered as a lecture at the Sorbonne, March 11, 1882. Quoted in E. J. Hobsbawm, *Nations and Nationalism Since 1780: Programme,*
Myth, Reality. Cambridge: Cambridge University Press, 1992.
[27] Ernest Gellner, *Nations and Nationalism* (Ithaca, NY: Cornell University Press, 1983).
[28] Victor Louis, *The Coming Decline of the Chinese Empire* (New York: Times Books, 1979), pg. 114.

China, "with five stripes of equal width symbolizing the equality" of the five proclaimed nationalities.[29]

Figure 2: The Five Colored Flag (*wu se qi*) of the ROC[30]

This rhetoric of ethnic unification, however, was not as consistently reflected by policy as Chinese elites had promised. Scholars agree that Chinese nation building was in essence still assimilationist, and that these policies of self-determination were later abandoned in the face of the emergence of regional militarists.[31] As Han writes, "Despite Sun's official proclamation that the Chinese nation comprised five nationalities, Sun's ideology on ethnic minorities and Chinese nationalism was in essence still very much assimilationist."[32] Han also quotes a speech delivered by Sun Yat-sen in 1953. In it, Sun reveals that his initial rhetoric of allowing for a unity between five ethnic enclaves and initially matching policies (such as the flag) did not reflect his actual, assimilationist ideology. Sun stated, "We must facilitate the dying out of all names of individual peoples inhabiting China, i.e., Manchus, Tibetans, etc.…We must satisfy the demands of all races and unite them in a single cultural and political whole."[33] Sun's contradictory policy and ideology were not resolved by his death, and his successor Chiang Kai-shek saw ethnic autonomy as communist propaganda (Mackerras 1994, p.59).[34] For Chiang "All people in China belong to the same race stock, and the goal was to eliminate all the cultural differences and make a single Chinese nation" thus sharply turning the Chinese nation back towards assimilation.[35] Even during the era of the Republic of China, before the regime shift to the Chinese Communist Party, the Chinese people experienced great inconsistency in policies, rhetoric and elite ideologies regarding ethnic relations. The government of the ROC thus, due to its inconsistent rhetoric, its constant "battling [with] various warlords, the fast growing CCP and the Japanese" was relatively unsuccessful in quelling ethnic tensions.[36] China's elites and institutions today display a lack of tolerance for separatism by ethnic groups, a worry that emerged from the enhanced contemporary ethnic tensions caused by past inconsistencies in policy-making.

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[29] Eric Han, *Contestation and Adaptation: The Politics of National Identity in China* (New York: Oxford University Press, 2016), pg. 30.
[30] *Wikipedia*, "Five Races under One Union," last modified 2024, https://en.wikipedia.org/wiki/Five_Races_Under_One_Union#:~:text=This%20principle%20emphasized%20harmony%20between,and%20the%20Tibetans%20(black).
[31] Baogang He, "China's National Identity: A Source of Conflict between Democracy and State Nationalism," in *Nationalism, Democracy and National Integration in China*, 175–200, https://doi.org/10.4324/9780203404294-20, pg. 176.
[32] Eric Han, *Contestation and Adaptation: The Politics of National Identity in China* (New York: Oxford University Press, 2016), pg. 30.
[33] Yat-sen Sun. *Memoir of a Chinese Revolutionary*. Taipei: China Cultural Service, 1953. Quoted in Dreyer, *China's Forty Millions*, pg. 16. Quoted in Enze Han. *Contestation and Adaptation: The Politics of National Identity in China*. New York: Oxford University Press, 2016, pg. 30.
[34] Colin Mackerras, *China's Minorities: Integration and Modernization in the Twentieth Century*, (Hong Kong: Oxford University Press, 1994), pg.59.
[35] Eric Han, *Contestation and Adaptation: The Politics of National Identity in China* (New York: Oxford University Press, 2016), pg. 31.
[36] Ibid.

The Communist People's Republic of China (PRC), headed by Mao Zedong's Chinese Communist Party (CCP) followed a similar path of inconsistent policy making. The PRC initiated its nation-building efforts with the Ethnic Identification (minzu shibie) Project an ethnic census which, through self-identification, returned reports of over 400 ethnic groups, causing a quick reevaluation of the definition of ethnic groups and a reduction to government identification of 54 groups.[37] This immediate reduction of self-identification and group autonomy reflects another failure of Chinese ethnic integration, and foregrounds the swing back towards assimilation that the CCP undertook. Additionally, as the Cultural Revolution progressed, belief in Han superiority increased with policies seeing different ethnic groups as being in different stages of development, and needing to be reformed and assimilated into the quickly developing Han China. This resulted in the CCP "roll[ing] back many of its earlier accommodationist policies toward ethnic minorities" and the aggressive assimilationist belief that "minorities should be treated in the same way as the Han, as granting…special treatment would hinder…assimilation into greater Chinese society."[38] Once again, ethnic minorities were subject to assimilation after being initially presented with the attraction of autonomy and integration.

The CCP's swing to aggressive assimilationism was reflected in China's language policies, developmental institutions and treatment of ethnic groups, further angering ethnic groups who were initially promised autonomy and integration. Though some ethnic groups have a level of political autonomy in China, language policy has reflected a far more assimilationist view. Since the Chinese Communist Party took control in 1949, language policy in the People's Republic of China has been characterized by 6 goals which reflect China's inconsistent policy-making:

1. Simplification and standardization of the Sinographic script
2. Promotion of Putonghua (Mandarin) as the national language
3. The design and refinement of Pinyin (the Romanized spelling of Putonghua) and its adoption for appropriate application
4. Identification and mapping of languages, topolects, and dialects- both Sinitic and non-Sinitic
5. Recognition and description of languages meriting official "minority" status
6. Creation of scripts for languages that lack them and the streamlining of traditional non-Sinitic writing systems[39]

The CCP initially implemented a tolerant language policy. The General Program for the Implementation of Regional Autonomy enforced the use of minority languages "in official business, education and cultural activities," while also including guidelines for bilingual instruction.[40] Unlike Tanzania, whose policy did not stamp out ethnic languages, but consistently proclaimed one official language (Kiswahili) in writing (Miguel 2004; Rwengabo 2016), China attempted to promote and enforce a single official language and script (assimilationist), while also officially recognizing minority languages (integrationist).[41]

