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Readers,

We are thrilled to share the first edition of the Emory Undergraduate Journal of Law and Society. It is our hope to create a platform for Emory's brilliant thinkers and writers to share their analyses of the most pressing legal and social issues of our time.

In a rapidly evolving world, it is crucial to carve out spaces for intellectual exploration across ideological spaces. This journal serves as a beacon for such discourse, offering members of our campus community a platform to delve into a variety of complex legal and social topics. It also embodies our commitment to fostering a culture of inquiry, empathy, and social responsibility on Emory's campus; now, and far into the future.

We are grateful to all of the students who submitted their pieces for consideration, especially those whose writing was selected for this journal. In addition, we express our thanks to Professor Hubert Tworzecki, and the faculty of Pi Sigma Alpha at Emory, who have supported the creation of the journal. Lastly, we extend much gratitude to our Editorial Board and Staff Writers, who have contributed tirelessly to this issue. Their contributions have made this journal possible.

– Rebecca Schwartz and Kardelen Ergul
Editors-in-Chief

202: Barriers to Free Speech on Campus

By: Melissa Shane

This article was authored prior to the April 25, 2024 events on Emory's campus. While its sentiments remain, it has become clear that there are far broader issues regarding Open Expression at Emory and that serious change needs to occur to ensure students' voices and well-being are heard and protected. This piece is not meant to understate or undermine the severity and harm of these occurrences, but rather speak on a niche facet of open expression that could be bolstered at Emory. True condolences and frustration with the April 25 occurrences remain, and this piece does not turn a blind eye to that fact.

Whether through hardline policies that work against open dialogue, or the fostering of an intolerant atmosphere, more and more is the American value of free speech being devalued in academic settings. While universities across the country frequently invite left-leaning speakers to campus, it is becoming increasingly rare that conservative speakers receive such opportunities. Emory University is far from an exception in this regard, as it ranks 202 out of the 248 colleges surveyed on tolerance for free speech, and 198 of 248 in tolerance for conservative speakers[1]. Although the opinions of conservative speakers have been called "disagreeable" and, at times, "abhorrent," they are necessary and worthwhile in developing student's critical thinking skills, ability to face opposition, and the American political climate.[2]

To preface, it must be understood that this piece is not an endorsement of conservative speakers and their beliefs, but instead an endorsement of the marketplace of ideas and its benefits to academia and intellectual growth. Supporting tolerance for objectionable viewpoints should not be interpreted as an endorsement of these viewpoints, and to do so is to straw man this argument. Rather, this piece seeks to assert that having both liberal and conservative speakers on campus is academically and societally necessary.

[1] Emory University | The Foundation for Individual Rights and Expression. (n.d.). www.thefire.org.
Retrieved November 29, 2023, from
https://www.thefire.org/colleges/emory-university/free-speech-rankings
[2] Should I Hang Out With Someone Whose Political Views I Hate?| The New York Times nytimes.com
Retrieved February 18, 2024, from
https://www.nytimes.com/2021/06/22/magazine/conservative-friends.html

Given that Emory students largely identify as liberal[3], the term "controversial" (or words of the like) is used to label those who identify as right-leaning. It appears fair to designate them as controversial, given that speakers who identify more with the American left or as progressive do not invoke a campus upheaval that their conservative colleagues do. Furthermore, this piece argues in favor of the inclusion of academic conservatives. Some may view these terms as mutually exclusive, but that would be similar to equating the contributions of Milo Yiannopoulos to those of Clarence Thomas, which is unfair regarding academic merit, societal importance, and speaker motive. Having graduated from Yale Law School and presently serving as a United States Supreme Court Justice, Thomas is far more educated and societally relevant than college dropout, Yiannopoulos, who is but merely an online political commentator. Moreover, Yiannopoulos speaks with the intent to incite; he is inflammatory and uses rhetoric to provoke the audience and controversy to grow his platform. This is not the case for Thomas, who maintains a stoic demeanor and speaks in limited cases, with poise and educational intent. He would never suggest liberal journalists should be "gunned down on sight"[4] or state that "Muslims are allowed to get away with almost anything,"[5] as Yiannopoulos has. Both figures stand merely as examples, but the summation is that inviting more conservatives does not mean any and all, but those with academic merit and accreditation. In order to create the desired marketplace of ideas, beliefs supported by study and academic merit, as articulated by those who conduct and participate in such, should be highlighted. Online content creators who aim to provoke the audience and grow their platform through inciting reactions are not included in this category.

The intellectual development and critical thinking that arises from inviting controversial speakers is vitally important to expanding one's intellectual capacity.[6] Contentious speakers go against the grain. They challenge students to think in ways they might not otherwise. Having

[3] Students at Emory University | Niche.
www.niche.com.
Retrieved November 29, 2023, from
https://www.niche.com/colleges/emory-university/students/
[4] Milo Yiannopoulos texts about 'gunning journalists down' 2 days before Capital Gazette shooting | Fox 5 Washington DC
www.Fox5dc.com.
Retrieved February 15, 2024, from
https://www.fox5dc.com/news/milo-yiannopoulos-texts-about-gunning-journalists-down-2-days-before-capital-gazette-shooting
[5] Milo Yiannopoulos on college free speech, his controversial comments and more | Fox 11 Los Angeles
www.youtube.com.
Retrieved February 15, 2024, from
https://youtu.be/e2uvGgPikT4?si=wedgCk-Ya4hh4xde
[6] A Pedagogy of Force: Faculty Perspectives of Critical Thinking Capacity in Undergraduate Students | The Journal of General Education
www.jstor.org.
Retrieved November 29, 2023, from
https://www.jstor.org/stable/27798029

speakers like Raphael Warnock[7] and Marianne Williamson[8] come to Emory to speak is profound and should continue to occur, but left-leaning speakers such as these do not encourage liberal Emory students to challenge their beliefs or think critically. Students can absorb their platforms with little thought because they already agree with the policies, beliefs, and sentiments these politicians represent. Conservative speakers spark conversation in a way that encourages students to critically evaluate as well as strengthen their own beliefs. Debate isn't solely about eloquence but also entails grasping the opposing viewpoint–a challenging feat when one remains insulated from differing perspectives. Contrary to what many believe, inviting conservative speakers is not done with the intent or effect of platforming them (as they must already have some sort of platform if the university, or a club within it, is inviting them), nor is it to say that Emory sympathizes with what they are saying. These talks or debates instead stand as an opportunity for students to be intellectually challenged, at their own choice. Students have the option to protest these talks if they disagree with the message; observe these talks if they want to hear a different perspective; attend because they agree with the speaker; or decide not to go at all. Students have a choice in the matter, and all of these choices spark thought in a way that solely inviting speakers who align with the opinions of the majority do not. When conservative Heather MacDonald came to Emory, many Emory Wheel articles were published by students in response–precisely eight (and these are just the documented responses). Said publications discussed the merits of her talk, with many critiques and a few endorsements, and were accompanied by a greater conversation about open expression at Emory. The intellectually advantageous nature of these pieces was directly sparked by the controversy of her appearance. By contrast, when Marianne Williamson came to speak last year, there was but one article was published–and it was merely an event report. Again, this is not to say that liberal speakers should not continue to receive invites, but that speakers who go against the grain should also be invited because of the conversation their presence sparks.

[7] Warnock encourages students to vote in upcoming runoff in Emory Speech | The Emory Wheel www.emorywheel.com.
Retrieved November 29, 2023, from https://emorywheel.com/warnock-encourages-students-to-vote-in-upcoming-runoff-in-emory-speech/

[8] In Emory speech, 2024 presidential candidate Marianne Williamson talks "institutionalized greed"| The Emory Wheel www.emorywheel.com.
Retrieved November 29, 2023, from https://emorywheel.com/in-emory-speech-2024-presidential-candidate-marianne-williamson-talks-institutionalized-greed/

Having conservative speakers also builds a student's ability to face opposition. Outside of Emory, students will enter the world as people, where not everyone will shelter them from opposing beliefs. There is a benefit to developing a tolerance and openness to absorbing all ideas, even if you vehemently disagree with them. Some may disagree with the use of the word "shelter" and argue that Emory not inviting contentious speakers is just a choice not an act of "sheltering," as they are not explicitly stating they cannot be invited. Nonetheless, invites are not being received, and the impact is that one political side is far more represented and supported on campus than the other, which is harmful to the preparation of students entering the world outside of Emory University. Extending the invite shows Emory endorsing open expression. By not doing so, Emory (or any institution acting similarly, for that matter) is setting students up with the expectation that their own opinions are the only ones worth considering. A certain sensitivity towards opposing beliefs grows when one is never exposed to them, and when one is accustomed to the belief that they should not and do not have to be exposed to them. Outside of university, people with opposing beliefs are everywhere, and in some circumstances, unavoidable. At least at Emory, should tendentious speakers be invited, students are always at liberty to not attend–itself a supported form of protest. Emory cannot claim "each person and every level of scholarly activity should be valued on its own merits," in its mission statement, and make no way for "every level of scholarly activity" to be valued and questioned.[9] It is no wonder the university is ranked 202–this mission remains but a mission, something they have yet to reach. Beyond general classes, Emory maintains a responsibility to prepare its students for life thereafter, and part of that preparation comes from endorsing open expression and diversity of thought.

Lastly, conservative ideals are a vital part of the political conversation right now, even if they are viewed as undesirable. These views represent roughly 45% of the population and thus have serious implications for elections, public policy, and defining societal morals.[10] It does a disservice to America's Democratic Republic to ignore views that undeniably play a significant role in deciding public policy issues, the future of this country, its governance, and broadly

[9] Mission Statement | Emory University
Emory.edu
Retrieved February 18, 2024, from
https://www.emory.edu/home/explore/emory-profile/our-mission.html

[10] U.S. Party Preferences Evenly Split in 2022 After Shift to GOP | Gallup
gallup.com
Retrieved November 29, 2023, from
https://news.gallup.com/poll/467897/party-preferences-evenly-split-2022-shift-gop.aspx

understanding the surrounding society. To operate as though every citizen is left-leaning is to paint a falsified image of partisanship in the United States. Inviting conservative speakers to Emory's campus opens the doors for political frontrunners' ideas to be critically examined and understood in a way not observed through soundbites and video clips showcased on news stations and social media platforms. Being an informed voter extends beyond just knowing your own beliefs but knowing those with which you disagree, allowing you to grasp the full picture of the public policy debate at hand.

Disagreeing with conservative viewpoints does not justify suppressing them–it only justifies students' right to protest, and to attend or not attend the event. The intellectual growth, real-world preparedness, and general necessity that comes from inviting controversial speakers cannot be understated, and thus Emory should put more effort into promoting ideological diversity through expanding the breadth of speaker viewpoints included on campus. Being ranked 202 is disappointing, and Emory has a long way to go. However, as has been pointed out, a strong tool to bolster open expression is but an invitation away…

The Polarization Pandemic: Debord, Foucault, and Fanon Explain What Went Wrong

By: Josh Grand

Forgive my naivety, as I have only recently begun my journey into meaningful discourse, but it seems as though everybody just wants to hear the sound of their own voice. Seldom do I feel that the other party even listens to what I say. My words, to them, merely serve as an intermission before the next act. I do not mean to suggest that I am the pinnacle of human communication. As a matter of fact, I invite you to question the hypocrisy of my writing of eight pages to complain about the narcissistic nature of society. Believe me, though, that if you take the time to read my treatise, I would undoubtedly, in turn, take the time to hear your two cents. That is, after all, what I am trying to say: let's hear each other out.

In a society where individuals do not value each other's opinions, President Barack Obama asserts, "democracy will wither."[1] The United States has entered an era of unprecedented polarization in the last century. As individuals become less open to dialogue, the prospect of compromise evaporates. There now only remains two dozen moderate Democrats and Republicans on Capitol Hill, a severe decline from the 160 in 1970.[2] Rampant radicalization has produced "ideological silos" on both sides of the political spectrum. Among the voting population, 36% of Republicans and 27% of Democrats now view the opposing party as a "threat to the nation's well-being."[3] The inflammation of partisan antipathy poses dangers not exclusively to government efficiency but also, as Obama noted, to the very state of our democracy. In this paper, I will not be, nor do I believe myself capable of, presenting a cure to this social virus. Rather, I will examine the issue through the lens of Debord's "spectacle," Foucault's notion of identity, and Fanon's decolonization theory to understand how society ended up in such a state of division.

I would be obtuse to overlook the role that media consumption plays in the shaping of our perspectives. It is, in my opinion, no coincidence that the burgeoning use of social media in our society follows nearly an identical trend as the increasing social polarization[2]. Our minds have

[1] "Disinformation Is Weakening Democracy, Barack Obama Said." *Stanford News*, 25 Apr. 2022, news.stanford.edu/2022/04/21/disinformation-weakening-democracy-barack-obama-said

[2] DeSilver, Drew. "The Polarization in Today's Congress Has Roots That Go Back Decades." *Pew Research Center*, Pew Research Center, 10 Mar. 2022, www.pewresearch.org/short-reads/2022/03/10/the-polarization-in-todays-congress-has-roots-that-go-back-decades/.

[3] Political Polarization in the American Public." *Pew Research Center - U.S. Politics & Policy*, Pew Research Center, 12 June 2014, www.pewresearch.org/politics/2014/06/12/political-polarization-in-the-american-public/.

become a marketplace used to reinforce a consumerist global order. Guy Debord, for one, would be quick to underscore the reality of a digital age: algorithms dominate the trajectory of our psyche. In his magnum opus, *The Society of the Spectacle*, Debord explores the idea, well before the introduction of social media, that life is merely presented as "an immense accumulation of *spectacles*."[4]

The concept that each individual is experiencing life through their own respective 'spectacle' is a difficult one to grasp. Imagine, though, your memories are compiled as an alternative reality. After mental "capital" is consummated, it is then inserted as another building block of this construct. Your alternative reality, essentially, shapes your outlook on reality. Debord summarizes the role of the spectacle best, declaring it "the heart of this real society's unreality."[4] The present-day "unreality," though, has become vastly misconstrued through the radical narratives – in conjunction with the rapid spread of misinformation – propagated across social media platforms. Once exposed to one half-truth, these platforms tailor their algorithms to suffocate users with radical partisanship. There is, after all, always "objective reality present on both sides."[4] As a result, though, the whole truth becomes virtually unattainable to the individual. I present this interpretation of the modern-day spectacle not to bring into question the freedom of individual thought but rather to expose the alienation in social relations that it creates. The further one strays from the full truth, the more difficult it becomes to acknowledge the existence of the other half-truth. As social interactions become plagued with disagreement and strife, contempt builds for the opposition. This ignites what Debord labels, a "vicious circle of isolation" where humans, as inherently factious people, seek out like-minded individuals and surround themselves with fellow half-truthers.

