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## **ACKNOWLEDGEMENT**

The UWJPS is thankful for the continued support of the Department of Political Science at the University of Washington. In addition, we are grateful to the students who submitted their work and ideas.

## **MISSION STATEMENT**

The University of Washington Journal of Political Science is an undergraduate, student-led journal established in 2024. The mission of the UWJPS is to give students a place and opportunity to showcase their exceptional work. It is also the goal of the UWJPS to cultivate conversation and engagement with a variety of significant events and topics in the field of political science and beyond.

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## Letter From the Editor

Dear reader,

The University of Washington Journal of Political Science (UWJPS), a student-run publication featuring exemplary scholarly research by undergraduate students in the field of Political Science, is thrilled to present our first issue of Volume II. This moment marks the continuing commitment of UWJPS to provide a platform for undergraduate students to present their work to the student body, the general public, and the broader political science community.

The work displayed in Volume II, Issue 1, represents a diverse collection of undergraduate research that explores a range of themes, including foreign policy, technology regulation, international trade, and social justice. Every published work in this issue combines not only a grasp of the subject matter at hand but a deep commitment to academic research and historical grounding. In this inaugural issue, UWJPS examines foreign policy topics that are often overlooked by the media. There are two works in this issue addressing the ongoing crises in Myanmar (Burma). While one author looks specifically at the role of the United States in influencing the region, another author evaluates the ongoing Rohingya Genocide and its causes.

Other articles confront matters of social justice, exemplified by one author's work on exploring the history of Angel Island as a foundational site of racialized exclusion and detention. Another author views the issue of racial equality through the historical application of copyright law in cases involving Black music in the United States. Both articles utilize historical lessons to inform today's state of affairs. In today's world, every citizen has a responsibility to be well-informed about the history of important social subjects if any positive change can be made. Students across the University of Washington are putting that principle into practice, and the University of Washington Journal of Political Science is a clear example of that.

It is an immense privilege to present the work of so many talented undergraduate students. As UWJPS marks the beginning of its second year on campus, the list of people supporting our organization continues to grow stronger. The UWJPS would not be possible without the continued passion of our founder and first Editor-in-Chief, Zoe Stylianides. We also have an incredible team that has committed hours of their time to producing this issue. Many of our team members have recently started in their new roles, and we are thrilled to continue the work we have begun on Volume II in the months ahead. Finally, the UWJPS team would like to thank our faculty advisors, Dr. Rachel Cichowski and Dr. James D. Long, for lending their expertise and support. We would also like to thank our Departmental Advisor, Daniel Ayala Robles, for his encouragement and advocacy every step of the way.

On that note, we are thrilled to present Volume II, Issue 1 with you.

Sincerely,

Luke McFadden  
Editor-in-Chief

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## **Long Form Student Research**

# Neoliberalism and the Ocean: The Effects of the Neoliberal System on Artisanal Fishing in Caleta Portales

By Isaac Bronfine

## Abstract

This study aims to explore the conflict between the neoliberal system implemented in Chilean society and the artisanal fishing sector, using Caleta Diego Portales, a fisherman's cove in Valparaíso, Chile, as a microcosm. This conflict has become more salient in the wake of corruption scandals regarding fishing law reform and, most importantly, the *estallido social* or "social outburst" of 2019, a popular reckoning with the country's political history which led to the drafting of a new constitution. This study will begin by discussing how neoliberal theory gained traction in intellectual spaces around the world, then examine how the philosophy arrived in Chile along with the immediate effects of its implementation during the Pinochet dictatorship. It will then discuss how the development of Chile's national fishing laws and regulations represent the manifestation of neoliberal ideals in this sector. I will then elaborate on the conflicts between industrial fishing corporations and the artisanal sector, alongside current legislation, and end the paper with an explanation of the day-to-day lives of the artisanal fishermen that work in Caleta Portales, analyzing how their struggles reflect the shortcomings of a neoliberal idealistic hegemony. I use academic literature and other written sources alongside personal interviews with academics, union leaders, and artisanal fishermen themselves to conclude that neoliberalism is incompatible with the success of a sustainable, local, fishing sector.

## Introduction

With more than 6,000 kilometers of coastline, it is almost inevitable that the ocean plays a central role in the identity, economy, and culture of Chile. Chile's shores are dotted with communities of those who have built their lives around the Pacific Ocean and the opportunities it provides. Many of these oceanfront towns have "caletas," small coves that serve as the home base for local fishermen. One of the most famous of these caletas is in Valparaíso, a city 50 miles northwest of Santiago. Caleta Diego Portales is nestled between the winding streets and rolling hills of Valparaíso and its sister city Viña del Mar. With its own stop on the city's metro, Portales is all seafood restaurants and bright red boats, where fishermen tend to their boats and their catches.

These fishermen are an essential part of the Valparaíso community and have long been the drivers of its economic development. However, the exhaustion of natural resources, the rising cost of living, and the continued influence of industrial fishing companies on fishing regulations present new challenges. Since *la apertura*, the opening of the Chilean economy to foreign companies during the Pinochet dictatorship, artisanal fishermen have been fighting against wealthy and powerful actors.

As globalization has taken hold in Chile, so has neoliberalism, and the fishermen have depended on their unions and their sense of community not only to survive times of hardship, but to fight for their rights and their way of life. The objective of this paper is to understand the fundamental conflict between the global neoliberal system and the communities of artisanal fishermen in Chile, specifically in Caleta Portales, and to determine whether neoliberalism is fundamentally damaging to artisan fishing communities, which I hypothesize is the case.

## Methodology

There is little written about artisanal fishermen in Chile, and even less about Caleta Portales in particular. Student research projects from the School for International Training program, including "The Great Hegemony of Neoliberalism" by Dan Zohn (2005), served to guide this paper's research process. Neoliberal theory and history are considered to determine which social and economic phenomena in Chile can be linked to the ideology. Regarding the politics and economics of Chilean fishing, my advisor, Patricio Díaz, helped connect me with academics who have studied other caletas, whom I formally interviewed. This included Marco Tamayo, an anthropologist, Armando Rosson, the legal representative and general manager of BITECMA, the center for Research and Consulting in Biology and



Marine Technologies, and Luis Vildosola, a researcher of fishermen's unions and cooperatives. I formally and informally interviewed many artisan fishermen in Caleta Portales, most notably Pedro Tognio, the president of the Portales fishermen's union, and Marco Leiton. This offered insight into the theory and the reality of fishing as an economic sector.

## Theoretical Framework

Neoliberalism in the economic sense is a set of supply-side policies enacted in pursuit of economic growth. This means that supply, rather than demand, is the key driver of that growth. As a subset of capitalism, neoliberalism's main objective is to generate capital under the belief that more wealth will always benefit the population. The neoliberal system favors the idea that wealth that is created for those at the top of the economic ladder will eventually trickle down to the middle and lower classes, and there is therefore no need for deliberate redistribution of wealth. However, historically, newly created capital has primarily stayed with the rich with very little ever reaching the lower classes.

The school of neoliberalism believes that high taxes and government oversight is far less efficient than a self-regulated market. The theory insists that government decisions are destined to be politically biased because they are beholden to interest groups. Instead, the guiding force of market signals is thought to be unparalleled. This belief stems from an image of an infallible market championed by early neoliberal scholars. Many believe that not only can the force of the invisible hand regulate the market, but "that individual freedoms are guaranteed by freedom of the market and trade" (Harvey 2005, 7). Not only is the market the best allocator of economic goods, but its efficiency can be used for social ends as well. As David Harvey writes,

*"Neoliberalism values market exchange as 'an ethic in itself, capable of acting as a guide to all human action, and substituting for all previously held ethical beliefs', it emphasizes the significance of contractual relations in the marketplace. It holds that the social good will be maximized by maximizing the reach and frequency of market transactions, and it seeks to bring all human action into the domain of the market" (2005, 3).*

The theory posits that the more profit is produced, the more people will benefit, so institutions must be modified to that end. Social services are frequently privatized or restructured with the goal of generating capital and lowering taxes. The power of groups outside the market, governmental or otherwise,

to influence the economy must be drastically reduced. These reforms are driven by ideals that support the freedom of the market over the unity of collectivism. Often these ideals require a cultural shift – as Margaret Thatcher said during her campaign for neoliberalism in the United Kingdom, "economics are the method, but the objective is to change the soul (Harvey 2005, 23).

## Historical Background

In order to comprehend the questions raised earlier in the paper, it is necessary to understand how neoliberalism developed in Chile and how the country's economic history affected its current state. There are not many recent studies on the artisanal fishermen of Chile, so the majority of the sources that influenced this project chronicled the history of the Chilean economy or analyzed artisanal fishing communities in the early 2000s.

## How Neoliberalism Rose to the Global Stage

After the Second World War, economic experts from the western world were in agreement that both capitalism and communism in their pure forms did not produce stable results. As a solution, the concept of a mixed economy was introduced. The mixed economy consists of both private and public enterprise, including a blend of both free-market and socialist principles in state, democratic, and economic institutions. While private property rights remain, the government can interfere in economic activities to achieve social goals. With the intention to avoid the tense economic conditions that allowed for the emergence of the war, many countries transitioned to an implementation of this new model. Government intervention and market regulation were freely used to stabilize currency, prevent recessions, maintain high employment rates, and ensure the general welfare of the citizenry.

In *A Brief History of Neoliberalism* by David Harvey, the author describes this dominant postwar economic model along with its eventual ruin. He writes that, during the mid 20<sup>th</sup> century, "to ensure domestic peace and tranquillity, some sort of class compromise between capital and labour had to be constructed" (Harvey 2005, 10). This global system functioned very well until the beginning of the 1970s when the economic growth rate began to slow. As a result of governments pumping money into their economies, inflation and unemployment rates rose significantly as economic development plummeted. The combination of these three trends is a phenomenon known as stagflation (Harvey 2005).

Stagflation escalated into an all-out crisis, badly hurting mixed economies across the globe.

The failure of the mixed economic model during the Cold War directly supported western arguments against economic institutions that bore any resemblance to communism or socialism. The crisis renewed search for a new way of thinking about global economic policy and early neoliberal scholars, who had been waiting in the wings, were pushed to center stage. Over time, neoliberalism gained support amongst those with a high concentration of wealth, such as business executives and investors who were against government intervention or regulation in most, if not all, forms (Harvey 2005). Small pockets of intellectuals started churning out neoliberal academics with access to influential positions. Some of the most prominent neoliberal minds originated in the University of Chicago.

### **The Chicago Boys and the Spread of Neoliberal Ideology in Chile**

Even before the peak of the 1970s capital accumulation crisis that led Europe and North America to neoliberalism, Chile was experiencing its own problems with the post war mixed economic model. Juan Flores Zendejas, in his work “Origins of neoliberalism in Chile 1938-1985” (2021), describes the conditions of Chile before the dictatorship of Augusto Pinochet, when neoliberal ideas took root in the upper class. According to Flores Zendejas (2021), Chile was a welfare state before Pinochet. The state controlled the economy through import substitution, a common strategy for growing economies where tariffs are used to increase demand for domestically manufactured products.

This approach began to cause problems in the 1950s, when Chile entered a state of stagflation. As a result, landowners, industrialists, and the conservative middle class criticized Chile’s structuralist mixed economic model. Many said there was an inefficient use of protectionism and an excess of state intervention, that the capital market was over-regulated and it had hampered development (Friedman 2004). Chronic inflation was adding to the fiscal deficit, taxes on foreign companies were impeding incentives to export to Chile, and “the Chilean state had too low of an exchange rate” (Friedman 2004).

Consequently, in 1954, Carlos Ibáñez del Campo, with the advice of American economists from the Klein-Saks Mission, pursued an economic overhaul. He privatized state enterprises and reformed the social safety net system in an attempt to solve

problems that couldn’t seem to be solved by structuralism. Instead, these changes resulted in higher unemployment rates, a slowdown in economic production, and a loss of purchasing power among the middle class. This provoked extreme responses from both the general public and elites, culminating in the withdrawal of the reforms in 1958 (Flores Zendejas 2021). Only four years had passed.

During this time, the economics professors at the Pontificia Universidad Católica in Santiago were fed up with the structuralist hegemony in economic academia. Thus, they began to work together with the University of Chicago, an epicenter of early neoliberalism, to create the “Proyecto Chile” program in 1955. In this program the best Chilean economics students received grants to join the masters program at Chicago (Flores Zendejas 2021). When those students returned to Chile, they were known as “the Chicago Boys,” a moniker that would grow infamous amongst the Chilean public. With the initial goal of improving economics education in Chile, these scholarships were likely made possible because they were undeniably beneficial to the anti-leftist strategy of the United States during the Cold War. The exposure of Chilean graduate students to theories other than the dominant leftist structuralist culture of their home country would be too enticing to reject.

While President Eduardo Frei gradually increased state participation in the Chilean economy in the 1960s, neoliberal influence spread as the Chicago Boys entered the upper echelons of academia and business. So when Salvador Allende ran for president on the promise to continue Frei’s policies (like the development of social services and the rapid nationalization of the copper industry), the Chicago Boys were in a prime position to help the opposition. Some Chicago Boys worked for the neoliberal thinktank in charge of crafting the economic platform for Jorge Alessandri, Allende’s right-wing opponent in 1970. Their plan included free trade, widespread privatization, and a reduction in state participation in the economy. These changes were so radical that even many people on the right did not support them. After the candidates from the left won in both 1970 and 1972, these same Chicago Boys converted the set of policies that once constituted Alessandri’s platform into a document of recommendations to improve the Chilean economy known as “El Ladrillo” or “the Brick.” This text contained political strategy that any government could implement and consult to fix both short-term and medium-term emergencies. This collection of economic guidelines later served as the basis for the policies of the Pinochet dictatorship.

## Changes Under the Dictatorship

On September 11<sup>th</sup>, 1973 the Chilean military overthrew President Salvador Allende in a coup d'état. When power changed hands, there wasn't yet a consensus for adopting neoliberal policy. But there also wasn't a lot of economic expertise to consult in the military, so Chile's new leaders needed to recruit civilians for help. The reputation of the Chicago Boys as a supposedly scientific rather than political source of economic strategy gained the trust of the military, who shared a similar disdain for "politics." When the Chicago Boys arrived, they brought "El Ladrillo" with them to guide the decisions of the new government.

In her School for International Training project "El Costo del Desarrollo Neoliberal" (The Cost of Neoliberal Development), student Michelle Friedman explained the reforms Pinochet's government put in place and their subsequent effects. Immediately, the dictatorship turned its attention to stabilizing the economy and confronting the chronic inflation that had plagued Chile for decades. According to Friedman, the dictatorship implemented policies to achieve four major goals and gain macroeconomic success. The first goal was fiscal discipline, as the government could no longer have a deficit larger than 1% of its GDP. Property rights were another goal, a priority which strengthened individualist attitudes. The third goal was privatization, under the assumption that the free market was more efficient. The fourth was deregulation, meant to stop inflation and alongside a more competitive exchange rate, relaxed interest rates, and newly reinvigorated flows of foreign trade and investment (Friedman, 2004). Foreign participation in the economy was encouraged by the liberalization of imports, with dismantled taxes and tariffs on international trade.

In the service of these neoliberal goals, the dictatorship eliminated price controls, reformed the tax code, and weakened workers rights. The institution of these new policies snowballed very quickly into the 1975 recession. Wages declined as the unemployment rate, the price of food and utilities, and the prices of social services like healthcare and transportation all went up (Friedman, 2004). These hardships were typical of any neoliberal transition, in which the idea is to impose the cost of development on the general population for a short period of time in order to realize long-term success in economic growth and increased quality of life.

## Fishing Laws in Chile

In the years during the opening of the Chilean economy, many foreign firms arrived to take advantage of the country's new policies and its abundant natural resources. The national economic landscape of Chile changed completely. The arrival of globalization reoriented the state's focus to an extractivist model that revolved around exports. Soon all avenues of foreign trade in Chile were, and still are, characterized by the extraction of natural resources, largely by foreign companies. The fishing sector is no exception. Under the country's export-based model there was suddenly global demand for Chilean ocean products, prompting both large companies and individual fishermen to rush to this newly lucrative industry.

In 1974 the Ministry of Agriculture established government power to grant permits to foreign vessels to fish without limitations of any species south of latitude 40° (Franchini Rossa, 2022). There was open access to all species of fish, just one instance of deregulation typical of neoliberalism. This attracted foreign industrial firms that recently gained permission to fish in Chilean waters and individuals with small boats. As anthropologist Marco Tamayo describes,

*"The ocean offered an open opportunity, until at least the 90s there were no big restrictions on access to the ocean or on the ability to extract its products. The levels of control of the state have always been quite low in this area... We have many kilometers and kilometers of coast where an artisanal fisherman can unload their products and the state in its aspect of control will perhaps never realize ... During this period a lot was extracted and the product obviously began to collapse in its biodiversity" (personal communication, May 16, 2023).*

Additionally, technology developed during the Second World War led to post-war innovations in ocean vessels and marine technology. New techniques such as trawling, when a boat tows a large net behind itself, could extract fish and seafood at unprecedented levels. These new technologies, combined with the policy of the Pinochet regime, resulted in severe overexploitation in many ecosystems off the coast of Chile. During the late 80s, fishermen began to notice a lack of resources that had been so abundant for so many years. They needed to venture out further and further from the shore into increasingly dangerous waters to catch enough to support themselves.

Resource scarcity continued to get worse until the final days of the Pinochet regime. In 1989, Law No. 18,892 – the "Ley Merino" – was enacted to establish different species classification regimes and

restrict overfishing. After the fall of the dictatorship, the new government modified the “Ley Merino” to grant it legitimacy in the new, democratic setting. This new version of the “Ley Merino” was prepared by a council of four public sector representatives, four business sector trade union representatives, four labor sector trade union representatives, and seven councilors nominated by the President (Franchini Rossa 2022). Only one of these nineteen members, one of the four from the labor sector, represented artisan fishing.

On September 6, 1991, the government implemented the Fisheries and Agriculture Act, which has undergone few changes from its original version decades ago. Under this law, four classification regimes were established:

*“[the] full exploitation regime, which implies a prohibition on the delivery of new fishing authorizations in respect of those species in which there is no longer a biological surplus, i.e. those in which the annual catch is equivalent to the growth of the fish population; [the] recovery regime; [the] incipient development regime; and [the] general free access regime for those fisheries that are not declared under any of the previous regimes” (Franchini Rossa 2022, 34-35).*

The Fisheries and Agriculture Act also reserved the first five nautical miles off of the coast for artisanal fishermen. However, industrial vessels were allowed permits to fish in the reserved area, and the act therefore didn’t offer effective protection of artisan fishing. The new policy also established global catch quotas or CGCs. CGCs came from the Supreme Decree of the Ministry of Economy, “without the obligation to follow exclusively technical or scientific criteria” (Franchini Rossa 2022, 35). Intended to curb overfishing, these quotas created an atmosphere that many call “the olympic race,” where companies would compete to outfish each other as much as possible in the shortest amount of time, before fishing was shut down, a predatory and counterproductive result of the Act (Franchini Rossa 2022).

By 1997 and 1998, this overexploitation of marine resources coincided with the El Nino phenomenon, resulting in a dire fish shortage and a wave of protests from the artisanal fishing community (Franchini Rossa 2022). In the Valparaíso region, all the artisanal fishermen gathered in Caleta Portales, marched to Chile’s National Congress Building, and left a flaming boat on its steps. After widespread demonstrations, the government restricted the main industrial fishing companies by establishing a maximum limit of catch per shipowner, thereby

empowering the artisanal fishing registry. Each region received different rules regarding each species and the region-specific CGCs were split up between industrial firms and artisanal fishermen, thereby ending the system that gave rise to the “olympic race.” Still, there was a lack of effective punishments for companies that did not follow the rules and an excess of industrial influence over fishing policy and CGC governing bodies which remains to this day.

Today, quotas are proposed by the Fisheries Development Institute, an organization that is responsible for conducting studies to monitor natural resources and recommend policies to preserve them. The FDI operates under the Undersecretary of Fisheries and Aquaculture and quotas are subject to their approval. In turn, the Undersecretary of Fisheries and Aquaculture is under the Ministry of Economy which reports to the president. Therefore, the FDI is not an institution that is well isolated from political pressures, often spurred by wealthy companies. The practical implications of this are that quotas are divided rather unevenly between artisanal and industrial fishing. Commercial fisheries can be allocated up to 75% or 80% of the annual legal catch, while artisanal fishermen can have only 25% or 20%.

Not only is fisheries law in Chile beholden to the interests of powerful lobbies, outright corruption has played a part. Seven fishing business families – Angelini, Sarkis, Stengel, Cifuentes, Jiménez, Izquierdo and Cruz – have combined into “three large conglomerates that control 76% of the industrial fishing capacity” in Chile and earn 3 billion dollars each year while benefitting from government subsidies (Pizarro Hofer 2020). In 2011, Corpesca, a group linked to the Angelini family, bribed two elected representatives with 1 billion pesos in campaign donations to pass a fishing law that granted them permanent fishing rights with automatic renewal. This event was known as the Longueira scandal. The representatives were tried for the roles they played in this corruption scheme and both were sentenced to jail time, but the practice highlights the prevalence of direct and indirect corruption in the fishing sector of Chile (Pizarro Hofer 2020).

### **Modern Life of Artisanal Fishermen in Caleta Portales**

Caleta Diego Portales is the oldest Caleta in Valparaíso. Founded in 1925, during the last 100 years it has grown into a thriving marketplace. Pedro Tognio, the president of the Caleta Portales fishermen’s union, is very proud of his community. “We have an immense Caleta, we have everything you



would want to have in a Caleta. We have restaurants, parking spaces, there we have a courtyard, a tunnel over there, the marketplace over here, everything, everything” (personal communication, May 26, 2023). The Caleta is a bustling tangle of boats, shoppers, fishermen, and their teams, and is still growing at a steady rate, according to Tognio.

Portales is the Caleta with the highest percentage of allocated catch in Valparaíso, due, in part, to its sense of responsibility and attention to fishing regulations. Every morning except Monday, the fishermen cast off at three or four in the morning and return to land almost six hours later. They venture 11 or 12 nautical miles from shore, though, put best by a fisherman named Mauricio, “the fisherman has no limits. He can go however far he’d like, as far as his heart will let him. As far as his heart and his gas tank will let him” (personal communication, May 26, 2023). The fishermen in Portales use nets made from nylon cord and fishhooks to catch their fish, and plastic bottles and weights to make sure that each net stays at its desired depth. When they return to land, the fishermen sell what they have caught to the city’s residents, using local resources to sustain the local population.

Many of the fishermen of Portales grew up around the Caleta. They have ancestors who were fishermen, and children who will follow in their footsteps. This personal history forges a close bond between the people of Portales and the ocean, something which all the fishermen share and creates a powerful sense of solidarity between them. Caletas are social systems as well as systems of production – such intertwinement has aided in the rise of unions within the artisanal fishing sector. In the 1960s, according to sociologist Luis Vildosola, these unions first came to prominence to protect exclusive rights to the land where fishermen would work and dock their boats. Thanks to these unions, fishermen now steward these areas and lobby the government for investment in local infrastructure (personal communication, May 25, 2023).

In addition to unions, there is another kind of institution sometimes found in Chilean caletas: cooperatives, particularly focused on supporting workers’ social services and wellbeing. However, the significant financial burden on these cooperatives have led to many to go bankrupt, leaving unions to fill the gap. The union of Caleta Portales works hard to make sure that its members are taken care of. “Before we had [a cooperative], but [it] went bankrupt. We depend only on our union. We distribute all of our money, hand in hand because we are all equals,”

explains Tognio (personal communication, May 26, 2023). “We have a commission for wellbeing, which is charged with checking in on people when they’re sick. For example, if someone doesn’t show up for work, they go to their house, see if they are sick, and try to help with whatever they can. Help with anything in the hospital, help with an operation, help with everything” (personal communication, May 26, 2023).

The union at Portales has a fund so that fishermen who are too old to continue working can receive a small allowance of money every month. 80% of the men fishing at Portales are over 60 years old, and since fishing is a dangerous job that can take a heavy toll on the body, the health of the fishermen is always top of mind. Both active and retired fishermen have all their medical fees and prescriptions paid for. This same fund is able to cover the all costs of a funeral when a fisherman passes away. In order to sustain this system, every fisherman pays 3,000 Chilean pesos (roughly \$3.75 USD) every time they go fishing. During the COVID-19 pandemic, they began paying 15,000 pesos each month. This additional financial burden was rough but, thanks to a union-owned seafood restaurant, the Caleta’s fishermen survived through the pandemic (Tognio, personal communication, May 26, 2023).

There are not enough studies to concretely determine the social effects unions have on their respective caletas, but to Luis Vildosola it seems “very likely that the caletas which have a union are stronger, more powerful, and have a deeper sense of solidarity” (personal communication, May 24, 2023). He noted that the economic crises of 1975 and 1982 had very different effects on unified artisanal fishermen’s unions than it did on industrial fishing companies. According to Vildosola:

*“Because companies in times of crisis fire workers ... as is usual here in Chile. Instead, in the caletas of fishermen, one could see the opposite ... They picked others up, absorbed them, and that was due to the social systems of solidarity ... They are flexible systems that during social crises absorb rather than expel” (Luis Vildosola, personal communication, May 24, 2023).*

Such mutual aid is not limited to just the fishermen in the unions. Many are very proud of the way that their organizations lift up the surrounding community. Unions donate to soup kitchens, support the children and friends of fishermen who are sick, and help those who are forced to live on the streets around their Caleta. Portales is seen as a place of upward mobility, not only for its members, but for its friends

and allies. In the words of Pedro Tognio, “We as fishermen have very big hearts, we have a strong sense of solidarity” (personal communication, May 26, 2023).

However, the life of an artisanal fisherman is not all good. But the pressures of the industrial fishing industry greatly influence the lives and attitudes of the Portales fishermen. Compared to other parts of the country, central Chile has a very strong industrial fishing presence. Marco Tamayo, who studies fishing in Southern Chile, has noticed differences between the south, which has fewer industrial fishing vessels, and areas like Valparaíso. “The industrialized zones that those fishermen are in generate a much more demanding environment where you want money more quickly” (personal communication, May 16, 2023). While the president of the union is able to and should be focused on the resources that the fishermen can share, sometimes the only thing the fishermen can think about is survival.

Marco Leiton, a fisherman who has worked in Caleta Portales for more than 30 years, tells a story of hunger, debt, and poverty. Economic pressure has forced him to adopt an attitude of saving all his money for hard times. He has seen firsthand the effects that the industrial fishing industry has had on the environment and the lives of his companions, explaining “This is not a recent problem. And now there is much more technology in the world, much more development ... The government is eating us, and the industrialists are always going to eat us ... The rich will always eat the poor. That’s how it is” (Marco Leiton, personal communication, May 24, 2023).

The fishermen of the Catela do not feel protected by the law. They don’t feel that the government hears them or cares about their struggle. The fishermen of Portales feel alone, trapped in a system run by enormous companies with unlimited flows of money and the ears of corrupt politicians. The Portales fishermen’s union considers itself to be an apolitical organization. That being said, they have an ambitious goal in the realm of law and politics: Completely eliminate the current fishing law. According to Tognio, unions of different caletas throughout the country have united to form federations for this purpose. They are infuriated by the flagrant corruption that they have seen, even before the Longueira scandal. They believe that they should be assigned the majority of the annual catch and that the industrial fishing sector should be held responsible for their actions. In the eyes of the unions, corruption has been too deeply entrenched in the current fishing laws for any part of them to stay. They want to start from scratch.

## Analysis

The fishermen of Caleta Portales see their conflict with the industrial fishing companies as an existential threat. They are fighting for their land, for their way of life, for their survival. Their profound connection with the ocean and their Caleta manifests in a strong sense of identity as artisanal fishermen, but a shared emotional connection with one’s natural surroundings does not align with the neoliberal vision of resource extraction. Pedro Tognio explains: “Much has gone in favor of the industrial ships, the trawling boats, the ones that take everything. We are artisanal, we guard and protect our resources. That is what the industrial boats do not do, because they trawl everything, take everything. Us no. We regulate our art so that we catch less and don’t eliminate our fish” (Tognio, personal communication, May 26, 2023).

The ideological conflict between neoliberalist competition and this cooperative, artisanal culture can be seen in all of Chile, a country built on the contradicting pillars of a strong connection to the Earth and the limitless extraction of its resources. Many times the fishermen referred to themselves as “the real Chileans,” and that their fight against corruption is a battle that represents the larger battle of Chile. This perspective of existentialism follows directly from the neoliberal system. When the only priority is profit, communities that cannot produce rapidly enough or who intentionally reject the framework then struggle to fend off annihilation.

A democratic state must represent and prioritize the needs of all its citizens, but under neoliberalism the power is with those few who dominate the system’s new priority, the market. When the market is trusted to provide the rights, it is given the power of a government body. When capital enforces these rights, he who controls the capital therefore controls the rights. Politicians in a neoliberal government are not obligated to play a role in the social sector. They may privatize these services, neglecting their responsibility and escaping blame on systemic social problems. Meanwhile, those who have accumulated capital can manipulate the system in order to grow their personal wealth. The middle and lower classes don’t have the money to compete, falling victim to policies that deprive them of further wealth in an endless cycle, as evidenced by the corruption and prejudice against artisanal fishing rampant in the laws of Chile.

However, there is one notable difference between this study and similar studies from past years.

Dan Zohn (2005) tells of a Caleta Diego Portales that lacks hope and direction. Zohn describes a lack of communication between union leaders and everyday fishermen in relation to the ideological conflict they faced. In my own research, I found a lot of pessimism, but also a genuine understanding of the nuances of the ideological conflict, and the importance of fighting for artisanal fishing. The people I spoke with knew how the political system at large was harming the fishermen's union and were organized very effectively to meet that challenge.

I think part of this is due to the fact that the export-focused system is starting to break down. Average annual economic growth rates in Chile were 7.4% between 1990 and 1998, according to Pizarro Hofer (2020), but growth during the years 2014 to 2018 fell to 2.2%. Export stagnation and deindustrialization reveal that the chosen path has reached its limit. The lack of economic growth could also be linked to other social effects of a neoliberal culture. For example, the poor quality of public education and research investment, or the corrupt stranglehold on the Chilean economy that creates an oligopolistic market. "There is no alternative but to provoke a 180-degree turn in the development strategy" (Pizarro Hofer, 2020).

## Conclusion

During the course of this research, we have gotten to know the neoliberal economy's effects on the social and cultural aspects of society. We analyzed where these effects come from and why it is essential that they be reinforced for the successful implementation of neoliberalism as a whole. We then examined how these effects have manifested themselves in the artisanal fishing sector of Chile. We saw both the concrete damage of these policies and the power of community organizing in overcoming personal and institutional obstacles. We examined the issue from the historical lens to the legal lens to the personal lens. We must consider all of these discoveries holistically to consider what comes next for Chile.

My recommendations start with a profound modification of the economic and cultural system in Chile and other neoliberal countries. However, as we can see with the process of the new Chilean constitution, this is easier said than done. Furthermore, a strong democracy would not allow such unpopular policies to remain, so a reassessment of the ways in which institutions within the Chilean government permit corruption would be a monumental step in the right direction. Measures must be taken to eliminate the influence of money in politics and to ensure that government positions reflect the demographics of the populations they represent. The harmful laws that are in place should be replaced with the artisanal fishing community in the room and in mind, just as the union federations demand.

There is further research which could be pursued on this topic, particularly as Chile compares to industrial and artisanal fishing policies in other countries. However, even if we go by Chile alone, there's already a lot of work to be done to improve the lives of the people. Marco Leiton said, "Fishing is the most beautiful thing in life" and my research has shown that this beauty is being threatened by corrupt political and economic forces. If one thing is clear, it is that the current state of the Chilean fishing economy, in society and under the law, is unsustainable. The artisanal fishing community has been fundamentally, systemically disadvantaged and harmed by the effects of the neoliberal system, and a change in that system is necessary in order to stop any more damage from being done.

## References

- Baraona, P. *Conformación de la ideología neoliberal en Chile (1955-1978)*. Conformación de la ideología neoliberal en Chile (1955-1978) - Memoria Chilena: Portal. <https://www.memoriachilena.gob.cl/602/w3-printer-31415.html>
- Bronfine, I., and Leiton, M. *Personal*. 24 May 2023.
- Bronfine, I., and Rosson, A. *Personal*. 17 May 2023.
- Bronfine, I., and Tamayo, M. *Personal*. 16 May 2023.
- Bronfine, I., and Tognio, P. *Personal*. 26 May 2023.
- Bronfine, I., and Vildosola, L. *Personal*. 24 May 2023.
- Drake, P. W., Winn, P., and Schurman, R. "Shuckers, Sorters, Headers, and Gutters: Labor in the Fisheries Sector." *Victims of the Chilean Miracle: Workers and Neoliberalism in the Pinochet Era, 1973-2002*, Duke University Press, 2004, pp. 298–336.
- El Mostrador*. "Ex senador UDI Jaime Orpis y su condena a presidio efectivo por cohecho y fraude al fisco: 'La cárcel va a ser mi casa.'" *El Mostrador*, 7 Apr. 2023. <https://www.elmostrador.cl/noticias/pais/2021/11/14/ex-senador-udi-jaime-orpis-y-su-condena-a-presidio-efectivo-por-cohecho-y-fraude-al-fisco-la-carcel-va-a-ser-mi-casa/>
- Franchini Rossa, V. A. *Análisis de la regulación de la actividad pesquera en Chile post Ley No 20.657 del año 2013*. 2022. Thesis.
- Friedman, M. *El Costo del Desarrollo Neoliberal*. 2004. Thesis.
- Harvey, D. *A Brief History of Neoliberalism*. Oxford University Press Inc., 2005.
- Lorenci de Francisco, Iván. *Origins of Neoliberalism in Chile, 1938-1985*. 2021. doi:10.13140/RG.2.2.33652.68481. *Memoria Chilena. La Transformación Económica chilena entre 1973-2003 - Memoria Chilena*. Memoria Chilena: Portal. <http://www.memoriachilena.gob.cl/602/w3-article-719.html>
- Pizarro Hofer, R. "Chile: rebelión contra el Estado subsidiario." *El Trimestre Económico*, vol. 87, no. 346, 2020, pp. 333–365. <https://doi.org/10.20430/ete.v87i346.1055>
- Resumen, P. "Cosme Caracciolo: 'La ley Longueira representa para nosotros la Guinda de la torta de la Corrupción en Chile.'" *Resumen.cl*, 27 Nov. 2020. <https://resumen.cl/articulos/cosme-caracciolo-la-ley-longueira-representa-para-nosotros-la-guinda-de-la-torta-de-la-corrupcion-en-chile>
- Reuss, A. "What Can the Crisis of U.S. Capitalism in the 1970s Teach Us About the Current Crisis and Its Possible Outcomes?" *That '70s Crisis | Dollars & Sense*. <https://www.dollarsandsense.org/archives/2009/1109reuss.html>
- Zohn, D. *La Gran Hegemonía de Neoliberalismo*. 2005. Thesis.



# America's Original Artform: The Complex Relationship Between Black Music and Copyright Law

By Mia Savoldelli

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*"The rhythmic cry of the slave – stands to-day not simply as the sole American music, but as the most beautiful expression of human experience born on this side of the seas. It has been neglected, it has been, and is, half despised, and above all it has been persistently mistaken and misunderstood; but notwithstanding, it still remains as the singular spiritual heritage of the nation and the greatest gift of the Negro people" (Du Bois 117).*

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## Introduction

This thesis addresses one specific aspect of the most pressing political issue the United States has faced since the start of the civil rights movement: how to remove the legal and economic barriers that have systematically disempowered African Americans. Since the inception of the American project, Black Americans have battled for equal treatment under the law across various political and social dimensions. However, for the purposes of this thesis, I will hone in on the injustices generated by copyright law, an often-overlooked legal framework enshrined in the U.S. Constitution and further protected by numerous laws. This legal structure has historically been applied to deny African Americans the economic benefits of the thirty-billion-dollar global music industry. However, African Americans largely created the sound that the American music industry is founded on and have consistently been a driving force for creativity and innovation throughout American history.

Some scholars argue that black music is the quintessential American art form (Du Bois 177). American black music began in the cradle of slavery. Based on African musical traditions, these sounds later evolved into jazz, blues, rock 'n' roll, and hip-hop. Following their lineage, these genres can be traced back to work songs and religious folk spirituals (Carnegie). Black music forms the spine of American culture and identity while also serving as a form of activism and giving voice to social movements. In *The Souls of Black Folk*, W.E.B. Du Bois writes, "the rhythmic cry of the slave – stands to-day not simply as the sole American music, but as the most beautiful expression of human experience born on this side of the seas. It has been neglected, it has been, and is, half despised, and above all it has been persistently mistaken and misunderstood; but notwithstanding, it still remains as the singular spiritual heritage of the nation and the greatest gift of the Negro people" (Du

Bois 117). Although he penned this quote in 1903, the truth of this statement reverberates today. Black music constituted the first original American art form and has shaped and reflected culture for centuries. Furthermore, the legal structures designed to protect creators and artists have consistently misunderstood black music and have failed to provide black artists with rightful credit and economic benefits. Even though the white mainstream and dominant legal structure have misunderstood black music and failed to properly credit and protect the art form, black music has had an immeasurable impact on the formation of culture.

