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Articles

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Letter from the Editors

Dear Reader,

On behalf of the executive and editorial boards, we are proud to present the Fall 2016 issue of the Columbia Undergraduate Law Review. This semester, our board had the difficult task of publishing only four papers out of the many high-quality submissions, and we are proud to present the following.

The first article in our issue is Tyler Headley and Thomas Yates' "Refugees or Immigrants? An Exegesis of the 1967 UN Convention on Refugees." This paper analyzes the history of international refugee law and specifically examines the cases of Liberia, Rwanda, and the Pacific, ultimately proposing productive alterations to the current legal institutions pertaining to refugees.

Bailee Ahern's "Resisting Reluctance" outlines the legal, philosophical, and political arguments for prisoner enfranchisement, recognizing the right to participate in the political process as intrinsic to the rights of all citizens.

"Peruta v. San Diego Reviewed," written by Andrew Frank, presents both the majority and dissenting argument of the gun-control issues in the Peruta v. San Diego case that was heard before the U.S. Court of Appeals for the Ninth Circuit.

In the article, "Human Security, United Nations Security Council Resolution 1325, and Vulnerable People: Rhetoric, Solidarity, and Silences in International Human Rights Discourses on Syrian Women Refugees," author Margaret Goelz argues that systematic perpetuation of violence and suffering against Syrian women refugees is attributed to specific and narrow discourses about women in conflict zones from which the titular United Nations Resolution is built.

Letter from the Editors

With each continuing publication, the Columbia Undergraduate Law Review strives to increase intellectual debate and discussion of legal issues, especially among undergraduates. To achieve this goal, we highly recommend visiting our online journal with shorter legal articles on our website – written by current Columbia students on our online staff. We hope that you enjoy reading the following submissions and our online articles.

Sincerely,
Alicia Schleifman and Jordana Fremed
Editors-in-Chief

MISSION STATEMENT

The goal of the Columbia Undergraduate Law Review is to provide Columbia University, and the public, with an opportunity for the discussion of law-related ideas and the publication of undergraduate legal scholarship. It is our mission to enrich the academic life of our undergraduate community by providing a forum where intellectual debate, augmented by scholarly research, can flourish. To accomplish this, it is essential that we:

i) Provide the necessary resources by which all undergraduate students who are interested in scholarly debate can express their views in an outlet that reaches the Columbia community.

ii) Be an organization that uplifts each of its individual members through communal support. Our editorial process is collaborative and encourages all members to explore the fullest extent of their ideas in writing.

iii) Encourage submissions of articles, research papers, and essays that embrace a wide range of topics and viewpoints related to the field of law. When appropriate, interesting diversions into related fields such as sociology, economics, philosophy, history, and political science will also be considered.

iv) Uphold the spirit of intellectual discourse, scholarly research, and academic integrity in the finest traditions of our alma mater, Columbia University.

SUBMISSIONS

The submissions of articles must adhere to the following guidelines:

i) All work must be original.

ii) We will consider submissions of any length. Quantity is never a substitute for quality.

iii) All work must inclde a title and author biography (including name, college, year of graduation, and major).

iv) We accept articles on a continuing basis.

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Refugees or Immigrants? An Exegesis of the 1967 UN Convention on Refugees

Tyler Headley and Thomas Yates | New York University Abu Dhabi

Abstract

The 1951 United Nations Convention on Refugees defines a refugee as someone who has fled their country "owing to well founded fears of being persecuted." The case studies of refugees from Liberia, Rwanda, and the Pacific demonstrate, however, that there is a dangerous and exploitable ambiguity imbued within this customary legal definition. This paper exegetically analyzes the history of international refugee law through three case studies, and then proposes productive alterations to the current legal institutions pertaining to refugees to address these shortcomings.

Introduction

In 2014, a brutal and bloody civil war unfolded in Syria. Millions of Syrian citizens fled the country in a desperate attempt to escape the violent conflict that quickly consumed thousands of lives.[1] Of the millions of Syrians who fled, hundreds of thousands attempted to enter Europe. The Syrian refugees joined the more than 60 million displaced persons worldwide, the largest number in recorded history. Despite the current plethora of refugees around the world, the international legal codes established by the two United Nations Conventions on Refugees governing the treatment, and specifically, the return of refugees to their home countries - including in cases of refoulement - are ambiguous, lack clear enforcement mechanisms, and leave too much room for third party state actors to renege on quotas and more generally, the established international law. The statutes within the UN Conventions on Refugees lack specific mechanisms pertaining to status changes—i.e., one's transition out of refugee status—as well as clauses for the granting of refugee status to protect one from impending dangers, which countries take how many refugees, and what the absolute criteria are for being granted refugee status.[2] Presently, individual countries determine most of these situations on a case-by-case basis, which leads to a dysfunctional and ineffective system.[3]

We conduct a three-pronged approach to draw solutions to the ambiguous legal code. First, we conduct a historical investigation of the existing laws governing refugees. Second, we offer and analyze three case studies to show the impact of these laws as applied and interpreted. Third, we build an argument based upon our previous exegeses. We find that, although the United Nations Conventions on Refugees have been ratified by 140 member countries and are currently the preeminent cornerstones of international refugee law, they grant too much authority to host countries in determining a refugee's status. By giving the power of arbitration to

an impartial third party, the UNHCR, to determine both when one is legally considered a refugee and when one's home is safe enough for them no longer to be considered as such, while leaving the decision of whether to ultimately grant citizenship to the host country, we believe that there will be a more comprehensive and cohesive legal system with less ambiguity. Furthermore, we believe that, by expanding the law to mandate that countries collaborate to make refugee quota commitments before a crisis arises, the process of refugee distribution will be much smoother for all relevant parties.

Historical and Current Contexts of the UN Conventions

The legendary political scientist Charles Tilly once wrote that "states make war and war makes states".[4] War also creates refugees - thus, one can argue convincingly that the phenomenon of refugees dates back to the creation of modern states. It wasn't until July 1951, however, that international laws that protect the rights of refugees were widely codified and ratified by most countries.[5] Initially created in response the nearly forty million displaced persons caused by World War II and the current European geopolitical climate, the UN Convention on Refugees was revised in 1967 to include displaced persons regardless of their geographic location while still keeping many of the World War II-centric ideas.[6]

In the nearly fifty years since the 1967 Convention on Refugees, the international legal regime of laws pertaining to refugees has remained largely the same. In current customary law, the only widely propagated and accepted tenet of the Convention is the prohibition on refoulement, "or return to countries of origin where the refugee faces a threat to their life or freedom".[7] While refoulement may be the cardinal tenet of the convention and thus international refugee law, there are other components enshrined in the law, written specifically to promote the basic needs of refugees.[8] For example, under current customary international law, so long as they are

at risk of persecution, refugees cannot be expelled from a country and are eligible for international funding in the form of housing and food.[9]

As the Convention on Refugees was created at the United Nations and is international law, the burden falls onto the 140 signatories to the convention - individual governments – for enforcement. The Office of the United Nations High Commissioner for Refugees (UNHCR) is the watchdog agency tasked with monitoring compliance.[10] Their enforcement mechanisms, however, are slim, as the only costs they can impose on non-compliant member states are through 'watching briefs,' which amount basically to tallies of rights abuses.[11] Thus, it is abundantly easy for state actors to renege and not comply with the proposed principles enshrined within the UN Conventions on Refugees.

The United States is a good example of the ease with which countries defect from enacting the statutes—especially the cardinal policy of non-refoulement—in the UN Conventions. The United States' policy on refugees is still governed by the Refugee Act of 1980. Signed into effect by President Jimmy Carter, the Refugee Act of 1980 created a mechanism to allow 50,000 refugees to enter the country every year, with additional and subsequent mechanisms to allow more in emergency situations in adherence to international norms.[12] While Section 101(a) states that "it is the policy of the United States to encourage all nations to provide assistance and resettlement opportunities to refugees to the fullest extent possible," the US actually subsequently contravened the international law on refugees with later administrative actions and court rulings. Specifically, the United States' compliance with the UN Convention on Refugees deteriorated with the Supreme Court cases INS v. Stevic (1984), INS v. Cardoza-Fonseca (1987), and Sale v. Haitian Ctrs. Council, Inc (1993). These three cases had the net effect of granting the United States government more control over the flow and influx of refugees into the United States, and even began wearing

away at the principal statute of the Convention, the clause of non-refoulement.[13] The United States framework serves as a good example of the difficulties in transferring and enacting international law into national law—international law still needs to get signed into effect by national legislatures, an act that is increasingly difficult. The case of the United States enacting national legislation additionally shows that Conventions' ratification processes were often derailed by individual ratification processes where states had unilateral incentives to renege on the laws they had previously signed at the international level.

While the framers of the UN Conventions on Refugees may have intended for wealthier and developed nations to take the lead in harboring refugees, the opposite has taken effect. In fact, in 2015, the five countries with the most number of refugees (in descending order of total refugees) were: Turkey, Pakistan, Lebanon, Iran, and Ethiopia.[14] Organized per capita, the list reads: Lebanon, Jordan, Nauru, Chad, and Turkey.[15] In fact, despite the UN Convention's call for worldwide acceptance of refugees, developing countries have effectively borne the brunt of the increasing refugee population. The dichotomy between development and the number of refugees taken in indicates two things: first, that wealthier countries have the capacity to accept more refugees than is currently mandated by the Convention. Second, that the current provisions in the Convention have established an unequal refugee distribution system.

In sum, refugees are not a new phenomenon, but the international law that exists to protect refugees' basic rights and dignity is. Yet this law, enacted as a response to the great tragedies of World War II, has met increasing difficulties in getting passed through national legislatures, and carries few, if any, enforcement mechanisms. The watchdog agency, the UNHCR, tasked with ensuring state actors take a multilateral approach to accepting refugees can only issue written warnings and reports when states fail to comply. This has led to much of the economic and security burden of harboring

refugees to fall on less developed and generally poorer countries. In the next section, we detail the specific effects and problems thereof that these theoretical legal pinnings have on real refugee rights.

International Refugee Laws as Applied

We examine three case studies to elucidate the problems that arise from the current laws pertaining to refugees and their refoulement. First, we analyze the case of the Liberian refugees in Ghana (1989-2008), examining the effect, if any, that the UN Conventions have on refugee flows into third party state actors. Flows into certain countries can be problematic due to their uneven burden and distribution; many of the countries that receive the most refugees are also the least equipped to take in the diaspora. Second, we analyze the ancillary and thus abbreviated case study of the Rwandan refugee diaspora during the Rwandan genocide (1994-2002). Using this case, we observe what a government, the source of a refugee diaspora, can do to improve refugee repatriation efforts in the context of the Conventions. Finally, we examine the potential refugee crisis in the Pacific that may occur as a result of climate change, which represents the first instance (of possibly many more) in which refugees are displaced due to ecological factors. Within each of these case studies, we determine what effect, if any, the current laws governing state interactions with refugees had, and the problems arising thereof. Through the analysis of these isolated cases, we demonstrate that the UN Conventions are outdated with regards to the current issues plaguing refugees.

The Liberian Refugee Crisis

The Liberian refugee influx into Ghana was a direct result of the First and Second Liberian Civil Wars. The First Liberian Civil War began in 1989 and concluded in 1997 when Charles Tay-

lor took power.[16] However, just two years later, the country was again plunged into chaos as Liberian dissidents invaded from Guinea, thus catalyzing the Second Liberian Civil War.[17] Six years into the Second War, the rebellion gained significant traction after an additional, armed Liberian group bolstered its efforts, causing Charles Taylor's government to lose ground and control. Finally, in August 2003, the Accra Comprehensive Peace Agreement was signed, expelling Taylor from the country, and beginning Liberia's slow transition to democracy.[18]

These two wars created a massive refugee crisis. The First Liberian Civil War, which resulted in the deaths of approximately 500,000 Liberians, caused an additional 700,000 Liberians to flee the country.[19] The Second Liberian Civil War is estimated to have killed 200,000 and caused 200,000 more to flee. These ratios prove a staggering proportion of the 3 million total Liberians.[20] With the high number of deaths, the Liberians who left the country clearly feared for their safety or believed they would be persecuted; thus, they could be classified as refugees. These Liberians sought refuge in other countries, with many turning to Ghana for asylum. By the end of the Second Civil War, Ghana's government estimated that it was providing asylum for roughly 17,000 Liberians.[21] Most of these refugees were housed at the Buduburam Camp, located about an hour away from Ghana's capital city, Accra.[22]

While the Liberian Civil Wars proceeded, many politicians incorrectly anticipated that the Liberian refugees, in the absence of foreign aid, would become a burden on the Ghanaian government. Dated reports between 1989-2003 indicate that many outside aid organizations and third party observers expected that the Liberian refugees relied solely on handouts and aid provided by UNHCR and the Ghanaian government.[23] The rationale behind this conclusion was that the Liberian refugees were people who generally lacked vocational skills that could garner individual income. Thus, most expected the Liberian refugees, especially those in the Buduburam

Camp, to suffer when the UNHCR began scaling back its humanitarian aid between 1999 and 2003.[24] To many experts' surprise, the reduced aid was tempered by the explosion of individual Liberian businesses that sprang up to fill the void in aid.[25] These enterprises included the establishment of a market, a bus line set up so people could work in Accra, and even the implementation of a telecommunications service.[26] Though this entrepreneurial success allowed the refugees to support themselves, it caused much consternation amongst some Ghanaians, a number of whom pressed the government to exploit articles in the Convention in order to forcibly refoule the Liberian refugees, especially since some Liberians were now wealthy but also still qualified for refugee handouts.[27] This phenomenon of refugee economic empowerment was never mentioned in the UN Conventions, which were written in a different time period and with European and Western states in mind as the refugee-receiving countries.

