



Volume III

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Daniel Patrick Kensinger
Editor-in-Chief

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Editor's Preface to the Fall 2003 Edition

The American Undergraduate Journal of Politics & Government provides a unique opportunity for outstanding undergraduate papers to be published in a competitive, bi-annual platform. Now in its sixth edition, the *Journal* has established itself and the work it publishes, and we hope to continue bringing the best in undergraduate research in politics and government to the academic community.

As the first Editor-in-Chief to have not served on the original *Journal* staff, my experience has represented the permanence of the organization. One of my highest priorities, and one of my greatest rewards, has been to teach the next generation of editors. I would like to thank the Editorial Board and the Advisory Board, composed of the most dedicated and knowledgeable political scientists Purdue has to offer, for their innumerable hours of hard work and dedication. Perhaps the only thing more gratifying than working with you all is knowing that the *Journal* will continue on in good hands. Furthermore, we appreciate the encouragement we have received from the National Pi Sigma Alpha Office, as well as from the Purdue University Department of Political Science, especially from department head Dr. William Shaffer. Finally, we greatly appreciate the guidance we have received from Dr. William McLauchlan, whose tireless support and commitment as our Faculty Advisor have made this publication possible.

Thank You.

Daniel Patrick Kensinger
Editor-in-Chief

Submission of Manuscripts

Submissions for the *Journal* are received on a rolling basis from undergraduates of any class or major from institutions across the nation. Submitted papers must be fewer than 30 pages of typed, double-spaced text with tables and charts numbered consecutively and on separate pages. Submissions must be in the form of a Microsoft Word document and have endnote citations in accordance with the Chicago Style Manual. All documents must be accompanied by a 150 word abstract to be considered for publication. Please include name, university affiliation, contact details, and complete works cited information. Subscriptions are available through Purdue Pi Sigma Alpha, but each edition can also be purchased individually. The *Journal* has launched a web site at www.purdue.edu/americanjournal, which is presently being renovated. To make a submission to the next edition or to contact the Editor-in-Chief, e-mail *The American Undergraduate Journal of Politics & Government* at journal@polsci.purdue.edu.

New Labour and the Role of the State

Craig Hilts
Wake Forest University

The Labour governments of 1997 and 2001 have been widely analyzed and discussed regarding policy proposals and ideology. Their policies suggest that New Labour lacks a clear ideology and the "Third Way" that they have offered has not given a clear vision of what the party stands for. Determining the role of the state in the New Labour governments allows for a clearer understanding of Labour's purpose and ideology. The state under Labour acts as a coordinator of market and non-market interactions, designed to improve both private markets and public institutions. New Labour's purpose is to improve the relationship between embedded markets and non-market areas to enable both to work in the public interest. The policies of the first two terms of government have not yet matched the rhetoric. New Labour will need to show a stronger commitment to the public interest in order to succeed in its objectives.

New Labour has consistently expressed throughout the course of their project that its major policy goals involve the achievement of social justice and economic growth. However, a clear route map to achieve those goals has not been so well illustrated. Much of this lack of ideological coherence results from a changing role of the state in both economic and social policy. New Labour's use of the state presents a role that is significantly different from that those used by past Labour and Conservative governments. New Labour's understanding of the relationship between the market and the state is a key element in explaining state action. New Labour seeks to coordinate market activities and state action in order to meet the public interest, rather than promoting the market and the state against the other. The role of the state that results from this is one that demonstrates similarities with past governments, but the basis for state action cannot be placed into the left and right ideologies of the past.

The question of whether to promote the market or the state as a solution to economic and social problems has been the standard of difference between the left and the right throughout the post-World War II era. Old Labour tended to see the market as the cause of inequalities and sought to enhance the role of the state to achieve equality. The New Right tends to see the state as a cause of economic inefficiency and promotes the role of the market in correcting these inefficiencies. Each political party had a boundary between the market and the state, and the position of that boundary would depend on the size and scope of the state. The boundary's position then determines what the role of the state is to be.

Old Labour's boundary was on the left and the role of the state in economic policy was to plan how the market operated. The objective of social policy was to provide universal public services intended to redistribute opportunity and to promote equality by decreasing class divisions. Economic slowdown and the perceived failures of the state during the 1970s allowed the New Right to come to power with an alternative position for the boundary between the state and the market. Its solution has been to decrease the role of the state in the economy and allow the free market to direct economic activity. The right also promotes the withdrawal of the state in social provision in order to form a safety net that helps those who failed in the market. The state moves towards a minimalist position, focusing on the removal of barriers to economic activity.

While this boundary is crucial to determining the position and the role of the state in economic and social policy, the relationship between the state and the citizen is also an essential factor. Old Labour took a centralist and authoritative approach, focusing on class differences for policy direction. The post-1979 Conservative governments took an individualistic approach and focused on easing individual failures rather than correcting inequalities. Both the left and the right constructed their route maps for economic and policies based on their perception of where the boundary between the state and the market should be and how they understood the relationship between the state and the citizen. New Labour has attempted to define itself as different from both traditions. The ideological ambiguity in their positions has left uncertainty as to what role the state plays in both economic and social policy. Efforts to define this prior to and since 1997 have achieved little success. However, examining New Labour's initial position and evaluating its actions in government presents a clearer picture of the role of the state. In not favoring market or non-market areas, New Labour has established a preference for coordinating the interactions of market and non-market areas in a manner hoped to meet the public interest.

Initial Positions in 1997

New Labour inherited a state, economy, and society that was directly and heavily influenced by the Thatcherite agenda. Electoral success depends on moving to the center to regain public confidence behind a Labour government. It was recognised that it was necessary for New Labour to accept the changes made by the Conservatives and pursue reform based on the demands of modern politics. The approach presented by New Labour recognises new demands and presents a policy approach that does not operate with a boundary between the market and the state. Instead of a boundary, the approach attempts to discern how the market and the state can interact with one another to serve the public interest. The question in economic policy has become how the state can improve the market. The question in social policy, similarly, is how the state and market can improve social provision. Rather than the market or the state providing the road map for economic and social policies, New Labour intends to make them work together in various ways to achieve the goals of social justice and economic efficiency. The relationship between the market and the state is complex; while markets are intended to enhance economic efficiency, they are also intended to build social justice. Public services have a similar purpose; they are intended to address the conditions necessary for the achievement of social justice, as well as to promote economic efficiency. The lack of a clear boundary is much of the reason that New Labour has not been able to lay out a clear philosophy. Their task has been to find a new way to describe a role of the state that is neither left nor right.