The intellectual foundations of identity politics are often traced to the Foucauldian doctrine of postmodern philosophy. Political advancement, Foucault noted following the Paris student uprising in May 1968, has ceased to be delivered through "parties, trade unions, bureaucracy, and politics" but rather has transformed into an issue of "individual and moral concern."[5] This concept, which aligns with Debord's perspective of human gravitation towards polarization, is rooted in the post-modern human tendency to prioritize power structures and

[4] Debord, Guy. *The Society of the Spectacle*. Unredacted Word, 2021.

[5] Foucault, Michel 2000. Sex, Power, and the Politics of Identity. In: Rabinow, Paul (ed). *Essential Works of Foucault 1954–1984*. Harmondsworth: Penguin Books.

labels over individual thought and agency. The problem, Foucault asserts, is that individuals no longer pursue the aspects of life that give them pleasure. Instead, when confronted with the crossroads of decision-making, they simply ask: "Does this thing conform to my identity?"[5] Foucault cites the external pressure to conform to these groups as the emerging driver of identity in a post-modern era. The agency of one's inner self to shape their own identity has effectively been surpassed, on a grand scale, by factors beyond our control. Foucault, when questioned on the divergence in society, declared that the social shifts are "not due to political parties, but the result of its movements."[5] The danger here lies, though, in the polarization of political parties. As the base of each caucus shifts further from the median, individuals are forced into more radicalized thought in their effort to conform to party lines[2]. Rapidly, the middle of the spectrum has transformed into a barren wasteland. Sustained party isolation prevents outside perspectives from reaching its members, and as the stalemate prolongs, it becomes unfathomable to empathize with such "radical" opposition. Inevitably, both sides begin to grow resentment for the other – and, consequently, identity politics polarize the political sphere.

This idea of a factious society in perpetual civil conflict is precisely what Frantz Fanon depicts in *The Wretched of the Earth*. Fanon develops this idea through his theory of decolonization, a concept which he outlines as "the meeting of two forces, opposed to each other by their very nature, which in fact owe their originality to that sort of substantification which results from and is nourished by the situation in colonies[6]."[6] Fanon speaks of a Manichean world, drawing examples from North African natives battling the oppression of the French colonialists in the 20th century. The similarities drawn between the human psyche amidst colonization and that of modern-day society revolve around Manichean Logic. Fanon describes this concept as, essentially, the "compartmentalization of society."[6] This supposition asserts that the roots of dualism are based on the dichotomous and hierarchical structure of our world. The power dynamics that result from modern institutions necessarily place individuals – and the factions that follow – fundamentally at odds with one another. It only becomes a matter of time, Fanon notes, until both sides begin to view the other as "a sort of quintessence of evil."[6] Fanon argues that the opposition's belief system "can only be called in question by absolute violence." All further analysis of this work, though, will be conducted on the assumption that violence is not, in

[6] Fanon, Franz. *The Wretched of the Earth*. Penguin, 1990.

fact, inevitable. Instead, I intend only to elaborate on the intellectual processes within the individual that result from this initial societal split.

The evolution of thought that Fanon outlines in these factious societies closely resembles, at least on the surface, those Debord and Foucault previously introduced. This is first noticeable, he points out, by both sides' "inaptitude… to carry on a two-sided discussion."[6] Identity politics, once again, proves to be a byproduct of a divided society. This perpetual cycle of isolation is only reinforced by the comfort one can find among the purported like-minded individuals within one's ideological silo. A lack of opposing rhetoric, then, leads to the extinction of critical thinking. With the loss of critical thinking, the very act which separates *Homo sapiens* from the other predators of the global food chain, Fanon declares that our "individualism is the first to disappear."[6] Each individual will no longer "say that they represent the truth, for they *are* the truth."[6] In this world where critical thinking has been eradicated, the argument against Fanon's proclamation of inevitable violence begins to look bleak. Democracy, a system of government in which state power is vested in the general population of the state, has persisted for over two hundred years in America because of its very ability to support divisiveness in society. Extreme polarization, however, cannot be sustained in any sort of representative government system. When political leaders begin to regard each other as existential enemies, institutions weaken, and compromise becomes impossible. This "violence of faction" is precisely what James Madison warned of in Federalist 10, citing the willingness for leaders to yield power to opponents as the foundation of a democratic system.[7]

To be clear, I did not intend for this essay to adopt any sort of alarmist perspective. In exploring this process of intense polarization, however, it has become apparent to me that this is our reality. Donald Trump's rise to power was not by chance; the American people had begun their social divergence long before 2016[2]. Intense negative partisanship – the tendency of voters to form their political opinions primarily in opposition to political parties they dislike – is ultimately what enabled Trump to tap into the racial and ethnic anxiety that many groups within American society had previously masked. Large masses within the American public, many of whom were previously diametrically opposed, united against a perceived common enemy. The reality, though, is that we are our own worst enemies. Buying into a hateful narrative and

[7] Madison, James. "Federalist No. 10." The Federalist Papers. New American Library, 1961.

scapegoating minority groups will not solve our nation's problems. An effective democracy requires unity. This, however, does not mean a nation united in hatred. It means a nation united in its respect for discourse and compromise – respect for those who hold opposing viewpoints. How, then, do we make people see eye to eye again? Or, at the very least, make them listen to what each other has to say?

As previously determined, I do not, at least at this moment, find myself capable of curing the polarization pandemic currently plaguing American society. What I have learned from writing this article, however, is that one's drift towards radicalization should not be labeled as a mere representation of their individual preferences. Debord, Foucault, and Fanon would all agree that the polarized perspectives that individuals adopt instead are a product of their external environment. Mass media, social conditions, and identity politics act in concert to distort our "real society's unreality."[4] If there is one lesson to take away from this paper, it is the necessity of humanity's willingness to acknowledge our vulnerability. Acknowledge your own vulnerability, open your mind to opposing perspectives, and recognize the dangers of your partisanship. Acknowledge the vulnerability of others; do not insult their intellect and disregard their beliefs because they have assumed a different perspective. And, most importantly, acknowledge the vulnerability of society; take the time to empathize with those whom you disagree with while appreciating how much you share as a fellow human being. In an era of polarization, I ask not for unity but for empathy. For, if we lose the ability to commune with one another, we jeopardize our very sense of humanity.

Navigating the Impact of Deepfakes in Hollywood: The Legal Ramifications of Video Manipulation

By: Elyn Lee

An explicit deepfake of Taylor Swift abruptly circulated the internet this past week, with one photo reaching 45 million views on X, formerly known as Twitter. Although generative artificial intelligence (AI) has seeped its way into the education and legal systems, there is currently very little conversation concerning other forms of AI and their implications. A deepfake is "any of various media, *esp.* a video that has been digitally manipulated to replace one person's likeness convincingly with that of another, often used maliciously to show someone doing something that he or she did not do."[1] Taylor Swift is not the first celebrity to fall victim to non-consensual deepfakes. Hollywood star Scarlett Johansson is currently taking legal action against Lisa AI: 90s Yearbook & Avatar—an app used to create deepfake videos—after a 22-second advertisement that featured the actor's likeness and name was released on X on October 28th, 2023.[2] Johansson's legal representatives quickly made it clear that she was not endorsing or connected to the brand. Fellow Hollywood star Tom Hanks was also involved in an unnegotiated advertising campaign where he was seen promoting a dental plan.[3] The actor was quick to respond on Instagram, warning his fans that he had "nothing to do with [the company].[4] Although AI-generated celebrity deepfakes in advertisements may seem insignificant in the grand scheme of things, situations like Taylor Swift's deepfake debacle show the disturbing abilities AI can have and force us to start a conversation concerning how deepfakes are impacting not only Hollywood but the legal system as well. Judiciaries must integrate software solutions or implement procedural frameworks for discerning deepfake evidence that arises from the escalating difficulty in its detection owing to technological advancements. Failure to do so risks inflicting harm upon innocent parties.

From a publicity standpoint, deepfakes are difficult to dispute because of the most logical

[1] deepfake, n. meanings, etymology and more | Oxford English Dictionary. (2023). *Oed.com*. https://doi.org/10.1093//OED//7847968874

[2] Shanfeld, E. (2023, November 1). *Scarlett Johansson Takes Legal Action Against AI App That Ripped Off Her Likeness in Advertisement*. Variety. https://variety.com/2023/digital/news/scarlett-johansson-legal-action-ai-app-ad-likeness 1235773489/

[3] Zee, M. (2023, October 1). *Tom Hanks Warns Fans About "AI Version of Me" Promoting Dental Plan: "I Have Nothing to Do With It."* Variety. https://variety.com/2023/film/news/tom-hanks-ai-video-dental-plan-warns-fans 1235741781/

[4] *Instagram*. (n.d.). Www.instagram.com. Retrieved January 30, 2024, from https://www.instagram.com/p/Cx2MsH9rt7q/

rebuttal: freedom of speech. A defendant may argue that their content is transformative, meaning it should be considered as a parody, satire, or comedy and, therefore, must be protected by the First Amendment.[5] Public figures and celebrities may combat this using claims of intentional infliction of emotional distress, defamation, or harassment.[6] However, with rapid technological advancement and the increasing difficulty of detecting deepfakes, the courts are struggling to find a balanced solution to keep public figures safe without jeopardizing the First Amendment.[7] The Lanham Act, also known as the Trademark Act of 1946, addresses this issue to a certain extent: it holds that if a deepfake has commercial intent and "is likely to cause confusion or to deceive as to the affiliation, connection, or association of such person with another person," it is liable to civil action.[8] One problem that arises, however, is the question of who is legally liable for the deepfakes. The person who created it? The app that creates the content? The platform where the video is shared? According to Section 230 of the Lanham Act, no user or account "shall be treated as the publisher of any information provided by another information content provider."[9] However, "no court has held that Section 230 bars false association claims," meaning users can hold websites accountable for deepfakes.[10]

Simultaneously, there is a growing concern within the justice system of deepfakes being used as evidence or scapegoats for defendants. If falsified audio and video are submitted as evidence and are not properly identified, innocent parties will be hurt. If people are unable to determine if what they are viewing or hearing is real, the court will be subject to human testimony, which can be equally as faulty. Although seven leading AI companies made voluntary commitments to combatting irresponsible AI usage in July 2023—using a watermarking system to reduce deception and reporting their system's capabilities, limitations, and areas of appropriate

[5] Bass, D. F., Penning, N., & on, S. A. (2023, July 25). *The Legal Issues Surrounding Deepfakes*. Www.honigman.com. https://www.honigman.com/the-matrix/the-legal-issues surrounding-deepfakes

[6] Bass, D. F., Penning, N., & on, S. A. (2023, July 25). *The Legal Issues Surrounding Deepfakes*. Www.honigman.com. https://www.honigman.com/the-matrix/the-legal issues-surrounding-deepfakes

[7] *Artificial intelligence, free speech, and the First Amendment | The Foundation for Individual Rights and Expression*. (n.d.). Www.thefire.org. Retrieved January 30, 2024, from https://www.thefire.org/research-learn/artificial-intelligence-free-speech-and-first amendment#:~:text=Just%20as%20a%20realistic%20painting

[8] Legal Information Institute. (n.d.). *15 U.S. Code § 1125 - False designations of origin, false descriptions, and dilution forbidden*. LII / Legal Information Institute. https://www.law.cornell.edu/uscode/text/15/1125

[9] *Section 230*. (n.d.). Electronic Frontier Foundation. https://www.eff.org/issues/cda230#:~:text=It%20states%3A

[10] Bass, D. F., Penning, N., & on, S. A. (2023, July 25). *The Legal Issues Surrounding Deepfakes*. Www.honigman.com. https://www.honigman.com/the-matrix/the-legal-issues surrounding deepfakes#:~:text=Importantly%2C%20%E2%80%9Cno%20court%20has%20held

and inappropriate use[11]—this task ultimately should not be left to the companies. There is a dire need for the courts to adopt software applications or have an established process to identify deepfake evidence as it becomes harder to identify with advancing technology.

Whilst the court's main concern is regarding the submission of deepfakes as evidence, there is a parallel worry that a defendant will claim that any or all evidence presented against them is comprised of deepfakes. This essay has slightly touched on the dystopian perspective in which the public can no longer believe anything they are seeing, and based on the current trajectory of AI, this idea is not too far-fetched. An example of this issue was already seen in April 2023, when Elon Musk allegedly claimed in an interview conducted in 2016, "A Model S and Model X, at this point, can drive autonomously with greater safety than a person. Right now." [12] Two years later, Walter Huang was killed in a car crash while driving a Model X. The family of Huang filed a lawsuit against Tesla and sought to depose Musk, claiming the automated software failed, while also intending to use Musk's statement in the 2016 interview as part of their lawsuit. Tesla opposed the request in court filings, arguing that Musk does not recall this statement and questions the authenticity of the video. Tesla's legal team stated that "[Musk], like many public figures, is the subject of many 'deepfake' videos and audio recordings that purport to show him saying and doing things he never actually said or did."[13] Many people, including the judge on the case, found Tesla's statement troubling as it implies that any celebrity can avoid taking accountability for their actions or words by using deepfakes as a scapegoat.[14] With Elon Musk already demonstrating the corrupt ways a person can utilize this technology, it will not be long before these claims are commonly made in court.