In 2004, when peace finally returned to Liberia, most Liberian refugees living in West Africa repatriated; of the 480,000 registered refugees in West Africa, roughly 80% of refugees in Cote d'Ivoire and Guinea returned back to Liberia.[28] This was not the case for Liberians in Ghana, however, who widely "resisted returning home".[29] The UNHCR reported that almost no Liberian in Ghana wished to return home due to perceived fears about safety in Liberia; thus, many remained living primarily in the refugee camps.[30] Even when Liberia finally stabilized, many Liberians continued to resist repatriation.[31] Most academics believe that their resistance stemmed from the establishment of so many businesses that were created, as well as the prosperous Ghanaian economy.[32] However, reports and hindsight analysis indicate that even when the Liberia's political stability was under question, the Ghanaian government could have exploited clauses in the UN Convention's Article 1 to forcibly repatriate the refugees, thus unduly withholding privileges entitled to refugees under international law. It appears that Ghana didn't invoke Article 1

because Liberians in Ghana engaged in mass-protests, threatening to ultimately take Ghana before the ICC for forcibly refouling refugees.

The case study of Liberians in Ghana illustrates the difficulty of defining exactly when refugees become immigrants. There are two periods of time where the refugee status of Liberians must be called into question. First, the two-year lull in violence between the First and Second Liberian Civil Wars could have been used to expel the refugees. Secondly, the period of political stability following the conclusion of the Second Civil War seems to call into question the refugee status of the Liberians. So what is the hallmark of a country safe enough for refugees to return to? One could argue that if there was still questionable safety in 1999, so too was there questionable safety in 2005, two years after the Second Liberian Civil War came to a close. Further, while there are clear points when the Liberians in Ghana were and weren't refugees, most of the time, the Liberians' status was in grey area between refugees and economic immigrants. The UN definition of refugee doesn't provide insight into the exact point that refugees become immigrants. Finally, the definition of refugee doesn't give insight into whether or not a refugee --who becomes independently economically empowered, especially compared to the local population, as many Liberian refugees in Ghana did, should preclude them from receiving humanitarian aid. Now, we look to the case study of the Great Lakes Refugee Crisis for more insight and analysis of how the UN Conventions are applied to real refugee crises.

The Great Lakes Refugee Crisis

The refugee crisis stemming from the Rwandan genocide, also known as The Great Lakes Refugee Crisis, demonstrates the lack of provisioning in the Convention with regards to repatriation and the source country of the diaspora. Specifically, an analysis of

the following case study shows the importance of a legal framework that incentivizes source countries to repatriate their citizen refugees in an expedient fashion, not to mention the creation of an enforcement mechanism to ensure the safety of the returning refugees—both of which the current Convention fails to do.

The Rwandan genocide of 1994 not only killed an estimated 500,000 - 1,000,000 people, but it also displaced more than 2 million others.[33] On April 6, 1994, Rwandan President Juvenal Habyarimana, a Hutu, died when his plane was shot down. His death sparked a conflict between two ethnic groups—the Hutus and the Tutsis—whose tensions had existed since Rwanda was colonized by Belgium.[34] Over the course of the next month, hundreds of thousands of Tutsis, the minority ethnic group, were slaughtered, until the Rwandan Patriotic Front, led by Paul Kagame, an ethnic Tutsi, retook Rwanda.

Fleeing reprisal killings and an unwelcome post-genocide Tutsi government, more than two million Hutus fled the country, primarily into Zaire (now the Democratic Republic of the Congo). Zaire's government wasn't equipped to provide basic public goods and services to the two million refugees, and so UNHCR quickly established camps to deal with the massive influx.[35] Initially, a multi-ethnic government was set up with Paul Kagame as president, but eventually there was a political falling out. Despite this, the Rwandan government began a reintegration program that included a period of relief and reconciliation marked by the Gacaca courts and reintegration of the military. Although fighting is still ongoing in the DRC—some experts estimate that more than five million people have died due to the spillover fighting from Rwanda into the DRC—reconciliation efforts of the Rwandan governments led to the successful repatriation and reintegration of their two million refugees.[36]

The case study of the post-genocide Rwandan refugees yields two pertinent lessons. First, that the repatriotization of refugees was only successful as a result of the government's own voli-

tion. The problem herein is that there are no enforceable protection provisions for third-party actor under the current Convention on Refugees. Second, while the UNHCR did an adequate job responding to the imminent crisis, there is a critical need to preempt refugee crises by establishing quotas and different categories of refugees for future emergencies.

The Looming Pacific Refugee Crisis

In September 2015, the New Zealand government declined refugee status for Ioane Teititoa. As the first individual to apply for asylum on the grounds of climate change, his fear was remarkably valid. Teititoa comes from Kiribati, a cluster of 33 coral atolls with only 100,000 inhabitants that, along with Tuvalu and Nauru, is expected to become entirely uninhabitable in the next 30-60 years due to rising sea levels.[37] Already, tens of thousands of people living in Kiribati have already been forced to move to the hinterland, where they are facing more frequent and severe storms and flooding. By 2050, estimates project that between 665,000 and 1.7 million people in the pacific alone will be displaced.[38]

With such grim predictions, why were the asylum applications of Ioane Teititoa and so many others in his situation rejected? Environmental refugees are not included in UN 1951 Refugee Convention—a tangible fear of persecution in one's home country is generally required for one to seek any asylum as a refugee.[39] In a world of increasing environmental concerns, however, individuals should not have to wait until the last possible moment to finally have their asylum applications taken seriously. Just as in the case of famine, scientific predictions can warn us of impending environmental crises and the impact that they will have over a fixed duration of time. Individuals should not have to wait until they are forced for fear of life to leave their country.

The real issue, however, is what happens going forward.

Unlike most crises, which involve physical conflict, these refugees will never be able to return home, as their countries will soon cease to exist. While they could ultimately be granted citizenship by the countries harboring them, millions of people are predicted to be in direct harm as a result of this calamitous situation by the end of the century. Kiribati has responded to these concerns by buying land in Fiji and planning to relocate its citizens to lands 2000km away while still calling it home.[40] This desperate move demonstrates the impending need of the international community to be proactive in establishing more concrete policies addressing the definition of refugees, the technicalities behind which countries harbor the refugees, and what to do in situations where refugees can never return home.

Conclusion: Problems & Solutions

The international laws protecting the rights of refugees exist because of our collective ethical obligation to respect and preserve the dignity and rights of each and every person, especially the persecuted. The current system of laws, however, contravenes that original intent by obfuscating the specific and individual obligations and burdens of each member state through unclear and ambiguous enforcement mechanisms. Drawing from both the current and historical context and the three aforementioned case studies, it is clear that there are a multitude of problems stemming from the current legal system dedicated to refugees. But the primary concern is that of ambiguity and implementation. To rectify the disparity between the intent and applied effect of the legal system, we recommend the six following changes:

First, at the heart of the definition of a refugee is that they must have a 'well-founded fear of persecution,' originally arisen from events associated with World War Two, but extended in 1967 to the entire world. This definition is problematic because it limits refugees to those predominantly from areas of conflict. While this

may have been sufficient until the Cold War, it certainly does not preempt the much wider range of issues plaguing our society today including famine and climate change. Even for those from a conflict zone, the definition of a refugee is still ambiguous enough that asylum may not always be granted for those who deserve and need it. As a result, this definition is certainly not sufficient in fulfilling its ultimate goal: targeting and helping those in need. We believe that there should be a new definition that does two things. First, it should take into consideration those who must leave their country for reasons other than persecution but still have valid fears for their life and safety, such as climate change in our Kiribati example. Second, the legal definition should be generally expanded so that it is clear in every circumstance as to who should be considered a refugee. The use of historical examples could be highly beneficial in achieving this.

Second, the definition of when one is no longer considered a refugee and is forced to repatriate or become naturalized should be made clearer. Sometimes refugees are unsafely and prematurely sent back home, as shown by the EU cases Abdulle vs. Minister of Justice (2011) and Saadi vs. Italy (2008). While this is illegal under international law and considered refoulement, refugees are commonly sent back home when it is assumed that they will no longer live in fear in persecution in their home country. The problem is that safety is often difficult to determine. For instance, in the case of Liberia, while the country was perceived to be safe, after two civil wars and hundreds of thousands of deaths, it is understandable why many refugees were wary to return home and genuinely believed that they could still face persecution there. In particular, an updated definition should allow refugees from countries with historical instability to be able to maintain refugee status until not only the conflict ends but also until no new conflicts are expected to arise. Of course, we believe that when refugees ultimately lose their status, host countries should still have full authority in determining wheth-

er they will allow refugees to naturalize or force them to repatriate.

Third, a major issue in the current legal framework arises in the case of the repatriotization of climate change refugees. Two potential solutions to this issue are that refugees' host countries allow them to become naturalized, or that their home countries, like Kiribati, buy land elsewhere to relocate their country. This is something that is not at all accounted for in the Refugee Conventions or international law. While there is no perfect solution to this situation, both of these options are suboptimal—much planning needs to go into either solution and thus the Convention should be adapted so to include this situation and its accepted solution.

Fourth, we propose a priority system based on need. Refugees currently get assigned destinations and timeslots based largely on mobility rather than dire need. The Convention itself grants no right of assistance to asylum-seekers until they reach a signatory country. This causes a disparity to emerge between those who need resettlement the most and those who are the most geographically pre-dispossessed or physically able to being granted asylum. Obviously, not all asylum-seekers face direct threats to their lives and thus those who do will be placed higher on the list than those who, for instance, are facing the effects of climate change in the Pacific. While in an ideal world every valid asylum-seeker would be granted asylum, there are limited resources. Thus a system of priority would be much more effective than the status quo which leads to a disproportionate number of young males being granted asylum.

Fifth, another key issue in terms of country allocations for asylum seekers is that the process by which countries take in refugees is extremely political in itself. Most countries make case-by-case decisions based on strategic and political interests as to how many refugees they will take in. As shown with the example of the USA, even when national laws as to how many refugees a country will accept each year are ratified, they are incredibly difficult to enforce. As a result, the countries that take the highest number of ref-

ugees from a country in crisis are those neighboring it. This leads to a disproportionate and unfair burden on these countries' resources, as many are often developing nations and unable to afford the economic burden of a large refugee influx. We propose that instead of countries making case-by-case decisions as to how many refugees they taken in, there should be collaboration between countries to determine, and legally ratify, how many refugees they would accept before the conflict even arises. This would both reduce the burden on the neighboring countries of the country in conflict, but also create more coherence and better living standards for the refugees involved.

Sixth, countries generally have unilateral incentives to promote international quotas but subsequently unilaterally renege on their own commitments. Further, as they are free to interpret the ambiguous articles of the Convention as they please, they often do so in a way that one-sidedly minimizes the burden on their country while simultaneously indirectly harming refugees. To correct these misaligned incentives, there should be one governing body to enforce and implement the aforementioned policies so that there is a multilateral acceptance of refugees. We propose that the United Nations Centre for Human Refugees' power be extended to that of a ruling body in these matters. The system is obviously not working for the abovementioned reasons and with the expected influx of refugees in years to come, it is vital that there exist an organization to legitimate legal decisions pertaining to refugees. The UNHCR will now determine refugee status and when refugee status is lifted, while continuing to oversee and assist refugee programs across the world.

Measures as drastic as this would surely need to be ratified in a new Convention. We fully support this motion because we have used case studies and analysis to prove that the current Convention is outdated and causing serious issues for its signatories and refugees across the world. As the nature of a refugee evolves with the

rise of new issues such as climate change, so too should the Convention. With the United Nations holding conferences and adapting conventions for other large global issues such as sustainable development, there is no reason why the same shouldn't be done for an issue as important as preserving the dignity and rights of the human being.

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Resisting Reluctance

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Abstract

When it comes to the protection of human rights, international law and state practices seem to be perpetually at odds with one another. The tension between the rights of citizens and the power of states to discipline is central to the debate on prisoners' rights. Despite the myriad of protections and liberties that international law ostensibly affords prisoners, felon disenfranchisement is a global phenomenon. Upon a comparative examination of the consequences of prisoner disenfranchisement across countries, the need to reevaluate prisoner disenfranchisement and consider the benefits of alternative models of voting rights has become increasingly apparent. The recalcitrant attitude of states toward the enfranchisement of prisoners indicates a blatant, hypocritical, and unlawful disregard for the democratic values that these states claim to uphold. This article outlines the legal, philosophical, and political arguments for prisoner enfranchisement, recognizing the right to participate in the political process as intrinsic to the rights of all citizens.

Relevant Instruments in Protecting the Rights of Prisoners

In order to assess the legality of prisoner disenfranchisement, it is necessary to examine the role of international law in the protection of prisoners' rights. Specifically, the International Covenant on Civil and Political Rights (ICCPR), a multilateral treaty adopted by the UN General Assembly in 1966, is perhaps the prisoner's Magna Carta. The ICCPR provides a legally binding mechanism for democratic governance, as it promotes values such as "freedom, justice, and peace."[1] Article 10 of the treaty specifically addresses the treatment of prisoners by mandating respect for the human dignity of every prisoner, making prisoners' rights necessary to meet these ends. Further, it states that the primary objective of incarceration in democratic states is rehabilitation. Other relevant documents, such as the UN Basic Principles for the Treatment of Prisoners, affirm the provisions listed in Article 10. Moreover, Article 25 of the ICCPR explicitly discusses voting rights and criminal disenfranchisement. It states that every citizen, prisoner or non-prisoner, possesses the right "to vote...which shall be by universal and equal suffrage." The drafters of the ICCPR, however, qualified this right with a provision that includes the right to vote "without unreasonable restrictions."[2] Following the logic of this provision, one may infer that reasonable restrictions to voting rights do in fact exist. The state thus has the responsibility of determining a proportional response to prisoners' past criminal actions. Ambiguous, easily exploitable language, such as the aforementioned provision, has been a source of contention between governments that resist full prisoner enfranchisement, and human rights advocates, who contend that protecting the right to vote adequately recognizes human dignity and most effectively promotes democratic values.

The Case for Prisoner Enfranchisement

A number of arguments clearly affirm the imperative need for the full enfranchisement of all prisoners. Some arguments are legal, while others are political or philosophical. Arguments focus concern on citizens' rights, the alienation of marginalized groups, and the effect of felon disenfranchisement on election outcomes. Moreover, these arguments typically emphasize democratic accountability and a reformed paradigm that emphasizes inclusion and rehabilitation, rather than retributive punishment. Furthermore, when considering this debate, it is important that the West does not possess a monopoly on democratic governance and other countries, notably South Africa, stand at the forefront of the global fight for prisoners' rights.

