

The Pulse

Undergraduate Journal of Baylor University

VOLUME 14 NUMBER 1 FALL 2016



Scientia Crescat

Honors College
Baylor University
Waco, Texas

Copyright © 2016
Baylor University.
All rights reserved.

The Pulse

2016-2017

PRESIDENT

Nicholas Coker

CHIEF EDITOR

Samantha Elmendorf

EDITORIAL BOARD

Jonah Hensley

Isabel Kazan

Cynthia Liu

Kaylie Page

Hannah Rogers

Shannon Sandridge

Hannah Vecseri

Jesse Watters

PUBLIC RELATIONS SECRETARY

Amanda Cordero

TECHNICAL DIRECTOR

Stu Mair

SECRETARY

Tim Campbell

FACULTY SPONSOR

Dr. Jeff Hunt

CONTENTS

Reforming the Social Security System: A Proposal.....6 TIM CAMPBELL

Entitlement reform is a pressing, if under-discussed, issue. According to one estimate, if no reforms are implemented in the interim, Social Security beneficiaries will experience a 21 percent cut in benefits beginning in the year 2034. Such a dramatic cut would have severe consequences for retirees and others who depend on Social Security benefits for a considerable portion of their monthly income. This paper considers a number of potential reforms to the system, including raising the retirement age, eliminating the payroll tax cap, and altering the manner in which the Cost-of-Living Adjustment (COLA) is calculated. The final proposal incorporates aspects of the latter two reforms: raising the payroll tax cap to cover 90 percent of earnings and basing the COLA calculation on the chained Consumer Price Index (CPI).

Plantation Slavery in St. Domingue: A Revolutionary Society 19 ABBY HARRIS

This paper argues that Theda Skocpol's theory on social revolutions should be expanded to include societies other than agrarian bureaucracies. The Haitian Slave Revolt of 1791 is applied to a revised theory - one focused on the underlying ideas that prompted Skocpol's thesis - in order to prove the validity of this paper's argument. The word "revolution" according to Skocpol encompasses only a few cases, including the Haitian Slave Revolt. When researched in detail, the Haitian Slave Revolt of 1791 actually fits the definition of a "revolution." With this in mind, Haitian society prior to the revolution, during the revolution, and after the revolution presents indicators that the event was in line with Skocpol's revised theory.

The Kurdish Question and the Political Salience of Territorial Integrity..... 28 PHOEBE SUY

This paper examines the question of Kurdish right to self-determination in the states of Syria, Iran, Iraq, and Turkey in light of Daniel Posner's model of cultural difference and political salience. Posner's model suggests that the Kurdish

population in each respective state would be prime for political mobilization as a result of cultural demographic makeup. The natural experiment presented by the Kurds' dispersion in these four states essentially turns Posner's model upside down. It is not so much the percentage of the population constituted by Kurds that poses a threat to the regime, but rather Kurdish nationalism itself that is perceived as a threat to the state's territorial integrity. As a result, the Kurdish populations in Syria, Iran, Iraq, and Turkey experience political demobilization rather than political mobilization.

Home Education and the Constitution: Is Homeschooling a Protected Right? 41
JOSH UPHAM

For years, homeschooling has been trapped in a constitutional grey area. Without a direct ruling from the Supreme Court, it's difficult to gauge what level of governmental protection, if any, homeschoolers should receive. In this paper, I will show that the Constitutionally protected right of parents to direct the education of their children should be extended to protect homeschooling. Using a substantive interpretation of the Fourteenth Amendment, I will show that homeschooling is a fundamental right, and as such ought to be afforded strict scrutiny protection.

Foundational Justice: Human Rights Accountability as a Threat to Democracy in Contemporary Latin America..... 61
REBECCA VOTH

This paper examines the effects of truth commissions and human rights individual prosecutions on transitional justice in Latin America. It seeks to compare the effects these two political transitional processes and their contributions to rebuilding trust between citizens and the government after an abusive authoritarian regime. This paper proposes that a combination of truth commissions and prosecutions ought to be used to most effectively provide justice for victims and build a society in which perpetrators and victims can live in peace.

About the Authors 74

Entitlement reform is a pressing, if under-discussed, issue. According to one estimate, if no reforms are implemented in the interim, Social Security beneficiaries will experience a 21 percent cut in benefits beginning in the year 2034. Such a dramatic cut would have severe consequences for retirees and others who depend on Social Security benefits for a considerable portion of their monthly income. This paper considers a number of potential reforms to the system, including raising the retirement age, eliminating the payroll tax cap, and altering the manner in which the Cost-of-Living Adjustment (COLA) is calculated. The final proposal incorporates aspects of the latter two reforms: raising the payroll tax cap to cover 90 percent of earnings and basing the COLA calculation on the chained Consumer Price Index (CPI).

Reforming the Social Security System: A Proposal

Tim Campbell

I. Introduction/Overview

The Social Security Trustees predict that the “Old Age, Survivors, and Disability Insurance (OASDI) trust funds are projected to be exhausted in 2034 [at which point] all beneficiaries would face an immediate 21 percent across-the-board benefit cut.”¹ The Congressional Budget Office (CBO) offers a slightly different prediction: it estimates that the OASDI trust fund “will be depleted in 2029, at which point benefits would be automatically cut by 28 percent.”² The Committee for a Responsible Federal Budget summarizes, “These differences should underscore that no projections for Social Security will be exact ... Regardless, both CBO and the Trustees see it likely that the Social Security trust fund will be exhausted within the next 20 years and that lawmakers will have to make significant changes to ensure 75-year solvency.”³

Along with Medicare and many Veterans' Administration programs, Social Security belongs in the category of "entitlement programs," which outline criteria for eligibility and offer assistance to those who meet those criteria. The topic of entitlement reform has historically been a political non-starter, with many officeholders deeming it a political "third rail": don't mess with it, lest you electrocute yourself. President George W. Bush made an attempt at Social Security reform after his re-election in 2004, but his proposal to partially privatize the system failed after it met with resistance from Democrats in Congress and considerable opposition from the American public.⁴ Nonetheless, policymakers will need to find a solution to the problem of looming insolvency over the next decade or so. This paper will begin by providing some background information on Social Security, then discuss three proposals for reforming the system along with their respective advantages and disadvantages, and conclude by recommending a reform program that includes raising the payroll tax cap and altering the way in which the Cost-of-Living Adjustment (COLA) is calculated.

II. Background

The Social Security Administration (SSA) reports that "in 2015, over 59 million Americans will receive almost \$870 billion in Social Security benefits."⁵ The large majority of these recipients are retirees, but people with disabilities and survivors whose loved ones passed away before turning 67 also receive a large proportion of the benefits distributed each month. Social Security expenditures accordingly comprise a large proportion of the federal budget each year. The Center for Budget and Policy Priorities reports that in fiscal year 2015, 24 percent of the federal budget – some \$888 billion – went toward paying for Social Security benefits for retirees, their spouses and children (including survivors), and those with disabilities and their dependents.⁶ Revenues for the program come from a dedicated payroll tax, interest on current funds, taxes on OASDI benefits, and reimbursements from the U.S. Treasury.⁷ The SSA explains the payroll tax as follows: "Employers and employees each pay 6.2 of wages up to the taxable maximum of \$118,500 (in 2015), while the self-employed pay 12.4 percent."⁸

"Insolvency" refers to the point at which Social Security "will no longer have enough revenue coming in to pay out 100% of promised benefits to retirees."⁹ In 2014, Social Security ran a \$39 billion

deficit for the fifth year in a row, leading some to question how soon it will reach insolvency.¹⁰ The prospect of insolvency is a troubling one indeed, because according to the SSA, more than one half of married seniors and nearly three-quarters of unmarried seniors depend on Social Security for at least half of their monthly income.¹¹ When the system becomes insolvent, sizable across-the-board cuts will occur, putting at risk millions of Americans who rely on Social Security benefits to pay for their basic needs.

Several factors are responsible for this looming uncertainty. One major contributor is the fact that the average American's life expectancy has increased due to improvements in nutrition, safety, and healthcare. In 1935, when Social Security was created, the average life span of a healthy individual was 61 years. By contrast, today the average life span of an American citizen is 75 years, and even higher by some estimates.¹² This means that retirees are receiving benefits for a longer period of time, which puts a greater strain on the system as a whole. In addition, today there are fewer workers paying for each recipient's benefits than there used to be, and this trend is likely to continue. According to the SSA, "There are currently 2.8 workers for each Social Security beneficiary. By 2035, there will be 2.1 workers for each beneficiary."¹³ This decrease in the worker-to-beneficiary ratio also puts a greater strain on the system. It is clear that a series of reforms must be implemented to ensure that Social Security does not become insolvent. Three potential reforms will be discussed in the next section, along with the advantages and disadvantages of each approach.

III. Options – Pros and Cons

(1) Raising the Retirement Age to 70

The age at which an individual can begin to receive benefits as a retiree varies based on when he or she was born. When Social Security was originally created, the full retirement age was 65. As a result of legislation passed in 1983, the full retirement age for those born between 1943-1954 is 66, and it will gradually increase to 67 for those born during or after 1960.¹⁴ One option is to raise the retirement age to 67 more quickly for those born in 1958-1975 and to 70 for those born in 1976 or later, while continuing to allow workers the option of receiving partial benefits at age 62.

- *Pros*: Proponents of this reform argue that it makes sense to raise the retirement age because the original system did not anticipate that average life expectancies would increase as dramatically as they have. For instance, David C. John of the Heritage Foundation, a conservative policy think tank, argues, “Longevity trends show that not only are workers living longer and staying healthier longer than in the past, but that this improvement is likely to continue. . . . Social Security’s eligibility ages should be increased simply to reflect the longevity increases that have *already* taken place.”¹⁵ According to a 2013 analysis by the CBO, “This option would shrink federal outlays by \$58 billion from 2015 through 2023. . . . By 2038, the option would reduce Social Security outlays relative to what would occur under current law by 6 percent.”¹⁶

- *Cons*: There are two primary disadvantages to this proposal. First, if the retirement age is increased, then people must work longer, even if they work in occupations that prove to be quite difficult for senior citizens. Senator Heidi Heitkamp has pointed out that it is probably not a good idea for a 68 or 69-year-old to work as a truck driver or work in manual labor.¹⁷ Second, such a change would be particularly detrimental to minorities and those with lower incomes. A recent study by the Center for Economic and Policy Research indicates that workers who have physically stressful jobs are “disproportionately Latino, lacking a college degree and earning a low income.”¹⁸ The report also highlights the disparity between the proportion of immigrants over the age of 57 who have physically demanding jobs and the proportion of non-immigrants who have such jobs.¹⁹

Moreover, Michael Hiltzik of the *Los Angeles Times* disputes the notion that the retirement age ought to be raised because Americans are, on average, living longer. He writes, “The basic problem with raising the retirement age . . . is that all Americans are not alike. The differences in life expectancy are closely tied to economic status, education and race.”²⁰ Virginia Reno of the National Academy of Social Insurance agrees: “A higher FRA [full retirement age] would greatly disadvantage low-paid and minority workers, who, on average, have seen little or no gain in life expectancy.”²¹

(2) *Eliminating the Payroll Tax Cap*

Currently, employees pay 6.2% of their earnings up to \$118,500 toward Social Security and their employers pay the same rate, while those who are self-employed pay 12.4% on their earnings up to the same

amount.²² Another option would be to eliminate the \$118,500 cap and require workers to pay 6.2% (or 12.4% if they are self-employed) on all earnings.

- *Pros*: One advantage of this proposal is that it alone would solve the problem of a Social Security shortfall. According to the National Committee to Preserve Social Security and Medicare, “Eliminating the cap without allowing for the possibility of additional benefits for those making additional contributions would eliminate Social Security’s funding shortfall.”²³ Likewise, John Irons of the Economic Policy Institute asserts that eliminating the cap would close the entire projected shortfall.²⁴ In addition, if the tax cap is kept in place, lower-income workers will continue to pay a higher percentage of their income to Social Security taxes than will those whose incomes exceed the cap. A 2015 report by the Center for American Progress argues, “Social Security’s funding is directly tied to the full wages that low- and middle-income workers earn—but not to the full wages that higher-earning workers receive. Upward redistribution of income . . . has meant that income has shifted away from workers whose full earnings are taxed and toward high-income workers whose additional dollars are exempt.”²⁵ Eliminating the tax cap would get rid of this inequality.

- *Cons*: Some commentators have argued that eliminating the tax cap would have deleterious effects on higher-income earners. For instance, Rachel Greszler of the Heritage Foundation contends that marginal tax rates would increase dramatically for those whose earnings are above the prescribed cap. She writes, “A single person with \$125,000 in earnings would see his combined federal income and payroll tax rate jump from 30.9 percent to 43.3 percent . . . [while] the marginal tax rate of a married couple with two children and two earners each making \$125,000, would rise from 36.8 percent to 49.2 percent.”²⁶ Such a dramatic rate increase could lead those with higher incomes to spend less or create fewer jobs. Another concern about this proposal is the fact that it would sever the connection between contributions and the benefits that workers receive upon retirement. This change may well cause many Americans to regard Social Security as more of a burden than a useful social program.²⁷

(3) *Altering the Cost-of-Living Adjustment (COLA)*

The Social Security Administration’s website defines Cost-of-Living Adjustments as “general benefit increases . . . based on increases in the cost of living, as measured by the Consumer Price Index [CPI].”²⁸

Some have argued that instead of using the CPI to calculate annual COLAs, the SSA should instead use the “chained CPI,” which accounts for the fact that as prices for certain products increase, consumers buy other, less expensive products instead.

- *Pros*: One argument in favor of using the chained CPI instead of the ordinary CPI is that the former more accurately reflects consumers’ activity. Romina Boccia has argued that the old CPI “accounts for the habits of only 32 percent of the population – despite the existence of a newer index that evaluates the purchasing habits of 87 percent of people.”²⁹ Erica Groshen, commissioner of the Bureau of Labor Statistics (BLS), has called the chained CPI “the latest stage in the development of our cost-of-living measures,” and observed that the chained CPI “generally shows a lower rate of inflation [than the original].”³⁰ This means that over time, cuts in benefits would compound. If a woman were to decide to retire at age 62, by age 63 her benefits would be 0.25 percent less than what they would have been if the original CPI were used to calculate benefits. By the time she is 73 years old, her benefits would be about 2.5 less, and when she turns 93, they would be 7.2 percent less (on average).³¹

- *Cons*: The arguments against this proposal focus on the difficulties that beneficiaries will face if the formula is amended. “Changing the cost-of-living adjustment (COLA) using a chained CPI,” writes Gary Koenig of AARP’s Public Policy Institute, “Would have a detrimental impact on the economic wellbeing of older and disabled Americans and their family members.”³² Koenig finds the compounded cuts particularly objectionable because of their effect on older and disabled Americans who have already received benefits for years.³³ Another article from AARP claims that over time “the gap [between benefits calculated using the old formula and those calculated using the chained CPI] accelerates and begins looking like real money. If you’re 62 and take early retirement this year, by age 92 . . . you’ll be losing a full month of income every year.”³⁴

IV. Policy Recommendations

There are many ideas about how to reform Social Security. Some are simply not politically feasible, such as the proposal to privatize the system over time by permitting workers to put some of the money they would have paid in Social Security taxes into a private account instead.

In my view, a successful reform program for Social Security should draw on elements from the latter two options discussed above: raising (rather than eliminating) the tax cap and altering the way in which the Cost-of-Living Adjustment is calculated.