As of now, at least 10 states have deep-fake laws to address AI-altered audio and videos, but most are connected to deepfake pornography. In 2019, California was one of the first states to

[11] The White House. (2023, July 21). *FACT SHEET: Biden-Harris Administration Secures Voluntary Commitments from Leading Artificial Intelligence Companies to Manage the Risks Posed by AI*. The White House. https://www.whitehouse.gov/briefing room/statements-releases/2023/07/21/fact-sheet-biden-harris-administration-securesvoluntary-commitments-from-leading-artificial-intelligence-companies-to-manage-the risks-posed-by-ai/

[12] Elon Musk's statements could be "deepfakes", Tesla defence lawyers tell court. (2023, April 27). *The Guardian*. https://www.theguardian.com/technology/2023/apr/27/elon-musks statements-could-be-deepfakes-tesla-defence-lawyers-tell-court

[13] Elon Musk's statements could be "deepfakes", Tesla defence lawyers tell court. (2023, April 27). *The Guardian*. https://www.theguardian.com/technology/2023/apr/27/elon-musks statements-could-be-deepfakes-tesla-defence-lawyers-tell-court

[14] Vincent, J. (2023, April 27). *Tesla lawyers claim Elon Musk's past statements about self driving safety could just be deepfakes*. The Verge. https://www.theverge.com/2023/4/27/23700339/tesla-autopilot-lawsuit-2018-elon-musk claims-deepfakes

pass Assembly Bill 602—a bill that criminalizes altered depictions of sexually explicit content.[15] Georgia, Hawaii, Virginia, and Texas followed suit and criminalized nonconsensual deepfake porn in the following years.[16] Although this is a step in the right direction for courts confronting AI, there must be a reevaluation of what is considered the gold standard of audio and video evidence. Luckily, institutions like MIT and Northwestern are creating technology to detect deepfake videos, but as AI continues to evolve, this endeavor will perpetuate a cat-and-mouse game where other technologies must continually strive to catch up with and outpace the advancements in AI-driven manipulation.

15 "Akin, an Elite Global Law Firm." *Akin Gump Strauss Hauer & Feld LLP - California Deepfake Laws First in Country to Take Effect*, www.akingump.com/en/insights/blogs/ag-data-dive/california-deepfake-laws-first-in-country-to-take-effect

16 Mulvihill, Geoff. "What to Know about How Lawmakers Are Addressing Deepfakes like the Ones That Victimized Taylor Swift." *AP News*, 31 Jan. 2024, apnews.com/article/deepfake-images-taylor-swift-state-legislation-bffbc274dd178ab054426ee7d691df7e.

How do Cities Enable Black Social Mobility: A Case Study on Washington D.C. and New York City

By: Michael Krensavage

New York City and Washington D.C. are two of the United States' most prominent economic centers. The cities, and their metropolitan areas**,** respectively, boast the first and fifth-highest GDPs in the country,[1] and they are known by many as the political and economic hubs of the country, if not the Western world. Both cities are also known for their diversity and strong Black cultures. New York City is one of the most diverse cities in the world, and Washington D.C.'s large Black population, which was 71.1% of its total in 1970, has earned it the nickname the "Chocolate City."[2] Given that they are the heart of the United States' economy, one could expect the Black residents of New York City and Washington D.C. to have reached the same economic heights as the cities in which they reside; this is not the case. As of 2021, the standard median household income in D.C. ($90,088) was 1.7 times larger than the city's Black median household income ($52,812), and New York's median household income to black median household income ratio was 1.3:1 ($67,997:$52,197).[3] While both city governments publicly claim an interest in addressing the racial income gap, there's a clear disparity between tangible results. Compared to New York City, Washington D.C. more than earns its reputation as one of the best American cities for Black families and professionals.[4] Washington D.C. has more laws and policies that are conducive to social mobility than New York City, which has fostered a more equitable education system, a more affordable and inclusive housing market, and more opportunities for Black-owned businesses and employment.

[1] Koop, A. (2023, March 9). *Mapped: The largest 15 U.S. cities by GDP*. Visual Capitalist. Retrieved May 1, 2023, from https://www.visualcapitalist.com/us-cities-by-gdp-map/ Leins, C. (2019, April 3). *The 10 best cities for public transportation*. US News. https://www.usnews.com/news/cities/slideshows/10-best-cities-for-transportation?slide=1 0

[2] Rusk, D. (2017, July). *Goodbye to chocolate city*. D.C. Policy Center. https://www.dcpolicycenter.org/publications/goodbye-to-chocolate-city/

[3] U.S. Census Bureau, "Median Income in the past 12 Months (In 2021 Inflation-adjusted Dollars)," United States Census Bureau, last modified 2021, https://data.census.gov/table?q=Median+Income+by+race&g=160XX00US3651000&tid=ACSST1Y2021.S1903.

[4] Apartment List, & Black@A-List. (2022, February 17). *Best cities for Black professionals, 2022*. Apartment List. https://www.apartmentlist.com/renter-life/best-cities-for-black-professionals-2022

Context

The American dream is defined by the ability of its citizens to position themselves within the middle class through opportunities for social mobility. When considering United States cities that struggle with racial inequality, there are three main factors that contribute to this dream's realization: academic equality, affordable housing, and opportunities for self-employment. While Black individuals still earn less on average than White citizens at equal levels of educational attainment, the gap narrows significantly between college-educated Americans,[5] indicating that inequitable access to college is a strong factor barring economic equality across races. Housing is equally important: home equity and retirement accounts make up 62.9% of American households' spending as of 2015.[6] Homeownership specifically is even more strongly correlated with wealth, as it generates value through security. When something occurs to make a piece of property more desirable, such as a technology company moving nearby or the construction of a school or park, gentrification often causes property values to rise as richer people are incentivized to move into the area[7]. While the effects of this gentrification can often be devastating to renters unprepared for a price increase, homeowners see an increase in the value of their assets without much downside. Finally, founding and maintaining one's own business is hugely conducive to middle-class security in America. In addition to the greater freedoms that come with self-employment, such as flexible hours, control over decision-making, and (likely) more fulfilling and meaningful work, self-employment is also conducive to building wealth. In 2019, the median net worth of self-employed families was $380,000, four times higher than the median net worth of employed families, $90,000.[8] Washington D.C.'s strength in these particular areas defines the potential for social mobility among its Black population.

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[5] Andrea Flynn et al., "The Racial Rules of Education," in The Hidden Rules of Race: Barriers to an Inclusive Economy (Cambridge University Press, 2017), 95, digital file.

[6] Eggleston, J., & Hays, D. (2019, August 27). Many U.S. households do not have biggest contributors to wealth: Home equity and retirement accounts. *United States Census Bureau*. https://data.census.gov/table?q=Median+Income+by+race&g=160XX00US3651000&tid=ACSST1Y2021.S1903

[7] Moretti, E. (2012). The inequality of mobility and cost of living. In *The new geography of jobs* (pp. 191-206). Harper Business.

[8] Zhou, L. (2023, February 23). *How many Americans are self-employed?* [2023 data]. Luisa Zhou. https://www.luisazhou.com/blog/how-many-americans-are-self-employed/#:~:text=In%202019%2C%20the%20median%20net,%24747%2C000%20(for%20all%20families).

Washington D.C. and New York are significant for their dual natures as prominent American economic hubs and landmarks of Black social and political activism and conflict. Both cities were amongst the most popular destinations of the Great Migration, which primarily occurred between 1940 and 1970 (U.S. Census Bureau, 2012).[9] Washington D.C., which became the first majority Black city in America in 1957, evolved into a significant hub of the American Black Power movement throughout the mid-late 20th century.[10] In 1963, over 250,000 people participated in the March on Washington for Jobs and Freedom, an event that picketed for economic and civil rights advancements for Black citizens. Mass protests swayed the federal government to appoint Black politician Walter Washington as mayor in 1967, and by the 1970s, Washington D.C. was a hub of Black art, business, and political thought.[11] While the Black population and

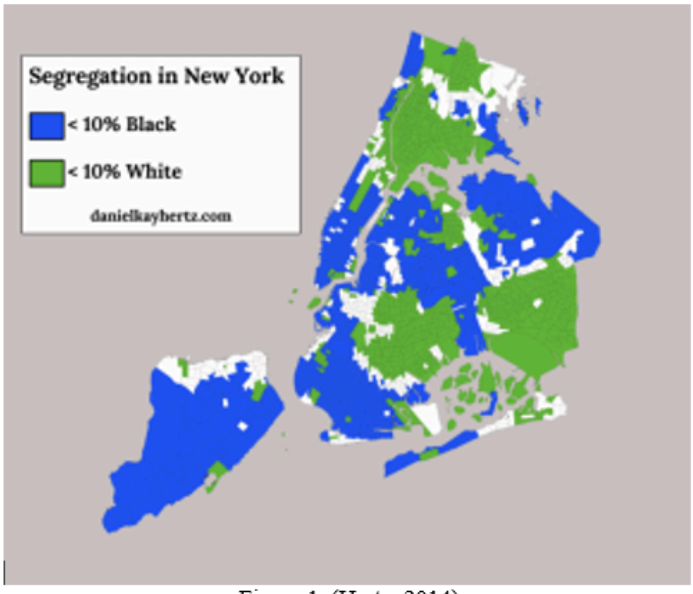

Figure 1, (Hertz, 2014)

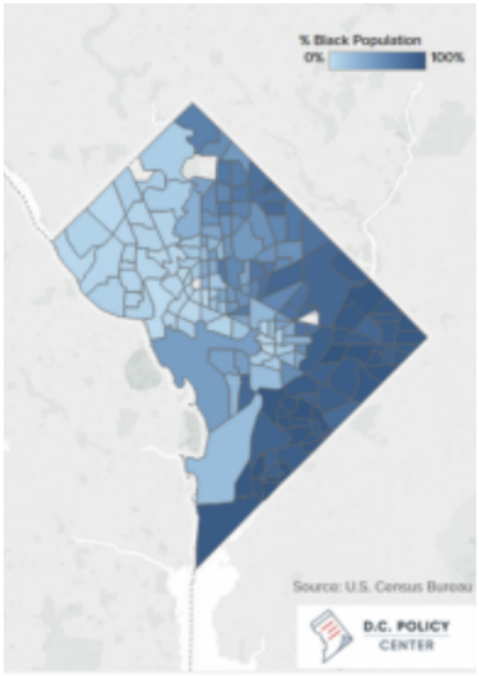

Figure 2, (Rusk, 2017)

[9] U.S. Census Bureau, "The Great Migration, 1910 to 1970," United States Census Bureau, last modified September 13, 2012, https://www.census.gov/dataviz/visualizations/020/.

[10] McQuirter, M. A. (2003). *A brief history of African Americans in Washington, DC*. Cultural Tourism DC. https://www.culturaltourismdc.org/portal/a-brief-history-of-african-americans-in-washington-dc

[11] McQuirter, M. A. (2003). *A brief history of African Americans in Washington, DC*. Cultural Tourism DC. https://www.culturaltourismdc.org/portal/a-brief-history-of-african-americans-in-washington-dc

cultural presence of the 1970s have faded from D.C. over time, its essence still remains in the city today. Conversely, much of New York's Black history since the Second Great Migration is intertwined with segregation that is still apparent today. Discriminatory housing regulations during the time period pushed the vast majority of Black immigrants into Harlem, a neighborhood that was already overcrowded and underfunded by the city. When the majority of White middle-class residents moved out due to said overcrowding, the city government slashed Harlem's funding further, even destroying parts of it, while segregationist policies such as redlining prevented Black residents from moving out.[12] As per Figure 1,[13] the echoes of that segregation continue to define much of New York City, as they confine Black access to spatially bound services such as public education.

Economic Outcomes in New York City

Washington D.C. excels past New York City in many aspects important to Black social mobility, but it's important to note New York City's strengths. While D.C. seems to be more conducive to Black economic success, it also seems more conducive to Black economic failure: citizens are faced with a higher ceiling and lower floor in regard to their economic outcomes. Despite outranking New York in nearly every statistic indicative of economic success amongst its Black population, Washington D.C. ranks lower in unemployment and poverty rates. D.C.'s Black unemployment rate is 16.3%, which is 8.1% higher than the race-blind unemployment rate of 8.2%,[14] 5.7% higher than the nationwide Black unemployment rate of 10.6%,[15] and 6.6% higher than New York City's Black unemployment rate of 9.7%.[16] D.C.'s Black poverty rate is 27.7%; the city's poverty rate is 16.5%,[17] the

[12] Finesurrey, S. (n.d.). *A people's history of New York City*. CUNY Academic Commons. https://historynyc.commons.gc.cuny.edu/black-new-yorkers-struggle-for-liberation/
[13] Hertz, D. K. (2014, april 14). *How segregated is New York City?* https://danielkayhertz.com/2014/04/14/how-segregated-is-new-york-city/
[14] U.S. Census Bureau, "Employment Status," United States Census Bureau, last modified 2021, https://data.census.gov/table/ACSST1Y2022.S2301?q=Employment%20by%20race&g=040XX00US11.
[15] U.S. Census Bureau, "Employment Status," United States Census Bureau, last modified 2021, https://data.census.gov/table?q=Employment%20by%20race.
[16] U.S. Census Bureau, "Employment Status," United States Census Bureau, last modified 2021, https://data.census.gov/table/ACSST1Y2021.S2301?q=Employment%20by%20race&g=160XX00US3651000.
[17] *Ibid*

nation's Black poverty rate is 21.8%,[18] and New York's Black poverty rate is 20.9%.[19] This disparity could be attributed to many characteristics of either New York or D.C.; Crawford and Das (2020) acknowledge D.C.'s history of overt and systemic racism, disproportionate allocation of educational resources, and discrimination within hiring processes, but all of those problems are well documented to exist at a comparable degree nationwide, including in New York. New York's superior unemployment rate could possibly be attributed to its public transportation system, which is significantly more accessible and efficient than the systems of D.C. and the rest of America.[20] The Black residents of both New York[1] and D.C.[2] mostly live in highly segregated neighborhoods, and the majority of Black neighborhoods in D.C. have weaker job markets than other neighborhoods in the city.[21] New York faces a similar problem[22] but its public transportation system makes up for it. While D.C. may offer better-paying jobs than New York, those jobs are inaccessible if people can't commute to them, and residents living within majority Black areas such as Ward 8, which is 86.5% Black,[23] are faced with the longest average commutes in the city.[24] New York can partially remedy disproportionate job markets through its public transportation system, which 59% of commuters use, whereas DC's 39.6% usage rate is a less effective countermeasure. New York City's public transportation system thus makes for a more accessible job market, which helps its residents achieve desirable economic outcomes. Despite this advantage, however, New York City still falls short of D.C. in other areas that overall make the latter the preferable city for Black social mobility.