Despite crucial contributions to American culture, black artists have struggled to maintain creative credit, ownership, and the ability to profit from their artwork. This is a result of the way that black music, as a distinct art form, interacts with copyright law. One inescapable truth of all attempts to integrate and empower minority groups in the United States is that economic empowerment can be a precursor to social integration and political empowerment. By tracing the development of black music and its interaction with legal structures, this thesis will argue that copyright law has been applied in a discriminatory fashion and has worked to deny African Americans legitimate economic benefits. This type of discrimination is no different than the structural legal discrimination that occurred in redlining laws or voter suppression laws. However, in this case, it is particularly insidious because African Americans are the creative leaders of this highly lucrative global industry. To address these issues, this thesis suggests practical legal solutions to mitigate the discriminatory application of copyright laws and attain a more equitable distribution of economic benefits.

The key question I aim to address in this paper is how copyright law has historically disadvantaged black artists, resulting in the theft of

economic benefits and intellectual property rights. In light of this, this thesis also discusses how black music and musicians have persisted despite consistent appropriation and continue to flourish; creating, and shaping American culture. To answer these questions, I will cover the historical foundations of black music and its thematic roots in resistance in Part I. In Part II, I will outline the evolution of American copyright law and how it developed in tandem with innovations in music performance, recording, and technology. Part III will turn to the inherent tensions between copyright law and historical traditions within black music. Part IV will introduce a case analysis of rock 'n' roll and discuss how the copyright structure and the cover record system disadvantaged black artists. Part V will introduce a second case, that of the era of hip-hop and digital sampling, and discuss how sampling technology has generated unique conflicts between black music and copyright law. Part VI will delve into a larger analysis of the two in conversation with each other, discussing the wider patterns and trends reflected in both eras. Lastly, Part VII will provide policy recommendations to alleviate the tensions between black music and copyright law on the issue of sampling in the current moment, integrating perspectives from legal systems around the globe. Overall, I aim to construct a picture of the current copyright structure, outline its conflicts with black music throughout American history, and offer recommendations to benefit the future of black artistry, creativity, and economic rights.

Before diving into the core of this essay, it is important to distinguish the constructs of appropriation and influence. Musicians draw inspiration from each other constantly: this is how genres grow and develop over time. However, there is a substantive difference between inspiration and theft. Influence can be described as hearing a work and learning from it, or, in other words, gaining creative fuel from an encounter with a prior work. This type of creative influence involves using prior work as a jumping-off point. To not constitute theft or appropriation, it must be significantly altered, incorporating new ideas, sounds, or styles. Theft, on the other hand, constitutes the usage of entire songs, complete sets of lyrics, melodies, or rhythms without significant change in meaning or sound of a composition. Theft or appropriation can be particularly harmful when it targets certain creative communities systemically or those without the resources to defend their rights. Within copyright law, the distinction is legally defined as whether an "ordinary listener would find substantial similarity between the preexisting recording or the new work" (Newton V. Diamond). This wording is intentionally

vague and subjective to ensure that judges can take into consideration the particular circumstances and larger context surrounding each case in every decision. Overall, inspiration involves transforming a prior work into something new and original, while theft requires the direct copying of distinct creative works.

Before engaging in the larger analysis of this paper, it must be noted that the music and recording industry as a whole employs exploitative practices. For decades, record companies monopolized the music production process by owning and controlling all elements necessary to create songs. This includes expensive recording equipment, large teams of marketers and advertisers, and publishing and distribution systems (Morton 19). Despite technological changes that have decentralized the distribution process, it remains incredibly difficult to succeed as an independent artist in today's competitive and oversaturated music landscape. For this reason, many artists feel pressured into signing away their creative rights in exchange for the security afforded by recording contracts.

Even though it is evident that the recording industry employs exploitative practices with many artists regardless of race, it is also incontestable that black artists are subject to a greater level of exploitation than white artists. The history of the appropriation of black music is as old as America itself, dating back to the inception of early black genres. Furthermore, in addition to the fact that "white businessmen controlled the capital resources (such as record studios and publishing houses)" they also control who can gain "access to the expertise needed to secure legal protection" (Greene 377). The vulnerability for black artists is twofold: white recording industry tycoons control both capital and legal structures. As a result, black musicians have more easily become victims of exploitation by the multi-billion-dollar recording industry, thus diminishing economic results, affecting control of their music, and prohibiting upward social mobility (Greene 377).

### **The Foundations of Black Music: The Spiritual as a Form of Resistance**

American black music spawned from the cradle of slavery with deep roots in African musical traditions. Referred to by Du Bois as the "sifting of centuries" the slave song was the collective message of enslaved communities to the world (Du Bois 199). This genre is referred to as the "spiritual" or the "work song" (Carnegie). The message included themes like the struggle of enslaved persons, as well as

incorporating centuries of African musical traditions (Du Bois 199, Maultsby). The lyrics and melodies emphasized the mournful existence of slavery and expressed an overwhelming longing for freedom. The work song and the spiritual were passed down orally for generations, revisions and permutations occurring over decades (Du Bois 199). This sharing of song through the enslaved population at a time when the African American population was completely subjugated by white America created the building blocks of a distinct black musical artistic identity.

Despite the unimaginable pain and hardships of slavery, the black community rose above institutionalized violence, oppression, and cruelty, creating something of unimaginable beauty: the first true American musical genre. Slave codes prohibited many elements typically considered instrumental to the creation of music and genre, such as “social gatherings, literacy, and even the playing of instruments” (Hines 472). However, through efforts of sustained resistance, a new genre bloomed, with elements of protest as the thematic core of these melodies. On top of the coordinated resistance required to create and sing work songs and spirituals, the lyrics and themes of this music contained subversive resistance. A key example of this subversion was detailed by Fredrick Douglass in one of his autobiographies, *My Bondage and My Freedom*. Douglass stated: “A keen observer might have detected in our repeated singing of ‘O Canaan, sweet Canaan, I am bound for the land of Canaan,’ something more than a hope of reaching heaven. We meant to reach the North, and the North was our Canaan” (Douglass 221). Although enslaved persons were prohibited from speaking of freedom and faced fear of physical retribution if they did so, these songs allowed them to express their longings and hope for a better future through the covert double meaning provided by themes of religious persecution. This creative expression of shared hardships through song provided relief and allowed for the building of community.

Another spiritual considered a vessel for resistance was “Go Down, Moses”, which Harriet Tubman used to identify herself as a leader of the Underground Railroad (Library of Congress). The coded messages in this music covertly notified enslaved persons of the passage to freedom and the opportunity to escape their oppressors. Using music as a secret weapon, enslaved persons were able to outsmart their oppressors and escape the complex social machinery of slavery. Black music was always a storytelling and communication mechanism for black resistance. From its inception, the work song and the spiritual served a variety of crucial purposes,

including community building and building a coalition for resistance. These sounds and themes formed the cornerstones of black music.

From these foundations in the slave song, black music bloomed into different genres that built American culture. Post emancipation, the slave song splintered into three distinct genres: ragtime, blues, and gospel (Maultsby). Later, these genres influenced other quintessentially American sounds, including jazz, rock ‘n’ roll, and hip-hop. In the Sixties, during the height of the Civil Rights Era, black music served as both a reflection and a respite from the lived experiences of a segregated and white dominated society (Greene 365). During this period, black music took on the themes of black pride, mirroring the sentiments engendered by the Civil Rights Movement and leaders like Martin Luther King Jr. and Malcom X (Greene 366). Black music both reflected and fueled these movements of resistance. This mirrors how black music was an agent of resistance during slavery. Similar motifs are also reflected today, with tracks like Pharrell Williams’ “Freedom” or Kendrick Lamar’s “Alright” becoming both storytelling agents and fuel for the Black Lives Matter movement of the 2010s and 2020s. Black music is, and has always been, a form of resistance in a racially stratified culture.

Despite the immeasurable impact that black artists have had on American culture and the fact that black artists invented and helped proliferate these genres, black creators struggle to gain recognition and the right to profit from their works (Hines). Oftentimes, the copyright structure put in place to protect the rights of creators can be counterproductive for black artists.

### **Foundations of American Copyright Law**

Copyright law is a legal tradition as old as the American democratic project, and its founding ideals are codified in the U.S. Constitution. Constructions of intellectual property ownership have long been tied to status and power and are central to the forward advancement of culture and technology in America (Greene 344). Hamilton, one of the architects of the Constitution and a staunch supporter of state protection of intellectual property rights, stated that “The one great object of government is personal protection and the security of property” (Greene 344). The founding fathers agreed that one of the government’s key roles was to protect property, inventions, and creations. As a result, this clause passed without controversy during the Constitutional Convention (Greene 346). The clear contradiction in this thinking is that at the time, black Americans

remained under the institution of slavery, unable to own property at all. Instead, black Americans were considered property themselves. Despite this clear contradiction in logic, protection of property was an important principle to the founding fathers, and these ideas were imbued into the language of the Constitution.

Intellectual property law in America has had a complex and long-winded evolution. It has undergone two complete overhauls, in 1909 and 1979 (Wayte). As technology has evolved, the Copyright Act has evolved in reaction to and in accordance with these changes. That said, it is important to note that the act has not undergone a full overhaul in the last forty-six years, a period in which music recording and distribution technologies have entirely transmuted.

The power of copyright can be found in the United States Constitution Article I, Section 8. The article states: “Congress shall have the Power... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” (The U.S. Constitution). The foundational intention behind this provision was to protect and encourage the progress of science and the arts. In addition, copyright law provided creators and inventors the right to financially benefit from authorship (U.S. Copyright Office). In this way, the spirit of invention, discovery, and creation is safeguarded by the Constitution and bolstered by the concurrent financial benefits of authorship. The latter piece is of utmost importance: securing financial benefits for authorship allows creators to make a career out of artistry and truly focus on their craft. Furthermore, the general public reaps the rewards of progress, as creative works become publicly enjoyable. To more clearly delineate this right, Congress passed the Copyright Act of 1790, which forms the basis of copyright protections in America.

Once the act was passed in 1790, it quickly amassed several notable alterations. These changes occurred mostly in response to new developments in technology and the arts. The original Copyright Act of 1790 was based on Britain’s Statute of Anne, which protected books, maps, and charts (U.S. Copyright Office). After this original act, subsequent amendments expanded which media were protected and the term they would be protected (U.S. Copyright Office). Notable expansions included historical prints (1802), dramatic works (1856), photographs (1865), and visual art (1870) (U.S. Copyright Office).

Turning to music specifically, there were a few key alterations made to the original act that followed the historical progression of music technology and distribution. The first music-related amendment to the Copyright Act occurred in 1831. This amendment expanded copyright protections to grant exclusive rights to the authors of printed musical compositions (Wayte). Critically, music had to be written down or printed to be copyrightable, posing a serious barrier to black Americans who were systemically barred from learning to read or write. The next music-related amendment came in 1897, when protection was afforded to the public performance of copyrighted musical works (Wayte). The Sound Recording Amendment was not passed until 1971, which “extended copyright protection to sound recordings, rather than just musical compositions” (Wayte). As previously noted, the act evolved in tandem with the advancement of music technology.

The Copyright Act was entirely rewritten and replaced in 1909 and 1976. Both of these overhauls resulted from the mass of edits and amendments made to the act, aimed to clarify and codify authors’ rights. The 1909 Act is less significant to modern legal practice, but the 1976 Copyright Act is still in use today. This act was inspired by the dramatic transformation that technology and media underwent in the prior century, with the advent of movies, television, and sound recording technology. It established protection for unpublished works, incorporated the doctrine of Fair Use, and clearly enumerated the large bundle of authors’ rights included in copyright protection. These rights include “the right to produce and adapt the copyright work, and to distribute, perform, and display the work publicly” (Hines). Furthermore, it established that encroachment on any of these rights constitutes copyright infringement. Lastly, this act extended the term of copyright protection substantially (Wayte). The term has since been extended one more time, to protect a copyright for the life of the author plus seventy years (Wayte). This length of term guarantees that an author can enjoy the benefits of their creation for their lifetime and have their creative legacy protected.

Importantly, although copyright law aims to protect an author’s rights to a creation, the purpose of copyright protection is not to disallow people from sharing ideas. This distinction originates from the landmark 1879 Supreme Court case *Selden v. Baker* (U.S. Copyright Office). This ruling delineates between the usage of an idea versus the specific expression of an idea, stating that only the latter is protected. According to the U.S. Copyright Office,



“creative expression is protected, underlying ideas are not” (U.S. Copyright Office). Keeping copyright protections tailored to protecting the expression of an idea rather than the idea itself avoids the generation of a chilling effect on creativity and expression. This concept is foundational to the study of music and the development of genre, as all music and art is derivative. No artist creates in a vacuum. All are inspired by the culture that surrounds them, their personal experiences, and the predominant sound of the times.

One doctrine crucial to understanding American copyright law is the doctrine of Fair Use. Fair Use is a principle that helps courts determine whether the usage of a copyrighted work is permissible or a legitimate infringement. This defense is meant to help balance the rights of authors with the competing interests of the free flow of ideas and information. The Fair Use doctrine includes four primary considerations. First, the court considers the purpose and character of use, which includes whether the work is for commercial use or, conversely, for nonprofit or educational use (U.S. Copyright Office). Next, the court looks at the nature of the copyrighted work. If the original work is highly creative, the usage of this work is less likely to be considered Fair Use. Third, the court considers the amount of the original work used in the new creation. This includes looking at how much of the original content was used in the creation of the new work, in addition to whether the appropriation included the creative “heart” of the original composition (U.S. Copyright Office). Lastly, the court evaluates the effect of the use on the potential market for the copyrighted work (U.S. Copyright Office). If the usage has a large impact on the intended market of the original piece, it is not likely that it will be ruled a fair usage. These factors work in tandem to determine whether the usage of a copyrighted work was fair or if it constitutes infringement.

Critically, the four factors that determine Fair Use are not a checklist. Instead, the factors work together to produce the context behind the usage of a work, and the court can choose to balance these considerations in any way or even bring in other considerations on a case-by-case basis. There are no hard and fast rules when it comes to Fair Use cases. As the U.S. Copyright office puts it: “There is no formula to ensure that a predetermined percentage or amount of a work – or specific number of words, lines, pages, copies – may be used without permission” (U.S. Copyright Office). As a result, the history of the Fair Use doctrine is a relatively patchwork and variant body of law. There are no hard lines in Fair Use cases,

which produces a fascinating lineage of cases that are unusually dependent on judicial discretion.

Another portion of the Fair Use defense is the measure of transformative use. To evaluate if a work was transformative, the court asks: 1) has the new artist added new expression or meaning, or 2) if new value was added through new aesthetics or insights. Transformative use should be a crucial consideration in music copyright law, as it can help inform a court whether or not a piece was inspired by another work or if it constitutes theft or unlawful appropriation. However, it is not often taken into consideration. Some examples of transformative use include parody, education, critique, or artistic inspiration. If the court rules that the work was transformative, it can help prove that a piece of art is not a copyright infringement.

In practice, the outcome of modern Fair Use copyright cases reflects many factors: the legal culture at the time, the social climate surrounding the case, and the biases of the judge and juries. As an example, I will reference the 2015 *Williams v. Bridgeport* case. This case does not serve as a binding precedent, but it is an example of how the subjective considerations in Fair Use can lead to a variety of differing rulings by the court. In this case, Marvin Gaye’s estate claimed that Robin Thicke and Pharrell Williams’s mega-hit “Blurred Lines” infringed on Gaye’s track “Got to Give it Up.” At issue in the case was whether the works were substantially similar to each other, or whether you could be found liable for infringement for copying a groove (*Williams V. Bridgeport*). Williams claimed that his work should have been protected under Fair Use because artists are inspired by other artists all the time, and that his track was substantially transformative (*Williams V. Bridgeport*). The track borrowed no specific sounds, lyrics, or arrangement of notes. In fact, “the two songs did not share a single melodic phrase” or even “a sequence of two chords played in the same order for the same duration” (McPherson). However, in a shocking decision, the court ruled against Williams, and the Gaye family was awarded \$5.2 million in damages for infringement of a groove (Quagliarello).

This case exemplifies the potential harms of certain overreaching applications of copyright law. Many in the music industry and legal community felt that the court erred in its decision because Williams did not use any distinct portions of Gaye’s song, and artists should not be held liable for their songs having a similar feel (Quagliarello). This case found Williams and Thicke liable for copying an idea, rather than the expression of an idea, which is entirely

antithetical to the founding purpose of copyright law (McPherson). When copyright law oversteps its bounds, it can imbue artists with a fear of financial retribution during the creative process. Rulings like these have a silencing effect on creativity, scaring artists away from finding inspiration from certain sounds. In addition, this ruling is largely ignorant of the fact that all music is derivative or influenced by that which came before it. Fear of financial and legal retribution should be kept out of the creative process, and artists should be allowed to learn from music history to create the sounds of the future. These factors inhibit artists from engaging with the full spectrum of their talents and creativity.

Interestingly, this case allows for a closer look into what separates music copyright law from that of other art forms, and why it is necessary to provide specific alterations to this portion of the American Copyright structure. In film, books, and television, what a writer can create is unlimited. Authors can pull from anything to create a work of art, without limitation. However, music as an art form poses a unique challenge. Unlike film and books, music contains a limited number of notes and chords that artists can choose from to create a composition, as there are a limited number of combinations that are pleasing to the ear (McPherson). In the *Darrell v. Joe Morris Music Co.* ruling in 1940, the judge made this key distinction. Because there are only twelve notes per octave, "It must be remembered that while there are an enormous number of possible permutations of the musical notes of the scale, only a few are pleasing; and much fewer still suit the infantile demands of the popular ear. Recurrence is not therefore an inevitable badge of plagiarism" (*Darrell v. Joe Morris Music Co.*). For this reason, music copyright is a unique case, and special attention must be paid to what falls under the distinct categories of appropriation or influence.

### **Historical Tensions Between Black Music and Copyright Law**

The previous section outlined the historical development of American copyright law, and this section will analyze how black musical traditions can come into conflict with copyright law. I argue that the tensions between copyright law and black music result from two common traditions of black music: community composition and improvisation. In addition to traditions of black music, there are social and societal factors that prevent black music from gaining proper recognition and protection to secure the author's economic rights. These include inequalities of bargaining power that are exacerbated by the effects of racism and social discrimination (Greene 356).

Despite these challenges, the legacies of black musical traditions can still be seen today and continue to frustrate the American copyright system.

Since the beginning of American history, black music has had its own distinct sound and surrounding culture, separate from the white mainstream. This is a result of African Americans' continual segregation in society, beginning with the long history of slavery and continuing with racism, violence, and discrimination. As a result of being forced into separate communities, black music has formed different traditions from white music (Hines). I will be focusing on the traditions of community composition and improvisation. These traditions stem from the hardships of slavery, but their legacy and importance can still be seen today. Furthermore, these traditions directly conflict with the American copyright structure, which emphasizes individualism and ownership, thus affecting the economic and intellectual property rights of African American creators.

The first of the two key components that make black musical traditions difficult to situate within the construct of copyright law is black music's emphasis on community composition. This practice dates back to the oral dissemination, sharing, and creation of the work song and the spiritual (Hines). Community composition de-emphasizes ownership and leverages the knowledge and creativity of a community. This is exemplified by the black musical tradition of call-and-response (Hines). Participatory music, which can oftentimes be improvised by groups of people, conflicts with the protections afforded by copyright law, which require finite authorship. Furthermore, when a work is composed by a community and passed down through generations, rather than being attributable to one author, it becomes more difficult to identify an author and pigeonhole this kind of composition into the typical American construction of copyright law.

A historical example of community composition is seen in the work song or the spiritual, such as the song "Jesus Leads Me All the Way" (Library of Congress). This song was typically sung in religious settings. Congregations would join together, transforming the way the song was sung, heard, and experienced each time (Library of Congress). Because it was passed down through generations and composed by a community, it is difficult to attribute this work to a singular author. The legacy of community composition can also be found in the collaborative nature of one of the most important and quintessentially American genres—Jazz. In Jazz,

artists work together and riff off each other to create a sound, making it difficult to attribute creative credits to one author. Modern examples of this tradition include the transformative work of Public Enemy in the 90s, through their use of sampling. This practice leveraged and remixed the musical history of the black community to create a modern piece (Franzen). In historical and modern cases, songs were composed by multiple authors—sometimes over multiple decades—to create a singular work. I argue that this presents challenges to the Copyright Act as it is currently designed, because it requires determining finite authorship.

Another component that can make black music less compatible with the copyright regime is the tradition of improvisation. This particular tradition can be traced back to artistic practices that took place in Africa before the slave trade, and it has continued in black music from the call and response songs in gospel music to the practice of freestyling in modern hip-hop (Hines). Improvisational performances frustrate the structure of copyright law because one of copyright's primary preconditions is that the work must be fixed in a physical medium, like sheet music (Hines). In improvised music, the work is constantly changing and has the potential to be an entirely different or new artwork each time it is performed. This is exemplified in Gospel music, Jazz, and freestyle rap. Gospel music is often driven by spontaneity and guided by the spiritual experience of those in a congregation, leading to a musical composition being punctuated by spontaneous and emotional reactions, which is illustrated in the track "Down Here, Lord, Waiting on You" composed by Rev. Gates and congregation (Carnegie). Jazz performance highly emphasizes improvisation, typically with a uniform bassline that other accompanying musicians then build spontaneous riffs off of (Carnegie). Unfortunately, Jazz music has been historically misunderstood by the copyright structure, and copyright law "brutally ignores the originality of jazz by labeling it derivative" (Park). Because of this, Jazz artists must pay royalties to the owner of a copyright if they want to play a song and add their own improvisational flair (Park). Lastly, in the modern example of freestyle rap, a hip-hop beat is typically played with an artist rapping lyrics off the top of their mind, creating a spontaneous and original composition. These three different styles and their improvisational nature pose complications for the copyright structure.

In addition to the musical components that make black music more difficult to situate within the structure of American intellectual property law, there are social and societal factors that work against black

artists having the proper protection for their works. Firstly, social stratification and racism led to decreased bargaining power in contracts and in other legal arenas for black artists (Greene 356). Black art was consistently devalued, demeaned, and marked as less valuable than white artistry. Copyright law is not a race-neutral regime because the "degree of protection accorded to intellectual property in American society, as with tangible property, frequently depended on the racial (as well as the gender and class) status of the individual and the economic power to enforce legal rights (Greene 359). Despite this lack of recognition, black musicians produced an incredibly valuable body of creative work, even under the institutions of slavery and segregation.

### **Case Analysis: Introduction**

Now that I have laid out the potential sources of tension between the American copyright regime and black music, I will analyze two cases in tandem to evaluate the culture surrounding copyright and black music at two key points in music history: the advent of rock 'n' roll and the advent of hip-hop. During these periods, copyright provisions posed unique challenges to the creation of music and the maintenance of ownership for black artists. These genres also serve as the soundtrack for black social movements, both reflecting the movements of the time and creating the rhythm that invigorates these resistances.

Before engaging in a larger discussion of America's copyright structure, it is also worth considering the social climate that governed black music outside of the copyright structure. Between the 1920s and 1940s, thousands of black recording artists contributed to the development of the "race record," which was essentially black music created only for black audiences (Blakemore). At this time of extreme segregation, even the art was segregated, and white audiences were unwilling to listen to black artists. However, while being prevented from entering the mainstream, these artists were pioneering the early sounds of rock 'n' roll (Blakemore). Most race record companies were entirely white owned; white people controlled the expensive recording equipment, production, and distribution mechanisms, meaning they could easily extort black artists and give them a fraction of the profit for their creative works (Blakemore). Overall, racism pervaded the arts, and the phenomenon of the race record kept white and black music separate in the early 1900s.

### **Case Analysis: Rock 'n' Roll**

Before discussing how black artists interacted with the copyright regime during this period, it is worth properly crediting the founding members of the genre. While white artists are often credited with birthing rock 'n' roll, even the name of the genre itself can be attributed to black artists. The origin has been traced back to Trixie Smith's 1922 record "My Daddy Rocks Me with One Steady Roll" (Carnegie). In addition, what is largely considered the first rock 'n' roll record, the 1951 song "Rocket 88", was written and performed by black artists (Carnegie). Around this time, the founding fathers of rock 'n' roll emerged, with the likes of Fats Domino, Little Richard, and Chuck Berry working to pioneer the sound with influential tracks like "Tutti Frutti", "Blueberry Hill", and "Johnny B. Goode" (Carnegie). Black artists established the creative cornerstones of the genre, including the name itself, the first record, and the primary artists who pioneered the sound. Rock 'n' roll was also derivative of other black music genres, like ragtime, jazz, blues, and swing. How, then, did rock 'n' roll undergo cultural whitewashing?

As rock 'n' roll transitioned into "rock" there was a paradigm shift in who was seen as at the forefront of the genre. Rock began to be tied to not only white musicians, but also to white audiences, aligning with white counterculture and hippie movements (Carnegie). Artists like Elvis, the Rolling Stones, and The Beatles were seen as the inventors, innovators, and legends of the genre, when in reality, the primary sound of rock was a gift from black artists. Lyrical themes of resistance that descended from black American thought and tradition morphed into the expressions found in counterculture and the white hippie movement. Through this appropriation of both lyrical themes and sound, rock became white people's genre.

The institutional tools that allowed rock to become a white genre were provided by copyright law. The central medium that permitted this transition was the process of covering. As previously discussed, the key difference between appropriation and influence occurs when the prior work was altered substantially. However, the systemic stealing allowed through the practice of covering used entire songs without permission from or economic compensation to the black artists who originally penned them. The process of covering involves an artist re-recording a song from another artist after obtaining permission from the copyright owner. However, record label owners often held the rights to black recordings (and therefore the ability to create derivative works) and were free to

give these permissions to white artists without consulting the original author (Blackmore).

In the 60's, record labels noticed the immense profitability of this strategy. Over time, a pattern emerged in which "an R&B group relatively unknown outside Black communities released a best-selling record, and established white pop singers would cover the song by recording the same lyrics and the same music. More often than not, the cover outsold the original, aided by the powerful promotion and distribution facilities of the music industry" (Hines). This essentially was a system of "legitimized piracy" (Hines). Covers by white artists consistently and dramatically outsold the original due to the promotional strategies used by their labels and their increased palatability to and acceptance by white audiences and consumers. As a result, the ownership and economic benefits of black compositions were transferred to the hands of white artists.

Typically, record labels provide artists with the equipment required to create a recording, and in return, they hold the rights to an artist's recordings or copyright (Fogarty 142). The possession of this copyright gives a label the right to reproduce, distribute, and control who can perform the work (Fogarty 142). Most importantly, holding the rights to a sound recording allows labels to decide if and when derivatives of the work can be produced. As a result, these labels controlled which songs could be covered, and profited the most from licensing these works (Hines). Record labels were highly financially incentivized to continually extort their black signees. Additionally, black artists were largely excluded from the ASCAP (American Society of Composers, Artists, and Performers), so it was difficult for them to have their royalties enforced (Blackmore). Moreover, when a white artist covered a song, it then diminished the potential profitability of the original, as audiences learned to associate songs with the star power of white artists. These factors compounded each other and created a machine that profited from the appropriation of black creativity and authorship through entirely legal channels. The regime of covering music during the era of rock 'n' roll stamped out black artists' creative credit for founding a genre and deprived them of their rightful financial benefits.

The concept of covering might seem race-neutral on its face or as a potential opportunity for white and black artists to share, collaborate, and advance the genre together. However, in practice, it played out in a way that greatly disadvantaged black artists. Of note is the unidirectionality of this artistic appropriation: white artists disproportionately covered



black artists during this time (Hines, Greene 369). Often, black artists were signed into extortionary work-for-hire contracts, in which their labels held the control of copyrighted works (Blackmore). Artists like Little Richard and Chuck Berry had their ownership rights transferred to record companies for minimal sums (Greene 373). Little Richard sold his publishing rights to a record company for a total sum of fifty dollars (Greene 376). He was then covered by both Creedence Clearwater Revival and the Beatles, creating incredibly lucrative tracks. Little Richard is a key example of the cover record extorting a black artist for profit.

An artist that serves as a prominent example of this recurring phenomenon is Elvis Presley, commonly referred to as the King of Rock N Roll. However, he rose to this position of royalty on the shoulders of black artists. A handful of the songs that he covered by black artists were Big Mama Thornton's "Hound Dog," Fats Domino's "Ain't That a Shame," Big Joe's "Shake Rattle and Roll," Arthur Crudup's track "That's All Right Mama," and Otis Blackwell's songs "Don't be Cruel" and "All Shook Up" (Hagney, Hines 486). These tracks form the core of Elvis's legendary discography and are by all measures publicly considered his artistic property. However, even Elvis acknowledged that he was not the creator of this sound, stating in a 1957 interview with *Jet*: "A lot of people seem to think I started this business, but rock 'n' roll was here a long time before I came along. Nobody can sing that kind of music like colored people. Let's face it: I can't sing like Fats Domino can. I know that" (Robinson 61). Though Elvis himself did not claim to be the leader or inventor of the genre, he became nationally accepted as the king of rock 'n' roll.

As a concrete example of this appropriation, I will focus on the particular circumstances surrounding "That's All Right," by Arthur "Big Boy" Crudup. Arthur Crudup worked as a recording artist but was paid so little for his work that he also had to work as a farm laborer. To continue making music, he sometimes sold "sweet potatoes alongside his recording sessions throughout his career" to financially sustain himself (Hines 486). He was also covered by rock legends like Creedence Clearwater Revival, Elton John, and Rod Stewart. Although his musical talents were recognized by record labels and artists who wished to profit from him, he ultimately had to quit the music business because he was "making everyone rich and he was poor" (Shaw). This was a common pattern in the industry. Black artists under work-for-hire contracts or exploited by the process of the cover record were paid a fraction of the profits

from their creative works. This left many artists unable to financially sustain this creative profession.

A similar controversy occurred with the song "Hound Dog." The original author, Big Mama Thornton, was reportedly given 500 dollars for this song (Hagney). The song has since sold ten million copies (Hagney). Compared to the profits generated by this track, this payment is blatantly offensive to the original artist and is certainly not enough to sustain an artistic career. These covers not only severely lessened black artists' ability to profit from their work, but also influenced the public to view white artists at the helm of the genre. Overall, as seen with Elvis, copyright law granted labels the legal right to rewrite the narrative on who founded an entire genre, in addition to reestablishing who got to profit from it. Black artists invented rock and continued to develop it through sustained creative contributions, but copyright law failed to adequately protect these authors and their artistic innovations. This again led to the alienation of economic benefits from black artists, which is at the root of the lack of social mobility and equal rights for African Americans.

### **Case Analysis: The Advent of Rap-- New Challenges**

From its inception, rap was not taken seriously by the white mainstream. It was judged for its obscenity and not considered a real art form by the larger artistic community, society, and legal community (Hines 488). However, once record labels realized the amount of money that could be made off of this genre, they began to take it seriously (Franzen 20:00). Crossover songs like "Walk This Way" with Run DMC and Aerosmith caught the attention of mainstream audiences and allowed rap artists to gain a foothold in the industry due to its immense profitability (Franzen 20:00). This collaboration between a white rock group and a rap group was the first rap single in the *Billboard* Hot 100. Furthermore, the first rap song to reach number one was "Ice, Ice, Baby" by aptly named white rapper Vanilla Ice. The irony in this is clear: the first rap songs to achieve mass popular recognition were white, even though the genre was a reflection of black culture. Within this crossover to the mainstream, a pattern reveals itself: the genre was not taken seriously until white musicians legitimized it and record labels realized how much could be made from it. Black music was not considered art—until it became clear that it could make labels money.

Hip-hop is a genre that builds on and actively creates black history. It has notable ties to black

musical tradition. It incorporates practices of community composition, improvisation, and participation (Hines 488). Rap music was founded on a “culture of borrow and take because it was a culture founded on a lack of resources” (Franzen 13:00). This culture of sharing ideas tends to conflict with the American copyright structure, especially when it comes to the process of digital sampling, a common practice in the composition of rap music.

Digital sampling is the practice of taking a piece of music or a sound and using it to create new music. The advent of this technology sparked controversy in the music industry, with some considering the power of this technology an “insidious conspiracy against musicians” (Johnson 135). Digital samplers can take previously recorded sounds and make them into new musical creations. These samples can include spoken words, beats, instruments—essentially anything that can be recorded. This sound or combination of sounds is then manipulated in a variety of ways to create a new piece. A digital sampler can alter the texture of a sound in many ways: playing it backwards, truncating it, repeating it, splicing it with another sound, or combining these methods to create something new (Johnson 138). One of the pioneers of this technique, Hank Shocklee of rap group Public Enemy, states: “Sampling was a very intricate thing for us. We didn’t just pick up a record and sample that record because it was funky. It was a collage. We were creating a collage” (McLeod 20). Shocklee draws a parallel to a visual collage to demonstrate how sampling takes other work and pieces it together with other elements to transform it into something new. In this way, sampling reflects the black musical tradition of community composition. Sampling is a key example of artists collaborating across time or generations. However, digital sampling generates conflicts between rap music and copyright law, and these conflicts have led to immense and sometimes insurmountable barriers for black artists in the genre.

The golden age of hip-hop occurred when artists were permitted to create without restriction. This came at the advent of digital sampling technology, before record labels caught up to the technology and realized how they could profit from and control it. The records created during this period that exemplify this revolutionary technique of blending samples together include De la Soul’s “Three Feet High and Rising” and Public Enemy’s “It Takes a Nation of Millions to Hold Us Back” (McLeod 22). These black artists utilized the “everything and the kitchen sink” approach to sampling, incorporating all kinds of sounds from daily life and music to create a

new track. Trugory of De la Soul explains their sources of inspiration in the following way: “I could be walking in the mall and I might hear something [...] It doesn’t matter if it was something recent or outdated, dusty, obscure, and you know, weird” (McLeod 22). As a master of the sound collage, Trugory demonstrates the ability to create a new work with substantial transformative quality from the original. No one was more adept with this technique than the Bomb Squad of Public Enemy. The Bomb Squad was Public Enemy’s team of musicians and DJs who worked together to construct their sound. Public Enemy used sampling to create a “tremendously complex choreography of sound that reconfigured smaller musical fragments in ways that sounded completely new” (McLeod 22). Sometimes, a single track would contain a dozen distinct samples spliced together (McLeod 22). These layers of samples created an entirely new and intricate sound. The seminal track “Fight the Power” never underwent any sample clearance procedures despite being incredibly well-known and featured in Spike Lee’s *Do the Right Thing* (McLeod 22). Copyright law had not caught up to the technology. Record labels had not realized what these artists had done with sampling technology because the sounds were so distorted from their original sources. This unrestricted creative freedom allowed these artists to create the sounds that jump-started hip-hop.

This period of creative freedom was short-lived. Once more artists discovered sampling technology and began to make simpler mixes, the samples used became more distinguishable and the legal crackdown began. Some producers would sample entire tracks and use them as backbeats for new records (McLeod 27). These verbatim samples were seen as blatant copies and were quickly classified as copyright infringement (Johnson 137). As a result, the original artists began to sue or ask for payment for the usage of their tracks, as this use was not transformative. The rules set in place to protect copyright holders were twofold: you had to pay an up-front licensing fee, and then agree to a royalty for the sales of the song or album (Delaurenti). These rules sprang up in reaction to DJs using sampling technology to copy large portions of songs or entire songs, and ended up greatly frustrating the development of digital sampling as a potential means of creating original and transformative tracks.

These restrictions on sampling put two hurdles in place for artists, hindering them both creatively and financially. Firstly, I will discuss the financial issues. Sometimes the costs required to sample are insurmountable for artists. According to a

study by McLeod in his book *Creative License: The Law and Culture of Digital Sampling*, sampling from a small or lesser-known artist might cost about \$500, but sampling from a well-known artist could cost as much as \$100,000 in up-front licensing fees (McLeod 205). This staggering rate prohibits most, if not all, creators from using the work of a large swath of artists. Beyond these up-front fees, most sampling contracts also require artists to pay royalties on each unit sold, which can range from \$0.01 a copy to \$0.15 a copy (McLeod 205). Due to royalties and up-front fees, sampling now imposes large financial burdens on creators, prohibiting creativity and making a new method of creating music financially impossible.

Furthermore, the long process of getting samples cleared also interferes with the creative process, until the sounds created by Public Enemy or De la Soul were no longer tenable because “every second of sound had to be cleared” (McLeod 27). Speaking on the interference that sample clearing has with the process of making music, Truog of De La Soul states: “You kind of have to do the work before you even do the creative end of things [...] it kind of spoils the creative process” (McLeod 28). Artists were given lists of people whose work they could not use in sampling, including many artists who were likely to sue them if their music was used in any form (McLeod 202). Due to the extensive process of getting samples cleared and the financial burdens, this creative method was largely extinguished.

As a result of the new legal ramifications for sampling in the late 80’s and early 90’s, an entire style of creating music became impossible to sustain due to legal hurdles and the resulting financial pressures. Artists like De la Soul and Public Enemy sometimes incorporated ten or twenty samples in one song (McLeod 203). Under the conditions discussed previously, it became economically unfeasible to make creations of this kind. Firstly, the up-front licensing fees would be astronomical for a track with twenty different samples. In addition, due to the phenomenon of royalty stacking, there is potential for the track itself to lose a significant portion of each sale profit to varying sources (McLeod 201).