A key factor in explaining the role of the state and the market is understanding the relationship of the citizen to the market and state. New Labour's understanding of the relationship between the state and the citizen has been clear throughout both governments. Rather than a paternalistic or strictly individualistic view, New Labour has taken a partnership approach. The Old Labour approach was based on the notion that the individual has the right to universal public provision and protection from market failure. The New Right approach is a move towards means-tested provision in the event of market failure in which the individual has the responsibility to ensure his or her own success. The New Labour approach is a combination of rights and responsibilities. Everyone has the right to universal public provision and protection from market failure, but also has the responsibility to use the available resources provided to ensure their own success. This approach has been a consistent element in New Labour's governing strategy throughout the extent of the project.

The initial understanding of the relationship between the market and the state was not based on a judgment of boundaries between the two distinct polarities, but rather an attempt to solve how the market and the state should co-exist. The political debate initiated by New Labour is not to be market versus state.

The case being made here is that to debate the balance between market and state is to misconstrue the issue; the real question is what sort of markets we want to create and what sort of state we want to develop, not how much we have of each. The false polarity of state versus market fails to capture the essential differences that exist between economies in the advanced capitalist world, or the essential choices we face in reforming these societies.¹

The relationship between the individual and the state, as well as the individual and the market, are crucial variables in explaining how the market and the state are to co-exist. New Labour takes a more traditionally neo-liberal approach to understanding the role of the individual in the market. It is the responsibility of the individual to work for success in the market. The state has a role in enabling the individual to achieve such success, and provides opportunity to individuals through public services. An individual has the right to services designed to provide opportunity to achieve prosperity, but also has the responsibility to use those opportunities provided to achieve improved outcomes. New Labour also recognizes the need to assist those individuals who do not succeed in the market. However, rather than separating the response to individual failures and the promotion of individual success, New Labour seeks to reconcile the treatment of failure with opportunity. New Labour hopes to target the provisions of benefits to address the symptoms and causes of poverty or unemployment rather than only providing means-tested benefits.

New Labour began with a markedly different understanding of the market than past Labour governments. Tony Blair published a joint paper with German Chancellor Gerhard Schroder claiming, "Product market competition and open trade is essential to stimulate productivity and growth. For that reason a framework that allows market forces to work properly is essential to economic success."² Gordon

Brown also shares a positive view of competitive markets: “We recognise the sharpest spur to innovation, efficiency and improvement is competition.”³ However, New Labour retains an important role for the state in a competitive market framework. The chief role set out initially was the achievement of macroeconomic stability, flexible markets and the promotion of human and social capital. While accepting the importance and apparent centrality of the market in the first term, New Labour has held a positive attitude towards the role of public services. An active state is assumed to use the public sector to achieve fairer outcomes in the market. An active state will also enhance the markets in the process of promoting individual opportunity.

The First Term 1997-2001

New Labour began its first term with two major actions: first, upholding a manifesto pledge to follow Conservative spending limits for the first two years of a New Labour government; and second, giving control of interest rates to an independent Bank of England. The fiscal pledge acted as a fiscal straightjacket on New Labour for the first two years and limited the extent of any redistributive policies. The second policy was designed to allow New Labour to pursue macroeconomic stability in maintaining a commitment to low inflation. Both actions also were designed as a reassurance to voters and an attempt to build a solid electoral coalition. New Labour desperately sought economic credibility from voters and the financial markets. New Labour’s fiscal policy was to be managed under the two rules: governments will only borrow to invest, and public debt as a proportion of gross domestic product (GDP) should be held at stable and prudent levels.

New Labour’s economic policies reflect a Thatcherite, neo-liberal approach when considered on a general level. Most commentators hold that there is significant continuity from the previous Conservative governments in economic policy, namely that New Labour “shares with its Conservative predecessors the belief that government can primarily exercise an enabling influence, creating the conditions for economic prosperity that can only be delivered by individual economic agents.”⁴ Moran and Alexander also note a significant break from the Conservative era: New Labour “does not share the view that the effective functioning of markets demands ever more inequality.”⁵ Driver and Martell note the similarities and differences behind Brown’s prudence and purpose fiscal strategy. “To be prudent is to balance the nation’s finances and keep inflation under control. The purpose is to spend the fruits of a strong economy on collective public services and welfare to the working poor. Brown’s prudence echoes Thatcherite economic philosophy; his purpose doesn’t.”⁶

New Labour’s acceptance of markets includes a commitment to allowing free and flexible capital markets because of the significance of globalisation. Prior to the 1997 election and throughout the first term, Blair and Brown consistently used the rhetoric of globalisation as a means of enhancing the focus of macroeconomic stability. New Labour promotes macroeconomic stability as a necessary element in attracting investment in a globalised economy. Stability requires low inflation and competitiveness which would give businesses confidence in the economy and encourage investment. “Monetary and fiscal stability is a necessary pre-condition for national economic success. For in a global economy, funds will flow to those countries whose policies inspire confidence.”⁷ The incentives for increases in investment are aimed at private capital and New Labour is opposed to the use of direct capital controls by the state. Stability is a necessary condition, but microeconomic intervention is to be the means towards achieving “an explicit objective of a Labour government” of raising “the trend rate of growth by strengthening our wealth-creating base.”⁸ This is intended to be accomplished by increasing productivity. The keys to increasing productivity for New Labour are investment in human capital, the promotion of competition and supporting entrepreneurial activities. Investment in human capital in the form of education and training is designed to promote a skilled and flexible work force that is needed to meet the challenges of a global knowledge economy.

New Labour’s social policy goals are also an important factor in explaining the relationship between the state and the market. New Labour’s social policy is centred on the understanding of the relationship between the state and the individual as well as the individual and the market described above. The theme of rights and responsibilities is correspondingly present throughout the social policy approach.