Education

[18] *Ibid*
[19] *Ibid*
[20] Crawford, D., & Das, K. (2020, January 28). *Black workers matter*. DC Fiscal Policy Institute. https://www.dcfpi.org/all/black-workers-matter/#_ednref8
[21] DC Department of Housing and Community Development, Lawyers' Committee for Civil Rights Under Law, & Poverty and Race Research Action Council (PRRAC). (2019, September). *Analysis of impediments to fair housing choice Washington, D.C.* https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/event_content/attachments/D.C.%20D raft%20Analysis%20of%20Impediments%20to%20Fair%20Housing%20Choice%209.27 .2019%20%281%29_2.pdf
[22] Afridi, L. (2018, December 19). *The racial jobs gap: who benefits from New York's economic growth*. Association for Neighborhood & Housing Development. https://anhd.org/report/racial-jobs-gap-who-benefits-new-yorks-economic-growth
[23] DC Health Matters. (n.d.). *Summary data for ward: Ward 8*. DC Health Matters. Retrieved May 1, 2023, from https://www.dchealthmatters.org/demographicdata?id=131495 Department of Small and Local Business Development. (2022, May 19). *Equity impact enterprise grants*. DC.gov. https://dslbd.dc.gov/equity-impact-enterprise-grants
[24] Crawford, D., & Das, K. (2020, January 28). *Black workers matter*. DC Fiscal Policy Institute. https://www.dcfpi.org/all/black-workers-matter/#_ednref8

Washington D.C.'s education system is more equitable for Black students than New York City's due to superior public resource allocation and high-quality Historically Black Colleges and Universities (HBCU's) that enable more Black students to attend college and provide pipelines for their participation in local industries. 89.5% of Washington D.C.'s Black population graduated from high school, as compared to 99.2% of White students.[25] New York City's students fare slightly worse, with 86.1% of Black individuals having graduated from high school as compared to 94% of the White population.[26] While D.C. fares slightly better statistically, both school systems have their problems and strong points. D.C. is currently grappling with a 30% annual teacher turnover rate – this is the city's highest figure in the past 3 years,[27] and significantly higher than the national rate of 16% as of 2019.[28] New York has identified its own problems with teacher retention: as of the 2017-18 school year, 15% of teachers left their classrooms; this figure is lower than the statewide average of 11%,[29] and it is likely higher today since the effects of the COVID-19 pandemic exacerbated state education on a national scale.[30] Where D.C. separates itself from New York, however, is in policy that provides aid to Black communities. While former New York City mayor Bill DeBlasio's Universal Pre-K program was controversial when it was launched in 2014, DC had already guaranteed Pre-K for all eligible students as of 2008.[31] D.C.'s Empowering Males of Color initiative, which began in 2016, garnered 20 million dollars worth of investments across three years to improve educational outcomes for males of color. The mission aims to increase literacy, attendance, and graduation rates amongst students, support enrollment in AP courses,

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[25] U.S. Census Bureau, "Educational Attainment," United States Census Bureau, last modified 2021, https://data.census.gov/table/ACSST1Y2021.S1501?q=Educational%20Attainment%20by%20race&g=040XX00US11.
[26] U.S. Census Bureau, "Educational Attainment," United States Census Bureau, last modified 2021, https://data.census.gov/table/ACSST1Y2021.S1501?q=Educational%20Attainment%20by%20race&g=160XX00US3651000.
[27] Gelman, S. (2023, March 17). DC schools' teacher retention rate falls for second year in a row. *WTOP News*, Washington, DC News. https://wtop.com/dc/2023/03/dcs-teacher-retention-rate-falls-for-second-year-in-a-row/#:~:text=The%20latest%20data%20from%20the,17%25%20left%20the%20city%20entirel y
[28] Bird, E., & Stringer, S. (2019, june 24). *Teacher residencies: Supporting the next generation of teachers and students*. New York City Comptroller. https://comptroller.nyc.gov/reports/teacher-residencies-supporting-the-next-generation-of -teachers-and-students/#_ftnref31
[29] *Ibid.*
[30] Barnum, M. (2023, March 6). *Teacher turnover hits new highs across the U.S.* Chalkbeat. https://www.chalkbeat.org/2023/3/6/23624340/teacher-turnover-leaving-the-profession-quitting-higher-rate#:~:text=That%27s%20a%20turnover%20rate%20of,a%20typical%20 pre%2Dpandemic%20year.
[31] Rozen, C. (2019, March 15). *On its tenth anniversary, here's where D.C.'s free preschool program stands*. DCist. https://dcist.com/story/19/03/15/on-its-tenth-anniversary-heres-where-d-c-s-free-preschool-program-stands/#:~:text=D.C.%20Public%20Schools%20became%20one,the%20Fou ndation%20for%20Child%20Development.

and prepare students for the college application process and their professional lives.[32] While the decision to focus on males exclusively is seemingly needlessly exclusionary, enacting a policy that explicitly focuses on people of color indicates a willingness from Washington D.C. officials to overtly invest in marginalized racial groups that are not displayed in New York.

Washington D.C. further supports its Black student population through a plethora of undergraduate educational opportunities. 33.7% of Black DC residents possess a bachelor's degree or higher, compared to 27.6% among Black New Yorkers and 24.9% nationally. While New York and D.C. possess comparably high-quality universities within their borders, D.C. can specifically pride itself on its HBCUs: Howard University and the University of the District of Columbia (UDC). HBCUs are of course beneficial to the Black community because they enroll majority Black students; 73% of Howard's 8,964 undergraduates identify as Black, whereas Black students only make up 8% of George Washington University's 11,502 and 8% of NYU's 28,772.[33] While Howard and UDC do, like most colleges, enroll students from out of state, their student bodies are disproportionately made up of in-state applicants, thus benefiting the residents of D.C. Howard's student body is 10% D.C. resident, [34] and New York's only HBCU, Medgar Evers College, is nowhere near as useful to the Black residents of New York. While Howard and UDC combined enroll around 12,000 undergraduates, Medgar Evers College only enrolls around 4,000.[35] Medgar Evers also has a 17% four-year graduation rate – equal to that of UDC, but 36% lower than Howard's four-year graduation rate of 53%– and it's ranked as a mere top 201 liberal arts college by US News. US News ranks universities by a myriad of factors emphasizing graduate outcomes and resources available to encourage positive outcomes, and it deems Howard the 89th strongest university in the US.[36] Howard's reputation as a well-resourced HBCU that regularly outputs

[32] District of Columbia Public Schools. (2016). *Empowering males of color*. https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/EMOC_1page r.pdf
[33] Fiske, E. B. (2022). *Fiske guide to colleges 2022* (38th ed.). Sourcebooks. Flynn, A., Warren, D. T., Wong, F. J., & Holmberg, S. R. (2017). The racial rules of education. In *The hidden rules of race: Barriers to an inclusive economy*. Cambridge University Press.
[34] *Ibid.*
[35] U.S. News & World Report Best Colleges Rankings. (2023). *Medgar Evers College--CUNY*. U.S. News & World Report. https://www.usnews.com/best-colleges/medgar-evers-college-cuny-10097
[36] U.S. News & World Report Best Colleges Rankings. (2023). *Howard University*. U.S. News & World Report. https://www.usnews.com/best-colleges/howard-university-1448

intelligent thinkers also allows it to shape the demographics of DC's workforce. Local companies are aware of Howard's reputation as one of the best universities in the nation, and this encourages local businesses to form connections with Howard in order to tap into employing its student body. These connections provide Howard students with a leg up as they look for work in D.C., as they can operate through direct pipelines between Howard and the workforce. Howard, and to a lesser extent UDC, thus provide their majority Black student bodies with footholds within Washington D.C.'s workforce. Pendergrass argues that these resources encourage permanent migration to a HBCU's home city,[37] which is especially necessary for D.C. considering the 'reverse great migration' is pulling many of the most well-resourced and intelligent members of the Black community to cities like Atlanta and Houston[38]. HBCUs like Howard University give young Black Americans a strong foothold into D.C.'s economy, and that effect is felt less in New York due to its lack of strong HBCUs.

Homeownership

In order for Howard to help the city thrive, Washington D.C. must be appealing enough to attract people to the city, especially with regard to the housing market. Washington D.C. is more affordable and inclusive than New York due to previous Black homeownership, affordable rentals, and a lower cost of living, thus making it a much more reasonable option for students and young professionals. Washington D.C. and New York City's Black homeownership rates are 35.2% and 26.8% respectively – both are below the national Black average of 44%, which is 21.5% less than the overall national average of 65.5%.[39] [40] While metropolitan areas are expected to have lower homeownership rates than the rest of the nation, the fact that both cities are in the midst of sharp declines in Black homeownership is cause for concern: D.C.'s rate has fallen from

[37] Sabrina Pendergrass (2013) Routing Black Migration to the Urban US South: Social Class and Sources of Social Capital in the Destination Selection Process, Journal of Ethnic and Migration Studies, 39:9, 1441-1459, DOI: 10.1080/1369183X.2013.815426

[38] Hunt, M. O., Hunt, L. L., & Falk, W. W. (2013). Twenty-First-Century trends in black migration to the U.S. south: Demographic and subjective predictors. *Social Science Quarterly*, *94*(5), 1398-1413.

[39] National Association of Realtors. (2023, March 2). *More Americans own their homes, but Black-White homeownership rate gap is biggest in a decade, NAR report finds*. https://www.nar.realtor/newsroom/more-americans-own-their-homes-but-black-white-homeownership-rate-gap-is-biggest-in-a-decade-nar#:~:text=While%20the%20U.S.%20homeownership%20rate,rate%20gap%20in%20a%20decade.

[40] Jones, J. (2023, March 7). *Cities with the highest (and lowest) minority homeownership rates*. Construction Coverage. https://constructioncoverage.com/research/cities-with-the-highest-minority-homeownersh ip-rates-2021

46% in 2005 to 34% in 2022,[41] and New York City has endured a 13% decline since 2000[42]. While D.C. does have a significantly higher Black homeownership rate than New York, that difference can hardly be credited to either city's recent actions, as they have failed to maintain Black homeownership at an equally discouraging pace across the 21st century. Instead, D.C.'s superior Black homeownership rate can likely be attributed to its history. As previously mentioned, the city was 71.1% Black as recently as 1970.[43] Being that the city has had a greater portion of historical Black residents, it can be inferred that the city's property is simply more likely to be owned by Black people, even if D.C.'s policies weren't particularly progressive. Washington D.C. does inspire hope for the future of Black homeownership, however, as mayor Muriel Bowser has explicitly stated that she aims to increase Black homeownership by 20,000 people by 2030.[44] She has recruited the help of the Black Homeownership Strike Force (BHSF) to establish recommendations on how to meet that goal, and she has already invested $10 million into a Black Homeownership Fund.[45] Other recommendations currently being investigated by the city include passing legislation to protect homeowners from harassment, providing support to existing Black homeowners struggling with repairs or other costs associated with homeownership, and increasing the supply of homes that are available to Black people interested in buying.[46] On the other hand, New York City's mayor Eric Adams, and his colleagues have not made any declarations as bold as Bowser's with respect to increasing black homeownership; that's likely because in New York's notoriously expensive housing market, such lofty ambitions simply aren't realistic. The cost of living in Washington D.C. is 38% lower than it is in New York [47], and the cost burden rate is much higher in New York, as 50% of New Yorkers spend more than

[41] Brice-Saddler, M. (2022, october 3). D.C. mayor's latest goal: 20,000 new Black homeowners by 2030. *The Washington Post*, D.C. Politics. https://www.washingtonpost.com/dc-md-va/2022/10/03/dc-bowser-black-homeownership-strike-force/#:~:text=Racial%20covenants%20and%20disparities%20in,strike%20force %27s%2028%2Dpage%20report.

[42] Sequeira, R. (2022, July 5). Black homeownership in NYC is on a 20-year decline. A free estate planning pilot could be a key in bridging racial wealth gaps. *The Bronx Times*, News.https://www.bxtimes.com/black-homeownership-nyc-20-year-decline/

[43] Rusk, D. (2017, July). *Goodbye to chocolate city*. D.C. Policy Center. https://www.dcpolicycenter.org/publications/goodbye-to-chocolate-city/

[44] Brice-Saddler, M. (2022, october 3). D.C. mayor's latest goal: 20,000 new Black homeowners by 2030. *The Washington Post*, D.C. Politics. https://www.washingtonpost.com/dc-md-va/2022/10/03/dc-bowser-black-homeownership-strike-force/#:~:text=Racial%20covenants%20and%20disparities%20in,strike%20force %27s%2028%2Dpage%20report.

[45] Executive Office of the Mayor. (2022, October 3). *Mayor Bowser announces a new goal to increase Black homeownership by 20,000 homeowners by 2030*. Government of the District of Columbia, Muriel Bowser, Mayor. https://mayor.dc.gov/release/mayor-bowser-announces-new-goal-increase-black-homeow nership-20000-homeowners-2030

[46] *Ibid.*

[47] Livingcost.org. (2023, May 4). *New York City vs Washington - cost of living comparison*. https://livingcost.org/cost/new-york/washington

30% of their income on housing, as compared to 40% of D.C. residents[48]. Supporting policies do of course exist, such as the HomeFirst Down Payment Assistance Program, which provides up to $100,000 to first-time New York City homebuyers who meet a myriad of criteria, but Bowser's lofty ambitions indicate the potential for more impactful and significant change in D.C.

Employment

While education and housing are essential facets of social mobility in any modern city, one cannot reap the rewards of either system without the opportunity to build wealth. This can most profitably be achieved in one's lifetime through entrepreneurship, which is arguably D.C.'s most beneficial strength for Black populations in comparison to New York. Washington D.C. is a fruitful location for Black entrepreneurship and employment because startups are encouraged by policy, a thick labor market, and a strong social network that promotes innovation. By every available metric, D.C. blows the vast majority of other American cities out of the water in terms of Black entrepreneurship. 2.1% of New York businesses are Black-owned.[49] While this figure seems small, it's not far off from the national average of 3%.[50] Washington D.C., however, sports the highest percentage of Black-owned businesses of any American city: 28%[51]. Any Black professional looking to start a business would almost certainly consider D.C. before New York. Ironically, New York is arguably more aggressive in supporting Black-owned businesses through policy; in 2019 New York invested $10 million into Black Entrepreneurs NYC,[52] a program meant to provide resources and support to New York's Black-owned businesses. BE NYC's opening report listed its initial steps to furthering Black business, one of which includes cooperating with private and public investors to provide equitable funding and strengthening the

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[48] Apartment List, & Black@A-List. (2022, February 17). *Best cities for Black professionals, 2022*. Apartment List. https://www.apartmentlist.com/renter-life/best-cities-for-black-professionals-2022

[49] NYC Department of Small Business Services. (2020). *Advancing Black entrepreneurs in NYC*. https://www.nyc.gov/assets/sbs/downloads/pdf/businesses/BENYC-briefing-paper.pdf

[50] Leppert, R. (2023, February 21). *A look at Black-owned businesses in the U.S.* Pew Research Center. https://www.pewresearch.org/short-reads/2023/02/21/a-look-at-black-owned-businesses-in-the-u-s/#:~:text=Despite%20this%20growth%2C%20businesses%20majority,from%20 classifiable%20companies%20that%20year.