Overall, hip-hop and digital sampling pose several complications to the copyright structure. Digital sampling provides artists with a new ability to create incredible collages of sound that leverage generations of music history in fresh tracks. However, due to its clashes with the copyright structure, it can be impossible for artists to sample at all, let alone incorporate multiple samples. As a result, the creativity of black artists has been inhibited through

legal and financial channels. Instead of shunning this new technology and financially badgering black artists, new factors should be taken into consideration that would allow for more equitable treatment of this new technology.

### **Case Comparison: How Do the Time Periods Differ?**

Although these periods of rock and rap differed in music technology and sound, their stories are not dissimilar. A new genre bloomed, the white mainstream largely ignored it until it became clear how much money could be made, and then major labels found ways to use legal paradigms to profit from it. This pattern exists in both cases. As a result, in both eras, the copyright structure tamped down black artistry, creativity, and credit through legal and economic channels. Overall, the copyright structure was used as a tool to enhance white profit and deny the economic rights of African American creators.

In the era of rock ‘n’ roll, the prevalence of the cover record got in the way of black artists’ ability to profit from their music. Black artists were paid nominal fees for their tracks and then received no further money or credit for their creations. Audiences craved the ingenuity and fresh sound of black artists, but it was only palatable to them after being whitewashed. The founders of America’s genre were written out of the narrative. Stated plainly, copyright law failed to protect black artists.

At the advent of hip-hop, the entire process of creating complex digital sample mashups was rendered obsolete because of the copyright structure. This limits the creative expression of many black artists and has hindered the expansion and growth of the genre itself. Once again, copyright law failed at its original intention. Instead, it blocked an entire method of creating.

In both of these eras, a legal framework intended to protect the rights of authors inhibited black authorship, creativity, and economic benefits for black artists. How, then, can this structure be improved upon to allow artists freedom in the era of digital sampling? Although the mistakes of the past cannot be corrected, it is vital to consider how the structures that govern American artistry do not continue to make the same repeating historic mistake of undervaluing and appropriating black music. As the controversy over digital sampling is still occurring, I believe this would be a relevant place to begin the work on ensuring that all artists who leverage this technology have the

creative freedom to make music to the fullest extent of their creative abilities.

### **How Can We Do Better? Policy Recommendations for a Rapidly Changing Musical Landscape**

There is no way to anticipate future developments in music technology, but it is necessary to react accordingly and promptly when these developments occur to ensure that artists are treated fairly by the structures in place to protect them. It is valuable to address the tensions created by digital sampling and provide recommendations on how these tensions could best be alleviated. I believe my recommendations would strike a better balance between providing the proper protections to creators and working to maintain artistic freedoms in the process of creating new music. Some scholars argue that the current copyright structure needs to be entirely overhauled to support this new technology, but I argue that a return to the core ideals underpinning the doctrine of transformative use (at the heart of the Fair Use defense) can address the issue (Johnson 145). I believe the current structure has fallen short in failing to recognize Fair Use and transformative use as a proper defense for digital sampling lawsuits, calling every sample infringement without evaluating its level of creativity or alteration. For this reason, I offer the following recommendations to help ease the tensions between copyright law and digital sampling by re-emphasizing the importance of transformative use in music law cases. This can be accomplished by incorporating a variety of new considerations, including evaluating how important the sample is to the value of the new composition, the frequency with which the sample is used, and the degree to which the sample was altered in the new track.

Returning to a concept that was previously referred to, in Fair Use cases, the court considers whether a use was transformative by asking: 1) has the new artist added new expression or meaning, or 2) if new value was added through new aesthetics or insights. If the court rules that the work was transformative, it can help prove that a piece of art is not an infringement. Artists like Public Enemy and De La Soul have been prohibited from using their creative sampling tactics, although transformative, due to the lack of detail provided by the copyright structure at the advent of this new technology.

Since the golden era of hip-hop, the tensions surrounding sampling have only increased. In the case *Bridgeport Music v. Dimension Films*, the court stated: “Get a license or do not sample” (McLeod 31). I argue that this precedent is much too broad to be

applied to digital sampling cases. Furthermore, this statement opened the floodgates for hundreds of sampling lawsuits, many retroactively, when labels realized the profits they could make through legal channels. In 2006, a case involving NWA’s track “100 Miles and Runnin’” used a manipulated two-second guitar riff from the song “Get Off Your Ass and Jam” to construct their beat, and they were found liable for infringement. In this case, the court established that copyright owners reserve the exclusive right to duplicate work, no matter how short the sound recording might be (DeLaurenti). This ruling by the court poses an extreme danger to artistic creativity, as it largely ignores the concept of transformative use. Since then, copyright claims have become a large source of profit for various plaintiffs, including major labels. In the example of *Williams V. Bridgeport*, Marvin Gaye’s estate was awarded a shocking five million dollars in damages (*Williams V. Bridgeport*). Since this ruling, there have been copycat suits for millions of dollars against stars like Ed Sheeran and Katy Perry, aiming to profit from similar claims of infringement (Wertheimer). According to Rolling Stone, this has caused a “culture of fear in the recording studio” (Wertheimer). For this reason, I argue that a return to the principles established in the Fair Use doctrine, specifically the concept of transformative use, would have a largely freeing impact on artists’ ability to create. I argue for a reevaluation of the copyright regime that allows for artists to use samples with appropriate licensing fees, with a medium-appropriate adherence to the transformative use doctrine, and the addition of a few additional considerations. These alterations would help bolster artistry and the protection of authors in this specific musical context.

Firstly, major labels must engage in fairer practices when it comes to pricing samples. One strategy is sliding fee scale arrangements (Johnson 164). Under these agreements, creators who want to use a sample would pay a small royalty of a few cents on the sale of each album that uses that sample (Johnson 164). In this way, artists can create freely, and owners of the copyright get to reap the benefits of the usage of their work. This idea contrasts with enormous up-front fees that prevent artists from using previous works. Using this strategy, artists who get sampled get to enjoy the usage of their creation to the degree of the popularity of the new track, instead of being allowed to charge exorbitant fees that block artists from creating. Artists should not be barred from creativity through financial means—this directly conflicts with the original intentions of the provisions established in the Constitution.



Secondly, transformative use needs to be reemphasized in music copyright infringement cases. In other words, “Although sampling may theoretically violate black letter copyright law, not all infringements are actionable” and some should be protected through the transformative use doctrine (Johnson 149). This is not a new or radical principle. If the work adds new expression or if value is added through the mixing of multiple samples together, it should be protected under Fair Use. Courts should consider whether a sample is foundational for a new piece of music, or if it is just a small effect or detail in a larger composition (Johnson 149). Drawing clear distinctions between these two usages could greatly benefit creators and allow for an expansion of the ways a digital sampler can be used to create new tracks. It should not be possible to own a small sound, note, or exclamation, as these are the fundamental building blocks by which songs are created, and artists should be free to use. Adhering to the doctrine of transformative use could provide a more balanced structure for black artists, in contrast with the sweepingly broad precedent established in *Bridgeport Music v. Dimension Films*. The Fair Use defense can be made to work with digital sampling technology, along with other considerations.

These considerations include how significant the sample is to the heart of the new composition, the frequency with which the sample is used, and the degree to which the sample was altered in the new track (Johnson 156-159). I believe all of these factors are relevant to determining if the usage of a sample was transformative in a new composition. If the sample is used as the heart of the new track or is the central selling point of the new composition, it should be considered an infringement. However, if the sample is used as an accent or is not the core of the piece, creators should be free to use it. Next, if the sample is used frequently or makes up the entirety of the new track, it could be considered an infringement on the original composition. Lastly, it should be considered transformative use if the sample was distorted significantly. An example of this practice would be Daft Punk’s sampling of “More Spell on You” by Eddie Johns for their track “One More Time.” In this creative use of sampling technology, the horns in the original track are distorted, rearranged, and layered with other beats. Ultimately, the two tracks have entirely different feels, and therefore, this usage

should be considered a transformative use. Overall, these three new considerations could help a court more fairly weigh Fair Use considerations in a digital sampling infringement case.

## Conclusion

It is the role of copyright law to uniformly protect creators, but it has failed to protect black artists properly over the course of American history. Although copyright law is intended to be a race-neutral structure, it must be recognized that not all artists have the same positioning due to the racially stratified nature of American society. This thesis has discussed how copyright law conflicts with the black musical traditions of improvisation and community composition, as both of these traditions frustrate the stiff and fixed nature of copyright law. Furthermore, copyright law permitted the transfer of authorship rights of rock ‘n’ roll into white hands. Lastly, copyright permissions have obstructed the expansion of sampling practices and the growth of the genre of hip-hop. By recognizing the negative consequences generated by the concurrent forces of the copyright structure and surrounding racist culture, we then have the space to notice where alterations to this system can be made that would benefit the future of black authorship.

Black creators and art must not be perpetually misunderstood and unfairly appropriated. For this reason, I argue that the concept of transformative use found in the Fair Use doctrine should be reemphasized in music copyright infringement cases. This would allow artists the freedom to create using this new technology, and it would work to prevent large record labels from using the copyright structure to extort people for profit. Furthermore, the larger importance of this thesis is to highlight the need for creators to be able to hold and maintain the financial benefits of their artwork, as this is crucial in ensuring the creative process and the forward progression of the arts. Turning to the future, black artists should not have to struggle against the regime to display their creative talents; it should assist and protect them. Allowing artists to profit from the work they create is the key to empowerment in American society. As the architects of the American sound, black artists should be properly protected and able to fully reap the financial benefits of this enormously profitable industry.

## References

- Aplin, Tanya. *Copyright Law in the Digital Society: The Challenges of Multimedia*. 1st ed., Bloomsbury Publishing (UK), 2005, <https://doi.org/10.5040/9781472563415>.
- Bargfrede, Allen. *Music Law in the Digital Age: Copyright Essentials for Today's Music Business*. 3rd edition., Berklee Press, 2021.
- Blakemore, Erin. "Race Records: The Birth of Black Music in America." *History*, A+E Networks, 26 Sept. 2019, <https://www.history.com/news/race-records-bessie-smith-big-bill-broonzy-music-business>.
- Carnegie Hall. *Timeline of African American Music*. Carnegie Hall, [www.timeline.carnegiehall.org/timeline](http://www.timeline.carnegiehall.org/timeline). Accessed 1 Feb. 2025.
- Copyright Act of 1909. U.S. Congress, 1909. U.S. Statutes at Large, vol. 35, U.S. Government Printing Office, 1909, pp. 1075–1080.
- Copyright Criminals. Directed by Benjamin Franzen, Big Mouth Productions, 2009.
- De la Torre, Carlos Ruiz. "Digital Music Sampling and Copyright Law: Can the Interests of Copyright Owners and Sampling Artists be Reconciled." *Vanderbilt Journal of Entertainment Law & Practice*, vol. 7, no. 3, Summer 2005, pp. 401-410. HeinOnline, <https://heinonlineorg.offcampus.lib.washington.edu/HOL/P?h=hein.journals/vanep7&i=400>.
- DeLaurenti, Kathryn. "Music Sampling." *The Sheridan Libraries & University Museums Blog*, 15 Mar. 2018, [blogs.library.jhu.edu/2018/03/music-sampling/](https://blogs.library.jhu.edu/2018/03/music-sampling/).
- Douglass, Frederick. *My Bondage and My Freedom*. 1855. Edited by William L. Andrews, Yale University Press, 2009.
- Du Bois, W.E.B. *The Souls of Black Folk*. 1st Dover Thrift ed., Dover Publications, 1994.
- Fogarty, Patrick. "Major record labels and the RIAA: Dinosaurs in a digital age." *Hous. Bus. & Tax LJ* 9 (2008): 140.
- Greene, K.J. "Copyright, Culture & (and) Black Music: A Legacy of Unequal Protection." *Hastings Communications and Entertainment Law Journal*, vol. 21, 1 Jan. 1998, [https://doi.org/https://repository.uchastings.edu/hastings\\_comm\\_ent\\_law\\_journal/vol21/iss2/2](https://doi.org/https://repository.uchastings.edu/hastings_comm_ent_law_journal/vol21/iss2/2).
- Hagney, John. "Rock 'n' Roll Was Stolen from Black Musicians. Elvis Presley Was Well-Aware of His Debt." *The Inlander*, 12 Feb. 2025, [www.inlander.com/culture/rock-n-roll-was-stolen-from-black-musicians-elvis-presley-was-well-aware-of-his-debt-25503326#:~:text=Some%20of%20these%20were%20Big,and%20%22All%20Shook%20Up.%22](https://www.inlander.com/culture/rock-n-roll-was-stolen-from-black-musicians-elvis-presley-was-well-aware-of-his-debt-25503326#:~:text=Some%20of%20these%20were%20Big,and%20%22All%20Shook%20Up.%22).
- Harris, Cheryl I. "Whiteness as Property." *Harvard Law Review*, vol. 106, no. 8, 1993, pp. 1707- 1791.
- Hines, Candace G. "Black Musical Traditions and Copyright Law: Historical Tensions." *Michigan Journal of Race & Law*, vol. 10, no. 2, Spring 2005, pp. 463-494. HeinOnline.
- Johnson, A. Dean. "Music Copyrights: The Need for an Appropriate Fair Use Analysis in Digital Sampling Infringement Suits." *Florida State University Law Review*, vol. 21, no. 1, Summer 1993, pp. 135-166. HeinOnline.
- Library of Congress. "African American Spirituals." Library of Congress, 7 Feb. 2025, [www.loc.gov/item/ihas.200197495/](https://www.loc.gov/item/ihas.200197495/). Accessed 7 Feb. 2025.
- Park, Jung Hyun. "Questioning the Copyright Act: Is Copyright Doing It Right?" *Writing Program Journal*, vol. 7,

- Boston University, 2025,  
[www.bu.edu/writingprogram/journal/past-issues/issue-7/park/](http://www.bu.edu/writingprogram/journal/past-issues/issue-7/park/). Accessed 16 Feb. 2025.
- Quagliariello, John. "Blurring the Lines: The Impact of Williams v. Gaye on Music Composition" *Harvard Law School Journal of Sports & Entertainment Law* vol. 105, no. 2, 2019, pp. 1-25.  
<https://journals.law.harvard.edu/jsel/wpcontent/uploads/sites/78/2019/02/HLS105.pdf>.
- Rai, Prabin. *Copyright Laws and Digital Piracy in Music Industries: The Relevance of Traditional Copyright Laws in the Digital Age and How Music Industries Should Cope with the Ongoing Piracy Culture*. 2020.  
 University of Agder.
- Rahman, Wardah. "UBeyond the Beat: The Fight for Fair Compensation for Black Musicians." *Columbia Black Pre-Law Society*, 24 Oct. 2022,  
<https://blackprelaw.studentgroups.columbia.edu/news/ubeyond-beat-fight-fair-compensation-black-musicians>.
- Robinson, Louie. "The Truth About That Elvis Presley Rumor." *Jet*, vol. 12, no. 13, 1 Aug. 1957, Johnson Publishing Co., 57-61.
- Ruiz de la Torre, Carlos. "Digital Music Sampling and Copyright Law." *Vanderbilt Journal of Entertainment & Technology Law*, vol. 7, no. 3, Summer 2005, pp. 609-644. Vanderbilt University,  
<https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1450&context=jetlaw>.
- Maultsby, Portia K., and Earl Stewart. *African Origins and Adaptations in African American Music*. University of Illinois Press, 2006.
- McPherson, Edwin F. *Crushing Creativity: The Blurred Lines Case and Its Aftermath*. McPherson LLP,  
<https://mcpherson-llp.com/articles/crushing-creativity-the-blurred-lines-case-and-its-aftermath/>. Accessed 30 Apr. 2025.
- McLeod, Kembrew, et al. *Creative License: The Law and Culture of Digital Sampling*. Duke University Press, 2011,  
<https://doi.org/10.1515/9780822393528>.
- Morton, David. *Off the record: The technology and culture of sound recording in America*. Rutgers University Press, 2000.
- Newton v. Diamond*, 204 F. Supp. 2d 1244 (C.D. Cal. 2002).
- Shaw, Arnold. *Black Popular Music in America*. 2nd ed., Schirmer Books, 1995. *Selden v. Baker*, 34 U.S. 453 (1835).
- U.S. Patent and Trademark Office. "Copyright Basics." United States Patent and Trademark Office, U.S. Department of Commerce, [www.uspto.gov/ip-policy/copyright-policy/copyright-basics](http://www.uspto.gov/ip-policy/copyright-policy/copyright-basics), accessed 9 Dec. 2024.
- Wayte, Larry. "Pay-For-Play: How the Music Industry Works, Where the Money Goes, and Why" *Copyright Theory and History*, University of Oregon Press, 2023, <https://opentext.uoregon.edu/payforplay/chapter/chapter-23-copyright-theory-and-history/>.
- Wertheimer, Ron. "How Music Copyright Lawsuits Are Creating a Chilling Effect." *Rolling Stone*, 5 Mar. 2020,  
[www.rollingstone.com/pro/features/music-copyright-lawsuits-chilling-effect-935310/](http://www.rollingstone.com/pro/features/music-copyright-lawsuits-chilling-effect-935310/).
- Williams v. Bridgeport*, 321 Conn. 804 (2016).

# Not Just the Economy, Stupid: How Party Platform Rhetoric Impacts Pro-Environmental Policy

By Elizabeth Tolbert

## Abstract

Breaking a longstanding history of tactical support, Senate Republicans are no longer supporting pro-environmental policy – a trend drastically highlighted in former President Biden’s Inflation Reduction Act of 2022. While change in policy support is not an atypical occurrence in American politics, it tends to coincide with policy that no longer advances a party’s current agenda. However, this stipulation cannot be attributed to the Inflation Reduction Act, as the bill incorporated Republican domestic manufacturing and investment goals. Why did Republican Senators unanimously oppose the act, and does this vote signal a larger shift within the Republican party toward categorical opposition to environmental policy?

This study explores the relationship between affectively polarized rhetoric within party platforms and senatorial voting behavior regarding such policy. Party documents have increasingly utilized antagonistic “othering” rhetoric to not just oppose but attack a given oppositional party. I hypothesize this shift to be a key reason for the change in Republican support of pro-environmental policy. Because such policy has come to be connotated with a liberal agenda, I propose that Republican Senators are increasingly opposing such legislation in tandem with increased levels of antagonistic othering.

To test this hypothesis, my study analyzed 60 pro-environmental policy bills voted on in the Senate from 1989 through 2024. Republican and Democrat Senator roll call votes were tracked for each bill; control variable data such as constituency preference, re-election years, economic ideological leanings, and unified government years were collected as well. Using word-identification software, I analyzed partisan and polarized rhetorical frequencies within all Republican and Democratic party platforms beginning in 1988. These frequencies were subsequently used to calculate the percentage of polarized oppositional language (PPOL) levels for each platform. Lastly, a multivariate regression analysis was conducted to determine correlation between PPOL levels and Senatorial voting behavior.

Data analysis proves that Republican Senators are opposing pro-environmental policy more consistently than they did in the past. This data also confirms that party platform rhetoric has become increasingly affectively polarized over time. Regarding the conducted multivariate regression analyses, this study has established the following: (1) PPOL levels of party platforms have summarily increased over time both parties; furthermore, Republican and Democrat PPOL levels are highly correlated to one another. (2) Republican and Democrat Senators have increasingly become polarized regarding their support and opposition for pro-environmental policy. (3) PPOL levels have a varying degree of significant correlation regarding Senatorial voting behavior for pro-environmental policy. (4) Personal economic ideology seems to be a significant variable that impacts Senatorial support for pro-environmental policy, regardless of party.

## Industrial Environmental Policy, Republicans, and the Inflation Reduction Act

Ronald Reagan is remembered for many things, but rarely as a climate advocate. Yet, the 40<sup>th</sup> President created and passed one of the most successful pieces of pro-environmental legislation to ever be enacted into American law: the Montreal Protocol. This expansive regulatory framework aimed to completely phase out the production and use of harmful chlorofluorocarbons (CFC). Reagan

recognized two realities: lucrative domestic chemical manufacturing businesses would not accept such legislation without a fight, and that there was a dire need to enact total chemical manufacturing regulation due to the looming Ozone Crisis. Despite his reputation as an economic conservative and ally of big business, Reagan managed to overcome the deep pockets that funded his party and pass this incredibly expansive regulatory policy for the climate.



Expansive environmental regulation policy can successfully pass through Congress so long as such regulation is justified by a projected economic benefit. The Montreal Protocol is quintessential in demonstrating this dynamic: Reagan purported that investment in novel American chemical industries would be the most rational choice to advance domestic economic strength, therefore making divestment and regulation towards existing CFC manufacturing economically sound. This fusion of environmental concerns and economic benefit is a policy formation tactic known as *industrial environmentalism* (Tolbert 2023). Necessary, yet expansive, pro-environmental regulations could be – and have since been – passed by stressing the resulting net benefit for the American economy. For decades, American politicians have navigated the precarious political challenge of protecting the green of the earth while not sacrificing the green of constituents’ pockets through such policy. Industrial environmentalism has subsequently been adopted by politicians hailing from both sides of the American political spectrum.

A modern example of industrial environmentalist policy is former President Biden’s Inflation Reduction Act. Passed in August 2022, the bill aimed to revitalize American manufacturing, jobs, and businesses while simultaneously pivoting the country away from reliance on environmentally harmful industries. Proving successful, a year after its passing more than 1.5 million American jobs were projected to have been created, spur more than \$110 billion dollars invested in American clean energy manufacturing, and American families were estimated to have saved nearly \$28 billion on electricity from lowered energy costs (White House 2023). While the Inflation Reduction Act did expand federal regulation, it simultaneously promulgated domestic manufacturing and inflation reduction that was argued to enhance overall American economic strength (RNC 2024).

The act was originally structured to incorporate Republican priorities of domestic manufacturing and industry goals. Furthermore, the act adhered to the long-accepted bipartisan industrial environmentalist policy formation tactic. In theory, the act should have been a success story for bipartisan Congressional action. Yet once put to a vote in the Senate, the Inflation Reduction Act was met with unanimous opposition from Republicans, and the policy barely cleared the Senate by a vote of 51 to 50 along party lines (Quinn 2022), highlighting a surprising divergence between party-aligned policy design and actual legislative support.

## Background

Before delving into the puzzle further, it is necessary to establish evidence of previous Republican support regarding pro-environmental policy. Richard Nixon signed the 1963 Clean Air Act into law. As detailed above, Reagan supported massive industrial regulation to protect the Ozone layer in 1989’s Montreal Protocol. In 1992, the Senate approved the U.N. Framework Convention on Climate Change (UNFCCC) with George H.W. Bush’s endorsement. In the same year, Republican Senator Chuck Grassley added the renewable energy production tax credit to the 1992 Energy Policy Act, which was critical for rapid expansion of the wind energy industry. From 2003-2007, bipartisan bills in the Senate produced significant efforts to reduce U.S. greenhouse gas emissions. Republican Senator John McCain and Democratic Senator Joe Lieberman joined political forces to produce the Climate Stewardship Act of 2003; this policy instituted a cap-and-trade emission-reduction program for electricity, manufacturing, commercial, and transportation sectors of the economy. Even in brief summary, it is clear that Republicans used to demonstrate much more consistent support of pro-environmental policy.

At first glance, the unanimous opposition as conservative legislators attempting to appeal to conservative constituent preferences, but the Inflation Reduction Act is not inherently at odds with the beliefs of the modern conservative constituent. For example, 25% of Republicans and conservative-leaning independents believe federal regulation of the economy is necessary to protect public interest (Pew Research Center 2016). While few Republicans designate the environment as a top priority for the American bureaucracy (Pew Research Center 2024), a large portion of these constituents support legislation directly addressing climate change (Kennedy et al. 2023). Majorities support regulation of oil and gas companies, along with tax credit plans for businesses incorporating carbon capture technology. Additionally, over half “strongly or somewhat support” the U.S. participating in international efforts to reduce effects of global climate change (Kennedy et al. 2023). Moreover, almost half of self-identified moderate Republicans say economic regulations are worth passing for environmental protection (Pew Research Center 2016). The unanimous Republican Senator opposition for the Inflation Reduction Act cannot be simply explained as a reflection of constituent beliefs.

Historically, conservative legislators have opposed policies that expand federal regulatory

powers, reflecting a traditional preference for limited federal authority. If modern Republicans strictly adhered to this ideology, they would favor state-level solutions. However, contemporary Republicans selectively support federal expansion, as seen in abortion policy. After *Roe v. Wade* was overturned, the Republican Study Committee's 2025 budget (*Fiscal Sanity to Save America*) and HR 5894 expanded federal control over abortion, including national bans and enforcement mechanisms that limited state authority. This selective federalism shows that Republican Senators' unanimous opposition to the Inflation Reduction Act cannot be explained simply as a consistent ideological stance against federal regulation.

### Voting Behavior and Polarization

Reelection theory asserts that legislators behave in ways that increase their chance of reelection, voting for policy that is calculated to garner the most constituent support. Reelection is now a necessary goal of politics after the professionalization of Congress (Hurley 2001); maintaining power is a "necessary means to an end to gain internal influence, prestige, or personal ideological implementation within a career-representative," (Fenno 1973). Therefore, every policy related activity a legislator undertakes can be understood as symbolic for her constituency. This phenomenon is known as position taking; legislators situate themselves with a policy that aligns most closely with their largest voter base. Position taking for maximum electoral appeal is understood by many scholars to mean that reelection seekers should take positions at the policy preference of the median voter. However, reality demonstrates that legislators typically do not locate themselves at the median policy position for their representative districts. For example, "...Republicans have been willing to shut down the government...[and have] pursued a presidential impeachment when large majorities of voters opposed both actions" (Hurley 2001).

Douglas Arnold's theory of policy addresses this contradiction through reinterpretation of the relationship between a legislator's actions and their constituents' policy preferences. Previously, constituents who expressed no opinions were largely ignored in empirical analyses as they were assumed to not have any notable effect on legislator voting choices. Arnold instead argues that legislators respond to potential political preferences to avoid future reelection challenges. Legislators estimate the political consequences of their voting decisions, considering both the existing preferences of attentive

citizens and the potential preferences of inattentive citizens (Arnold 1992).

It can be preliminarily asserted that Republican Senators were motivated by concerns of reelection and desires to appeal to the largest voter base. In the context of the Inflation Reduction Act, these legislators deduced that achieving these goals would be best done through opposition. Understanding how legislators reasoned that supporting such a polarized voting position would still secure reelection – and even broad constituent support – requires examining the ways partisan dynamics and affective polarization have reshaped legislative incentives, despite the act's incorporation of Republican policy goals.

### Review of American Polarization

Southern Democrats and liberal Rockefeller Republicans of the 1950s often had too little political deviation in ideology. The American Political Science Review study of 1950 concluded that introducing more polarization of policy stances would help voters differentiate between the parties, and political elites subsequently heeded this advice. The primary generation of polarization scholars asserted that polarization phenomena was merely based in expression of policy differences (Kleinfeld 2023).

American voters are actually less ideologically polarized than they think they are, with this misperception being most pronounced for the most politically engaged individuals (Kleinfeld 2023). There still exists significant policy preference overlap, but only one party is typically motivated to include a given policy in its agenda (Baldassarri & Park 2020). Scholars assert that the most highly engaged constituents therefore perceive general polarization because they correctly identify the extreme ideological partisanship among their political representatives (Kleinfeld 2023). This creates an affirmative cycle for constituents to "identify" polarization; an us-versus-them lens leads constituents to see policy incorporation in one party as antagonistic to the lack of policy incorporation in the other. This logic explains why pro-environmental policy is now viewed as a liberal agenda, and one that is inherently antagonistic to the GOP.

The process of candidate selection has produced a trend for party chairs to select the "more extreme candidates," as they believe such representatives are more likely to win seats (Brockman et al. 2021). Modern polarization is self-reinforcing: voters exposed to polarizing rhetoric from leaders of

their own party often reshape their preferences to match what they believe their group endorses, particularly among primary voters whose identity is deeply tied to partisanship. So, while representatives and parties may be responding to polarized primary voters, it is because candidates and parties have been the driving force for such polarization.

The Democratic Party's incorporation of pro-climate goals – and the GOP's lack thereof – created an issue area that conservative constituents could “perceive” antagonistic polarization in. Additionally, because of elite level affective polarization, conservative constituents view support of any left-sponsored policy (such as the Inflation Reduction Act) as antagonistic towards their party, even though the policy itself overlaps in interest for conservative and liberal constituents.

Polarization within American politics is not an issue of policy difference; it largely rests on the levels of antagonistic othering rhetoric purported by a given party surrounding a given policy issue.

### Measuring Affective Polarization

Francis Lee of Princeton University argues that the struggle to maintain Congressional power from political elites has created policy-based ideological polarization (Lee 2014). She purports that the American polarization phenomenon is a result of emotional distaste rooted in identity, departing from the previous assessment based in policy positioning. In Lee's study, constituent sentiments were measured through polling thermometers that ranked “warmth” or “coolness” toward the other party, trust and trait measures, and social distance measures (Hersh & Yair 2018). She found that feelings of dislike and disgust between members of opposing parties are now based in identity issues, a phenomena she coined as *affective polarization* (Mason 2024). Lee's essential study establishes that modern American polarization is the antagonistic rhetorical othering of the opposition, often paired with policy (non)incorporation of a party.

The Comparative Manifestos Project (CMP) tracked ideological and policy positionings for both Republican and Democrat parties. While it successfully identified the need to observe the elite level as a unit of analysis for polarization, the data set utilizes out-of-date assumptions of polarization theory. The CMP assumes that parties compete against each other by emphasizing different policy issues rather than taking oppositional positions on the same

issue. It also neglects to code and account for affective polarization within political elites (Gemenis 2013).

Party platforms incorporate both policy stances and identity politics. Therefore, analyzing party platforms is a sophisticated and apt way to track levels of top-down affective polarization, or antagonistic othering, within the elite level of a given party. A novel measurement method that can substantively quantify loaded rhetoric and identity-based policy positioning is needed to begin to understand how affective polarization is impacting the voting behavior of legislators.

I therefore situate this study as a novel addition to American polarization literature, as it measures polarization through an elite level affective polarization lens regarding a singular overlapping policy preference. Previous measures of the American polarization phenomenon analyze factors through an individual level and a bottom-up effect. However, scholars have determined that polarization from the elite level has actually created a top-down cycle. As political parties position themselves as ideologically opposing, party elites promote more extreme values and rhetoric as they expect constituents to express more polarized opinions in elections. This affective polarization manifests as the phenomenon of antagonistic othering, which I hypothesize to be a key motivation for the Republican Senators' unanimous opposition of the Inflation Reduction Act.

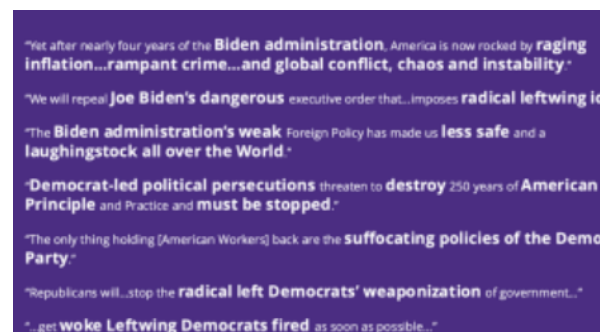
### Antagonistic Othering: The 2024 Republican Party Platform's Rhetorical Weapon

It is no mystery that legislative promotion of a robust American economy has been a longstanding policy concern for the Republican Party (Gerhard & Woolley 1956). Today, the GOP's vision of such value has come to be centered around the revitalization of domestic industry and manufacturing. Elected conservative legislators are therefore committed to passing “economic boosting legislation and agendas” (Republican National Committee 2025). Specifically, domestic manufacturing and industry have become the legislative priority for contemporary Republicans. The 2024 Republican Party Platform states that “...if we don't have domestic manufacturing with low inflation...our economy...cannot thrive. The Republican Party must return to its roots as the Party of Industry, Manufacturing, Infrastructure, and Workers.” While this statement seems relatively neutral, the Republican Party Platform is far from nonpartisan. The document is riddled with affective polarization, creating polarized policy positioning through antagonistic othering.

The platform asserts that poor American economic performance is due to the failures of the Democrats and their policies. Yet this blame is not achieved through specific policy references, but rather specific antagonistic rhetoric against liberals. For example, Democratic politicians were deemed as having “sold [American] jobs and livelihoods to the highest bidders overseas with unfair Trade Deals” (Gerhard & Woolley 2024). Republican elites claim that the “left” is destroying American greatness (Republican National Committee 2025), and that bipartisanship for economic revitalization is impossible, as the “left is attacking” Republicans. This necessitates a “national effort” from the GOP to fight against any liberal policy or agenda (Republican National Committee 2025). The Biden administration is cited as the sole perpetrator of the “raging inflation and instability” of the American economy because of his support of the “suffocating policies of the Democrat Party” (Gerhard & Woolley 2024). The 2024 platform conveys to readers that a robust American economy is only a Republican ideal, and pairs this policy positioning with antagonistic rhetoric against vague liberal policies and politicians.

Republican elites position American economic success as an ‘us-or-them’ policy stance differentiation within the 2024 platform; this strategy successfully creates a façade of polarization for conservative constituents to observe within elite messaging and voting behavior. Yet the platform not only connotes Democrats with bad policy, but with bad people.

**Figure 1: Antagonistic Othering: Democrats as “Bad” People**



Opposing the left, as communicated within the 2024 Republican Party Platform, is the only way to metaphorically purge the American bureaucracy of harmful actors towards the American economy. The affective polarization within the Republican Party has moved beyond emphasizing faux policy stance differentiation; as demonstrated in Figure 1, antagonistic othering from the elite level is undertaking issues of identity politics such as patriotism, pride, and strength to create a constant enemy for conservative constituents: Democrats.

### **Theory and Hypothesis: Antagonistic Othering, The Inflation Reduction Act, and Pro-Environmental Policy**

Affective polarization – and its adjacent antagonistic othering – has made it impossible for Republican legislators to support policy coming from the other side of the aisle. Therefore, I theorize that Republican Senators unanimously opposed the Inflation Reduction Act of 2022 to maintain integrity of elite level messaging within the 2024 GOP Party Platform.

As dictated by the Party Platform, it is in these legislators’ electoral interest to oppose any liberal agenda, even while sacrificing advancement of Republican goals, because affective polarization has made it impossible to have preference overlap in ‘polarized’ policy issue areas. The 2024 Republican Party Platform explicitly states that only Republicans support American economic success, and that liberals and their policies are to blame for all American economic failure. A Republican Senator would therefore not want to support policy promoted by the Biden administration as conservative constituents would view this support of a left-sponsored policy as support of the generalized “left”. A Republican Senator’s support of the Inflation Reduction Act would cost them reelection, as their constituents would



view it as betrayal of current party goals dictated from elite rhetoric. It was therefore much safer for the given Republican Senator to vote against the Inflation Reduction Act.

I depart this theory from the specific example of the Inflation Reduction Act and apply it to other pro-environmental policies. The Democratic Party has come to assign climate activism as a party agenda item while conservatives have generally not. This creates an opportunity for conservative constituents to identify “polarization” between the two political camps, and elites can capitalize off this “polarization” to garner constituent support in reelection. I hypothesize that antagonistic othering and Senatorial voting behavior exhibit a corollary relationship; wherein higher levels of antagonistic othering within a given party platform will result in higher levels of opposition or support for pro-environmental policy. If my hypothesis is withstanding, I expect to see (1) increased opposition for such policy from Republican Senators and decreased opposition from Democratic Senators; (2) increased levels of antagonistic othering rhetoric in both Republican and Democratic party platforms; (3) statistically significant correlation between antagonistic othering and Senatorial voting behavior for both Republicans and Democrats.

### **Rival Theories and Hypotheses**

A rival theory would assert that the Democrat unified government present in 2022 could explain the unanimous opposition from the Republican Senators. This hypothesis would entail that the Inflation Reduction Act, since voted under a Democratic unified government, would obviously be opposed by all Republicans to demonstrate position taking. While the impact of unified governments cannot be ignored when considering voting behavior, this hypothesis fails to account for pro-environmental policy that was opposed during non-Democratic unified government years, or was proposed by Republican legislators.

Another rival theory to explain Republican voting behavior regarding the act would be attributed to constituent preferences. This hypothesis would entail that Republican Senators opposed this pro-environmental policy as conservative constituents had decentered economic-environmental regulation as a priority. Yet as already established, a significant portion of Republican constituents do express desires for pro-environmental policy. This rival hypothesis fails to consider the non-homogeneity of modern Republican constituents.

A last rival theory may suggest that the Republican Senators’ voting behavior was simply aligned with conservative ideology regarding governance. Once more, this study has established that this hypothesis could not withstand, as modern Republican legislators are comfortable with increasing the regulation power of the bureaucracy in certain agenda areas. Additionally, this theory neglects the substantial evidence of past Republican legislators supporting and proposing federal regulatory pro-environmental policy.

### **Scope, Variables, and Data**

Senate archival roll call votes are only available from the 101<sup>st</sup> Congress and on, this presented me with 35 years of pro-environmental policy and Senatorial voting behavior to analyze. The range of data for this study therefore spans from the 101<sup>st</sup> through 118<sup>th</sup> Congresses (1989 through 2024).