One of the most salient arguments for prisoner enfranchisement is the recognition that voting is a fundamental mechanism of citizenship. The basic argument suggests that as citizens, prisoners should retain this right. Proponents of this view directly oppose social contract theorists, such as Hobbes, Rousseau, and Kant, who argue that committing a crime or, in other words, breaking the social contract, justifies a punitive reaction from the state. For Kant in particular, violating criminal law means forfeiting one's citizenship.[3] In response, proponents of enfranchisement affirm prisoners' status as citizens and contend that taking away the right to vote violates the social contract, which should be, according to the theory, mutual. In the absence of a mutual relationship between the state and prisoners, a number of questions related to democratic governance, arise. First, if prisoners are obliged to obey the law, but lack the right to vote, do they then become subjects instead of citizens? Second, if prisoners have no means to check the government's power, can the authorities then rule without the full consent of the governed?[4]

According to the UN Standard Minimum Rules for the Treatment of Prisoners, upon incarceration, a prisoner retains his or her

full civil rights, which, many argue, include the right to vote. The Canadian Supreme Court affirmed this view in 2002 with its Sauvé decision, in which it affirmed the notion that prisoner enfranchisement not only protects democratic values, but also promotes social responsibility. In its decision, the Canadian Supreme Court declared unconstitutional a 1993 electoral law, which disenfranchised prisoners with sentences of two years or more. The Court maintained that, in pursuit of democratic values and the rule of law, the right to vote must extend to every citizen. According to the Court, the 1993 law undermined this objective because of its neglect of the reintegration and social rehabilitation of prisoners.[5] In effect, the Canadian Supreme Court disregarded the anachronistic arguments of philosophers, such as Kant, in favor of a progressive paradigm that honored prisoners' rights as citizens.

Another important yet often neglected argument against disenfranchisement is the undue burden it places on marginalized groups. As Professor of Psychology Mandeep K. Dhami notes in her work, disenfranchisement policies can lead to inequality. In the United States, where Black men are incarcerated at a disproportionate rate, disenfranchisement only further exacerbates a systemic pattern of discrimination. A decade ago, Black men constituted only 6 percent of the general population; however, they represented over 35 percent of the disenfranchised population.[6] Additionally, while corporate lawbreakers and tax evaders often avoid imprisonment and retain their rights as citizens, minorities continue to experience imprisonment and consequent disenfranchisement at an unconscionable rate. Again, in the Sauvé decision, the Canadian Supreme Court recognized the injustice of this phenomenon when the majority duly noted the disproportionate impact denying prisoners the right to vote had on minority populations, particularly Canada's Aboriginal communities. Like Black men in the United States, Aboriginal communities are incarcerated at a higher rate and thus are disproportionately affected by disenfranchising policies. Although

Aboriginal people constituted only 1.7 percent of the Canadian adult population in 2008, they represented about 17 percent of admissions to federal carceral institutions that year.[7] Referencing Article 10 of the ICCPR, the Canadian Supreme Court found the government's policy of disenfranchisement in direct opposition to the state's core responsibility of social rehabilitation. As the Canadian Supreme Court recognized, it is necessary to challenge the policies that further disadvantage marginalized groups in order to effectively address inequality.

A third and equally relevant argument for prisoner enfranchisement is electoral outcomes. Proponents of prisoner voting rights argue that election results can not only be distorted, but also racially biased as a result of prisoner disenfranchisement. If prisoners are not included in the data used for census returns and are therefore unaccounted for when the number of representatives in electoral districts are determined, then an entire community—one that could affect the impact of elections—is left out of the democratic process. In the United States, for example, a racial element to disenfranchising laws indeed exists. New prisons, in which minorities are overwhelmingly housed, are predominantly constructed in white, rural communities. Consequently, Black political voices are suppressed, while white voices remain dominant to pursue and secure political interests.[8] Further, irrespective of race, prisoner disenfranchisement is often arbitrary. The denial of the right to vote may be wholly dependent upon the timing of an election and when an individual happens to be detained or incarcerated. As a result, individuals who have not been convicted of a crime—possibly people awaiting trial—may be denied their franchise. If voting is the most prized "manifestation of the social contract," then states must ensure that no citizen is arbitrarily deprived of this right.[9]

A Critique: Hirst v. United Kingdom

In the face of growing public sentiment for prisoner enfranchisement, cases such as Hirst v. United Kingdom and Scoppola v. Italy illustrate how democratic states continue to limit prisoners' rights. Hirst v. United Kingdom (2005) represents a tenuous progress in the struggle for full prisoner enfranchisement, as the United Kingdom continues to fight enforcement of the European Court of Human Right's decision—despite the fact that the verdict was rendered nearly a decade ago. The case began in 2004 as a challenge to the 1983 Representation of the People Act, which excluded prisoners from voting while incarcerated. Prior to this suit, John Hirst, a prisoner convicted of manslaughter, had failed to convince UK domestic courts that this particular legislation violated his rights provided in the European Convention on Human Rights. Specifically, Hirst claimed violations of Article 3 of the First Protocol and Article 10, which guarantees the freedom of expression for all citizens.[10] Hirst argued that the 1983 Act failed to meet a legitimate aim under the ECHR, adding that the British Parliament had given little consideration to the historic purpose of this legislation. In response, the UK government defended its policy of disenfranchisement. It maintained that the 1983 Act had two legitimate aims: first, to duly punish the prisoner's crime and prevent recidivism, and second, to enhance civic responsibility and the rule of law.[11] The High Chamber of the ECHR decided to follow the reasoning of the Canadian Supreme Court in a similar case to reach its final verdict—a decision that, although encumbered by a lack of enforcement, demonstrates the growing insistence that governments reform their attitudes toward prisoner enfranchisement.

Based on evidence provided in Sauvé v. Canada, the Chamber concluded that the UK act did not meet its stated aims. According to the "rational connection" test, the Chamber acknowledged that no direct, observable link existed between the abrogation of a

prisoner's right to vote and the promotion of criminal deterrence, civic responsibility, and respect for the rule of law.[12] Although the High Chamber found that blanket disenfranchisement under the 1983 Act violated prisoners' rights, it stopped short of enfranchising all prisoners. Citing Article 25 of the ICCPR, the Chamber appealed to the margin of appreciation—a legal principle that allows domestic courts to render the final verdict. In this case, UK domestic courts were left to determine a "proportional" response to disenfranchisement.[13] Despite this somewhat favorable concession, the UK government proceeded to contest the Chamber's ruling against a blanket ban in a series of consultation papers.

The first consultation paper sought to defend the UK's unqualified policy of disenfranchisement. The paper was met with considerable criticism from the ECHR, which reasserted that such an option was explicitly ruled out by its decision. The second consultation paper provided only a vague outline of the instances in which disenfranchisement might be a proportional response to a prisoner's crime.[14] Although the UK has sought to maintain the status quo of disenfranchisement in these papers, its reasons for doing so remain largely unarticulated until today—a decade later. Furthermore, so long as the Court favors the margin of appreciation, it has little power to enforce its decision. Without such enforcement, the United Kingdom can continue to circumvent the decision, promulgating a restrictive, illiberal attitude toward prisoner enfranchisement that is inconsistent with the values that democratic states, such as the UK, purport to uphold.

A Critique: Scoppola v. Italy

On May 22, 2012, the ECHR ruled in Scoppola v. Italy that the Italian government had not violated Franco Scoppola's rights under the Convention by permanently disenfranchising him with a law known as Presidential Decree no. 223/1967. In this case, the

ECHR's approach to enfranchisement was far more restrictive than that of Hirst. Specifically, its posture toward the margin of appreciation was even more permissive than that of the previous decision. Scoppola found that the disenfranchisement of prisoners with sentences of three years or more was not indiscriminate, whereas Hirst only seven years earlier had concluded that the disenfranchisement of prisoners with custodial sentences of any length was indiscriminate. Instead of applying the penalty with regard to the particulars of the crime, as Hirst propounded, the Scoppola decision focused on the length of the sentence in determining disenfranchisement. Moreover, the Court failed to engage in a substantive discussion of legislative history. Discussion of the 1983 Act and its intended aims were instrumental to the Court's decision in Hirst to outlaw blanket disenfranchisement.

Upon further analysis, the Scoppola decision appears inconsistent not only with the proportionality test employed in the Hirst decision, but also with the mandates of the European Convention on Human Rights. Article 3 of the European Convention states that the Contracting Parties shall hold free and fair elections and protect the right of all people to free expression. When viewed in isolation, the text does not answer the question of whether or not the Court was correct in its decision to uphold the Italian law. Article 31(3)(c) of the Vienna Convention on the Law of Treaties states that treaty interpretation requires that one take the relevant rules of international law into account, together and in context.[15] The ICCPR is the most relevant instrument to a contextual analysis of the Scoppola decision. Article 10 of the ICCPR, as mentioned earlier, calls upon states to respect the human dignity of all persons and to prioritize the rehabilitation of all prisoners. One must evaluate the Italian government's stated aims in the Scoppola case with this mandate. The Italian government, like the British government in Hirst, claimed that prisoner disenfranchisement enhanced civic responsibility and respect for the rule of law. However, the Scoppola decision did not

provide any discussion of how the state might rehabilitate a prisoner and reintroduce him or her into society. Contrary to Italy's claims otherwise, criminal disenfranchisement blatantly undermines rehabilitation and social reintegration, as prisoners are unable to exercise their full rights or hold their government accountable. It appears that, under the test of strict scrutiny, Italy's disenfranchising policies cannot stand. From Hirst to Scoppola, the Court's understanding of prisoner's rights, particularly the right to vote, has devolved, further insulating governments with anti-democratic predilections.

Beyond Western Boundaries

Provided an alternative model of prisoners' rights outside the Western context, African countries, such as South Africa, are gradually shifting toward full prisoner enfranchisement. Although neither the African Commission nor the African Court have had the opportunity to adjudicate any cases involving the issue of criminal disenfranchisement, national courts and legislatures have actively sought to ensure that their constitutions are consistent with relevant human rights instruments. According to the African Commission, the right to political participation, including the right to vote, extends to every citizen. However, Article 4 of the African Charter clearly states that the right to participation, in general, and the right to vote, in particular, are not absolute rights. Article 13 of the Charter attempts to clarify this provision, stating that the right to participation must be exercised in accordance with the "provisions of the law."[16] The salient question then becomes: Is the restriction of a prisoner's right to vote an appropriate, fundamental, and proportional limitation of the right to participation? While international bodies, including the African Commission, await the opportunity to respond to this question, African states are actively promoting prisoners' rights. In keeping with provisions such as the UN Minimum Rules, the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal

Reforms indicates that governments have a responsibility to reform, rehabilitate, and reintegrate prisoners into society.[17]

South Africa has been at the forefront of the effort to honor the human rights of prisoners. For South Africans, the debate over prisoner enfranchisement is one of social, historical, and political significance. In the 1990s, many of the legislators who promoted prisoners' rights were ex-prisoners themselves who were jailed during the era of Apartheid, and members of the African National Congress led by Nelson Mandela—one of the most recognizable advocate of prisoners' rights in world history. The 1996 South African Constitution consequently provided the right to vote to every adult citizen, including prisoners. Succeeding governments have, however, sought to limit this right. However, in a series of decisions, culminating in Minister of Home Affairs v. Nicro (2004), the country's Constitutional Court ultimately rejected the presiding government's blanket ban of enfranchisement.[18] The Court recognized that prisoners are instrumental parts of a functioning and healthy democracy. Professor of Law, Ntusi Mbodla notes that proponents of enfranchisement in South Africa understand that voting is, in a way, an act of allegiance to the state. Proponents argue that if prisoners lose their right to vote while incarcerated, they will likely walk out of jail with less allegiance to their governments. Without such allegiance, the rate of recidivism would likely increase.[19] Arguments, such as this, have formed a larger narrative in support of prisoner enfranchisement that is spreading across the continent.

This movement, however, remains an anomaly in other parts of the world. For example, Hong Kong, like the UK and Italy, represents the ever-strained relationship between the state's obligations to prisoners under international law and its own practices. In Hong Kong, imprisoned persons are deprived of the right to vote absolutely—a policy that has garnered criticisms from human rights advocates, such as Professor of Applied Social Sciences, Wing Hong Chui. Chui argues that human rights are "universal and incontrovert-

ible to every person regardless of age, ethnicity, religion, political conviction, or type of government."[20] She adds that the right to vote is one of the primary expressions of citizenship and thus, should not exclude prisoners. To abrogate this right and limit one's citizenship halts the perpetuation of ideals like freedom and democracy. She maintains her argument by citing not only international law, but also national law. The Basic Law of Hong Kong, specifically Article 26, prohibits disenfranchisement based on "social origin" or "other status." The ICCPR affirms this notion of maintaining the rights of all, regardless of social status and "without unreasonable restriction [...] to vote at genuine periodic elections."[21] Given the possibility of restriction, the government's stated reason for disenfranchising prisoners must be considered and used to determine proportionality. In the case of Hong Kong, there appears to be, like the United Kingdom, a general unwillingness to articulate its objections to prisoner enfranchisement. According to General Comment 25 of the ICCPR, any restriction to this right must be proportionate to the offense and the sentence. Determining proportionality then requires a critical evaluation of the legislation depriving prisoners of this right. A government, like that of Hong Kong, cannot merely retain disenfranchising policies based on "unquestioning and passive adherence to a historic tradition."[22] Rather, there must be considerable debate within the legislature as to whether restrictions on the right to vote are justified.

What is missing in the conversation of prisoners' rights in Hong Kong is a discussion of the legislation that has historically deprived prisoners of their right to vote. As voting is a fundamental right that protects human dignity and promotes democratic legitimacy, according to both international law and Hong Kong's own national legislation, any deprivation of this right must undergo the strict scrutiny of a court or legislature. The government's ambivalent disregard for its own historic assumptions about prisoners' rights and unwillingness to heed the demands of international hu-

man rights law ultimately undermine democratic governance.