[51] Department of Small and Local Business Development. (2022, August). *National Black business month*. DC.gov. https://dslbd.dc.gov/node/1609876

[52] BE NYC. (2020, August). *Advancing Black entrepreneurship in New York City*. NYC Department of Small Business Services. https://www.nyc.gov/assets/sbs/downloads/pdf/about/reports/benyc-report-digital.pdf

network between New York's Black entrepreneurs.[53]

New York is looking to strengthen its Black entrepreneurial community to a level that D.C. already maintains. The city's history of a majority Black population, and thus many Black businesses, has combined with the previously outlined advantages of attractive HBCUs and affordable properties to rent or buy to grant the city a thick labor market comprised of skilled employees and potential employers.[54] Black individuals who come to D.C. looking for work can find many Black-owned businesses as potential employers and Black business owners can sort through thousands of qualified candidates to find the one who best suits their company's needs. This high concentration of Black business owners also results in increased knowledge spillover, as good ideas are more easily generated with multiple high-powered thinkers in proximity to each other, thus enabling Black businesses to optimize how they run their businesses through the ideas of others[55]. As for why thick markets of Black businesses are conducive to knowledge spillover as opposed to mixed-race ones, Pendergrass argues that possessing a mutual understanding of the Black American experience more easily allows Black people to "learn to identify with each other and support each other's initiative."[56] When job interviewers assess a candidate's ability to 'fit the company culture,' for example, they are partially screening for race, as race and culture are intimately intertwined. It thus follows that Black applicants are more likely to fit into the 'company culture' of a Black-owned business, just as White applicants are more likely to match the culture of a PWI. D.C.'s high concentration of well-educated Black citizens enables the success of its Black-owned business community to thrive at a level above that of New York.

Conclusion and Research Applications

Washington D.C.'s phenomenal market for entrepreneurship depends on the city's solid

[53] *Ibid.*
[54] Moretti, E. (2012). Forces of attraction. In *The new geography of jobs* (pp. 153-190). Harper Business.
[55] *Ibid.*
[56] Sabrina Pendergrass (2013) Routing Black Migration to the Urban US South: Social Class and Sources of Social Capital in the Destination Selection Process, Journal of Ethnic and Migration Studies, 39:9, 1441-1459, DOI: 10.1080/1369183X.2013.815426

foundations for social mobility, which stems from D.C.'s strong education system and accessible housing market. The benefits of these traits reinforce themselves in a cyclical manner, as D.C.'s successful educational and housing opportunities have created the thick labor market that allowed the unprecedented growth of Black entrepreneurship. It's especially notable that a thick Black labor market proved to be essential to Washington D.C.'s superiority over New York City, especially because Washington D.C. is largely composed of two races – only 19% of residents are neither White nor Black – whereas New York is more diverse, as 44% of residents are neither White nor Black.[57] This finding seems to imply that having a high concentration of fewer races is better for a city's economy. This theory makes sense considering the widely reported difficulties faced by Black people looking to network in predominantly White professional environments. Katherine Phillips, Tracy Dumas, and Nancy Rothbard of the Harvard Business Review suggest these difficulties could stem from a feeling of unease and distrust around opening up and forming connections across racial lines, noting that similarity attracts within professional and social relationships.[58] A sample size of two cities simply isn't very much, and New York and Washington D.C. are certainly subject to thousands of invisible forces undescribed in this paper, but the advantages of a demographically homogeneous labor market are worthy of interrogation. Further research might analyze the labor markets of other cities, contrasting the economic successes of minority groups with the levels of racial homogeneity or heterogeneity within their respective workforces. The implications of this phenomenon spell out a whole different problem; suggestions of segregation feel outrageous considering its well-documented potential for discrimination, and they would be dangerous and inflammatory without appropriate research and nuance. Regardless of greater implications, the success of Washington DC's Black entrepreneurial market may point to a bizarre truth about the effect of homogeneous racial demographics on a city's economy.

[57] U.S. Census Bureau, "Race," United States Census Bureau, last modified 2021, https://data.census.gov/table?q=Population&g=040XX00US11&tid=DECENNIALPL2020.P1.
[58] Phillips, K., Dumas, T., & Rothbard, N. (2018, March). Diversity and authenticity. Harvard Business Review. https://hbr.org/2018/03/diversity-and-authenticity

New York Rifle & Pistol Association vs. Bruen and its Implications for Gun Regulations

By: Michelle Tucker

In a landmark decision, the Supreme Court of the United States struck down New York's restriction on publicly carrying weapons, ruling 6-3 in the case of *New York Rifle & Pistol Association vs. Bruen* (2022) that New York's open carry regulation violated the Second and Fourteenth Amendments.[1] Under New York law, individuals originally had to prove "proper cause" to obtain a firearm permit, demonstrating that they faced extreme danger. Otherwise, they could only obtain a restricted permit allowing firearm possession within an individual's personal home or business.[2] When Robert Nash and Brandon Koch tried to purchase an unlimited firearm permit in New York, they were denied because they could not prove they were in enough danger to warrant such a license.[3] Nash and Koch sued the superintendent of the New York State Police, allerging that New York's proper cause requirement violated the Fourteenth Amendment right of law-abiding citizens to exercise their Second Amendment rights. The New York Supreme Court dismissed the case in 2018, and the 2nd Circuit Court dismissed the case in 2020 as well. The Supreme Court of the United States accepted the case in 2021[4].

In 2022, the Supreme Court ruled that the New York law violated the Second and Fourteenth Amendments, concluding that the Second Amendment does not restrict any law-abiding adult citizen from obtaining a weapon for self-defense. Justice Clarence Thomas wrote in his opinion that any gun restriction policy must be "consistent with the Nation's historical tradition of firearm regulation."[5] This is the new test for which the Supreme Court will assess gun regulations going forward; thus, the bulk of the court's opinion derives from an analysis of firearm restrictions of the past. This historical analysis focused on precedents dating back to the 18th century, as modern gun regulations must be aligned with regulations from this nation's founding. Ultimately, the court determined that there is no historical precedent for

[1] New York State Rifle & Pistol Association, Inc., et al. v. Bruen, Superintendent of New York State Police, et al. (Supreme Court of the United States, 23 June 2022)
[2] "New York State Rifle & Pistol Association Inc. v. Bruen." Oyez, www.oyez.org/cases/2021/20-843. Accessed 6 Feb. 2024.
[3] Vogue, Ariane de, and Tierney Sneed. "Supreme Court Says Constitution Protects Right to Carry a Gun Outside the Home | CNN Politics." *CNN*, Cable News Network, 23 June 2022, www.cnn.com/2022/06/23/politics/supreme-court-guns-second-amendment-new-york-brue n/index.html.
[4] Stuart, C. (2018, February 2). *New Yorkers Sue Police for Right to Carry Guns in Public*. Courthouse News Service. https://www.courthousenews.com/new-yorkers-sue-police-for-right-to-carry-guns-in-public
[5] Sneed, T. (2022, June 23). *What the Supreme Court's new gun rights ruling means*. CNN. https://www.cnn.com/2022/06/23/politics/second-amendment-gun-rights-supreme-court-new-york-test/index.html

which New York's law concurs and that the Second Amendment does not limit the right to bear arms to one's home. Furthermore, the court found no historical precedent for "proper cause" as a barrier to obtaining a firearm.

This ruling has many implications for the future of firearm restrictions. Not only does it open the door for more cases challenging state gun regulations,it also complicates how these regulations are able to be applied in the future. [6]The new standard set forth by Justice Thomas, which states, "to justify a firearm regulation the government must demonstrate that the regulation is consistent with the Nation's historical tradition of firearm regulation," sets a high barrier for state legislators to clear in order to restrict gun ownership. This standard requires states to prove their legislation is consistent with 18th-century criteria. However, gun safety concerns today are not the same as they were when this nation was founded. With more technologically advanced weapons on the market and school shootings on the rise, the problems of today do not reflect the problems of 18th-century Americans. Nevertheless, gun safety protocols must meet the Supreme Court's new antiquated standards.

This juxtaposition between modern issues and historical precedent has already been an issue with *United States vs. Rahimi* (2023). Zackey Rahimi was convicted of multiple violent offenses, including domestic violence. Rahimi was then convicted of possession of a firearm while subject to a protective order issued by his ex-girlfriend. Rahimi challenged this law, arguing that his Second Amendment right had been violated. The 5th Circuit Court ruled against the law in accordance with the new standard.[7] The court argued that they could not find any law dating back to the 17th or 18th centuries that restricted gun ownership for those convicted of domestic violence.[8] Therefore, the court could not enforce a law that does not resemble a similar law from the founding era. In the 17th and 18th centuries, it was normal for husbands to "chastise" their wives.[9] There were no laws from this era that restricted gun ownership from domestic abusers, as domestic abuse was rarely seen as criminal.[10] The ACLU argues that the 5th Circuit Court's ruling was a misinterpretation of *Bruen*. They assert that by requiring courts

[6] Valentine, Matt. "Clarence Thomas Created a Confusing New Rule That's Gutting Gun Laws." *POLITICO*, 28 July 2023, www.politico.com/news/magazine/2023/07/28/bruen-supreme-court-rahimi-00108285#:~:text=As%20laid%20out%20by%20Justice,ways%2C%20with%20some%20determining% 20historical.
[7] 2024. United States v. Rahimi (Supreme Court of the United States, 7 November 2023)
[8] "United States v. Rahimi." Oyez, www.oyez.org/cases/2023/22-915.
[9] Valentine, M. (2023, July 28). Clarence Thomas Created a Confusing New Rule That's Gutting Gun Laws. *POLITICO*. https://www.politico.com/news/magazine/2023/07/28/bruen-supreme-court-rahimi-00108285
[10] Swan, Betsy Woodruff. "Supreme Court Will Decide Whether Domestic Abusers Can Have Guns." *POLITICO*, 30 June 2023, www.politico.com/news/2023/06/30/supreme-court-guns-domestic-abusers-00104445.

to find a law that directly mirrors a founding-era law, they will be forced to disregard violence against women and minorities. Furthermore, the *Bruen* decision only protects the rights of "law-abiding, responsible citizens" for which Rahimi is not. However, historical precedent does not categorize domestic abusers as violent criminals. Therefore, the new standard by which judges must assess gun regulations does not dictate how to handle this case.[11]

The Supreme Court heard *Rahimi* in November of 2023. During this hearing, Justice Kentanji Brown Jackson raised concerns about *Bruen*. By deferring to founding-era traditions, Justice Jackson is concerned that the Court must also overlook violence against Black or Native Americans because violence against these peoples was normalized in the founding era. Justice Jackson asked General Prelogar, who appeared representing the United States, how legislators should proceed if there is not any principle from the founding era that relates to a modern concern. General Prelogar replied:

> "So I think, if there is no relevant principle that a law would slot into, like sensitive place regulation or dangerous person regulation, then you would conduct the *Bruen* analysis in order to help try to identify those principles of the Constitution that define the scope of the Second Amendment right. But it wouldn't just be a hunt for a particular, precise historical analogue. I -- I think that that's really a caricature of *Bruen*, and that would make the Second Amendment a true outlier because there's no constitutional right that's dictated exclusively by whether there happened to be a parallel law on the books in 1791." (Prelogar 2023)

This answer does not necessarily ensure that marginalized people will be protected going forward. Neither does Justice Thomas's clarification of the standard. He said:

> "Analogical reasoning requires only that the government identify a well-established and representative historical analogue, not a historical twin. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster".

Although *Bruen* does not require legislators to find an exact twin law from the founding era, it requires them to be analogous to 18th-century principles. *Rahimi* will be among the first

[11] ACLU. "United States v. Rahimi." *American Civil Liberties Union*, 19 Sept. 2023, www.aclu.org/cases/united-states-v-rahimi.

cases to put *Bruen* to the test. This decision will determine if domestic abusers have the Second Amendment right to bear arms. Future cases will decide to what extent legislators must ensure their gun regulations mirror those from the founding era, though it is evident that the tension between historical precedence and contemporary realities will remain a central aspect of debates surrounding gun regulations.

Sasnett vs Sullivan and the Ethos of the American Prison System

By: Michael Krensavage

Modern discourse around the reform or abolition of the American prison system has forced the informed citizen to reexamine the purpose of prison itself. What benefit does imprisoning those who violate our rules yield for society? On a theoretical level, the exact values behind the various prison systems of the world can't be pinned down, but I can identify four values that hold near universal value: retribution, imbuing the victim(s) of a crime with a sense of justice and contentment; incapacitation, preventing individuals who are known to be both capable and willing to break the law from doing it again; deterrence, persuading citizens to not commit crimes in order to avoid punishment; and rehabilitation, providing incarcerated individuals with the resources to improve as people so that they don't commit these same crimes again. Prison abolitionists often cite the United States' prison system's failure to fulfill this final responsibility, rehabilitation, as an argument to completely discard the current system. Prisons do not exist to pursue these philosophical values alone (nor does anything), – the hidden factor of profit undoubtedly motivates the prison industrial complex which generates over 4 billion dollars annually[1] – but the values that the collective consciousness of a society imbue onto its prison systems do inform how the system operates. Being that United States law and policy attempts to shape its systems based on the society's cultural consciousness, we can assess the most prioritized values of the American prison system through an assessment of the laws that govern it.