Raising the Payroll Tax Cap

John Irons of the Economic Policy Institute has proposed a more nuanced position on the tax cap: “[Eliminating] the cap on earnings for employer contributions, and [raising] the cap to cover 90 percent of earnings for employee contributions.”³⁵ According to Irons, this proposal would “reduce the long-term shortfall by about three-fourths.”³⁶ Moreover, although some conservatives inveigh against eliminating the cap altogether, adjusting the cap so that 90 percent of employee earnings are taxed helps to mitigate against various criticisms, such as the arguments that marginal tax rates will increase dramatically for higher-income earners and that the connection between contributions and benefits would be severed, undercutting public support for the program.

Altering the COLA

A successful reform program should also seek to base the COLA on the chained CPI rather than the “plain” or “original” CPI. This change would reflect the fact that the CPI that is currently used does not account for the activity of most consumers, who frequently change their spending habits if the cost of certain products increases. If the chained CPI were used instead, it would result in cuts over time, but these cuts would take place so gradually that beneficiaries would hardly notice them on a year-to-year basis. (As a consequence, this proposal is more politically feasible than other proposals, such as privatization.) A 2010 report by the CBO also disputes the notion that beneficiaries would see a dramatic decrease in the benefits they receive, contrary to the claims made by AARP officials in the previous section. The report claims, “Compared with those scheduled under current law, lifetime benefits for people in all earnings categories would be reduced by about 3 percent. Payable lifetime benefits would not change significantly.”³⁷ Thus, using the chained CPI to calculate the COLA would not only help to address the budget shortfall without substantially cutting benefits, it would also more accurately reflect the activity of American consumers.

V. Conclusion

Reforming the Social Security system is an important (if oft-neglected) issue in contemporary American politics. Millions of Americans depend on income from Social Security to pay their bills each month. But in the face of looming insolvency, policymakers will need to craft a series of reforms over the next ten or twenty years to ensure that these Americans' livelihoods are not jeopardized. The proposals discussed in this paper, if implemented by Congress, will resolve most of Social Security's financial uncertainty, helping to preserve one of the United States' most important social programs for generations to come.

NOTES

- 1 “Trustees’ Report,” 2015.
- 2 “Budget Outlook,” 2015.
- 3 “Gap Widens,” 2015.
- 4 William A. Galston, 2007.
- 5 “Social Security Basic Facts,” 2015.
- 6 “Policy Basics,” 2016.
- 7 “How is Social Security Financed?” 2016.
- 8 *Ibid.*
- 9 Jeanne Sahadi, 2015.
- 10 Romina Boccia, 2015.
- 11 “Social Security Basic Facts,” 2015.
- 12 Marilyn Moon and Janemarie Mulvey, 1996, 27.
- 13 “Social Security Basic Facts,” 2015.
- 14 “What is the Retirement Age?” 2015.
- 15 David C. John, 2010, emphasis in original.
- 16 “Raise the Retirement Age,” 2013.
- 17 Heidi Heitkamp, 2016.
- 18 Daniel Marans, 2016.
- 19 Cherrie Bucknor and Dean Baker, 2016.
- 20 Michael Hiltzik, 2016.
- 21 Virginia Reno, 2012.
- 22 “Update 2016,” 2016.
- 23 “Raising Tax Cap,” 2013.
- 24 John Irons, 2009.
- 25 Rebecca Vallas et al., 2015.
- 26 Rachel Greszler, 2014.
- 27 “Raising Tax Cap,” 2013.
- 28 “Cost-Of-Living Adjustment,” 2016.
- 29 Boccia, 2015.
- 30 Emily Brandon, 2013.
- 31 *Ibid.*
- 32 Gary Koenig, 2012.
- 33 *Ibid.*
- 34 Kim Keister, 2013.
- 35 John Irons, 2009.
- 36 *Ibid.*
- 37 “Policy Options,” 2010.

BIBLIOGRAPHY

- “Analysis of the 2015 Social Security Trustees’ Report.” 2015. *The Committee for a Responsible Federal Budget*, July 22. <http://crfb.org/document/report-analysis-2015-social-security-trustees-report>.
- Boccia, Romina. 2015. “Social Security: \$39 Billion Deficit in 2014, Insolvent by 2035.” *Heritage Foundation*, July 29. <http://www.heritage.org/research/reports/2015/07/social-security-39-billion-deficit-in-2014-insolvent-by-2035>.
- . 2015. “How Social Security’s Current Way of Calculating Cost of Living Hurts Taxpayers.” *The Daily Signal*, October 15. <http://dailysignal.com/2015/10/15/how-social-securitys-current-way-of-calculating-cost-of-living-hurts-taxpayers/>.
- Brandon, Emily. 2013. “How the Chained CPI Affects Social Security Payments.” *U.S. News and World Report*, April 29. <http://money.usnews.com/money/retirement/articles/2013/04/29/how-the-chained-cpi-affects-social-security-payments>.
- Bucknor, Cherrie and Dean Baker. 2013. “Still Working Hard: An Update on the Share of Older Workers in Physically Demanding Jobs.” *Center for Economic and Policy Research*. <http://cepr.net/images/stories/reports/still-working-hard-2016-03.pdf>.
- “Cost-Of-Living Adjustment (COLA).” 2016. *Social Security Administration*, accessed March 31. <https://www.ssa.gov/oact/cola/colasummary.html>.
- Galston, William A. 2007. “Why the 2005 Social Security Initiative Failed, and What it Means for the Future.” *Brookings Institution*, September 21. <https://www.brookings.edu/research/why-the-2005-social-security-initiative-failed-and-what-it-means-for-the-future/>.
- “Gap Widens Between Trustees and CBO on Social Security.” 2015. *The Committee for a Responsible Federal Budget*, July 27. <http://crfb.org/blogs/gap-widens-between-trustees-and-cbo-social-security>.

- Greszler, Rachel. 2014. "Raising the Social Security Payroll Tax Cap: Solving Nothing, Harming Much." *The Heritage Foundation*, August 1. <http://www.heritage.org/research/reports/2014/08/raising-the-social-security-payroll-tax-cap-solving-nothing-harming-much>.
- Heitkamp, Heidi. 2016. Class Speaker, PSC 3310 from Baylor University. March 1.
- Hiltzik, Michael. 2016. "Here's why raising the retirement age for Social Security is a terrible idea." *Los Angeles Times*, January 25. <http://www.latimes.com/business/hiltzik/la-fi-mh-raising-the-retirement-age-for-social-security-20160125-column.html>.
- "How is Social Security Financed?" 2016. *Social Security Administration*, accessed March 30. <https://www.ssa.gov/news/press/factsheets/HowAreSocialSecurity.htm>.
- Irons, John. 2009. "Raising cap on social security tax best way to fix shortfall." *Economic Policy Institute*, June 17. http://www.epi.org/publication/raising_cap_on_social_security_tax_best_way_to_fix_shortfall/.
- John, David C. 2010. "Time to Raise Social Security's Retirement Age." *Heritage Foundation*, November 22. <http://www.heritage.org/research/reports/2010/11/time-to-raise-social-securitys-retirement-age>.
- Keister, Kim. 2013. "What's the Chained CPI?" *AARP*, February. <http://www.aarp.org/politics-society/advocacy/info-02-2013/the-chained-consumer-price-index-explained.html>.
- Koenig, Gary. 2012. "Proposed Changes to Social Security's Cost-of-Living Adjustment." *AARP Public Policy Institute*, October. <http://www.aarp.org/work/social-security/info-10-2012/proposed-changes-to-cola-insight-AARP-ppi-econ-sec.html>.
- Marans, Daniel. 2016. "Why Raising The Social Security Retirement Age Could Hit Latinos Hardest." *Huffington Post*, March 25.

http://www.huffingtonpost.com/entry/social-security-retirement-age-latinos_us_56f4982be4b0143a9b47dccc.

Moon, Marilyn and Janemarie Mulvey. 1996. *Entitlements and the Elderly: Protecting Promises, Recognizing Reality*. Washington, D.C.: Urban Institute Press.

“Policy Basics: Where Do Our Federal Tax Dollars Go?” 2016. *Center on Budget and Policy Priorities*, March 4. <http://www.cbpp.org/research/federal-budget/policy-basics-where-do-our-federal-tax-dollars-go>.

“Raise the Full Retirement Age for Social Security.” 2013. *Congressional Budget Office*, November 13. <https://www.cbo.gov/budget-options/2013/44751>.

“Raising the Social Security Tax Cap.” 2013. *National Committee to Preserve Social Security and Medicare*, February. <http://www.ncpssm.org/Document/ArticleID/967>.

Reno, Virginia. 2012. “Option: Raise the Full Retirement Age.” *AARP Public Policy Institute*, June 18. http://www.aarp.org/content/dam/aarp/research/public_policy_institute/econ_sec/2012/option-raise-the-full-retirement-age-AARP-ppi-econ-sec.pdf

Sahadi, Jeanne. 2015. “Setting the record straight on Social Security ‘insolvency.’” *CNN Money*, October 29. <http://money.cnn.com/2015/10/28/news/economy/social-security-christie/>.

“Social Security Basic Facts.” 2015. *Social Security Administration*, October 13. <https://www.ssa.gov/news/press/basicfact.html>.

“Social Security Policy Options.” 2010. *Congressional Budget Office*, July. https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/reports/07-01-ssoptions_forweb.pdf.

“The CBO Long-Term Budget Outlook.” 2015. *The Committee for a Responsible Federal Budget*, June 16. <http://crfb.org/document/>

report-2015-cbo-long-term-budget-outlook.

“Update 2016.” 2016. *Social Security Administration*, January. <https://www.ssa.gov/pubs/EN-05-10003.pdf>.

Vallas, Rebecca et al. 2015. “The Effect of Rising Inequality on Social Security.” *Center for American Progress*, February 10. <https://www.americanprogress.org/issues/economy/report/2015/02/10/106373/the-effect-of-rising-inequality-on-social-security/>.

“What is the Social Security Retirement Age?” 2016. *National Academy of Social Insurance*, accessed March 29. <https://www.nasi.org/learn/socialsecurity/retirement-age>.

This paper argues that Theda Skocpol's theory on social revolutions should be expanded to include societies other than agrarian bureaucracies. The Haitian Slave Revolt of 1791 is applied to a revised theory - one focused on the underlying ideas that prompted Skocpol's thesis - in order to prove the validity of this paper's argument. The word "revolution" according to Skocpol encompasses only a few cases, including the Haitian Slave Revolt. When researched in detail, the Haitian Slave Revolt of 1791 actually fits the definition of a "revolution." With this in mind, Haitian society prior to the revolution, during the revolution, and after the revolution presents indicators that the event was in line with Skocpol's revised theory.

Plantation Slavery in St. Domingue: A Revolutionary Society

Abby Harris

“Well, remember that we négres are numerous, and we want to die for this liberty; for we want it and plan to get it at whatever price,” declares an anonymous author within a letter written to M. Mollerat in 1789, two years prior to the official beginning of the Haitian slave revolt.¹ “Why, for how many hundreds of years, have our fathers been subjected to this fate that still falls on us? Did God create anyone as a slave?”² Due to the dehumanizing effect of slavery on the laborers mixed with the singularity of crop production within Caribbean society, plantation slavery embodied the colonial system that could not hope to sustain itself. And yet only agrarian bureaucracies, according to Theda Skocpol, produce the successful social revolutions that comparativists claim as valid, positive cases.³ Skocpol describes an agrarian bureaucracy as “inherently vulnerable to peasant rebellions. Subject to claims on their surpluses, and perhaps their labor, by landlords and state agents, peasants chronically resent both.”⁴ Looking at the underlying concepts within Skocpol's description reveals frustration at authority mixed with subordinating treatment: so should agrarian bureaucracy be the sole cause of social revolution, or do other societal structures encompass

these same avenues for mass uprisings? If it included societies besides agrarian bureaucracies, Skocpol's model would predict the social revolution that occurred within Haiti, and then St. Domingue, in 1791. This essay will begin by providing an introduction to the Haitian Revolution and explaining slavery's role within Haitian society. This leads into why St. Domingue's slave rebellion is in fact a social revolution and is significantly different from "coups, rebellions . . . political revolutions and national independence movements."⁵ Then, by looking at St. Domingue prior to the revolution, the model will be applied to the case and predict the social revolution by focusing on the internal and external pressures leading St. Domingue to this movement. Finally, evaluating the use of Skocpol's model throughout the case will conclude the argument. Overall, Skocpol's model will be applied to a time period that occurs earlier than the cases which she focuses on in her essay "France, Russia, China: A Structural Analysis of Social Revolutions." Therefore this essay will reveal striking similarities between the Haitian Revolution and the cases she draws from.

When it "embarked alone to destroy this particular system of total violence and human debasement," the Haitian Revolution threw a blinding spotlight on St. Domingue, a tiny Caribbean island. For the Haitian Revolution, in fact, began as a slave revolt.⁶ From 1791 to 1804, the uprising transformed from a concentrated group of slaves rebelling against their white plantation masters, to the proclamation of the Haitian Declaration of Independence on January 1, 1804, led by the victorious, colored general Jean-Jacques Dessalines. The era of turmoil from 1791 to 1804 could be termed an independence movement, but then the primary motive for rising up would be suppressed under the end result, for when researched throughout the 13 years of chaos, the Haitian Revolution embodies a social revolution.

The tiers of society claim different names within an agrarian bureaucracy yet fulfill the same function. For example, within an agrarian bureaucracy, "the landed upper class typically retains . . . local and regional authority over the peasant majority of the population" while in a plantation slave society, the dominant land-owning class (typically white) owns all assets of their respective slaves, who make up the majority of the population.⁷ Within the colonial plantation slave society, St. Domingue, the motherland, owns the area and therefore provides the "central administration" that the "landed upper class relies upon."⁸ The plantation slave society contains the landlord-peasant system within

a more dominant institution: instead of collecting “rents and/or dues from the peasantry” to benefit the state, the dominant class collects labor for the economic success of the colony.⁹

In her book, *Democracy After Slavery*, Mimi Sheller describes a model that “suggests that there are general causal mechanisms which determined whether a slave-holding island in the Caribbean was more or less of a ‘slave society.’ The two main variables in [Stinchcombe’s] model are the degree of planter dominance (which determines inter-island variation of freedom) and the degree of slave agency (which determines intra-island variation).”¹⁰ The former, according to Stinchcombe, depended upon the economic success of the colony, which was, in Haiti’s case, the success of sugar production.¹¹ Sheller logs sugar exports in 1789, prior to the French and Haitian Revolution, at 141 million pounds; in 1801, in the midst of the revolution, they were logged at 18.5 million pounds.¹² This decrease shows the effect of the breakdown of slave society: when the enslaved colored population rebelled, society began to crumble, and fewer pounds of sugar were exported. Sheller’s argument looks at a post-colonial Haiti which was occupied by the British, struggling economically, and continuing to spiral downward. This result points to the foundation of the colony: plantation slavery was not simply one institutional aspect to St. Domingue, but rather was the entirety of Haitian society. Jeremy Popkin describes St. Domingue as “a classic example of what historians call a ‘slave society,’ one in which the institution of slavery was central to every aspect of life.”¹³ Through the abolition of slavery, this revolution transforms “a territory built as a plantation complex” to a “lone free state established by former slaves.”¹⁴ The 13 years of chaos brought the island a new economy, population, and social structure, which explains why this case is valid to examine. No other term except for social revolution truly encompasses the complete transformation from the most successful plantation economy in the Caribbean to an island society owned and operated by the massive former-slave population.