An Alternate View of Prisoner Rights

Perhaps if the conversation surrounding prisoners' right to vote moved toward a meaningful discussion that highlighted the benefits of enfranchisement, more countries would recognize their obligations to prisoners. In countries where prisoners have an unrestricted right to vote, such as Denmark and Finland, prisoners are both politically empowered and socially reintegrated. Proponents of the political empowerment of prisoners, as previously discussed, suggest that prisoner enfranchisement would ensure that the population of voting-age citizens is reflective of the diversity that exists in constituencies and that a sizeable portion of the population fully contributes to election outcomes.

Take, for example, the Prison Reform Trust's argument that the UK's policy of disenfranchisement swayed the results of the 1997 General Election. The Trust concluded that the country's restrictive ban on prisoners' voting rights likely influenced the election results in eight marginal constituencies that had large prisoner populations. In Dorset South, three prisons housed 1,500 prisoners in 1997. In this constituency, a conservative candidate won the election by only 77 votes—an outcome that the enfranchisement of both prisoners and ex-felons likely would have changed.[23]

Moreover, evidence suggests that prisoner enfranchisement is a powerful force in the effort to promote the social reintegration of prisoners. Professor of Psychology Mandeep K. Dhami argues that, psychologically and socially, the right to vote often enables prisoners to see themselves as valuable, responsible, and lawfully upstanding citizens. This sense of self-empowerment may then facilitate the rehabilitation of prisoners and their eventual reintegration into society. The movement for prisoner enfranchisement recognizes the obligations outlined in Article 10 of the ICCPR, which calls for the

dignified treatment of all humans and clearly states that the primary objective of prisons should be rehabilitation and social reintegration. When the Constitutional Court of South Africa officially ruled against prisoner disenfranchisement in 1999, it cited Article 10 of the ICCPR as its primary justification.[24] If the law is not sufficient to convince governments to honor their lawful obligations, perhaps quantitative evidence is. A 2005 study found that disenfranchisement was associated with feelings of inferiority, stigmatization, humiliation, and social isolation. Notably, prisoners reported that they felt like "second-class" citizens.[25] The alienation that prisoners claim to experience as a result of their disenfranchisement illustrates states' disregard for human dignity and democratic values, which instruments such as the ICCPR have sought to protect. If human rights are to exist universally, then it is imperative that states that claim to be democracies recognize the benefits of enfranchisement.

Conclusion

As prisoner disenfranchisement threatens human rights around the world, it threatens democratic governance as well. Despite progress made in the last century, as more social groups than ever enjoy suffrage, prisoners remain one particularly disadvantaged minority. Despite the precedent set by countries, such as South Africa, many modern democracies continue to deny incarcerated citizens their civil right to political participation, without regard for the collateral consequences of this policy. As this paper has extensively highlighted, prisoner disenfranchisement has the anti-democratic effect of not only stripping citizens of their fundamental rights, but also systemically diluting the political voice of marginalized individuals. Although the international body of law relevant to this issue mandates, in the name of equality, an ideological shift across cultures, lasting protection of democratic values will require a radical paradigm shift that, above all, prioritizes human rights.

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Peruta v. San Diego Reviewed

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Abstract

This paper presents both the majority and dissenting argument of the gun-control issues in the Peruta v. San Diego case that was heard before the U.S. Court of Appeals for the Ninth Circuit. The case primarily pertains to the legality of San Diego's restrictive policy regarding the issuing of concealed-carry permits and its requirement that applicants for concealed-carry permits demonstrate "good cause" and circumstances that "distinguish the applicant from the mainstream public and place the applicant in harm's way" (Cal. Pen. Code §§ 26150, 26155). The majority and dissenting opinions diverge primarily because they disagree on the fundamental question being posed in Peruta. According to the majority, the court must decide whether a responsible, law-abiding citizen has the right under the Second Amendment to carry a firearm in public, whereas the dissent reframes the question to be whether the plaintiff should be awarded a license to carry a concealed handgun for any purpose, asserting that there is no such thing as a right to concealed carry. Both the majority and dissenting opinions engage in an all-encompassing analysis of the historical interpretation of Second Amendment rights, judicial precedent regarding the concealed carry of firearms (especially around the time of ratification) as well as other extenuating circumstances particular to Peruta which may shed light on a judicially consistent and appropriate response.

Introduction

In light of the vast "terra incognita" that the Court left unresolved in District of Columbia v. Heller, a number of suits have been filed in recent years asking the courts to speak clearly on the constitutionality of regulations concerning firearms outside of the home. The following paper considers two fundamentally distinct approaches to one such case, Peruta v. San Diego, heard before the U.S. Court of Appeals for the Ninth Circuit in 2014. Specifically, the case pertains to the constitutionality of San Diego's restrictive policy regarding the issuing of concealed-carry permits, namely its requirement that applicants for concealed-carry permits demonstrate "good cause" and circumstances that "distinguish the applicant from the mainstream public and place the applicant in harm's way" (Cal. Pen. Code §§ 26150, 26155). What is referred to as the "Majority" opinion in this piece undertakes significant historical inquiry to establish whether or not citizens have a right to carry firearms in public for self-defense. If this is the case (which the "Majority" ultimately determines it is), the "Majority" reasons that San Diego's policy regarding concealed-carry permits should not stand, abridging a fundamental right enshrined under the Second Amendment that cannot be balanced with competing public safety interests. On the other hand, the "Dissent" reframes the question, focusing not on whether the typical citizen has a right to self-defense, but rather on whether the plaintiff should be awarded a concealed-carry license for any purpose. The "Majority" and "Dissent" differ significantly in the kind of historical analysis they undertake, the value they accord to such analysis and, most significantly, on whether the rights abridged by the defendant's regulations constitute fundamental rights of the Second Amendment or mere subsidiary ones that may be subject to a lesser form of scrutiny and thus regulated by the government. The labeling of the opinions as "Majority" and "Dissent" do not indicate the author's preference of one over the other.

Majority

The fundamental question before the Court in this case is whether a responsible, law-abiding citizen has the right under the Second Amendment to carry a firearm in public. In the state of California, both open and concealed-carry are generally prohibited in public, with several concealed-carry exemptions granted only for the owner's residence, place of business, and other private property.[1] Beyond those exemptions, California residents who wish to carry firearms in public may apply for a concealed-carry permit, upon demonstrating "good moral character," completing a specified training course, and establishing "good cause," among other things.[2] California has delegated the power to determine the procedures for satisfying these vague requirements to its cities and counties. At issue in this case is the County of San Diego's interpretation of what constitutes "good cause," currently defined as "a set of circumstances that distinguish the applicant from the mainstream and causes him or her to be placed in harm's way."[3] Significantly, while "good cause" may encompass "situations related to personal protection as well as those related to individual businesses and occupations," concern for "one's personal safety alone is not considered good cause."[4] As a result, many San Diego residents who desired to carry firearms in public for their own safety, but who were unable to document extraordinary circumstances or specific threats against them, were denied concealed-carry licenses or simply chose not to apply, doubtful that their circumstances would satisfy San Diego's interpretation of the law. Petitioner Peruta sued the County of San Diego, arguing that his Second Amendment rights were infringed by its "good cause" policy that prevented him from carrying a firearm for self-defense.

First and foremost, it is necessary to determine whether a restriction on a law-abiding citizen's ability to carry a gun outside of the home for self-defense falls within one's Second Amendment

right. A thorough analysis must begin with the text of the Second Amendment itself and then progress to the historical record, case law, legislative practices, and other historical context that may shed light on which activities and practices are protected under the Second Amendment, even though not explicitly protected in the text. After all, the objective is to develop a "fair, not a hyper-literal, reading of the Constitution's language" informed by the historical context in which it was ratified.[5]

As the Court reminded us in District of Columbia v. Heller, "constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad."[6] To say otherwise would be to give judges unprecedented authority in interpreting the scope of constitutional rights, a power resulting in quasi-legislative activity by the judicial branch of government and thus a breach of the doctrine of separation of powers.

For the purposes of this paper, the most pertinent part of the Second Amendment is
"the right of the people to keep and bear arms," the verbs "keep" and "bear" being the most central to our investigation regarding the right to carry firearms outside the home. While most English speakers would naturally draw a distinction between these two words, the Heller Court has already clarified "bear" to be broader than "carry." Beyond the most common usage of "convey[ing] or transport[ing]" an object, the verb "bear" has the connotation of "carrying for a particular purpose- confrontation." In Muscarello v. United States, J. Ginsburg elucidates the original meaning of "bear arms" as seen in Black's Law Dictionary at 214: "wear, bear, or carry...upon the person or in the clothing or in a pocket, for the purpose...of being armed and ready for offensive or defensive action in a case of conflict with another person."[7] From this definition, we assume that "bear arms" connotes "being armed and ready for offensive or defensive action," and thus it would be unreasonable to restrict the exercise of such a

right solely to the home. Moreover, J. Hardiman writes that restricting the bearing of arms to inside the home "not only would conflate 'bearing' with 'keeping,' in derogation of the Court's holding that the verbs codified distinct rights, but also would be awkward usage given the meaning assigned to the terms by the Supreme Court."[8] Regarding bearing arms outside the home, both the Heller and McDonald Courts are unequivocal: "public and private violence" are protected under a natural reading of the Second Amendment.[9]

Beyond the literal text of the Second Amendment, a thorough investigation of the historical record demonstrates that the right to bear arms outside of the home is "fundamental to the American scheme of justice." and should thus be subject to extensive historical analysis to determine its degree of protection.[10] Just as the Heller Court decided, we must begin by analyzing English law predating the founding that preceded and informed the American "right to keep and bear arms." In Second Amendment case law and Heller in particular, the courts have heavily relied on Commentaries of the Laws of England (1769) by William Blackstone, a legal text that this Court has previously referred to as "the preeminent authority on English law for the founding generation."[11] Blackstone writes that "the right of having and using arms for self-defence" can be traced back to "the natural right of resistance and self-preservation."[12] Drawing on Blackstone and other British law commentaries, the Heller Court asserts that, "By the time of the founding, the right to have arms had become fundamental for British subjects."[13]

Additionally, St. George Tucker, "a law professor and former anti-Federalist," insisted that the right to self-defense is the "first law of nature" and that any law that "prohibit[ed] any person from bearing arms" was blatantly unconstitutional.[14] Tucker added that, "though English law presumed that any gathering of armed men indicated that treasonous plotting was afoot, it would have made little sense to apply such an assumption in the colonies, 'where the right to bear arms is recognized and secured in the constitution itself.'"[15]

Given that the right to keep and bear arms was seen as natural and necessary as a defense against an oppressive federal government, the Heller Court wrote that, "[t]he debate with respect to the right to keep and bear arms, as with other guarantees in the Bill of Rights, was not over whether it was desirable (all agreed that it was) but over whether it needed to be codified in the Constitution."[16] As the historical record regarding the right to bear arms is so unequivocal, the Heller Court thus concludes that handguns, the weapon in question and "the most preferred firearm in the Nation to 'keep' and use," must fall within the Second Amendment for the core lawful purpose of self-defense.[17]

Admittedly, case law from the time of ratification to the present day provides us with a gamut of judicial interpretations regarding the meaning of the Second Amendment, with those cases closer to the founding meriting the most significance. However, not every case is of equal value, given the Heller Court's resolution of two key Second Amendment questions: 1) that "the keeping and bearing of arms is, and has always been, an individual right" and 2) "the right is, and has always been, oriented to the end of self-defense." Aside from cases upholding only a collective right to bear arms in connection with military service (which fall outside of Heller's clarification of the Second Amendment's original meaning), the other case law interpreting the Second Amendment falls into one of two categories: cases that classify bearing arms for self-defense as a right and those that defend bearing arms for a purpose other than self-defense.

Much of nineteenth-century case law interpreting the Second Amendment aligns with Heller in ruling that Second Amendment rights extend beyond the home for the purposes of self-defense. The Arkansas Supreme Court in Wilson v. State, for example, asserted that while "the Legislature might, in the exercise of the police power of the State, regulate the mode of bearing arms," banning "the citizen from wearing or carrying a war arm, except on his own premises and when on a journey…[would be] an unwarranted restriction

upon his constitutional right to keep and bear arms."[18]

In State v. Reid, the Alabama Supreme Court declared that "a right to bear arms, in defense of self and the State" necessitated that Alabamans be permitted to wield firearms in at least some fashion. While the Reid Court determined that the enumeration of the right to bear arms did not preclude the state's ability "to enact laws in regard to the manner in which arms shall be borne," it cautioned against unduly expanding the Legislature's role to include "clearly unconstitutional" statutes that "under the pretense of regulating, amoun[t] to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defense."[19] Relying on the Reid decision, the Georgia Supreme Court went even further in Nunn v. State, a decision praised in Heller as "perfectly captur[ing]" the two clauses of the Second Amendment, writing that "[t]he right of the whole people…to keep and bear arms of every description, and not merely as are used by the militia, shall not be infringed, curtailed or broken in upon, in the smallest degree."[20] Had the statute in question only "suppress[ed] the practice of carrying weapons secretly," it would have withstood scrutiny, as it wouldn't have "deprive[d] the citizen of his natural right to self-defence, or his constitutional right to keep and bear arms."[21]

In Bliss v. Commonwealth (1822), a special case given its proximity to the founding, the Kentucky Supreme Court not only recognized the natural right of citizens to bear arms codified by the Second Amendment, but also laid out an important and still relevant framework for determining the constitutionality of firearms regulation. The Kentucky Supreme Court wrote that for an act to be invalidated, it need not amount to the "complete destruction" of the right but also the "diminish[ment] or impair[ment of the right] as it existed when the Constitution was formed."[22] While some courts in the nineteenth-century approved limitations on the manner of carry outside the home, none approved a total destruction of the right to carry in public. The "burden or destruction of a right" framework

will be later revisited when evaluating the County's policy.