New Labour’s social policy approach demonstrated what has been termed “selective universality.” Public services are universal, but provision of benefits is targeted to meet specific needs of those in poverty or the ‘socially excluded.’ Social exclusion is understood as a dynamic process,

meaning that one event or an outcome will affect future events and future outcomes. This is central to Blair's idea that, "poverty is multi-dimensional. It is not only about money. It is also about jobs, access to public services, environment and ambition. It is about education, housing, the local environment, training, jobs, your house and family life, being free from crime and drugs."⁹ The problem of social exclusion is that one aspect of exclusion will likely lead to further aspects of exclusion and ultimately poverty. The targeting aspects of New Labour's policies in its first term were designed to address existing social inequalities. The understanding behind this approach was that existing social inequalities meant that "universal benefits would fail to promote social equality, in fact, the most excluded would benefit the least. Put another way, policies which aspire to more universal values of social justice cannot be attempted until social exclusion has been eradicated."¹⁰

New Labour also specifically treats unemployment as the cause of poverty and highlights child poverty as a result of unemployment. Gordon Brown makes this clear:

When we came into office, four and a half million adults lived in households where nobody worked, double the level of twenty years ago. Nearly one in five children were growing up in households where no one is working, twice the rate of France and four times the rate of Germany. And the reason that this issue of unemployment poses a massive challenge is that it is now the primary cause of poverty.¹¹

New Labour focuses on unemployment in their reform of the welfare state. The centerpiece of reform has been the New Deal, a policy that takes a "welfare-to-work" approach to welfare provision. The approach involves personal attention to the individual needs of the unemployed and providing direct assistance to them in obtaining a job. Polly Toynbee touts the success of the program, not only in getting people into jobs, but also because "it established in the public imagination the idea that the welfare state does good: welfare well-managed can lead people forward to independence. As unemployment fell, so did the social security budget and the general misconception of a crisis."¹²

The other major parts of New Labour's social policy involve commitments to improve the health care and education systems. The idea promoted is that public services needed to be "modernised" after nearly two decades of neglect. New Labour has initially focused on pursuing reforms in the key sectors rather than increasing spending.

Tony Blair's most quoted statement prior to the 1997 election was his top three priorities being "education, education, and education." The emphasis on education was emphasised, given its key role as an economic policy, as well as a social policy. Despite the emphasis, New Labour's educational policy shows a great deal of continuity from previous Conservative governments, but with certain differences. The most notable separation is in the method of achieving high standards. Driver and Martell comments that while New Labour has kept many of the Conservative reforms, namely the 1988 Education Act, "it is also true that Labour does not share the Conservatives' faith in market forces as the main tool for raising standards. Instead, Labour's approach to education reform was to get its hands on the levers of power."¹³ Spending increases after 1998 have been delivered with requirements of meeting standards set by the government. Standards are the favored approach of targeting improvements in poorer areas, as evidenced by the creation of Education Action Zones.

New Labour also has entered into government with an ambitious approach to "save the NHS." The government began by initiating reforms designed to alter previous Conservative reforms. The biggest target has been the internal market. Reform is to be accomplished by changing the competitive relationship between purchasers and providers into a more cooperative relationship. Tony Blair introduced spending increases in 2000 and promised more in the future. The promise of spending increases was accompanied by the establishment of higher standards and central control over how the money would be spent. The central control of the plan led to an observation that, "for all Labour's critics on the Left, the NHS plan was as close to old-style central planning as a government embracing market forces was likely to get."¹⁴

It would seem to suggest that education and health policies show evidence that New Labour has a very central role for the state. However, while central organization of policy is evident, the delivery of services is subject to less state control. The delivery of public services is founded in a pragmatic approach: they should be delivered in order to best suit the particular needs of the users. This approach allows New Labour to use private-sector ideas in the delivery of public services. The involvement of the private sector

was not designed to promote markets and “did not just mean private involvement; it also implied new forms of management that would address one of the most widely noted features of the public services: too much discretion for service providers.”¹⁵ This effort to improve the local delivery of services to suit individual needs is consistent with the government’s approach to fighting social exclusion.¹⁶ The state maintains a central role in controlling where money goes and implementing reforms as to how it is spent, but delivery is not necessarily controlled by the state.

Assessment: The Roles of the State and the Market

The acceptance of a positive role for markets by New Labour has been the source of much criticism from the left, often resulting in accusations that New Labour is simply a continuation of Thatcherism. However, while the positive view of markets is different, it is not synonymous with that of the right. Stephen Fielding accurately assesses the role of markets in New Labour by stating, “If markets had advanced centre stage and state intervention had shuffled to the wings, the former as much as the latter was considered to be merely a means and not an end. Thus society had to become fairer as a result of economic progress. This meant certain standards had to be imposed on the market by government.”¹⁷ While Conservatives have sought to create markets through rolling back the state, New Labour has focused on improving markets that already exist and reforming those that do not bring desired outcomes. Markets are expected to produce economic growth, but would not produce such growth alone and market-led growth could produce inequalities if not regulated by the state. New Labour also has a broader understanding of the state’s role in market failure. The response to market failure or prevention of market failures requires an active state response that addresses the causes of individual and market failures.

The state retains an important and essential role in promoting economic growth. It has been suggested that the state’s role in the economy is to act as a lubricator working with private industry to help the economy move forward.¹⁸ This idea follows Blair’s suggestion that “the state should not row, but steer: not so much control, as challenge.”¹⁹ It is necessary to examine how New Labour has progressed in its second term and how their view has changed, as the role of the state is still a work in progress. Before doing so, the role of the state in social policy needs to be presented, as it is a very important factor in New Labour’s agenda and is vital to the success of their economic policy.

The role of the state in social policy has been suggested to be an “enabling state.” In Gordon Brown’s view:

To tackle the social injustices that still remain the state will have to give power away, not just devolving power to empower local communities, but also enabling community and voluntary organisations to do more. This new relationship brings a new understanding to the rights and responsibilities of the citizen and to the reach and role of Government. It involves a credible and radical view of citizenship as responsible citizenship and a new view of the state as an enabling state.²⁰

For Brown, the state is an enabler of other forms of provision. Blair has stressed a different role of the enabling state in speaking in terms of enabling individuals to succeed in the modern economy :

The successful economy also must invest heavily in human capital, technology and infrastructure. Education is a top economic as well as social priority. High levels of unemployment and social exclusion do not just disfigure society; they waste the national resource of human talent... This is the role of the enabling state.²¹

While it is true New Labour wants the state to play an enabling role both in encouraging other forms of provision and in helping individuals succeed, this view does not accurately describe the role of the state in social policy. Ian Taylor recognizes that the idea of an enabling state was initially a rightwing idea applied to the delivery of public services so as to withdraw the state to allow other forms of provision and create a market in the process.²² He draws a valid point on the idea of an enabling state:

For all the posturing of the previous Conservative and current Labour administration, the notion of an enabling state in its very guises may be regarded as something of a fallacy. Whatever new structures evolve and whatever frameworks central government established to implement change, the state will need to provide a bulk of the support for public services. The state still provides, but

as under the Conservatives, the question of how far it should provide universal benefits and services to all remains the key issue in public policy. Whereas the Conservatives placed the idea of the enabling state to the provision of public services, New Labour is applying it to benefit as well. The enabling was, and is likely to remain a device in the providing state to raise awareness of and encourage different forms of delivery and participation.²³