Skocpol formulates the definition of a social revolution by describing it in “three developments: (1) the collapse or incapacitation of central administrative and military machineries; (2) widespread peasant rebellions; and (3) marginal elite political movements.”¹⁵ Each of these are exemplified in revolutionary Haiti: (1) the French colonial administration collapsed from the forces of the French Revolution of 1789 and turmoil within Haiti; (2) the increased organization from contained

slave revolts to an island wide uprising; and (3) the simultaneous political movements from the free colored population. During the 13 years of insurgency, the aforementioned causes are the means by which the island radically transformed.

St. Domingue existed as a dependent colony whose purpose was to serve France's economy. A few years before the revolution the island housed "655 sugar plantations, 1,962 coffee plantations, and 398 cotton and indigo plantations" and "comprised one-third of the foreign trade of France."¹⁶ Therefore, when the French Revolution manifested itself in the storming of the Bastille, a power vacuum began to form.¹⁷ Men in Paris began to shout for equality and liberty, and in 1789 the traditional French role in St. Domingue shifted to one of liberty for those in the lower tiers of society. The central administration changed multiple times from 1789 to 1791: France sent instructions from its revolutionary National Assembly, created a Colonial Committee, and sent a First Civil Commission.¹⁸ Confusion escalated in the colony when The National Assembly, the same that in 1789 "considered[ed] abolishing slavery," voted on September 24, 1791 to give the white colonists power over the citizenship rights of St. Domingue's free colored people, granting dominance to the plantation owners once again.¹⁹ The French Revolution provided an opportunity within the colony for both slaves and free colored people to rise up against the image of French authority – the white population.

During the Haitian Revolution, French authority rarely solidified again. In 1794, France, Spain, and England all had forces on the ground in Haiti.²⁰ European powers were left to war with one another, while the black population was strengthened under the leadership ability of Toussaint Louverture, the slaves population's military figurehead. No matter who they allied with (first the Spanish, then the French) "the blacks would not tolerate any victory –whether French, Spanish, or English – which failed to abolish slavery."²¹ The authority on the island slowly shifted from French white plantation owners to the black slave (or former slave) population.

The official beginning date of the revolution (August 22, 1791) excludes a steady increase of violence that began around 1789. One of the most significant beginning insurrections occurred when Vincent Oge, an influential and wealthy free colored man, led a movement to gain equality rights not granted to him and the exploited free colored population.²² Then, simultaneously, slaves began to revolt against the

white plantation owners in St. Domingue's North Province while the Free Men of Color led an organized revolt against the plantation system in general.²³ This insurrectionary organization parallels the spread of the emancipation of slaves that French commissioners Sonthonax and Polverel enacted; first, they only offered emancipation to those who would fight with the French against the Spanish, then to the North Province, and finally a general emancipation in August of 1793.²⁴ As the insurrection spread and became more organized, an almost entirely colored society became more of a possibility rather than just a slave's daydream.

The last requirement for a social revolution is "a marginal elite political movement," which takes the form of the local free colored population.²⁵ Thomas O. Ott describes St. Domingue's society as "a caste system of three divisions: the whites, the *gens de couleur*, and the slaves."²⁶ The people of color, though free, "were really an appendage of slavery, and their disabilities increased as that institution expanded."²⁷ Understandably, the free colored population grew frustrated. On October 22, 1789, the Parisian population of free coloreds wrote a letter to the National Assembly on behalf of St. Domingue's free colored population, pleading the motives of the French Revolution. This letter said, "They claim the rights of man and of citizen . . . those rights that you have so solemnly recognized and so faithfully established when you established as the foundation of the constitution 'that all men are born and remain free and equal in rights.'"²⁸ In 1791, this frustration grew to a political movement asking for "political equality with the whites," but not an abolition of slavery.²⁹ This difference established the free colored people as elite, yet throughout the revolution they allied with the lower class uprising in the masses. Although abolition was the not the primary goal, the destruction of the plantation system saw a society where free colored men gained political equality through an economy based on freedom.

Skocpol's model creates not only a detailed structure for what a social revolution is, but also claims a structure for how to predict social revolutions. Her causes include "*both* incubated peasantries structurally prone to autonomous insurrection *and* . . . severe administrative and military disorganization due to the direct or indirect effects of military competition or threats from more modern nations abroad."³⁰ Essentially, the model predicts a successful social revolution if institutions encourage internal pressure and allow external pressure to influ-

ence the society. For St. Domingue, slavery allowed the workers so little freedom outside of their labor that the plantations and mills provided an incubator for revolutionary thought. Also, France owned St. Domingue, and therefore, external pressure from colonial Europe continually made itself known on the island.

Because plantation slavery in St. Domingue provided the colony with the majority of its economy, the system owned the majority of the slave's lives. "The daily schedule of the slave began at 5:30 a.m. and ended at 6 p.m. . . . but during the harvest of the sugar cane . . . the slave frequently worked to the point of exhaustion."³¹ Labor dominated their day, but slave culture was neither stagnant nor inhuman. "Market day was his main social gathering of the week," and considering that "the white population stood at 24,000 . . . and the rapidly increasing slaves at 408,000," enslaved people were not at a loss for variety or culture.³² Slavery provided just enough freedom to interact in a revolutionary manner while also providing just enough atrocity to act in a drastic and insurgent way. This was exemplified in the very first uprising on August 14, 1791. "Slaves from a number of plantations in the Northern Plain met together on Sunday, 14 August 1791, eight days before the start of the rebellion . . . at a gathering on the Lenormand de Mezy estate . . . the slaves who organized the plot were often those who occupied the most responsible positions on the plantation."³³ The revolutionaries with the most responsible positions, held enough respect from their masters to be able to meet with other slaves without provoking questions – the little freedom that the plantation owners gave proved detrimental.

As previously mentioned, in 1794 France, Spain, and England all were vying for territory in Haiti. This reveals the competitive desire for Haiti's landmass that had festered for years before, and embodies the external pressure which the tiny island received. St. Domingue only came into being because "in 1697, at the end of the European conflict known as the War of the League of Augsburg, Spain officially ceded the western third of the colony of Santo Domingo."³⁴ France and St. Domingue's economies were closely interrelated because "The colonial trade dominated by St. Domingue was also crucial to the nascent French industrial sector."³⁵ Therefore, the modernizing ideology of the French Revolution could not be ignored in this island extension of France: the marginalized population took advantage of the opportunity for revolution, opened up by international pressures put onto St. Domingue.

According to Skocpol's model, St. Domingue's institutions created a society that would predict a social revolution, and as proved through the first half of the paper, St. Domingue did experience a social revolution. From 1791 to 1804, St. Domingue's society shifted from the white aristocratic plantation owners to the colored, freed slaves rising from below and creating a new society based off of small-farm agriculture.³⁶ Yet, Skocpol's model would not have even considered the Haitian Revolution as a viable case because it lacked an agrarian bureaucracy. Only through the deeper understanding of the colonial slave society could this paper prove its valid application. Therefore, this essay arrives back at its main argument: Skocpol's model can predict social revolutions in cases other than agrarian bureaucracies and should be refined to include other societal structures. Thus, with a broader context, the academic world could refine and strengthen this model, even more than this paper does.

NOTES

- ¹ Laurent Dubois and John D. Garrigus 2006, 65
- ² Ibid.
- ³ Theda Skocpol 1976
- ⁴ Ibid.
- ⁵ Ibid.
- ⁶ Nick Nesbitt 2013, 5
- ⁷ Skocpol 1976; Thomas O. Ott 1973, 16
- ⁸ Skocpol 1976
- ⁹ Ibid.
- ¹⁰ Mimi Sheller 2000, 44
- ¹¹ Arthur Stinchcombe 1995
- ¹² Sheller 2000, 47
- ¹³ Jeremy D. Popkin 2012, 14
- ¹⁴ Angela Naimou 2012
- ¹⁵ Skocpol 1976
- ¹⁶ Ott 1973, 6
- ¹⁷ Popkin 2012, 27
- ¹⁸ Ibid., 34
- ¹⁹ Ibid., 27
- ²⁰ Ott 1973, 79
- ²¹ Ott 1973, 79; J. R. Beard 1970, 85
- ²² Popkin 2012, 30
- ²³ Ibid., 37
- ²⁴ Ibid., 69
- ²⁵ Skocpol 1976
- ²⁶ Ott 1973, 9
- ²⁷ Ibid., 12
- ²⁸ Dubois and Garrigus 2006, 69
- ²⁹ Popkin 2012, 41
- ³⁰ Skocpol 1976
- ³¹ Ott 1973, 15
- ³² Ibid., 9
- ³³ Popkin 2012, 37
- ³⁴ Ibid., 12
- ³⁵ George F. Tyson 1973, 3
- ³⁶ Sheller 2000

BIBLIOGRAPHY

- Beard, J. R. 1970. *The Life of Toussaint L'Ouverture, the Negro Patriot of Hayti: Comprising an Account of the Struggle for Liberty in the Island, and a Sketch of Its History to the Present Period*. Westport, Conn: Negro Universities Press.
- Dubois, Laurent, and John D. Garrigus. 2006. *Slave Revolution in the Caribbean, 1789-1804: A Brief History with Documents*. Bedford Series in History and Culture. Boston, MA ; New York, NY: Bedford/St. Martins.
- Naimou, Angela. 2012. "‘I Need Many Repetitions’: Rehearsing the Haitian Revolution in the Shadows of the Sugar Mill." *Callaloo* 35 (1): 173–92. doi:10.1353/cal.2012.0005.
- Nesbitt, Nick. 2013. "Haiti, the Monstrous Anomaly." In *The Idea of Haiti*, 3–26. Rethinking Crisis and Development. University of Minnesota Press.
- Ott, Thomas O. 1973. *The Haitian Revolution, 1789-1804*. [1st ed. Knoxville]: University of Tennessee Press.
- Popkin, Jeremy D. 2012. *A Concise History of the Haitian Revolution*. Viewpoints = Puntos de Vista. Malden, MA: Wiley-Blackwell.
- Sheller, Mimi. 2000. *Democracy after Slavery: Black Publics and Peasant Radicalism in Haiti and Jamaica*. Gainesville: University Press of Florida.
- Skocpol, Theda. 1976. "France, Russia, China: A Structural Analysis of Social Revolutions." *Comparative Studies in Society and History* 18 (2): 175–203.
- Stinchcombe, Arthur. 1995. *Sugar Island Slavery in the Age of Enlightenment: The Political Economy of the Caribbean World*. Princeton: Princeton University Press.
- Tyson, George F. 1973. Toussaint L'Ouverture. Great Lives Observed. Englewood Cliffs, N.J: Prentice-Hall.

This paper examines the question of Kurdish right to self-determination in the states of Syria, Iran, Iraq, and Turkey in light of Daniel Posner's model of cultural difference and political salience. Posner's model suggests that the Kurdish population in each respective state would be prime for political mobilization as a result of cultural demographic makeup. The natural experiment presented by the Kurds' dispersion in these four states essentially turns Posner's model upside down. It is not so much the percentage of the population that Kurds constitute that poses a threat to the regime, but rather Kurdish nationalism itself that is perceived as a threat to the state's territorial integrity. As a result, the Kurdish populations in Syria, Iran, Iraq, and Turkey experience political demobilization rather than political mobilization.

The Kurdish Question and the Political Salience of Territorial Integrity

Phoebe Suy

Created in part by British bureaucrat Mark Sykes, the Sykes-Picot Agreement of 1916 delineated state lines in the Middle East by simply drawing “a straight line from the ‘e in Acre to the k in Kirkuk.”¹ The Sykes-Picot Agreement essentially formed state lines with little regard for “ethnic, religious, or cultural facts on the ground.”² The Kurdish people, one of the largest ethnic groups without their own state, were one of many groups disenfranchised as a result of the ill-informed demarcations.³ Although Sykes-Picot never became law, it nevertheless set the precedent for future negotiations in the region.⁴ One hundred years later, state lines in the Middle East have not deviated substantially from Sykes’ proposed divisions, leaving the Kurdish population predominantly dispersed between Iran, Iraq, Syria, and Turkey.

The question of the Kurdish right to self-determination further complicates relations in the already-tumultuous Middle East. Given the variety of people groups and the similarities between them—such as physical appearance, alphabet, food, and religious text—it is astonishing

to see such an immense amount of discord in this deceptively homogenous region. Upon closer examination, the Middle East is a region of intricate cultural cleavages, or differences, between a variety of ethnic groups and tribes within these respective groups. Is the multitude of cultural cleavages to blame for conflicts in the region? According to Daniel Posner, cultural cleavages in and of themselves are not to blame for “political or social strife,” but instead become determining factors in conflict if deemed politically important or salient.⁵ Posner offers an explanation for competing cultural cleavages, arguing, “the political salience of a cultural cleavage will depend on the sizes of the groups that it defines relative to the size of the arena in which political competition is taking place.”⁶ Posner tests his model by taking advantage of the natural experiment between the Chewa and Tumbuka peoples in Malawi and Zambia, two democratic states. Ultimately, Posner determines that cultural demography is all that matters.⁷ While his model holds true in the democratic political arenas of Malawi and Zambia, it does not hold the same weight in nondemocratic or authoritarian political arenas. Kurdish people in Iran, Iraq, Syria, and Turkey do not experience political mobilization, as Posner’s model would suggest given the Kurdish demography relative to that of the overall population in each country. Rather, they experience political demobilization as a result of discriminatory policies and practices of these nondemocratic arenas. While Posner’s model of political salience and cultural difference explains the nature of cultural cleavages in democratic states, it does not address the significance of the type of political arena and therefore fails to answer the question of Kurdish right to self-determination in Iran, Iraq, Syria, and Turkey. In the case of the Kurdish people, political salience is related to the threat to territorial integrity imposed by the size of the Kurdish minority relative to the nondemocratic political arena.

The Kurds: “People Without a Country”

The Kurds are a predominantly Sunni Muslim ethnic group dispersed between Iran, Iraq, Syria, and Turkey. With a population of approximately 24 to 27 million, the Kurds constitute the fourth-largest ethnic minority in the world and the largest ethnic group without a sovereign state.⁸ It is important to note that Kurds do not identify as Arabs or Turks—they are fundamentally Kurdish in the same way that Arabs, Turks, and Persians constitute their own individual ethnic groups.

Although Kurds are not necessarily a cohesive people group due in part to their dispersion, they nevertheless share a common culture, religion, and history. Kurdish tribal culture depended heavily on traditional legitimacy, “operating on kinship ideology and territoriality” in conjunction with a “myth of common ancestry.”⁹ Regardless of the accuracy of these myths, they are “exclusive to the Kurdish people” and therefore play a crucial role in building unity amongst the Kurdish tribes.¹⁰

In order to fully understand the Kurdish question, it is necessary to first understand the relationship between Kurdish minorities and their respective states of residence. The Kurdish way of life differs in light of the “political space” created by a specific regime.¹¹ Essentially, what it means to be Kurdish in one state is inextricably tied to what it means to be Turkish, Syrian, Iraqi, or Iranian.¹² Because Kurdish nationalism varies in relation to the degree of assimilation forced by the state, the government’s attitude towards the Kurdish people has the potential to either guarantee their freedom or result in their persecution. For states in which Kurds are granted a degree of autonomy, Kurdish nationalism flourishes, whereas in others, nationalism is perceived to be a threat and therefore suppressed.