What the bulk of nineteenth century cases strongly suggest, and the Heller Court explicitly states, is that self-defense is not, as J. Breyer argues "a subsidiary interest" of the Second Amendment, but the "central component of the right itself."[23] As a core right, keeping and bearing arms for self-defense is not subject to the "interest-balancing" approach that J. Breyer puts forward—such as considerations of public safety, for example; the enumeration of the right inhibits government action. Notably, none of the core components of any enumerated constitutional right are subject to "interest-balancing," no matter how many of us would find it beneficial for the society's well-being. For example, while many may disapprove of the picketing activities of the Westboro Baptist Church, notorious for its crude public denunciation of homosexuals, the First Amendment nevertheless protects their right to free speech, no matter how profane. As the Heller court clearly explains, while "the First Amendment contains the freedom-of-speech guarantee that the people ratified, which included exceptions for obscenity, libel and disclosure of state secrets," it in no way prohibits "the expression of extremely unpopular and wrong-headed views."[24] Irrespective of the alleged positive relationship between certain gun regulations and public safety, as the County argues, the Constitution simply does not allow the consideration of such factors when determining the scope of enumerated constitutional rights.

Having clarified the original meaning of the right to "keep and bear arms" and its imperviousness to government action, the final issue to resolve is whether the County's "good cause" policy infringes this right. We follow the approach that other courts have used when presented with Second Amendment questions: strict scrutiny or stronger justification is appropriately applied when dealing with regulations that burden core rights while a lesser level of scrutiny may be used for regulations burdening subsidiary rights that do not infringe on the core of the Second Amendment. As self-defense is

the core right protected by the Second Amendment, this Court must determine if the County's gun regulations constitute the destruction of this right or the mere burdening of it.

The County's "good cause" policy has effectively robbed the right of a regular, law-abiding citizen to "bear arms," when unable to identify an extraordinary circumstance or threat that would distinguish them from the mainstream. While concealed carry is allowed among specific groups, such as peace officers, military personnel, retired federal officers and during times of "immediate, grave danger" and when "the weapon is necessary for the preservation of that person or property,"[25] the vast majority of citizens who do not fall into the aforementioned categories are essentially barred from obtaining a concealed carry permit and are unable to exercise their right to self-defense.[26] At this juncture, many would be quick to note, as the County does, that concealed carry in and of itself does not fall under the scope of the right to "keep and bear arms." Per se this would be correct following Heller: "It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."[27] Because the Second Amendment is not unlimited, restrictions on the ability of the mentally ill to obtain firearms or other regulations like gun-free school zones withstand constitutional muster. If we were to understand the County's interpretations in isolation, Petitioner Peruta's arguments would likely fail, as concealed carry is not necessarily protected by the Constitution and the government may regulate the manner in which Second Amendment rights are exercised.

However, when considered in the context of California's gun regulations, it is clear that the County's policy effectively results in the destruction of the right in question, rather than the mere burdening of it. In general, law-abiding citizens wishing to obtain a firearm in California must apply for either a concealed or open carry license. In California, however, no provisions exist for the licensing of open carry firearms; thus, the only way for California residents to

exercise their Second Amendment right is to apply for a concealed carry license, which the state government also heavily regulates. More precisely, the County's policy, which prevents the typical citizen from obtaining a concealed carry license, effectively prevents the typical citizen from obtaining a firearm at all, given California's regulatory scheme that does not allow open carry.

It is unclear whether a flat out ban on concealed carry would unduly burden the right "to keep and bear arms," as Heller does not answer this question, but the government may certainly not ban or prevent typical law-abiding citizens from obtaining concealed carry permits when no other legal avenue exists to obtain a firearm. In this framework we follow the precedent set forth by the Reid and Heller courts. In other words, either concealed or open carry may be banned, but not both. To ban both, as the County's policy effectively does, given California's regulatory scheme, amounts to the destruction, not just mere burdening, of the constitutional right to "keep and bear arms."

Dissent

In District of Columbia v. Heller, the Supreme Court ruled that completely banning firearm possession in the home was unconstitutional, while also reminding us that the Second Amendment is limited: the government may regulate the manner in which the right "to keep and bear arms" is exercised.[28] The Court wrote that, "the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues," and indeed there is no such thing as a right to concealed carry.[29] Unfortunately, the majority misconstrues the fundamental question posed by Petitioner Peruta in writing an anomalous decision that unnecessarily answers many questions and stands in stark contrast to judicial precedent, particularly the Heller Court. The question is not, as the majority asserts,

whether a law-abiding citizen has a right under the Second Amendment to carry a firearm in public for self-defense, but rather whether the plaintiff should be awarded a license to carry a concealed handgun for any purpose. Peruta did not request a general license to carry firearms in public for self-defense, but rather to carry concealed firearms in public. The majority unduly bestows unprecedented constitutional protection on concealed carry by inappropriately taking the rest of California's regulatory scheme into account, and, for this reason, I respectfully dissent.

After reframing the question, the central issue becomes the amount of protection afforded to concealed carry. Of central importance will be whether concealed carry has ever been considered a core right protected by the Second Amendment, with the most significant evidence coming from the founding period. If concealed carry is not found to be a core right, what is the appropriate level of scrutiny in evaluating restrictions that burden the carrying of concealed weapons? It should be stressed that the McDonald Court's decision to incorporate the Second Amendment's right to self-defense "does not imperil every law regulating firearms."[30] In other words, firearm regulations and the Second Amendment's protection of a right to self-defense are not necessarily at odds.

As the Second Amendment codified a right "inherited from our English ancestors," our investigation must start by considering how the right arose and evolved in English law.[31] The Statute of Northampton, one of the first examples of gun regulations, declared in 1328 that "no man" shall "go nor ride armed by night nor by day…upon pain to forfeit their armour to the King."[32] In Sir John Knight's case, an English court explained the dual purpose of the statute: to "punish people who go armed to terrify the King's subjects" and codify common law, that is, to assure the King's ability to protect his subjects.[33]

After the enactment of the Statute of Northampton, monarchs continually called for its enforcement, including Queen Elizabeth I,

who in 1579 called for the prohibition of "Dagges, Pistols, and such like…whereby her Majesties good qu[i]et people, desirous to live in peaceable manner, are in feare and danger of their lives."[34] The Queen called for strict enforcement again in 1594 when her subjects were threatened by concealed weapons, such as "pocket Dags."[35] Just under a century later, a declaration by William and Mary in 1689 that has "long been understood to be the predecessor to our Second Amendment" provided that "the subjects which are Protestants may have arms for their defence suitable to their Conditions, and as allowed by Law."[36] As interpreted by Robert Gardiner in The Compleat Constable (1708), this declaration meant that "if any shall Ride or go Arm'd offensively… in Fairs or Markets or elsewhere, by Day or by Night…or wear or carry any Daggers, Guns, or Pistols Charged; the Constable upon sight thereof, may seize and take away their Armour and Weapons, and have them apprized as forfeited to Her Majesty."[37] Examples from English law, spanning a period of over 400 years, that affirm a need to heavily restrict or even confiscate weapons are numerous.

Later, in the post-ratification period, state legislatures boldly assert their right to regulate arms. In the early nineteenth century, restriction of concealed carry was normal and the majority of states enacted laws banning concealed weapons, with very few exemptions. Ohio's concealed weapons ban only exempted those who carried a firearm relating to their lawful employment, while a concealed carry ban in Virginia had no such exemptions at all.[38] Even defendants who used concealed weapons for self-defense were found in violation of the act.[39] Other states, such as Georgia and Tennessee went further and passed laws prohibiting the sale of concealable weapons. The Supreme Court of Tennessee upheld the prohibition, reasoning that, "the Legislature thought the evil great, and, to effectually remove it, made the remedy strong."[40]

Additionally, early nineteenth-century case law presents ample evidence of courts upholding restrictions or all-out bans on con-

cealed weapons. For example, the Indiana Supreme Court ruled that, "the statute of 1831, prohibiting all persons, except travelers, from wearing or carrying concealed weapons, is not unconstitutional."[41] Similarly, in State v. Reid the Alabama Supreme Court ruled that Alabama's concealed firearm ban did not "trench upon the constitutional rights of the citizen," after engaging in the same review of various English precedents to the Second Amendment, including the English Bill of Rights.[42] Reid was explicit in denouncing the "evil practice of carrying weapons secretly," supporting the legislature's right to determine the "manner in which arms shall be borne."[43] Other courts were equally adamant in defending the right of legislatures to restrict concealed weapons. In Aymette v. State, the Tennessee Supreme Court wrote that, "to hold that the Legislature could pass no law upon this subject…would be to pervert a great political right to the worst of purposes, and to make it a social evil of infinitely greater extent to society than would result from abandoning the right itself."[44] The majority in this case characterizes several of the court cases from this time period, such as Reid and Aymette, as supporting a framework that permits concealed carry insofar as open carry licenses are available. Such a view is artificially imposed and out of line with the courts' condemnation of the "evils" of concealed carry and affirmation of the Legislature's power to "regulat[e] the social relations of the citizens upon this subject."[45]

There is, however, at least one case that takes the opposing view. In Bliss v. Commonwealth, the Kentucky Supreme Court reversed the lower court's decision that affirmed Kentucky's ban on concealed weapons, arguing that all laws restricting the use of firearms, including the manner in which they are used, were invalid. However, upon examining the historical record, Bliss appears to be no more than a judicial outlier that was met with utter disbelief immediately after it was decided. After Bliss, "[a] committee of the Kentucky House of Representatives concluded that the state's Supreme Court had misconstrued the meaning of the state's constitu-

tional provision on arms bearing."[46] In 1850, Kentucky amended its constitution to overrule Bliss, writing, "[T]he rights of the citizens to bear arms in defence of themselves and the State shall not be questioned; but the General Assembly may pass laws to prevent persons from carrying concealed arms."[47] Clearly, Bliss was completely out of touch with predominant nineteenth-century judicial thinking: regulation of the manner in which firearms are wielded, notably concealed carry, is perfectly and necessarily within the proper domain of the legislatures.

Given the resounding consensus of nearly all nineteenth century case law with exception of Bliss, it should be no surprise that in 1897 the Supreme Court ruled in Robertson v. Baldwin that "the right of the people to keep and bear arms…is not infringed by laws prohibiting the carrying of concealed weapons" as those rights inscribed in the Bill of Rights have "been subject to certain well recognized exceptions arising from the necessities of the case."[48] Although admittedly a somewhat dated case, Robertson affirms that concealed carry does not fall, and has never fallen, under those core protections ensured by the Second Amendment.

The majority, however, remains convinced not only that concealed carry falls within the core of the Second Amendment but also that all enumerated constitutional rights, including the right "to keep and bear arms," are not subject to interest-balancing, suggesting that the government is equally constricted in passing laws concerning these protections. The Petitioner in Kachalsky v. City of Westchester, a case regarding New York's "proper cause stipulation" for a concealed carry license, makes a similar point, arguing that "the right to bear arms cannot be made dependent on a need for self-protection, just as the exercise of other enumerated rights cannot be made on a need to exercise those rights."[49] The Heller Court, however, did not reject all means-ends scrutiny regarding Second Amendment rights, but merely J. Breyer's case-by-"interest-balancing inquiry" that amounted to a case-by-case review.[50] Furthermore, as Kachal-

sky makes clear, "[s]tate regulation under the Second Amendment has always been more robust than of other enumerated rights."[51] No law, for example, could constrict the right of the mentally ill or felons to practice their religion. With the Second Amendment, on the other hand, regulations prohibiting felons from bearing arms are, according to Heller, "presumptively lawful."[52] "[E]xtensive state regulation of handguns has never been considered incompatible with the Second Amendment or, for that matter, the common-law right to self-defense," making handgun regulations "stricter than any other enumerated right."[53]

Furthermore, the majority heavily and erroneously relies on Heller, which it believes foreclosed a series of questions that should ensure the success of the County's appeal. Although Heller established a right to self-defense in the Second Amendment and overturned D.C.'s handgun ban in the home, the Court remarked that, "few laws in the history of our Nation have come close" to the draconian nature of the D.C. law, adding that the law would fail constitutional muster "[u]nder any of the standards of scrutiny the Court has applied to enumerated constitutional rights…"[54] In other words, Heller cannot by any means be construed to clear up the persisting jurisprudential terra incognita concerning gun regulations as it only "represents this Court's first in-depth examination of the Second Amendment."[55]

Indeed, Heller admittedly leaves many questions unanswered, only deciding that a prohibition on handguns in the home and other regulations on these weapons that render them useless,[56] violate the Second Amendment's "core lawful purpose of self-defense." In the Court's history, government regulation into one's dwelling and other private property has been particularly suspect, as "liberty protects the person from unwarranted government intrusions…[i]n our tradition the State is not omnipresent in the home."[57] The Heller Court, however, made no ruling on whether that right extends outside of "hearth and home," where "the importance of the

lawful defense of self, family, and property is most acute."[58]

As for gun control outside the home, it would be wrong "to assume that regulation and liberty occupy mutually exclusive zones—that as one expands, the other must contract."[59] While the courts have strictly circumscribed the state's ability to regulate firearms in the home, "outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self- defense."[60] The Court has deemed constitutionally valid various rules and regulations on the use of handguns in public, such as the prohibition of firearm possession by felons and the mentally ill as well as use in sensitive places, such as schools and government buildings, but on what basis? As J. Breyer writes in McDonald, "Does the Court know that these regulations are justified by some special gun-related risk of death? In fact, the Court does not know. It has simply invented rules that sound sensible without being able to explain why or how Chicago's handgun ban is different."[61] Only the legislatures, and not the courts, are suited to answer the types of empirical questions and evaluate the gamut of significant circumstances pertaining to gun regulation.

Even if, for argument's sake, the burden that concealed carry restrictions impose on the Second Amendment were substantial, the County's "good cause" policy would yet survive intermediate scrutiny. In order to pass intermediate scrutiny, "the government's stated objective" must be "significant, substantial, or important," and there must be "a reasonable fit between the challenged regulation and the stated objective."[62] As for the first requirement, the County's policy is but one of a multitude of attempts by local and state governments to ensure public safety and prevent crime, which the Supreme Court has already identified as significant and compelling government interests.[63] The County's policy seeks to reduce the number of concealed firearms carried in public, which it argues will limit the lethality of violent crimes, ensure police officers' effective monopoly on armed force, and reduce the danger of firearms posed

to the general public.