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[37] Eric Han, *Contestation and Adaptation: The Politics of National Identity in China* (New York: Oxford University Press, 2016), pg. 31.
[38] Eric Han, *Contestation and Adaptation: The Politics of National Identity in China* (New York: Oxford University Press, 2016), pg. 36. Quoted in Heberer, Thomas. *China and Its National Minorities: Autonomy or Assimilation*. London: Routledge, 2017, pg. 25..
[39] Victor H. Mair, "Foreword," in *Language Policy in the People's Republic of China: Theory and Practice Since 1949*, ed. Minglang Zhou and Hongkai Sun (London: Kluwer Academic Publishers, 2004), pg. xviii.
[40] Eric Han, *Contestation and Adaptation: The Politics of National Identity in China* (New York: Oxford University Press, 2016), pg. 34.
[41] Edward Miguel. "Tribe or Nation? Nation Building and Public Goods in Kenya versus Tanzania." *World Politics* 56, no. 3 (2004): 327–362; Sebastian Rwengabo. *Nation Building in Africa: Lessons from Tanzania for South Sudan*. Mandela Institute for Development Studies (MINDS) Youth Dialogue. Dar es Salaam, Tanzania, 2016.

The failure of Chinese language policy was reflected in the redaction of many of these policies during the Cultural Revolution.

Case Study Two: Tanzania

Tanzania, as a country with over 130 unique ethnic groups, faced similar nation-building issues to China when it came to improving interethnic relations. Put simply, Tanzania aimed "to find a balance between national Party interests and ethnic or regional interests."[42] Eric Han describes how "Gellner contends that nationalism is an ideology demanding that national boundaries and political boundaries should be congruent."[43] Both Tanzania and China encountered the problem of achieving this congruency in the face of incredible ethnic diversity. In contrast to China, Tanzania implemented a consistent assimilationist policy from the beginning of their nation-building period which focused on the creation of a single national identity, not the unification of many. Much of the literature on Tanzania hails its nation-building in relation to ethnic tensions as a success. It has been called "a striking refutation of the prevalence of state failure across post-colonial Africa", celebrated for its successful unification of over 130 different ethnic groups, and defined as "a peaceful nation without ethnic tensions" and "an outlier when compared to most other heterogeneous African countries" (Green 2011; Omari 1987, p.65; Banshchikova 2023, p.122; Rwengabo 2016, p.ii).[44] What elite choices and lasting institutions contributed to this stark success, and what differences can explain the contrast between Tanzanian success and Chinese struggle in the amelioration of ethnic tensions through nation-building?

A key feature of Tanzania's success was its strong commitment to assimilation and use of institutions to depoliticize ethnicity. Like China, Tanzania engaged in single-party politics through the Tanganyika African National Union led by president Julius Nyerere. Unlike the Chinese elite parties, however, TANU elites chose to politically incorporate key figures from local areas and ethnic groups so that each group would feel represented in government.[45] This contrasts Chinese attitudes wherein a ruling party closely associated with the Han majority viewed ethnic minorities as barbarians needing to be helped along the stages of development–not included in the political process of national development. The construction of TANU, "ensured that almost all ethnic groups had a presence and stake in the struggle for independence."[46] These elites, employed by Nyere, "became the backbone of his political power, especially in rural areas…disassociated themselves from the chiefs and aligned themselves with TANU: identifying with its objectives and aspirations…[and] remained closely in touch with the people and were accepted as leaders at local/regional level."[47] The integration of ethnic figures showed minorities respect, while providing an initial incentive to assimilate into the greater Tanzania, an attitude deepened by Tanzanian language and education policies. Though ethnic groups were individually represented, they were united under the ideology of a single Tanzanian

[42] C. K. Omari, "Ethnicity, Politics and Development in Tanzania," *African Study Monographs* 7 (1987), pg. 70.
[43] Ernest Gellner, *Nations and Nationalism* (Ithaca, NY: Cornell University Press, 1983).
[44] Elliott Green. "The Political Economy of Nation Formation in Modern Tanzania: Explaining Stability in the Face of Diversity." In *Nationalism and Conflict Management*; C. K. Omari, "Ethnicity, Politics and Development in Tanzania," *African Study Monographs* 7 (1987), pg. 65; Anastasia Banshchikova. "Julius Nyerere, Comprehension of Slavery, and Nation Building: Some Notes on Popular Consciousness in Modern Tanzania." *Uchenye Zapiski Instituta Afriki RAN* 65, no. 4 (2023): 122–130. https://doi.org/10.31132/2412-5717-2023-65-4-122-130; S. Rwengabo, *Nation Building in Africa: Lessons from Tanzania for South Sudan*, Mandela Institute for Development Studies (MINDS) Youth Dialogue, (Dar es Salaam, Tanzania: 2016), pg. ii.
[45] C. K. Omari, "Ethnicity, Politics and Development in Tanzania," *African Study Monographs* 7 (1987), pg. 66.
[46] S. Rwengabo, *Nation Building in Africa: Lessons from Tanzania for South Sudan*, Mandela Institute for Development Studies (MINDS) Youth Dialogue, (Dar es Salaam, Tanzania: 2016), pg. 20.
[47] Ibid.

nation, thus reflecting assimilationism rather than a policy of ethnic enclaves.

In a similar contrast to China, Tanzanian language policies reflected their consistent commitment to assimilationism without disrespecting the histories of ethnic minorities. Rwengabo describes how, "through mass adult literacy campaigns and language education, Tanzania…implemented a Swahili language policy hitherto un-attempted elsewhere in Africa."[48] Additionally, Miguel highlights the "ethnically neutral" nature of the choice of Swahili, a language which could assimilate the country without providing any single ethnic group, like the mandarin of Han Chinese, with an ethnolinguistic superiority.[49] In fact, in Tanzania, "Swahili became a means of neutralising dominant language groups…through the creation of a neutral language."[50] One institutional method for adopting the Swahili language was its implementation as the "sole language of primary education."[51] China's assimilationist moments reflected a similar language policy, but it was rendered less effective due to inconsistent swings towards instanced integration, where bilingual education policies were briefly implemented. Rwengabo (2016, p.17) effectively summarizes the successful results of Tanzanian language reform by quoting Wimmer (2014, p.30): "low levels of linguistic diversity enhance nation building because they make it easier to extend networks of political alliances across an entire territory."[52] The importance and significance of successful language reform in ameliorating ethnic tensions reflects Gellner's argument that an industrialized society requires the communication and social benefits of a common language and culture.[53] Based on the comparison of Chinese and Tanzanian language policies, it seems an ethnically neutral language is more effective at building Wimmer's networks and reaping Gellner's benefits. A language which does not promote the linguistic superiority of a single ethnic group–like the Han–is much more likely to be readily accepted by all ethnicities within a nation.