### **Establishing Scope for Unit of Analysis**

“Pro-environmental” is a vague identifier; furthermore, the thousands of policies that were voted on during the time scope of this study could be related to the environment in both positive and negative ways. Simply analyzing any policy that involved an environmental concern would not be sufficient to establish a unit of analysis or provide accurate data.

My categorization methodology addressed these concerns. For each Congressional session, I first identified any voted upon policies that were related to the environment in some capacity. I used word identification software as a preliminary filter: “climate,” “environment,” “energy,” “emissions,” “clean,” “green,” “oil,” “gas,” “manufacturing,” “protect,” and “pollute.” The policies that utilized any of these keywords were then filtered further to establish positive or negative impact on the environment. To identify which of these preliminary policies were “pro” rather than “anti” environment, their policy memorandum summary was assessed for intent. If a given policy was formulated with (1) focus on a climate/environmental concern and (2) made clear an intent to protect that specific climate/environmental concern (whether with economic benefit or not), a policy could then be categorized as pro-environment. This process whittled down the 300+ preliminary policies to just 60.

This methodology is imperative for my analysis. If I had analyzed Senatorial voting behavior for each policy that was identified using the preliminary keyword filter, it would include bills that

were crafted to dismantle green technology, expand oil pipelines, or repeal the Endangered Species Protection Acts. My study is not concerned with policies that include the environment; rather, it is concerned with policies that are meant to protect it. It is further important to note that by filtering the policies as such, a dichotomous 1-0 score for support and opposition could be applied in my future regression model.

**Table 1: Identified Pro-environmental Policies, 1989-2024**

Year	Congress	Vote Number
2024-2023	118th	679, 677
2022-2021	117th	924, 853, 175
2020-2019	116th	549, 324
2018-2017	115th	243
2016-2015	114th	400, 350, 115, 18, 8
2014-2013	113th	116, 58
2012, 2011	112th	298, 281, 72
2010-2009	111th	584, 125, 55
2008-2007	110th	583, 537, 430, 219, 214
2006-2005	109th	426, 408, 289, 151, 144
2004-2003	108th	543, 504, 428, 420, 317
2002-2001	107th	430, 425, 247, 87, 77, 11
2000-1999	106th	645, 644, 370
1998-1997	105th	566, 363
1996-1995	104th	628, 525
1994-1993	103rd	627, 528, 503, 114
1992-1991	102nd	443, 57
1990-1989	101st	636, 344, 317, 315, 168

### Independent Variable: Antagonistic Othering in Republican and Democrat Party Platforms

Antagonistic othering within party platforms was quantified by calculating keywords used in specific rhetorical contexts for both political camps' documents. Antagonistic othering was therefore turned into a tangible sum by establishing the percentage of polarized oppositional language (PPOL) within a given document.

For Republican platforms, the sum of Democrat keywords utilized in negative rhetorical contexts was divided by the sum of Republican keywords used in positive rhetorical contexts. This value was then divided by the total word count of the given document, creating a proportional PPOL that could then be utilized in an analysis. Democrat

platforms followed a similar process but inversely: the sum of Republican keywords utilized in negative rhetorical contexts was divided by the sum of Democrat keywords utilized in positive rhetorical contexts. Negative rhetorical contexts are defined as a keyword that was positioned in a chunk of text whose rhetorical aim was to berate, belittle, or assume fault of the opposition party. Positive rhetorical contexts are defined as a keyword that was positioned in a chunk of text whose rhetorical aim was to support, emphasize positively, or build up their own party.

Table 2 lists all keywords and how they were tracked for frequency. For Republican platforms, keywords 1-9 were tracked for frequency of use in negative rhetorical contexts. Keywords 10-18 were tracked for frequency of use in positive rhetorical contexts. An inverse process was conducted for Democrat platforms. Keywords 1-9 were tracked for frequency of use in positive rhetorical contexts, while keywords 10-18 were tracked for frequency of use in negative rhetorical contexts.

**Table 2: Keywords, Republican and Democratic Platforms**

Keyword	Number	Frequency in Negative Rhetorical Context	Frequency in Positive Rhetorical Context
Left	1	Republican Party Platforms	Democrat Party Platforms
Leftist	2	Republican Party Platforms	Democrat Party Platforms
Liberal	3	Republican Party Platforms	Democrat Party Platforms
Liberalism	4	Republican Party Platforms	Democrat Party Platforms
Democrat	5	Republican Party Platforms	Democrat Party Platforms
Democratic	6	Republican Party Platforms	Democrat Party Platforms
Radical	7	Republican Party Platforms	Democrat Party Platforms
Past Administration Reference, Democrat	8	Republican Party Platforms	Democrat Party Platforms
Presidential Nominee Reference, Democrat	9	Republican Party Platforms	Democrat Party Platforms
Right	10	Democrat Party Platforms	Republican Party Platforms
Rightist	11	Democrat Party Platforms	Republican Party Platforms
Conservative	12	Democrat Party Platforms	Republican Party Platforms
Conservatism	13	Democrat Party Platforms	Republican Party Platforms
GOP	14	Democrat Party Platforms	Republican Party Platforms
Republican	15	Democrat Party Platforms	Republican Party Platforms
Radical	16	Democrat Party Platforms	Republican Party Platforms
Past Administration Reference, Republican	17	Democrat Party Platforms	Republican Party Platforms
Presidential Nominee Reference, Republican	18	Democrat Party Platforms	Republican Party Platforms

It is important to note that party platform documents are published every four years in alignment with upcoming presidential elections; therefore, not every identified policy will directly correlate to the exact year of a given platform document. My study grouped the 60 identified policies to the relevant four years that a party platform encompassed. For example, a policy that was voted on in the Senate in 2003 was analyzed under the 2000 Republican/Democratic party platforms. Table 3 categorizes policy voting years to the relevant party platforms for analysis.

**Table 3: Party Platforms and Pro-environmental Policy Coverage**

Publication Year of Party Platform	Policy Year Coverage
1988	1989-1991
1992	1992-1995
1996	1996-1999
2000	2000-2003
2004	2004-2007
2008	2008-2011
2012	2012-2015
2016	2016-2020
2020	2020-2023
2024	2024-

*\*The Republican Party reframed from publication of a 2020 Republican Party Platform document. The RNC resolution on the topic cited that the COVID-19 pandemic “necessitated a scaled-back convention” that prevented delegates from gathering in person to adequately deliberate. This reasoning is not universally accepted, however (Prokop 2024).*

#### Dependent Variable: Republican and Democrat Voting Behavior for Pro-environmental Policy

Republican and Democrat Senators’ opposition or support for the 60 identified pro-environmental policy bills were recorded into a large dataset. Voting behavior regarding pro-environmental policy was analyzed through a combination of existing Senate rollcall records and the rollcall database of political scientist Keith T. Poole.

Senators were assigned a dichotomous 0-1 score to record oppositional or supporting roll call votes. An opposing vote regarding a given pro-environmental policy from a Senator was scored as a 0; a supporting vote for such policy from a Senator was scored as a 1. Senators who chose not to vote for a given pro-environmental policy were redacted from the dataset, as their non-vote could not be calculated to represent demonstrated opposition or support. This process was repeated for all 60 identified pro-environmental bills.

Senate.gov tracks roll call vote numbers for both first and second sessions of a given Congress. Voteview.org, however, does not. To utilize Keith Poole’s data, the 60 identified bills from Senate.gov needed to match Poole’s rollcall datasets. Below, I have provided a translation table for Senate.gov’s roll call vote number and Poole’s vote number.

**Table 4: Rollcall Number Translation Table**

Congress	Original Vote Number	Voteview Translation
118th	327, 325	679, 677
117th	396, 325, 175	924, 853, 175
116th	121, 324	549, 324
115th	243	243
114th	61, 11, 115, 18, 8	400, 350, 115, 18, 8
113th	116, 58	116, 58
112th	63, 46, 72	298, 281, 72
111th	187, 125, 55	584, 125, 55
110th	141, 95, 430, 219, 214	583, 537, 430, 219, 214
109th	60, 42, 289, 151, 144	426, 408, 289, 151, 144
108th	84, 45, 428, 420, 317	543, 504, 428, 420, 317
107th	50, 45, 247, 87, 77, 11	430, 425, 247, 87, 77, 11
106th	271, 270, 370	645, 644, 370
105th	268, 65	566, 363
104th	15, 525	628, 525
103rd	232, 133, 108, 114	627, 528, 503, 114
102nd	163, 57	443, 57
101st	324, 32, 5, 3, 168	636, 344, 317, 315, 168

#### Control Variables

There are other factors besides PPOL levels that could impact how a given Senator votes regarding pro-environmental policy. This study accounted for such factors as control variables:

*Reelection Years:* It is necessary to account for the impact that reelection desires have on Senators’ voting behavior. Reelection year information was tracked through a dichotomous 0-1 score; if a given Senator was up for reelection within the year of a given pro-environmental policy was voted on, they are scored a 1. If they were not, they would have scored a 0.

*Constituency Preference:* Senators are legislators, they are supposed to represent constituency desires and preferences; therefore, necessary to account for the impact that conservative and liberal constituencies have on Senators’ voting behavior. Constituency political preference was tracked through presidential election results from 1988-2024; Senators who had states give their electoral votes to the Republican candidate were scored a 1; states that gave their electoral votes to the Democratic candidate were scored a 0.

*Economic Ideological Leanings:* Personal ideology also impacts how a Senator may vote for pro-environmental policy. This study controlled for the

liberal-conservative spectrum of personal economic beliefs for each Senator utilizing Keith Poole's NOMINATE Dimension 1 data. Positive numerical values represent a more conservative ideology; negative numerical values represent a more liberal ideology.

*Unified Governments:* Senators may also vote differently under (non)unified government years, impacting their support or opposition for a given pro-environmental policy. If a given Congress was nonunified, a score of 0 would be given to the “Republican unified government” and “Democrat unified government” variable in this study’s dataset. If Republicans or Democrats controlled the government, a score of 1 would be recorded in the data set for the respective party in control.

**Table 5: Variable Codebook**

Variable	Variable Name	“Real” Value	Coded Value
Vote	Vote	Supporting vote	1
Vote	Vote	Oppositional vote	0
Vote	Vote	No vote	NV
Reelection Year	RY	Up for reelection in a given year	1
Reelection Year	RY	Not up for reelection in a given year	0
Constituency Political Preference	CP	Prefers Republican presidential candidate	1
Constituency Political Preference	CP	Prefers Democrat presidential candidate	0
Economic Ideological Leanings	ND1	More conservative economic beliefs	Positive integer
Economic Ideological Leanings	ND1	More liberal economic beliefs	Negative integer
Republican Platform PPOL Levels	RPP.OPSP	Percentage of polarized oppositional language	Decimal
Democratic Platform PPOL Levels	DPP.OPSP	Percentage of polarized oppositional language	Decimal
Republican Unified Governments	RUG	Under a Republican unified government	1
Republican Unified Governments	RUG	Not under a Republican unified government	0
Democratic Unified Governments	DUG	Under a Democrat unified government	1
Democratic Unified Governments	DUG	Not under a Democrat unified government	0

## Conducting the Analysis: Multivariate Regression

This study sought to determine whether a corollary relationship exists between platform PPOL levels and Senatorial voting behavior regarding pro-environmental policy. However, a variety of variables needed to be accounted for to accurately determine statistical significance. A multivariate regression analysis (MVRA) can calculate a correlation relationship by assessing how each variable influences the others simultaneously. Therefore, two MVRAs were conducted against Republican and Democrat Senators and their respective voting behavior.

### Code Line for Republican MVRA

```
multi_lm <- lm(Vote ~ RPP.OPSP + ND1 + CP + RY + DPP.OPSP + UG, data = IDVD)
summary(multi_lm)
```

### Code Line for Democrat MVRA

```
multi_lm <- lm(Vote ~ DPP.OPSP + ND1 + CP + RY + RPP.OPSP + UG, data = IDVD)
summary(multi_lm)
```

## Findings and Implications

*Republican and Democrat Platform PPOL Levels: Increasing, and Correlated:* Tables 6 and 7 detail the Republican and Democrat PPOL levels from 1988 through 2024. The Table’s model increases and decreases over 35 years that vary in severity. But before delving into the deeper results of the keyword frequency analyses of all 19 platforms, this study can confidently assert that both parties’ PPOL levels have summarily increased since 1988. Additionally, the PPOL levels proved to be highly correlated to one another.

**Table 6: Republican Party Platforms PPOLs, 1988-2024**

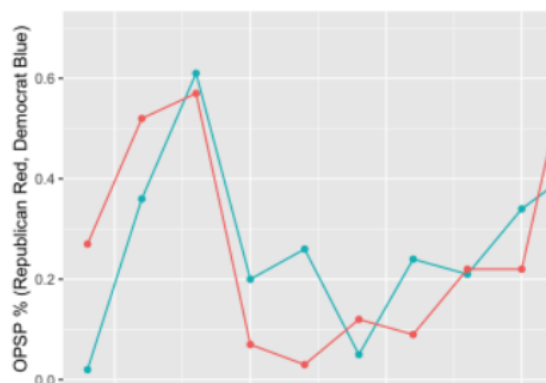
Key Word	1988 RPP	1992 RPP	1996 RPP	2000 RPP	2004 RPP	2008 RPP	2012 RPP	2016 RPP	2024 RPP
Left	0	1	0	2	1	0	1	0	6
Leftist	0	0	0	0	0	1	1	0	6
Liberal	8	15	8	2	0	0	3	1	0
Liberalism	1	2	3	0	0	1	1	0	0
Democrat	81	126	36	7	5	15	4	24	12
Democratic	0	0	1	7	1	10	4	24	0
Radical	0	1	0	1	1	0	0	2	6
Past Administration Reference, D	8	4	1	2	0	2	4	27	0
Presidential Nominee Reference, D	0	0	108	3	3	0	10	1	7
Opposing Party References Sum	98	149	157	24	11	29	28	79	37
Total Word Count	36296	28510	27747	34620	41318	23702	39637	35580	5396
OPRS/TWC	0.0027	0.0052	0.0057	0.0037	0.0003	0.0012	0.0009	0.0022	0.007
OPSP	0.27%	0.52%	0.57%	0.07%	0.03%	0.12%	0.09%	0.22%	0.70%

**Table 7: Democrat Party Platform PPOLs, 1988-2024**

Key Word	1988 DPP	1992 DPP	1996 DPP	2000 DPP	2004 DPP	2008 DPP	2012 DPP	2016 DPP	2024 DPP
Right	0	0	0	1	0	0	0	0	0
Rightist	0	0	0	0	0	0	0	0	0
Conservative	0	0	0	0	0	1	0	0	1
Conservatism	0	0	0	0	0	0	0	0	0
GOP	0	0	0	0	0	0	0	0	0
Republican	1	20	86	39	7	4	37	22	21
Radical	0	0	0	0	0	0	2	0	0
Past Administration Reference, R	0	0	3	5	1	8	4	1	1
Presidential Nominee Reference, R	0	11	21	4	39	0	22	32	120
Opposing Party References Sum	1	31	110	49	47	13	65	77	141
Total Word Count	4826	8530	18038	24089	17774	25984	26509	25882	42032
OPRS/TWC	0.0002	0.0036	0.0061	0.002	0.0026	0.0005	0.0024	0.0021	0.0034
OPSP	0.02%	0.36%	0.61%	0.20%	0.26%	0.05%	0.24%	0.21%	0.34%

## Graph 1: Republican and Democrat PPOLs Comparatively, 1988-2024





Graph 1 visually demonstrates the correlation relationship between Republican and Democrat PPOL levels. The graph illuminates that antagonistic othering language is responsive towards the other party's, seemingly showcasing that affective polarization from the two political parties depends on perceived need. This would align with the theory that political elites inflame affective polarization to create necessary policy stance differentiation.

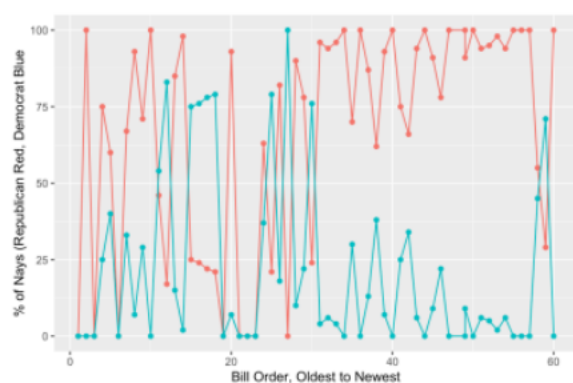
Note that both Republican and Democrat PPOLs underwent a drastic decrease after 9/11. Interestingly, 9/11 is an empirically accepted time of unity for the country's politics. Also note that after 2008, Republican and Democrat PPOLs have massively increased. 2008 marked the beginning of former President Obama's administration, which was a very divisionary time for the American political scene. It seems that PPOL levels are responsive to (non)divisionary events in American political culture, and therefore elites respond accordingly with the level of affective polarization in party platforms.

### A Widening Gap: Oppositional Votes for Pro-Environmental Policy

This study can confidently assert that Republican Senators are now consistently opposing pro-environmental policies, while Democrat Senators are now consistently supporting pro-environmental policies.

Predating Bill 30 (detailed in Graph 2), it was a mixed bag as to who would make up the majority of the oppositional vote for a given pro-environmental policy. Yet after Bill 30, Republicans are modeled to consistently make up the majority of the nay vote, while Democrats do not.

### Graph 2: Oppositional Vote Percentages, Republican and Democrat



### PPOLs and Voting Behavior: Republican and Democrat MVRA Results

Table 8: Republican MVRA Results

	Estimate	Standard Error	T-Value	Pt(> t )	Significance
Higher Levels of Republican PPOLs	0.0002	0.12198	0.250	0.8024	X
Higher Levels of Conservative Economic Ideology	-0.40433	0.06664	-6.368	2.07E-10	***
Higher Levels of Republican Preference in Constituency	-0.04877	0.05145	-0.967	0.3334	X
Voting Behavior During Restriction Year	0.11755	0.06089	1.784	0.0745	X
Voting Behavior During Republican Unified Governments	-0.09811	0.05645	-1.756	0.0792	X
Voting Behavior During Democratic Unified Government	-0.13372	0.06089	-2.032	0.0422	*

In summary, only economic ideology and Democratic unified governments proved to have a significant correlation value regarding Republican Senatorial voting behavior regarding pro-environmental policy. This disproves one aspect of my hypothesis: that platform PPOL levels will impact all Senators' voting behavior regarding such policy, regardless of policy. Nearly all control variables proved to be insignificant in correlation values regarding my independent variable. Multiple interesting non-correlated corresponding relations, however, were discovered in this regression analysis.

1. Republican platform PPOLs were calculated to not be of significant correlation value, so no direct correlation can be assigned between this variable and Republican Senator voting behavior regarding pro-environmental policy. However, the estimated value produced within the regression resulted in a positive correspondence. Meaning higher levels of Republican platform PPOLs corresponded to Republican Senators being more supportive of pro-environmental policy. This is a surprising finding, but it must be stressed that no statistical significance can be calculated to affirm this is not a chance relationship.
2. Personal economic ideology and Republican Senator voting behavior was proven to be a

statistically significant correlation value. Therefore, this study can establish that levels of conservative economic ideology do impact how Republican Senators vote regarding pro-environmental policy. The regression showed that the two variables shared an inverse correlation; denoting that as a given Republican Senator's economic beliefs increased in conservatism, a given Republican Senator decreasingly supported pro-environmental policy. This finding makes rational sense, especially when situated within the theory of industrial environmentalist policy formation.

3. Constituency preference for the Republican presidential candidate was calculated to not be of significant correlation value, so no direct correlation can be assigned between this variable and Republican Senator voting behavior regarding pro-environmental policy. However, the estimated value produced within the regression resulted in an inverse correspondence. Republican Senators who hailed from states where the Republican presidential candidate won in a given election year corresponded to Republican Senators being less supportive of pro-environmental policy. Once again, no statistical significance can be calculated to affirm this is not a chance relationship.
4. A Republican Senator being up for reelection during a year that a given pro-environmental policy was being voted on was calculated to be almost statistically significant in correlation value, as it measured near the 0.05 threshold. While I cannot establish that reelection year has direct correlation to my independent variable, there is evidence that hints to some level of relation. Regardless of calculated significance, the estimated value produced within the regression is a positive correspondence. This shows that any given Republican Senator up for reelection during the year a pro-environmental policy was being voted on corresponded to higher levels of support for pro-environmental policy. Once again, no statistical significance can be calculated to affirm that this is not a chance relation.
5. Republican Senator voting behavior during Republican unified governments was calculated to be almost statistically significant in correlation value, as it measured near the 0.05 threshold. While I cannot establish that Republican unified governments have direct correlation to my

independent variable, there is some evidence that hints to some level of relation. Regardless of calculated significance, the estimated value produced within the regression is an inverse correspondence. This highlights that Republican unified governments corresponded to Republican Senators being less supportive of pro-environmental policy. Once again, no statistical significance can be calculated to affirm that this is not a chance relation.

6. Republican Senator voting behavior and Democrat unified governments was proven to be a statistically significant correlation. Therefore, this study can establish that Republican unified governments do impact how Republican Senators vote regarding pro-environmental policy. The regression showed that the two variables shared an inverse correlation; showing that Republican Senators are less likely to support pro-environmental policy during Democratic unified governments. This is not surprising as position taking assumes that opposing parties will not support policies and legislation when voting under oppositional-controlled governments.

**Table 9: Democrat MVRA Results**

	Estimate	Standard Error	T-Value	Pt ( >  t  )	Significance
Higher Levels of Democratic OPSPs	-0.38541	0.07900	-4.893	9.02E-07 ***	
Higher Levels of Conservative Economic Ideology	-0.38467	0.09189	-4.186	2.90E-05 ***	
Higher Levels of Republican Preference in Constituency	-0.01633	0.02556	-0.639	0.5229 X	
Voting Behavior During Election Year	0.02631	0.03419	0.770	0.4415 X	
Voting Behavior During Republican Unified Governments	-0.05605	0.02893	-1.938	0.0528 X	
Voting Behavior During Democratic Unified Governments	0.01171	0.03002	0.390	0.6984 X	

The Democrat regression analysis also produced some surprising results. In summary, Democrat platform PPOLs and personal economic ideology proved to both be a highly statistically significant correlation value regarding Republican Senatorial voting behavior for pro-environmental policy. My hypothesis seems to be partially affirmed as PPOL levels, at least regarding Democrats, do impact voting behavior for pro-environmental legislation. All control variables proved to have no statistically significant correlation value regarding the independent variable, but they did have interesting non-correlated corresponding relations.

1. Democrat platform PPOLs and Democrat Senator voting behavior was proven to be a statistically significant correlation value. Therefore, this study can establish that Democrat platform PPOLs do impact how Democrat Senators vote for pro-environmental policy. The regression showed

- that the two variables shared an inverse correlation; this means that as PPOL levels increased within Democrat platforms, Democrat Senators decreasingly supported pro-climate legislation. This goes against a suspected result I hypothesized.
2. Personal economic ideology and Democrat Senator voting behavior was proven to be a statistically significant correlation value. Therefore, this study can establish that levels of conservative ideology regarding economics do impact how Democrat Senators vote for pro-environmental policy. The regression showed that the two variables shared an inverse correlation; as a given Democrat Senator's economic beliefs increased in conservatism, a given Democrat Senator decreasingly supported pro-environmental policy. In other words, more economically conservative Democrats behave exactly like more economically conservative Republicans when it comes to pro-environmental policy.
  3. Constituency preference for the Republican presidential candidate was calculated to not be of significant correlation value, so no direct correlation can be assigned between this variable and Democrat Senator voting behavior regarding pro-environmental policy. However, the estimated value produced within the regression resulted in an inverse correspondence. Showing that Democrat Senators who hailed from states where the Republican candidate won in a given election year corresponded to Democrat Senators being less supportive of pro-environmental policy. Yet no statistical significance can be calculated to affirm this is not a chance relationship.
  4. A Democrat Senator up for reelection during a year that a given pro-environmental policy was being voted on was calculated to not be of significant correlation value, so no direct correlation can be assigned between this variable and Democrat Senator voting behavior. However, the estimated value produced within the regression resulted in a positive correspondence. Meaning that any given Democrat Senator up for reelection during the year a pro-environmental policy being voted on corresponded to higher levels of support for pro-environmental legislation. Once again, no statistical significance can be calculated to affirm that this is not a chance relation.
  5. Democrat Senator voting behavior during Republican unified governments was calculated to be almost statistically significant in correlation value, as it measured near the 0.05 threshold. While I cannot establish that Republican unified governments have correlation to my independent variable, there is evidence that hints to some level of relation. Regardless of calculated significance, the estimated value produced within the regression resulted in an inverse correspondence. This shows that Republican unified governments corresponded to Democrat Senators being less supportive of pro-environmental policy. Once again, no statistical significance can be calculated to affirm that this is not a chance relation.
  6. Democrat Senator voting behavior during Democrat unified governments was calculated to not be of significant correlation value, so no direct correlation can be assigned between this variable and Democrat Senator voting behavior. However, the estimated value produced within the regression resulted in a positive correspondence. This shows how Democrat unified governments corresponded to Democrat Senators being more supportive of pro-environmental policy. Once again, no statistical significance can be calculated to affirm that this is not a chance relation.

### Key Takeaways

*Personal Economic Ideology and its Impact on Pro-Environmental Policy:* This study was conducted to analyze affective polarization within platform documents. Furthermore, this study sought to establish whether the rhetorical phenomenon of antagonistic othering impacted Senator voting behavior for both Republicans and Democrats regarding pro-environmental policy. Yet after conducting regression analyses, a key discovery had nothing to do with rhetoric and polarization. For both Republican and Democrat Senators, levels of personal conservative economic ideology were the biggest influence as to how they ended up voting regarding pro-environmental policy.

While this finding differentiates from this study's original query, it is an important one nonetheless. Think back to the theory of industrial environmentalist policy: an environmental regulation can be passed in Congress, so long as the net economic benefit is greater than if having not implemented

regulations. This study provides a substantial basis for such a claim. This statement can now be asserted as true for both Republicans and Democrats –which is unexpected, as the Democratic party has incorporated environmental policies into their party agenda. It seemingly does not matter whether a Senator’s party supports pro-environmental policy as a policy issue; keeping American economics out of harm’s way takes primacy for individual legislators as they seek reelection. Conservative or liberal, everybody knows that their constituents love cheap groceries and less taxes.

Understanding what motivates American legislators to support or oppose pro-environmental policy is quintessential in taking steps forward to mitigate the looming climate crisis. Drastic regulation, while necessary and perhaps the only way to stop irreversible climate change, routinely does not pass in American Congress. But that should not discourage American constituents or legislators from seeking to slow or mitigate the climate crisis. If political action groups, constituent activists, and passionate legislators can craft pro-environmental policy that finds novel markets for domestic economic success, perhaps America can begin to consistently aid in the fight against the climate crisis.

*Not Just the Economy: Platform PPOLs and Voting Behavior:* Personal economic ideology has proven to play a substantial role in determining voting behavior for Senators regarding pro-environmental policy. However, it’s not just the economy that is impacting all Senatorial voting behavior.

My hypothesis that higher platform PPOL levels would produce a correlation value for both Republican and Democrats’ voting behavior was only partially proven (and with further unexpected results). Republican Senators and PPOL levels demonstrated no significant correlation value whatsoever, while Democrat Senators and PPOL levels demonstrated a highly significant correlation value. Furthermore, Democrat Senators’ voting behavior behaved very differently than what I hypothesized it to have been if platform PPOLs were a relevant variable. Liberal legislators actually opposed pro-environmental policy at higher rates when Democrat platform PPOLs were higher. While the Republican regression analysis between PPOL levels and voting behavior cannot be established as a correlation value, the corresponding behavior of the two variables is also perplexing:

Republican Senators supported pro-environmental policy in correspondence to years with higher Republican platform PPOLs.

This study has produced enough viable data to demand further analysis as to the extent that elite level antagonistic othering impacts pro-environmental policy. There are ways that a future analysis could be edited as to fine-tune results and give a more accurate analysis. For example, “pro-environmental policy” could be further filtered by establishing whether a given policy was industrial environmentalist in nature or not, whether it was proposed by a Republican or Democrat, or if the policy would be harming existing political donors for a given party (e.g., oil companies funding Republican campaigns). By refining this preliminary identification for my unit of analysis, a more holistic picture of how PPOL levels in party platforms really impact legislators’ voting behavior may be provided.

An additional refinement of this study could be conducting a sentiment analysis of party platforms as a slightly different way to measure affective polarization. Code lines, instead of manual tracking and analysis, would track negatively charged sentiments within a given platform. This methodology would produce different data points to score and rank affective polarization within a given platform document, also perhaps influencing final regression analysis results. Pro-environmental policy, industrial environmentalism, antagonistic othering, and personal interests of American legislators all impact the passing of essential policy; I plan to continue this research and determine the exact extent it does, so as to contribute my effort in the fight for the future of our planet.

## References

- Arnold, Douglas R. *The Logic of Congressional Action*. Yale University Press, 1992.
- Baldassarri, Delia, and Barum Park. “Was There a Culture War? Partisan Polarization and Secular Trends in US Public Opinion.” *Journal of Politics*, vol. 82, no. 3, 2020. Accessed 4 Dec. 2024.
- Brockman, David, et al. “Why Local Party Leaders Don’t Support Nominating Centrists.” *British Journal of Political Science*, vol. 51, 2021. Accessed 4 Dec. 2024.
- Erikson, Robert S. “Constituency Opinion and Congressional Behavior: A Re-examination of the Miller-Stokes Representation Data.” *American Journal of Political Science*, vol. 22, no. 3, Aug. 1978. Accessed 23 Nov. 2024.
- Gemenis, Kostas. “What to Do (and Not to Do) With the Comparative Manifestos Project Data.” *Political Studies*, vol. 61, 2013, pp. 3–23. Accessed 4 Dec. 2024.
- Hersh, Eitan, and Yair Chitza. “Mixed Partisan Households and Electoral Participation in the United States.” *PLoS ONE*, vol. 13, no. 10, 2018. Accessed 4 Dec. 2024.
- Hurley, Patricia A. “David Mayhew’s *Congress: The Electoral Connection After 25 Years*.” *American Political Science Association*, vol. 34, no. 2, June 2001. Accessed 23 Nov. 2024.
- Kennedy, Brian, Cary Funk, and Alec Tyson. “Majorities of Americans Prioritize Renewable Energy, Back Steps to Address Climate Change.” *Pew Research Center*, 28 June 2023. Accessed 23 Nov. 2024.
- Kennedy, Brian, and Alec Tyson. “How Republicans View Climate Change and Energy Issues.” *Pew Research Center*, 1 Mar. 2024. Accessed 23 Nov. 2024.
- Kleinfeld, Rachel. “Polarization, Democracy, and Political Violence in the United States: What the Research Says.” *Carnegie Endowment for International Peace*, 5 Sept. 2023. Accessed 4 Dec. 2024.
- Lee, Frances. “American Politics is More Competitive Than Ever. That’s Making Partisanship Worse.” *The Washington Post*, 9 Jan. 2014. Accessed 4 Dec. 2024.
- Lewis, Jeffrey B., Keith Poole, Howard Rosenthal, Adam Boche, Aaron Rudkin, and Luke Sonnet. *Voteview: Congressional Roll-Call Votes Database*. 2021. Accessed 19 Mar. 2025.
- Mason, Lilliana. “A Cross-Cutting Calm: How Social Sorting Drives Affective Polarization.” *Public Opinion Quarterly*, vol. 80, no. S1, 2016. Accessed 4 Dec. 2024.
- McCrone, Donald J., and James H. Kuklinski. “The Delegate Theory of Representation.” *American Journal of Political Science*, vol. 23, no. 2, May 1978. Accessed 23 Nov. 2024.
- Miller, Warren C., and Donald E. Stokes. “Constituency Influence in Congress.” *American Political Science Review*, vol. 57, no. 1, Mar. 1963. Accessed 23 Nov. 2024.
- Nivola, Pietro S., and David W. Brady. *Red and Blue Nation? Characteristics and Causes of America’s Polarized Politics*. Brookings Institution Press and Hoover Institution, 2006.
- Oliphant, Baxter. “10 Facts About Republicans in the United States.” *Pew Research Center*, n.d. Accessed 23 Nov. 2024.
- Peters, Gerhard, and John T. Woolley. “2024 Republican Party Platform.” *American Presidency Project*, 8 July 2024. Accessed 23 Nov. 2024.



- . "Republican Party Platform of 1956." *American Presidency Project*, 20 Aug. 1956. Accessed 23 Nov. 2024.
- Pew Research Center. "Americans' Top Policy Priority for 2024: Strengthening the Economy." *Pew Research Center*, 29 Feb. 2024. Accessed 23 Nov. 2024.
- . "Political Values: Government, Regulation, Environment, Immigration, Race, Views of Islam." *Pew Research Center*, 8 Dec. 2016. Accessed 23 Nov. 2024.
- Prokop, Andrew. "Why Republicans Didn't Write a Platform for Their Convention This Year." *Vox*, 24 Aug. 2024. Accessed 23 Nov. 2024.
- Quinn, Melissa. "Senate Passes Democrats' Sweeping Climate, Health, and Tax Bill, Delivering Win for Biden." *CBS News Politics*, 8 Aug. 2022. Accessed 23 Nov. 2024.
- Republican National Committee. "About Our Party." *Republican National Committee*, 2024. Accessed 23 Nov. 2024.
- "FACT SHEET: House Republicans Endorse a National Abortion Ban with Zero Exceptions in Latest Budget." *The White House*, 22 Mar. 2024. Accessed 23 Nov. 2024.
- "Inflation Reduction Act Fact Sheet: One Year In." *The White House*, 16 Aug. 2023. Accessed 23 Nov. 2024.
- Tamborino, Kelsey. "Trump Vows to Pull Back Climate Law's Unspent Dollars." *Politico*, 5 Sept. 2024. Accessed 23 Nov. 2024.
- Tolbert, Elizabeth. "Reagan and the Ozone: The Construction of Industrial Environmentalism." *University of Washington Political Science Journal*, vol. 1, no. 2, 11 Mar. 2025. Accessed 23 Nov. 2024.

# The Guardian of the Western Gate: Angel Island and the Creation of Carceral Borderlands

By Noelani Matsuko Yonahara Stewart

## Abstract

This essay critically examines the Angel Island Immigration Station as a foundational site of racialized exclusion, surveillance, and detention within U.S. immigration history. Positioned at the intersection of border control and incarceration, Angel Island functioned not merely as a processing center but as a racialized carceral space— what this study conceptualizes as a carceral borderland. Through interdisciplinary methods combining literary analysis, legal-historical research, and oral testimony, my research interrogates how immigration law, national security rhetoric, and racialized surveillance produced a system of confinement for Asian immigrants that continues to echo in modern immigration enforcement. Central to this investigation is the original framework of carceral borderlands, which offers new insight into how immigration governance operates across time, space, and identity. By centering the lived experiences of detainees through their poetry, personal narratives, and intergenerational memory, this research challenges dominant narratives of American inclusion. It reveals the enduring architecture of exclusion that persists today in ICE detention centers and broader immigration policy. My approach contributes new insights by examining both personal narratives and institutional frameworks, and highlighting how the experiences of detainees at Angel Island reflect broader themes of resistance and identity formation within the context of exclusionary policies. This essay contributes a new analytical vocabulary for scholars and advocates seeking to understand immigration not as a movement alone, but as a process involving confinement, regulation, and resistance within carceral geographies.

*“Today is the last day of winter;  
Tomorrow morning is the vernal equinox  
One year’s prospects have changed to another.  
Sadness kills the person in the wooden building” (Lai 2014)  
Poem by Angel Island detainee*

## Introduction

The history of immigration in the United States reflects a complex narrative of gatekeeping and exclusion. One essential part of this narrative is the story of Angel Island, which operated from 1910 to 1940 as a detention facility for primarily Asian immigrants (Lee et al. 2012). Angel Island’s history is both obscured and misunderstood. Though often referred to as the “Ellis Island of the West,” Angel Island operated differently. While Ellis Island is typically associated with an almost welcoming narrative of immigration, Angel Island epitomized the harsh realities of the United States’ exclusionary immigration policies, particularly against those of Asian descent (Yogi 1991). Angel Island functioned as what I have termed a carceral borderland, a racialized zone of exclusion and detention. Many detainees who were held there were subjected to invasive interrogations, humiliating physical examinations, prolonged detentions, and the constant threat of deportation (Egan 2022) (Lai 2014). Unlike

Ellis Island, where 98% of arrivals were processed and admitted within days, roughly 60% of Angel Island’s immigrants were detained for weeks, months, or even years (Aneja et al. 2021) (Lee et al. 2012).

The idea of “carceral borderlands” is crucial to understanding Angel Island’s role in American immigration history. I developed the term to describe how immigration stations often intersect the boundaries between border control, incarceration, and racialized state surveillance. The term refers to spaces where the mechanisms of immigration control intersect with systems of incarceration, ultimately creating environments of confinement and surveillance for marginalized populations. At Angel Island, Asian immigrants confronted racial profiling and prolonged detainment, contrasting sharply with the narratives of opportunity that typically accompany the idealized immigrant experience in America (Yogi 1991) (Pegler-Gordon 2021). The emotional and psychological toll of this experience is captured in the

poetry inscribed on the detention center walls, where detainees expressed their hope, anger, frustration, and desire for justice (Lai 2014).