The Petitioner clearly disagrees with the efficacy of the County's policy to achieve these objectives, citing evidence challenging the correlation between tighter gun regulations and a reduction in crime. The Petitioner's disagreement with the County's reasoning should bear no weight in this Court's analysis; the County has already made its decision. As was mentioned earlier, on an issue such as gun control, when the evidence is unclear or conflicting and a variety of risks and significant circumstances must be evaluated, it is the sole duty of the Legislatures to address these questions by enacting laws that do not strike at the core of the Second Amendment. Moreover, the Court has often granted "'substantial deference to the predictive judgments of [the legislature].'"[64]

As for intermediate scrutiny's second requirement, stating that there must be "a reasonable fit between the challenged regulation and the stated objective," the County's policy clearly meets this standard.[65] As the majority accurately observes, California's concealed carry restrictions provide a multitude of exemptions, such as one's place of residence, business, or private property.[66] Furthermore, firearms can be kept concealed in a vehicle as long as they are locked in the trunk or in a locked container and "the transportation of unloaded firearms by a person" is unaffected as long as such transport is in accordance with applicable federal law.[67] "Licensed hunters or fishermen" are exempted as well as people practicing at target ranges, whether public or private.[68] Even the County's fairly limited interpretation of California's "good cause" requirement still provides exceptions for those facing exceptional circumstances and/or specific threats. These exemptions are the very reason why the California Court of Appeal concluded that California's concealed carry statutes were "narrowly tailored to protect the public," and did "not substantially burden defendant's exercise of his Second Amendment right."[69]

It is, of course, very possible that some citizens who need a

handgun may fail to receive a permit, just as it is possible that some ostensibly law-abiding citizens may misuse their handgun permits. The County's policy, however, need not be perfect and it would be unwise to expect any regulatory measure in any area to be perfect. In order to pass intermediate scrutiny, the County's policy must strike a balance between burdening rights and the public interest, which it clearly does by not only providing a wide array of exemptions so that citizens' right to bear arms is narrowly affected but also by providing certain protections for the public from proliferate firearms.

We can therefore conclude two things: 1) concealed carry does not, nor has it ever, fallen under the core rights protected by the Second Amendment, and 2) even if the County's policy imposed substantial burdens on the exercise of Second Amendment rights, it would easily pass intermediate scrutiny. The crux of the majority's argument, however, relies on considering facts outside of those covered. After considering California's regulatory scheme as a whole, the majority has determined that the County's concealed carry ban is invalid, while not considering whether the ban is invalid in and of itself. The majority engages in an unprecedented and erroneous legal framework, namely the "one but not both" doctrine that it puts forward, thereby bestowing constitutional protection on behavior that is unequivocally not protected under the Second Amendment. Petitioner's cause for complaint is the County's interpretation of California's "good cause" statute, but the majority unnecessarily expands the question to call the entirety of California's firearm regulatory scheme into question.

Had the State of California been the defendant in this case, perhaps the majority's approach would have been justifiable. In the case before this Court, however, the State of California was not named as a defendant and was thus unable to defend the constitutionality of its regulations before this Court. Fed. R. Civ. P. 5. 1. protects the right of states to intervene to defend their regulations. Unfortunately, the State of California was denied that opportunity in

this case.

The majority has issued a sweeping opinion which conflicts with this Court's ruling in Heller, inappropriately classifying concealed carry as a core right, rejecting any type of means-ends scrutiny, and refusing to give substantial deference to legislatures, in striking the proper balance between its citizens' rights and the public interest.

1. Cal. Penal Code § 25400
2. Id. §§ 26150, 26155
3. Id. § 26155
4. Id
5. Edward Peruta v. County of San Diego, Appeal 10-56971 (9th Cir. 2015)
6. Heller, 554 U. S. 570, 634-35 (2008).
7. Muscarello, 524 U.S. 125, 143 (1998) (quoting Black's Law Dictionary 214 (6th ed. 1998))
8. Drake v. Filko, 12-1150 (3rd Cir. 2013).
9. Heller, 554 U.S. at 594 and McDonald v. Chicago, 561 U.S. 742 (2010)
10. Duncan v. Louisiana, 391 U. S. 148, 149, n.14
11. Alden v. Maine, 527 U.S. 706, 711
12. Blackstone at 139-141
13. Heller, 554 U.S. at 593.
14. St. George Tucker, Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States; and of the Commonwealth of Virginia 289 (1803).
15. Peruta v. County of San Diego at 19 quoting Tucker, supra, vol. 5, app., n.B, at 19 (emphasis added).
16. 554 U. S. at 598
17. Id. at 571.
18. Wilson v. State, 33 Ark. 557, 560, 34 Am. Rep. 52, at 54 (1878).
19. Id. at 617
20. 554 U.S. at 612, 1 Ga. 251 (1846).
21. Id.

22. Bliss, 12 Ky. (2 Litt.) at 92.
23. 554 U. S. at 599 (dissenting opinion)
24. Id. at 635
25. It is, however, unclear how the typical citizen would go about acquiring any firearm in an event of "immediate, grave danger."
26. Cal. Penal Code § 26050
27. 554 U. S. at 571, n. 2
28. 554 U. S. at 571, n. 2
29. 554 U.S. at 626.
30. 561 U. S. at 786.
31. Robertson v. Baldwin, 165 U. S. 275, 281 (1897)
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39. 1838 Va. Acts ch. 101 at 76
40. Day v. State, 37 Tenn. 496, 500 (1857).
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43. Id. at 616.
44. Aymette v. State, 21 Tenn. at 159 (1840).
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46. Saul Cornell, The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, and the Lessons of History, 17 Stan. L. & Pol'y Rev. 571, 586 (2006) (citing Journal of the Kentucky House of Representatives 75, Frankfort, Ky. (1837)).
47. Ky. Const. of 1850 art. XIII, § 25.
48. 165 U.S. 275, 281–82.
49. Kachalsky, 701 F.3d 81, 45 (2nd Circuit 2012).
50. 554 U.S. 689-690
51. Kachalsky, 701 F.3d 81, 45.

52. 554 U. S. at 627
53. Kachalsky, 701 F.3d 81, 46.
54. Heller 554 U. S. at 629 and 634 (added).
55. Id. at 635.
56. Such as trigger locks or requiring firearms in the home to be disassembled.
57. Kachalsky, 701 F.3d 81, 30-31.
58. 554 U. S. at 571.
59. McDonald, 561 U. S. 742, 895.
60. United States v. Masciandaro, 638 F.3d at 470.
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67. Id. at § 25610
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69. People v. Ellison, 196 Cal. App. 4th 1342, 1351, 128 Cal.Rptr.3d 245, 252 (Cal. App. 2011).

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Human Security, United Nations Security Council Resolution 1325, and Vulnerable People: Rhetoric, Solidarity, and Silences in International Human Rights Discourses on Syrian Women Refugees

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Abstract

United Nations Security Council (UNSC) Resolution 1325, a policy constructed to address and alleviate particular vulnerabilities of women in conflict zones, was adopted over fifteen years ago. However, one does not need to look far to see that Syrian women refugees continue to face extreme and debilitating forms of suffering as they have been forced to seek refuge in neighboring countries. So, why does this gap between policy rhetoric and lived experience persist for women in conflict zones? I argue that such systematic perpetuation of violence and suffering is attributed to specific and narrow discourses about women in conflict zones from which the Resolution is built. Due to the policy's limited discursive scope on human security and vulnerability, UNSC Resolution 1325 informs representations of Syrian women in conflict zones that fail to grasp a just, comprehensive assessment of the suffering population's context. Through discourse analysis of reports published by the United Nations High Commissioner for Refugees (UNHCR), the United Nations Entity for Gender Equality and the Empowerment

of Women (UN Women), and the International Rescue Committee (IRC), particular representations of Syrian women will be identified and analyzed in terms of how and to what degree they allow structural suffering and violence to continue. In addition to what framings are explicitly represented, attention will also be paid to representations that are more implicit or silenced by the Resolution's policy discourse, and how these silences simultaneously feed into persistent suffering of the widespread Syrian refugee population. Overall, naming these discursive representations will aim to shed light on a presence/absence paradigm that is structurally created in international human rights policy. The conclusions will be essential for activists and justice leaders to later engage in a genuine, collaborative, and dialogic process that privileges the complex, authentic lived human experience in order to inform more cognizant and mindful community aid, individual support, and international policy.

Introduction

As described by Tim Dunne, the United Nations (UN) is a "multi-purpose agency dedicated to specific goals including collective security, peacekeeping, health, environmental, and human rights concerns."[1] One subset of these goals is to protect and promote the security of women who have experienced armed conflict. The vulnerability and insecurity of women in armed conflict zones is a concern that has garnered much attention in the UN in recent decades. The 1995 Fourth World Conference on Women, the Beijing Platform for Action, and the UN Security Council Resolution 1325 are just some UN pronouncements that express concern for women's vulnerability and suffering in conflict zones and in post-conflict rehabilitation. The documents outline practices, goals, and benchmarks that encourage implementation of programs to explicitly address women's specific protections and needs in

post-conflict humanitarian and refugee resettlement efforts. UN agencies, such as the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), and international nongovernmental organizations, such as the International Rescue Committee (IRC), have dedicated considerable efforts in translating these policy commitments into action. Together, these organizations have devoted resources to report on the plight of women in conflict zones and to implement programs inspired by policy frameworks put forth by the UN.

However, despite such extensive rhetorical commitments and policy frameworks, women in conflict zones continue to experience considerable suffering. A fundamental discrepancy appears between the policies and reports disseminated by these collective organizations, and the organizations' ability to alleviate suffering in practice. In order to locate the source of this discrepancy, this paper asks, how has UNSC Resolution 1325 characterized representations of women in conflict zones that have led for their suffering to continue? I argue that UNSC Resolution 1325 is built on a narrow discursive scope on human security and vulnerability about women in conflict zones that is unable to grasp a just, comprehensive assessment of the suffering population's context which, ultimately, leaves the policy to be mal-equipped to uproot systemic suffering post-conflict.

This essay will invoke policy and discourse analyses on UN Security Council (UNSC) Resolution 1325, the central policy that has shaped the narrow way in which human security and vulnerability discourses have been constructed for women in conflict. Then, using a case study, the second section of this paper will critically explore how UNSC Resolution 1325's narrow human security and vulnerability discourse is applied to representations of Syrian women refugees. This examination will be done through discourse analysis of reports produced by UNHCR, UN Women, and IRC on the

experiences of Syrian women refugees. A discourse analysis examines the processes and language mechanisms that create certain depictions, which ultimately lead to particular outcomes and implications. This section will identify explicit representations of Syrian women refugees across the reports that arise from Resolution 1325, and analyze those representations for their consequences and the extent to which they contribute to continued suffering and vulnerability. In addition to communicating what is being explicitly articulated in the reports, a discourse analysis must also deconstruct what, or who, is silenced and is absent. That being said, a third section will also address misrepresentations and silences that UNSC Resolution 1325's narrow discourse fails to recognize. Exposing these silences will prove to be critical in demonstrating why post-conflict suffering persists for Syrian women refugees, as well as the larger Syrian refugee population.

Finally, this piece will conclude with a discussion of recommendations for moving forward with the explored representations and their implications in mind. I will speak to alternative ways that the international community can more equally and justly speak to a diverse range of lived experiences. International policies and discourses construct boundaries around specifically and explicitly defined victim communities while simultaneously overshadowing, silencing, and manipulating the lived experiences of those who fall outside of these constructed boundaries. This silencing impedes full implementation of change that could more holistically address human suffering.

Development of Human Security and Vulnerability Discourses by the UN

Language is arguably one of the most powerful tools in world politics today. The words one chooses, the tone one takes, and the arena in which one speaks all constitute important deci-

sions with often lasting political implications. Essentially, how one frames an issue matters greatly.[2] The process in which discussions on international political issues are constructed, framed, understood, and remembered can be explained as discourse. The way discourse within the UN context is produced and developed for populations in conflict zones happens in three main layers.

The first layer is characterized by initial discussions and debates of a topic where a specific language and scope is created to inform how the topic comes to be understood and spoken about.[3] Through these conversations, the established language becomes the primary way in which that topic is understood.[4] In the second layer of discourse development, the language and the scope from the first layer that informed nascent understandings of a topic are then used to inform, produce, and justify policy.[5] Finally, the third layer of discourse construction is the application of its particular policy language as the primary framework to inform and construct representations of populations in individual conflict cases.[6] As a process, discourse construction is a powerful concept that dictates the primary way in which an issue is discussed and understood through a streamlined language. This process of discourse development, and its multitude of consequences and implications, will be explained further as it is applied to trace how human security and vulnerability discourses for women in conflict zones have been established by the UN body.

In the UN context, the first layer of discourse development is represented by initial agency discussions that construct language and concepts around a particular political issue. For human security and vulnerability discourses, this was demonstrated through the organization's evolving definition and conception of security. Initially, legal understandings of security were synonymous with respecting a country's borders and territorial integrity.[7] However, following the Cold War, the nature of international conflict shifted from threats of armed conflict between nation-states, to a higher prevalence of

intra-state wars of aggression, colonial occupation, civil war, systemic human rights abuses, and terrorism. In this world system, the state's credibility as the primary protector and provider of security began to be challenged.[8] The UN recognized this shift and initiated discussions to alter security language that would reflect and encompass such a shift. In 1994, the UN Development Program (UNDP) released a Human Development Report that affirmed a need for a concept and language that would encompass the changing nature of security. The report states:

> The concept of security has of too long been interpreted narrowly: as security of territory from external aggression, or as protection of national interests, or as global security from the threat of nuclear holocaust. It has been related more to nation-states than to people…Forgotten were the legitimate concerns of ordinary people who sought security in their daily lives. For them, security can symbolize protection from the threat of disease, hunger, unemployment, crime, social conflict, political repression, and environmental hazards. With the dark shadows of the Cold War receding, one can now see that many conflicts are within nations rather than between nations.[9]

The report articulates a broader understanding of security, as well as actors who may experience threats to security, thereby demonstrating how discussions on security began to shift toward a focus that would recognize the security of civilian's lives.

Out of this report came the term "human security," a novel concept and language that encompasses the shift from state and border protection to individual and civilian protection. The concept privileges the claims of civilians by advocating for greater consideration for their protections, rights, and welfare in order to establish a sustainable peace.[10] This development of human security as a distinct concept and a language represents the first layer in how the UN has developed human security and vulnerability discourses. In

context, the use of human security characterizes a distinct method of speaking about, understanding, and advocating for civilian protection in the face of multidimensional threats ranging from global to local.