In a similar way, the Tanzanian education system focused on promoting the history of a united Tanzanian nation. Miguel highlights how "the public school curriculum in Tanzania has been aggressively employed as a nation building tool."[54] The curriculum stresses common tropes of nation-building, teaching children that Tanzanians share a common history, culture and value system.[55] The Tanzanian education system promoted a coherent Tanzanian identity, and since 1960 has supplemented it by including political education as a standard subject.[56] Tanzanian school teachers have also, since 1970, been required to serve in Tanzania's paramilitary national service organization. According to Miguel, this "indoctrinated [teachers] in the ideals of the

[48] S. Rwengabo, *Nation Building in Africa: Lessons from Tanzania for South Sudan*, Mandela Institute for Development Studies (MINDS) Youth Dialogue, (Dar es Salaam, Tanzania: 2016), pg. 15.
[49] E. Miguel, "Tribe or Nation? Nation Building and Public Goods in Kenya versus Tanzania," *World Politics* 56, no. 3 (2004).
[50] S. Rwengabo, *Nation Building in Africa: Lessons from Tanzania for South Sudan*, Mandela Institute for Development Studies (MINDS) Youth Dialogue, (Dar es Salaam, Tanzania: 2016), pg. 15.
[51] R. Rajabu and D. Ngonyani, "Language Policy and the Hidden Agenda," in *Teaching and Researching Language in African Classrooms*, vol. 98 (1994), pg. 7.
[52] Andreas Wimmer, "Nation Building: A Long-Term Perspective and Global Analysis," *European Sociological Review*, pg. 30 (2014). doi: 10.1093/esr/jcu078. Quoted in S. Rwengabo, *Nation Building in Africa: Lessons from Tanzania for South Sudan*, Mandela Institute for Development Studies (MINDS) Youth Dialogue, (Dar es Salaam, Tanzania: 2016), pg. 16.
[53] Ernest Gellner, *Nations and Nationalism* (Ithaca, NY: Cornell University Press, 1983).
[54] E. Miguel, "Tribe or Nation? Nation Building and Public Goods in Kenya versus Tanzania," *World Politics* 56, no. 3 (2004), pg, 335
[55] Ibid.
[56] Ibid.

regime."[57] By aligning both education and education themselves with the nations assimilationist identity, Tanzanian elites far increased the likelihood of this ideology being adopted by–and lasting through–the country's youth. Chinese education also strongly promoted nationalism, but includes accounts of ethnic minorities that "are constructed and presented from the perspective of the Han people" further demonstrating the disconnect between Chinese rhetoric and actual policy.[58] Nationalism grants elites the ability to rewrite history in order to reinforce a new status quo.[59] Chinese and Tanzanian education policies reflect their respective attempts to rewrite and teach their history and show how successful each fabricated history was at quelling ethnic tensions.

The Effect of Nation-Building and Institutions on Development

Both China and Tanzania faced the obstacle of contending with an incredibly large amount of ethnic groups within their state. In the case of nation-building in China, their historically inconsistent policy irregularly empowered ethnic groups, leading to expectations of political autonomy that were continually crushed by the reemergence of the assimilationist tradition. Institutions failed to solve the problems faced by elites, as they reflected elite inconsistency as well as empowering the Han race in a way that led the government to become synonymous with the ethnic majority, further politicizing the ethnic issue in China. In the Tanzanian case, elites faced with the same issue implemented a consistent assimilationism. These attitudes were reflected by the inclusion of minority figures in the single political party, the aggressive implementation of an ethnically neutral official language throughout the state, and a consistent rhetoric of one Tanzania, from government to elementary education. Furthermore, unlike China, Tanzania's consistency did not include periods of ethnic discrimination or marginalization. Both cases reflect Gellner's theory that industrial societies must be nationalistic, and that industrialization requires a common language, culture and mass education in a common vernacular language.[60] The theory is nuanced, however, when considering how this unity must be achieved and whether it must be fully achieved. It goes without saying that China is a far more industrialized society than Tanzania, and far more developed *economically*. This suggests that, for economic development, nation-building in the context of ethnic relations need not be entirely successful. In fact, it can be forceful and authoritarian in nature if it is backed by a strong state or central authority like in China. Nation-building, in an economic context, also does not need to be ethical. China achieved unprecedented economic success from its "invention" of Han ethnic superiority that disregarded the Confucian ideals of integration of its pre-1911 past.[61] The force and lack of morality through which they achieved this success, however, may bring into question the "universally legitimate value" of China's "nationess."[62] This raises the question on whether development today should be measured on an economic scale, a scale of social equality, or some amalgamation of multiple factors.