The Kurds in Turkey

Approximately half of the world’s Kurds live in Turkey; they comprise 18% of the total Turkish population.¹³ Turkish Kurds are granted full rights to citizenship, guaranteeing a relative degree of freedom not found in other states. However, full citizenship in Turkey comes at the cost of compromising Kurdish individuality and identity. Since the beginning of the Turkish Republic, the Turkish government has sought to turn Kurds into a Turkish people in every sense of the word, “not only politically ... but also culturally and socially... through assimilation.”¹⁴ The government even went so far as to ban the Kurdish language and inflict increasingly harsh treatment on Kurdish people.¹⁵ By banning the Kurdish language, the government disenfranchised approximately a fourth of the population.¹⁶ The laws and practices of the Turkish state testify to the “perceived [threat of] Kurdish national awareness” to Turkey’s “territorial integrity.”¹⁷

Today, Turkish Kurds are overshadowed by the terrorist reputation of the Kurdistan Workers’ Party, otherwise known as the PKK (*Partia Karkaren Kurdistan*). Abdullah Ocalan founded the group, believ-

ing that it was “time for a Kurdish independence movement in Turkey.”¹⁸ The group’s first and foremost priority was to establish an independent Kurdistan.¹⁹ To the detriment of the movement, the group came to be characterized by “hit-and-run attacks” and guerrilla warfare.²⁰ Moreover, civilians were subject to the increased tension between the Turkish government and the PKK as the distinction between insurgents and civilians became unclear. In spite of its negative impact, the PKK “succeeded in calling the Kurdish problem in Turkey to the attention of the world.”²¹

Overall, the Kurdish question in Turkey remains obscured in part due to the PKK’s reputation as a violent and controversial organization. The PKK and associated Kurdish nationalist movements complicate Posner’s presumption of the political arena as a democratic entity. The state of Turkey essentially sought to demobilize the Kurds because of their perceived threat to the state, leading to the formation of groups such as the PKK. Totalling nearly a fourth of the population, Posner’s model would suggest that the Kurds are politically salient. However, with their nationalist goals, Turkish Kurds would not “constitute viable coalitions in the competition for political power” in a state that renounces political competition.²² Given the state’s clear intention to eliminate any cultural cleavage between Turks and Kurds, this natural experiment in Turkey offers itself as the antithesis to Posner’s model. Political salience in nondemocratic arenas is more closely linked with demobilization due to perceived political threat rather than political mobilization.

The Kurds in Iraq

In the 1980s, the Kurdish population in Iraq constituted 23% of Iraq’s total population.²³ According to the CIA World Factbook, the Kurdish population has since decreased by approximately 15-20%.²⁴ This decline in Kurdish population is largely a result of the Anfal campaign against the Kurds in the late 1980s. Led by Ali Hassan al-Majid, the cousin of President Saddam Hussein and secretary general of an Iraqi Socialist party, the Anfal campaign’s primary goal was “to solve the Kurdish problem and slaughter the saboteurs.”²⁵ The campaign against the Kurds began with a “shoot-to-kill policy” in areas deemed prohibited by al-Majid.²⁶

The Kurdish question in Iraq is largely shaped by the formation and role of the Kurdish Regional Government (KRG). The KRG, the “most successful attempt at Kurdish statehood in modern times,”²⁷ was

established shortly after the Gulf War with the “intention of becoming a federal state within a future democratic, post-Saddam Iraq.”²⁸ Following the Gulf War, Kurds were granted “an autonomous safe haven”²⁹ and subsequently transitioned “from insurgency into a civilian government.”³⁰

Under President Saddam Hussein’s administration, the relationship between the state of Iraq and the KRG was extremely destructive. He declared Kurdish safe havens a threat to Iraqi sovereignty and refused to compromise with the Kurds.³¹ In hopes of weakening the KRG’s state capacity and damaging the legitimization process, Saddam withdrew state funds from the region, cutting off all services and salaries financed by the Iraqi government.³² Contrary to Saddam’s intention, the Kurds filled the “administrative vacuum left by the withdrawal of the Iraqi state” and progressed further towards Kurdish self-determination in Iraq.³³

When Saddam was finally captured in 2003, an era of possible “prosperity and political freedom” had begun in Iraq.³⁴ However, without a leader, the state of Iraq became incredibly vulnerable and “plunged into instability, chaos, and sectarian violence.”³⁵ The Coalition Provisional Authority (CPA) was then formed by American diplomat L. Paul Bremer and British diplomat Jeremy Greenstock with a distinctly American approach towards promoting democracy.³⁶ The CPA was not well-received and was forced to shift its focus from establishing democracy to “countering insurgency” and settling tensions.³⁷ The CPA’s change in objective resulted in the creation of the Iraqi Governing Council (IGC), “an unelected body of representatives of all sects,” including Kurds, created to address civilian affairs.³⁸ Finally represented in government, the Kurds were able to utilize their platform in the IGC to further legitimize the KRG through the Transitional Administrative Law (TAL), “the earliest version of the 2005 Iraqi constitution.”³⁹ The TAL “reinforced regional autonomy” by recognizing the right of the Kurdish Regional Government to “perform its current functions throughout the transitional period.”⁴⁰ The legitimization of the KRG through written law allowed for greater autonomy and opened the door for Kurdish leaders to build relationships with other states, organizations, NGOs, and corporations.⁴¹ Through TAL, the Kurds received both greater autonomy and international recognition, an important factor in state-building.

Iraq offers a unique political arena in light of the Kurdish question and the two models set forth by this paper and by Posner. Prior to the establishment of the CPA, the political arena of Iraq further substantiated the tie between political salience and territorial integrity. Saddam viewed Kurds as threats to his dictatorship and worked to demobilize Iraqi Kurds. In contrast, once the CPA was established, the nature of the political arena changed. It was only once Saddam was removed from power that the Kurds were able to make greater strides toward their nationalist goals. With the capture of Saddam and the help of international diplomats, the KRG was legitimized and made substantial steps towards Kurdish self-determination, thus increasing Kurdish autonomy and supporting Posner's original model.

The Kurds in Syria

In contrast to Iraq and Turkey where Kurdish people constitute a significant portion of the populace, Syrian Kurds constitute only 10% of the population yet remain "the country's largest ethnic minority."⁴² With an overwhelmingly Arab population, Syrian Kurds face both a dilemma in regards being both a "stateless person" and a "stateless people."⁴³ A stateless person is "a person who is not considered as a national by any State under the operation of its law" and a stateless people are a group "distinguished from other peoples in that [they do] not have [their] own state."⁴⁴ Whereas the PPK and the KRG play critical roles in Kurdish-state relations in Turkey and Iraq, Syrian Kurds are defined by the contention between recognition as both a Syrian citizen and an ethnic Kurd.

After Syria split from Egypt in the fall of 1961, a bourgeoisie party took power with the intent of intensifying Kurdish oppression.⁴⁵ Shortly after taking control, the government issued a census that specifically targeted and disenfranchised the Kurdish population.⁴⁶ Following the census, approximately 120,000 Kurds living in Syria were counted as non-Syrian, virtually "[becom] stateless overnight."⁴⁷ Without citizenship, institutions like hospitals, schools, and even marriage become inaccessible. Eventually "statelessness became an emotive short-hand for the situation of all Kurds in Syria: oppressed, alienated, and rightsless."⁴⁸ The question of Kurdish citizenship is especially exacerbated in light of the ongoing Syrian Revolution. In the midst of Syria's civil war, citizenship does not hold much weight as civil rights and rule of law have been significantly undermined under the current regime.

In addition to citizenship, Syrian Kurds face discrimination for being Kurdish in a predominantly Arab state. As Syrian Arabs began to adopt Arab nationalism, the relations between Kurds and Arabs became increasingly polarized. Consequently, Arab nationalists began to fear “internal and external enemies” and viewed the Kurds as a threat to Syria.⁴⁹ Today Syrian Kurds remain subject to a discriminate and oppressive political climate, yet remain better off than their counterparts in Turkey, Iraq, or Iran.⁵⁰ They have managed to break out of their somewhat silent existence in Syria to join the opposition against Assad.⁵¹ While the Syrian civil war further obscures the Kurdish question, it also creates a political arena similar to that of Turkey and Iraq where Kurds are explicitly deprived and demobilized.

The Kurds in Iran

In contrast to Syria, where Arabs outnumber Kurds, Kurds in Iran constitute approximately 16% of the total population.⁵² Although Iranian Kurds are fewer in number than their Iraqi or Turkish counterparts, more than half of the population in Iran is of non-Persian nationality.⁵³ It must be noted that undoctored Iranian demographic figures are limited because the Iranian Government considers Kurds to be “Pure Iranians.”⁵⁴ Like Turkey, Iran has implemented assimilation policies that deny Kurdish individuality and culture. For example, Iranian schools are only allowed to teach in the Persian language.⁵⁵ Despite this restriction, Kurdish literature in Iran has blossomed considerably following the revolution in 1958. While the creation of Kurdish texts remains fairly unstinted, the “Iranian regime’s repressive policies” remain intact; the Iranian secret police are known to torture and imprison those owning even one Kurdish publication.⁵⁶

Despite the Iranian regime’s policies, the Kurdish population in Iran has made significant strides towards self-determination. In the fall of 1942, leaders in the Mahabad region took advantage of political vacancies and “launched the first Kurdish political movement, the Komala J.K. (*Jani Kurdistan*, Rebirth of Kurdistan).”⁵⁷ Unfortunately, the Komala lasted only two years due to a lack of clearly defined objectives and weak organizational framework. By 1943, the Kurdish nationalist movement had outgrown Komala’s capacity.⁵⁸ Two years later, the Kurdish

Democratic Party (KDP) was founded and welcomed all of the Komala members.⁵⁹ Unlike Komala, the KDP adopted eight key objectives, the first granting Kurdish autonomy within Iranian borders.

In the fall of 1946, the Tehran Government “launched a campaign to organize [‘free’] elections throughout the country” which conveniently required the presence of government troops in Kurdistan for supervision.⁶⁰ The campaign met little resistance and ultimately resulted in the massacre of thousands.⁶¹ Despite this major setback, the Kurdish liberation movement was not over. Several years later, an Iranian base was destroyed, opening doors for Kurdish liberation organizations and resulting in increased momentum.⁶² In the fall of 1959, the Tehran Government, fearing the growing Kurdish movement, arrested hundreds of innocent Kurdish civilians in an attempt to stop what they considered to be dissent.⁶³

The Tudeh party, a Marxist-inclined Iranian political party, was later founded with the intent of “becoming a mass party representing all sections of the population.”⁶⁴ Despite their seemingly good intentions, the party’s definition of “a rich and worthy Iranian culture” excluded the Kurds and other peoples, “their national culture [was] ... trampled underfoot, their history ... falsified and their cultural heritage” was attributed to the Persians instead.⁶⁵ In contrast to its stated intent, the Tudeh party primarily sought to retain Iran’s “territorial integrity.”⁶⁶ As in the case of Turkey, Iraq, and Syria, Iranian Kurds have both made significant progress in the Kurdish nationalist movement and experienced setbacks and hardships as cultural outliers. The political arena of Iran more closely mirrors that of Turkey, where oppression and assimilation go hand in hand.

Conclusion

In nondemocratic or authoritarian regimes, the state is not bound by a constitution to the general public. Because this is largely the case in Turkey, Iraq, Iran, and Syria, Posner’s model of political salience and cultural cleavage does not hold, as it assumes that the political arena in question is a democracy. This paper suggests that in order to accommodate for authoritarian regimes, Posner’s model should consider the threat to territorial integrity posed by the group in question instead of the group’s proportion of the population. The Kurdish question essentially turns Posner’s model upside down, as it is contingent upon the

notion of demobilization rather than political mobilization. The widespread discrimination of Kurdish people throughout these four states testifies of the Kurdish dilemma involving demobilization. Whereas the Kurdish question is concerned, these countries view Kurdish mobilization and nationalism as a threat to their individual territorial integrity. If successfully unified and mobilized, Kurds in these countries have the potential to create a reasonably large state which would naturally pose a threat to the powers that be.

NOTES

- ¹ Anne Applebaum, "Israel Notebook," *The Spectator* (2016)
- ² Reeva Spector and Simon and Eleanor H. Tejirian, *The Creation of Iraq*, 96
- ³ Gerard Chailand, *People Without a Country: The Kurds and Kurdistan*, 1980, 11
- ⁴ Reeva Spector and Simon and Eleanor H. Tejirian, 2004, 98
- ⁵ David Posner, *The Political Salience of Cultural Difference*, (2004), 529
- ⁶ Ibid., Ibid.
- ⁷ Ibid., 530
- ⁸ (McDowall 2000, 3).
- ⁹ (McDowall 2000, 13-14).
- ¹⁰ (McDowall 2000, 4)
- ¹¹ (Natali 2005, 14)
- ¹² (Natali 2005, xvii)
- ¹³ (CIA 2016)
- ¹⁴ Michael Gunter, "The Kurdish Spring," *Third World Quarterly* (1990), 14
- ¹⁵ Ibid., 43-46
- ¹⁶ Ibid., 44
- ¹⁷ Ibid., 123
- ¹⁸ Ibid., 58
- ¹⁹ Ibid., 59
- ²⁰ Ibid., 75
- ²¹ Ibid., 126
- ²² David Posner, *The Political Salience of Cultural Difference*, (2004), 529
- ²³ Michael Gunter, *The Kurdish Predicament in Iraq: A Political Analysis*, (1999), 24
- ²⁴ (CIA 2016)
- ²⁵ (MEW 1993, 4).
- ²⁶ (MEW 1993, 9).
- ²⁷ Gunter 1999, 67
- ²⁸ Gunter 2013, 441
- ²⁹ Natali 2005, 64
- ³⁰ Yaniv Voller, *The Kurdish Liberation Movement in Iraq*, (2014), 68
- ³¹ Ibid., 70
- ³² Ibid., Ibid.

- ³³ Ibid., Ibid.
³⁴ Ibid., 95
³⁵ Ibid., Ibid.
³⁶ Ibid., Ibid.
³⁷ Ibid., Ibid.
³⁸ Ibid., Ibid.
³⁹ (Voller 2014, 98).
⁴⁰ Ibid., Ibid.
⁴¹ (Voller 2014, 99).
⁴² Gunter 2013, 439).
⁴³ (McGee 2014, 172).
⁴⁴ Ibid., Ibid.
⁴⁵ (Nazdar 1980, 216)
⁴⁶ (McGee 2014, 173).
⁴⁷ Ibid., Ibid.
⁴⁸ (McGee 2014, 178).
⁴⁹ (McDowall 2000, 473).
⁵⁰ Ibid., 476
⁵¹ (Gunter 2013, 442).
⁵² (Ghassemlou 1980, 108)
⁵³ Ibid., 128
⁵⁴ Ibid., 108
⁵⁵ Ibid., 110
⁵⁶ Ibid., 111
⁵⁷ Ibid., 118
⁵⁸ Ibid., Ibid.
⁵⁹ Ibid., Ibid.
⁶⁰ Ibid., 121
⁶¹ Ibid., Ibid.
⁶² Ibid., 123
⁶³ Ibid., Ibid.
⁶⁴ Ibid., 128
⁶⁵ Ibid., 128-129
⁶⁶ Ibid., 129

BIBLIOGRAPHY

- Applebaum, Anne. "Israel Notebook." *The Spectator*, January 23, 2016. <http://www.spectator.co.uk/2016/01/why-were-we-going-to-israel-for-the-winter-sunshine-of-course/>.
- Central Intelligence Agency. 2016. "The World Factbook: Iraq." March 2016. <https://www.cia.gov/library/publications/the-world-factbook/geos/iz.html>
- Central Intelligence Agency. 2016. "The World Factbook: Turkey." March 2016. <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html>
- Ghassemloo, A. R. 1980. "Kurdistan in Iran." In *People Without a Country: The Kurds and Kurdistan*, edited by Gerard Chaliand, 107-134. London: Zed Press.
- Gunter, Michael M. 1990. *The Kurds in Turkey: A Political Dilemma*. Boulder: Westview Press.
- Gunter, Michael. 1999. *The Kurdish Predicament in Iraq: A Political Analysis*. New York: St. Martin's Press.
- Gunter, Michael. 2013. "The Kurdish Spring." *Third World Quarterly* 34 (3): 441-457.
- McDowall, David. 2000. *A Modern History of the Kurds*. New York: St. Martin's Press.
- McGee, Thomas. 2014. "The Stateless Kurds of Syria: Ethnic Identity and National I.D." *Tilburg Law Review* 19 (1-2): 171-81.
- MEW (Middle East Watch). 1993. *Genocide in Iraq: The Anfal Campaign Against the Kurds*. New York: Middle East Watch.
- Natali, Denise. 2005. *The Kurds and the State: Evolving National Identity in Iraq, Turkey, and Iran*. New York: Syracuse University Press.