Angel Island further offers essential artifacts through which to reexamine the history of immigration in the United States. The poetry left behind by detainees reveals the emotional toll of confinement and exclusion. These poems are not merely artifacts but acts of survival, resistance, and witness. One detainee wrote starkly, “America has power, but not justice”, a line that encapsulates the sense of disillusionment and betrayal felt by many who endured the station’s brutal conditions (Lai 2014). These expressions insist on being remembered not just as literary fragments but as enduring critiques of a nation that defined belonging through exclusion.

In this paper, I use Angel Island as a physical and historical place to examine the legacy of immigration enforcement. Through a combination of literary analysis, legal history, and personal testimony, I demonstrate how the immigration station functioned not just as a port of entry but as a racialized prison, one that blurred the lines between borders and incarceration. This research offers new insight into the history of U.S. immigration policy as a system of racialized control. By revisiting Angel Island’s history, we can gain a deeper understanding of the endurance of exclusionary practices and the importance of advocating for just immigration reform today.

## Methodology

This project adopts an interdisciplinary methodology that draws from literary analysis, archival research, and legal-historical interpretation to examine Angel Island Immigration Station as a microcosm of the carceral borderlands. My analysis is shaped by American Ethnic Studies’ commitment to community-based knowledge and power-conscious research. I approach the immigration station not only as a historical site but as a racialized space where the logic of incarceration, exclusion, and imperial governance converged.

My source base includes four main categories: Chinese poetry inscriptions carved on the barrack walls by detainees between 1910 and 1940, published secondary literature on immigration policy and racial formation, recorded oral histories from survivors and descendants, and an original interview I conducted with Danielle Wetmore, Director of Education at the Angel Island Immigration Station Foundation (AIISF).

Oral histories inform my understanding of the enduring emotional afterlife of Angel Island. These testimonies from former detainees and their descendants expose themes often absent in state records: familial separation, mental health struggles, and acts of cultural survival. I incorporate these voices to center the immigrant experience and intergenerational memory as legitimate and necessary forms of knowledge. I interviewed Danielle Wetmore of AIISF, who offered insights into the foundation’s public education work, its efforts to center Angel Island in national immigration memory, and the significance of storytelling as a form of inclusion and healing. Wetmore’s emphasis on the U.S. as a “gatekeeping nation” and the racialized nature of immigration policy helped me frame Angel Island as a historic site and an ongoing space of remembrance (Wetmore, 2025).

Time and geographic contractions produced limitations in my research. I am based in Seattle, and this project unfolded over an eleven-week academic quarter. I was subsequently unable to conduct a site visit to Angel Island or engage more extensively with community members, descendants, or local organizations in the Bay Area. A longer project would have benefited from the use of ethnographic methods and collaborative storytelling with the communities directly affected. While I strive to represent the voices of immigrants and detainees ethically, I recognize the limitations of any analysis filtered through translation, archival selection, and academic interpretation. My goal is not to speak for these individuals but to amplify their resistance and resilience using the tools available to me as a student and scholar.

## Historical Context of Asian Immigration and Immigration Policy in the United States A. A Brief History of Asian Immigration to the United States

The early years of Asian immigration to the United States were shaped by a transition from predominantly local discrimination to federal systems of surveillance, exclusion, and detention. Angel Island, as the primary immigration station on the West Coast, emerged from this evolution in national policy, becoming both a physical and symbolic barrier to Asian entry (Barde et al. 2006).

Between 1910 and 1940, over 300,000 immigrants were processed through Angel Island Immigration Station. Among them were approximately 100,000 Chinese, 85,000 Japanese, 8,000 South Asians, and smaller numbers of Koreans, Filipinos, Russians, Jews, and Mexicans (Egan 2022).

Unlike the comparatively brief processing at Ellis Island, immigrants at Angel Island were routinely subjected to lengthy detentions, sometimes lasting weeks, months, or even years. The Bureau of Immigration's rationale for placing the station offshore was to isolate detainees from friends and advocates, prevent coaching for interrogations, and screen for disease, specifically targeting Asians under racialized assumptions of contagion (Lai 2014) (Lai 1978) (University of California 2005).

Federal exclusionary legislation provided the legal architecture for this harsh enforcement. The Page Act of 1875 was the first federal law to restrict immigration based explicitly on race and gender, targeting Chinese women under the pretext of preventing prostitution. It was followed by the Chinese Exclusion Act of 1882, which marked the first time the United States explicitly barred an ethnic group from entering the country (Hing 1993). The Scott Act of 1888 and the Geary Act of 1892 further entrenched these restrictions. The Scott Act banned the reentry of Chinese laborers, even those who had left the country with valid documents. The Supreme Court upheld the law's constitutionality in the Chinese Exclusion Case (*Chae Chan Ping v. United States*, 1889), setting a precedent for unbounded federal immigration control (Hing 1993). The Geary Act introduced a mandatory registration system, justified by racist claims that "Chinese names and faces were all alike," reflecting a widespread nativist belief that undocumented Chinese people could only be controlled through state surveillance, putting in place a system of racialized immigration surveillance we are still contending with today (Ng 1995).

The Japanese faced their own barriers, most notably through the Gentlemen's Agreement of 1907–08. The Japanese government agreed to restrict the emigration of laborers to the U.S. following growing anti-Japanese sentiments, particularly from organizations like the Asiatic Exclusion League. This restriction also allowed wives and children emigrating from Japan to join their husbands and fathers within the United States (Egan 2022). This compromise led to "picture brides," through which thousands of women legally migrated to reunite with husbands they had only met through photographs. Between 1910 and 1920, an estimated 6,000 to 10,000 picture brides passed through Angel Island (Egan 2022).

However, the Gentlemen's Agreement did little to incite resentment towards Japanese populations. California's Alien Land Laws of 1913 and 1920 barred Japanese immigrants from owning or leasing agricultural land. Agriculture was the primary

livelihood of many Japanese immigrants, making these laws particularly devastating. The loss of many families' livelihoods successfully curbed Japanese immigration. The Immigration Act of 1917 and the Johnson-Reed Act of 1924 effectively ended Asian immigration (Ng 1995). The 1917 law created an "Asiatic Barred Zone," encompassing regions across South and Southeast Asia, the Polynesian Islands, parts of the Middle East, and Asiatic Russia. This law extended the scope of the Chinese Exclusion Act to a broader range of Asian territories (Ng 1995). Japan was initially exempt due to its alliance with the United States during World War I. However, this changed with the Immigration Act of 1924, which prohibited entry to anyone ineligible for naturalization, a provision that implicitly targeted Japanese immigrants without explicitly naming them. Despite strong objections from the Japanese government, the exclusionary measure remained in place (Egan 2022).

Angel Island implemented these immigration policies, which detainees referred to as "The Guardian of the Western Gate" (Egan 2022). It functioned as a full-time detention and deportation facility throughout its thirty-year operation. During both World Wars, it was also used to intern "enemy aliens," further cementing its role in militarized and racialized immigration enforcement. The personal and legal hardships faced by Asian immigrants, lengthy interrogations, family separation, and racial surveillance were not incidental outcomes of immigration law but their intended effects. As Hing notes, these policies were "mean-spirited," designed to shrink communities, limit growth, and institutionalize racial inferiority (Egan 2022). Angel Island became the bureaucratic embodiment of this logic, implementing federal policy through a local infrastructure of suspicion, exclusion, and indefinite detention.

### Angel Island as a Site of Immigration Control

While immigration has long been part of the "American dream," Angel Island forces us to confront the contradictions embedded in that narrative. The idealized vision of America as a welcoming land of opportunity erases how immigration law has historically been used to enforce racial hierarchies. Angel Island stands as a stark counterpoint to the Ellis Island mythology. Rather than facilitating entry, it functioned primarily as a mechanism of exclusion, particularly for Chinese and other Asian immigrants (Yung 2019).

Located in the San Francisco Bay, Angel Island processed more than 500,000 immigrants over

three decades, and unlike European arrivals on the East Coast, many immigrants arriving through Angel Island were subjected to prolonged detention and intense interrogation (Lai 2014). Officials viewed the station to more effectively enforce the 1882 Chinese Exclusion Act's racialized provisions and its expansions. As exclusionary policies became more entrenched, the station grew into a site of aggressive immigration enforcement designed to restrict entry based on race, class, and national origin (Lai 2014).

### **Memory, Identity, and Resistance: Angel Island through Poetic and Oral Testimony A. Poetic Resistance and the Emotional Landscape of Detention**

The poems inscribed on the wooden walls of the Angel Island Immigration Station are more than personal laments; they are communal expressions of resistance, resilience, and humanity in the face of exclusion and confinement. Composed by Chinese detainees between 1910 and 1940, these poems reveal the psychological impact of U.S. immigration policies and offer a profound emotional record of lives marked by waiting, suspicion, and racialized rejection. These writings indicate policies that labeled entire communities as suspicious and undesirable. The poems document four major themes: isolation, injustice, nationalism, and defiance (Yogi 1991).

Isolation is a recurring motif across many poems. Separated from their families and homeland, detainees often expressed longing and emotional fatigue. One wrote, "Imprisoned in this wooden building, I am always sad and bored. / I remember since I left my native village, it has been several full moons" (Lai 2014). Another reflected, "The family at home is leaning on the door, urgently looking for letters. / Whom can I count on to tell them I am well?" These verses encapsulate the ache of indefinite separation and the emotional toll of being trapped in bureaucratic limbo (Lai 2014).

Injustice emerges as another dominant theme, with detainees recognizing the structural discrimination embedded in U.S. immigration enforcement. One poem reads, "America has power, but not justice" (Lai 2014). As Wetmore of AIISF explains, Angel Island reflects how "people were guilty until proven innocent," a legal inversion that especially impacted non-white immigrants. The racial scrutiny and degrading interrogations produced a sense of betrayal that is palpable in the poetry: "The barbarians' cruelty is overwhelming. / Confident of their might, they oppress us Chinese" (Lai 2014).

Still, not all the poems were mournful. Nationalism and defiance also shaped the expressions of many detainees. Some wrote of pride in their heritage and aspirations for collective strength. One detainee declared, "I have 10,000 hopes that the revolutionary armies will complete their victory / And help make the mining enterprises successful in the ancestral land" (Lai 2014). Others wrote of revenge and future justice: "If the land of the flowery flag is occupied by us in turn / The wooden building will be left for the angel's revenge" (Lai 2014). These lines speak not only to political awareness and to a rejection of passivity and victimhood.

Chinese calligraphy itself carried a cultural obligation to "speak truth to power," and the act of writing on the walls was both a literary tradition and a political one (Lai 2014). The inscriptions became a shared medium through which detainees built solidarity, preserved identity, and resisted dehumanization. Oral histories reinforce this collective resilience. Interviews with former detainees recall the emotional weight of confinement, but also highlight how poetry served as a coping mechanism and a voice for those who were otherwise silenced. One oral history recounts how detainees would whisper verses to one another, helping to maintain morale during prolonged periods of isolation (Lai 2014).

Jeffrey Leong's book, *Wild Geese Sorrow*, further frames these poems as historical documents and living memories. He notes how the Angel Island verses blend grief with cultural continuity, and how their preservation is an act of intergenerational storytelling. While each text narrates the story of a single individual, collectively, they highlight the historical, economic, and cultural influences at play (Leong 2018).

The poetry carved into Angel Island's walls operates on multiple levels: as personal expression, communal resistance, and cultural record. These emotional testaments offer a counter-archive to state documentation, capturing how racialized immigration policy impacted real human lives. Through themes of isolation, injustice, nationalism, and defiance, the detainees' voices continue to resist erasure and call for remembrance. The poems serve as a testament to the resilience of the human spirit when confronted with challenges, illustrating the strength of artistic expression as a means of resistance.

### **Personal Narratives and the Afterlife of Exclusion**



Oral histories and personal testimonies offer vital context for understanding how exclusionary immigration policies have shaped the lived experiences of individuals and continue to resonate across generations. The narratives of former detainees, collected through projects like the Angel Island Oral History Project, recall moments of fear, uncertainty, and resilience, but also expose the enduring psychological effects of racialized immigration enforcement (Immigrant Voices 2025).

Several interviewees describe arriving as “paper sons,” forced to memorize fabricated biographical details to pass immigration interrogations. David Chan Leong, who immigrated at age eight, recalled being coached on his fictive identity and subjected to multiple interrogations over weeks. “I was more nervous meeting my father than I was at Angel Island,” he reflected, describing the emotional distance immigration had placed between family members (Angel Island Oral History Project 2005). His experience of being detained alone, separated from his family, and fear of using the bathroom at night due to rumors of suicides underscores the terror and isolation many young detainees felt.

Dick Jeong similarly remembered his month-long detention and the pressure of reciting coaching papers while also recalling that “some people stayed a year, a couple of years... some even committed suicide” (Angel Island Oral History Project 2005). His testimony not only reflects the emotional strain of detention but also affirms the broader patterns of racialized suspicion.

Myron Ning Wong, who also arrived as a child, vividly remembered the disorientation of the process: “They put you in one of those vans with wires; we were like criminals” (Angel Island Oral History Project 2005). The procedures left a lasting impression on Wong, tied to criminalization and fear. He also recalled memories of poetry on the walls, hinting at the subtle ways that cultural memory filtered into children’s experiences, even if they could not fully understand the inscriptions.

These oral histories reveal more than individual memories; they illuminate the emotional and psychological effects of exclusion (UC Berkeley 2025). Themes of silence, separation, and shame recur. For many families, the trauma of Angel Island was not passed down in stories but buried in silence. Contemporary journalism has drawn attention to the silencing of Angel Island’s victims (Immigrant Voices 2025). Some writers have connected the Angel Island legacy to modern immigration enforcement, from

family separations to ICE detentions, arguing that the exclusionary logic that governed Angel Island has not disappeared but merely adapted (Hu 2025) (Ahmed 2017) (Hu 2025). Visiting the island today, descendants describe a reckoning not just with their ancestors’ hardships, but also with their own inherited sense of belonging and marginalization (Mastrodonato 2025).

Personal narratives serve as more than historical footnotes; they are counter-archives that challenge dominant myths of American inclusion. The voices of former detainees and their descendants remind us that exclusion was not an abstract policy; it was lived. Its afterlife continues to shape how immigrant communities remember, resist, and reclaim their place in American history.

## **Angel Island and the Architecture of Carceral Borderland**

### **Racial Surveillance through Immigration Law**

Beyond its role as a detention site, Angel Island functioned as an extension of the state’s growing investment in racial surveillance (Lee 2002). The purpose of the immigration station was not simply to inspect arrivals but to classify, interrogate, and filter people through an elaborate bureaucracy rooted in white supremacist assumptions about difference, criminality, and national purity (Johnson 2008). Immigration law, particularly as applied at Angel Island, operated less as a neutral policy instrument than as a mechanism to regulate racial groups under the guise of national security and procedural legality (Lee 1999).

Legal scholar Bill Ong Hing highlights how immigration statutes, such as the Geary Act of 1892, were designed to reinforce a state of suspicion around Chinese immigrants. The act mandated registration, proof of legal residency, denied bail to those detained, and was justified with claims that “Chinese names and faces were all alike,” rendering racial profiling into federal law (Hing 1993). These measures formed the backbone of what Erika Lee has called a “bureaucracy of exclusion,” in which identity documents, interrogations, and surveillance technologies were deployed to identify and exclude those deemed racially unfit for American citizenship (Lee 2015).

At Angel Island, this surveillance apparatus took the form of invasive personal questioning, often about one’s family, village geography, and ancestral ties—questions designed not to establish the truth but to uncover contradictions. Pegler-Gordon’s analysis of

early immigration photography also reveals how visual documentation, ID photos, mug shots, and anthropometric images became racialized technologies used to standardize, sort, and control Asian bodies (Pegler-Gordon 2021). The state relied on an emerging visual regime to reinforce who could be discernibly identified as legal, trustworthy, or assimilable.

Angel Island thus became a site where law enforcement, race science, and administrative power converged. Immigration law at the turn of the century played a crucial role in defining not only who could enter the nation but also who could be considered a legal subject (Johnson 2004). For Chinese immigrants, entry into the U.S. was contingent on passing through a legal maze designed to produce failure.

This logic of surveillance has not disappeared. As contemporary immigration enforcement continues to rely on digital monitoring, biometric data, and predictive analytics, the precedents set at Angel Island endure. The gatekeeping functions once carried out by inspectors with clipboards and racial assumptions now persist as another form of racial surveillance through software, scanners, and facial recognition, marking a pattern in how the U.S. governs race through law (Hu 2025).

### Angel Island as a Carceral Space

Angel Island operated more like a prison than a port of entry, designed to exclude rather than embrace (Kilty 2002). It was a deliberately isolating site of detention, what scholars and descendants now recognize as a racialized carceral space. Many detainees at Angel Island were held for weeks or months, some even over a year. This extended detention was not incidental but embedded into the station's design and geographic location (Lai 2014). Built on an island in the San Francisco Bay, the facility's isolation was strategic: it limited detainees' contact with legal advocates, reduced public oversight, and aligned with racialized health fears about Asian contagion (Lee et al 2012). The station's physical remoteness reinforced the structural barriers of exclusion codified by laws like the Chinese Exclusion Act (Mastrodonato 2025).

Conditions inside the station reflected its punitive function. Detainees were subjected to degrading medical exams, including testing for hookworms—a procedure disproportionately applied to Asians—and grueling interrogations. The physical environment, overcrowded dormitories, poor ventilation, and constant uncertainty compounded the

emotional toll of confinement (Yung 2018) (Lai 1980). These conditions did not arise purely from negligence but were integral to a system meant to deter and dehumanize.

The poetry carved into the wooden walls of the men's barracks is among the most vivid testaments to Angel Island's carceral character. These poems were acts of remembrance, mourning, and resistance. As one reads in *Island: Poetry and History of Chinese Immigrants on Angel Island*: "In prison, we were victimized as if we were guilty". The poems bear witness to the trauma of detention and provide "evidence of the interior lives of immigrants criminalized by law" (Yogi 1993).

Angel Island's legacy continues to shape how immigration history is understood in the United States. Revisiting sites like Angel Island reminds us that detention was never just about borders; it was about racial control (Pegler-Gordon 2021) (Ahmed 2017). Understanding Angel Island as a carceral space demands that we confront not only the past but the structures that continue to echo it in today's immigration system.

### Defining "Carceral Borderlands": A New Framework

Scholars have discussed detention and racialization in the context of immigration. Still, I offer a new framework for examining how spaces of detention intersect with broader societal structures of control and exclusion. The concept of *carceral borderlands* provides a new lens for understanding the intertwined relationship between immigration enforcement and detention. It challenges the traditional understanding of borders as fixed geographic thresholds, instead interpreting them as shifting spaces of surveillance, waiting, and state control. By placing immigration detention, historically exemplified by Angel Island, within the broader discourse of carcerality, this approach reframes how we interpret both historical and contemporary sites of immigrant exclusion.

*Carcerality*, as defined in prison studies, refers to systems and logic that confine, discipline, and surveil populations (Rios 2024) (Beiner 2014). Following Gloria Anzaldúa and others, *Borderlands* invoke spatial hybridity, contested belonging, and sociopolitical marginalization (Anzaldúa 2012). By bringing these frameworks together, carceral borderlands conceptualize immigration stations like Angel Island as racialized spaces where legal exclusion and punitive confinement merge. This is especially visible in Angel Island's dual role: it served

as a port of entry and a site of long-term detention (Barde et al. 2006). Michel Foucault's concept of *carceral culture* helps explain how this logic extends beyond prisons into institutions like immigration. Rather than relying solely on punishment, such systems employ surveillance, classification, and bureaucratic scrutiny to discipline subjects. Angel Island exemplifies this carceral logic: detainees were not just confined but continuously monitored, examined, and forced to prove their right to belong within a system designed to reject them (Beiner 2014).

Importantly, this concept also enables us to examine how time and space interact in tandem. The detainees at Angel Island were not just confined physically. They were suspended in time, often waiting weeks or months for uncertain outcomes. Angel Island speaks directly to the carceral borderland as a zone of conditional belonging, enforced not by walls but by delay, doubt, and documentation (Lai 2014).

The emotional testimonies of detainees further reveal the psychic dimensions of the carceral borderland. Poetry etched into the station walls reflects the lives of those who lived in a state of legal limbo. "Sadness kills the person in the wooden building," one detainee wrote, encapsulating the emotional violence of indefinite detention (Lai 2014). The emotional sentiments captured in the poetry underscore the connection between individual stories and systemic oppression, highlighting the need for a more comprehensive examination of carceral spaces within immigration studies.

The framework of carceral borderlands opens new possibilities for interdisciplinary immigration research by bridging legal, spatial, and emotional analyses of exclusion. It enables scholars to move beyond binaries and instead study how immigration control unfolds in carceral forms. In this way, Angel Island is not an isolated historical artifact but a precedent-setting space of exclusion that helps us trace a continuous genealogy to present-day immigration detention centers (Hu 2025).

Future scholarship can use carceral borderlands to examine how confinement structures migrate into new spaces, such as private prisons, local jails contracting with ICE, and transnational border zones. This framework encourages historians, legal scholars, geographers, and ethnic studies researchers to analyze how racialized control is justified not only through law but also through medicalization, national security discourse, and humanitarian rationales.

Moreover, it foregrounds emotion, memory, and affect as crucial tools of analysis, connecting archival sources, such as poetry and oral histories, to broader systems of power. In doing so, it elevates subjugated knowledge as central to understanding the machinery of state violence. As a methodological intervention, the framework of carceral borderlands challenges scholars to study immigration as a movement across borders and containment within them.

Although the term "carceral borderlands" has been introduced in legal scholarship by two scholars, its use has been limited to theoretical contexts of border policing (Visan et al. 2025). This project represents one of the first to apply the concept directly to Angel Island and its contemporary echoes such as ICE detention centers, where racial profiling, protracted confinement, and criminalization continue. This framework deepens our historical understanding and helps explain how exclusion operates across generations both through policy and through the emotional architecture of detention.

### **From Angel Island to ICE Detention**

The racialized exclusion and confinement practices that defined Angel Island persist today in the operations of Immigration and Customs Enforcement (ICE). While the structures and terminology have changed, the underlying logic, racial profiling, national security rhetoric, and bureaucratic delay remain strikingly similar. Angel Island, once called "The Guardian of the Western Gate," was not just a physical space of exclusion but a prototype for the modern immigration detention system. Today, ICE detention centers replicate many of its practices, often in even more expansive and punitive ways (Thompson 2025).

Federal immigration law has long served as a tool for constructing and policing racial and national identity (Lee 2002). At Angel Island, Asian immigrants were treated not as potential citizens but as threats, subjected to prolonged detention, invasive interrogations, and degrading medical exams. This treatment mirrored anxieties about racial purity and national loyalty. Today, similar anxieties are coded through the language of "border security" and "national interest," disproportionately affecting immigrants from Latin America as well as certain Asian and Muslim-majority countries (Smith 2025).

Contemporary ICE operations demonstrate this continuity. A CBS News report from June 2025 reveals that ICE arrests under Trump's renewed

enforcement policies have surpassed 100,000 in just one year, reflecting a surge in aggressive detention practices targeting undocumented and racialized communities (Smith 2025). Similarly, NBC News reported a record-breaking day on June 3, 2025, in which ICE agents arrested more immigrants than on any single day in agency history, reinforcing fears of surveillance and arbitrary removal (Arkin 2025). Meanwhile, NPR detailed how private prisons and local jails are ramping up contracts with ICE as federal facilities exceed capacity, expanding the physical reach of the carceral borderland (Thompson 2025).

This expansion is not new, but rather part of a long-standing trajectory. Immigration control has always relied on moral panics and policy swings to justify the tightening of borders and the growth of detention regimes (Pegler-Gordon 2021). Angel Island's history demonstrates how legal categories, such as "alien," "enemy," "undocumented," or "undesirable," are weaponized to criminalize migrants. Today's immigration discourse continues to echo this logic.

The relevance of Angel Island is not merely historical. Descendants of former detainees visiting the site today are struck by how deeply their families' experiences parallel the stories of modern migrants held in ICE detention (Mastrodonato 2025) (Thompson 2025). This memory work underscores that exclusion is not a relic of the past but a living system of power. Recognizing this continuity demands a reckoning with how carceral logics, first practiced at Angel Island, have been normalized, expanded, and sustained.

If Angel Island was the beginning of the carceral borderland in American immigration, ICE detention is its latest evolution. The lessons of the past, ignored too often in the name of national security, must now inform a more just and humane future (Mastrodonato 2025).

### **Conclusion: Angel Island and the Enduring Architecture of Exclusion**

This research has argued that Angel Island Immigration Station was not simply a historical footnote in U.S. immigration policy but a foundational site in the development of what I call *carceral borderlands*. In these spaces, immigration enforcement, detention, and racialized state power converge. Through literary analysis, oral testimony, and legal-historical interpretation, I have demonstrated how Angel Island functioned as a physical and symbolic threshold, where notions of

American belonging were defined through exclusion. This history matters because the legacies of Angel Island's surveillance, suspicion, and confinement continue to shape contemporary immigration systems, particularly in the context of ICE detention centers, racial profiling, and national security rhetoric.

Angel Island illuminates a central tension in American immigration history: the contradiction between a national narrative of being a "country of immigrants" and a legal infrastructure built on racial exclusion. The poetry carved into the barracks' walls and the testimonies of former detainees document the emotional violence and bureaucratic cruelty of a system that treated Asian immigrants as threats rather than as future citizens. As Bill Ong Hing notes, Asians were not only the first to be targeted by federal immigration law, but their exclusion prompted a wholesale rethinking of what immigration law could do, namely, reinforce racial boundaries under the cover of legality (Hing 1993). My findings confirm this: from the Chinese Exclusion Act to the Geary Act to the systemic criminalization of "paper sons," Angel Island functioned as the state's experimental ground for racialized immigration control.

By introducing the concept of carceral borderlands, I propose a new theoretical framework that bridges carceral studies and border studies. This term describes zones like Angel Island, which are geographically peripheral yet politically central, where immigration and incarceration intersect. These are both spatial and temporal borderlands, where individuals live in prolonged states of waiting, surveillance, and legal limbo. Informed by Michel Foucault's carceral logic and Gloria Anzaldúa's borderlands theory, this concept invites scholars to rethink immigration as movement across borders and containment within them (Anzaldúa 1987) (Beiner 2014). The emotional, psychic, and legal effects of this containment were evidenced in detainee poems and oral histories, which recorded both the violence of exclusion and the persistence of hope, defiance, and cultural identity.

Importantly, this framework opens the door for future interdisciplinary research. Comparative studies could apply carceral borderlands to other sites like Japanese American internment camps or contemporary border processing centers, revealing the throughlines of racialized exclusion across time and space. It can also enrich the analysis of current immigration infrastructure, from biometric surveillance to detention outsourcing in private prisons, as forms of carceral governance. Today's immigration landscape bears an uncomfortable

resemblance to Angel Island. As ICE detentions rise, with record-breaking arrest numbers and expanded use of private prisons, the carceral state has found new ways to reproduce its old logic (Arkin 2025) (Smith 2025) (Thompson 2025). Individuals, particularly those from marginalized racial and ethnic groups, are once again treated as suspects first and humans second. In this way, Angel Island's history is not just a cautionary tale but a mirror and a call to action.



## References

- Ahmed, Beenish. "The Lost Poetry of the Angel Island Detention Center." *New Yorker*, 22 Feb. 2017, [www.newyorker.com/books/page-turner/the-lost-poetry-of-the-angel-island-detention-center](http://www.newyorker.com/books/page-turner/the-lost-poetry-of-the-angel-island-detention-center).
- "Angel Island Immigration Station - San Francisco." *AIISF*, [www.aiisf.org/](http://www.aiisf.org/). Accessed 15 May 2025.
- Angel Island Oral History Project. *Oral History: David Chan Leong*. Interview by Christine Trowbridge, University of California–Pacific Regional Humanities Center, 10 June 2005, [escholarship.org/search?q=author%3AOral%2BHistory%2BProject%2C%2BAngel%2BIsland](http://escholarship.org/search?q=author%3AOral%2BHistory%2BProject%2C%2BAngel%2BIsland). Accessed 15 May 2025.
- . *Oral History: Dick Jeong*. Interview by Anna Cheng, University of California–Pacific Regional Humanities Center, 28 May 2005, [escholarship.org/search?q=author%3AOral%2BHistory%2BProject%2C%2BAngel%2BIsland](http://escholarship.org/search?q=author%3AOral%2BHistory%2BProject%2C%2BAngel%2BIsland). Accessed 15 May 2025.
- . *Oral History: Myron Ning Wong*. Interview by Anna Cheng, University of California–Pacific Regional Humanities Center, 29 May 2005, [escholarship.org/search?q=author%3AOral%2BHistory%2BProject%2C%2BAngel%2BIsland](http://escholarship.org/search?q=author%3AOral%2BHistory%2BProject%2C%2BAngel%2BIsland). Accessed 15 May 2025.
- . "Oral History Project, Angel Island." *eScholarship*, University of California–Pacific Regional Humanities Center, 2005, [escholarship.org/search?q=author%3AOral%2BHistory%2BProject%2C%2BAngel%2BIsland](http://escholarship.org/search?q=author%3AOral%2BHistory%2BProject%2C%2BAngel%2BIsland). Accessed 15 May 2025.
- Aneja, Arpita, and Olivia B. Waxman. "The Overlooked History of Angel Island, Where the U.S. Enforced Rules Designed to Keep Asian Immigrants Out." *TIME*, 3 May 2021.
- Anzaldúa, Gloria. *Borderlands / La Frontera: The New Mestiza*. 4th ed., Aunt Lute Books, 2012.
- Arkin, Daniel. "ICE Arrests Record Number of Immigrants in a Single Day." *NBC News*, 5 June 2025, [www.nbcnews.com/politics/national-security/ice-arrests-record-number-immigrants-single-day-rcna210817](http://www.nbcnews.com/politics/national-security/ice-arrests-record-number-immigrants-single-day-rcna210817).
- Barde, Robert, and Gustavo J. Bobonis. "Detention at Angel Island: First Empirical Evidence." *Journal of Social Science History*, vol. 30, no. 1, 2006, pp. 103–36. <https://doi.org/10.1017/S0145553200013407>.
- Beiner, Ronald. "Michel Foucault's Carceral Society." *Political Philosophy: What It Is and Why It Matters*, Cambridge University Press, 2014, pp. 151–67.
- Egan, Charles. *Voices of Angel Island: Inscriptions and Immigrant Poetry, 1910–1945*. Bloomsbury Academic, 2022.
- Hing, Bill Ong. *Making and Remaking Asian America through Immigration Policy, 1850–1990*. Stanford University Press, 1993.
- Hu, Jane. "The Long Shadow of the Chinese Exclusion Act." *New Yorker*, 23 Jan. 2025, [www.newyorker.com/books/under-review/the-long-shadow-of-the-chinese-exclusion-act](http://www.newyorker.com/books/under-review/the-long-shadow-of-the-chinese-exclusion-act).
- "Immigrant Voices: A Project of the Angel Island Immigration Station." *Immigrant Voice*, [www.immigrant-voices.aiisf.org/](http://www.immigrant-voices.aiisf.org/). Accessed 15 May 2025.
- Johnson, Kevin. *The Huddled Masses Myth: Immigration and Civil Rights*. Temple University Press, 2008.
- Kilty, Keith M. "Race, Immigration, and Public Policy: The Case of Asian Americans: Pressing Issues on Inequality

- among Asian American Communities.” *Journal of Poverty*, vol. 6, no. 4, 2002, pp. 23–41.
- Lai, H. Mark. *Island: Poetry and History of Chinese Immigrants on Angel Island, 1910–1940*. Edited by Genny Lim and Judy Yung, 2nd ed., University of Washington Press, 2014.
- Lai, H. M. “Island of Immortals: Chinese Immigrants and the Angel Island Immigration Station.” *Journal of California History*, vol. 57, no. 1, 1978, pp. 88–103. <https://doi.org/10.2307/25157818>.
- “Library Guides: A Year on Angel Island (2022-23): Primary Sources.” *Library Guides at UC Berkeley*, [guides.lib.berkeley.edu/angelisland/archivalsources](https://guides.lib.berkeley.edu/angelisland/archivalsources). Accessed 15 May 2025.
- Lee, Erika. *The Making of Asian America: A History*. Simon & Schuster, 2015.
- . “Enforcing the Borders: Chinese Exclusion along the U.S. Borders with Canada and Mexico, 1882–1924.” *The Journal of American History*, vol. 89, no. 1, 2002, pp. 54–86. <https://doi.org/10.2307/2700784>.
- . “Immigrants and Immigration Law: A State of the Field Assessment.” *Journal of American Ethnic History*, vol. 18, no. 4, 1999, pp. 85–114.
- Lee, Erika, and Judy Yung. *Angel Island: Immigrant Gateway to America*. Oxford University Press, 2012.
- Leong, Jeffery Thomas. *Wild Geese Sorrow: The Chinese Wall Inscriptions at Angel Island*. Calypso Editions, 2018.
- Mastrodonato, Jason. “At Immigration Station at Angel Island, Some Asian-Americans Are Learning Their Family’s Painful History for the First Time.” *TCA News Service*, 26 Jan. 2025, [www.proquest.com/wire-feeds/at-immigration-station-angel-island-some-asian/docview/3159751544/se-2](http://www.proquest.com/wire-feeds/at-immigration-station-angel-island-some-asian/docview/3159751544/se-2).
- Ng, Franklin. “Bill Ong Hing. *Making and Remaking Asian America through Immigration Policy: 1850–1990*. (Asian America.) Stanford: Stanford University Press, 1993. Pp. xiv, 340. \$45.00.” *The American Historical Review*, vol. 100, 1995, pp. 1701–02.
- Pegler-Gordon, Anna. *Closing the Golden Door: Asian Migration and the Hidden History of Exclusion at Ellis Island*. University of North Carolina Press, 2021, [https://doi.org/10.5149/9781469665740\\_pegler-gordon](https://doi.org/10.5149/9781469665740_pegler-gordon).
- Rios, Victor M. “Policing, Surveillance, and Confinement in the Lives of Black Boys and Young Men.” *Souls*, vol. 26, no. 2, 2024, pp. 131–47.
- Smith, Camilo Montoya-Galvez. “ICE Arrests under Trump Surpass 100,000 amid Expanded Enforcement.” *CBS News*, 2 June 2025, [www.cbsnews.com/news/ice-arrests-under-trump-100k/](http://www.cbsnews.com/news/ice-arrests-under-trump-100k/).
- Sostaita, Barbara Andrea. *Sanctuary Everywhere: The Fugitive Sacred in the Sonoran Desert*. Duke University Press, 2024, <https://doi.org/10.1215/9781478059592>.
- Thompson, A.C. “Private Prisons and Local Jails Are Ramping Up as ICE Detention Exceeds Capacity.” *NPR*, 4 June 2025.
- Visan, A., and Alison Mountz. “Conceptualizing the Borderlands: A Geographical Reclamation.” *Journal of Borderlands Studies*, 2025, <https://doi.org/10.1080/08865655.2025.2475807>.
- Wetmore, Danielle. Personal interview. 27 May 2025, conducted via Zoom.
- Yogi, Stan. “Reviews – *Island: Poetry and History of Chinese Immigrants on Angel Island, 1910–1940* Edited by Him Mark Lai, Genny Lim and Judy Yung.” *MELUS*, vol. 17, no. 2, 1991, pp. 77–79.
- Yung, Judy. *The Chinese Exclusion Act and Angel Island: A Brief History with Documents*. Bedford/St. Martin’s, 2019.

## **Short Form Student Research**

## The United States Must Adopt a Realist Approach to Curb China's Influence in Burma

By Lucas Fasulo

On February 1st, 2021, Burma's military launched a brutal Coup D'Etat. The military, titled the Tatmadaw, seized power on the day the newly elected legislature was set to meet. This established military governance through the State Administration Council (SAC) and sparked nation-wide violence at the expense of the Burmese people (PBS Newshour 2017). The coup followed Aung San Suu Kyi's National League for Democracy (NLD) landslide victory over the military-backed Union Solidarity and Development Party (USDP). Rejecting the election results and falsely claiming fraud despite international validation, the Tatmadaw detained Suu Kyi and other NLD leaders, declaring a state of emergency and marking Burma's return to an authoritarian military junta (Encyclopedia Britannica 2024). This ended nearly a decade of democratic progress, igniting widespread violence and instability. The crisis has drawn significant international attention, especially from the U.S. and China.