With time, UN discussions around human security became increasingly streamlined as a leveraging point for more specific advocacy causes. Specifically, human security increasingly became utilized as the primary language in which to express a need to protect particular demographic groups, namely women and girls, in armed conflict zones. The adoption of UNSC Resolution 1325 is an example of this application. Unanimously adopted in 2000, Resolution 1325 affirms the particular vulnerabilities experienced by women who have been affected by violent and armed conflict and advocates for increased awareness and aid on their behalf. The language of the Resolution utilizes the same conceptual understanding of human security and vulnerability that was noted previously, by narrowly presenting insecurity as the vulnerability experienced by women in armed conflict zones. The document utilizes rhetoric that places women as the "vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons."[11]

From this narrowed vision on human security and vulnerability, the Resolution establishes concrete procedures that focus on protecting women in conflict settings by outlining eighteen acts to identify ways governments, the UN, and NGOs can address the needs of women and girls that arise in armed conflict. Some of these policies include recognizing the specific needs of women during resettlement, rehabilitation, and post-conflict programs, protecting women from all forms of violence in armed conflict and post-conflict, and generating awareness for the needs of women in humanitarian programs and refugee settlements.[12] By establishing these policy goals and practices solely in terms of women in armed conflict zones, the Resolution illustrates how the UN has established

binding law and formulated concrete calls for action informed by narrow and limited discourse. UNSC Resolution 1325 is based on specific discourses of human security and vulnerability that are concerned with how these concepts apply to women, and therefore, its substantive calls for change are only applicable within this explicit and limited context.

Moreover, UNSC Resolution 1325, a policy that utilizes the organization's own restricted human security and vulnerability discourses, further entrenches a limited perspective that is incapable of recognizing comprehensive contexts of suffering. I argue that this is why the international community continues to see the UN's language and rhetoric of solidarity dedicated to alleviating human suffering, but does not see full implementation in practice and, ultimately, leaves a significant amount of suffering in place and without appropriate means to redress it. UNSC Resolution 1325 policy discourse is informed by simplified contexts and perspectives that do not broadly recognize the full, lived experience of human suffering. As such, the Resolution's discourse focuses narrowly on particular, constructed experiences of suffering and thereby leads the Resolution to be unequipped in truly making a difference that would effectively change existing systems of suffering.

In the final layer of discourse development, the policy and its language that has been established in the previous two layers is applied as a general framework to explain and describe individual cases of human suffering in reporting done on a conflict. In doing so, the experiences, narratives, and needs of women within the examined conflict's context are framed as representations that align with Resolution 1325 and its discourse. In practice, this third layer is reflected in reporting done by UN agencies and international NGOs on individual international conflict cases. Within these reports, the experiences and narratives of those living in or affected by the conflict are discussed through representations that fit within the framework of human security and vulnerability discourse as utilized in

UNSC Resolution 1325. I argue that these narrow representations, informed by UNSC Resolution 1325, allow suffering for women to continue, because they manipulate experiences of women to fit within prescribed frameworks that simplify their scope of suffering. Furthermore, manipulating and limiting the scope of human security and discussions of civilians in conflict also limits the narratives of vulnerability that are recognized and made visible by the UN. When narratives or experiences of an individual fall outside of the UN's narrowly defined boundary of vulnerability, in this case women in armed conflict zones, they are largely discredited. By constructing this boundary around vulnerability, discourse actively includes certain groups by legitimating and voicing their experiences, while excluding others. Therefore, the opinion, narrative, or experience of an individual that diverges from this dominant discourse subsequently finds their voice, dignity, and integrity discredited, minimized, and silenced.

The processes and the consequences that arise for those who find themselves either within or silenced by the Resolution's discourse will be examined using a single-case study approach. What began in Syria as a populist uprising in 2011 against a longstanding military regime has since transformed into a complicated civil war that has affected millions of lives through violent conflict, displacement, and political instability. Civil unrest began in the early spring of 2011 within the context of the Arab Spring protests, a wave of both violent and nonviolent demonstrations, protests, and riots across the wider Arab World. Nationwide protests rallied against Bashar al-Assad's government, whose forces responded with violent crackdowns.[13] The conflict gradually morphed from mass protests to an armed rebellion after months of military sieges. Fighting reached the country's capital, Damascus, and second major city, Aleppo, in 2012, and by July 2013, the UN estimated that 90,000 combatants and non-combatants had been killed in the conflict.[14]

As the conflict has continued and transformed from a civil

uprising to a full-fledged civil war with heavy international intervention, its effects on the Syrian population, as well as populations in surrounding countries, have become increasingly detrimental. In 2014, the UN estimated around 2.5 million Syrians had fled the country. As of March 2016, this figure has nearly doubled to 4.8 million.[15] The basis for the remainder of the piece is a discourse analysis on reports depicting refugee experiences and describing aid programs enacted for those affected by the Syrian conflict from UN agencies and the International Rescue Committee (IRC), a global humanitarian aid and development NGO that provides assistance to individuals displaced by conflict, emergency, and natural disaster.

Discursively Informed Representations of Syrian Women Refugees

The central puzzle that focuses this essay is that there are discussions and policies at the UN level that recognize the hardship and trauma experienced by women in armed conflict zones, yet widespread suffering continues. This section will focus on how the narrow scope of UNSC Resolution 1325 and its discourse on human security and vulnerability has informed similarly narrow representations of Syrian women refugees in reports produced by the UNHCR, UN Women, and the IRC. This section will name two representations of Syrian women refugees established in the reports, and analyze how these tropes manifest from UNSC Resolution 1325 discourse to inform subsequent humanitarian intervention and aid programs.

Suffering Yet Empowered Paradigm

One of the representations that UNSC Resolution 1325 discourse invokes about women in armed conflict zones is a trope that women are negatively affected by armed conflict in a multi-

tude of traumatizing ways, but also emerge as resilient and critical peacebuilding tools. The Resolution speaks to the number of traumatic experiences faced by women in armed conflict, including gender-based violence, targeting from armed combatants, and increased likelihood to become refugees or internally displaced persons (IDPs).[16] Yet, despite all of these debilitating circumstances, the Resolution pinpoints women as necessary peacebuilding resources. In its text, the Resolution affirms women as having an important role in the prevention and resolution of conflicts and in peace-building and calls for, "effective institutional arrangements to guarantee [women's] protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security."[17] As such, the Resolution calls for women's empowerment, recognition, and participation to be critical in post-conflict reconstruction activities. This suffering yet empowered paradigm encouraged by Resolution 1325 feeds into reporting done on the livelihoods of Syrian female refugees.

A duality of vulnerable yet resilient women in armed conflict emerges in UN agencies' and the IRC's publications on Syrian women refugees. Largely, these women are portrayed as isolated, anxious, and alone. Yet, in spite of this hardship, the women remain strong, resilient, and committed to building a better future for themselves and their families. Throughout the UNHCR and IRC sources, this trope is evident. The UNHCR report, "Woman Alone: The Fight for Survival by Syria's Refugee Women," describes women as isolated and without a network of support due to the way in which fleeing from war has broken apart their families and communities. Therefore women are left to navigate their new environment without a typical support network of friends and family that used to surround them.[18] However, in the face of such adversity, the report states that women still strive to provide solidarity, material support, and share information with women refugees in their new communities.[19] The IRC publication, "Are We Listening? Acting on Our Commitments

to Women and Girls Affected by the Syrian Conflict," also depicts this image by describing Syrian women refugees as "isolated and imprisoned" within their own homes. The report included a survey which found that half of the female refugees interviewed left their residence in their host community less than when they were living in Syria, which is main a factor contributing to feelings of isolation.[20] Despite this image of isolation, however, the report reaffirms Syrian women's strength by stating that they, "demonstrate resilience and courage every day, yet the risks they face continue to worsen."[21] Mirroring UNSC Resolution 1325's discursive construction of women in armed conflict zones is a representation of Syrian women refugees as similarly isolated yet resilient.

This representation has subsequent implications that directly affect the lives of Syrian women refugees, because UNSC Resolution 1325 discourse and the representations the Resolution informs are used to form the basis for aid programs supported and carried out by UN agencies and the IRC. Programs that respond to feelings of isolation felt by refugee women emphasize building community-based support in spaces where they can simultaneously express their hardships and promote communal resilience with other refugee women. The UNHCR has partnered with local organizations in neighboring countries to start or sustain women's centers where women can come together in a safe space to socialize, talk through shared experiences, and support one another.[22] These centers are also spaces where women can obtain access to economic opportunities or job training programs while also engaging with other women. A center in Lebanon started a knitting group for women to overcome their sense of isolation and gather in a support group-like setting.[23] A center in Jordan provides cash for work programs where women work in tailoring, clothing production, or hairdressing to receive economic assistance and build community.[24] The IRC has opened and funded similar centers that provide community-based emotional support as well as education programs for women ranging from

safety training, to counseling needs, to guided group discussions. The programs and opportunities these centers provide are framed as an opportunity for Syrian women refugees to break the chain of isolation, build confidence, and establish a supportive female network.

A discursive representation of Syrian women refugees as resilient yet empowered appears to be simultaneously effective and strained at addressing continued suffering experienced by these women. Building a trusting and supportive community is an effective response generated from a framework that largely portrays refugee women as alone, isolated, and overwhelmed. In these spaces, women are encouraged and have the internal efficacy to seek collective support, regain emotional and psychological strength, and access the tools they need to participate actively in their new life and plan for the future. This representation, however, can also be limiting for Syrian women refugees who have experienced trauma, because it provides just one predetermined method of coping. A representation of Syrian women refugees as both suffering and asserting resilience encourages aid programs designed to help women quickly adjust and rejoin society. However, such a representation simplifies the path of dealing with and overcoming trauma. Then, subsequent aid responses which are informed by this simplified representation, do not make room for alternative modes of healing. After witnessing and living devastating effects of a civil war, an ideal and monolithic path to empowerment through community cannot be as simply or universally applied as the publications and UNSC Resolution 1325's discourse make it out to be. Therefore, a representation of women as vulnerable yet resilient does contribute, partially at least, to persistent suffering of Syrian women refugees because it fails to approach the healing process of trauma in a multifaceted and comprehensive way.

Hierarchy of Vulnerability

A framing that classifies female Syrian refugees as the "most vulnerable" among the general refugee population is also justified and informed by politically legitimized human security and vulnerability discourse. UNSC Resolution 1325 iterated this distinctly heightened burden for women by expressing concern that women and children account for the vast majority of those adversely affected by armed conflict. Additionally, the adoption of this Resolution by the UN further solidifies women's categorization of vulnerability at the highest level. The sheer creation and adoption of a policy to recognize women in armed conflict zones as a distinctly vulnerable demographic group provides political legitimacy to the construction of a hierarchy of vulnerability in which these women are placed at the top. Therefore, the discourse of vulnerability found in UNSC Resolution 1325 has informed a framework for UN agency and IRC reports to position refugees in that hierarchy to discusses refugee women as the most vulnerable.

The UNHCR organizes its dispersal of resettlement aid based on who the report titles the "most vulnerable refugees." In Jordan, 40% of UNHCR financial assistance goes to households that are classified as the "most vulnerable."[25] UN Women makes similar distinctions by recognizing that life is tough for refugees, but women and girls in particular are severely and adversely affected by conflict. The report states women and girls are more reticent to admit problems, leaving them to "suffer silently in suffocating tents and experience the worst kinds of exploitation."[26] The IRC paints a similar picture of female Syrian refugees as the distinct group who experiences the most burden from fleeing conflict. As refugees, the report states, Syrian women have fled all they have known for a stark new reality where the burdens they face have significantly increased.[27] The implications of this gendered representation of a vulnerability hierarchy are evident in the UN agencies' and IRC's aid

programming structure, and impose potentially debilitating implications on the livelihoods of Syrian women refugees and the Syrian refugee population as a whole.

This constructed hierarchy is then applied in practice as it is utilized by organizations to inform their aid programs and distribute resources. The UNHCR report implements this hierarchy in terms of the economic assistance it provides Syrian refugees. The report states that the organization offers its direct economic assistance to "the most vulnerable" Syrian female refugee headed-households. In Jordan, for example, UNHCR cash assistance programs are directed to the ⅓ of female headed-households that were "the most vulnerable."[28] In Lebanon, the report states the UNHCR financial assistance program "focuses on cash for rent or other short-term needs, targeting those most vulnerable."[29] However, the report provides no insight or explanation into how the organization procedurally and fairly defines a household in this bottom category. The UN Women report attributes the Syrian female refugee experience as the most vulnerable due to their lack of economic stability and employment prospects. Therefore, UN Women programs for Syrian women refugees are focused on providing increased work and employment prospects for women through education and job training programs so that they may find diversified employment opportunities.[30]

However, a focus on providing increased employment prospects for refugees would be greatly beneficial if directed at all refugees, as economic insecurity is likely not solely a gendered experience. The IRC also has focused their aid programs for Syrian refugees based on a discursively constructed hierarchy of vulnerability with women at the top. For Syrian refugees in Turkey, the IRC provides cash assistance to "vulnerable female headed-households" with payments of up to $150 per month. The organization also provides these chosen females with an opportunity to participate in a group discussion curriculum on how to make financial decisions.[31] However, similar to the UNHCR report, the IRC report provides no

technical definition of how they define certain households as "vulnerable," and therefore more deserving of assistance than others. The absence of a technical, cross-organizational definition is significant because it allows for provision of aid to individuals whom that particular organization deems worthy, and without a wider context or view of trauma and vulnerability based on particular experiences. Therefore, vulnerable population groups other than Syrian women refugees are easily forgotten, silenced, and left out of support provisions due to this imposed hierarchy of vulnerability.