- Nazdar, Mustafa. 1980. "The Kurds in Syria." In *People Without a Country: The Kurds and Kurdistan*, edited by Gerard Chaliand, 211-219. London: Zed Press.
- Posner, Daniel N. 2004. "The Political Salience of Cultural Difference: Why Chewas and
- Tumbukas Are Allies in Zambia and Adversaries in Malawi." *American Political Science Review* 98 (4): 529-545.
- Simon, Reeva Spector, and Eleanor H. Tejirian, eds.. 2004. *The Creation of Iraq, 1914-1921*. Edited by Reeva Spector and Simon and Eleanor H. Tejirian. Columbia University Press. <http://www.jstor.org/stable/10.7312/simo13292>.
- Voller, Yaniv. 2014. *The Kurdish Liberation Movement in Iraq: From insurgency to statehood*. New York: Routledge.

For years, homeschooling has been trapped in a constitutional grey area. Without a direct ruling from the Supreme Court, it's difficult to gauge what level of governmental protection, if any, homeschoolers should receive. In this paper, I will show that the Constitutionally protected right of parents to direct the education of their children should be extended to protect homeschooling. Using a substantive interpretation of the Fourteenth Amendment, I will show that homeschooling is a fundamental right, and as such ought to be afforded strict scrutiny protection.

Home Education and the Constitution: Is Homeschooling a Protected Right?

Josh Upham

In this paper I will show that the Constitutionally protected right of parents to direct the education of their children, as identified in *Pierce* and applied in *Yoder*, can be logically extended to protect homeschooling. When the Court first explored the boundaries of the Fourteenth Amendment, they immediately excluded its most potentially broad and sweeping provision, the Privileges or Immunities Clause.¹ This closed the door on the protection of additional unspoken liberties by the Fourteenth Amendment for over twenty years. Then, in 1897, the Court ruled that the word “liberty” in the Fourteenth Amendment’s due process clause could be extended to protect a new area of freedom, economic liberty.² This ruling ushered in a series of decisions that we now refer to as the *Lochner* era, during which the Supreme Court tended to strike down laws regulating business in the interest of so-called economic due process.³ The trend was brought to a rather abrupt halt in a desperate attempt by the Court to preserve its own sovereignty in *West Coast Hotel v. Parrish*. In that case, the Court made the switch in time that likely preserved the layout of the court we know today.⁴ Since then, the jurisprudence regarding the substantive qualifications of the Fourteenth Amendment has seen ebb and flow. Protected rights of due process have come and gone, and only one of these provisions stands distinct from the rest. The Constitutional right of parents to direct the

education of their children was first codified during the *Lochner* era, and continues to stand to this day.⁵ Stephen Gilles writes that the Court was guided by a notion he calls Liberal Parentalism. Liberal Parentalism says that, barring an obvious conflict with a child's basic interest, the state ought to defer to the decisions of parents when dealing with parental rights. In this paper I will further argue that Liberal Parentalism was and remains the guiding ideology of the Court on issues relating to parental discretion. If such a case were to reach the Supreme Court, it would be decided in favor of the right to home education.

The Privileges or Immunities Clause

Neither the right to education nor parental privilege can be found in the Constitution. Therefore, we must begin with a survey of the Constitutional landscape in which we are stranded to see where these protections originate. Some scholars have suggested that the best rationale for a legal parental right might be found in the long-neglected Privileges or Immunities Clause of the Fourteenth Amendment⁶. While the Privileges or Immunities argument at times can seem a tempting solution to cases of all variety, the Court appears to be highly recalcitrant to this reasoning. The clause, written into the text of the Fourteenth Amendment in 1868, was summarily truncated upon its first review. Because the text of the clause was only applied to rights guaranteed on condition of federal citizenship and not state citizenship, the Court chose not to apply it to the police powers of the state of Louisiana. They instead ruled that the butchers' due process had not been violated by the creation of an effective monopoly.⁷ Furthermore, they found that the clause in question, as well as the whole amendment itself was intended to "mean the freedom of the slave race...and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him."⁸ Together, the all but exclusive application to former slaves coupled with the strict limitation on protected rights effectively gutted the Privileges or Immunities Clause, thus lending a morbid sense of irony to the title of the case. Though it has been considered extinct for the better part of 150 years, there are those who would see its resurrection. Even among the members of the Court, Justice Thomas appears to be a proponent of the view, and has several times hinted that he would be convinced by such argumentation.⁹ However, any real hope of bringing back the

Clause in the near future was likely stymied with when Justice Alito, speaking for the majority, wrote that “[f]or many decades, the question of the rights protected by the Fourteenth Amendment against state infringement has been analyzed under the Due Process Clause of that Amendment and not under the Privileges or Immunities Clause. We therefore decline to disturb the Slaughter-House holding.”¹⁰ It is quite likely that were the Clause applied to the States, and treated as an extension of due process, it could be found to protect parental rights, the right of parents to reasonably direct the upbringing and education of their children, and ultimately, the institution of homeschooling. However, the Constitutional climate is such that the chances of Privileges or Immunities being revived in a post-Obama court are slim indeed. Though it is tempting to find a refuge for the parental right of homeschooling under the Privileges or Immunities Clause, such a solution is unworkable. We will now turn to the Constitutional extension of due process protections we are afforded, namely, the doctrine of substantive due process.

The Origins of Substantive Due Process

Substantive due process is tricky, as it is not found in the text of any amendment. Indeed, the words “substantive due process” are nowhere to be found in the Constitution, Bill of Rights, or the subsequent amendments. Nevertheless, it has been the basis of many landmark rulings, and is a much more viable basis for the parental right to homeschool. In general terms, substantive due process was first recognized at the beginning of the *Lochner* era in *Munn v. Illinois*.¹¹ In that case, the Supreme Court ruled that the State was Constitutionally justified in regulating the prices charged by a grain elevator business. The rationale for this ruling is that the grain elevators serve a “direct and positive interest” to the public, and as such it was subject to regulation by the state.¹² Justice Waite wrote that, “[W]hen private property is devoted to a public use, it is subject to public regulation.”¹³ On a *prima facie* analysis, this case seems to be in opposition to the interpretation of due process we are accustomed to today. In fact, the ruling allows a state to regulate the prices charged by a company in the course of their business. The majority was very clear that contingent on becoming a member of society, “One...parts with some rights or privileges which, as an individual not affected by his relations to others, he might maintain.”¹⁴

However, viewed in contrast with the other rulings of this period, *Munn* makes a clear distinction between property which serves a vested public interest and true private property. It is also worth noting that the grain elevators in question in *Munn* were considered to be a “virtual monopoly.”¹⁵ The only hint at a substantive view of due process comes at the very end of the consideration of Fourteenth Amendment argument. Justice Waite made the concession that “[the setting of rates] is a power which may be abused; but that is no argument against its existence.”¹⁶ Here the court does not take the new interpretation of due process, but acknowledges that it is an argument that could be made and would have some Constitutional merit. While widely viewed as an anti-business ruling, the Court in *Munn* did open the door to a new Constitutional argument through which a later Court would run.

The Lochner Era and Its Parentalist Legacy

Around the turn of the century, the Supreme Court had a paradigmatic shift in its interpretation of due process. What we now refer to as the *Lochner* Era actually began a few years prior to *Lochner v. New York* in the 1897 case of *Allgeyer against Louisiana*. Article 236 of the Louisiana State Constitution required that any corporation seeking to do business in Louisiana have a bricks-and-mortar presence within the state.¹⁷ A later decision by the Supreme Court of Louisiana applied the provision to businesses which sought to issue marine insurance within the state.¹⁸ E. Allgeyer & Co. had insured a shipment of cotton with the Atlantic Mutual Insurance Company, and in doing so violated Louisiana law.¹⁹ The Court ultimately ruled that the law was unconstitutional, and that the Fourteenth Amendment did prohibit such legislation as a violation of the freedom of contract. However, in this case, they did not make a blanket rule on the exact bounds of state police powers. In fact, Justice Peckham writing for the unanimous majority cautioned that “we do not intend to hold that in no such case can the State exercise its police power. When and how far such power may be legitimately exercised with regard to these subjects must be left for determination to each case as it arises.”²⁰ Although *Allgeyer* did not make a hard determination on the Constitutionality of all economic regulation, it did leave us this fundamental principle:

The 'liberty' mentioned in the amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace *the right of the citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.*²¹

Without a sweeping decimation of state economic regulations, the Court still made a very strong case for a substantive interpretation of the due process right, thus opening wide the door that had been unlocked in *Munn*.

If *Allgeyer* opened the door to economic due process, it was *Lochner* where the court took full advantage of the opportunity and ushered in one of the most controversial periods of Supreme Court jurisprudence in America. A far cry from his unanimous opinion eight years prior, Peckham's opinion in *Lochner* was only joined by four other justices, and served as a scathing rebuke of New York labor laws. In that case, the Bakeshop Act was held to be "unreasonable, unnecessary, and arbitrary interference with the right of the individual to...enter into...contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family."²² The law at issue in this case, among other things, prohibited NYC bakers from working in excess of 60 hours a week. Instead of being framed as a protection of workers, the legislature's basis for the law was public safety. The Court didn't agree. They held that there was "no reasonable ground" for the state to tell a baker how many hours he could work.²³ Public safety would have been a fine basis for the law, had it actually affected public safety in some way. More important than any test or weighing mechanism, was the fact that *Lochner* clearly ruled in favor of a right to contract as substantively covered under the Fourteenth Amendment.

The rule set in *Lochner* was used far and wide for several decades after its inception, but was quickly overturned in almost all of its applications. Without going into too much detail, I will provide a brief summary of these cases and rulings. The first substantial application of

the *Lochner* rule occurred in 1908 when it was applied to labor rights and used to strike down “yellow dog contracts”, which prevented workers from joining unions.²⁴ A series of cases from this era completely removed Congress’ ability to regulate child labor, and even removed the use of tax penalties against companies that employed children.²⁵ A further ruling invalidated a minimum wage that had been set for female employees of a DC children’s hospital.²⁶ And yet, despite the incredibly broad application of the economic right, its existence was short lived. Over the next few decades, rulings were passed down, one at a time, that invalidated every one of these cases.²⁷ For our purpose, the most significant of these rulings was *West Coast Hotel Co. v. Parrish*. This case marks the end of the *Lochner* era and in it, the court took a wide-ranging view of the government’s power to regulate economic activity. This case was likely motivated by the political climate of the time, as President Roosevelt had just announced the Judicial Procedures Reform Bill of 1937, known colloquially as the court-packing scheme. This bill was a thinly-veiled ploy to weaken the votes of older, more conservative justices by allowing the President to appointment up to six new justices in an effort to water down the voice of the existing court.²⁸ Regardless of the motivation behind the ruling, this case ended the Constitutionally protected right to economic freedom for all intents and purposes. In the case, an employee of the Cascadian Hotel in Washington sued her employer for the difference between what she had been paid, and what she should have been paid under the state minimum wage requirement. Chief Justice Hughes, writing for the majority, based his decision on the same ground that had been used in *Allgeyer*, he wrote, “what can be closer to the public interest than the health of women and their protection from unscrupulous and overreaching employers? And if the protection of women is a legitimate end of the exercise of state power, how can it be said that the requirement of the payment of a minimum wage fairly fixed in order to meet the very necessities of existence is not an admissible means to that end?”²⁹ It is worth noting, that through all of these cases, from *Allgeyer* to *West Coast Hotel Co.*, the predominant guiding factor in the Court’s reasoning was a consideration for public health and wellbeing. Though it is nowhere near the level of strict scrutiny which the Court would later impose, this series of cases examined laws to determine if their enforcement was necessary for the public wellbeing.

Throughout the entire saga of *Lochner's* evolution and devolution, there are two cases that stood strong, and successfully weathered the storm that tore apart the other rulings. These cases continue to guide our understanding of the parameters of substantive due process and parental rights and both have fact patterns that directly correspond to my question regarding the permissibility of homeschooling. I am, of course, referring to *Pierce v. Society of Sisters* and *Meyer v. Nebraska*. These two opinions are remarkably brief (two printed pages each) but their analysis is brilliant in its simplicity. In *Meyer*, the plaintiff was a teacher at a private church school who violated an odd Nebraska statute prohibiting the teaching of any language other than English to children who had not yet passed the eighth grade. The State Supreme Court found Meyer guilty of a violation and said that the law was not a violation of the Fourteenth Amendment because it was necessary to protect public safety and the political homogeneity of the American citizen body.³⁰ Justice McReynolds laid out in broad strokes the US Supreme Court's view of how the Fourteenth Amendment, correctly applied, invalidates this reasoning. "Without doubt, it [the Fourteenth Amendment] denotes not merely freedom from bodily restraint but also the right of the individual to . . . acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own consciousness."³¹ This is the first time we see the substantive due process right expanded to cover parental rights. While this case only tangentially touched a parental rights question, it did specify some of the unenumerated rights covered by the Fourteenth Amendment. Not only does Meyer specify the existence of a parental right, but it frames it in such a way that it can easily be applied to homeschooling. To "establish a home and bring up children" is exactly what most homeschooling parents are attempting to do. This exact line of reasoning was carried through in several important cases including *Pierce v. Society of Sisters* where it was used to explicitly affirm parental rights.³² In *Pierce*, the Court heard from Society of Sisters, an Oregon-based charity organization whose primary outreach was through a parochial school for children between the ages of eight and sixteen, and Hill Military Academy, a private military prep school for boys aged five to twenty-one.³³ However, these organizations' missions conflicted with Oregon's newly-passed Compulsory Education Act, due to go into effect in 1926. Their enrollment was already dropping off substantially and would completely go away if the law stood, as it required education in a public school and did not recognize private

or parochial schools. It is in this case that Justice McReynolds penned the now famous words, “The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”³⁴ Since this was a case about private boarding schools who were the guardians of the children they educated, this is obviously who the court was referring to. However, the reasoning behind the words, and the application to the facts of *Pierce* are such that this doctrine is ripe for application to the homeschooling question. *Pierce* and *Meyer* continue to stand among the few cases not discarded from the *Lochner* era, and for good reason. Their interpretation of the Fourteenth Amendment is reasonable, not overbroad, and it is still relevant today. These cases will guide our analysis of homeschooling’s Constitutionality as a due process right.