An observation can be made that the role of the state for New Labour is to act as a coordinator of a network of policies designed to achieve social justice and economic growth. It is observable how New Labour presents an agenda of reinforcing policies designed to complement each other in achieving major goals. The role for the government is to create a coherent set of policies that can be carried out effectively and efficiently. The more difficult aspect is to use the state to make these policies work effectively and efficiently, as success in one area often depends on success in another. The most important aspect in this framework is short-term economic performance, as Andrew Gamble and Gavin Kelly suggests:

Labour may no longer articulate many of the themes which used to identify social democracy, but it is still a party of social reform and active government, with an increasingly unified economic and social policy. Its hopes of holding its electoral coalition together and implementing its wider programme of reforms depend more than ever on its economic policy being a success.²⁴

This idea fits with New Labour's approach of finding "joined-up solutions to joined-up problems." This approach devolves responsibility to local actors in order to meet specific policy goals that fit into the overall structure. It is also consistent with the reforms designed to "break down vertical institutional barriers in order to delivery coherent policies, insulated from the predations of individual government departments jealously guarding 'their' territory."²⁵ New Labour has used new methods to ensure cooperation and consistency between policy areas. Cross-departmental units identify specific policy needs in various departmental areas and then oversee departmental policy coordination to meet the different needs to solve a complex problem. An example is the Social Exclusion Unit, an agency designed to reduce social exclusion (and lead to greater equality) by researching the causes of social exclusion and reporting policy changes or specific targets to individual departments or local actors. Other such units are the Neighbourhood Renewal Unit, Regional Coordination Unit, and the Strategy Unit. These units have an important role in policy formulation, and are each located in central offices, namely the Cabinet Office and the Office of the Deputy Prime Minister. This centralisation of power and policy coordination allows for greater central control over policy and allows top officials to initiate and coordinate policies.

The 1997 manifesto promises "a new partnership with business to improve the competitiveness of British industry for the 21st century, leading to faster growth."²⁶ It has been said the government needs to establish the conditions necessary for the private sector to invest and grow. The government also promotes flexible labour and capital markets that adjust to the needs of the economy. New Labour's first-term economic policy was undoubtedly pro-business, as short-term economic growth was essential to establishing economic competence and, hence, reelection. New Labour's social policies were often justified by the contribution to the economy rather than contributions to equality. Tony Blair's speech introducing the New Deal for young people is no exception:

The New Deal is about opportunities; opportunities for young people to gain skills, to become independent, to work and prosper; opportunities for business to recruit the people they need with the skills they need; opportunities to grow. And the New Deal is also about partnerships with business. Without business involvement, there is no New Deal opportunity for young people. And business commitment and skills of the young people it recruits. Business provides opportunity for young people. And business benefits from the commitment and skills of the young people it recruits. That is a genuine partnership.²⁷

Turning to New Labour's second term allows for a further examination of policy coordination and to consider how New Labour is changing its use of the state to achieve its goals of social justice and economic growth. The goal here is to establish a coordination strategy and to examine the relationship between the state and the market in the context of the state coordinating policy, to have positive impacts on the market, and for the market to have positive impacts in non-market areas.

The Second Term

On 7 June 2001 New Labour achieved a major goal of its 1997-2001 government: reelection. The idea put forward by New Labour is that they had laid the foundations for reform in the second term. Blair began referring to New Labour as operating in phases. The first involved modernising to win an election, the second involved building the foundations for the third phase, which pursued reform in the second term.²⁸ The focus on New Labour's economic policy has remained the same since 1997: macroeconomic stability and microeconomic intervention. The commitment to greater competition and flexible markets has remained with no major policy changes. The most notable initiatives have been to provide incentives for increased private investment. The 2002 Budget called for tax cuts to small businesses and a research and development tax credit. Other policy goals have been to increase investment in underdeveloped regions to address areas with more poverty and unemployment as well as a greater effort to provide incentive for businesses to train employees, including subsidization of training.

Much of the reason for the lack of recent criticism of economic policies has been the general success of the economy relative to other industrialised countries. In spite of the recent global downturn the British economy has grown at a more consistent rate than the euro area, Japan, and the US. The UK has also performed considerably better when comparing unemployment rates, being lower than the euro area, Japan, and the US for the first time in fifty years. Whether or not this performance cannot be solely credited to New Labour; they have been comparatively successful and been able to meet their primary economic goals.

While the government does remain pro-business and committed to the market, it should be noted that New Labour has not moved any farther to the right. They have not pressed for more neo-liberal reforms or solutions in economic policies, while becoming more ambitious on social policy. The focus on public sector investment and reform involved raising taxes, which was done without any significant public opposition. This change in social policy and consistency in economic policy allows for a better picture of the relationship between the state and the market.

Second Term Social Policy

New Labour has attracted much attention to its commitments to improve public services throughout its second term. Its commitment has been backed by large spending increases, especially in health and education. Tony Blair has stressed the idea that public services fulfil the idea of the enabling state, as he said in 2002: "The role of government today in enabling. It is not the old controlling role of the state and it is not laissez-faire, free market economics. This is about enabling people, equipping them to survive this process of change."²⁹ The key to the enabling state for Blair is high quality public services that meet individual needs.

The vision of public services, described by John Reid,

[I]s one where we open up the system to diversity, choice, flexibility of working, setting the creativity of local services free within a framework of national standards and systems of accountability. Our vision is not one of consumerism in public services, but of a partnership in which the users of services get more power and choice, but in return help the system to work better for the good of all.³⁰