I argue a narrow representation of human security and vulnerability discourse in Resolution 1325 that classifies vulnerability into a rigid, hierarchical structure contributes to continued suffering of Syrian refugee populations for two reasons. One reason is that this hierarchy of vulnerability structures aid provision and assistance to be distributed in a correspondingly controlled and gendered way that disregards concern for alternate suffering contexts and populations. By discursively placing Syrian women refugees as the most vulnerable among those affected by the Syrian conflict, the aid and support that follows is thereby justifiably narrowed to focus specifically on alleviating the suffering of women. This practice continues systemic suffering among the general Syrian refugee population because it permits and implements a limited scope of aid provision that disregards broader contexts of vulnerability and suffering. Therefore, significant numbers of the refugee population are deprived of sufficient aid that would improve their livelihoods. Without a broader concern for the context of suffering, or recognizing the existence of suffering in a more egalitarian way, suffering among Syrian refugee populations continues to exist and is exacerbated.

Another reason why policy representations that frame vulnerability as a gendered hierarchy allows post-conflict suffering to continue is because classifying women as the "most vulnerable" cohort decontextualizes vulnerability into a singular sensation to be

compared across populations and contexts. However, simplifying vulnerability in a way that permits its comparison among and across demographic groups is morally and ethically inappropriate. Experiences of vulnerability and trauma are highly individualized, so it is unfair to prioritize and discuss certain populations of refugees as experiencing heightened vulnerability when, in reality, all are experiencing personal and unique vulnerabilities, trauma, and stresses. Therefore, vulnerability is a personalized sensation that should not be measured in comparison to the decontextualized, broadly-applied understanding of vulnerability and insecurity that the Resolution's discourse and framings encourage. This framing of vulnerability continues widespread suffering of Syrian refugee populations because it refuses to recognize the complexities of insecurity that arise among all demographic groups of Syrian refugees and the variety of contexts in which these insecurities can arise. Therefore, it is both morally and practically problematic to place certain vulnerabilities and experiences as "more vulnerable" over others, when these vulnerabilities would likely be better off constructed as different. Constructing them as different would create the space needed to adequately and justly recognize the complex and myriad of vulnerabilities experienced by the Syrian refugee population beyond the gendered hierarchy that is currently present.

Structural Silencing Outside of UN Discourses on the Syrian Conflict

In addition to identifying explicit representations of human security and vulnerability tied to UNSC Resolution 1325 and narratives of Syrian women refugees, discourse analysis also requires examination into what representations are implicitly suggested, ignored, and silenced that still contribute to the context of suffering. While human security and vulnerability discourse from UNSC Resolution 1325 invoke explicit representations that raise awareness to

the debilitating circumstances and challenges faced by Syrian women refugees, there are also frameworks discursively constructed by the Resolution that manipulate understandings or outright overshadow alternative experiences of other Syrian refugee populations. Shedding light on these silenced frameworks encouraged by UNSC Resolution 1325 and its vulnerability discourse is necessary because it provides another explanation that grapples with why a significant amount of civilian suffering and violence persist in the face of this policy.

Violent Refugee and Host Community Men

Informed by UN human security and vulnerability discourses, a framing that constructs refugee and host community men as generally aggressive, violent, and dominating in opposition to vulnerable and defenseless female refugees is permitted and justified. UNSC Resolution 1325 was established out of approaches to security and vulnerability that adopted a gendered focus. As a whole, UNSC Resolution 1325 calls specifically for aid responses to recognize the particular trauma and vulnerabilities faced by women post-conflict.[32] The Resolution makes no reference to any particular trauma or distress from armed conflict that may harmfully affect the wellbeing of men, thereby promoting an implicit converse assumption that men either do not experience these vulnerabilities, or that they experience trauma significantly less than women. The Resolution's human security and vulnerability discourse implies an assumption that women are solely victims in conflict zones, and subsequently allows for representations to implicitly arise about men that suggest a binary opposite: that men are the perpetrators of violence who contribute to women's insecurity. The Resolution and its related gendered discourse encourages a representation of men in the examined reports as the perpetrators of violence and harassment who contribute primarily to women's sense of insecurity.

Across the three reports, references to Syrian refugee men were made in terms of their presupposition to inflict violence, harassment or sexual assault toward refugee women. The UNHCR report tells the stories of Syrian female refugees who were abused by their husbands, but "accepted it, only because [they] did not know where else to go."[33] The UN Women report also describes the source of female vulnerability to violence from men. The report discusses instances of violence toward women solely in terms of physical domestic violence at the hands of husbands, brothers and other male figures.[34] The IRC report follows similar framing and attempts to contextualize male violence as a symptom of stress, frustration and instability in moving and adapting to a new environment. The report attributes physical and emotional violence from husbands as a method of coping with the trauma of conflict, an inability to fulfill their traditional role as the family provider, feelings of sexual frustration, or concern over meeting basic needs for the household.[35] Overall, when Syrian male refugees were referenced in the examined reports on the experiences of Syrian female refugees, the males were largely constructed as violent, aggressive and hostile beings who escalated a woman's sense of insecurity and vulnerability.

Aggressive representations of men in these reports are not solely limited to Syrian refugee men. The reports also construct host community men as equally violent and manipulative by describing ways that host community men are perceived to take advantage of Syrian women refugees and girls. The UNHCR report, for example, tells stories of girls who are persuaded to enter into marriages very young with older partners who are described as wanting to "take advantage of cheap and easy" Syrian refugees;[36] however, the report states that marriages created on the principal of an unequal power relationship subsequently increases the possibility for domestic violence against the female.[37] The UN Women report tells similar stories of Syrian teenage girl refugees persuaded into marriage with older host community men in exchange for financial income. In do-

ing so, the report describes cases of non-Syrian men coming into camps to "shop for brides."[38] In these representations, the men initiating these marriages are portrayed as wanting to take advantage of vulnerable refugee women in authoritative, emotionless and violent ways. Therefore, similar to Syrian refugee men, host community men are discursively framed in an aggressive and violent way that constructs them as another source for Syrian women refugees' vulnerabilities.

A narrow representation of Syrian refugee men reduces them to violent and aggressive beings contributes in two ways to why widespread suffering of Syrian refugee populations, both men and women, continue. The first is that UNSC Resolution 1325's limited discourse on human security and vulnerability construct a one-dimensional, violent representation of men in such a way that any possibility of additional, complex hardships being faced by Syrian refugee males or host country populations is ignored. For example, it is likely that there are deeper reasons behind why some of these men turn to violence as an outlet for frustration and stress, and it is necessary to consider what those may be rather than unfairly villainizing men as agents of gender violence, and subsequently as undeserving of assistance. This framing is problematic because it dismisses men as inherently violent and aggressive toward women; therefore, these men are perceived by international organizations as undeserving of support and aid. However, dismissing the struggles of men in this way limits and excludes opportunities that could be created to support all refugees, especially if there were programs that could alleviate the previously described violent coping strategies used by husbands who feel heightened stress when trying to provide for their families in a new setting. By ignoring Syrian refugee men with aid and support programs that would address their psychological needs, any potential to comprehensively address suffering and violence against women, the Resolution's ultimate substantive goal, will be consistently curtailed. Therefore, due to a lack of critical recognition

into the full context of suffering, UNSC Resolution 1325's narrow discourse leaves a significant amount of suffering in place by failing to acknowledge its existence amount Syrian refugee male populations and host community men.

Silenced Refugee Men

In addition to being subjected as a monolithic figure of violence and aggression, the UN's gendered human security discourse also allows an overshadowing of Syrian refugee men's particular experiences and vulnerabilities. This silencing is a direct consequence of UNSC 1325's policy discourse which puts particular weight, visibility and credibility on the experiences of women in conflict zones. Thus, any experiences outside this frame of reference are rendered as secondary, irrelevant or nonexistent. The Resolution's text makes no explicit statements about vulnerabilities incurred by men during or post armed conflict, especially male non-combatants. Without political recognition of this particular population of civilians, Syrian refugee men's experiences and need for support in conflict zones are largely disregarded in the examined reports. Therefore, aid programming and assistance that is informed by UNSC Resolution 1325's discourse on human security and vulnerability fails to address a comprehensive view of suffering by excluding the plight of Syrian refugee males. Such an oversight ultimately allows suffering to systematically continue for the widespread Syrian refugee population.

Representations of Syrian male refugees outside of the previously examined frame of these men as violent aggressors are nonexistent across the three reports. The IRC, however, has recently attempted to uproot and challenge this silencing by publishing a groundbreaking report in January 2016 titled, "Vulnerability Assessment of Syrian Refugee Men in Lebanon." The report illuminates how aid agencies have forgotten and overlooked single Syrian refu

gee men and sheds light on experiences and narratives that speak to their otherwise not documented hardships by looking particularly at the livelihoods of Syrian male refugees living in Lebanon. The report challenges the previously examined monolithic representation that constructs Syrian male refugees as violent actors by providing alternative representations of these men as individuals who are in need of psychological support, who face threats to their personal safety, and who are subjected to discrimination in their host community. By explicitly discussing these hardships, the report demonstrates how UN human security and vulnerability discourses have structurally overlooked and ignored the plight of Syrian refugee men.

One of the structurally silenced representations exposed by the IRC notes males' lack of access to necessary psychological and emotional support after fleeing the conflict. The report recognizes that refugee men are widely presumed as the group best able to self-protect, self-sustain, and negotiate the complexities of displacement unaided.[39] This misconception arises simply because male refugee experiences are not addressed in UN policy-informed representations of Syrian refugee vulnerability. This perception of lacking vulnerability ignores the importance for single Syrian refugee men to still have access to emotional and psychological support, as they also face immense hardship in coping with displacement and the trauma of conflict. Nonetheless, due to being disregarded by aid agencies, these men do not have access to spaces where they could receive necessary support to feel safe in their new communities.[40] It is necessary to recognize that traumatic environments are both emotionally and physically taxing, regardless of any status-based categorization. Though particular difficulties and challenges faced by each individual vary, it is important to simultaneously acknowledge an overall need for support arises among the entire Syrian refugee population.

Another structurally silenced representation of Syrian male refugees' experiences within the narrow and gendered human

security discourse of UNSC Resolution 1325 is their particular susceptibility to violence and instances of crime in a host country setting. Due to this lack of recognition, Syrian refugee men are commonly perceived as security or criminal risks by host country communities. The IRC report found that refugee men face disproportionate and aggressive targeting by governments and host community members. Two out of every three refugee men in that the IRC surveyed reported experiencing threats to their personal safety, with more than half of that group identifying the threats as constant or frequent. The range of threats include raids, arrests, arbitrary checkpoints, and instances of verbal or physical aggression.[41] The implication of this silencing allows perceptions of Syrian refugee men as security and criminal risks in host communities to flourish without question. As such, these men find themselves living in a harsh climate of discrimination and within an omnipresent cloud of insecurity. The Resolution's human security and vulnerability discourse fails to recognize this reality, and without recognition toward violence and particular experiences of refugee males, adequate measures to support their protection and rehabilitation are silenced, forgotten, and ignored.

These two framings of Syrian refugee males raise awareness about significant silences invoked by UNSC Resolution 1325's discourse on human security and vulnerability. It is evident that this policy and its discourse fails to recognize the experiences and vulnerabilities of refugee men. A failure to construct policy discourse around comprehensive assessments of civilian experiences and suffering is a structural decision that explains why widespread suffering continues to persist for Syrian civilians after they have fled the physical, geographic location of violence. Existing policy discourse on human security and vulnerability for those in conflict zones manipulates, silences and disregards the needs of entire cohorts of suffering individuals. Furthermore, the combination of violent representations of Syrian refugee men and the structural silencing of their alternative, humanizing experiences can justify sentiments that

permit active exclusion of the Syrian male refugee population from any form of international aid and support. Together, these silenced representations have the potential to villainize the Syrian male population into a dangerous situation where the population is indisputably dehumanized. This is why we, as an international audience who care about populations made vulnerable by armed conflict, continue to see civilian suffering post-conflict, despite the existence of discourses and policies that rhetorically promise to address it.

Moving Forward in Solidarity

There is a dissonance in today's world order that, despite UN laws that propose commitment and action to end female suffering imposed by armed conflict, widespread suffering continues to occur for the Syrian refugee population. This persistence of suffering can be contributed to the ways in which the UN has constructed, established, and disseminated human security and vulnerability discourses about civilians in conflict zones, with a particular focus on UNSC Resolution 1325. Representations have been constructed both explicitly and implicitly about the Syrian refugee population that are informed by the Resolution's human security and vulnerability discourse. While some representations have dual effective and limiting implications in their attempts to alleviate suffering for women, UNSC Resolution 1325's limited discourse overall appears to be a contributing factor that is perpetuating Syrian refugee suffering. As such, in order to fully address this issue and work towards resolving this discrepancy, a true needs-based prioritization and targeting of responses must be based on a comprehensive assessment of the protection context, rather than equating vulnerability with particular groups or demographic categories.

Studying discursively informed representations illuminates a critical need for international policies to be constructed in a way that goes beyond a limited or narrow focus, and recognize the

broader relationship of people in the world and with the world. When considering how a more interpersonal and comprehensive assessment can be performed for international policies to more fully acknowledge the structural and systemic complexities of civilian suffering post-conflict, the potential for praxis arises as an alternative. Praxis is a dual method of action and reflection that transforms thinking about a problem from a basic and naive state, to a level that perceives the causes of that reality. In its process, two forms of knowledge come together: critical and theoretical knowledge with empirical knowledge and stories of lived realities.[42] In this setting, discussion of experienced realities combined with specific objectives to alter that reality are reconciled in a humanizing way with the goal of permanent liberation from suffering.

This approach to dialogue has the potential to improve UN policy discourses on vulnerable or suffering populations moving forward. A space that constructs, develops and disseminates policies meant to address civilian suffering must do so in a humanistic way and transcend hierarchies of vulnerability and human needs. To be clear, the UN should not completely do away with gender-focused, or age-specific policies. Focused policies are key to recognizing the differences and specific needs of different demographic groups. However, a problem arises when the UN's discourses and policies are too narrowly framed. Dialogic processes can help remedy this by broadening the scope in which suffering is assessed and informing better individualized needs targeting. That way, the policies and needs assessments that come out of UN and other international law dialogues are more comprehensive and justly mindful. A process such as this, where genuine communication and dialogue on a diverse range of lived experiences can be identified equally, fairly, and with empowerment, has the potential to lead the international community into effective solidarity where advocacy is motivated by a desire in recognition of one another as human beings.

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