The "U.S. and China Great Game" is often seen as a tug-of-war, with each nation pursuing different motivations for gaining influence in Burma (Southeast Asia: A Multidisciplinary Journal, 2023). The U.S. has historically focused on promoting democracy, establishing regional security, and upholding human rights, using Burma's location as a balance of power to contain China's influence in Southeast Asia. This is a key element of its Indo-Pacific Strategy, and to strengthen ties with ASEAN members like Japan and India. In contrast, China seeks economic development, leveraging Burma as a bridge to India, ASEAN, and the Bay of Bengal, which provides vital access to the Indian Ocean and supports energy security through projects like the China-Myanmar Oil and Gas Pipeline (BRI Monitor 2024). Despite significant investments in Burma through the Belt and Road Initiative and China-Myanmar Economic Corridor, the coup has hindered China's plans. As a result, China has engaged with both Ethnic Armed Organizations (EAOs) and the Military Junta to establish sufficient peace to finalize its projects. Meanwhile, The U.S. responded to the coup with condemnation via Executive Order 14014, reinstating unilateral sanctions and offering rhetorical support for the Burmese people. The 2022 BURMA Act marked a step forward, advocating for coordinated

multilateral action, humanitarian aid, and non-lethal assistance to resistance groups. However, the BURMA Act, along with Executive Order 14014, will remain half-measures unless enforced and applied more rigorously (Marston 2023).

The United States must recognize that ensuring diplomatic ties with Burma aligns with the overarching goal of the U.S. Indo-Pacific Strategy, which seeks to limit China's influence in Southeast Asia (Chansoria 2021). To achieve this, the U.S. must adopt a realist approach by advocating for and implementing multilateral, holistic economic sanctions targeting arms-dealing networks and Burmese state-owned enterprises (SOEs), while simultaneously expanding U.S. dialogue to include all relevant state actors, including the Military Junta.

U.S. foreign policy toward Burma has long relied on unilateral sanctions targeting military officials, government entities, and sectors supporting the SAC (Southeast Asia: A Multidisciplinary Journal, 2023). These sanctions, such as Executive Order 14014 in 2021, have been largely ineffective as the Burmese military evades them through support from China and other loopholes (Crowley et al. 2021). Unilateral sanctions create gaps that arms-dealing networks exploit to continue the military's procurement of weapons. To establish influence, the U.S. must first increase its control over the military junta by implementing more holistic sanctions on arms-dealings networks and advocate for international collaboration.

In 2019, Sky Aviator, a Burmese military arms broker, received \$32 million in spare parts for MiG fighter jets, Mi-24 and Mi-35 helicopters from state-owned Russian military suppliers (OHCHR 2023). Sky Aviator facilitated visits from Russian technicians and organized trips for Burmese officers to Russia for technical training. In 2022, Sky Aviator and its owner, Kyaw Min Oo, were sanctioned by the U.S. and UK, but payments intended for Sky Aviator were quickly redirected to a new company, Heli Eagle Company Limited, owned by Min Oo's brother and business partner. Heli Eagle has not been sanctioned, allowing Sky Aviator's operations to continue and undermining the sanctions' intent.

Despite U.S. and UK sanctions in 2022, the International Gateways Group (IGG) continues to supply the Burmese military with advanced military equipment (OHCHR 2023). Since the coup, IGG's network has expanded the military's arsenal with Russian MiG-29s, Chinese JF-17s, Mi-17 gunships, and attack helicopters. IGG operates through a network of 42 corporations controlled by seven key shareholders, with entities based in Myanmar, Singapore, Thailand, and Hong Kong. Yet, only two entities, IGG and its owner Naing Htut Aung, have been sanctioned. In anticipation of sanctions, IGG preemptively shifted its trade through entities in Thailand and Singapore and transferred its trading network's center to Aung Myo Win, a business partner of Naing Htut Aung.

A key factor in the persistence of the arms-dealing networks is the necessity for foreign currency to purchase arms. In 2023, the UN reported that the Burmese military imported over \$1 billion in arms and military resources since the 2021 coup. The SAC allocated \$2.6 billion to defense in the 2022-2023 budget, relying on foreign currency from Burma's state-owned enterprises, such as the MOGE, MTE, and MGE, which generate about \$2.5 billion USD annually. These funds are routed through offshore accounts via MFTB and MEB to support military purchases. The U.S. has served as a model by sanctioning all major SOEs, leaving the Myanmar Economic Bank (MEB) as the last target to disrupt the SAC's financial network. However, international coordination remains insufficient, with only 36% of SOEs sanctioned by the EU, U.S., UK and Canada (OHCHR 2023).

The cases above underscore the importance of pursuing multilateral, holistic sanctions against arms-dealing networks and SOEs. The Sky Aviator case illustrated the necessity of sanctioning all related entities and individuals to prevent companies from pivoting to new names to avoid sanctions. The IGG case highlights the need for multilateral sanctions, as unilateral actions allow entities to move operations to neighboring countries. The U.S. can pressure IGG by leveraging diplomatic relations with Thailand to advocate for the government to close down arms dealing networks and support the enforcement of international sanctions. Similarly, sanctions on SEOs must be coordinated internationally to effectively impede the SAC's ability to acquire arms. The US should use its position in the United Nations Security Council (UNSC) and diplomatic ties in ASEAN to advocate for strategic multilateral sanctions on SOEs that fund the military's atrocities.

While the cooperative nature of multilateral sanctions may seem liberal, the implicit goal is coercive diplomacy. Realism suggests that the military junta is influenced by the anarchic nature of the international system, and will ensure its own power and security through force and suppression of opposition. Therefore, the U.S. must exert leverage over the junta, escalating sanctions and encouraging international partners to adopt similar measures to push the junta to de-escalate domestic conflict and create conditions for the return to democratic governance.

This hard power policy faces limitations if international actors are unwilling to pressure the military junta, or if the U.S. fails to establish diplomatic dialogue with the SAC. The most effective sanction would be a resolution to establish a comprehensive arms embargo through the UNSC, yet Russia and China vetoed similar resolutions in 2021 and 2023 (Associated Press 2023). Furthermore, without diplomatic communication with the junta, increased sanctions could push Burma deeper into China's sphere of influence. Clear "off-ramps" must be articulated to persuade the SAC to make concessions, such as rolling back sanctions if the junta complies.

Prior to the coup, the U.S. focused exclusively on supporting the NLD and Aung San Suu Kyi, diplomatically isolating the military junta. This approach was counterproductive, portraying the NLD as too influenced by Western powers and a threat to the junta's control (Encyclopedia Britannica 2024). The U.S. must now engage with all relevant actors, including EAOs, Pro-democracy groups, and the military junta, to establish a wider net of influence in Burma. China recognized the value of this approach, engaging diplomatically with the SAC after the coup to safeguard its Belt and Road investments. However, when the military junta was failing to maintain sufficient stability in the nation to enable progress on their infrastructure projects, they turned their support to the Northern Alliance, an EAO coalition on the Burma-China border (Clapp 2024). When the Northern Alliance launched a military offensive, China utilized this chaos to become a mediator, asserting clear influence on both sides. This shows the complexities of balancing support for all actors involved in Burma's conflict.

The violence by the Burmese military following the coup has spread across 321 of the 330 townships in Burma, leading to the rise of new armed resistance groups under the National Unity



Government (NUG) as the People's Defense Forces (ACLED 2024). However, conflicting visions for the future of the nation's government have caused a lack of sufficient coordination and cooperation to successfully combat the Tatmadaw. The U.S. must utilize the BURMA Act's "non-lethal assistance" provision to support EAOs, PDFs, and pro-democracy movements organizations (Marston 2023). This provision can become an invaluable tool for supporting the unification of resistance fighting groups by supplying necessary resources like uniforms, armor, vehicles, and medical supplies. Simultaneously, diplomatic dialogue with the military junta also must remain a priority due to the fact that it is presently the only functioning form of governance in the nation, and the only entity that is capable of stopping progress of pro-democracy movements as seen in 2021. Obtaining a balanced level of engagement between the military junta and resistance groups places the U.S. in a position similar to that of China, where there is the ability to exert influence over both actors and de-escalate conflict from both ends. Most importantly, Congress must amend the BURMA Act to include the position of a Special Coordinator for Burma Democracy, a provision that was omitted from the original legislation of the act. The Secretary of State would have ultimate authority in designating an official from the U.S. State Department to this position, tasked with the official duty of coordinating multi-agency policy implementation, such as the previously mentioned holistic sanctions, and facilitating diplomatic dialogue between the U.S., the SAC, and resistance groups.

"Non-lethal assistance" allows the U.S. to continue coercive diplomacy, pressuring the military junta to make concessions towards restoring civilian rule (Marston 2023). The junta has already suffered humiliating losses at the hands of the relatively disorganized EAOs and PDFs. By limiting the military's access to arms through holistic sanctions and supporting the resistance with sufficient resources to prolong their fight, the U.S. can force the junta into a corner, where, in accordance to realism's assumptions of a state operating in an anarchic system, they will prioritize their ability to hold on to any control they can. This was seen with the provisions of the 2008 Constitution allocating 25% of legislative seats to the military despite allowing progress towards civilian rule (Congressional Research Service 2023). If the military agrees to concessions, the U.S. will work to support both sides in signing ceasefire agreements and foster a peaceful transition to democratic rule.

It is necessary to acknowledge that increasing diplomatic dialogue within Burma should be approached cautiously, and strategically. As China demonstrated, becoming overly reliant on one actor can either place you at odds with its opposition, or cause prolonged instability in the nation. Support for resistance fighters, especially, should be carefully assessed. While actors, such as the NUG, demonstrate eagerness to return to civilian rule and continue progress towards federal democracy, not all EAOs share the same goal. Solely supporting resistance fighting without engaging with the military junta can either lead to a successful insurrection by creating the opportunity for a failed establishment of a governing body that renders Burma into a Libya-style failed state. This strategy could also cause the SAC to fall deeper into dependence on China, potentially turning the nation into a proxy battleground.

A liberal approach would find value in much of this policy's focus on working with international actors to achieve its goals. Multilateral frameworks and multi-agency cooperation are central to liberalism in addressing global challenges, such as the conflict in Burma. The overall goal of this policy, if grounded in a liberalist approach, would focus on upholding human rights, promoting democratic values, and seeking cooperative solutions, rather than striving solely to limit China's influence in the region.

Before Burma's first democratic elections in 2012, 42% of the population lived below the poverty line, less than 50% had electricity, and less than 66% had access to clean water. To address this, the U.S. prioritized a level of soft power strategy, especially during the quasi-civilian rule from 2012 to 2021. In 2016, the U.S. developed the U.S.-Myanmar partnership to promote education exchange programs and the Diversity and Inclusion Scholarship Program to fund access to college education for Burmese students. Significant progress was made in improving the quality of life under the NLD's time in government, but most of these advancements were halted and reversed after the coup. Since the start of the last Fiscal Year, the U.S. has directed over \$141 million to aid Burmese communities facing food shortages and lack of clean drinking water amidst the ongoing conflict (USAID 2024). USAID has played a key role since the coup by supporting free and independent media, maintaining civic spaces, bolstering access to essential services, and expanding access to quality education (US Embassy Myanmar 2023). The liberalist approach would critique the proposed policy for not focusing more on resolving humanitarian crises and upholding human rights, which aligns with the assumption that international

relations is a repeated game that values long-term progress over short-term gains.

A liberal perspective would also disapprove of an increase in sanctions, believing the military would harm the civilian population more than the intended targets. While the liberalist view supports multilateral sanctions for demonstrating international cooperation, it would argue that their hard power nature would threaten the military junta to depend more on China. Consequently, the military leaders might evade sanctions by seeking financial support from China, resulting in little political reform and increasing the likelihood that the SAC would withhold essential services from the Burmese people.

Instead of sanctions, the liberalist approach would support economic engagement to limit China's economic influence in Burma and persuade the military junta to adopt reforms that promote a return to civilian rule. This could be achieved in two ways: by working with international financial institutions and engaging with international governing bodies. A liberalist perspective would favor cooperation with the International Monetary Fund (IMF) or World Bank to direct aid and loans toward sustainable development programs benefiting Burma's population, similar to the work already done by USAID. Additionally, the U.S. could leverage its ability to coordinate trade access for Burma in collaboration with ASEAN, incorporating Burma into existing trade agreements such as the 2006 Trade and Investment Framework Agreement with ASEAN.

Lastly, the liberalist approach would agree with the policy of increased diplomatic dialogue with relevant actors across Burma. It would view this as a unifying tool for ensuring greater stability by externalizing the U.S. value of rule of law, which would help establish a federal democracy. It would likely extend to involving international actors like the UN and ASEAN to further the process, demonstrating a collective commitment to promoting progress in Burma.

The realist approach of this policy is intentional. The proposed policy does not emphasize expanding humanitarian aid or focusing on human rights because it doesn't need to. The multilateral, holistic sanctions and expanded dialogue would be enforced in tandem with existing policy that supports USAID. The same section of the BURMA Act that funds "non-lethal assistance" to resistance fighting groups also supports humanitarian issues and efforts by pro-democracy groups to establish a federal

democracy. Although the liberalist approach would be grounded in human rights, democracy, and cooperative solutions, the realist approach, which focuses on limiting China's influence, is necessary to achieve the broader goal of democratic restoration in Burma. However, one cannot be accomplished without the other.

It must be recognized that this policy is just one piece in the larger solution to Burma's crisis. No single policy will resolve the complex issues at play, as seen with the seven provisions of the BURMA Act. China already holds significant influence in Burma, both through substantial investments in infrastructure projects and its support for the military junta to maintain Burma's sovereignty while it struggles with internal stability. Above all, few policy options in the U.S. arsenal can rival the influence China holds by sharing a border with Burma (Myers 2024). Holistic sanctions, alongside expanded diplomatic dialogue, however, are an essential and necessary start. Soft power provisions, such as humanitarian aid and the promotion of democratic institutions, are crucial in not only fulfilling the U.S.' commitment to human rights but also building trust among Burma's civilian population that the U.S. supports their return to peace and prosperity. This must continue as it aligns with the goal of expanding U.S. engagement with all relevant actors in Burma. However, the military junta's reign of terror will persist until the U.S. demonstrates tangible resolve that it will not tolerate its violent suppression of the people. This can only be achieved through giving the SAC an implicit ultimatum, derived from coercive diplomacy, as well as enforced with holistic sanctions and support for armed resistance organizations. This would signal the U.S.'s willingness to invest significant resources and accept potential losses to force the military junta to make concessions for the return of civilian rule.

The Burmese people have shown their desire for federal democracy, with support for democracy rising to 90% in 2019 with only 9% of the population preferring the authoritarian regime (Stromseth 2021). Areas liberated from military control have shown innovation in governance by using federal principles at the local level, involving civil society groups and community organizations (Stromseth 2021). The Burmese people refuse to let the spirit of democracy they once enjoyed fade into the past (Stromseth 2021). Imposing multilateral, holistic sanctions on arms-dealing networks and Burmese state-owned enterprises, restricting the military's ability to purchase weapons and military resources, while prioritizing the expansion of U.S. dialogue to include all relevant state actors, including the Burmese

Military Junta, will be the crucial first step in supporting the Burmese people and, in turn, curbing China's ability to expand its regional influence in Burma and Southeast Asia as a whole.

## References

- ACLEd. "Between Cooperation and Competition: The Struggle of Resistance Groups in Myanmar." *ACLEd*, 26 Nov. 2024, <https://acleddata.com/2024/11/26/between-cooperation-and-competition-the-struggle-of-resistance-groups-in-myanmar/>.
- Andrews, Tom. *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*. United Nations, 17 May 2023, <https://www.ohchr.org/sites/default/files/documents/countries/myanmar/crp-sr-myanmar-2023-05-17.pdf>.
- Associated Press. "UN: Myanmar's Military May Have Committed Genocide, Crimes Against Humanity." *AP News*, 22 Mar. 2023, <https://apnews.com/article/un-myanmar-military-killing-rights-suu-kyi-029f8503bf1eb6ec0e97e8521775184a>.
- BRI Monitor. "Myanmar-China Oil and Gas Pipeline Projects." *BRI Monitor*, [www.brimonitor.org/case-studies/myanmar-china-oil-and-gas-pipeline-projects/](http://www.brimonitor.org/case-studies/myanmar-china-oil-and-gas-pipeline-projects/). Accessed 10 Dec. 2024.
- Center for Strategic and International Studies. "A New Generation of Opportunity: Cultivating U.S. Soft Power in Myanmar." *New Perspectives on Asia*, CSIS, [www.csis.org/blogs/new-perspectives-asia/new-generation-opportunity-cultivating-us-soft-power-myanmar](http://www.csis.org/blogs/new-perspectives-asia/new-generation-opportunity-cultivating-us-soft-power-myanmar). Accessed 10 Dec. 2024.
- Chansoria, Monika. "Myanmar in the US Indo-Pacific Strategy: Why Is China Winning and What to Do about It?" *Journal of Indo-Pacific Affairs*, 13 Aug. 2021, <https://www.airuniversity.af.edu/JIPA/Display/Article/2747535/myanmar-in-the-us-indo-pacific-strategy-why-is-china-winning-and-what-to-do-abo/>.
- Clapp, Priscilla. "How a Fractured Myanmar Is Navigating U.S.-China Rivalry." *United States Institute of Peace*, 11 Apr. 2024, <https://www.usip.org/publications/2024/04/how-fractured-myanmar-navigating-us-china-rivalry>.
- Congressional Research Service. *Burma's Political Crisis: Issues for U.S. Policy*. IF12331, 26 Apr. 2023, <https://crsreports.congress.gov/product/pdf/IF/IF12331/2>.
- Crowley, Michael, and Lara Jakes. "Biden Announces Sanctions on Myanmar Generals Who Led Coup." *The New York Times*, 10 Feb. 2021, <https://www.nytimes.com/2021/02/10/us/politics/biden-sanctions-myanmar-coup.html>.
- The Diplomat*. "Conflict in Myanmar Paves the Way for a New Way of Democracy." *The Diplomat*, June 2024, <https://thediplomat.com/2024/06/conflict-in-myanmar-paves-the-way-for-a-new-way-of-democracy/>.
- Encyclopædia Britannica*. "2021 Myanmar Coup d'état." *Encyclopædia Britannica*, [www.britannica.com/event/2021-Myanmar-coup-d-etat](http://www.britannica.com/event/2021-Myanmar-coup-d-etat). Accessed 10 Dec. 2024.
- Encyclopædia Britannica*. "Aung San Suu Kyi." *Encyclopædia Britannica*, [www.britannica.com/biography/Aung-San-Suu-Kyi](http://www.britannica.com/biography/Aung-San-Suu-Kyi). Accessed 10 Dec. 2024.
- International Trade Administration. "Burma—Market Overview." *Country Commercial Guides*, U.S. Department of Commerce, [www.trade.gov/country-commercial-guides/burma-market-overview](http://www.trade.gov/country-commercial-guides/burma-market-overview). Accessed 10 Dec. 2024.
- Marston, Hunter. "What the BURMA Act Does and Doesn't Mean for U.S. Policy in Myanmar." *Center for Strategic and International Studies*, 25 Jan. 2023, <https://www.csis.org/analysis/what-burma-act-does-and-doesnt-mean-us-policy-myanmar>.
- Myers, Lucas. "To Counter China, the U.S. Must Do More in Myanmar." *Stimson Center*, 24 Jan. 2024,

- <https://www.stimson.org/2024/to-counter-china-u-s-must-do-more-in-myanmar/>.
- PBS NewsHour*. "Myanmar, Burma, and Why the Different Names Matter." *PBS*, 28 Aug. 2017, <https://www.pbs.org/newshour/world/myanmar-burma-and-why-the-different-names-matter>.
- "Revisiting the Perils of Proximity: ASEAN's Normative Influence after the Myanmar Coup." *International Affairs*, vol. 100, no. 2, Mar. 2024, pp. 751–767, <https://academic.oup.com/ia/article/100/2/751/7609297>.
- "The Significance of Strategic Distance on Emerging-Market Firms' Performance: Evidence from Myanmar." *Southeast Asia: A Multidisciplinary Journal*, 2023, <https://www.emerald.com/insight/content/doi/10.1108/seamj-02-2023-0018/full/html>.
- Stromseth, Jonathan. "The Genie Will Not Return to the Bottle: Understanding the Pro-Democracy Protests in Myanmar." *Brookings*, 3 Feb. 2021, <https://www.brookings.edu/articles/the-genie-will-not-return-to-the-bottle-understanding-the-pro-democracy-protests-in-myanmar/>.
- United Nations Office of the High Commissioner for Human Rights. *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*. 17 May 2023, <https://www.ohchr.org/sites/default/files/documents/countries/myanmar/crp-sr-myanmar-2023-05-17.pdf>.
- U.S. Agency for International Development. "Democracy, Human Rights, and Governance." *USAID*, [www.usaid.gov/burma/democracy-governance](http://www.usaid.gov/burma/democracy-governance). Accessed 10 Dec. 2024.
- U.S. Department of State. "Sanctions against the Myanmar Oil and Gas Enterprise and Concerted Pressure with Partners." *U.S. Department of State*, [www.state.gov/sanctions-against-the-myanmar-oil-and-gas-enterprise-and-concerted-pressure-with-partners/](http://www.state.gov/sanctions-against-the-myanmar-oil-and-gas-enterprise-and-concerted-pressure-with-partners/). Accessed 10 Dec. 2024.
- . "U.S. Relations with Burma." *Fact Sheet*, Bureau of East Asian and Pacific Affairs, 14 July 2023, <https://www.state.gov/u-s-relations-with-burma/>.
- U.S. Department of the Treasury. "Treasury Targets Entities in Burma's Defense Sectors and Other Regime Cronies." *Press Release*, 31 Jan. 2022, <https://home.treasury.gov/news/press-releases/jy2067>.
- U.S. Embassy in Myanmar. "United States Provides Additional Humanitarian Assistance to Myanmar." *U.S. Embassy in Myanmar*, 9 Aug. 2023, <https://mm.usembassy.gov/united-states-provides-additional-humanitarian-assistance-to-myanmar/>.
- United States Congress. *Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008*. Public Law 110-286, 29 July 2008, <https://www.govinfo.gov/content/pkg/PLAW-110publ286/html/PLAW-110publ286.htm>.
- The White House. *Indo-Pacific Strategy of the United States*. Feb. 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/02/U.S.-Indo-Pacific-Strategy.pdf>.



## The Rohingya Genocide

By Luca Fasulo

The Rohingya Genocide in Myanmar represents an egregious instance of political violence strategically enacted by state actors against civilians, underpinned by a calculated combination of ethnic hostility, political motives, and strategic military considerations. In this paper, I argue that state-centric theories of mass killings by Valentino et al. (2004), emphasizing strategic military considerations in guerrilla warfare, and Balcells & Stanton's (2021) multifaceted analysis of violence against civilians collectively provide the most comprehensive explanation for Myanmar's indiscriminate violence against the Rohingya. In line with these theories, Myanmar's military, the Tatmadaw, intentionally executed an ethnic cleansing campaign masked as counterinsurgency, driven by strategic interests to permanently remove a population they deemed a threat to national unity and security.

Myanmar's Rohingya, a Sunni Muslim ethnic and religious minority, were recognized as citizens following the country's independence from British colonial rule, before being progressively stripped of rights until that citizenship was denied in 1982 (Martin 2017). The Rohingya were seen as unwelcome immigrants holding unwarranted rights by the majority Buddhist population, leading to repeated cycles of violence and discrimination culminating in the 2012 riots and a mass exodus of Rohingya to neighboring Bangladesh (Abubakar et al. 2022). This ethnic fractionalization is theorized by scholars James Fearon and David Laitin (2003) to stem from weak state institutions, poverty, and political instability, creating favorable conditions for insurgency and state violence. In 2017, this insurgency was realized with the Arakan Rohingya Salvation Army (ARSA) launching coordinated attacks on security posts along the border, leaving a dozen police officers dead (United Nations Human Rights Council 2018). State violence, as Fearon and Laitin predicted, followed, with the Tatmadaw deploying over 30,000 soldiers into Northern Rakhine State as part of an ostensibly counterinsurgent measure, escalating nevertheless into mass violence against civilians, an act condemned by the UN as ethnic cleansing (McPherson & Lone 2018).

State violence did not end here. The Tatmadaw and various Buddhist militias continued to employ indiscriminate violence, while the insurgent

force, the ARSA, lacked the technological capability to sufficiently combat the military forces, maintaining a minimal role in the conflict while civilian killings, mass rape, and the destruction of entire villages continued, such as in the Tula Toli and Inn Din Massacres (McPherson, P. & Lone, W 2018). In 2018, UN estimates of the death toll counted at least 10,000 Rohingya killed, with over 700,000 driven into exile in neighboring Bangladesh, and 392 villages either partially or completely destroyed within the first few months of the military campaign (United Nations Human Rights Council 2018). In 2021, a coup d'état led by the Tatmadaw installed Senior General Min Aung Hlaing as Acting President, one of the genocidaires who led attacks on Rohingya villages in the Rakhine State (United Nations Human Rights Council 2018). As long as the Tatmadaw continues to hold power in Myanmar, the threat to the Rohingya Muslims remains.

The combination of mass killings with the intent of annihilation and the mass displacement of an ethnic group fits political scientist Stathis Kalyvas (2019)'s definitions of both genocide and ethnic cleansing. This combination of genocide and ethnic cleansing is seen as a counterproductive method for counterinsurgency, as brutality only fuels the fire for further resistance, thereby threatening the security of the state even further. According to Kalyvas (2019), political violence, from genocide to ethnic cleansing, follows a strategic rationality surrounding concerns such as internal stability as well as ideological factors, where ethno-nationalism comes into play. Kalyvas (2019) further explains that perceived insurgent threats may contribute to state actors' commitment to political violence. Indiscriminate violence, as opposed to selective targeting of insurgent leaders, is not the mark of true counterinsurgency, but if insurgent threats are only a small part of the equation, exaggerated to justify ethnonationalism and strategic removal of a perceived political threat, the strategy is more fully explained.

In terms of strategic rationality, the literature suggests that purely rational motivations should be analyzed through multiple contextual lenses. Some contend that mass killings of civilians is in line with counterinsurgency in a guerrilla conflict, where the civilian population forms the insurgency's logistical base (Valentino et al. 2004). This "draining the sea to

kill the fish” logic could be behind the Tatmadaw’s decision to employ indiscriminate violence against the Rohingya following limited insurgent attacks by ARSA. Under this lens, the Tatmadaw strategically exaggerated the threat from ARSA, using minimal insurgent activity as justification for broad, collective violence aimed at eradicating its civilian support bases. Scholars Laia Balcells and Jessica Stanton present a different lens. Their framework explores various conditions preceding and enabling Myanmar’s genocide and ethnic cleansing against the Rohingya people, viewing the matter from the international, national, subnational, organizational, and individual perspectives.

At the international level, Balcells & Stanton (2021) emphasize how global norms and external actors influence state behavior toward civilians. During the Rohingya genocide, the international community’s largely passive stance, combined with diplomatic shielding from influential allies such as China and Russia, enabled Myanmar to escalate violence without significant repercussions (McPherson, P. & Lone, W 2018). Nationally, they highlight the role of political institutions, domestic constituencies, and national ideologies (Balcells & Stanton 2021). Myanmar’s 2011 political transition from military dictatorship to quasi-civilian governance saw major parties like the National Democracy League prioritize appealing to the majority Buddhist population rather than protecting the Rohingya minority (Abubakar, I. et al. 2022). The 2015 presidential decision to rescind the Rohingya’s “white cards”, temporary voting licenses, allowed for violence against the Rohingya to be low-cost for politicians domestically, further promoting Balcells & Stanton’s exclusionary ideology (Marshall, Andrew R. C. 2015). Subnationally, Balcells & Stanton assert that territorial contests and demographic configuration increase risks of civilian-targeted violence. They argue that violence spikes in territories with long-held ethno-political tensions and contested control of areas occupied by insurgent factions. These factors were evident in Northern Rakhine State, where historical animosity and perceptions of Rohingya as outsiders amplified tensions and created fertile conditions for state-led atrocities under the mask of counterinsurgency (United Nations Human Rights Council 2018).

Organizationally, military capabilities and ideological commitments are seen to shape leaders’ willingness to perpetrate violence, as specific conditions in a nation, such as an autocratic government and ethno-centric nationalism, can allow for impunity, even for egregious acts of violence

(Balcells & Stanton 2021). Myanmar’s authoritarian military structure and Buddhist nationalism fostered an environment of impunity, with military leaders openly labeling Rohingya as illegal immigrants that are “inferior” to the Buddhist majority (Martin 2017). Lastly, on the individual level, Balcells & Stanton (2021) explore how psychological and emotional factors cause dehumanization, hatred, and fear. Propaganda from the very top of the chain of the Tatmadaw created socialization in the military that leaked into broader society, displayed through individual acts of violence such as rape and torture as well as a greater intolerance towards the Rohingya by refusing to accept them as citizens of Myanmar and instead as “Bengalis” (McPherson & Lone 2018). This further inflamed existing ethnic and religious hostilities, creating conditions ripe for genocide.

These combined theories provide important insight into the political violence against civilians committed in the Rohingya Genocide, from elimination of civilian support for counterinsurgency to the impact of high-level decisions from the top, down. However, they focus entirely on strategic rationality, and not on ideological, ethnonationalist factors, the second half of Kalyvas’ model. The grievance theory articulated by scholars Collier and Hoeffler in 2004 offers a compelling emphasis on these drivers. Under this theory, grievances rooted in ethnic inequality and severe social marginalization can significantly influence the onset of violence (Collier and Hoeffler 2004). Through this perspective, the racist nationalism and widespread islamophobia prevalent within the Buddhist majority population in Myanmar can fill in the gaps when determining the causes of the Rohingya genocide, particularly addressing the minimal insurgent activity from the ARSA, which makes genocide and ethnic cleansing disproportionate even if we accept that the Tatmadaw see civilian support bases as a strategic threat.

Ultimately, the theories of Valentino et al. and Balcells & Stanton, pulled together under those of Kalyvas, offer the most comprehensive explanation of how and why Myanmar’s leaders chose genocide and ethnic cleansing as a policy, by integrating multiple variables that single-factor explanations, like simply ethnic hatred, fail to do. They predict that a weak state facing a rebelling minority with whom it has a hostile ethnic relation will often resort to mass civilian targeting, especially if it can do so without oversight, aligning directly with what transpired in Myanmar. The Rohingya genocide can therefore be understood as a grim implementation of a calculated strategy under the banner of counterinsurgency coupled with

generational prejudice developing into mass violence  
consistent with ethnic cleansing.

## References

- Abubakar, I., Dalglish, S. L., Ihekweazu, C. A., Bollyky, T. J., Ihekweazu, V. U., Merali, S., ... & Yamey, G. (2022). Lessons from COVID-19 on responding to infectious disease outbreaks. *The Lancet*, 400(10352), 1151–1167. [https://doi.org/10.1016/S0140-6736\(22\)01651-8](https://doi.org/10.1016/S0140-6736(22)01651-8).
- Balcells, L., & Stanton, J. A. (2021). Violence against civilians during armed conflict: Moving beyond the macro- and micro-level divide. *Annual Review of Political Science*, 24, 45–69. <https://doi.org/10.1146/annurev-polisci-041719-102229>.
- Collier, P., & Hoeffler, A. (2004). Greed and grievance in civil war. *Oxford Economic Papers*, 56(4), 563–595. <https://doi.org/10.1093/oep/gpf064>.
- Fearon, J. D., & Laitin, D. D. (2003). Ethnicity, insurgency, and civil war. *American Political Science Review*, 97(1), 75–90. <https://doi.org/10.1017/S0003055403000534>.
- Kalyvas, S. N. (2019). The landscape of political violence. In E. Chenoweth, R. English, A. Gofas, & S. N. Kalyvas (Eds.), *The Oxford handbook of terrorism* (pp. 11–33). Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780198732914.013.1>.
- Maizland, L. (2023, January 31).
- Martin, M. (2017, September 27). *Testimony before the House Foreign Affairs Committee Subcommittee on Asia and the Pacific*. United States Congress. Retrieved from <https://www.govinfo.gov/content/pkg/CHRG-115hhrg27011/html/CHRG-115hhrg27011.htm>.
- Marshall, Andrew R. C. (2015, February 17) In Rohingya Camp, Tensions Mount over Myanmar Plan to Revoke ID Cards. *Reuters Special Report*. Retrieved from [www.reuters.com/article/world/in-rohingya-camp-tensions-mount-over-myanmar-plan-to-revoke-id-cards-idUSKBN0LL053/](http://www.reuters.com/article/world/in-rohingya-camp-tensions-mount-over-myanmar-plan-to-revoke-id-cards-idUSKBN0LL053/)
- McPherson, P. & Lone, W. (2018, June 26). New evidence shows how Myanmar’s military planned its brutal purge of the Rohingya. *Reuters Special Report*. Retrieved from <https://www.reuters.com/investigates/special-report/myanmar-rohingya-warcrimes-investigation/>.
- United Nations Human Rights Council. (2018). *Report of the Independent International Fact-Finding Mission on Myanmar*. Retrieved from [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/A\\_HRC\\_39\\_64.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf).
- Valentino, B., Huth, P., & Balch-Lindsay, D. (2004). “Draining the sea”: Mass killing and guerrilla warfare. *International Organization*, 58(2), 375–407. <https://doi.org/10.1017/S0020818304582061>.

# The Falklands War Through the Lens of Diversionary War and National Identity

By Hunter Fonseca

## Introduction

The Falklands War of 1982, though lasting only ten weeks, had far-reaching implications for Argentina, Britain, and international politics. On April 2, Argentina's military junta, led by Lieutenant General Leopoldo Galtieri, invaded the Falkland Islands, prompting an immediate and decisive British military response. A 200-year old sovereignty dispute over the islands fueled the confrontation, with both nations claiming territorial claims rooted in national and historical identity. The conflict would last 8 weeks, ending on June 14 following the Argentine surrender, and would have significant effects on both nations' international position and domestic politics.

This paper aims to address the catalyst of the Falklands War, arguing that the intersection of domestic political upheaval and national identity best explains the onset of the Falklands War. To develop this claim, the paper first provides a brief overview of the conflict's historical and political context before turning to two theoretical perspectives: Jaroslav Tir's Theory of diversionary war and Richard Herrmann's work on national identity. Tir's theory examines how leaders under domestic pressure may provoke international crises or conflicts to create a "rally around the flag" effect, diverting attention from internal problems that threaten their political survival. In contrast, Herrmann's theory illustrates how nationalism influences the public's perceptions of foreign threats, amplifying disputes with disliked states by prompting people to interpret their actions as hostile and threatening. I will then apply these theories to the case of the Falklands to assess how each explains the outbreak of the war. Converging these two theories, this paper argues that the war was not only driven by internal instability that incentivized diversionary conflict, but also worked in tandem with the power of national identity politics to make the war politically compelling and publicly legitimate.

## Historical and Political Context

The Falklands are a remote island group located off the coast of Argentina that have been at the center of a sovereignty conflict between Argentina and the United Kingdom for over 200 years. The modern

sovereignty dispute began in 1833 when Britain expelled Argentina's remaining officials and established continuous administration over the islands (Falkland Islands War 2025). Argentina has consistently claimed sovereignty over the *Islas Malvinas*, as they are known locally, due to their geographical proximity and the belief that they are an integral part of the nation's identity (Falkland Islands 2025). For nearly 150 years after the British established its administration in 1833, the dispute remained dormant, only existing in the diplomatic realm and never escalating beyond rhetoric. However, in early 1982, the unresolved conflict would escalate into full-blown war.

Argentina's military junta in the early 1980s was grappling with economic collapse, public dissatisfaction, and growing criticism of the government's human rights violations (Falkland Islands War 2025). Confronted with declining legitimacy, Lieutenant General Leopoldo Galtieri sought to offset increasing dissatisfaction with his government and garner domestic support. The junta attempted to bolster its legitimacy through reviving Argentina's sovereignty claim over the Falklands, aiming to redirect public frustration toward the external British enemy. (Falkland Islands War 2025). On April 2, 1982, Argentine Forces invaded and occupied the Islands until June 14, following their surrender to the British. (Lu 2022, 57). The initial response to the war was enthusiastic, with widespread patriotic rallies suggesting that the junta had achieved a temporary "rally around the flag" effect (Falkland Islands War 2025).

Britain, led by Prime Minister Margaret Thatcher, reacted swiftly and promptly to Argentina's invasion. Thatcher framed the attack as an assault on their sovereignty and the rights of the British people. Despite being located over 8,000 miles from the Falklands, Britain prepared a "naval task force" and launched an ambitious amphibious counteroffensive to retake the islands (Lu 2022, 57; Falkland Islands War 2025). At the time, Thatcher was facing declining approval ratings amid an economic recession and internal political pressure – conditions that made a strong response both strategically and politically opportune (Grandpierron 2022, 57). Backed by



growing public support and international alliances, including logistical assistance from the United States, British troops recaptured the islands by June 14 (Britton 2023).

The war was brief but costly, with approximately 650 Argentine and 255 British military deaths (Falkland Islands War 2025). Strategically, it reasserted Britain's global capacity; politically, it reshaped leadership in both countries. Argentina's defeat led to the junta's collapse and a return to democracy; while in Britain, Thatcher's popularity surged, contributing to her re-election (Britton 2023). More than a territorial skirmish, the war demonstrated how unresolved symbolic disputes can escalate into full-scale international conflict when fueled by domestic pressures and nationalism.