The current debate on the National Health Service (NHS) and the creation of foundation hospitals is a striking example of New Labour reform efforts. These efforts have also been met with much criticism from the left. This debate raises an important difference between Old and New Labour and speaks directly to New Labour's understanding of the role of the state. To simply the issue, it involves creation of Foundation Trusts from NHS Trusts by granting foundation status to the best performing hospitals. The major differences are that foundations will have "access to increased financial freedoms, including the freedom to borrow capital, sell off assets and retain surpluses. They will see a relaxation of central control by the Department of Health. Linked to this will be greater management freedoms, including flexibilities to reward staff. They will have to establish a new Board of Governors which will be elected in part by local communities."³¹ Many on the left understand this to be privatisation and criticise it as undermining the role of public services. While the state is opening up the operation of the public sector to market forces, this

does not amount to a privatisation of the NHS.³² There is a difference between creating a market for public services and allowing market forces into the public sector. Even so, the argument between New Labour's biggest critics, especially Hattersley, takes place on two varying understandings of public services. Colin Crouch recently published a Fabian pamphlet criticising the Government's acceptance of private firms in the public sector. The main point of his argument rests on his belief that "public services were designed to provide entitlements or rights – to education, health and social care – and that they did this through an equitable allocation of resources on a universal basis. The role now being given to private business in this field does not simply ignore this foundation, it actively undermines it."³³ Roy Hattersley shares this view and is quick to criticise openings to the private sector, believing that the evils of the market will soon follow. Tony Wright has addressed these types of criticisms as stemming from "a tradition that was more concerned with the idea of public service than the reality."³⁴ Wright also addresses a key fault in the arguments of Hattersley by arguing that, in the past, the left failed to improve the operation of public services, and their failures left them to the will of the right. The reality is that after nearly decades under public sector cutbacks and emergence of private alternatives, maintaining the status quo is not the answer. He writes, "If non-market provision is to survive, it has to be combined with high quality. Without this people will increasingly seek to abandon public for private provision. This is why it is imperative for the left to rethink the idea of the public domain and the public interest, with a clear focus on the public service rather than the public sector."³⁵

The state does allow market forces to enter into the provision of public services, but the state also retains strict control over where market forces have an effect. Under New Labour, public services retain the purpose of providing entitlements or rights to universal services, but their functional purpose is to address the specific needs of the users of each service. The argument is that universal public services that meet the needs for all individuals will have the best success in improving the life chances for all.

An important observation on the ideological differences between Old Labour and New Labour can be made from this argument concerning the allowance of market forces into public services. However, this debate is more ideologically driven than it should be. Foundation hospitals are not a question of public versus private or nationalisation versus privatisation, but rather centralism versus pluralism. John Kay notes that the debate on centralism and pluralism is very important to the debate on the state and the market. Recognising that nationalisation was off political agendas, he writes, "The road ahead becomes clearer if privatisation is off the agenda. Many people who would prefer the state to the market would also prefer a pluralist solution to a centralised one. If the choice is between profit motive and public service, they prefer public service. If the choice is between central direction and local autonomy, they prefer autonomy."³⁶ New Labour is attempting to address the balance between centralism and pluralism in seeking central direction and pluralist responsiveness. The question of centralism and pluralism leads to another important aspect of the ideological differences in the question of individualism.

As explained earlier, New Labour defines the relationship between the state and the individual in terms of a partnership: the state enables individuals to succeed and individuals hold the responsibility of taking advantage of opportunities. Many of New Labour's policies are then directed at meeting individual needs, especially in fighting poverty. Hattersley retains the position that the state should act in a manner that imposes equality, rather than creating conditions for equality.³⁷ However, noble as this position may be, history shows that state efforts to impose equality will not meet the needs of individual citizens and will be met with hostility. New Labour hopes to allow greater equality to emerge by ensuring that all individuals have the necessary services available, delivered at a high quality to enable them to have the opportunity to succeed in the market economy, and supported by the maintenance and incremental increases of an electorally acceptable distribution of wealth that better enables individuals to take advantage of opportunities provided and earned.

The State as a Coordinator

The observation of the state acting as a coordinator of a network of policies designed to achieve social justice and economic growth remains the best possible characterization of the state under New Labour. This model is simplistic, in that it leaves a great number of possible actions and does not prescribe any policy directions. However, its simplicity is intended, as it offers the best possible model to evaluate more important questions in characterizing New Labour's state. The important questions are of the

relationship between the state and the market and of the role of the market within a policy network.

The most notable and insightful attempt to define this relationship is put forth by Gordon Brown in a speech to the Social Market Foundation in February 2003. The main theme of the speech is about public interest:

The argument that is often put as public versus private, or markets versus state, does not reflect the complexity of the challenges we face: that markets are part of advancing the public interest and the left are wrong to say they are not; but also that markets are not always in the public interest and the right is wrong to automatically equate the imposition of markets with the public interest. The challenge for us now, while remaining true to our values and goals, is to have the courage to affirm that markets are a means of advancing the public interest; to strengthen markets where they work and to tackle market failures to enable markets to work better.³⁸

Brown emphasizes a test for the role of the state and of the market based around public interest. He recognizes that markets and states have often failed to advance the public interest in the past. Brown puts forth a solution to areas where markets have failed and public provision has not been successful: "It is only by developing decentralised non-market models for public provision that respond to people's needs, extend choice and are equitable and efficient that we will show to those who assert that whatever the market failure the state failure will always be greater that a publicly funded and provided service can deliver efficiency, equity and be responsive to the consumer."³⁹

Brown has opened up a debate concerning how to pursue the public interest in areas where markets fail and public provision has not met individual needs or has been inefficient. Tony Wright highlights the importance of the question in referring it as "a crucial moment in the permanent debate between centralism and localism."⁴⁰ Wright concludes: "The boundaries of the state and market are in flux, and in many areas state and market do not inhabit the same territory. How these boundaries are policed and regulated becomes a fundamental issue, if the test of public interest is to be the primary consideration. In many respects the issue is not whether the state should be bigger or smaller, but how it can be smarter."⁴¹

New Labour is working towards a model of the state acting as a coordinator of policies that manage the interactions of the state, market, and civil society using the test of the public interest as the deciding factor. The state has different roles within this coordinating approach. The state has an important role as an enabler of individuals, so as to maximize their abilities in market areas. The state also acts as a regulator of actors within markets, so as to limit the negative consequences of markets in non-market areas. The state acts as a lubricator by establishing the conditions that enables markets to work better. The state acts as a provider in areas where markets are ineffective. Lastly, the state acts as an organizer of provision when markets and state action fails to meet the public interest.

For the state to fulfil all of the roles a great deal of coordination from the center must take place on two levels. Coordination must occur first, on the level of the individual to ensure that that individual can succeed in the market and that the market does not negatively effect an individual's life chances, and second, on a general level concerning domains of political, market, and social activities. The state needs to manage the relationship between the state, market, and society, given the embeddedness of the three areas. The role of the state is not to build separations between the respective domains of the state, market, and society, but to act as a coordinator of the activities and influences that each domain has on the other. The state discerns the positive elements of each domain and allows such activities to influence other domains, and seeks to maximize their potential contribution. For example, public sector inefficiencies may be corrected by allowing elements of the market domain to penetrate the public sector and encourage more efficient outcomes. An example of the social domain positively influencing the market would be education; in addition to having benefits to the individual, education can have a positive effect on the market by supplying a more knowledge and efficient workforce.