When considering development, however, Tanzania's victory does not seem so clear. Tanzania has a fluidly unified but weak state, while China has a strong state which overshadows regional ethnic

[57] Ibid.
[58] Yiting Chu, "The Power of Knowledge: A Critical Analysis of the Depiction of Ethnic Minorities in China's Elementary Textbooks," *Race Ethnicity and Education* 18, no. 4 (2015), https://doi.org/10.1080/13613324.2015.1013460, pg. 469.
[59] E. J. Hobsbawm, *Nations and Nationalism Since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1992).
[60] Ernest Gellner, *Nations and Nationalism* (Ithaca, NY: Cornell University Press, 1983).
[61] E. J. Hobsbawm, *Nations and Nationalism Since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1992).
[62] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2006), pg. 21.

tensions. In terms of economics, Tanzania's GDP per capita of $3600 pales in comparison to China's $22,100. Furthermore, Tanzania has a low Human Development Index score of 0.532, compared to China's high 0.788.[63] For all economic factors of development, China comes out on top. But, when considering equality and ethnic relations, the story is more nuanced. Contemporarily, "the Chinese government sees economic development as the main solution for ethnic dissent.[64] This has led to an influx of Han Chinese into autonomous ethnic areas, increasing economic development, but also not aiding ethnic tensions. Han and Paik, report a negative correlation between ethnic minority concentration in autonomous areas in China and public goods provision.[65] Not only does this reflect the lasting effects of elite choices on contemporary institutions favoring the development of majority Han regions, but it also highlights the lack of concentration on ethnic relationships within Chinese development strategies. Public goods provision only improves following an influx of Han immigration into the autonomous area of an ethnic minority, reflecting a lasting assimilation and the lack of institutional aid for ethnic integration in China. Though Tanzania focused consistently on assimilation, and did not have moments of pro-integration, its policies seem to have had better results for inter-ethnic equality and relations. Miguel reports a nearly negligible relationship between factors of economic redistribution or goods provision and local ethnic diversity in Tanzania.[66]

Conclusion

The elite choices and lasting institutions in China created a strong state, but did not resolve historical ethnic tensions. In contrast, Tanzania succeeded in developing harmonious ethnic relations, but falls behind on economic factors of development. The comparison of these two cases raises the question of the definition of development itself, and whether development needs to be moral to be successful. If emphasizing economic development, China is the clear winner despite its subpar treatment of ethnic minorities within its state. In contrast, Tanzania exemplifies institutional success in the development of peaceful ethnic relationships, but this peace is not enough to propel economic development. While institutional persistence may have helped the unification of Tanzania's nation and hindered the resolution of Chinese ethnic tension, the success of nation-building has less of an effect on economic development than it does on social and ethnocultural development.

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[63] *World Population Review*, "China Population 2024 (Live)," November 2024, https://worldpopulationreview.com/countries/china.
[64] Eric Han and Chung Paik, "Ethnic Integration and Development in China," *World Development* 93 (2017), https://doi.org/10.1016/j.worlddev.2016.12.010.
[65] Ibid.
[66] E. Miguel, "Tribe or Nation? Nation Building and Public Goods in Kenya versus Tanzania," *World Politics* 56, no. 3 (2004).

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The Politics of Wage Theft: State Variation by Policy Diffusion and Decision Agendas

Billy Bonnist

Introduction

Wage theft refers to the denial of legally owed wages and benefits, often taking the form of payments under the minimum wage, failure to pay overtime hours, misclassification of employees as independent contractors, or failure to pay benefits. Wage theft victimizes vulnerable employees, directly impacting the lives of victims and more broadly presenting a burden on the U.S. economy. The Economic Policy Institute estimates that wage theft costs U.S. workers over $50 billion a year.[1] Despite receiving far more attention, traditional forms of theft through robberies, burglaries, larcenies, and motor vehicle theft cost victims less than $14 billion in 2012.[2] Although these offenses are not new, "wage theft" groups abusive employment practices related to wages together under one term. Wage theft has emerged as a policy issue drawing the attention of progressive media, interest groups, and policymakers.

State legislation on wage theft varies greatly. While some states have passed legislation to impose strict penalties and enforcement strategies, other states lag behind with minimal penalties and limited enforcement capabilities. In the United States, between 2005 and 2017, 24 states passed a total of 141 laws designed to address wage theft.[3] What explains the variance in wage theft law-making among states? Even where legislation exists, the enforcement capabilities of states vary. Why do some states fund and support enforcement of wage theft policies, while other states have moved in the opposite direction, cutting support from enforcement agencies? I argue that state variation on wage theft policy is a product of both policy diffusion based upon ideological learning and of varied ability for wage theft mitigation efforts to reach decision agendas.

In the following sections, I explore the policy issue of wage theft and outline the variance in state approaches using scholarly frameworks and case studies. In the first section, I define wage theft in the United States with relevant context and explain the federal legislation that revolves around the issue. Second, I lay out the framework for understanding policy diffusion across states, relying on Daniel Mallinson's "Theory of the Diffusion Life Course." I draw upon Mallinson's broad trends of policy diffusion from innovators to adopters and apply wage theft policy to his framework using the ideological learning hypothesis. I provide a subsequent case study on New York's policy innovation of the Wage Theft Prevention Act and describe its diffusion to California and the role of ideological ties. In the third section, I delve into how state governments reach decision agendas, relying on John Kingdon's three streams model. I then apply Kingdon's framework to the policy issue of wage theft. In doing so, I provide a case study on California's 2024 Workers' Rights Enforcement Grant Program as well as a case study on Ohio's cutting of funds from the wage and hour investigators of the Labor and Worker Safety Division in 2011. Finally, I offer a conclusion to summarize my findings and remarks on the future of wage theft policy.

[1] Brady Meixell and Ross Eisenbrey, "An Epidemic of Wage Theft Is Costing Workers Hundreds of Millions of Dollars a Year." *Economic Policy Institute*, September 11, 2014, 2. https://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/.
[2] "Crime in the United States 2012: Table 23: Offense Analysis." Federal Bureau of Investigation. https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/23tabledatadecoverviewpdfs/table_23_offense_analysis_number_and_percent_change_2011-2012.xls.
[3] Benjamin Levin, "Wage Theft Criminalization." *UC Davis Law Review* 54 (2021): 1429. https://scholar.law.colorado.edu/faculty-articles/1315.

Section I: Background

Scholars vary in their phrasing of wage theft definitions. Rebecca Galemba of the Josef Korbel School of International Studies frames wage theft as "fundamentally a crime of power that transfers wages and value from workers to profit employers."[4] Focusing on the United States specifically, Joy Jeounghee Kim and Skye Allmang define wage theft as the "results from the violation of labour standards designed to ensure employees' rights and benefits."[5] Scholars agree that it is a blatantly illegal form of economic injustice and exploitation that disproportionately affects low-wage and minority workers. Based on nationally representative household survey data, roughly 17% of low-wage workers experienced minimum wage violations alone.[6] In a neoliberal labor market that "endorses minimum government regulations and limited social duties of employers" like that of the United States, wage theft becomes a natural consequence of labor market deregulation that facilitates under-detection of standards violations.