Post-Lochner Parental Rights Cases and the Continuation of Parentalism

After the *Lochner* era, the expansion of due process was stymied for a number of years while the Court overturned many of its prior rulings. For our purposes, the next important case was brought by members of the Old Order Amish religion, who fought against Wisconsin’s compulsory education statute.³⁵ Here the Yoder family challenged the compulsory public education of their children beyond the eighth grade. Wisconsin law required education in a public or private school of any child up to the age of 16, and respondents sought to pursue a different type of education independent of formal public or private schooling. While the Yoders’ method of education was not traditional, and did not follow a set curriculum, the Court ruled in their favor because this type of education was an essential part of the practice of the Old Order Amish religion.³⁶ Of particular issue in this case, was the sincerity and long-standing nature of the Yoder’s beliefs, and the effect on children of this educational system. The Court did find in favor of the Yoders’ religious belief, and also found any detrimental effects of this novel education model to be inconsequential. This could easily serve as a justification for homeschooling, but it would have a limited application to upper grade levels in religiously-motivated contexts only. These limitations are incompatible with the nature of the parental right as a fundamental right, and so we must continue our analysis further.³⁷

Troxel and Modern Parental Rights

The parental right was most recently revisited in the 2000 case *Troxel v. Granville*, where a custody dispute shed light on the Constitutional classification of parental rights. At issue in this case was a Washington law which allowed any person to petition a superior court for visitation rights of children, whether they were blood related related or otherwise.³⁸ Troxel and Granville shared a domestic partnership and had two daughters together. Their relationship ended in 1991 and Brad Troxel died in 1993 at which point the children lived with their mother, Tommie Granville. They continued to visit their paternal grandparents regularly for a few months, but in October of that year, Granville sought to limit the Troxels' visitation rights. They responded with legal action under the relevant Washington law. The Supreme Court ultimately ruled in Granville's favor, and in the process, paved the way for a new generation of parental rights protection. The *Troxel* case is very important for our purposes, and Justice O'Connor's treatment of the parental right as a fundamental one further emboldens my claim regarding the constitutionality of homeschooling. Justice O'Connor began the majority opinion by tracing the lineage of the parental right back to a substantive reading of the Fourteenth Amendment's Due Process Clause. "We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, 'guarantees more than fair process.'"³⁹ The Court further stated that the interest of parents in the "care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court."⁴⁰ This high duty of parents has long been recognized in American law as an essential liberty enjoyed by American citizens, and *Troxel* showed this by tracing it back through *Pierce*, *Meyer*, *Yoder*, and other equally important, but less seminal cases. The Court ultimately concluded that it "cannot...be doubted" that the Constitution protects the "fundamental right of parents to make decisions concerning the care, custody, and control of their children." This ruling represents a huge affirmation of the parental right which previously had not been strongly codified in precedent. However, it is the reasoning that comes after this ruling that is particularly helpful and can be of assistance in determining the limitations on what we now know to be a fundamental right. The ruling was not against the specific effect of the Washington law, but rather its "sweeping breadth."⁴¹ Ever since *Meyer* and *Pierce*, there has been a standing presumption that an

apt parent will act in the best interest of his or her children. The law in question granted visitation rights if such visitation was deemed to serve “the best interest of the child.”⁴² Not only would this put the actions of the parents up for review with or without cause any time another party wanted visitation rights, but the aptness of the parents need not be considered. “[I]n practical effect, in the State of Washington a court can disregard and overturn *any* decision by a fit custodial parent concerning visitation...based solely on the judge’s determination of the child’s best interests.”⁴³ In the present case, the court made no determination of whether Granville was an unfit parent, which is essential because of the presumption in favor of fit parents to act in the best interest of their children. In closing, Justice O’Connor made clear that this ruling did not remove all federal control of parents, but that it be limited by a standard. While the Court declined to name that standard, it reaffirmed that the parental right is in fact “fundamental” and that the state cannot infringe on it “because a judge believes a ‘better’ decision could be made.”⁴⁴

Several scholars have also dealt with the question of the parental right. Two authors conflict on the ideology behind *Pierce* and *Meyer*. The most widely cited author on the subject is Barbara Bennett Woodhouse in her article “Who Owns the Child?”⁴⁵ In this tome on the history of American parental and children’s rights, Woodhouse examines the history of the language laws at issue in *Meyer* and the background of the universal schooling mandate in *Pierce*. In doing so, Woodhouse argues that the Court took radical positions in these cases, as the laws in both were broadly supported and had been enacted by a majority of states. She shows that issues surrounding these cases highlight a clash between the desire for family autonomy and an odd brand of xenophobic populism. Woodhouse then takes an almost Straussian view of *Pierce* and *Meyer* by painting them as cases that were really decided because child-ownership and family sovereignty ideology, not the traditional understanding in which they stood for parental rights in line with the child’s interest. She explains that “along with protecting religious liberty and intellectual freedom, Meyer and Pierce constitutionalized a narrow, tradition-bound vision of the child as essentially private property.”⁴⁶ Later, she speculates that this patriarchal mindset causes courts to give undue deference to natural parents when negotiating custody disputes and all but ignore the best interest of the child.⁴⁷ While this unique interpretation of a clearly-written judicial opinion is conceptually interesting, it

did not stand the test of time. Regardless of the true motivation behind these cases, they still stand today. Since Woodhouse's publication, the Supreme Court has clarified its stance on the intersection of parental and children's rights such that there can be no doubt that the child's best interest is justice's primary concern.⁴⁸

Published the same year as Woodhouse's work, Stephen Gilles' paper argues that the Court was guided in these seminal cases by an ideology he terms "Liberal Parentalism." It is my argument that this has been the Court's guiding mindset all along, that it was the basis for the *Troxel* ruling, and, extended to a case directly touching on the legality of homeschooling, would cause a judge to find homeschooling a constitutional right. Gilles defines Liberal Parentalism as a matter of policy by which "states...defer to parents' educational choices unless they are plainly unreasonable." Gilles immediately draws an important distinction, that Liberal Parentalism is not opposed to children's rights, but that those rights ought to be limited. For example, children ought not to have control over their education as they often lack the maturity to make prudent decisions at such a young age.⁴⁹ The Court's *Yoder* decision is almost a poster child for Parentalism, as Wisconsin "failed to establish any overall harm to Amish children."⁵⁰ While Gilles later criticizes the *Yoder* Court for not articulating the Parentalist principle fully, their decision was correct, and had *Troxel* been decided at the time of publication, Gilles would have praised its result as well. In *Troxel*, the Court found there was no evidence that Granville was an unfit parent, and thus it deferred to her choices.⁵¹ Legal precedent is clear that absent a finding of harm or abuse, courts ought to defer to the parents.

Limitation of a Fundamental Right

After a review of the legal history and theory surrounding the issue of homeschooling, I will now show that actual home education is a protected Constitutional right and investigate what limitations could then be placed on homeschooling. Parental rights have been consistently recognized and protected by our courts and legislature for nearly a hundred years. But it wasn't until *Troxel*, that the Court finally granted the parental right standing as a fundamental right under the Constitution. Justice O'Connor wrote, "The Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be

made.”⁵² This quote comes with the obvious caveat that *Troxel* didn’t address the issue of homeschooling, but was a case about child visitation. While the facts are not parallel, the Court invoked the same standard that it has used countless times before to protect parents’ education choices, the substantive qualifications of the Fourteenth Amendment.⁵³ The same right used in those cases has been declared a fundamental right which means it is afforded extra protection under the law. In order to for a law to violated a fundamental right, the government must prove that the law is narrowly tailored to achieve a compelling state interest. This is known as strict scrutiny and is the highest protection that can be afforded to a Constitutional right. The long history of education cases decided under the parental right make a compelling case for the inclusion of educational choice in this fundamental right. Gilles agrees, stating in his article that the Parentalist history of the Supreme Court leads to the conclusion that homeschooling ought to be protected in addition to public and private education.⁵⁴ The Supreme Court has recognized a fundamental state interest in educating children. Compulsory education laws are Constitutional, but cannot rule out homeschooling, as the interest is in education, not a specific type of education.⁵⁵ While home education has yet to reach our highest court, language from *Meyer* and *Pierce*, almost a century ago, spells out the parental right in a strongly Parentalist framework that I argue clearly includes homeschooling. Meyer said that “without doubt, it [The Fourteenth Amendment] denotes not merely freedom from bodily restraint but also the right of the individual to...establish a home and bring up children, to worship God according to the dictates of his own conscience.”⁵⁶ A key part of bringing up children is their education, and, since this case dealt with educational freedom, it is not unreasonable to extend this logic to protect home education where basic requirements are met. The *Pierce* Court struck down a law because it “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.”⁵⁷ To be fair, homeschooling was not popular in America in the same form that it is today, but the Court did rule that the parental right included the right to educate children as parents see fit. Nothing about this decision indicates that home education would not be included in that protected class.

All of this precedent, combined with the fundamental right classification shows that America has a long history of protecting the parental right. Educational freedom is just as essential today as it was a hundred

years ago, and there is very little reason to think that home education would not be protected as a fundamental right. While I am not arguing that homeschooling should be unrestricted, cases of that nature ought to be afforded strict scrutiny review.

The Parentalist framework of education rights continues when we examine the cases where this freedom is regulated. While they should be few and far between, reasonable regulations may arise when there is a compelling governmental interest. In *Parham v. JR*, the Court specified that, “absent a finding of neglect or abuse...the traditional presumption that the parents act in the best interests of their child should apply.”⁵⁸ While homeschooling hasn’t been addressed by the Supreme Court, it has an interesting history in State court. With only a few key exceptions, the Parentalist understanding is applied at that level as well to protect parental rights.

In 1961, the California Court of Appeals ruled that the state’s compulsory education law prevented a veterinarian and his wife from educating their children at home.⁵⁹ However, this was only after an inquiry by the school into the children’s education and a court-ordered psychiatric evaluation. The court determined the children to be lacking in several key areas of education.⁶⁰ It is also worth noting that type of education we now know as “homeschooling” didn’t come into existence in America until well into the 1970s, and, according to the Oxford English Dictionary, the term “home-school” didn’t enter common usage until the early 1980s.⁶¹ While this case does prohibit one specific type of education, there are several reasons this case is distinct from our question today. The primary reason is that in this case, the court did find that the parents were unqualified to teach their children and had been failing in their attempts to do so. Since the 1960s, home education has grown in popularity. As it has become mainstream, its approach has been narrowed to teach children the same things they would learn in public schools. Today, a handful of states required a high school diploma for a parent to teach, but most states impose no requirements.⁶² In 2008, the Court of Appeal of California handed down decision in the case of *In re Rachel L.* that made homeschooling in the state unconstitutional.⁶³ While it caused significant public outcry at the time, the case was later reheard and the previous ruling vacated.⁶⁴ Even in state court, the precedent of our legal system shows a strong Parentalist influence.

In each of these cases and the dozens of similar one, either the case didn't address modern homeschooling, regulated it in accordance with a compelling government interest, or was later overturned.⁶⁵

After seeing the long and consistent history of Liberal Parentalism through our Supreme Court cases, it becomes clear that parental rights are deeply rooted in the substantive portions of our Fourteenth Amendment as a fundamental right. One of the most-used applications of this right is the right of parents to control and direct the education of their children. Both our state and federal legal precedent shows that the choice to education children at home is protected as well. Even with standing as a fundament right, the state is still able to “reasonably to regulate all schools... [and to require] that certain studies plainly essential to good citizenship must be taught.”⁶⁶ It is certainly within the state's interest to make sure its citizens are being properly educated, but in order to inhibit the exercise of this fundamental right, the state must show a compelling interest in doing so.

NOTES

- ¹ See *Slaughterhouse Cases*, 83 U.S. 36 (1873).
- ² See *Allgeyer v. Louisiana*, 165 U.S. 578 (1897).
- ³ See e.g. *Lochner v. New York*, 198 U.S. 45 (1905); *Adair v. United States*, 208 U.S. 161 (1908); *Adkins v. Children’s Hospital*, 261 U.S. 525 (1923); *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sister*, 268 U.S. 510 (1925).
- ⁴ *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).
- ⁵ 268 U.S. 510 at 535.
- ⁶ Not to be confused with the Privileges and Immunities Clause of Art. IV Sec. 2 which requires fair treatment by one state of another state’s citizens. Also, see e.g. David M. Wagner, “Thomas V. Scalia on the Constitutional Rights of Parents: Privileges and Immunities, or Just Spinach?”, *Regent University Law Review* 24 (2011): 49–82.
- ⁷ 83 U.S. 36 at 74.
- ⁸ 83 U.S. 36 at 71.
- ⁹ See *Troxel v. Granville*, 530 U.S. 57 (2000) at 80 (Thomas, J., concurring in the judgment) and also *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) at 3059 (Thomas, J., concurring in part and concurring in the judgment) (“Instead, the right to keep and bear arms is a privilege of American citizenship that applies to the States through the Fourteenth Amendment’s Privileges or Immunities Clause.”).
- ¹⁰ See *McDonald v. City of Chicago*, 123 S. Ct. 3020 (2010) at 3030-3031.
- ¹¹ See *Munn v. Illinois*, 94 U.S. 113 (1876).
- ¹² 94 U.S. 113 at 133.
- ¹³ *Id.* at 130.
- ¹⁴ *Id.* at 124.
- ¹⁵ *Id.* at 131.
- ¹⁶ *Id.* at 135.
- ¹⁷ Article 236 of the Louisiana State Constitution (1897) (“No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the State, upon whom process may be served.”).
- ¹⁸ See *State v. Williams*, 46 La. Ann. 922 (1894).
- ¹⁹ See *Allgeyer v. Louisiana*, 165 US 578 (1897) at 585-587, 592.
- ²⁰ *Id.* at 590.
- ²¹ *Id.* at 589. [Emphasis added]

- ²² See *Lochner v. New York*, 198 US 45 (1905) at 56.
- ²³ *Id.* at 57. (“The question whether this act is valid as a labor law, pure and simple, may be dismissed in a few words.”).
- ²⁴ See *Adair v. United States*, 208 US 161 (1908).
- ²⁵ See *Hammer v. Dagenhart*, 247 U.S. 251 (1918); *Bailey v. Drexel Furniture Co.*, 259 U.S. 20 (1922); etc.
- ²⁶ See *Adkins v. Children’s Hospital*, 261 U.S. 525 (1923).
- ²⁷ See *Coppage v. Kansas*, 236 US 1 (1915) (allowed employers to make contracts banning union participation); *United States v. Darby Lumber Co.*, 312 U.S. 100 (1941) (upheld the passage of the Fair Labor Standards Act de facto invalidating *Hammer v. Dagenhart* and *Bailey v. Drexel*); and *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) (directly invalidated *Adkins v. Children’s Hospital* and ultimately, *Lochner*).
- ²⁸ *Parrish*, The Hughes Court (2002).
- ²⁹ See *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) at 398.
- ³⁰ See *Meyer v. State*, 107 Neb 657 (1922).
- ³¹ See *Meyer v. Nebraska*, 262 U.S. 390 (1923) at 399.
- ³² See *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) at 534.
- ³³ *Id.* at 532 and 533.
- ³⁴ *Id.* at 535.
- ³⁵ See *Wisconsin v. Yoder et al.*, 406 U.S. 205 (1972) at 207.
- ³⁶ *Id.* at 235.
- ³⁷ See e.g. *Troxel v. Granville*, 530 U.S. 57 (2000), *Reno v. Flores*, 507 U.S. 292 (1993) at 295 (claimed right in contrast to established parental right).
- ³⁸ Revised Code of Washington Sec. 26.10.160(3).
- ³⁹ See *Troxel v. Granville*, 530 U.S. 57 (2000) at 65. Citing *Washington v. Glucksberg*, 521 U.S. 702 (1997) at 719.
- ⁴⁰ *Id.* at 65.
- ⁴¹ *Id.* at 73.
- ⁴² Revised Code of Washington Sec. 26.10.160(3).
- ⁴³ See *Troxel v. Granville*, 530 U.S. 57 (2000) at 67.
- ⁴⁴ *Id.* at 73.
- ⁴⁵ Woodhouse, Barbara Bennett. “Who Owns the Child: Meyer and Pierce and the Child as Property.” *William and Mary Law Review* 33, no. 4 (1992): 995-1122.
- ⁴⁶ See Woodhouse at 997.