The state role is crucial, as it must coordinate activities in an economy characterized by dynamism and interdependence of other domains. David Miliband illustrates this relationship:

Each mixed economy, and each part of a mixed economy, has its own logic, institutions, and character based on a complex interdependence of state, market and citizen at local, regional and national level. The point is not simply that regulation can increase competition, though this is of course true. More important regulation or collective intervention of any kind changes

competition: it changes the relative power of players in the market, changes the boundaries of competition and changes the rules.⁴²

The state's role is more difficult in this sense, in that altering the interactions between two domains has the effect of changing other relationships elsewhere. Hence, John Kay's argument that a top-down method to positively control or influence bottom-up relationships is often unsuccessful and can cause unintended consequences.⁴³ This underscores the importance of building a "pluralistic regime of power."⁴⁴ Establishing a cooperative and effective balance between central and local authority may be difficult to achieve, but such attempts are necessary if economic growth is to be combined with social justice. Success is dependent on the ability of the central authority to provide successful direction and to coordinate policies, so as to have to provide the conditions and resources for successful local solutions.

Requirements for Successful Coordination

Past Labour governments have attempted to control the economic order of society by owning or influencing the commanding heights of the economy. New Labour's approach is quite different from that of old Labour governments, particularly that of 1945. The problem with past attempts to control the existing economic order was that such plans could never be fully implemented or carried out because of existing restrictions to policy success. Control of the commanding heights of the economy could not be effectively accomplished, because of circumstances like a large balance of payments deficit and the state of the world economy. At any rate, even in perfect circumstances for implementation, it is unlikely that such plans for control of economic activity would succeed. As markets are deeply embedded into social and political institutions, these institutions serve to uphold the dynamics of a market economy. If a central plan is implemented to change the functioning of the market, such a plan must also change political institutions and influence a change in social institutions in a manner that allows for the accommodation of the new structure of the market economy.

It is obvious that New Labour is reluctant to use the state for any alteration of the operation of the market. The state plays an active role in the market by providing regulation and incentives to alter the behaviour of actors within the market domain. The market is understood as a firmly entrenched and dominant domain that can work in the public interest when influenced to do so. The state has the role of establishing the conditions and providing incentives so that market forces can work in a manner consistent with its entrenched position, and exert a positive influence on social institutions in the form of fair rewards for contribution to the market process. The relationship between the state and the market is essentially one of cooperation, but not just between state policy and market forces. The state seeks to reform and alter itself and social institutions so as to be responsive to the positive forces of the market and in turn, the market will be positively enhanced by the improvement in those institutions.

This represents an effort to achieve reform of non-market areas that is designed to regulate market influence in those areas in a manner that allows for further improvement in performance. The success of such a project depends upon the willingness of a government to innovate and experiment with policies that are consistent with the economic order and enhance non-market areas through reform and the prevention of further domination of market in those area while allowing market values to enhance the performance of non-market areas.

New Labour is attempting to use the state in various roles to positively enhance the interactions between individuals and the institutions surrounding their daily lives, in addition to coordinating cooperative relationships between the state, market, and society. The achievement of this coordinating role will involve meeting not only specific policy challenges, but also continually addressing the limits of the market. Success will require continually strengthening non-market areas from damaging market forces. Such strengthening often occurs against entrenched interests and, unless values of cooperation can influence market actors, these policies will very likely be unpopular and, hence, not implemented.

New Labour is most ambitious in strengthening non-market areas against market forces in the long-term. The Government has been increasingly determined to ensure opportunity and provide redistribution to children. Also, the centrality of education and training in improving the strength of labour relative to capital is central to New Labour's long-term agenda. However, these policies will be ineffective in achieving social change if the government is not able to engender positive and cooperative relationships between the market and socio-political domains. If New Labour is willing to use the test of public interest

in coordinating interactions, it must be willing to take the necessary steps to ensure that the public interest is met and to show a willingness and capability of developing innovative methods of combining central control and local autonomy.

Conclusion: The Next Phase

These requirements fit squarely into New Labour's politics. Colin Leys explains that "politics are no longer about managing the economy to satisfy the demands of voters, they are increasingly about getting voters to endorse policies that meet the demands of capital."⁴⁵ This assessment addresses the political strategy that New Labour employs to maintain an electoral coalition. Policies intended to benefit business are marketed to voters, and New Labour attempts to convince voters why such policies are necessary. What New Labour lacks and needs to do is to promote policies intended to benefit workers and non-market areas to businesses and convince them to support policies that are not necessarily pro-market, but are in the public interest. It may be possible to bring market and non-market interests together into a single "public interest" if New Labour demonstrates a commitment to encouraging business to follow the public interest. New Labour's model of the coordinating state will depend on success in doing so. If policies remain pro-market over public interest, it is likely that the private sector will be able to expand its influence over non-market areas according to the needs of capital. New Labour must build a stronger commitment to promoting the public interest against private interests when market forces are damaging to non-market areas. The public interest must be promoted to voters and business, effectively used to police the interactions between the public and private sectors, and allow each sector to improve the other sectors in a manner that allows the public interest to be advanced. This will be necessary if successful coordination is to achieve economic growth and social justice. If New Labour falls short in the commitment to the public interest by allowing market forces to have too great an influence in non-market areas, the coordination will likely be ineffective. However, if New Labour actively pursues and accepts responsibility for meeting the public interest, coordination could bring the desired results.

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Israel : A Nuclear Strategy for the Twenty-First Century

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The politics of international relations become most complicated once weapons of mass destruction enter as a factor. No state recognizes this threat more than Israel, whose military, the Israel Defense Force, has waged numerous wars with its Arab neighbors since its establishment in 1948. Within this context, the author presents a description of Israel's nuclear weapons capability, contrasts this capability with the capabilities of its most probable military opponents, and analyzes the usefulness of a nuclear deterrent as a national security policy.