To understand wage theft as an illegal practice, it is important to note the federal legislation that wage theft practices violate. There are five labor standards particularly relevant to wage theft: the National Labor Relations Act (NLRA), the Federal Insurance Contributions Act (FICA), the Fair Labor Standards Act (FLSA), the Federal Unemployment Tax Act (FUTA), and Worker's Compensation (WC). The NLRA, also known as the Wagner Act, was established in 1935 to grant private-sector employees the right to organize unions and bargain collectively with their employers. FICA, also established in 1935, mandated payroll taxes to be paid by both employer and employee. The FLSA in 1938 enforced a national minimum wage, "time-and-a-half" overtime pay, and recordkeeping requirements. FUTA, passed in 1939, established unemployment insurance that employers are required to pay into. Finally, through WC, employers provide insurance for medical bills and lost wages of employees who get injured or ill on the job. In practice, all wage theft violations in the United States can be defined by their failure to comply with regulations of the NLRA, FICA, FLSA, FUTA, or WC.[7]

Despite the existence of federal regulations, federal labor standards enforcement is limited. Federal enforcement agencies— the Wage and Hour Division (WHD), the US Department of Labor (DOL) for the FLSA, and the Internal Revenue Service (IRS) for employment tax laws—have "limited funding and investigators to carry out their enforcement responsibilities and deter employers' wage theft."[8] As a result, much of the enforcement responsibility falls to the states. However, states greatly vary in their approaches to enforcement of wage theft violations, and many mirror the federal government's limited enforcement capabilities. In fact, as of 2021, only about 10% of states' wage theft laws involved "criminal charges and define wage theft as a misdemeanor or felony that results in fines or jail time."[9]

Despite limited enforcement on a national scale, several states have passed anti-wage theft efforts to combat, deter, and punish labor exploitation. Several states have implemented stricter penalties as a strategy to combat wage theft. For example, Arizona, Ohio, Massachusetts, New Mexico, and Rhode Island charge treble damage as a financial disincentive to committing wage theft.

[4] R.B. Galemba, "'They Steal Our Work': Wage Theft and the Criminalization of Immigrant Day Laborers in Colorado, USA." *European Journal of Criminology and Policy Research* 27 (2021): 93.
[5] J. J. Kim and S. Allmang, "Wage Theft in the United States: Towards New Research Agendas." *The Economic and Labour Relations Review* 32, no. 4 (2021): 535.
[6] David Cooper and Teresa Kroeger. "Employers Steal Billions from Workers' Paychecks Each Year: Survey Data Show Millions of Workers Are Paid Less than the Minimum Wage, at Significant Cost to Taxpayers and State Economies." Economic Policy Institute, 2017, 1.
[7] Kim and Allmang, "Wage Theft in the United States," 536.
[8] Kim and Allmang, "Wage Theft in the United States," 540.
[9] Kim and Allmang, "Wage Theft in the United States," 544.

In some states, treble damage may take the form of employers paying back wages owed plus 200% of liquidated damages as a penalty for wage theft, a practice that was found to reduce the "probability of minimum wage violations by nearly half."[10] Other strategies include posting bonds and mechanic's liens, which act as holds against the wage theft violator's property, and worker's Bill of Rights legislation at the state level.[11] Amid some successful sub-national policy innovations, several states have followed suit to implement anti-wage theft legislation, while others have remained without effective deterrents or enforcement capabilities. The following section will begin to explain this variation in state approaches through Mallinson's theory on policy innovation and diffusion by ideological similarity.

Section II: State Wage Theft Policy Diffusion

Mallinson's study on "Policy Innovation Adoption Across the Diffusion Life Course" offers insights on how wage theft policy has diffused across states from innovators to early adopters. Mallinson identifies both leaders and laggards in terms of policy innovation, contrasting states that are "generally innovative" versus others with "a tendency to lag behind their peers."[12] Mallinson groups states into five categories based on how they "respond to different motivations for adopting innovations."[13] The five state types are innovators, early adopters, early majority adopters, late majority adopters, and laggards who are resistant to policy innovations and "less likely to follow the lead of other adopters."[14] Mallinson's study provides insights into the general patterns of policy diffusion from innovators to adopters with a "theoretical foundation for why particular internal and external determinants vary across the life course."[15] While innovators and adopter roles vary by individual policies, Mallinson provides relevant insights into the diffusion of wage theft policies.

While Mallinson concedes that policy diffusion between states can feature "myriad determinants of adoption,"[16] his determinant of "Ideological Similarity" contributes to the diffusion of wage theft policies among ideologically similar states that feature progressive economic ideologies. Compared to the regional neighborhood effect of policy diffusion among bordering states, states that are ideological neighbors influence one another with their policy innovations. As Mallinson explains, "ideological ties can be stronger than contiguity, particularly as political polarization has increased."[17] Ideological networks are a potent predictor of state policy diffusion as states tend to be early adopters and early majority adopters of policies innovated by ideologically similar states. Legislators often follow ideological neighbors because, by adopting innovations from states with ideological ties, they "reduce political uncertainty when considering an innovation."[18] Conversely, Mallinson offers the "Ideological Learning Hypothesis" which outlines that "greater ideological distance from past adopters will have a negative effect on state innovation adoption in the late majority and laggard stages."[19] Just as ideological ties feature a positive influence on diffusion from innovators to early adopters, ideological distance from state innovators and early adopters generates a negative effect on adoption, explaining why ideologically distant states are laggards to adoption.

New York's 2011 Wage Theft Prevention Act

[10] Ibid.
[11] Ibid.
[12] D.J. Mallinson, "Policy Innovation Adoption Across the Diffusion Life Course." Policy Studies Journal 49, no. 2 (2021): 337.
[13] D.J. Mallinson, "Policy Innovation Adoption Across the Diffusion Life Course," 339.
[14] Ibid.
[15] D.J. Mallinson, "Policy Innovation Adoption Across the Diffusion Life Course," 340.
[16] Ibid.
[17] D.J. Mallinson, "Policy Innovation Adoption Across the Diffusion Life Course," 343.
[18] Ibid.
[19] Ibid.