Sasnett vs Sullivan (1996) is a case surrounding religious expression and prisoners' rights that was ruled upon by judge Barbara Crabb of the United States District Court for the Western District of Wisconsin. The plaintiffs, represented by Sasnett, argue against the legality of regulations established by a prison that banned its prisoners from wearing necklaces with crosses and limited their property ownership to 25 books, which pushed some prisoners to give up religious texts. Their primary contention is the following: "The enforcement of these procedures violates their rights 1) to free exercise of religion under the First Amendment, by substantially burdening their exercise of religion using a means not rationally related to a legitimate

[1] Haberman, Clyde. "For Private Prisons, Detaining Immigrants Is Big Business." New York Times. Last modified October 1, 2018. Accessed March 1, 2024. https://www.nytimes.com/2018/10/01/us/prisons-immigration-detention.html.

governmental purpose; 2) to free exercise of religion under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, by imposing a substantial burden on their practice of religion, in the absence of a compelling governmental interest and without using the least restrictive means of furthering a governmental interest; and 3) to due process under the Fourteenth Amendment by restricting their liberty interest in religious materials and items without affording plaintiffs the process due such deprivation."[2] The half of the case dealing with book ownership is relatively simple. The prison claims a compelling interest in limiting the property ownership of prisoners in order to reduce fire hazards, and owning 25 books at a time is not particularly limiting for those primarily interested in religious texts. Even if the limit of 25 was not enough, prisoners were offered the possibility of donating their books to the prison's library system and then renting them out. In short, the 25 book rule did not significantly infringe on the rights to religious freedom afforded by American law.[3]

The case in regards to the prisoners wearing their chains is much more contentious. The defendants state that the 'compelling governmental interest' (as cited in the Religious Freedom Restoration Act, or RFRA) required to justify this law originates from the desire to restrict violence and gang affiliation, as necklaces can be used to signal gang affiliation to other prisoners and even presents danger of strangling.[4] The plaintiffs' main argument also falls primarily under interpretation of RFRA. While the rules and sacred texts of Christianity do not literally obligate wearing a cross around one's neck, it does fall under the category of an action 'motivated by sincere religious belief,' which is protected by RFRA. The next step in the case is thus to determine whether the regulation preventing prisoners from wearing crosses is a 'substantial burden' to their religious practice. Crabb decides that it is, citing how several of the plaintiffs represented by Sasnett were significantly empowered to exercise their religion thanks to their crucifixes: "Plaintiffs wore their crosses at all times (except for plaintiff Miller who took her cross off when she bathed) because of sincere, religious beliefs that the crosses helped them to advance their faiths. Sasnett is a chapel employee who wants to become a minister; he wore his cross as a continuous reminder of his faith. Smith is a participant in prison bible study and a chapel band, who believes that the cross helps him to get to know God and deal with other people better. Miller feels closer to God when she wears her cross."[5] With this substantial burden established, the case becomes a judgment call. Is the defendants' 'compelling governmental

[2] Sasnett v. Sullivan, 908 W.D. (US District Court for the Western District of Wisconsin Jan. 9, 1996). Accessed March 1, 2024. https://law.justia.com/cases/federal/district-courts/FSupp/908/1429/1457544/.
[3] Sasnett v. Sullivan, 908 W.D. (US District Court for the Western District of Wisconsin Jan. 9, 1996). Accessed March 1, 2024. https://law.justia.com/cases/federal/district-courts/FSupp/908/1429/1457544/.
[4] Sasnett v. Sullivan, 908 W.D. (US District Court for the Western District of Wisconsin Jan. 9, 1996). Accessed March 1, 2024. https://law.justia.com/cases/federal/district-courts/FSupp/908/1429/1457544/.
[5] Sasnett v. Sullivan, 908 W.D. (US District Court for the Western District of Wisconsin Jan. 9, 1996). Accessed March 1, 2024. https://law.justia.com/cases/federal/district-courts/FSupp/908/1429/1457544/.

interest' in reducing prison violence strong enough to justify the burden placed on the prisoners and their ability to practice their religion?

This gray area is where the theoretical purpose of prisons enters the conversation. One operating from a perspective focused on deterrence and retribution might argue that enduring a burden on one's ability to express themselves religiously is a necessary punishment of the system. In order for prison to sufficiently deter people from committing crimes and make victims feel as if justice has been served, it must be a negative experience. This includes reduced access to one's rights, which is already an established and accepted consequence of incarceration.[6] One approaching prison with the aim of rehabilitation, however, would view this case entirely differently. In my opinion, the most interesting quote from the above description of the ways in which the plaintiffs felt their crucifixes enabled their connections with God is in reference to Lonnie Smith, who asserts that his cross not only enabled him to connect with God

but also to interact more positively with other people. Smith's faith is clearly a crucial aid to his rehabilitation. Any prison system interested in allowing the incarcerated to develop as people so that they can live fulfilling, socially productive lives on the other side must value this quote to a high degree.

Crabb ultimately sides with the plaintiffs, citing the fact that the ban on crosses was not the least invasive means of restriction, which is required of any regulation that substantially burdens one's ability to express themselves religiously. While Crabb does not make any explicit suggestions for a less restrictive regulation, she does reference a compromise proposed by the plaintiffs in which prisoners would be enabled to wear their crosses under their shirts but not over.[7] Crabb also makes no explicit mention of the rehabilitative or punitive purposes of prison, but her decision sets a judicial precedent in its respect for the rights of prisoners. Each precedent informs the purpose of the American prison system, and Crabb's decision to reinforce the rights of prisoners to religious expression supports an optimistic narrative about the purpose of prison: by passing and ruling upon legislation that emphasizes the humanity and agency of prisoners, the American prison system can mend itself by becoming more conducive to rehabilitation.

[6] Find Law. Last modified July 19, 2022. Accessed March 1, 2024. https://constitution.findlaw.com/amendment1/free-speech-rights-of-prisoners.html#:~:text=Inmates%20lose%20their%20right%20to,of%20their%20First%20Amendment%20righ ts.

[7] Sasnett v. Sullivan, 908 W.D. (US District Court for the Western District of Wisconsin Jan. 9, 1996). Accessed March 1, 2024. https://law.justia.com/cases/federal/district-courts/FSupp/908/1429/1457544/.

Barriers to Chilean Constitutional Change: The Politics of Neoliberal Discontent and Reform

By: Daniel Bomberger

The 2022 draft of the Chilean Constitution was meant to overhaul many of the neoliberal policies enshrined by the old constitution that had governed Chile for decades. The old constitution, created in 1980 during the Pinochet regime, significantly limited government influence in the economy to promote free markets.[1] In 2019, after several years of making amendments to the 1980 Constitution, widespread economic insecurity prompted protests across Chile that opposed the constitution and its neoliberal principles in their entirety.[2] These protests created pressure on the government, eventually prompting them to hold a referendum in which 78% of Chileans voted to draft a new constitution.[3] Chileans also decided that this new constitution should be drafted by the elected members of a constitutional convention.[4] The members of the constitutional convention were elected in May of 2021, and by July of 2022, they had drafted a new Chilean Constitution.[5] Despite the high levels of support for a new constitution in 2019, when Chileans voted on the ratification of the 2022 draft of the document, they overwhelmingly voted to reject it.[6] To understand why Chileans rejected the 2022 Constitution, we must examine how public debates around the constitution shaped public opinion. Leading up to the referendum, instead of focusing on the structural economic changes made by the constitution, debates about the 2022 Constitution centered around the most progressive elements of the constitution. As a result, many Chileans felt their economic interests were sidelined in favor of progressive policies and became distrustful of the liberal representatives within the constitutional convention, leading them to vote against the 2022 constitution.

When examining how public debates around the 2022 Chilean Constitution developed, it

[1] Schmidt, Samantha. "Chilean Voters Decisively Reject Leftist Constitution." The Washington Post, September 4, 2022, https://www.washingtonpost.com/world/2022/09/04/chilevotes-constitution-referendum/.
[2] Edwards, Sebastian. The Chile Project: the Story of the Chicago Boys and the Downfall of Neoliberalism. Princeton University Press, 2023, pp. 218-219.
[3] Gay, Arlette, et al. "The Moment of Truth for Chile's New Constitution." NACLA, July 13, 2022, https://nacla.org/moment-truth-chiles-new-constitution.
[4] *ibid.*
[5] *ibid.*
[6] Rojas, René. "Chile's Vote Was a Rebuke of the 21st-Century Left. Will We Listen?" Jacobin, December 12, 2022, https://jacobin.com/2022/12/chiles-vote-was-a-rebuke-of-the-21st-century-left-will-we-listen.

is important to understand the issues that were facing Chileans in 2019. The 2019 protests that sparked support for a new constitution were primarily driven by unequal access to goods and widespread economic insecurity.[7] While neoliberal policies had significantly lessened income inequality and reduced poverty throughout Chile by 2019, the country still suffered from worse social inequalities than many of its neighbors.[8] Throughout Chile, there continued to be large discrepancies between social classes in access to basic necessities such as work, education, and housing.[9] Furthermore, widespread collusion among companies and politicians, which oftentimes went unpunished, indicated to many Chileans that the neoliberal constitution primarily served the interests of the wealthy elites.[10] The 2022 Constitution attempted to rectify the inequalities that neoliberal policies created by increasing the punishments for abuses of power and allowing sanctions for activities that are "contrary to the social interest," enabling the government to more effectively combat collusion and elitism.[11]

Economic insecurity was another issue that prompted dissatisfaction with the 1980 constitution among Chileans. For many years, neoliberal welfare policies in Chile solely focused on addressing poverty by allocating resources to the "deserving poor."[12] The unforgiving restrictions on eligibility for receiving aid meant that many families who were slightly above the poverty line received no support from the government, leaving them particularly vulnerable to any economic shock.[13] Additionally, flaws within Chile's privatized pension system meant that many people received significantly less than they expected from their pensions.[14] These low payments jeopardized the economic security of retired Chileans, as they could no longer afford the same standard of living that they had when they were employed.[15] Economic insecurity in Chile was worsened by the emergence of the COVID-19 pandemic in 2020, which reduced

[7] Edwards, Sebastian. The Chile Project: the Story of the Chicago Boys and the Downfall of Neoliberalism. Princeton University Press, 2023, pp. 213-232.
[8] *ibid.*
[9] *ibid.*
[10] *ibid.*
[11] Gay, Arlette, et al. "The Moment of Truth for Chile's New Constitution." NACLA, July 13, 2022, https://nacla.org/moment-truth-chiles-new-constitution.
[12] Edwards, Sebastian. The Chile Project: the Story of the Chicago Boys and the Downfall of Neoliberalism. Princeton University Press, 2023, pp. 226 and 243.
[13] *ibid.*
[14] *ibid.*
[15] *ibid.*

employment by over 20% in the first year[16] and subjected Chileans to increased crime and violence, creating widespread economic and political insecurity.[17] The 2022 Constitution attempted to mitigate this widespread insecurity by affirming a new set of social rights, including the right to housing, education, and health, in order to ensure that everyone could rely on the government to support them even when they were unable to support themselves.[18]

Of the Chilean voters who wanted to ratify the 2022 Constitution, the vast majority cited these structural economic changes that targeted insecurity and inequality as their primary motivation.[19] Comparatively, less than 14% of those who voted against the new constitution cited these structural changes as the reason they were rejecting the constitution, arguing that it would infringe on neoliberal ideals of individual freedoms and strong property rights.[20] Many of these objections to the 2022 Constitution stemmed from Chile's history of neoliberal policies. For instance, reforming the pension system was a heavily debated topic in 2022 because many Chileans didn't want the government to increase its control over money in their pension, which they have historically owned and controlled.[21] These Chileans believed that the current neoliberal constitution promoted freedom and that an influx of new social rights would jeopardize that.[22] Similarly, many argued that the neoliberal history of free market policies had greatly benefited Chile and that these changes could destroy the economy.[23] Despite these criticisms, the poll results indicate that the structural economic reforms at the center of the 2022 Constitution were popular among Chilean voters, the majority of whom were no longer concerned with protecting or pursuing neoliberal ideals of property rights and economic freedom.

In addition to combating economic inequality and insecurity, the elected constitutional

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[16] Organization for Economic Cooperation and Development. "OECD Economic Surveys: Chile 2021." OECDiLibrary, 2021, https://www.oecd-ilibrary.org/sites/e5a68274-en/index.html?itemId=/content/component/e5a68274-en.
[17] Rojas, René. "Chile's Vote Was a Rebuke of the 21st-Century Left. Will We Listen?" Jacobin, December 12, 2022, https://jacobin.com/2022/12/chiles-vote-was-a-rebuke-of-the-21st-century-left-will-we-listen.
[18] Gay, Arlette, et al. "The Moment of Truth for Chile's New Constitution." NACLA, July 13, 2022, https://nacla.org/moment-truth-chiles-new-constitution.
[19] Rojas, René. "Chile's Vote Was a Rebuke of the 21st-Century Left. Will We Listen?" Jacobin, December 12, 2022, https://jacobin.com/2022/12/chiles-vote-was-a-rebuke-of-the-21st-century-left-will-we-listen.
[20] *ibid.*
[21] Edwards, Sebastian. The Chile Project: the Story of the Chicago Boys and the Downfall of Neoliberalism. Princeton University Press, 2023, pp. 252.
[22] Schmidt, Samantha. "Chilean Voters Decisively Reject Leftist Constitution." The Washington Post, September 4, 2022, https://www.washingtonpost.com/world/2022/09/04/chilevotes-constitution-referendum/.
[23] *ibid.*

convention also sought to address issues raised by different social organizations that participated in the 2019 protests. During the election of representatives for the constitutional convention, Chileans voted primarily for representatives who were affiliated with leftist social movements instead of politicians from established political parties.[24] This led to the inclusion of a number of socially progressive provisions within the 2022 Constitution, often reflecting the narrowly defined interests of various activist groups represented within the convention.[25] Many of these provisions were focused on the specific concerns of marginalized groups in Chile, meaning they lacked the broad appeal of structural economic reforms.[26] These provisions generated controversy among moderate Chileans because they were viewed as being too new and radical to include within the 2022 Constitution.[27]

One provision within the 2022 constitution that was particularly controversial was the acknowledgment that Chile was a "plurinational" state. This acknowledgment involved granting special rights to indigenous groups and increasing the political power that these groups had.[28] Many Chileans disagreed with this provision, leveraging the neoliberal argument that granting positive social rights to a particular group in Chile would give benefits to those who don't deserve them, ultimately reifying and worsening inequality.[29] Others argued that this provision would jeopardize national unity by recognizing indigenous Chileans as separate from the rest of the Chilean population.[30] Ultimately, when polled, only 4% of Chileans responded that they supported the 2022 Constitution because of the benefits it gave to indigenous peoples, while a large segment of Chileans who voted to reject the constitution stated that indigenous rights were the reason for their decision.[31] In fact, the areas in Chile with the largest indigenous populations voted overwhelmingly to reject the new constitution, illustrating that these policies were not