Since its inception in 1948, the state of Israel has faced myriad external threats to its national security, ranging from hostile coalitions of neighboring Arab nation states to fundamentalist terrorist organizations such as Hamas and Hezbollah to the ever-present Palestinian nationality question. These security concerns have spawned the Middle East's premier military force, the Israel Defense Force (IDF), along with a highly militarized state whose political goals are centered on ensuring its survival through any means necessary. These measures have encompassed assassinations of suspected heads of terrorist organizations, preemptive attacks on bordering nation states, and, since the 1960s, a form of covert nuclear deterrence. Israel is today the world's only undeclared nuclear state, standing apart from the seven confirmed nations. It has maintained a policy of careful ambiguity, termed a strategy of opacity,¹ since suspicions have arisen surrounding its potential nuclear arsenal, bolstering this by its claim that it will not be the first state to introduce nuclear weapons in the Middle East. Despite this assertion, and in light of evidence that has surfaced in recent years, this paper shall premise that Israel does possess nuclear weapons and shall present some of the proof that has emerged to this effect. Having done so, it shall turn to an examination of Israel's nuclear capabilities with regards to how it came to acquire its weapons and the extent of its military and civil programs, arsenal size, and delivery systems. Using this as the point of departure, the geo-political situation in the Middle East shall be considered with relation to neighboring putatively friendly or hostile nations and recommend that Israel should covertly dispose of its nuclear weapons and lobby for the creation of a nuclear weapons free zone in the Middle East, similar to that found in South America today, in order to ensure continued peace in the region.

Rationale for Possessing Nuclear Weapons and Their Use as a Deterrent

Before the analysis of Israel's nuclear arsenal begins, the motivations of why Israel would feel the need to possess such weapons must be presented. Some answers can be found in its history. Soon after its founding in 1948, Israel was attacked by an Arab coalition composed of most of its neighbors; this assault fomented a sense of encirclement and provoked a deep-seated need for security. This was merely the first in a long line of conflicts with the surrounding Arab states that continues in a more reduced, but perhaps no less violent, form today. Unlike many larger states, Israel cannot trade space for time when attacked; thus, any enemy penetration into the heartland of the nation is tantamount to a death sentence. This has led to the creation of the highly professional and competent IDF, which so far has succeeded in repulsing all conventional military strikes against Israeli territory. Despite its success, however, there have been several occasions in recent memory where the ultimate outcome of the fighting was in doubt, namely in 1967 and again in 1973. This doubt prompted a sensation at the highest levels that a nuclear deterrent, or, in a grimmer scenario, the use of weapons of mass against the state of Israel itself, was needed to deter a massive conventional attack.

As academic George Perkovich has illustrated, every state wishes to deter its enemies without itself being deterred. As Israel is the only state in the Middle East with nuclear weapons, it could presumably deter other states through these weapons, while at the same time avoiding deterrence from possibly numerically superior conventional enemy forces. In this scenario, Israel does not have to accept the territorial status quo of deterrence established by the Arab states; rather, it is those states that must accept the status quo established by Israel. Thus, the only means by which Israel can avoid accepting the

mutuality of deterrence with the Arab states would be by possessing the ultimate weapon of deterrence, nuclear bombs. This negation of mutual deterrence, however, does not signify that Israel wishes to use a nuclear umbrella to expand. Any expansion would result in the addition of a greater Arab populace to the Jewish state and therefore dilute it to an unacceptable level. The nuclear weapons permit Israel to preserve its borders and to attack preemptively should it feel that its security is threatened. Thus, by possessing a nuclear deterrent, Israel hopes to preserve peace in the region, and thus itself.

Problematic questions clearly arise from this discussion of deterrence, namely, the very nature of deterrence itself. If one wishes to posit that successful deterrence entails the total absence of attack on a nation state, or its vital interests during the period of deterrence, then one is bound to encounter grave difficulties, as this definition has never matched itself to real world situations. In the case of Israel, it can be postulated that deterrence involves possessing weapons that will discourage hostile neighbors from attacking in numbers sufficient to overwhelm the IDF, pursuing war against Israel aimed at its total destruction as a nation, or using weapons of mass destruction against either Israeli cities or military forces in the field.² This definition seems to be acceptable purely from an Israeli standpoint, however, as many nations would believe that their strategy was a failure, had they suffered damage comparable to that of Israel during its various wars with its Arab neighbors. Thus, it is seen that this issue of deterrence remains problematic in this context and will be discussed further in a later section; for the moment, this paper will assume that Israel believes that its nuclear deterrent has represented the paramount means of preserving itself from the eventualities presented above.

Current Nuclear Strategy

This desire for self-preservation undergirds Israel's nuclear strategy. As stated, Israel maintains a strategy of careful ambiguity with regards to its nuclear arsenal, presenting only the most opaque statements when pressed with questions regarding the existence of its arms. This strategy was outlined when Prime Minister Levi Eshkol declared that Israel would not be the first nation to introduce nuclear weapons in the Middle East, after being urged by the United States to respond to charges on the intentions of its nuclear program. Ironically, Eshkol also admitted that Israel had the necessary knowledge to construct a nuclear weapon; to date, he remains the only Israeli leader to have done so. After successfully resisting pressure from the Johnson administration to sign the Non-Proliferation Treaty (NPT) in 1968, a modus vivendi was reached with the U.S. during the Nixon administration in 1970. As long as the U.S. did not delve too deeply into Israel's nuclear program, the latter would not test weapons, proliferate them, declare them, nor acknowledge the existence of a program to acquire them. This "don't ask, don't tell" policy solidified Israel's strategy of nuclear opacity and has continued to the present day.³

This strategy of studied ambiguity was designed chiefly to prevent a backlash from both the declared nuclear nations, whose vested interest is in minimizing nuclear proliferation, and the Arab world. In light of the Indo-Pakistani example, the fear of a declared-nation backlash has been defensible as intense pressure was brought to bear on both nations to relinquish their nuclear arms. Had this been the case in the 1960s, when Israel was not as powerful as it is now internationally, it is possible that this pressure, especially from the U.S., would have been sufficient to make renunciation of the weapons a necessary decision. Had Israel acknowledged possessing nuclear weapons, or were it to do so today, it would in all likelihood have triggered a regional arms race, as the Arab nations could not, and cannot, for both domestic political reasons and questions of international prestige, permit Israel to be the only openly declared nuclear power in the Middle East. Most importantly, the open acknowledgement of these weapons would engender a tense regional security environment as the Arab nations would, perhaps erroneously, perceive Israel's nuclear weapons as a means of waging offensive wars for the purpose of territorial aggrandizement. This would unacceptably compromise the Jewish nature of the nation, under a nuclear umbrella due to Israel's history of launching pre-emptive attacks, some of which have proven in hindsight to be unjustified.⁴ Thus while unofficially the world's most powerful nations, chief among them the U.S., were tacitly informed of the existence of the nuclear weapons in the 1970s, Israel's strategy has been designed to preserve its weapons and peace in the region by not admitting to their existence through official channels.