(WTPA), which took effect in April 2011, serves as an example of a policy innovation from a state innovator that diffused to ideologically similar states. According to the New York State Department of Labor (NYSDOL), the WTPA implemented six key provisions for employers to follow that work to deter wage theft practices and enforce wage theft policies.[20] First, the WTPA established a public notice of violations in which the "Department of Labor may post the violation in a place where employees can see it for up to a year."[21] Next, the WTPA created enhanced rules against retaliation, with retaliation defined as "any action which negatively affects workers such as discharge, suspension, transfer to another shift, reduction in wages or hours, which is done because a worker has engaged in a protected activity."[22] The WTPA requires employers to provide their employees a written notice with specific guidelines to inform employees of wage expectations upon their hiring in addition to providing pay stubs to employees regularly, both of which deter employers from stealing wages and ensure that employees are aware of their wages so that they can easily determine if their wages are being stolen from them.[23] Next, the WTPA enforces payroll record requirements for employers, who must "keep accurate records of hours worked by employees and wages paid."[24] Finally, the WTPA "provides for higher penalties when an employer fails to pay the wages required by law."[25] Specifically, the law enforces liquidated damages on up to 100% of the unpaid wages, an increase from the prior law that enforced damages of just 25% of unpaid wages, in addition to civil penalties and interest.[26] Ultimately, the WTPA in New York was a policy innovation as the first legislation of its kind to create extensive measures to address the issues of "wage theft" by name.

The diffusion of the WTPA from policy innovator New York to early adopter California demonstrates the trend of wage theft policy diffusion by ideological ties. New York's Wage Theft Prevention Act diffused to ideological neighbor California, who became an early adopter of New York's model legislation by passing the California Wage Theft Protection Act of 2011, which went into effect January 1, 2012, less than a year following New York's WTPA. California modeled its legislation after New York, passing the nearly identical Assembly Bill 469. Although not completely undifferentiated, California's Wage Theft Prevention Act follows New York's policy of written wage notices to new hires, as seen in California Assembly Bill 469 Section 2810.5, which reads "at the time of hiring, an employer shall provide each employee a written notice" and outlines guidelines for the written notice that match those of New York's WTPA.[27] California further models its legislation after New York by following the WTPA's penalties and damages structure, enforcing that "in addition to being subject to a civil penalty, any employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to paying restitution of wages to the employee."[28]

California's 2011 Wage Theft Protection Act, modeled after New York's Wage 2010 Theft Prevention Act, exemplifies Mallinson's theory on diffusion by highlighting the role of ideological ties as a basis for diffusion. California and New York share an ideological network based upon progressive, liberal economic policies that prioritize

[20] New York State Department of Labor. "Wage Theft Prevention Act," 2011, 1.
[21] Ibid.
[22] New York State Department of Labor. "Wage Theft Prevention Act Frequently Asked Questions (FAQ)," 2011, 6.
[23] New York State Department of Labor. "Wage Theft Prevention Act," 1-2.
[24] New York State Department of Labor. "Wage Theft Prevention Act," 2.
[25] Ibid.
[26] Ibid.
[27] California Assembly Bill 469, 2011, 14.
[28] California Assembly Bill 469, 1.

economic equity and justice. As an early adopter, California leveraged New York's policy innovation by following their legislation, aligning with Mallinson's observation that states with shared ideologies are more likely to emulate one another's policies. California's swift enactment of nearly identical legislation to combat wage theft demonstrates how ideological ties can act as powerful predictors of policy diffusion. This case reinforces Mallinson's framework by showing how ideological alignment, rather than physical proximity, can drive early adoption and encourage states to model policy innovations from ideological peers. Conversely, laggards in policy diffusion are often states with distant ideologies from innovators and early adopters. In this case, Mallinson's ideological learning hypothesis posits that ideologically distant states from New York and California are less likely to implement wage theft policies. Applying Mallinson's reasoning, states with opposing economic priorities or conservative economic ideologies are likely laggards in implementing wage theft policies like the New York Wage Theft Prevention Act or the California Wage Theft Protection Act. In the case of wage theft policy, Mallinson's reasoning accurately applies as ideological opposed states like West Virginia or Alabama have yet to see wage theft policy reach state decision agendas.

However, policy diffusion does not fully explain the variance in state legislation on wage theft nor does it fully explain why some ideologically similar states vary in their ability to pass anti-wage theft legislation. Colorado aligns itself ideologically with other liberal states that have passed stricter wage theft protections and featured the characteristic of partisan control of Democrats. In 2024, Colorado's Democrats sponsored House Bill 1008. The Bill focused on wage theft, citing that "the Colorado Fiscal Institute estimates that wage theft transfers nearly $728 million dollars to employers from the pockets of approximately 438,260 Colorado workers each year" and that "to combat wage theft, the state must keep up with changes in the marketplace."[29] The Bill creates general contractor liability to combat wage theft, following the policy innovation of New York's Senate Bill S2766C which was passed and signed into effect in 2022.[30] However, unlike in New York where Governor Kathy Hochul signed the bill into law, Colorado's Governor Jared Polis, a Democrat, vetoed the Bill to create general contractor liability. The case of Colorado demonstrates that, while policy diffusion explains how wage theft policies have diffused to ideologically similar states, it does not fully explain state variance in wage theft policies. To fully account for state variance in wage theft policies, I argue that, complimented by state policy diffusion, policy agendas determine state variance. The following section will outline how Kingdon's model on policy agendas, combined with Mallinson's theory on policy diffusion, explains state variance in wage theft policies.

Section III: How Wage Theft Reaches Decision Agendas

While Mallinson's discussion of policy diffusion from policy innovators to adopters contributes to the explanation for state policy variance on wage theft policies, it is limited in its ability to fully explain state variation. Policy diffusion by ideological learning offers a framework for understanding why some states have adopted model legislation on wage theft while ideologically opposite states remain without wage theft policies. However, Mallinson's methodology of looking at broad trends in the diffusion life course limits its ability to fully explain the variation of state approaches to combating wage theft. Further, while Mallinson's understanding of policy diffusion contributes to an understanding of why some states have adopted wage theft policies from innovators, it does not offer an explanation as to how wage theft concerns reached the political agenda for policy innovators. To fill the gaps, I draw upon John

[29] Colorado House Bill 1008, 2024, 2.
[30] New York Senate Bill S2766C, 2021-2022.