### **The Falklands War Through the Lens of Diversionary War**

Tir's theory of diversionary war, as outlined in "Territorial Diversion: Diversionary Theory of War and Territorial Conflict," offers a compelling framework for critically analyzing the causes of the Falklands War through testing its explanatory power against historical evidence. Applying diversionary theory to the Falklands War requires identifying the domestic political conditions that might incentivize leaders to initiate external conflict and assessing whether those conditions were present in Argentina's case, with the caveat that not all diversionary strategies necessarily escalate to full-scale war (Levy 1989, 282). Therefore, a comprehensive diversionary theory must identify the specific domestic conditions – such as severe economic crises, declining approval ratings, or regime instability – that are most likely to prompt leaders to initiate diversionary conflicts. The theory must also clarify which types of diversionary actions are most likely to escalate into war and the political processes that facilitate this escalation.

Tir's theory posits that unpopular leaders facing domestic instability may incite international conflict to unify the populace through a "rally around the flag effect," thereby redirecting attention from domestic failures in an attempt to secure their political survival. This effect operates through an ingroup-outgroup dynamic, in which the use of military force in an external crisis fosters public unity and loyalty to the state and its leader (Tir 2010, 413). Tir explains this process through two distinct but interconnected mechanisms: leadership strategy and citizen response. Leadership strategy examines how individual unpopular leaders in power may turn to conflict as a diversionary tool. Citizen response details how the

rally effect relies on psychological mechanisms, as perceived external threats trigger an ingroup-outgroup dynamic. This effect shifts the public focus away from domestic issues towards support for the nation and its leadership. Humans possess a "formal impulse of hostility," reinforcing the notion that psychological tendencies shape collective responses to external threats (Simmel 1904, 501). This sociological perspective helps contextualize Tir's assertion that perceived foreign threats activate an ingroup-outgroup dynamic, encouraging citizens to rally around national pride and leaders during crises.

The political climate of Argentina in 1982 offers a compelling illustration of the conditions Tir's theory anticipates. The ruling military junta in the early 1980s was in disarray, with Galtieri's regime facing economic turmoil, widespread public upheaval, and growing criticism of the government's human rights violations (Falkland Islands War 2025). To divert attention from these crises, the regime deliberately framed the invasion as a patriotic mission to reclaim Argentine Territory, a piece of land with deep national connections (Schenoni 2020, 35). The symbolic weight of the Falklands provided a unifying national cause that redirected public frustration, reinforced a collective sense of purpose, and activated national pride – strategies that align closely with Tir's citizen response mechanism, which emphasizes rallying public support through external conflict. Complementing this, researchers Dennis M. Foster and Jonah W. Keller's research on scapegoating supports the idea that leaders can deflect blame for "domestic problems by exaggerating foreign threats and engaging in the political use of forces" effectively using out-groups, such as Britain, as convenient targets to unify public opinion (Foster & Keller 2010, 419).

Just as Argentina exemplifies Tir's theory of diversionary war, Britain's leaders responded to the Falklands invasion through similar dynamics of domestic political vulnerability and the pursuit of leadership survival, albeit on a more modest level. At the time of the war, Prime Minister Thatcher was facing a "major economic crisis," and by January 1982, her government's approval rating had plummeted to 24%. The prime minister was also confronting electoral competition and political instability from rivals within her cabinet (Grandpierron 2022, 57). In a similar diversionary attempt, the British government reframed the conflict as a defense of national sovereignty and the rights of the British people. Following the victory in the Falklands, the government's approval rating increased

to 48%, helping the Conservatives secure a win in the 1983 general election (Grandpierron 2022, 57).

While Tir's Diversionary Theory of War provides valuable insight in explaining the conflict from both the British and Argentine perspectives, the theory still faces limitations. The theory lacks a precise specification of the conditions under which domestic political incentives escalate into global conflict. If diversionary war is a tool to undermine domestic political upheaval, then why don't we see it utilized more by leaders in these times?

Addressing this gap, political scientists TaeJun Seo and Yusaku Horiuchi study 46 militarized disputes to analyze why diversionary war is not a reliable tool for increasing domestic support for political leaders or governments. In their theory, they question the universality of rally effects, concluding that these effects are either nonexistent or short-lived. Engagement in a diversionary war can actually "increase citizens' criticism of the job performance of their political leaders," potentially leaving leaders in an even weaker political position than before the conflict (Seo and Horiuchi 2024). This limitation of rally effects was evident in the aftermath of the Falklands War, as Argentina's defeat led to the collapse of the military junta (Britton 2023). Furthermore, leaders are not all equally inclined toward scapegoating or risk-taking, highlighting that leaders' psychological traits influence their use of divergent conflict (Foster and Keller 2010, 418-419). While Tir's theory explains how Argentina sought to unify the public through conflict, it does not fully account for the deeper perceptions that made the war viable.

Herrmann's theory of national identity helps fill this gap by examining how symbolic narratives and group loyalties shaped public support for war.

### **The Falklands War Through the Lens of National Identity**

Richard Herrmann's theory, explicated in "How Attachments to the Nation Shape Beliefs About the World," offers a robust framework for analyzing the role of national identity in the Falklands War and assessing its explanatory strength against the historical evidence. Operating at the individual level, Herrmann's theory asserts that public perceptions of foreign threats are not formed through rational thinking; instead, they are shaped by cognitive biases rooted in national consciousness and in-group-out-group dynamics (Herrmann 2017, 61-62). In doing so, the theory challenges rationalist and realist

assumptions that people view the world and then form their beliefs. Instead, it emphasizes that perceptions of foreign threats are shaped and filtered through identity narratives, in which disliked states are viewed as inherently hostile (Herrmann 2017, 66). Therefore, threats are interpreted through a psychological lens that encourages misperception, heightens perceived dangers, and increases the likelihood of conflict escalation. The stronger an individual's patriotism, the more likely it is that their perception of international relations will be shaped – or even distorted – by that identity (Herrmann 2017, 61).

Argentina's public response to the Falklands invasion vividly illustrates the conditions Herrmann's identity-based theory foresees. As historian Benedict Anderson famously argued, the nation-state is an imagined community constructed through shared narratives that cultivate emotional ties to territory and identity. Nations are further bound by territory, in which some people are part of the national community while others are not (Anderson 1983, 6). The Falklands are deeply embedded in Argentine national identity, symbolizing both colonial grievance and the extension of national sovereignty, reinforcing Anderson's conception of the nation as imagined and sovereign. (Anderson 1983, 7). Herrmann's framework explains how the British occupation was framed not as a geopolitical challenge but as a violation of Argentine national dignity and sovereignty.

Furthermore, the Argentine education system teaches children at a young age the significance of the Falklands War, emphasizing the island's symbolic importance to their national character (Benwell and Dobbs, 2011). These educational strategies perpetuated collective memory and cultivated a public consensus that the Falklands were non-negotiable. By reinforcing identity frames rooted in in-group versus out-group dynamics, the state-sponsored education system made the war more publicly acceptable. This framing perpetuated animosity toward Britain and validated aggressive policies, aligning with Herrmann's theory of how identity narratives shape perceptions of foreign threats. Argentina's response illustrates the identity-driven dynamics Herrmann describes; British public reactions to the Falklands crisis similarly engaged deeply with nationalism and emotional framing.

Herrmann's theory of national identity offers valuable insight into how the British public initially perceived the onset of the Falklands War. The British nationalistic attitude at the time is conveyed extremely well through Prime Minister Thatcher's warning to

Alexander Haig, then-U.S. Secretary of State: “there’s a feeling that you’re trying to...make it difficult for us to liberate our Islands from the aggression of a military junta who’s in bed already with the Soviet Union” (Grandpierron 2022, 65). The Thatcher administration framed the invasion as both a territorial challenge and an assault on British sovereignty and global prestige. This narrative invoked colonial memory and a sense of international duty, resonating with the public and legitimizing the war effort. Public engagement was not merely about strategic interests but reflected deeper concerns over national pride and global standing, aligning with Herrmann’s emphasis on affective identity frames (Herrmann 2017, 66). Nationalist sentiment is sustained through collective imagination, and the Falklands War served to reassert Britain’s imagined community on the global stage.

While Herrmann’s theory of national identity highlights how it fuels conflict, it does not fully account for the complexities that shape decisions to go to war. In some instances of conflict, leaders strategically manipulate nationalist sentiments, treating national identity as a political tool rather than an autonomous driver of foreign policy; furthermore, not all disputes involving nationalism necessarily result in war (Van Evra 1994, 7-22). This notion suggests that identity alone does not determine whether a dispute turns violent, and factors such as strategic interests and regime type also explain the onset of war. Furthermore, changes to the education curriculum in Argentina were implemented to reinforce nationalist ideals – this is primarily shown through the integration of soldier testimonies into secondary school curricula. However, these narratives can also complicate identity by exposing the harsh realities of the war (Benwell, 2021). Veterans’ recollections reveal the brutality, destruction, and disillusionment of war, which undermine notions of heroism and national unity, suggesting that national identity may also include memory-based dissent and internal contestation.

### **The Falklands War Through the Intersection of Identity and Diversion**

Herrmann’s identity-based framework reveals how public narratives make war compelling. However, to understand why leaders act on these sentiments, we must also consider Tir’s emphasis on political survival and diversion. Taken together, these theories argue that the causes of the Falklands War are best understood through the intersection of domestic instability, which incentivized diversionary conflict, and national identity politics, which rendered the war both politically compelling and publicly legitimate.

While Tir’s diversionary war framework and Herrmann’s model of national identity offer powerful lenses for the Falklands conflict, their explanatory power is strongest when used in conjunction. Although diversionary motives played a role, the Falklands War shows that such strategies need nationalist alignment to make foreign threats resonate with the public. Yet, the onset of the war remained unpredictable, politically costly, and risky. From this perspective, Tir’s diversionary theory of war does not operate in a vacuum but depends on the cognitive and symbolic mechanisms that Herrmann articulates.

Tir’s theory posits that leaders under domestic pressure may intentionally initiate conflicts to generate a rally around the flag effect, thereby shifting the public’s focus from internal failures to an external adversary. However, this logic assumes that the public will always respond predictably to this incitement, which is not always the case. Seo and Horiuchi’s study of 46 militarized interstate disputes challenges Tir’s assumption, highlighting that rally effects are either nonexistent, weak, or short-lived, a notion that is especially true when the public lacks emotional attachment to the cause (Seo & Horiuchi 2024). Their findings demonstrate how diversionary war only succeeds under certain conditions, conditions which Herrmann’s theory helps clarify.

Herrmann argues that national identity and motivated reasoning influence how citizens perceive foreign threats. These perceptions are not rational or objective as a realist or rationalist would suggest, but instead are filtered, formed, and distorted by the framing of national identity – rendering specific foreign policy actions more politically viable and emotionally relevant. Argentina vividly exemplifies this dynamic through its portrayal of the Falkland Islands as an integral part of its national character. Galtieri’s strategy effectively leveraged the Falklands dispute, relying on the fact that the islands were already embedded in their national consciousness (Schenoni 2020). The Falklands functioned as such a symbol for Argentina (Anderson 1983, 172), reinforced through education systems that presented the islands as a non-negotiable and integral part of Argentine identity (Benwell & Dobbs, 2011). If Argentina lacked the emotional and symbolic attachment to the Falklands, it is highly unlikely that the diversionary strategy would have garnered the mass support it did. Herrmann’s theory not only complements Tir’s but also uncovers the psychological foundation that makes diversionary war possible.

The British case further reinforces this tandem model. Prime Minister Thatcher faced immense domestic pressure, including economic recession and political instability, during the onset of the conflict. (Grandpierron 2022, 57). The war offered her a diversionary opportunity, and her government took advantage of it. Her success in mobilizing a rally effect was grounded in her framing of identity politics. Using Herrmann's theory alongside Tir's helps convey why her framing resonated so strongly with the British people. Thatcher's nationalist rhetoric toward international allies exemplified Britain's assertive stance, casting the Argentine invasion as a direct assault on British sovereignty and global prestige (Grandpierron, 2022, 65). By fueling emotional narratives of civilization versus aggression, she reaffirmed Britain's imagined identity as an international defender of order and stability. Thatcher's narrative effectively re-imagined Britain's global role through the lens of national identity, drawing on the imagined solidarity that is central to the endurance of nations (Anderson 2006, 7).

Using Tir and Herrmann in tandem exposes the limitations of using either theory in isolation. Tir's diversionary war theory struggles to explain why some unpopular leaders choose war while others refrain and why public support for such conflicts is often absent or inconsistent. Herrmann fills the theoretical gap of why not all diversionary actions lead to war (Levy, 1989, 282) by identifying how national identity and motivated reasoning shape the public's interpretation of foreign threats. These identity frames convert a diversionary opportunity into a rallying cause, but even then, war is not inevitable. Herrmann's model can overstate the causal force of identity if not tempered by political context. While identity narratives can cause war, they do not act in isolation.

These theorems, in tandem, suggest a reinforcing cycle in which identity narratives legitimize diversionary war, and the war itself reinforces those same national identities.

While these theories clarify the onset of diversionary war, they additionally raise questions about its long-term utility. The Falklands War demonstrates that while this type of war may generate temporary political gains, such as Thatcher's increased electoral rating or Galtieri's brief rally in support, the benefits are often fleeting. Furthermore, the strategy is highly risky and costly, highlighted by the fact that Argentina's failure in the Falklands was a driving factor in the junta's collapse. Military and economically, the costs were immense for both sides: financial strain, prolonged diplomatic fallout, and hundreds of lives lost. As Seo and Horiuchi emphasize in their study, rally effects can be either nonexistent, short-lived, or even backfire, as observed in Argentina. Ultimately, the conflict highlights that while national identity may provide the psychological necessity for a diversionary war, its political outcomes are unpredictable at best and can be disastrously self-defeating at worst.

## References

- Anderson, Benedict. 2006. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. Verso. London and New York.  
[https://is.muni.cz/el/1423/podzim2013/SOC571E/um/Anderson\\_B\\_-\\_Imagined\\_Communities.pdf](https://is.muni.cz/el/1423/podzim2013/SOC571E/um/Anderson_B_-_Imagined_Communities.pdf)
- Benwell, Matthew C. 2021. "Going Back to School: Engaging Veterans' Memories of the Malvinas War in Secondary Schools in Santa Fe, Argentina." *Political Geography* 86: 102351. <https://www-sciencedirect.com.offcampus.lib.washington.edu/science/article/pii/S0962629821000111>.
- Benwell, Matthew C., and Klaus Dodds. 2011. "Argentine Territorial Nationalism Revisited: The Malvinas/Falklands Dispute and Geographies of Everyday Nationalism." *Political Geography* 30 (8): 441–49. <https://www-sciencedirectcom.offcampus.lib.washington.edu/science/article/pii/S0962629811001582>.
- Britton, John A. 2023. "Falkland Islands War." EBSCO.  
<https://www.ebsco.com/research-starters/military-history-and-science/falkland-islands-war>
- Foster, Dennis M., and Jonathan W. Keller. 2010. "Rallies and the 'First Image.'" *Conflict Management and Peace Science* 27 (5): 417–41.  
<https://journals-sagepubcom.offcampus.lib.washington.edu/doi/epdf/10.1177/0738894210379327>.
- Grandpierron, Matthieu. 2022. "The British Use of Domestic Political Situations during the Falklands War." *The Round Table* 111 (1): 56–68.  
<https://www.tandfonline.com.offcampus.lib.washington.edu/doi/pdf/10.1080/00358533.2022.2037234?needAccess=true>.
- Herrmann, Richard K. 2017. "How Attachments to the Nation Shape Beliefs about the World: A Theory of Motivated Reasoning." *International Organization* 71 (S1): S61–S84. <https://cambridge.org.offcampus.lib.washington.edu/core/journals/international-organization/article/how-attachments-to-the-nation-shape-beliefs-about-the-world-a-theory-of-motivated-reasoning/7CB86BDBDF617CDE3D64184C049B8F4B>.
- Levy, Jack S. 1989. "The Diversionary Theory of War: A Critique." In *Handbook of War Studies*, edited by Manus I. Midlarsky.  
<https://fas-polisci.rutgers.edu/levy/articles/Levy%20-%20Diversionary%20theory.pdf>
- Lu, Xiaosheng. 2022. "Causes of the Falklands War: A Historiography." *BCP Education & Psychology ESS* (7): 57–63. <https://bcpublication.org/index.php/EP/article/download/2608/2580/2555>
- Schenoni, Luis L., Sean Braniff, and Jorge Battaglini. 2020. "Was the Malvinas/Falklands a Diversionary War? A Prospect-Theory Reinterpretation of Argentina's Decline." *Security Studies* 29 (1): 34–63.  
<https://doi.org/10.1080/09636412.2020.1693618>
- Simmel, Georg. 1904. "The Sociology of Conflict. I." *American Journal of Sociology* 9 (4): 490–525.  
<https://www.jstor.org/stable/2762175?seq=1>
- Seo, TaeJun, and Yusaku Horiuchi. 2023. "Natural Experiments of the Rally 'Round the Flag Effects Using Worldwide Surveys." *Journal of Conflict Resolution* 68 (2–3): 269–93. <https://journals-sagepub.com.offcampus.lib.washington.edu/doi/epub/10.1177/00220027231171310>.
- Tir, Jaroslav. 2010. "Territorial Diversion: Diversionary Theory of War and Territorial Conflict." *Journal of Politics* 72 (2): 413–25. <https://www-journals-uchicago.edu.offcampus.lib.washington.edu/doi/pdfplus/10.1017%2FS0022381609990879>.
- The Editors of Encyclopedia Britannica. 2025. "Falkland Islands. Encyclopedia Britannica.  
<https://www.britannica.com/place/Falkland-Islands>



- The Editors of Encyclopedia Britannica. 2025. "Falkland Islands War." Encyclopedia Britannica.  
<https://www.britannica.com/event/Falkland-Islands-War>.
- Van Evera, Stephen. 1994. "Hypotheses on Nationalism and War." *International Security* 18 (4): 5–39.  
<https://muse.jhu.edu/article/447095/pdf>.
- Simmel, Georg. 1904. "The Sociology of Conflict. I." *American Journal of Sociology* 9 (4): 490–525.  
<https://www.jstor.org/stable/2762175?seq=1>

# Regulating Giants: How the U.S. Government's Markets Clash with Digital Monopolies

By Isaac Grey

## Introduction

The Sherman Antitrust Act of 1890 is a federal statute that outlaws activities that impede free competition within the American marketplace (Legal Information Institute). Initially enforced by the Attorney General, the Roosevelt administration later created the position of Assistant Attorney General to strengthen federal enforcement (United States Department of Justice, "History of the Antitrust Division"). The Clayton Act was enacted in 1914, and the Wilson administration reorganized the Department of Justice (DOJ) into different divisions, including the formal creation of the Antitrust Division in 1919 (United States Department of Justice, "History of the Antitrust Division").

Over time, federal antitrust enforcement began to confront new economic titans. By the late twentieth century, the DOJ turned its attention to Big Tech, a term used to group the largest technology companies in the world (House Judiciary Committee). The first notable clash was in 1998, when the DOJ sued Microsoft for illegally maintaining its monopoly over PC operating systems (United States Department of Justice, "U.S. v. Microsoft Corp. Findings of Fact"). This monopoly violated Section 2 of the Sherman Act (Legal Information Institute), thus infringing on the accessibility of the tech market. Later settled in 2001, this case required Microsoft to share its APIs with other third-party developers (United States Department of Justice, "U.S. v. Microsoft Corp. Findings of Fact"), no longer legally permitting its competitive hold over the sector. *United States v. Microsoft Corp.* (1998) became a landmark moment in digital antitrust enforcement, shaping how tech firms approached market dominance.

Under the Biden administration, Big Tech became a favored target of federal antitrust enforcement (Kang). With the return of Donald Trump to the presidency, many expected a rollback in this approach, especially given Trump's ties to billionaire moguls during his first term. Yet, over six months into the second Trump administration, the anticipated shift in antitrust policy has been less dramatic than expected (McCabe).

This paper examines the evolving role of the Department of Justice in regulating digital monopolies. It begins by outlining the history of antitrust enforcement and recent developments involving Big Tech, then evaluates whether the current approach is sufficient in the face of growing digital market power.

## Evolution of Digital Antitrust

Early federal action against the concentration of American economic power began with the Sherman Antitrust Act of 1890, which made monopolization acts that restrained the flow of interstate commerce illegal (Legal Information Institute). Congress followed this with the Clayton Act of 1914 to address gaps in Sherman by specifically targeting practices of discrimination and mergers that might substantially lessen competition (United States Department of Justice, "History of the Antitrust Division"). These statutes became the backbone for a generation of cases that tested how far the federal government could go in breaking up or disciplining dominant firms.

An early example of enforcing Clayton was *Standard Oil Co. of New Jersey v. United States* (1911), where the Supreme Court held that Standard Oil had illegally monopolized the country's petroleum markets and thus ordered the firm broken up. The decision also articulated the "rule of reason," interpreting Sherman to reach only unreasonable restraints of trade, an interpretation that shaped enforcement strategy going forward. The legacy of structural relief reappeared decades later in *United States v. AT&T*, the long-running case that culminated in the 1982 consent decree and 1984 divestiture of the Bell System (House Judiciary Committee). Breaking up "Ma Bell" opened long-distance competition and restructured American telecommunications, demonstrating that the DOJ could pursue far-reaching structural remedies against a networked utility incumbent.

During the mid- to late twentieth century, antitrust priorities shifted under the growing influence of the idea that enforcement should focus on consumer welfare (House Judiciary Committee), typically measured through the effects of pricing rather than the

size of firms or their broader political power. This narrower analytic frame then contributed to a period of lighter structural intervention, with greater tolerance for vertical conduct unless clear harm from consumer pricing could be shown. Scholars and industry enforcers later criticized the consumer welfare turn for overlooking harms to competition in digital markets (American Economic Liberties Project), setting the stage for a renewed debate about how antitrust should evaluate market power in technology ecosystems.

The DOJ's aforementioned 1998 case against Microsoft showed how existing antitrust law could reach digital markets (United States Department of Justice, "U.S. v. Microsoft Corp. Findings of Fact"). The government alleged that Microsoft used its operating system dominance to maintain its monopoly, leveraging a disadvantage for rivals by bundling Internet Explorer and restricting OEM flexibility, conduct found to violate Sherman's Section 2. The litigation ended in a 2001 settlement that imposed behavioral remedies, including API disclosure that would limit exclusionary contracts, rather than a complete breakup (United States Department of Justice, "U.S. v. Microsoft Corp. Findings of Fact"). Even without structural relief, *United States v. Microsoft Corp.* reframed modern enforcement (House Judiciary Committee). This case alerted regulators and the industry to how the control of their platforms and default settings could entrench digital power. That template informs the current scrutiny of other large technology firms.

### **The Digital Monopoly Problem: Why Big Tech Is Different**

The emergence of Big Tech has revealed serious limitations in traditional antitrust enforcement. While the DOJ has historically targeted monopolies tied to physical infrastructure and more traditional industrial markets, digital platforms present a new kind of power (House Judiciary Committee). This power is less visible and more complex, while also far more resistant to the remedies that once proved effective against older titanic monopolies. What distinguishes today's tech giants is network effects that generate data monopolization, and their role as gatekeepers through self-preferencing. These factors have altered how competition works in the digital economy, placing enormous strains on the DOJ's existing antitrust framework.

Network effects remain one of the strongest drivers of digital dominance (House Judiciary Committee). The value of a platform increases as more people use it, thus creating a cycle that draws in new

users and discourages them from leaving. Platforms like Instagram and Google are not just popular, but their algorithms allow them to improve with use. Every search query submitted through Google and every post shared on a Meta platform produces data that enhances their product. This process strengthens the platform's usage and pushes potential competitors further behind. Even a startup with a better product often cannot survive without a comparable user base. These winner-takes-most dynamics lock in dominant firms and create enormous barriers to entry.

Another defining feature of digital monopolies is their data control. Google and Meta have unparalleled access to a multitude of variations of information from billions of users. This data is used to personalize their services, train their machine learning models, and power their targeted advertising (House Judiciary Committee). Unlike traditional capital or physical infrastructure, this form of power is invisible and nearly impossible for new competitors to replicate. The more data a company can collect, the more accurate and valuable its algorithms become. Competitors without access to this data cannot offer the same level of performance, even if their core product is equally well-designed. In effect, competition is not blocked through law or pricing but by the overwhelming informational advantage that dominant firms possess.

Beyond user data, Big Tech companies also control the rules of the marketplaces they operate in. This gatekeeping function allows them to quietly tilt the playing field in their favor. Amazon, for example, has been infamously criticized for using its internal sales data from third-party vendors to identify high-performing products, replicate them, and then prioritize its versions in application search results (Federal Trade Commission, "FTC Sues Amazon for Illegally Maintaining Monopoly Power"). Apple does something similar through its App Store by charging high commission fees and limiting app developers' ability to guide users toward external payment options (Brody; Fung). Google pays billions to ensure it remains the default search engine on a majority of devices (United States District Court for the District of Columbia, "U.S. v. Google LLC, Complaint"), a tactic that restricts user choices while reinforcing its dominance. These forms of self-preferencing are not always visible to consumers but deeply affect competition behind the scenes.

Traditional enforcement tools have struggled to address these practices. Most digital services are offered at no monetary cost to users, which has complicated legal action under the consumer welfare

standard that has shaped antitrust law for decades. If price is the primary test, then companies offering free services appear harmless even when their market behavior is clearly exclusionary. In addition, behavioral remedies like those used in the Microsoft case have proven insufficient in this new context. Temporary fixes, like altering contract terms or unbundling apps, do little to challenge the underlying advantages that keep these firms dominant. As a result, there have been growing calls for structural solutions that include breaking up platforms or requiring data-sharing and interoperability between firms.

The DOJ now stands at a crossroads. Legal doctrines designed for industrial monopolies are being asked to regulate platform monopolies rooted in digital architecture. If enforcement strategies fail to evolve alongside the market, digital monopolies will continue to consolidate power, not because they are unbreakable, but because they are operating in an outdated regulatory environment. To meet this challenge, antitrust must move beyond its traditional assumptions and develop tools suited for the digital economy.

### **The DOJ's Antitrust Actions Against Big Tech**

The DOJ's recent antitrust actions display how digital monopolies are not just theoretical concerns but active targets of America's federal litigation. At the center of this enforcement resurgence is the DOJ's landmark case against Google, which represents one of the most consequential antitrust challenges since Microsoft. The agency has also laid the groundwork for possible litigation against Apple, while working alongside the FTC in investigations into Amazon and Meta. In our digital age, these DOJ cases reflect both the ambitious side and the constraining side of antitrust enforcement.

In *United States v. Google LLC* (2020), the DOJ alleged that Google illegally maintained its monopoly over general search services through exclusionary contract practices of self-preferencing (United States District Court for the District of Columbia, "U.S. v. Google LLC, Complaint"). According to the complaint, Google pays billions to companies like Apple, Samsung, and Mozilla to secure the default placement of its search engine across a multitude of browsers and devices (Kang). These contracts, the DOJ argues, suppress competition by denying rivals the scale needed to compete and thus entrenching Google's dominance. The DOJ also raised concerns about Google's control over digital advertising, specifically its vertically integrated ad stack, which allegedly disadvantages both advertisers

and publishers ("Department of Justice, "Justice Department Sues Google:").

Google has defended its conduct by asserting that its dominance is the result of product quality rather than coercive tactics (Kang). The firm argues that consumers prefer its search engine because it is unarguably better, and that default placement agreements are legal under antitrust precedent. Google also points to the presence of competitors like Bing and DuckDuckGo as evidence of a competitive market (Brody; Kang). Critics, however, argue that user inertia and the bundling of default settings significantly limit the ability of competitors to attract other users, effectively insulating Google from meaningful competition (Kang).

While the Google case advances, the DOJ has also been investigating Apple's control over its iOS systems (Brody; Fung). Central to the inquiries are the iOS App Store's rules, which include high commission fees and multiple restrictions on directing its users to alternative payment systems (Fung). Apple's requirement that all iOS apps use its in-house payment processor, combined with limits on app distribution outside of its system's store, has raised concerns about anti-competitive gatekeeping (Brody). Though the DOJ has yet to file any formal charges, the agency has signaled that this hypothetical litigation is a serious possibility, especially after developments in related cases like *Epic Games v. Apple*.

The DOJ's work is also part of a larger effort that includes the FTC. Led by Lina Khan, the FTC has taken on major cases against Meta and Amazon. In Meta's case, the agency is going after its past purchases of Instagram and WhatsApp (House Judiciary Committee), claiming those deals were made to shut down future competition. With Amazon, the focus is on how the company uses its control over the marketplace to push out third-party sellers and boost its products in search results (Federal Trade Commission, "FTC Sues Amazon for Illegally Maintaining Monopoly Power"). While the FTC is taking the lead on these lawsuits, the DOJ has been working alongside through joint investigations and coordinated strategies, especially in areas where tech giants dominate multiple markets.

Despite this renewed federal energy, antitrust enforcement remains politically contentious. Democratic administrations have generally favored more aggressive enforcement strategies, with broader definitions of harm. The Biden administration's appointment of Jonathan Kanter to lead the DOJ's Antitrust Division signaled a return to muscular enforcement. By contrast, Republican officials

traditionally have been more skeptical of government overreach in markets, often prioritizing regulatory restraint. However, criticism of Big Tech has become increasingly bipartisan. This shift is primarily visible through the current second Trump administration. Despite the GOP's deregulatory leanings, President Trump's DOJ continues to initiate antitrust lawsuits against Google and Facebook. While these efforts were sometimes narratively framed as responses to perceived political bias in content moderation within the firms' applications, they nonetheless marked a notable departure from prior Republican hesitations. The result was an unusual consensus across party lines that unchecked corporate concentration, particularly in the digital economy, demands serious scrutiny.

This has created strife amongst the giants of Big Tech, even as proposed solutions differ. For the DOJ, the challenge is to navigate this divisive landscape while maintaining a coherent enforcement strategy. The outcome of these cases will not only determine how to address digital platform dominance but also shape the direction of American antitrust law.

### **Political and Legislative Efforts To Rein in Big Tech**

Since the Biden administration's aggressive stance, the DOJ and FTC have led the federal charge in the courtrooms. In addition, lawmakers, in hand with state officials, have also stepped in with their own efforts to hold the digital industry giants accountable. Over the past few years, Congress has called for updates to the century-old American antitrust laws that no longer reflect the realities of the country's digital economy.

In 2020, the House Judiciary Antitrust Subcommittee published a heavy report after a 16-month investigation into the competitive practices of the four giants: Amazon, Apple, Meta, and Google (House Judiciary Committee). The report concluded that these companies hold monopoly powers and have weaponised them in ways that crush smaller competitors, limiting innovation in the space. The investigation was led by then-Chairman David Cicilline and marked one of the most aggressive congressional critiques of Big Tech in decades while helping spark a wave of reform proposals (House Judiciary Committee).

Following this report, several bills were introduced to tackle different aspects of digital platform dominance. A standout of this legislative wave is the American Innovation and Choice Online

Act (AICOA), which would ban the dominant platforms from favoring their products over rivals' within their services (American Economic Liberties Project). For instance, Amazon would be legally prohibited from giving its private-label products better placement in search results over independent third-party sellers (American Economic Liberties Project). Another standout was the Open App Markets Act, which aimed at Apple and Google's control over their devices' app stores (Sisco). It would require them to allow alternative payment systems and stop them from blocking sideloading, which lets users download external apps from outside the official app store.

Beyond these targeted reforms, there is a growing movement to update Sherman and Clayton, which were written over a century ago to regulate industrial monopolies rather than digital ones. Many lawmakers argue that these laws weren't designed for platform-based economies where data on user networks is the key source of power. They believe Congress needs to modernize antitrust statutes to better reflect how competition works in today's markets.

Individual states have also taken a more active role in antitrust enforcement. Numerous state attorneys-general have launched their own lawsuits against Big Tech companies, both in coordination with federal departments and independently. For instance, a bipartisan coalition of states led by Texas filed a case against Google for allegedly abusing its dominance in online advertising (Federal Trade Commission, "State Attorney General Lawsuits Against Tech Firms"). Other states have also joined forces to challenge Meta's acquisitions or Amazon's treatment of sellers (Federal Trade Commission, "State Attorney General Lawsuits Against Tech Firms"). These state-level actions depict the growing reality that antitrust isn't just a federal issue, and that local officials are willing to step in when they feel federal law is moving too slowly.

Together, these political and legislative efforts reflect a growing consensus in America that the tools currently available are outdated. Whether through new laws or stricter market enforcement, momentum is building to rethink how the government tackles monopoly power in the digital age.

### **Can Antitrust Keep Up? The Future of DOJ Enforcement**

As Big Tech keeps growing in America, many wonder whether antitrust enforcement can keep pace with the market. The DOJ has stepped up to the



plate, but its approach still feels reactively slow to the industry's growth. In the rapidly changing tech market, a case that drags on for years often ends up lacking the same momentum.

There's been growing pressure on the DOJ to take a tougher stance. The argument continues to be made that it's time to move past the light-touch remedies of the past and consider breaking up the dominant firms altogether. In digital markets, workarounds are easy, and temporary restrictions don't stick for long. If the goal is real competition, the agency might need to take bigger swings, and fast.

Others think the solution lies outside America's traditional antitrust tools. One popular idea is ex-ante regulation, where rules are laid out in advance to stop monopolistic behavior before it happens. The EU already does this with its Digital Markets Act, which puts strict rules on the biggest tech players (American Economic Liberties Project). Some are pushing for a similar program in America. Another immensely popular argument is treating platforms like app stores and search engines as public utilities, which would bring more oversight while giving smaller players a fairer shot.

Of course, there's also a risk in going too far. Overregulation could scare off new startups or make it harder for small companies to grow altogether. But letting Big Tech operate with little to no guardrails could make American markets even more concentrated. The challenge is figuring out where that middle ground is, and how we can get there as a country. Politics only makes this harder. Both parties have expressed being fed up with Big Tech, but for two very different reasons. Democrats usually focus on monopoly power and its harm to the country's markets, while Republicans often raise concerns about the censorship of speech and political bias. Differences like these could pull enforcement in conflicting directions while also making it harder to build lasting policy.

The future of antitrust isn't about filing more lawsuits, but rethinking how the DOJ should operate in a digital-first world. That could mean new tools, faster timelines, or entirely new ways of regulating platform power. What's clear is that standing still won't work. The market is moving, and our country's enforcement must keep up.

## Conclusion

The DOJ has taken the lead in challenging Big Tech, but digital monopolies continue to present obstacles that older antitrust strategies were not built to manage. Traditional enforcement emphasized price effects and market share. Today, dominance often takes more subtle forms. Platforms can shape access to information while pushing out competitors through their design choices, all to control how users interact with the internet itself. These tactics become harder and harder to detect and even harder to regulate under laws from a different era.

American antitrust enforcement needs to change if it hopes to keep up. That could involve moving cases forward in a timelier manner and creating new standards that better reflect how digital markets actually work. It is still uncertain whether the federal government can meet the moment. The DOJ has shown commitment, but the legal tools it relies on were built for a different kind of monopoly.

There is still a chance to catch up, but that opportunity isn't set in stone. Rising to the occasion will take more than just cautious reform. It will require the kind of bold, principled action that has defined American economic leadership in the past. Laws must reflect the realities of our digital frontier, and enforcement must stand firm in its defense of fair competition. If we allow the most powerful firms to dominate unchecked, we risk losing not just our competitive markets but a core part of the American promise. Our country's markets were built with the purpose that anyone with a good idea and a fair shot can rise. Whether that promise endures will depend on whether we dare to meet digital power with democratic strength.

## References

- American Economic Liberties Project. AICOA Summary. 2022.  
<https://www.economicliberties.us/press-release/senate-judiciary-committee-advances-aic-oea/>
- Brody, Ben. “The Coming DOJ Antitrust Case Against Apple.” Protocol, 2023.  
<https://www.protocol.com/policy/apple-antitrust-doj-lawsuit>
- Department of Justice. Justice Department Sues Google for Monopolizing Digital Advertising Technologies. 2023.  
<https://www.justice.gov/opa/pr/justice-department-sues-google-monopolizing-digital-advertising-technologies>
- Federal Trade Commission. FTC Sues Amazon for Illegally Maintaining Monopoly Power. 2023.  
<https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power>
- Federal Trade Commission. State Attorneys General Lawsuits Against Tech Firms. 2023.  
<https://www.ftc.gov/news-events/news/press-releases/2023/03/state-ag-lawsuits-big-tech>
- Fung, Brian. “The Justice Department is Reportedly Preparing to Sue Apple.”
- CNN, 2024. <https://www.cnn.com/2024/01/04/tech/apple-doj-antitrust-investigation/index.html>
- House Judiciary Committee. Investigation of Competition in Digital Markets. 2020.  
[https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf)
- Kang, Cecilia. “Justice Dept. Takes on Google in Second Monopoly Lawsuit.” The New York Times, 24 Jan. 2023. <https://www.nytimes.com/2023/01/24/technology/google-ads-antitrust.html>
- Legal Information Institute. “Sherman Antitrust Act.” Cornell Law School,  
[https://www.law.cornell.edu/wex/sherman\\_antitrust\\_act](https://www.law.cornell.edu/wex/sherman_antitrust_act).
- McCabe, David. “Trump Administration Softens Tone on Big Tech Antitrust Suits.” The New York Times, 13 Apr. 2025. <https://www.nytimes.com/2025/04/13/technology/trump-tech-antitrust-cases.html>
- Sisco, Tatyana. “Congress Tries Again to Rein in Big Tech with Antitrust Bills.”
- NPR, 2022. <https://www.npr.org/2022/05/26/1101312455/big-tech-congress-antitrust-bills>
- United States Department of Justice. “History of the Antitrust Division.” Justice.gov,  
<https://www.justice.gov/atr/history-antitrust-division>.
- United States Department of Justice. U.S. v. Microsoft Corp. Findings of Fact. 1999.  
<https://www.justice.gov/atr/us-v-microsoft-courts-findings-fact>
- United States District Court for the District of Columbia. U.S. v. Google LLC, Complaint. 2020.  
<https://www.justice.gov/opa/press-release/file/1328941/download>

# From Commerce to Security: Trade, Alliances, and the Dynamics of International Conflict

By Emma Rubbert

## Introduction

The interplay between alliances and trade networks is intricate and influential in international relations. This paper presents a framework for analyzing how trade and alliance networks may influence militarized interstate disputes (MIDs). Alliance commitments are pivotal in deterring potential aggressor states, as demonstrated by Fang et al. (2014) and Jackson and Nei (2015), because they increase the costs associated with initiating hostilities.