- ⁴⁷ See Woodhouse at 1042, (“In my view, this property rhetoric sheds important light not only on Meyer and Pierce, but on the many ways in which courts and authorities act inconsistently with a trusteeship or best interest theory of adult power over children”).
- ⁴⁸ See *Troxel v. Granville*, 530 U.S. 57 in its entirety and at 65 (quoting *Pierce*), 67, 68-72 (admonishing the lower court for failing to consider child’s best interest properly), 75.
- ⁴⁹ See Gilles at 11.
- ⁵⁰ See Gilles at 12.
- ⁵¹ See *Troxel v. Granville* at 68.
- ⁵² See *Troxel* at 73.
- ⁵³ See *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), *Wisconsin v. Yoder et al.*, 406 U.S. 205 (1972), *Parham v. JR*, 442 U.S. 584 (1979), etc.
- ⁵⁴ Gilles at 27.
- ⁵⁵ See *Pierce*, *Yoder* throughout.
- ⁵⁶ See *Meyer v. Nebraska* at 399.
- ⁵⁷ See *Pierce v. Society of Sisters* at 3.
- ⁵⁸ See *Parham v. JR*, 442 U.S. 584 (1979)
- ⁵⁹ See *In Re. Shinn*, 195 Cal. App. 683 (1961).
- ⁶⁰ See *In Re. Shinn* at 688.
- ⁶¹ Hughes, Kristine. “School Offers New Twist on Classical Education.” *The Dallas Morning News*, June 12, 2006. Also “Home-School, v.” OED Online. Oxford University Press. Accessed August 8, 2016.
- ⁶² Parent Qualifications – Coalition for Responsible Home Education.
- ⁶³ *In re Rachel L.*, 73 Cal. Rptr. 3d 77 (2008).
- ⁶⁴ *Jonathan L. v. Superior Court*, 165 Cal. App. 4th 1074 (2008).
- ⁶⁵ See *E.G. State v. Hoyt*, 84 NH 38 (1929), *People v. Turner* 121 Cal. App. 2d Supp. 861 (1953), *People v. DeJonge*, 501 NW 2d 127 (1993), *McIntyre v. El Paso Independent School District*, (Supreme Court of Texas 2015), etc.
- ⁶⁶ *Pierce v. Society of Sisters* at 534.

BIBLIOGRAPHY

- Adair v. United States, 208 US 161 (Supreme Court 1908).
- Adamson v. California, 332 US 46 (Supreme Court 1947).
- Adkins v. Children’s Hospital of DC, 261 US 525 (Supreme Court 1923).
- Allgeyer v. Louisiana, 165 US 578 (Supreme Court 1897).
- Bailey v. Drexel Furniture, 259 US 20 (1922).
- Brown v. Board of Education, 347 US 483 (Supreme Court 1953).
- Bybee, Jay S. “Substantive Due Process and Free Exercise of Religion: Meyer, Pierce and the Origins of Wisconsin v. Yoder.” *Capital University Law Review* 25 (1996): 887–932.
- Coppage v. Kansas, 236 US 1 (Supreme Court 1915).
- Gilles, Stephen G. “Liberal Parentalism and Children’s Educational Rights.” *Capital University Law Review* 26 (1997): 9–44.
- Hammer v. Dagenhart, 247 US 251 (Supreme Court 1918).
- “Home-School, v.” *OED Online*. Oxford University Press. Accessed August 8, 2016. <http://www.oed.com.ezproxy.baylor.edu/view/Entry/260336>.
- Hughes, Kristine. “School Offers New Twist on Classical Education.” *The Dallas Morning News*, June 12, 2006.
- In re Rachel L., 73 Cal. Rptr. 3d 77 (Court of Appeal, 2nd Appellate Dist., 3rd Div. 2008).
- In re Shinn, 195 Cal. App. 2d 683 (California Court of Appeals. Fourth Dist. 1961).

Jonathan L. v. Superior Court, 165 Cal. App. 4th 1074 (Court of Appeal, 2nd Appellate Dist., 3rd Div. 2008).

Lochner v. New York, 198 US 45 (Supreme Court 1905).

McDonald v. City of Chicago, Ill., 130 S. Ct. 3020 (Supreme Court 2010).

McIntyre v. El Paso Independent School District, (Supreme Court of Texas 2015).

Meyer v. Nebraska, 262 US 390 (Supreme Court 1923).

Meyer v. State of Nebraska, 107 Neb 657 (1922).

Munn v. Illinois, 94 US 113 (Supreme Court 1877).

“Parent Qualifications – Coalition for Responsible Home Education.” Accessed August 8, 2016. <http://www.responsiblehomeschooling.org/policy-issues/current-policy/parent-qualifications/>.

Parker v. Hurley, 514 F. 3d 87 (Court of Appeals, 1st Circuit 2008).

Parrish, Michael E. *The Hughes Court: Justice, Rulings, and Legacy*. ABC-CLIO, 2002.

People v. DeJonge, 501 NW 2d 127 (Supreme Court 1993).

People v. Turner, 121 Cal. App. Supp. 2d 861 (California Court of Appeals 1953).

Pierce v. Society of Sisters, 268 US 510 (Supreme Court 1925).

Reno, Attorney General, Et Al. v. Flores Et Al., 507 U.S. 292 (U.S. Supreme Court 1993).

Roe v. Wade, 410 US 113 (Supreme Court 1972).

- Slaughter-House Cases, 83 US 36 (Supreme Court 1873).
- South Dakota v. Dole, 483 US 203 (Supreme Court 1987).
- State v. Hoyt, 84 NH 38 (Supreme Court of New Hampshire 1929).
- State v. Williams, 46 La. Ann. 922 (1894).
- Troxel v. Granville, 530 US 57 (Supreme Court 2000).
- United States v. Darby, 312 US 100 (Supreme Court 1941).
- United States v. Kahriger, 345 US 22 (Supreme Court 1953).
- Wagner, David M. “Homeschooling As a Constitutional Right: A Close Look At Meyer and Pierce and the Lochner-Based Assumptions They Made About State Regulatory Power.” *Oklahoma City University Law Review* 39, no. 3 (Fall 2014): 385–413.
- Wagner, David M. “Thomas V. Scalia on the Constitutional Rights of Parents: Privileges and Immunities, or Just Spinach?” *Regent University Law Review* 24 (2011): 49–82.
- Washington v. Glucksberg, 521 US 702 (Supreme Court 1997).
- West Coast Hotel Co. v. Parrish, 300 US 379 (Supreme Court 1937).
- Wisconsin v. Yoder, 406 US 205 (Supreme Court 1972).
- Woodhouse, Barbara Bennett. “Who Owns the Child: Meyer and Pierce and the Child as Property.” *William and Mary Law Review* 33, no. 4 (1992 1991): 995–1122.

This paper examines the effects of truth commissions and human rights individual prosecutions on transitional justice in Latin America. It seeks to compare the effects these two political transitional processes and their contributions to rebuilding trust between citizens and the government after an abusive authoritarian regime. This paper proposes that a combination of truth commissions and prosecutions ought to be used to most effectively provide justice for victims and build a society in which perpetrators and victims can live in peace.

Foundational Justice: Human Rights Accountability as a Threat to Democracy in Contemporary Latin America

Rebecca Voth

“We will not enjoy security without development, we will not enjoy development without security, and we will not enjoy either without respect for human rights.”- Kofi Annan ¹

After an interlude of twentieth century authoritarian regimes, Latin America is finally experiencing a third wave of democracy. Many scholars find this third wave to be unprecedented and surprising given its temporally short proximity to anti-democratic regimes. Scholars have remarked incredulously that in only twenty years, Latin America has completely transformed from a region dominated by dictators to one that is striving for and successfully implementing liberal democracy in all but two nations.² While this transition is astonishing, Latin America still faces many challenges as it continues to build and develop successful democracies. Threats to this new democratic era include economic inequality, the rise of populism, and a lack of protection for individual rights. While these issues focus mostly on the present situation and the shortcomings of the regimes in place, I argue that the most significant threat to democracy in contemporary Latin America lies in the region’s past and continues to haunt current states. As Kofi Annan argues in the opening quote, nations cannot begin to experience security or development unless they establish respect for human rights. In this paper I will

argue that the lack of accountability for human rights abuses is the most significant democratic threat Latin America faces. I will begin by demonstrating the significant damage that a history of human rights abuse causes; I will examine their toll on civil trust and political unity, and how the manner in which states choose to address them has significantly affected the development of a liberal democracy. Next I will embark on a comparative study of truth commissions and human rights prosecutions, comparing the strengths and weaknesses of each to the construction of a democratic regime and restoration of civil society. Finally, I will suggest that a combination of truth commissions and criminal justice prosecutions can solve this threat, restoring justice and unity to the broken states of Latin America.

Threat to Democracy

Not only do human rights abuses weaken social unity; they also destroy trust between citizens and their government. Citizens in a state that has just concluded an intrastate conflict experience a deeply divided society, and are likely to have difficulty trusting both their fellow citizens and the government. However, the transition to a democracy requires a state to possess a strong sense of unified support from its citizens. When a government lacks legitimacy or approval, citizens often fail to participate in the democratic process. Perhaps worse, they may actively undermine the regime, and even replace a liberal democracy with an illiberal regime. In Brazil, current approval ratings for government leadership stand at only 15%.³ This sense of civil distrust manifests itself in public protests, demonstrations, and congressional pursuit of presidential impeachment. Empirical evidence shows that regime stability depends heavily upon civil trust and approval, especially following the conclusion of domestic conflict. Given the government's prominent role in political repression during an authoritarian period, citizens tend to distrust any new government. Sometimes, this distrust exists for good reason. For example, in Chile, the judicial branch was "at best complacent, at worst complicit" in abuses committed, and remained legally loyal to the old authoritarian regime until 1998, almost a full decade since the nation's transition to democracy.⁴

In a 2001 study, University of Arizona researchers concluded that, "trust strengthens citizens' beliefs that government is responsive and encourages citizens to express their demands via participation."⁵ The

absence of political trust after a time of conflict greatly impacts political participation, and democracy suffers as a consequence. Without trust and unity, a liberal democracy cannot grow. In fact, I contend that when such serious threats as human rights violations go unpunished, the resulting civil disunity and political distrust impedes states from making progress on other fronts such as civil liberties or inequality. Instead, states must reconcile the fractured society that makes up their populace, and restore the trust and unity of their citizens. Faced with these issues, there are several courses of action from which a government can choose. Two of the most popular are the use of truth commissions and human rights trials.

Marie Smyth defines these societies in need of restorative justice after conflict as those “in which citizens (and state agents) have killed and harmed each other systematically across fault-lines, or ethnic, racial, or national difference.”²⁶ The presence of societal discord necessitates restoration of a unified society after the terror of an abusive regime. In the process of building a new regime, a state may choose how to address past abuses. One option, according to Mark Freeman, is to “forget the past in favor of building a new and better future” by granting amnesty for all persons involved in conflict. However, this potion represents the complacency that ultimately turns into what Freeman calls a “recipe for disaster.” He argues “where past human rights violations are ignored and the victims are forgotten, there is a cancer in such a society that remains dormant and available for use or abuse by some or other future despotic power.”²⁷ Although blanket amnesty might be the easiest path for transitional states in the short term, it paves the way for long-term abuse and a society that cannot support a stable democracy. Instead, states must decide how to best address the atrocities of the past in a way that is conducive to social healing as well as justice and political stability in the long-term. Since blanket amnesty and complacency are not adequate solutions, I turn now to alternatives faced by states that choose a middle path of truth commissions or criminal prosecution.

Truth Commissions

The formation of a truth commission is the first option states may adopt to address human rights accountability. Effective truth commissions successfully encourage unity while simultaneously revealing the reality of atrocities committed. However, this mechanism may lack

the power and resources necessary to effectuate lasting change. In this section, I will address the advantages and disadvantages of employing a truth commission to address human rights abuses. I will begin by examining the internationally acclaimed Truth and Reconciliation Commission formed in South Africa following the end of apartheid, before moving on to Latin American examples from Guatemala and Chile that have proven less successful. In order to find out what makes this approach popular among scholars, I will outline the criteria necessary for a successful truth commission, using the South African Truth and Reconciliation Commission (TRC) as an example. First, however, it is important to establish what a truth commission means. Smyth refers to truth commissions as truth mechanisms purposed to “shed light on human rights abuses” from the past, “raise public consciousness, and focus on the human consequences” as well as to aid in the “process of societal transition out of political violence.”⁸ According to Elizabeth Kiss in Robert Rotberg’s book, truth commissions strengthen civil society and provide restorative justice, as they are simultaneously “investigative, judicial, political, educational, therapeutic” and tend to be victim-centered.⁹ For the purposes of this paper, I will define a successful truth commission as one that supports the development of a united political and social body striving toward liberal democracy.

In Robert Rotberg’s book, David Crocker enumerates all necessary responsibilities of a truth commission as the following: ferret out the truth, provide salutary platforms for victims and families, sanction violators effectively, uphold and strengthen the rule of law, compensate victims through reparations, contribute to institutional reform and long-term national development of the nation, reconcile the defeated with the victorious, and foster public debate leading to publicly acceptable compromises.¹⁰ Similarly, Freeman recommends the powers of statement taking, state-issued subpoena power, search and seizure, public hearings, and publication of findings as essential to an effective truth commission.¹¹ All of these factors assume the existence of a strong federal government capable of implementing the proper institutions to support such a complex system. South Africa had this strong government system, and was thus able to support an effective truth commission, while Latin America has tended to lack the resources necessary to properly support the same.

If a truth commission has proper legal power and support from a government that genuinely desires to investigate the whole truth, it has the tools to be effectively comprehensive and inclusive, as well as to heal sharp divides. First, successful truth commissions are comprehensive. Rotberg points out that truth commissions allow for both sides to recognize victimization and wrongdoing where a trial may not. Whereas in a trial there are two parties investigating a single answer with an absolutist tendency toward a single truth, a truth commission comprehends every side. It does not rest upon the binary assumption of a two-sided story, but instead recognizes that there are an infinite number of sides to each story. Second, commissions allow for healing through forgiveness.

Prosecutions tend to divide. Whether it is lining streets to the courthouse with protestors or creating politically charged headlines around the world, as in Chile's prosecution of Pinochet, trials can contribute to and possibly aggravate an already divided society.¹² However, effective truth commissions allow, and even demand, that perpetrators face their victims in public. This gives victims an opportunity to face their perpetrator on equal ground, and learn to live in the same society together. Exemplifying the equality of democracy, truth commissions can encourage a liberal attitude of egalitarianism as victims learn to interact with perpetrators in political society. Third, truth commissions are inclusive. One distinctive marker of the South African TRC was that all testimony was public. Anyone and everyone were permitted to know the truth. As Freeman writes, "public hearings can help provide a privileged public platform for victims, and thereby serve as an indirect form of acknowledgement and moral restoration for past suffering," as well as "secure support for subsequent justice, reparation, and reform efforts" from citizens.¹³ This aspect of public testimony encourages democracy by showcasing the rights of each individual to know the truth about their regime and to fight for the protection of rights in the in the formation and perpetuation of a new regime.