Kingdon's framework of the three streams that open policy windows.

To address the question of "what makes an idea's time come" in terms of reaching political agendas, Kingdon develops the three streams framework to explain the different factors that lead to public policy.[31] Whereas Mallinson highlights broader, inter-state trends of influence based on a model of diffusion from innovator to adopters, Kingdon focuses on the intra-state process of an individual legislature or government and the process of an idea reaching an agenda. Kingdon defines the "agenda" as "the list of subjects or problems to which governmental officials, and people outside of government closely associated with those officials, are paying serious attention to at any given time."[32] Kingdon emphasizes that "out of the set of all conceivable subjects or problems to which officials could be paying attention, they do in fact seriously attend to some rather than others."[33] To explain how an issue catches the attention of policymakers and reaches the agenda, Kingdon outlines three "processes by which agendas are set and alternatives are specified."[34] The three processes are "problems, policies, and politics."[35] Each of the three processes—problems, policies, and politics—can act as an "impetus" in which "items are promoted to higher agenda prominence" or can act as a "constraint" in which "items are prevented from rising on the agenda."[36]

First, Kingdon outlines the process of "problems pressing in on the system," or, simply put, "problem recognition."[37] Within the problems process, a "crisis or prominent event" can signal the emergence of a policy issue and propel it into political relevance.[38] In addition to crises, a problem might arise to relevance through a "change in a widely respected indicator."[39] Second, the policies process refers to the "process of gradual accumulation of knowledge and perspectives among the specialists in a given policy area, and the generation of policy proposals by such specialists."[40] The policies process refers to the collection of ideas and policy proposals among experts in which "ideas may sweep policy communities like fads, or may be built gradually through a process of constant discussion, speeches, hearings, and bill introductions."[41] Third, the political process can influence the agenda as an impetus or constraint. The political process may include "public opinion, election results, changes in administration, and turnover" in legislative roles.[42] Kingdon argues that the political sphere has a powerful influence on the agenda as politicians' receptivity to certain ideas can depend upon political considerations like reelection and electoral coalitions.[43]

The application of Kingdon's three political processes that influence the agenda is particularly relevant to the variation of state public policy on the enforcement capabilities surrounding wage theft. Just as legislation and the criminalization of wage theft vary across states, public policy on budgets and enforcement capabilities towards wage theft efforts also varies. Enforcement capabilities are an essential element to wage theft public policy

[31] John W. Kingdon, *Agendas, Alternatives, and Public Policies*. 2nd ed. Harlow: Pearson Education Limited, 2014, 1.
[32] Kingdon, *Agendas, Alternatives, and Public Policies*, 3.
[33] Ibid.
[34] Kingdon, *Agendas, Alternatives, and Public Policies*, 16.
[35] Ibid.
[36] Kingdon, *Agendas, Alternatives, and Public Policies*, 18.
[37] Kingdon, *Agendas, Alternatives, and Public Policies*, 18, 16.
[38] Kingdon, *Agendas, Alternatives, and Public Policies*, 16.
[39] Kingdon, *Agendas, Alternatives, and Public Policies*, 17.
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Kingdon, *Agendas, Alternatives, and Public Policies*, 18.

and its ability to promote economic justice, and supporters of wage theft mitigation efforts argue that wage theft features "a problem of under-enforcement."[44] To highlight the role of Kingdon's three streams framework in wage theft policy variation across states, I draw upon contrasting enforcement budgets in California and Ohio.

On February 16th, 2024, the State of California Department of Industrial Relations (DIR) and the Labor Commissioner's Office launched the Worker's Rights Enforcement Grant Program, investing 18 million dollars to prosecute wage theft.[45] The grant program provides "grants to eligible public prosecutors to develop and implement a wage theft enforcement program," incentivizing and creating opportunities to prosecute state wage theft cases.[46] In a news release from the Department of Industrial Relations, the government frames the funding as essential to "ensuring that labor laws are enforced, violators are prosecuted, and employers are deterred from engaging in practices such as unpaid overtime and minimum wage violations."[47] Further, the 18 million dollar investment reflects "California's commitment to ensuring every Californian is fairly compensated for their labor."[48] Lilia Garcia-Brower, the Labor Commissioner for the Department of Industrial Relations, describes wage theft as "a serious and persistent problem, which demands increased collaboration with government agencies and community leaders" and therefore justifies the grant program as an effort to "combat wage theft and unfair competition in the workplace."[49] The Worker's Rights Enforcement Grant Program represents a public policy agenda focused on and committed to combating wage theft.

Kingdon's three streams model provides insights into California's investment in combating wage theft by highlighting how wage theft reached California's agenda. In California, the policy stream created an impetus for wage theft's prominence in reaching the agenda. The concept of "wage theft" is a relatively new fad that has captured the attention of progressive, leftist activists and policy circles.[50] "Wage theft" as a phrase "was unknown until quite recently" and the practice of abusive economic behavior among employers targeted at their employees was not "treated as theft until very recently."[51] Wage theft was first mentioned in academic literature in 1988 but emerged in the mid-2000s as a more popular academic term to describe troubling trends of injustice.[52] Judicial opinions follow a similar pattern, with the first reference to wage theft in a published opinion emerging in 2005 with steady increases in frequency since.[53] Since the mid 2000s, activists and academics in socially and economically progressive circles have embraced the term wage theft as a focus of interest in the problem stream.[54] As an ideologically progressive state, the fad surrounding wage theft found a footing in California and serves as an impetus for wage theft policies to reach the agenda. The political stream supports the policy and problem streams and prevents any constraints. In 2024, Democrats made up 46.2% of registered voters compared to just a

[44] Levin, "Wage Theft Criminalization," 1479.
[45] California Department of Industrial Relations. "The State of California Invests $18 Million to Prosecute Wage Theft." February 16, 2024. https://www.dir.ca.gov/DIRNews/2024/2024-14.html.
[46] Ibid.
[47] Ibid.
[48] Ibid.
[49] Ibid.
[50] Levin, "Wage Theft Criminalization," 1439.
[51] Ibid.
[52] Levin, "Wage Theft Criminalization," 1441.
[53] Ibid.
[54] Levin, "Wage Theft Criminalization," 1446.