[24] Gay, Arlette, et al. "The Moment of Truth for Chile's New Constitution." NACLA, July 13, 2022, https://nacla.org/moment-truth-chiles-new-constitution.
[25] *ibid.*
[26] Rojas, René. "Chile's Vote Was a Rebuke of the 21st-Century Left. Will We Listen?" Jacobin, December 12, 2022, https://jacobin.com/2022/12/chiles-vote-was-a-rebuke-of-the-21st-century-left-will-we-listen.
[27] ibid.
[28] Gay, Arlette, et al. "The Moment of Truth for Chile's New Constitution." NACLA, July 13, 2022, https://nacla.org/moment-truth-chiles-new-constitution.
[29] *ibid.*
[30] Schmidt, Samantha. "Chilean Voters Decisively Reject Leftist Constitution." The Washington Post, September 4, 2022, https://www.washingtonpost.com/world/2022/09/04/chile votes-constitution-referendum/.
[31] Rojas, René. "Chile's Vote Was a Rebuke of the 21st-Century Left. Will We Listen?" Jacobin, December 12, 2022, https://jacobin.com/2022/12/chiles-vote-was-a-rebuke-of-the-21st-century-left-will-we-listen.

popular even among the minority groups that they sought to benefit.[32]

Another provision of the 2022 Constitution that created significant controversy was the requirement for gender parity. The new constitution would require gender parity in positions of popular representation across all levels of government, public companies, and autonomous bodies, which was something that no other constitution had ever done.[33] Like the acknowledgment of plurinationality, the requirement for gender parity faced criticism for granting benefits based on identity rather than merit. It also suffered from the same issue of sacrificing broad appeal to elevate the rights of a particular vote.[34] As a result, it received a similarly low level of support, with only 10% of Chileans citing feminist values as the reason they voted for the new constitution.[35] In contrast, the vast majority of Chileans believed that the 2022 Constitution focused too much on feminism, with many citing it as the reason they voted against the constitution.[36] While the constitution included other progressive activist concerns, such as environmental rights and abortion rights, these ideas were not as radical or novel as the requirements for gender parity and plurinationality.[37] Despite these provisions being comparatively tame, they were still widely cited as reasons why Chilean voters rejected the 2022 constitution.[38]

While the provisions within the 2022 Constitution created controversy, there was also a lack of confidence in the constitutional convention that drafted the document. Since many members of the constitutional convention were activists, Chileans began to believe that they were politically incompetent due to their lack of experience in positions of political power.[39] Furthermore, the moralizing lens through which many of these members made their demands cast

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[32] *ibid.*
[33] Gay, Arlette, et al. "The Moment of Truth for Chile's New Constitution." NACLA, July 13, 2022, https://nacla.org/moment-truth-chiles-new-constitution.
[34] Rojas, René. "Chile's Vote Was a Rebuke of the 21st-Century Left. Will We Listen?" Jacobin, December 12, 2022, https://jacobin.com/2022/12/chiles-vote-was-a-rebuke-of-the-21st-century-left-will-we-listen.
[35] *ibid.*
[36] *ibid.*
[37] Gay, Arlette, et al. "The Moment of Truth for Chile's New Constitution." NACLA, July 13, 2022, https://nacla.org/moment-truth-chiles-new-constitution.
[38] *Rojas, René. "Chile's Vote Was a Rebuke of the 21st-Century Left. Will We Listen?" Jacobin, December 12, 2022, https://jacobin.com/2022/12/chiles-vote-was-a-rebuke-of-the-21st-century-left-will-we-listen.*
[39] Gay, Arlette, et al. "The Moment of Truth for Chile's New Constitution." NACLA, July 13, 2022, https://nacla.org/moment-truth-chiles-new-constitution.

doubt on whether they had the interests of the Chilean people at heart, leading many to distrust their authority.[40] This skepticism was worsened by many public scandals involving the convention, such as one member pretending to have cancer in order to get elected.[41] Importantly, the concerns with the constitutional convention came at a time when record inflation, increased crime, and widespread violence had exacerbated economic insecurity and weakened the legitimacy of the leftist government in Chile, leading many people to question the effectiveness of leftist policies, including the ones promoted by the constitutional convention.[42] This substantially worsened the impact of the controversies surrounding the constitutional convention and led a significant number of Chileans to reject the new constitution, with over 40% of those who rejected it citing distrust of the constitutional convention as their reason for voting.[43]

While the widespread controversies surrounding the progressive elements of the 2022 Constitution provide a compelling explanation for its rejection, people of diverse political stances have offered alternative explanations that are worth considering.[44] Many on the left claim that the Chilean people were manipulated into distrusting the constitution by wealthy donors who funded conservative media campaigns.[45] They argue that these campaigns spread misinformation and placed undue emphasis on unpopular elements of the new constitution, influencing the views of many Chileans.[46] While the disinformation in these media campaigns was likely a contributing factor, these campaigns relied on already-existing concerns that moderate Chileans had about the 2022 Constitution. Despite these genuine apprehensions about the 2022 Constitution, members of the constitutional convention oftentimes doubled down on their more progressive views rather than amending them to increase their appeal toward moderate Chileans.[47] Importantly, these concerns should not be interpreted to mean that the Chilean population was too conservative to

[40] Rojas, René. "Chile's Vote Was a Rebuke of the 21st-Century Left. Will We Listen?" Jacobin, December 12, 2022, https://jacobin.com/2022/12/chiles-vote-was-a-rebuke-of-the-21st-century-left-will-we-listen.
[41] Schmidt, Samantha. "Chilean Voters Decisively Reject Leftist Constitution." The Washington Post, September 4, 2022, https://www.washingtonpost.com/world/2022/09/04/chilevotes-constitution-referendum/.
[42] Rojas, René. "Chile's Vote Was a Rebuke of the 21st-Century Left. Will We Listen?" Jacobin, December 12, 2022, https://jacobin.com/2022/12/chiles-vote-was-a-rebuke-of-the-21st-century-left-will-we-listen.
[43] *ibid.*
[44] *ibid.*
[45] *ibid.*
[46] *ibid.*
[47] *ibid.*

accept this "populist" doctrine, as those on the right have alleged.[48] In fact, as evidenced by poll numbers, the structural economic changes were the most well-liked elements of the 2022 Constitution.[49] It is more likely that conservative media campaigns, combined with the stubbornness of those at the constitutional convention, centered the debates about the 2022 Constitution on the more progressive and controversial elements of the document. In the end, Chilean voters heard more about the controversial elements of the constitution and less about the structural changes that they actually desired.

From this evidence, it is clear that the controversies surrounding the creation of the new constitution, as well as the new and radical provisions within it, were the reason Chileans ultimately rejected it. Despite Chile's history of neoliberal policies creating a strong demand for structural economic changes, this demand alone was not enough to overcome the controversies and skepticism surrounding the new constitution. Chileans were afraid that the radical changes proposed by the new constitution, such as indigenous rights and gender parity, would jeopardize national unity and defer the structural changes that they supported. Furthermore, scandals surrounding the constitutional convention and increased economic insecurity led many Chileans to doubt the effectiveness of liberal policies, leading them to question the benefits of the 2022 Constitution. In the end, the controversies surrounding the changes made by the new Chilean constitution, when combined with the distrust for liberal policymakers, led Chileans to reject the new Chilean Constitution in 2022.

[48] Schmidt, Samantha. "Chilean Voters Decisively Reject Leftist Constitution." The Washington Post,September 4, 2022, https://www.washingtonpost.com/world/2022/09/04/chilevotes-constitution-referendum/.
[49] Rojas, René. "Chile's Vote Was a Rebuke of the 21st-Century Left. Will We Listen?" Jacobin, December 12, 2022, https://jacobin.com/2022/12/chiles-vote-was-a-rebuke-of-the-21st-century-left-will-we-listen.

Trump v Anderson: The Balance of American Democracy & Legitimization

By: Melissa Shane

In the highly tense partisan environment of the United States, the mere mention of the name Donald Trump evokes a reaction. Hence, the United States Supreme Court's decision to hear a case where the former president himself is a plaintiff has taken the political world by storm. *Trump v Anderson* (2024) sought to investigate whether Colorado's decision to bar Donald Trump from appearing on the Republican primary ballot was constitutional.[1] The decision to hear this case itself and what they ultimately decided indicates both the legal role of the Supreme Court and the political motives they hold. Knowing the surrounding political climate and the potential consequences of ignoring this case, the Court ruled that Donald Trump could not be excluded on the ballot. The Court made this ruling in a manner that made them look as far removed and apolitical as possible and diverts the issue from the name "Donald Trump" and to the law. In this way, it is clear that the Supreme Court aims to preserve its legitimacy and American democracy while masking these motives of political tranquility under legality.

On January 6, 2021, the United States Capitol was attacked by a large mob of supporters of then-President, Donald Trump after Congress determined he had lost the 2020 Presidential Election to his Democratic opponent, Joe Biden. Trump and the mobsters claimed that he did not lose and that the election had been stolen; he famously echoed, "We will stop the steal,"[2] in his speech preceding the attack. As he emerges as the front-running Republican candidate for the 2024 presidential election, people and most notably, states, have begun questioning whether this event makes him ineligible to be elected president and more technically even appear on the ballot. Section three of the 14th Amendment states, "No person shall be… an elector of President and Vice-President… who, having previously taken an oath… as an officer of the United States…to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."[3] Under this statute

[1] Trump v. Anderson, 601 U. S. (2024). https://www.supremecourt.gov/opinions/23pdf/23-719_19m2.pdf
[2] Naylor, Brian. "Read Trump's Jan. 6 Speech, a Key Part of Impeachment Trial." *NPR*, NPR, 10 Feb. 2021, www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of impeachment-trial.
[3] *United States Constitution*. Amend. XIV, Sec. 1 & 3.

and the Colorado Election Code, courts in Colorado reached a disagreement regarding the application of the term "officer" to the President and whether this potential application could exclude Trump from the Colorado Republican Primary ballot. Knowing Trump's exclusion from the ballot would result in him appealing to the Supreme Court, Colorado delayed the implementation of this ruling, and thus, *Trump v Anderson* (2024) was born.

Perhaps an unpopular opinion, this *was* a question to be answered by the Supreme Court. The public tends to believe in the concept of popular constitutionalism, where the final arbiter of the law is the people, and they tend to get angry when the Court rules against public desire. There is historical evidence to support this constitutional approach, a famous example being conservative retaliation to Supreme Court approval of New Deal legislation.[4] However, the people are not equipped to answer this specific question. There was a legitimate need to clarify the broader issue at hand, which deals with the extent to which states can control who appears on the ballot for national elections, and more specifically, presidential elections. The people know how they feel about abortion, Affirmative Action, or other hot-topic issues that are frequently at the forefront of political conversation, but issues of federalism and the creation of a ballot are less contentious. Many people know they don't want Donald Trump as president[5], but they are less aware of the actual legal question at hand and the potential consequences of the ruling that he can be excluded from the ballot. Of course, every case has an underlying legal dispute, but when the results of a case could impact the functioning and legitimacy of American Democracy for the foreseeable future, using the public's opinion of a specific candidate to guide that ruling would be illogical. While states are broadly at liberty to run their own elections, if states have the capability to edit who is on their ballot, particularly for federal elections and the highest office in the nation, knowing who the nationally approved candidate is would be difficult as there would be inconsistencies across states due to varying ballots. Trump could be barred from the ballot,

[4] Fishkin, Joesph, and William E Forbath. "The Supreme Court Wasn't Always the Final Arbiter of the Law" *The Washington Post*, 2 Aug. 2022, www.washingtonpost.com/made-by history/2022/08/02/supreme-court-wasnt-always-final-arbiter-constitution/.
[5] Cerda, Andy. " Little Change in Americans' Views of Trump Over the Past Year." *Pew Research Center* pewresearch.com,https://www.pewresearch.org/short-reads/2023/07/21/little-change-in-americans-views-of-trump-over-the-past-year/

but then Republican states could respond by finding a way to bar Biden from the ballot. The presidential election would be in shambles as the ability for a candidate to win the necessary number of electors would be excruciatingly difficult and likely depend on the speed at which various states can judicially edit the candidates on their ballot. For this reason, there is a legitimate legal issue at hand that should be contemplated by the highly educated Justices of the Supreme Court. They cannot decide to usurp the entire process of putting candidates on the ballot because of Donald Trump's public disapproval. As a result, popular constitutionalism is a better fit for public policy issues that don't directly delegitimize the principle of democracy and that the public has a strong opinion on.

Beyond the legality of the issue, there was a strong political motive to hear this case because of what could have happened should they have elected not to. If the Court had ignored this case, effectively allowing Colorado and other states to bar Trump from the ballot, chaos likely would have ensued, and the Justices knew this. Look at the very reason this case exists–there was an insurrection by supporters who felt democracy was at threat and that an election was unfair. If the Justices stayed silent, effectively allowing Trump to be absent from the ballot, who is to say this event would not repeat? If the Justices ruled that Trump couldn't be on the ballot and effectively limited his ability to participate in democracy as a candidate, again, who is to say this event would not repeat? Sure, justices are supposed to be apolitical, merely interpreters of the law who operate as though they are isolated from the outside world, but they are not. While they do have their partisan ties that likely influence how they vote, *Trump v Anderson* (2024) feels less about these ties and more about the context in which they are operating in. This is articulated well in the "strategic" framework set up by Political Scientist Lee Epstein. Judges' "expectations about the actions of others" and consideration for retaliation play a large role in how they act.[6] When she discusses *Newport News Shipbuilding & Dry Dock Company v. Equal Employment Opportunity Commission* (1983), it becomes very clear that the judges could have ruled according to their opinions (which, at the time, were Conservative compared to Congress), but they did not–because they knew that if they did, Congress could

[6] Epstein, Lee, and Jack Knight. "A Strategic Account of Judicial Decisions." *The Choices Justices Make*, CQ Press, Washington D.C., 2005.

retaliate by writing a different, perhaps more expansive law. This same retaliation is what the Judges kept in the back of their mind when ruling in *Trump v Anderson* (2024). If they had ruled that Trump could be barred from the ballot, how would Trump retaliate? How would his correspondents, still in Washington D.C., retaliate? How would other states and their legislators? While sure, this same retaliation could occur by those who dislike Trump; there was an inherently higher risk with a group that has already demonstrated their volatility (Trump supporters) and with the general nature of ruling that states can make decisions about who can be on their presidential ballot. The Court wanted to subdue these potential consequences by straying away from this question and answering it without really answering it.