The TRC in South Africa, often touted as an international example of reconciliatory success among truth commissions, was supported by the government and delegated the necessary power to meet the goals enumerated by Crocker and Freeman. First, its creation by parliament established immediate governmental support for all of the body's actions. The parliament was more diverse in political opinion than the judicial system, and was therefore more likely to conduct a fully comprehensive review of facts. The commission's proximity to the government

also gave it power to access the information necessary to garner credibility with citizens. The TRC was granted subpoena power and backed by a bill that gave it independent legal authority to grant amnesty on an individual basis.¹⁴ These strong legal powers gave the commission access to information that actors were sometimes unwilling to share. Freeman argues that truth commissions need subpoena power to remain efficient and to avoid possible corruption from the judicial branch; it is best for truth commissions to have subpoena power.¹⁵ Compared to the truth commissions in Latin America, the TRC was successful because it had proper government support with legal consequences. Though sixteen truth commissions have been established in Latin America, none has ever been granted independent subpoena power.¹⁶ This is one indication that, while truth commissions may have many positive impacts on truth revelation, they may be an inadequate source of accountability for human rights violations if not properly resourced.

Despite improvements made possible by effective truth commissions, the obstacles to creating a body capable of such change may prove overwhelming for newly transitioning regimes, and may even contribute to the further fracturing of society if improperly implemented. In Latin America, sixteen truth commissions have been established in response to human rights violations committed by authoritarian regimes. While some have been more successful than others, I contend that none of these commissions has done enough on its own to properly address the divides created by a lack of accountability for human rights violations. Many of the commissions created in the region have lacked the resources and authority necessary to make effective changes. For example, the Guatemalan truth commission was established in 1997 to address violations committed by militia groups from the 1950s to 1970s. This commission was not permitted to name any victim or perpetrator by name. Instead the commission conducted private interviews and reported only statistics.¹⁷ Even thirty years after the violations, the government was still unwilling to implement the commission's advice. While the recommendations provided by the commission elicited some response, none of the factors that have been proven to heal broken societies and hold perpetrators accountable, such as those enumerated by Rotberg, Freeman, and Smyth, are present. The commission's recommendations went largely ignored by the government who responded with a public apology and national Remembrance Day, but failed to pay reparations or reform political structures.¹⁸ This type of commission does not en-

courage social or political unity in the way public testimony does, nor does it build political trust. Guatemala's is a prime example of a truth commission that failed to address the problem for which it was created. If the government desires to develop a strong democracy, then it must be responsive to the recommendations of such commissions and seek to rebuild the people's trust.

One commission that went further than the Guatemalan commission in changing in government institutions and social trust was the Argentine Commission on the Disappeared. Formed in 1983 to investigate disappearances that occurred for the seven years prior, this commission was established immediately after the government's transition to a democratic regime. This quick response aided the commission in finding accurate truth and in quickly addressing the social and political problems created by the previous military regime. As a transitioning regime in its most formative period, it is vital that any previous human rights violations are given a strong institutional response immediately upon transition.¹⁹ Not only did this commission work quickly, it worked effectively. In 1984 upon the publication of its report, the commission recommended both judicial reforms and reparation payments to families, both of which were immediately taken up by the government and delivered as promised.²⁰ Additionally, the extensive report was extremely helpful in the successful prosecution of the military junta as well as five generals who were imprisoned after being convicted as charged.

Contemporary democratic differences between these two nations exemplify how effectively (or ineffectively) they each transitioned. Freedom House currently ranks Guatemala as "Partly Free" with an overall score of 54 out of 100, while it ranks Argentina as "Free" with a score of 79 out of 100.²¹ While these statistics are not entirely dependent upon the state's actions taken in the wake of democratic transition, I argue that the state's actions are a significant contributing factor. Recently, Guatemala has held successful human rights trials, which, I will argue, will aid the nation in recovery by promoting democratic trust and illustrating the need for accountability on human rights violations.

Human Rights Trials

By choosing to implement human rights trials, nations can promote the rule of law and deter further abuse. In a transitional government, the choice to prosecute perpetrators carries similar responsi-

bilities to truth commissions, but also carries the possibility of much more serious consequences and sanctions. New governments often fear the implementation of these trials due to the high stakes prosecution carries with it. While a human rights trial shares the same truth-revealing aspect as a truth commission, the key differences lie in government execution and punishment of perpetrators. First, the government plays a much larger role in the prosecution of officials involved in past abuse that may still have a role in the current government. Prosecutors must find a way to systematically accept and investigate claims as well as identify perpetrators, which can be an overwhelming task for a newly formed government. For example, in Chile, following the collapse of the military regime and the replacement of Pinochet, the judicial system saw over three hundred appeals filed.²² However, because the government in Chile did not immediately prosecute perpetrators and instead granted amnesty to most involved, those appeals did little to aid victims in receiving justice.

The benefits of human rights trials include deterrence, public attention and retribution. In a 2010 study, scholars concluded that human rights trials “have a deterrence impact beyond the confines of a single country” as they increase the cost of committing abuses.²³ In her book *The Justice Cascade*, Kathryn Sikkink argues that the highly publicized human rights trials that have substantially increased in recent decades results in a “cascade of justice” that deters potential perpetrators of human rights violations around the world.²⁴ Not only does public attention decrease the possibility that other world leaders will engage in human rights abuses, but it also incentivizes citizens to become involved in the process of uncovering truth and appropriating just punishment to the guilty. This assignment of punishment also lends legitimacy to the regime and healing to the victims. The government is seen enforcing the rights of the people and supporting the democratic system. Additionally, the people have the opportunity to gain complete justice that they otherwise would not from the mere publication of truth through a commission. In fact, one journalist said in response to the truth commission process in South Africa, “[the truth commission] is a denial of justice. Without justice, how can the victims feel healed?”²⁵ After testifying either publicly as in South Africa, or in a private hearing as was more common in Latin America, the perpetrators receive no form of retributive punishment or sanctions in response to their horrendous actions. The trial process of assigning guilt and doling out punishment can give

victims a higher sense of support from the new institutions of their state and a sense that justice has been done for the crimes committed against them. Perhaps more importantly, effective human rights prosecutions can encourage the development of a strong judicial system and rule of law in the nation.

The Combination Approach

It would appear that the best solution for the accountability of human rights abuses is a combination of truth commissions and criminal trials. As evidenced by the claims enumerated in this paper about truth commissions and human rights trials, each has its own benefits to supporting democracy and alleviating the threat of return to an authoritarian regime of social and political distrust. Freeman argues that both truth commissions and human rights trials “contribute to the objectives of truth, justice, reparation, reform, public debate, and the validation of victim experience.”²⁶ Working in tandem, truth commissions can provide the basis of information from which a judicial branch can begin to process and prosecute violators. The establishment of a truth commission immediately upon the transition to liberal democracy can aid in giving the judicial system time to adjust to the new regime as well as support victims by providing an outlet in which they can tell their story and feel supported by their new government. These factors both combat the serious threats to democracy posed by past human rights violations by lending legitimacy to the new government, and encourage the healing of social divides for a united populace that supports democratic institutions. Some nations have successfully used truth commissions and trials in conjunction. For example, in both Peru and Argentina, the truth commission forwarded its files directly to the office of the prosecutor.²⁷ In other accountability processes, the courts have handled all serious criminal offenses while truth commissions have taken care of everything else, ensuring that the judicial system is not overburdened.²⁸ In this way, it is possible for both forgiveness and justice to occur in a society divided by abuses of the past.

In conclusion, as the most significant threat to democracy in contemporary Latin America, accountability for past human rights violations should be addressed through a combination of public truth-telling and criminal prosecutions. A failure to properly address issues of social and political distrust that result from the human rights abuses of a pre-

vious regime can lead to an extremely unstable democracy that is likely to return to authoritarianism because citizens fail to believe in the new system. In response to these issues, states ought to emphasize uncovering the truth of what occurred during the abuse, making that information available to the nation, and publicly punishing perpetrators. In this way, states can heal the divide among citizens by reconciling differences in the public forums of truth commissions, and can secure justice by following up with trials that discourage future leaders from abusing citizens, bringing justice to victims. As Kofi Annan said, nations cannot work toward development or security without respect for human rights. That is why each nation in Latin America must strive to reconcile the abuses of the past in order to build a more democratic future.

NOTES

- ¹ Annan, 2005.
- ² Mainwaring, *Journal of Democracy*, 101–14.
- ³ Gallup Inc, 2016.
- ⁴ Roht-Arriaza, *The Pinochet Effect*, 69.
- ⁵ Mishler and Rose, *Comparative Political Studies*, 30–62.
- ⁶ Smyth, *Truth Recovery and Justice after Conflict: Managing Violent Pasts*, 2.
- ⁷ Freeman, *Truth Commissions and Procedural Fairness*, xi.
- ⁸ Smyth, *Truth Recovery and Justice after Conflict*, 6-7.
- ⁹ Kiss, *Truth v. Justice: The Morality of Truth Commissions*, 70.
- ¹⁰ Crocker, *Ibid.*, 99-121.
- ¹¹ Freeman, *Truth Commissions and Procedural Fairness*.
- ¹² Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights*, 79-83.
- ¹³ Freeman, *Truth Commissions and Procedural Fairness*.
- ¹⁴ Rotberg and Thompson, *Truth v. Justice*.
- ¹⁵ Freeman, *Truth Commissions and Procedural Fairness*.
- ¹⁶ “United States Institute of Peace,” and Freeman, *Truth Commissions and Procedural Fairness*, 189.
- ¹⁷ Rotberg and Thompson, *Truth v. Justice*.
- ¹⁸ “United States Institute of Peace.”
- ¹⁹ Larry May, *After War Ends: A Philosophical Perspective*.
- ²⁰ “Truth Commission: Argentina,” *United States Institute of Peace*.
- ²¹ “Freedom in the World 2016.” | Freedom House. 2016.
- ²² Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights*, 69.
- ²³ Kim and Sikkink, *International Studies Quarterly*, 939–63.
- ²⁴ Sikkink and Kim, *Annual Review of Law and Social Science*, 269–385.
- ²⁵ Rotberg and Thompson, *Truth v. Justice: The Morality of Truth Commissions*, 14.
- ²⁶ Freeman, *Truth Commissions and Procedural Fairness*, 72-73.
- ²⁷ *Ibid.*
- ²⁸ Bakiner, *Truth Commissions: Memory, Power, and Legitimacy*.
- ²⁹

BIBLIOGRAPHY

- Bakiner, Onur. *Truth Commissions: Memory, Power, and Legitimacy*. Pennsylvania Studies in Human Rights. Philadelphia: University of Pennsylvania Press, 2016.
- <http://ezproxy.baylor.edu/login?url=http://www.jstor.org/stable/10.2307/j.ctt18z4gmr>.
- Freeman, Mark. *Truth Commissions and Procedural Fairness*. 1st ed. Cambridge ; New York: Cambridge University Press, 2006.
- Inc, Gallup. “Brazilians’ Trust in Country’s Leadership at Record Low.” Gallup.com. Accessed April 13, 2016. <http://www.gallup.com/poll/190481/brazilians-trust-country-leadership-record-low.aspx>.
- Kim, Hunjoon, and Kathryn Sikkink. “Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries1.” *International Studies Quarterly* 54, no. 4 (December 1, 2010): 939–63. doi:10.1111/j.1468-2478.2010.00621.x.
- Mainwaring, Scott. “The Surprising Resilience of Elected Governments.” *Journal of Democracy* 10, no. 3 (1999): 101–14.
- May, Larry. *After War Ends: A Philosophical Perspective*. Cambridge: Cambridge University Press, 2012. <http://ezproxy.baylor.edu/login?url=http://site.ebrary.com/lib/baylor/docDetail.action?docID=10565017>.
- Mishler, William, and Richard Rose. “What Are the Origins of Political Trust? Testing Institutional and Cultural Theories in Post-Communist Societies.” *Comparative Political Studies* 34, no. 1 (February 1, 2001): 30–62. doi:10.1177/0010414001034001002.
- “Quotes on Human Rights | UNFPA - United Nations Population Fund.” Accessed April 13, 2016. <http://www.unfpa.org/resources/quotes-human-rights>.

Roht-Arriaza, Naomi. *The Pinochet Effect: Transnational Justice in the Age of Human Rights*. Pennsylvania Studies in Human Rights. Philadelphia: University of Pennsylvania Press, 2005. <http://ezproxy.baylor.edu/login?url=http://www.jstor.org/stable/10.2307/j.ctt3fj29r>.

Rotberg, Robert I., Dennis F. Thompson, and JSTOR (Organization), eds. *Truth v. Justice: The Morality Of truth Commissions*. University Center for Human Values Series. Princeton, N.J: Princeton University Press, 2000.

<http://ezproxy.baylor.edu/login?url=http://www.jstor.org/stable/10.2307/j.ctt7t4sd>.

Sikkink, Kathryn, and Hun Joon Kim. "The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations." *Annual Review of Law and Social Science* 9, no. 1 (2013): 269–85. doi: 10.1146/annurev-lawsocsci-102612-133956.

Smyth, Marie. *Truth Recovery and Justice after Conflict: Managing Violent Pasts*. Routledge Studies in Peace and Conflict Resolution. London ; New York: Routledge, Taylor & Francis Group, 2007.

"Truth Commission: Argentina." United States Institute of Peace. Accessed April 12, 2016. <http://www.usip.org/publications/truth-commission-argentina>.

ABOUT THE AUTHORS

TIM CAMPBELL

Tim Campbell is a senior University Scholar from Elizabethtown, Pennsylvania with concentrations in political science and philosophy. He spent the spring 2016 semester in Washington, D.C., as part of the Washington Semester Program at American University, where he studied American politics and public policy and interned at the Commission on Security and Cooperation in Europe (U.S. Helsinki Commission). While at Baylor, he has been an active member of the Honors Residential College, Ampersand Society, and The Pulse. He also participated in the Fulbright-Scotland Summer Institute at the Universities of Dundee and Strathclyde during the summer of 2015. After graduating from Baylor, Tim plans on attending a graduate program in political science.

ABBY HARRIS

Abby Harris is a junior History and International Studies student with a minor in Italian. She is an active member of the Texas Zeta chapter of Pi Beta Phi, serving as the Intramural Chair for the 2016-2017 school year. Outside of working as a Supplemental Instruction Leader for Christian Scriptures, Abby enjoys reading, coffee, the Texas Rangers, dancing, and driving back to Dallas to see her family. After graduation, she intends to pursue a Ph.D. in History in the hopes of one day becoming a professor of History.

PHOEBE SUY

Phoebe Suy is a junior from Silsbee, Texas and a Journalism, Public Relations, and New Media major with a minor in Arabic. She is a member of Baylor's Theta chapter of Sigma Phi Lambda Sorority and serves as Philanthropy Chair. In addition to Phi Lamb, she is also involved with International Justice Mission and enjoys serving with Jesus Said Love and her local church, Parkview Baptist. She is interested in the languages and cultures of the Middle East and spent fall 2016 in Amman, Jordan. After graduation, she intends to travel abroad for a year before pursuing a Masters of Arts in Islamic Studies.

JOSH UPHAM

Joshua Upham is a junior University Scholar with concentrations in political science and accounting. He currently serves as the treasurer and captain of the Baylor Undergraduate Mock Trial team. After graduation, Joshua plans to attend law school, where he intends to focus on appellate-level legal matters that affect poverty and discrimination in America.

Rebecca Voth

A University Scholar, Rebecca is studying political science, international studies, philosophy, and Spanish with the goal of pursuing a career in international law. She enjoys giving tours of Baylor to prospective students as well as serving as an officer for Baylor's Mock Trial team. After graduation, Rebecca plans to pursue a law degree with the goal of entering the non-profit or governmental sector, as an advocate for human rights in Latin America.