By serving as a deterrent against aggression, these alliances impose significant costs on potential aggressors, compelling them to support allied nations in the event of an attack (Leeds, 2014). As Jackson and Nei (2015) observed, the pivot towards peaceful conduct fosters a secure environment for global trade activities. Economic interdependence is shown to reduce the probability of military conflict between countries. Increasing bilateral trade interdependence and global trade openness promotes peace between countries (Lee & Pyun, 2009). Building upon this observation, Fordham (2010) identified two factors contributing to this phenomenon: bolstering trade relations with allies and aligning economic interests, leading to mutual security concerns that are subsequently formalized through alliances. Jackson and Nei (2015) support this notion, finding significant implications for understanding the relationship between trade, alliances, and conflict dynamics. Their research suggests that trade and alliances can bolster a state's domestic legitimacy and resource access by fostering economic interdependencies. This argument suggests that nations with strong trade ties and alliances tend to have stable domestic environments, and ultimately sets the stage for examining whether this pattern holds in practice.

## Summary of Argument

If alliances and increased trade both serve as deterrents against aggression, then this leads to two hypotheses:

H1: The higher the degree of centrality in the alliance network a state has, the less likely it is to experience a MID

H2: The greater the degree of centrality a state has in the trade network, the less likely it is to experience a MID.

There is a three-part argument that supports these hypotheses.

1) Central positioning within trade and alliance networks bolsters a state's legitimacy. Central positioning within these networks enhances a state's legitimacy by showcasing strength and cooperation. Research indicates that weaker states often resort to armed conflict to compensate for political vulnerabilities (Watman, 2003). Engaging in formal alliances and involving multinational partners in military operations can bolster a state's political legitimacy, enabling it to undertake actions it may not pursue alone. The mere existence of a formal alliance agreement signals shared interests and a lasting partnership, further enhancing the state's legitimacy through a commitment to cooperation and collective security (McInnis, 2019). Greater centrality underscores the political strength of the state and its allies.

2) Trade and alliance networks serve as communication channels and foster negotiation. International strategic alliances and trade negotiations involve intricate multi-actor discussions to achieve mutually beneficial agreements (Jeive, 2019). These negotiation processes and the establishment of alliances serve as communication channels, fostering cooperation and spreading norms that discourage the use of military force among states (Odell & Tingley, 2013). Moreover, states engaged in multiple trade agreements face pressure from their domestic exporters to maintain open lines of trade, incentivizing them to resolve disputes through negotiation rather than military means.

3) A central network position increases the likelihood of collective action, including military intervention, against states engaged in militarized interstate disputes.

Countries at the core of global trade and alliance networks are more inclined to engage in collective responses, including military intervention. Improved connectivity and cooperation within these networks facilitate coordinated actions, escalating the potential costs and repercussions for potential aggressors.

Alliances and alliance networks provide a structured framework for coordinating choices and actions between individual actors. This coordination

mechanism helps solve collective action problem that individual states may face.

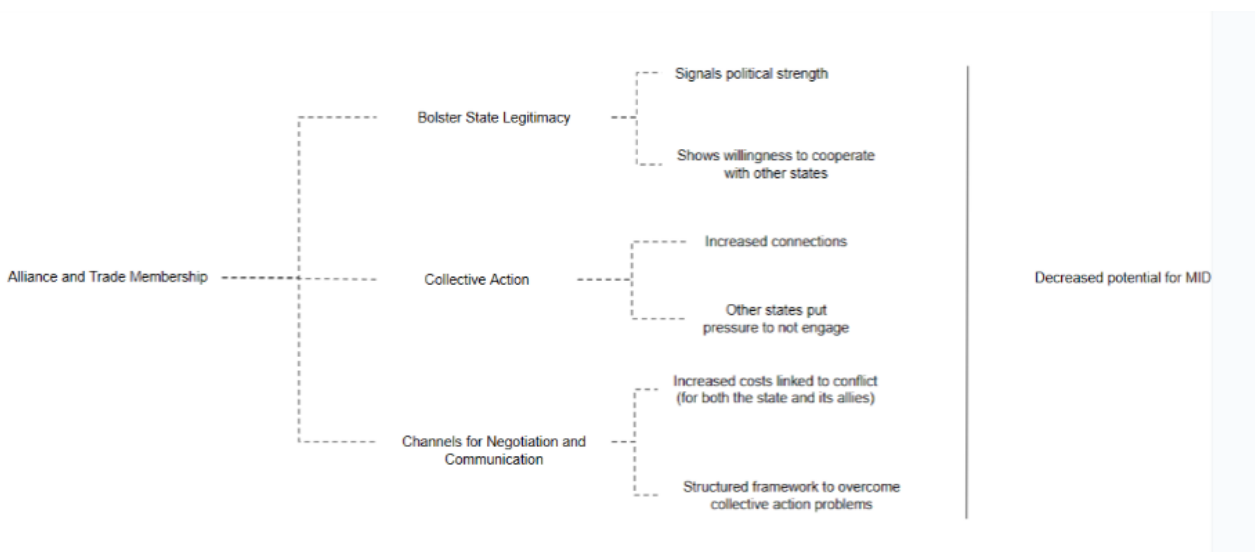


Figure 1. Conceptualization of the Causal Mechanisms

## Research Design

The independent variable is a state's degree of centrality in trade and alliance networks, or the number of alliances in which a state is involved. The dependent variable is the frequency of MIDs in which a state engages. The relevant information on alliances is in the Correlates of War dyadic dataset on Formal Alliances. This dataset chronicles all formal alliances between states from 1816 to 2012 (Douglas, 2009). This dataset offers a comprehensive classification system comprising three distinct types of alliances: Type I, characterized as defense pacts, representing the strongest form of alliance; Type II, encompassing neutrality/non-aggression pacts; and Type III, denoting ententes. Only Type I and Type II classifications will be considered to hone in on the most impactful alliances, disregarding Type III alliances for their potentially lesser influence.

I will use the Correlates of War dyadic dataset on Trade to analyze trade networks, which collects trade data between states from 1870 to 2014 (Barbieri et al., 2016). The dataset comprises data on bilateral trade flows and total national imports and exports. The dyadic trade dataset uses U.S. dollars to delineate import and export figures for pairs of

sovereign states. Finally, to analyze militarized interstate disputes, the Correlates of War dataset will be used (Braithwaite, 2010). This dataset comprises all the geographic locations of MIDs between 1816 and 2010.

The analysis will focus on the period from 1989 to 2006 to maintain continuity across both datasets. 1989 will serve as the baseline for alliance membership and trade volume, with observations extending to 2006 to track the occurrence of MIDs. This timeframe was selected to coincide with the end of the Cold War, the dissolution of the Soviet Union, and the resultant shifts in the international order. Focusing on the post-Cold War era, the study aims to capture the evolving nature of international relations in a more interconnected and multipolar world, which has led to the emergence of new geopolitical alignments and strategic partnerships influencing trade patterns and conflict behavior among states.

To best see these potential connections, network visualizations can provide a clear and intuitive representation of the complex interactions between countries by representing countries as nodes and their trade and alliance relationships as edges. The nodes will be sized based on a country's degree of





This visualization enables us to identify states with higher trade values through the size of the nodes representing them. Each node is scaled proportionally based on its trade value. This data can also visualize the top five trade-value nodes, as shown in Figure 4.

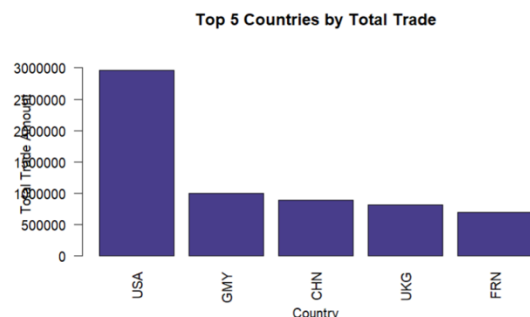


Figure 4. Representation of the Top 5 Countries in Total Trade

The bar graph displaying the top five countries in terms of trade volume directly relates to hypothesis two by providing insights into their centrality within the global trade network. The countries' substantial trade volumes indicate extensive economic interdependencies and trade relationships with numerous other countries worldwide. As central nodes in the global trade network, these countries play a crucial role in facilitating the flow of goods and capital across borders.

According to Hypothesis 2, countries in the global trade network that are more central are less likely to experience MIDs. This is because high levels of economic interdependence and interconnectedness fostered by trade can act as a deterrent against conflict. Countries with strong economic ties are interested in maintaining peaceful relations to safeguard their economic interests and avoid disruptions to trade flows. In the context of the bar graph, the trade volumes of the top five countries underscore their significance as central nodes in the global trade network. Their central positions imply that they are deeply embedded in a web of economic relationships and dependencies, which may contribute to a reduced likelihood of MIDs. By promoting economic

cooperation and stability, these countries may mitigate the risk of conflict escalation and contribute to maintaining peace in the international system.

## Conclusion

The paper examines the intricate relationship between alliances, trade networks, and MIDs. Drawing upon existing theories and empirical evidence, it proposes a theoretical framework that elucidates how a country's centrality in global trade and alliance networks influences its likelihood of experiencing MIDs. The analysis emphasizes three key arguments supporting the hypothesis: first, that central positioning within trade and alliance networks enhances a state's legitimacy and political strength; second, that these networks serve as communication channels fostering negotiation and peaceful dispute resolution; and third, that central network positions increase the likelihood of collective action.

The research design employs comprehensive datasets on alliances, trade, and MIDs from 1989 to 2006, allowing for a thorough examination of the proposed relationships. Network visualizations provide intuitive representations of alliance structures and trade networks, facilitating a deeper understanding of international relations dynamics. The regression analysis, controlling for confounding factors, will elucidate the strength and significance of this relationship. I anticipate that the top five countries in terms of trade volume and those with the highest degree of centrality within the alliance network would exhibit one of two outcomes regarding their involvement in Militarized Interstate Disputes (MIDs): a) They may be noticeably absent from the MID data altogether. This absence indicates that their solid economic ties or extensive alliance networks act as effective deterrents against conflicts. b) Alternatively, if these highly interconnected countries appear in the MID data, their frequency of involvement in conflicts would be significantly lower compared to less connected nations.

## References

- Barbieri, Katherine and Omar M. G. Omar Keshk. 2016. Correlates of War Project Trade Data Set Codebook, Version 4.0. Online: <https://correlatesofwar.org>.
- Barbieri, Katherine, Omar M. G. Keshk, and Brian Pollins. 2009. "TRADING DATA: Evaluating our Assumptions and Coding Rules." *Conflict Management and Peace Science*. 26(5): 471-491.
- Braithwaite, A. 2010. "MIDLOC: Introducing the Militarized Interstate Dispute (MID) Location Dataset." *Journal of Peace Research* 47(1): 91-98.
- Bezerra, P., & Braithwaite, A. 2019. Codebook for the Militarized Interstate Dispute Location (MIDLOC-A/I) Dataset, v2.1.
- Fang, S., Johnson, J. C., & Leeds, B. A. (2014). To Concede or to Resist? The Restraining Effect of Military Alliances. *International Organization*, 68(4), 775–809. <https://doi.org/10.1017/S0020818314000137>
- Fordham, B. O. (2010). Trade and asymmetric alliances. *Journal of Peace Research*, 47(6), 685–696. <https://doi.org/10.1177/0022343310381689>
- Gibler, Douglas M. 2009. *International military alliances, 1648-2008*. CQ Press.
- Jackson, M. O., & Nei, S. (2015). Networks of military alliances, wars, and international trade. *Proceedings of the National Academy of Sciences*, 112(50), 15277–15284. <https://doi.org/10.1073/pnas.1520970112>
- Jeive, M. (2019). Applying a trust lens to the study of international strategic alliance negotiations. *European J. International Management*, 13(5), 596–611.
- Leeds, B. A. (2003). Do Alliances Deter Aggression? The Influence of Military Alliances on the Initiation of Militarized Interstate Disputes. *American Journal of Political Science*, 47(3), 427. <https://doi.org/10.2307/3186107>
- McInnis, K. (2019, October 30). *The Competitive Advantages and Risks of Alliances*. The Heritage Foundation. <https://www.heritage.org/military-strength-essays/2020-essays/the-competitive-advantages-and-risks-alliances>
- Odell, J., & Tingley, D. (2013). *Negotiating Agreements in International Relations*. American Political Science Association. <https://www.apsanet.org/portals/54/Files/Task%20Force%20Reports/Chapter7Mansbridge.pdf>

## Building Stability in the Indo-Pacific: Japan's Two-Pronged Approach with China

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### Introduction

The relationship between Japan and Russia has grown increasingly complex as Japan has joined Western nations in imposing sanctions on Russia after Russia's 2022 invasion of Ukraine. The prolonged geopolitical standoff between Russia and Ukraine was catalyzed by Russia's 2014 masked invasion of Crimea and illegal annexation of Eastern Ukraine (Walker 2023). Although Japan and its allies implemented sanctions at the onset of the 2022 invasion, Russia's aggression has continued. In February 2022, Russia launched a full-scale invasion of Ukraine – aiming to undermine Ukraine's Western-style democracy and reinforce its control over Eastern Europe. The war in Ukraine has forced Japan into a delicate balancing act as it responds to Russia's growing belligerent rhetoric while grappling with shifting security dynamics in its own region.

For Japan, the evolving alliance between Russia and North Korea presents significant security challenges. North Korea's growing missile and nuclear programs, along with its military assistance to Russia, have heightened tensions in East Asia. These concerns are compounded by Russia's incursions into Japan's airspace and territorial waters. Japan's support of the National Atlantic Treaty Organization's (NATO) sanctions against Russia, together with its ongoing concerns about North Korea's provocations, leaves it with limited leverage over both nations. As Russia continues its territorial ambitions in Ukraine, Japan finds itself balancing its Western commitments with the need to protect its own security. The situation places Japan in a difficult position, having to navigate an increasingly hostile international environment while safeguarding its alliances and regional stability.

Currently, Russia is increasing its military partnership with North Korea through active military assistance in Ukraine, training exercises, and munitions contributions. By backing North Korea, Russia has eliminated the possibility of normalizing relations. On October 25th, North Korea deployed over 10,000 troops to Russian frontline offensives, with the possibility of further installments that could reach up to 100,000 (Kim and Lee 2024).

Additionally, November 12th saw the official signing of the Comprehensive Strategic Partnership Treaty between Russia and North Korea – creating a bilateral agreement between Russia and North Korea to defend each on the basis of their right to collective self-defense (Treaty 2024).

As a response to the strengthening alliance between Russia and North Korea and the advancement of their ballistic missile technology through said alliance, we recommend a two-pronged approach to ease Japanese territorial security concerns:

First, through pursuing further economic dialogue with China through the existing Regional Comprehensive Economic Partnership (RCEP) as a framework. Given Japan's deteriorating ties with Russia and its lack of diplomatic relations with North Korea, engaging China – an actor with economic influence over both – is necessary to easing regional tensions. Utilizing the RCEP as a dialogue platform to further ties between Japan and China will solidify their economic partnership, and act as the foundation in which China can be engaged further to defuse tensions with Russia.

Second, by expanding military communications with China through the existing military hotline. With no communication with either Russian or North Korean military forces, Japan must turn to China which has military connections with both groups. In order to increase military communications with China, Japan must reduce operation barriers surrounding the China-Japan military hotline as the first step to opening communications between Japan and Russia.

Japan lacks any sort of leverage or communication lines between Russia and North Korea, an issue exasperated by Russia's invasion of Ukraine. Faced with rising tensions due to the Russian-North Korean alliance, Japan must look towards their mutual economic partner China.

However, China's influence and leverage over the Democratic People's Republic of Korea (DPRK) and Russia must be gauged by Japan (Kiuchi 2024). China opposes DPRK nuclear testing, and ballistic missile launches, while China likes to use DPRK as a check on the Western alliance. To

complicate the issue, China does not see the importance of a strategic coalition as Russia gains influence over DPRK. “China sees more harm from sending DPRK forces into Russia than potential benefit,” (Hawkins & Davidson 2024). China does not want either of the two parties taking initiatives upsetting the balance of power amongst the three thus China has an incentive to cooperate with Japan who also views the Russia-North Korea alliance as a threat.

### **The Economic Environment Between Russia and Japan**

Since 2022, Japan has frozen assets, implemented trade embargos, and imposed further sanctions on the Russian Federation under their Foreign Exchange and Foreign Trade Act in response to the invasion of Ukraine (Ministry of Foreign Affairs, et al. 2022). Additionally, Japan has sanctioned the purchasing of crude oil and petroleum, only allowing for import of those natural resources under the current price ceiling (Ministry of Finance 2024). These sanctions highlight a tonal shift in their economic diplomacy with Russia, moving from limited cooperation to a position of sustained economic pressure. Under Prime Minister Shinzo Abe, Japan pursued measures for economic cooperation and had a symbolic ministry for economic relations with Russia (Nakano 2016). However, with the G7 – the informal bloc of the seven major industrialized democracies – collectively advocating for reduced carbon emissions, Japan cut ties from Russia’s coal industry in an attempt to stay aligned with its allies (Riise 2022). This trajectory has continued, with Tokyo further aligning with allies such as the U.S. and NATO through economic sanctions on Russia, even at the cost of access to a key energy supplier.

Considering the decreasing engagement with Russia, and recognizing Russia’s growing dependence on China in their fuel industries since their invasion of Ukraine, we must look to China in future dealings with Russia. By 2021, Russia was China’s second-biggest oil, natural gas, and coal supplier with their partnership increasingly strengthening (Khitakhunov). After their invasion in Ukraine, China has only reaffirmed their support for Russia, importing 1.73 million barrels of oil per day from Russia, a 30 year deal for liquified natural gas from Sakhalin, and major increases in coal purchasing from Russia (Reuters 2023). These arrangements have been advantageous for China, which has been able to secure energy resources at discounted prices while simultaneously reinforcing its strategic leverage over Russia.

Given China’s growing influence over Russia’s oil industry, Japan should work to continue their trade relationship with China to tie themselves to an economy that Russia is reliant upon. Japan has been a major trading partner with China since the 1970s and has critical ties to China in regional economics (Davis 2021). Yet, Japan must carefully navigate this relationship with Beijing in light of its security alliance with the U.S.. With a second Trump presidency all but guaranteeing a return to US isolationism that was seen under his first term, Japan has more incentive than ever to continue forging strong ties to China (Davis 2021). At the same time, to avoid aggravating its U.S. ally, Japan should prioritize engagement with China through established economic platforms rather than through direct state-to-state deals.

### **Economic Engagement Through RECP**

Further economic dialogue between Japan and China is likely to take place most effectively through the Regional Comprehensive Economic Partnership (RCEP). The agreement seeks to “eliminate tariffs on 91% of goods as well as introduce rules on investment and intellectual property to promote free trade,” between the 15 participating members – Japan and China included (Whiting 2021). Between Japan and China it is already predicted to decrease Chinese tariffs against Japanese auto industries by 87% and increase the amount of tariff free industrial parts from Japan to China from 8% to 86% (Shimizu 2022). By further pursuing an economic dialogue in the RCEP, both countries will continue to benefit from a stronger economic relationship, while benefiting the additional member states.

The Ministry of Economy Trade and Industry (METI) White Paper goals for 2024 underscores the importance of engaging the Global South and underscores a greater need for indirect exports to boost the Japanese economy (METI 2024). Many of the member countries of the RCEP are developing countries that fall under the category of Global South, suggesting that further engagement in the RCEP aligns both with Japan’s economic goals while simultaneously supporting regional development. Additionally, through decreased trade barriers that the RCEP has to offer, Japan will be able to increase its export capabilities – particularly to its number one exporter China (Harvard). Through the first step of engaging China in an international order, Japan will strengthen ties between them and regional ties as a whole. With China having increased stakes in the region, it will further incentivize them to act as a

moderator between the Russian-North Korean alliance.

Recent diplomatic exchanges suggest that both governments are already laying the groundwork for such engagement. On November 15, 2024, Japan's Prime Minister Ishiba held talks with China's President Xi Jinping while attending the Asia-Pacific Economic Cooperation Leaders' Meeting in Peru. The two sides confirmed that they would comprehensively promote "strategic and mutually beneficial relations", build "constructive and stable relations", and adhere to the principles and consensus of the four basic documents of Japan and China (Japan-China 2024). The leaders of the two countries agreed to further strengthen communication at all levels and in a wide range of areas, including at the summit level, striving to reduce outstanding issues and expand areas of cooperation (Japan-China 2024). These developments indicate that Japan-China high-level economic dialogue, possibly within the RCEP framework, is becoming an increasingly plausible path under the new government.

### **Japan's Contemporary Security Environment**

Japan's security environment is shaped by the absence of formal diplomatic ties with both Russia and North Korea, two states whose cooperation has grown more visible in recent years. Although the 1956 Japan-Russia Joint Declaration served to end the state of war that existed between the two nations, the agreement never produced a lasting peace treaty or solidified a relationship between the states. (Franke & Söderström 2023).

Additionally, arms transfers in context of the war in Ukraine have added to the concern over the extent of Russian and North Korean cooperation. In 2023, Pyongyang began supplying Moscow with munitions to supplement Russian shortages. Estimates suggest North Korea has transferred roughly 5 million artillery shells – far exceeding Russia's domestic annual capacity of 2–3 million (Martynyuk 2024). Since August 2023, around 13,000 containers of weapons are believed to have been shipped to Russia, including missiles, anti-tank rockets, and an additional 8 million artillery shells (Lamothe & Ryan 2024). These transfers illustrate not only the scale of cooperation, but also the material role North Korea now plays in sustaining Russia's war effort.

Subsequently, North Korea has continued to expand their missile capabilities. On October 31, North Korea test-fired its most recent Intercontinental Ballistic Missile, Hwasong-19, which reached a record

flight time of eighty-six minutes and an altitude of 7000 kilometers, landing in the Sea of Japan. Compared to the Hwasong-18, the first solid-fuel rocket, which demonstrated the ability to reach the continental United States, this new technological advancement is speculated to be used for heavier payload delivery (Diepen 2024). Though Russian technology was not used in the development of HS-19, the addition of Russian technology moving forward raises alarms (Diepen 2024). North Korea aims to bolster its capabilities through Russian technology posing a legitimate threat to the Korean Peninsula and the broader Indo-Pacific region.

In response to the increase in arms trade and advancement in ballistic technology between Russia and North Korea, one option for Japan would be to increase their military industry by enhancing their defensive and counter-strike capabilities. In 2022, then-Prime Minister Fumio Kishida called to parliament an action item that proposed to raise the Japanese defense budget from 1% to 2% by 2027 (Johnson 2024). The plan was framed as a direct response to Russia's invasion of Ukraine but now carries added weight as concerns grow about that conflict spilling into the Indo-Pacific (Ministry of Defense 2024). By redirecting attention to upgraded technology and counterstrike capabilities, Japan will have assurance that if Russian and North Korean aggressions develop in the Indo-Pacific it will be better prepared for national defense. At the same time, this path carries risks. Russia's defense officials have already criticized Japan's more assertive military stance since the Abe era (Russian 2024), raising fears of escalation. Though it is important to consider how Japan is allocating resources towards its defense, Japan should look for a more tempered approach that engages mutual allies to deter aggression from Russia.

### **Military Communication with China**

As tensions deepen between Russia and North Korea, Japan faces pressure to expand its channels of military communication with China. The U.S. and China have already established military communication since 1998; and as of May 2023, Japan and China established a defense authorities hotline (MacArthur 2023). However, the hotline has been underutilized during invasions of airspace. As recently as August 26th, 2024 when China flew a Y-9 spy plane into Japanese airspace, the hotline was not utilized for any communication. Current guidelines restrict its use, requiring prior discussion between defense authorities and limiting reporting primarily to military vessels (MacArthur 2023). While "building trust" is the main



initiative of the Maritime and Aerial Communication Mechanism (MCM), the fault lies in its inability to “quickly resolve gray-zone disputes,” (Tokuchi 2024). Whether the underuse stems from insufficient urgency or from bureaucratic barriers, the result is the same: Japan and China lack a reliable way to defuse incidents before they escalate. Japan’s next step is to engage China in the parameters surrounding the MCM and reduce operation guidelines that restrict Japan-China effective foreign communication.

Engagement of China does not suggest a break from the U.S.-Japan alliance as Japan is a key player in the continued U.S. strategy of Chinese containment. Instead, it aims to use China's cautious stance on Russia-North Korea military cooperation to address threats to the international order and regional stability (Hird et al. 2024). Strengthening dialogue and establishing a higher-level hotline, such as a leader-to-leader hotline, may be more decisive than the Defense Department's military hotline, which is currently underutilized in incidents such as airspace incursions. Such a high-level communication mechanism can quickly convey information in emergency situations and prevent miscalculations and conflicts. The strategic move aims to resolve security issues by establishing open channels with China, thereby preventing misunderstandings and promoting regional stability without compromising Japan's commitments to its allies. In addition, high-level dialogue with

China can also conduct in-depth discussions on security issues of common concern without time and geographical constraints, seek possibilities for cooperation, and jointly respond to regional challenges. In this way, Japan can not only safeguard its own national security interests, but also avoid damaging relations with allies, and achieve the dual goals of foreign and security policy.

## Conclusion

The security challenges unfolding in the East Sea region call for a balanced and forward-looking response. Japan’s ability to manage these tensions depends not only on its stance toward Russia and North Korea, but also on its engagement with China, which plays a pivotal role in the regional balance of power. By working with China on two fronts – deepening economic cooperation through the RCEP and strengthening the Japan-China military hotline – Japan can help create conditions for de-escalation and stability. A stronger regional economy in which China has a central stake may encourage the nation to exert greater influence on Russia and North Korea, while more reliable use of the hotline can create much-needed military trust. Together, these efforts can provide Japan with a steady foundation to navigate the shifting dynamics of the Indo-Pacific in the face of closer Russia-North Korea ties.

## References

- Choi, Woosun. "North Korea-Russia Alliance and South Korea's Polic." Ifans.go.kr, 2020, [www.ifans.go.kr/knda/ifans/kor/act/ActivityAreaView.do?csrfPreventionSalt=null&sn=14383&boardSe=pbl&koreanEngSe=KOR&ctgrySe=06&menuCl=&searchCondition=searchAll&searchKeyword=&pageIndex=1](http://www.ifans.go.kr/knda/ifans/kor/act/ActivityAreaView.do?csrfPreventionSalt=null&sn=14383&boardSe=pbl&koreanEngSe=KOR&ctgrySe=06&menuCl=&searchCondition=searchAll&searchKeyword=&pageIndex=1). Accessed 25 Nov. 2024.
- Davis, Christina L., 'Japanese Trade Policy', in Robert J. Pekkanen, and Saadia M. Pekkanen (eds), *The Oxford Handbook of Japanese Politics* (2022; online edn, Oxford Academic, 2 Sept. 2020), <https://doi.org/10.1093/oxfordhb/9780190050993.013.30>, accessed 2 Dec. 2024.
- Diepen, Van. "North Korea Tests New Solid ICBM Probably Intended for MIRVs - 38 North: Informed Analysis of North Korea." 38 North, 5 Nov. 2024, [www.38north.org/2024/11/north-korea-tests-new-solid-icbm-probably-intended-for-mirvs/](http://www.38north.org/2024/11/north-korea-tests-new-solid-icbm-probably-intended-for-mirvs/).
- Franke, Ulrike, and Söderström, Jenny. "Star Tech Enterprise: Emerging Technologies in Russia's War on Ukraine." European Council on Foreign Relations, 5 Sept. 2023, [ecfr.eu/publication/star-tech-enterprise-emerging-technologies-in-russias-war-on-ukraine/](https://ecfr.eu/publication/star-tech-enterprise-emerging-technologies-in-russias-war-on-ukraine/).
- Guseinova, Olena. "Putin's Partner." Shop.freiheit.org, Oct. 2024, [shop.freiheit.org/#](https://shop.freiheit.org/#). Harvard Growth Lab. "The Atlas of Economic Complexity by @HarvardGrwthLab." [atlas.cid.harvard.edu, atlas.cid.harvard.edu/countries/114/export-basket](https://atlas.cid.harvard.edu/countries/114/export-basket). Accessed 1 Dec. 2024.
- Hawkins, Amy, and Helen Davidson. "North Korea's Involvement in Ukraine Draws China into a Delicate Balancing Act." *The Guardian*, The Guardian, 6 Nov. 2024, [www.theguardian.com/world/2024/nov/06/north-korea-troops-russia-ukraine-war-china-relationship](https://www.theguardian.com/world/2024/nov/06/north-korea-troops-russia-ukraine-war-china-relationship).
- Hird, Karolina, et al. "North Korea Joins Russia's War against Ukraine: Operational and Strategic Implications in Ukraine and Northeast Asia." Institute for the Study of War, 25 Oct. 2024, [www.understandingwar.org/backgrounders/north-korea-joins-russias-war-against-ukraine-operational-and-strategic-implications](https://www.understandingwar.org/backgrounders/north-korea-joins-russias-war-against-ukraine-operational-and-strategic-implications).
- "Japan-China Summit Meeting (November 15, 2024)." Embassy of Japan in China, 16 Nov. 2024, [www.cn.emb-japan.go.jp/itpr\\_zh/00\\_000485\\_00386.html](http://www.cn.emb-japan.go.jp/itpr_zh/00_000485_00386.html).
- Johnson, Jesse. "Japan Ups Defense Spending to 1.6% of GDP with Eye on 2027 Goal." *The Japan Times*, 29 Apr. 2024, [www.japantimes.co.jp/news/2024/04/29/japan/politics/japan-defense-spending-gdp/](https://www.japantimes.co.jp/news/2024/04/29/japan/politics/japan-defense-spending-gdp/). Johnstone, Christopher B, et al. "Kishida Steps Aside." CSIS, 2024, [www.csis.org/analysis/kishida-steps-aside](https://www.csis.org/analysis/kishida-steps-aside).
- Khitakhunov, Azimzhan. "Economic Cooperation between Russia and China." Eurasian Research Institute, [www.eurasian-research.org/publication/economic-cooperation-between-russia-and-china/](https://www.eurasian-research.org/publication/economic-cooperation-between-russia-and-china/).
- Kim, Jack, and Lee, Joyce. "North Korea Troops Have Joined Ukraine War Battles as Part of Russian Units, Seoul Says." Reuters, 20 Nov. 2024, [www.reuters.com](https://www.reuters.com),
- Dan, and Ryan, Missy. "North Korean Troops Are in Russia but Their Purpose Is Unclear, U.S. Says." *Washington Post*, The Washington Post, 23 Oct. 2024, [www.washingtonpost.com/world/2024/10/23/austin-north-korea-troops-russia/](https://www.washingtonpost.com/world/2024/10/23/austin-north-korea-troops-russia/).
- MacArthur Bosack, Michael. "How the Japan-China Hotline Can Help Stop Crisis from Turning into Conflict." United States Institute of Peace, 7 Sept. 2023, [www.usip.org/publications/2023/09/how-japan-china-hotline-can-help-stop-crisis-turning-into-conflict](https://www.usip.org/publications/2023/09/how-japan-china-hotline-can-help-stop-crisis-turning-into-conflict).
- Martynyuk, Leonid. "Russia Increases Arms Trade with UN-Embargoed Nations to Feed Ukraine War." *Voice of America*, 19 Nov. 2024, [www.voanews.com/a/russia-increases-arms-trade-with-un-embargoed-nations-to-feed-ukraine-war/7868778.html](https://www.voanews.com/a/russia-increases-arms-trade-with-un-embargoed-nations-to-feed-ukraine-war/7868778.html).

- Masters, Jonathan. "Ukraine: Conflict at the Crossroads of Europe and Russia." Council on Foreign Relations, 14 Feb. 2023, [www.cfr.org/backgrounder/ukraine-conflict-crossroads-europe-and-russia](http://www.cfr.org/backgrounder/ukraine-conflict-crossroads-europe-and-russia).
- METI and Trade Policy Bureau. "White Paper on International Economy and Trade 2024." METI, Jul. 2024, [https://www.meti.go.jp/english/report/pdf/0709\\_001a.pdf](https://www.meti.go.jp/english/report/pdf/0709_001a.pdf).
- Ministry of Defense. Defense of Japan Pamphlet. MOD, 2024, [https://www.mod.go.jp/j/press/wp/wp2024/pdf/DOJ2024\\_Digest\\_EN.pdf](https://www.mod.go.jp/j/press/wp/wp2024/pdf/DOJ2024_Digest_EN.pdf). Ministry of Finance. "Measures under the Foreign Exchange and Foreign Trade Act Regarding the Situation in Ukraine (February 2, 2024)."
- MOFA, Feb. 2024, [www.mof.go.jp/policy/international\\_policy/gaitame\\_kawase/gaitame/economic\\_sanctions/ukrainehoudou\\_20240202.html](http://www.mof.go.jp/policy/international_policy/gaitame_kawase/gaitame/economic_sanctions/ukrainehoudou_20240202.html).
- Ministry of Foreign Affairs, et al. "Measures under the Foreign Exchange and Foreign Trade Act Regarding the Situation in Ukraine." MOFA, 26 Feb. 2022, [www.mof.go.jp/policy/international\\_policy/gaitame\\_kawase/gaitame/economic\\_sanctions/gaitamehou\\_shisantoukatsu\\_20220226.html](http://www.mof.go.jp/policy/international_policy/gaitame_kawase/gaitame/economic_sanctions/gaitamehou_shisantoukatsu_20220226.html).
- Nakano, Takashi. "Japan and Russia Chase Different Goals through Economic Cooperation." Nikkei Asia, 10 Nov. 2016, [asia.nikkei.com/Politics/Japan-and-Russia-chase-different-goals-through-economic-cooperation](http://asia.nikkei.com/Politics/Japan-and-Russia-chase-different-goals-through-economic-cooperation). Reuters. "China's Oil, Commodities Import from Russia."
- Reuters, 11 May 2023, [www.reuters.com/markets/commodities/chinas-oil-commodities-import-russia-2023-05-11/](http://www.reuters.com/markets/commodities/chinas-oil-commodities-import-russia-2023-05-11/). Riise, Tanvi. Japan's Quest for Energy Security in the "New" World of Geopolitics. Observatory Indo-Pacific, 2022, <https://www.sciencespo.fr/ceri/observatory-indo-pacific/wp-content/uploads/2022/07/IP-Essay-Tanvi-RIISE-Japans-energy-security.pdf>.
- "Russia Protests to Japan about Joint Exercises with NATO Countries." The Japan Times, 29 June 2024, [www.japantimes.co.jp/news/2024/06/29/japan/politics/russia-japan-nato-nations/](http://www.japantimes.co.jp/news/2024/06/29/japan/politics/russia-japan-nato-nations/).
- Shimizu, Kazushi. "RCEP's Great Impact on Japan and East Asian Economies." The Japan Institute of International Affairs, 2 Aug. 2022, [www.jiia.or.jp/en/ajiss\\_commentary/rceps-great-impact-on-japan-and-east-asian-economies.html](http://www.jiia.or.jp/en/ajiss_commentary/rceps-great-impact-on-japan-and-east-asian-economies.html).
- Tokuchi, Hideshi. "THE SENKAKU ISLANDS ISSUE and REGIONAL SECURITY." ORCA, 9 Jan. 2024, [orcasia.org/article/553/the-senkaku-islands-issue-and-regional-security](http://orcasia.org/article/553/the-senkaku-islands-issue-and-regional-security).
- "Treaty on Comprehensive Strategic Partnership between the DPRK and Russia." Korean News Service, 2024, [kcna.co.jp/calendar/2024/06/06-20/2024-0620-004.html](http://kcna.co.jp/calendar/2024/06/06-20/2024-0620-004.html).
- Walker, Nigel. "Conflict in Ukraine: A timeline (2014 - eve of 2022 invasion)." UK Parliament, 22 August 2023, <https://commonslibrary.parliament.uk/research-briefings/cbp-9476/>.
- Whiting, Kate. "What Is RCEP, the World's Biggest Trade Deal?" World Economic Forum, 18 May 2021, [www.weforum.org/stories/2021/05/rcep-world-biggest-trade-deal/](http://www.weforum.org/stories/2021/05/rcep-world-biggest-trade-deal/).