And that is just what they did. Not even six months after this case was first heard in Colorado courts, on March 4, 2024 the Supreme Court issued its decision in *Trump v Anderson* (2024) ruling that Colorado erred in its decision to bar Donald Trump from its Republican Primary ballot, as the enforcement of Section three of the 14th Amendment is constitutionally delegated to the United States Congress, not to the states. This statute effectively prevents Trump and any other political candidates from being barred by states from the ballot.

While the Court recognized there was a legitimate legal question at hand and a political concern to contemplate, they likely wanted to make a decision in the most apolitical fashion possible, given the nature of Donald Trump as a political figure and their legitimization as an institution. Put plainly, the Court didn't want to answer the presented question. Stability is a frequent concern and conversations among the Justices; Justice Clarence Thomas and Justice Elena Kegan, along with a few others, showed their concerns with the Court's public perception, fearing a loss of trust and stressing the dangerous effects of a "lost connection" with the American people.[7] As a result, there was likely a legitimate and inherent concern with this case–while they recognized the necessity of the case given the upcoming presidential election, the justices were likely aware that their reputation would be squashed and further delegitimized no matter how they chose to rule. The Justices didn't want to appear in favor of

[7] de Vogue, Ariana. "Justices Worry about the Future of the Supreme Court -- and Point Fingers as to Who's to Blame." *KRDO*, CNN, 29 July 2022, krdo.com/news/2022/07/29/justices worry-about-the-future-of-the-supreme-court-and-point-fingers-as-to-whos-to-blame/.

Trump, nor did they want to appear against him. They didn't want to appear to have an opinion on him at all, just the law. This is likely why they reached the decision they did, centering the issue around logistics to shield themselves from partisan blame. Nonetheless, considering the alternatives, this decision was risky.

While it ultimately focused on who maintained the 14th Amendment's enforcement power, the decision could have been even more far removed. For example, this concern could have been deferred as a problem of ripeness–arguing that the Colorado statute and the 14th Amendment's focus is on Trump's ability to take office, not his ability to appear on the ballot, and thus this is an issue for a later time, should he win and need to assume office. It could've also been argued as an issue in Congressional purview, urging Congress to make a law specifying states' ability to exclude presidential candidates from their ballot. Both approaches would lend a decision to the pressing issue (so pressing that, within five months of its initial hearing, it is on the desk of the Supreme Court) by avoiding a conclusive or divisive decision. The optics of these alternatives are arguably better than that of the Court's ultimate decision, as the alternatives stray completely away from the question. Contemplating this decision and the alternatives matters because, as the Justices recognize themselves, the Supreme Court is not only responsible for interpreting the law but also for legitimizing the American government. If the Court is consistently ruling against the other branches or usurping key principles of the nation (in this case, democracy), it becomes hard to maintain national unity, and thus, trust with the people. "At its best, the Court operates to confer legitimacy, not simply on the particular and parochial policies of the dominant political alliance," and thus, the Justices have a key responsibility to stray away from ruling along party lines and instead focus on maintaining legitimacy; both for themselves and for the American government.[8]

Holistically, the political and legal crossover of *Trump v Anderson* (2024) can be found in the need to legally protect the legitimacy of American Democracy while balancing the reputation and societal damage that could come from failing to do so. Silence is not an option when the

[8] Dahl, Robert A. "Decision Making in a Democracy: The Supreme Court as a National Policymaker." Emory Law Journal, Emory University, 2001.

integrity of a presidential election is in question, and the Court was challenged to balance this need with their own desire to shield themselves from partisan controversy and strategically avoid the weeds of Donald Trump. It is then evident that the Supreme Court is neither completely centered on legal interpretation nor policymaking but must balance the two to carefully consider the legitimacy and the meaning of the Constitution in the given political context.

Who Gets to be Human: The Plight of the Rightless in the American Justice System

By: Kaylah Holmes

"Who gets to be human?" This perplexing inquiry resonates deeply within the convoluted corridors of the modern legal system, particularly regarding individuals within the incarceration system, further complicating the matter. The contemporary Western notion of legal justice removes incarcerated individuals' personhood. Stripping them of the right to (and) recognition of suffering through manipulating the language in the law.[1] The effects of this dehumanization are exacerbated by a common consensus on who has the right to exert violence. It begs the question of who society recognizes as human and how the language of the law has enabled these narratives to change throughout history. There is a collective Western desensitization to watching the right-less suffer. To understand the plight of rightless and stateless individuals, I will use Colin Dayan's definition of wanton-ness and its role in defining legal malice when determining criminal intent. The arbitrariness surrounding such definitions contributes to malice within the law. Covertly affecting the limits of torture and further complicating interpretations of legal jargon. In the context of this paper, we can define those in power as individuals who have the power to keep "non-humans" as wards of the state: prison officials, government officials, prison owners, etc.

To understand the evolution of the relationship between law and human dignity, it is imperative to assess the history of religion. Religious doctrines have influenced legal systems for centuries, establishing fundamental principles and moral codes underpinning societal norms. As a result, the concept of inherent human dignity and human worth served as the bedrock for early legal systems. Ancient codes of law, such as the Code of Hammurabi in Mesopotamia or the Ten Commandments in Judeo-Christian traditions, were emblematic of this fusion between religious morality and legal governance. These codes provided guidelines for societal conduct and established the sanctity of human life and property.[2] The concept of natural law, deeply embedded in Christian philosophy, proposed that certain universal moral principles were inherent to human nature and the basis for just laws. This notion was pivotal in shaping legal

[1] Dayan, Colin. (2011). *The Law Is a White Dog: How Legal Rituals Make and Unmake Persons*. Princeton University Press.

[2] Berman, Harold J. (1983). Religious Foundations of Law in the West: An Historical Perspective. *Journal of Law and Religion, 1*(1), 3-43. Cambridge University Press.

thought and laid the groundwork for recognizing human rights and dignity within the legal framework.

The secession of theocratic dominance occurred due to the Enlightenment, and eventually, secular interpretation gained more traction. The concept of the soul has traditionally been more metaphysical around the individual as a moral entity, subject to divine judgment. However, with this rise in enlightenment ideals, the law's ideology shifted to a more secular rational framework.[3] This integration marked a significant evolution in legal practice, reflecting broader societal changes and philosophical shifts towards a more nuanced understanding of justice and accountability. Furthermore, the criminal justice system began to integrate more of the constructs of tort law into criminal prosecution. Unlike criminal law, where punishment focuses, tort law centers on compensating and redressing individuals who have suffered damage due to civil wrongs. The legal pursuit in torts aims to compensate the injured party rather than punish the wrongdoer, focusing on redressing the damage caused. Tort law considers intent, inadvertence, foresight, and blame as principles.[4] This differentiates intentional wrongful acts and negligence. Wanton or willful misconduct doesn't always require proof of intent to injure, leading to complexities in determining liability between the non-humans and actors of the state (individuals with power). In this paper, I will analyze two court cases, their contribution to this phenomenon, and the written circumstances within tort law that bolster its proliferation.

Hudson V. McMillian

Keith Hudson, a Louisiana prison inmate, testified that he had suffered minor bruising, a broken palate, and loosened teeth, amongst other injuries, after an alleged beating by two prison guards, Marvin Woods and Jack McMillian. During the attack, Hudson was shackled and proved no immediate threat to the guard's safety. A supervisor who witnessed the beating simply told the guards, “Don’t have too much fun.” Hudson’s district court had ruled in his favor and awarded him damages, but this ruling was reversed by the Fifth Circuit Court of Appeals, who

[3]What Is the Enlightenment and How Did It Transform Politics?" *CFR Educator Resources*, Council on Foreign Relations,https://education.cfr.org/learn/reading/what-enlightenment-and-how-did-it-transform-politics

[4] Introduction to Tort Law. Congressional Research Service, 15 Dec. 2020, https://crsreports.congress.gov/product/pdf/IF/IF11291.

argued that Hudson had not proven significant injury.[5] There is an objective component of the 8th Amendment wherein the alleged wrongdoing must be compelling enough to constitute a constitutional violation. “Whenever prison officials stand accused of using excessive physical force constituting "the unnecessary and wanton infliction of pain" violation of the Cruel and Unusual Punishments Clause—the core judicial inquiry is that set out in Whitley v. Albers: “whether force was applied in a good-faith effort to maintain or restore.”[6] The effects of depersonalization take hold through the arbitrary, reckless, and indifferent infliction of pain and suffering upon incarcerated individuals by those in positions of authority. This comes from wantonness and affects curating a “burdened personhood.” The concept of “burdened personhood” refers to a state where the physical body is displaced.[7] In this instance, as long as the scars the prison guards leave heal or are found to be mental and not physical, it is not extreme violence. For example, an individual can be placed in solitary confinement for weeks on end, suffering extreme mental deterioration, but this may not constitute cruel and unusual punishment without the presence of physical scars or abuse. Essentially, the expectation of an inmate to prove significant injury in a position of “non-human status” underscores a legal system that strips individuals of their agency and humanity, effectively burdening them with the weight of punishment and proof. The visible and quantifiable effect of abuse on the psyche is a notable human consequence of abuse. Unlike animals who cannot verbally express the impact of abuse, humans have the unique capacity to do so. Negating the effect this has on an incarcerated individual forces them to prove their humanity, creating this burdened personhood. Ignoring this impact is the system's refusal to recognize the dignity and humanity of all individuals, regardless of their legal status. The statement from the prison supervisor to “not have too much fun” underscores an environment with a lack of empathy and humanity for the non-person. When law enforcement officers or other state actors are granted broad discretion to use force to pursue their duties, the application of force to maintain or restore order can become a pretext for the abuse of power. After reading this case, we should question, “Why must an inmate prove significant injury in a position of depersonalization?”[8]

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[5] Supreme Court of the United States. "Oral Argument Transcript: Oklahoma Tax Commission v. Jefferson Lines, Inc." Supreme Court of the United States, 13 Nov. 1991, www.supremecourt.gov/pdfs/transcripts/1991/90-6531_11-13-1991.pdf.
[6] ibid
[7] Dayan, Colin. (2011). *The Law Is a White Dog: How Legal Rituals Make and Unmake Persons*. Princeton University Press.
[8] Wilson v. Seiter, 501 U.S. 294 (1991). Cornell Law School, Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/501/294

Perry Wilson V. Richard Seiter

While incarcerated at the Hocking Correctional Facility in Nelsonville, Ohio, Pearly Wilson sued two state prison officials, Richard Seiter, and Carl Humphreys. Wilson alleged that the conditions in the prison violated the Eighth Amendment's prohibition against cruel and unusual punishment. Wilson argued that the prison's policies and practices, specifically overcrowding and double-celling (housing two inmates in a cell designed for one), constituted cruel and unusual punishment. The District Court ruled in favor of the state officials, and the Sixth Circuit Appellate Court affirmed. The ruling in Pearly Wilson V. Richard Seiter shows how the law contributes to the displacement of the physical body.[9] As long as the physical scars heal, it is not extreme violence. For those existing in the non-human state, bearing the undue burden of proving suffering extenuates the mental and physical suffering of the incarcerated. In proving the extent of one's suffering, the judicial system asserted that mental suffering is negligible. For example, an inmate who mentally deteriorates in solitary confinement cannot be considered for a defense of cruel and unusual punishment as it pertains to their mental incapacitation.

Furthermore, the United States Court of Appeals for the Sixth Circuit asserted that "if deprivations are not a specific part of a prisoner's sentence, they are not punishment unless imposed by prison officials with a "guilty mind." The harmful conditions Wilson endured were not the determining factor for guilt; the assumed intent of the abuser was. The capacity to be wanton, defined as cruel or violent action that is deliberate and unprovoked, can only be attributed to someone with power. Therefore, wantonness becomes a test to advocate for constitutional rights. You must disprove the recklessness of the powerful and convince those dependent on your subjugation of rights only granted to those with human status. Only those with power are afforded such a status in the justice system. This case creates a legal assertion that those with non-human status cannot suffer mental scars; their abuse must leave visible marks on the skin. This is reflective of a desensitization to the experiences of the rightless. This burden of proof disregards the complexities of emotional or psychological harm experienced by individuals. There is an unspoken notion that a non-human, in the eyes of the law, cannot suffer mentally. The ability to think complexly and express pain and emotions through words is a

[9] Wilson v. Seiter, 501 U.S. 294 (1991). Cornell Law School, Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/501/294

canonical human experience. As non-humans, they are barred from asserting such a right. It creates a gap in legal understanding and protection for those who may experience trauma or harm beyond physical manifestations.

With the integration of tort law verbiage into criminal justice, how do the principles of tort law blur the lines between immorality and strict cruelty? Unlike criminal law, where punishment focuses, tort law centers on compensating and redressing individuals who have suffered damage due to civil wrongs.[10] Tort law aims to compensate the injured party rather than punish the wrongdoer, focusing on rectifying the damage caused and shifting the focus away from the assaulter. Tort law considers intent, inadvertence, foresight, and blame as part of its principles. This differentiates intentional wrongful acts and negligence. Wanton or willful misconduct doesn't always require proof of intent to injure, leading to complexities in determining liability. Tort law blurs dichotomies like public/private, subjective/objective, and personal/impersonal, influencing perceptions of good or bad behavior—this change in language and application of torts may impact society's definitions of responsibility and liability, potentially affecting who takes on moral blame.[11]

Power, and who can utilize it in the context of the law, often feels like a distant, solely theoretical construct. However, when one peels back the layers that overshadow it, we see the power within the language of laws, statutes, and legal doctrine. Language isn't merely a tool for legal power but wholly embodies it. Language is the vessel for which legal authority and influence can be exercised. The way legal verbiage is manipulated endorses the unequal distribution and application of power, particularly to determine the rights and status of the non-human.

[10] Introduction to Tort Law. Congressional Research Service, 15 Dec. 2020, https://crsreports.congress.gov/product/pdf/IF/IF11291.

[11] Introduction to Tort Law. Congressional Research Service, 15 Dec. 2020, https://crsreports.congress.gov/product/pdf/IF/IF11291.