24.7% share of Republicans.[55] Further, California has a Democratic trifecta and triplex as of 2024, with control of both chambers of state legislature, the governor's office, the attorney general, and the secretary of state.[56] The streams therefore converged to open a policy window with no stream acting as a constraint to wage theft mitigation efforts from reaching California's agenda.

In contrast to California's investments into prosecuting wage theft, Ohio has moved in the opposite direction by cutting funding to the Labor and Worker Safety Division (LAWS). In a 2011 state budget bill, funding to the LAWS division of the Department of Commerce was cut "33 percent below what it was in the FY 2006-2007 biennium."[57] Staffing for LAWS in Ohio has the constitutional responsibility of enforcing wage and hour laws, including those that protect employees from wage theft.[58] Ohio's wage theft enforcement abilities were already limited before the 2011 budget cuts, with just six wage and hour investigators employed by the state, working out to just one investigator for every 616,000 Ohio private-sector workers and ranking Ohio second to last in number of investigators among large states with a minimum wage above the federal level.[59] As of 2019, funding for the Wage and Hour Bureau in Ohio, the division responsible for enforcing employment laws including minimum wage and overtime laws, is down more than 24% since 2010.[60] Even further down from 2011, Ohio had just five wage and hour investigators as of 2019, translating to just one investigator for every 932,367 private-sector workers.[61] In Ohio, efforts to combat wage theft have remained off of the agenda as highlighted by budget cuts from wage theft enforcement. Beyond a failure to address wage theft through strict legislation, Ohio has actively weakened its ability to combat wage theft by cutting funds from the Labor and Worker Safety Division.

Whereas the policy streams support wage theft enforcement efforts to reach the agenda in California, the streams fail to support wage theft enforcement in the same way in Ohio. In Ohio, the political stream, with its elements of public opinion and ideologies among elected officials, acts as a constraint to wage theft enforcement efforts from reaching the agenda. While wage theft prevention efforts emerged as a fad among policy advocates across the nation, their progressive advocacy has greater weight in states that share the same progressive economic ideology. According to Pew Research survey data, 40% of Ohio adults identify as politically conservative compared to just 21% who identify as liberal.[62] As a fad among ideologically liberal circles, advocacy for wage theft falls into a minority demographic of ideologically liberal Ohio citizens. Also, opposite to California's Democratic trifecta and triplex, Ohio features a Republican trifecta and triplex in which Republicans control the offices of governor, secretary of state, attorney general, and both

[55] Baldassare, Mark, Dean Bonner, Alyssa Dykman, and Rachel Lawler. "California Voter and Party Profiles." *Public Policy Institute of California*, 2024. https://www.ppic.org/wp-content/uploads/JTF_VoterProfilesJTF.pdf.
[56] Ballotpedia. "Party Control of California State Government." 2024. https://ballotpedia.org/Party_control_of_California_state_government.
[57] Hannah Halbert and Zach Schiller, "Shrinking Employment Law Enforcement Funding Raises Risk of Wage Theft." *Policy Matters Ohio*, May 26, 2011. https://www.policymattersohio.org/research-policy/fair-economy/work-wages/minimum-wage/shrinking-employment-law-enforcement-funding-raises-risk-of-wage-theft, 1.
[58] Ibid.
[59] Halbert and Schiller, "Shrinking Employment Law Enforcement Funding Raises Risk of Wage Theft," 1-2.
[60] Hannah Halbert, "Budget Bite: Wage Theft Ignored in Proposed Budget." *Policy Matters Ohio*, April 10, 2019. https://www.policymattersohio.org/research-policy/fair-economy/work-wages/minimum-wage/budget-bite-wa ge-theft-ignored-in-proposed-budget.
[61] Ibid.
[62] Pew Research Center. "Review of Political Ideology among Adults in Ohio: Religious Landscape Study, 2024." *Pew Research Center*, 2024. https://www.pewresearch.org/religious-landscape-study/database/state/ohio/political-ideology/.

chambers of the state legislature.[63] Ultimately, the policy and political streams that propelled wage theft efforts onto the agenda in California do not exist in Ohio. Applying Kingdon's model, wage theft remains off of the Ohio agenda as they cut funding towards enforcement because of the failure for the streams to support a policy window for wage theft policy.

Conclusion

States vary in their wage theft policies as a result of two phenomenon: 1) policy diffusion from policy innovators to adopters with ideological ties, reflecting Mallinson's ideological learning hypothesis in his discussion of the diffusion life course, and 2) the varying contributors to the problems, policies, and politics streams that lead to decision agendas in state governments, reflecting Kingdon's three streams model. Mallinson explains how ideologically similar states, specifically those with progressive ideologies on economic equity and justice, diffuse wage theft protections to each other. However, Mallinson falls short of offering a complete explanation of why some ideologically similar states vary in their wage theft legislation. To complement and complete the explanation, Kingdon's three streams model outlines why wage theft reaches the agenda in some states but not others.

Ultimately, the diffusion of wage theft policies acts as a case study for how progressive policies can gain traction and spread state-by-state. Although made up of long-discussed issues like minimum wage violations and worker misclassification, wage theft as a categorical term represents a relatively new, emerging policy fad. For left-leaning policymakers critical of neoliberalism, the issue of wage theft allows politicians to make arguments that highlight inequalities entrenched in the American economic and justices systems, where the U.S. government does not "view what abusive or exploitative bosses do as 'theft,' while they continue to pursue charges against poor defendants, particularly poor defendants of color, who commit low-level property crime."[64] The imbalance of justice inspires the question of the "white-collar theft exception": "Why should wealthier defendants be excused when they commit theft?"[65] As left-leaning policymakers continue to challenge issues of economic injustice and inequality in the United States while economically right-leaning policymakers defend deregulation and the market economy, wage theft will continue to be a source of debate and policy variation by state.

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