Origins of the Nuclear Program

It was precisely to ensure concord under an Israeli aegis that Israel began to examine a nuclear option in the 1950s, after the return to power of David Ben-Gurion, by establishing the Israel Atomic Energy Commission (IAEC) in June 1952, a body composed of civilian members. The true beginning of this nuclear program, however, occurred when Israel contracted with France in 1957 to build a plutonium-producing reactor at Dimona, in the Negev desert. While Israel had contracted with the United States in 1955 to build a 5-megawatt (mW) reactor at Nahal Soreq, fueled by 90 percent enriched uranium, it was the Dimona reactor that was constructed for the express purpose of building nuclear weapons. Indeed, the Dimona reactor was not placed under IAEC control, but rather under that of the Ministry of Defense, which clearly signals the military nature of the project.⁵ This is supported by the ensuing French construction of a plutonium extraction facility at Dimona designed to remove plutonium from the spent reactor fuel for weapons use. Subsequently, France gave Israel vital information on its own bomb design and manufacturing techniques.⁶ It was not until 1967 that the Israelis managed to construct deliverable nuclear warheads, mainly as a result of the crash program provoked by the May crises with Egypt that later resulted in the Six-Day War.

Evidence of the Nuclear Program

While this information could be dismissed as an example of a civil nuclear program for energy production under military control for the purposes of safe-guarding it from harm in a volatile region, other information supports the claim that these facilities have been used for making weapons. On 22 September 1979, a U.S. monitoring satellite detected a flash over the South Atlantic that may have come either from a low-yield nuclear test, potentially from a tactical device, or from the fission trigger of a thermonuclear bomb. This potential test was in all likelihood an Israeli one with South African endorsement, a conclusion particularly valid when considered in conjunction with the strong collaboration between the South African and Israeli nuclear programs at the time. This cooperation involved the sale of Israeli tritium for South African uranium. The remarkable similarity between the three-prong South African nuclear strategy of the period and that of Israel indicates an acute level of strategic interchange between the two nations, as well. A joint test would have benefited both nations, as South Africa would have been able to explore different types of bomb designs, and Israel would have been able to assess the capabilities of one of its weapons.⁷

While it may be argued that this test was solely a South African one, this seems unlikely, it was not until November 1979 that Pretoria had developed an operational nuclear device.⁸ The U.S. government scientific review that concluded that the flash was a non-nuclear event seems to provide the most convincing refutation of this line of reasoning, however, it may be surmised that it did not serve U.S. interests in the signing of the Egyptian-Israeli peace treaty to acknowledge Israeli nuclear arms, and thus the study was perhaps not entirely accurate in that regard. Indeed, this supposition is further supported by later Central Intelligence Agency and Russian Intelligence Bureau studies that indicate the nuclear character of the flash.⁹

The most convincing evidence of an Israeli nuclear weapons program comes from the sensational defection to England in October 1986 of Mordechai Vanunu, a technician at the Dimona facility. Vanunu published a highly factual account, including photographs and schematic drawings, of the inner workings of Dimona in the London *Sunday Times*. In it, he detailed the activities on the secret floors at Dimona, claiming that those floors not shown to inspectors were where nuclear weapons research and development took place. Interestingly, the Israeli government has never denied his allegations, and took them seriously enough that the Mossad, the Israeli secret service, abducted him in Italy. He now languishes in an Israeli prison, seemingly a rather solid corroboration for his story.

While it is alleged that Vanunu was a plant by the Mossad to scare regional foes by revealing a tantalizing glimpse of Israel's nuclear capabilities, this view is in part discredited by his abduction and later incarceration in an Israeli prison. Additionally, Vanunu took advantage of lax security on the restricted levels at Dimona to assemble his information over the space of several years.¹⁰ Had he been a plant, it seems more likely that he would not have revealed as much as he did. As his story could have jeopardized the Israeli strategy of opacity with respect to nuclear weapons, it is dubious that he was a Mossad plant. Vanunu himself stated that his revelations were designed to clarify the ambiguity surrounding the weapons

program; additionally, the Israeli government has taken no measures to discredit his disclosures.¹¹ His story, combined with the 1979 tests, former Prime Minister Levi Eshkol's declaration that Israel had the capabilities necessary to construct a nuclear weapon, and, most crucially, when taken with the vast information available today to the general public on Israel's nuclear program, seems to indicate rather convincingly that Israel does have such weapons. Indeed, Israel's efforts to quash such information from emerging in the mainstream, including the interrogation of well known writers on the subject like Avner Cohen as to the provenance of their sources,¹² epitomizes why such a line of reasoning supports the existence of an Israeli stockpile of nuclear weapons.

Nuclear Capabilities

Israel's nuclear arsenal is often estimated as ranging from 50-200 weapons,¹³ with the best estimates centered on an arsenal 98-172 weapons in size, and the assumption of 4 kilograms (kg) of plutonium per warhead.¹⁴ Using a more conservative evaluation of 5 kg per warhead produces an arsenal between 78-137 weapons in size. These assessments are themselves based on the yearly yield of the Dimona reactor, which is estimated as being between 10.6-18.6 kg of plutonium.¹⁵ This yield would permit the construction of 2-4 new weapons per year. The remaining components are assembled at other facilities. Most of Israel's nuclear facilities are not devoted to energy producing civilian purposes, but rather to the fabrication of plutonium for nuclear weapons. Therefore, to speak of a civilian nuclear program is a sophism of sorts, as any semblance of this program exists merely to serve in the interests of military manufacturing. These weapons are all assumed to be of both the tactical and the strategic variety, as Israel possesses both ballistic and cruise missiles of various ranges. While the precise number of weapons is somewhat unimportant with the numbers discussed, what remains from this analysis is a large and sophisticated arsenal that can be delivered through a variety of means.

Foremost among these systems are the nuclear capable Jericho missile series, which uses a solid fuel similar to those in the U.S. nuclear arsenal. The advantage of possessing solid-fueled weapons is derived from their ease of maintenance, and the rapidity at which they can be prepared for use with respect to liquid-fueled weapons; the former have their fuel kept on the missile while the latter need to be fueled before launching. Solid-fueled weapons give Israel an advantage over the liquid-fueled weapons possessed by several of their adversaries, which will be elaborated upon further. The Jericho I is a short-range missile with a range of 500 kilometers (km) with a 500 kg payload. The Jericho II is a medium-range missile with a range of 1,500 km with a 1,000 kg payload; these weapons are capable of striking targets anywhere in the region. Both are road and rail mobile and about 100 have been deployed thus far, mainly in the Negev.¹⁶ Israel also possesses a variety of cruise missiles, including the American Harpoon with a range of 120 km with a 220 kg payload.¹⁷ An intercontinental missile capability could also be added to the Israeli arsenal with the modification of the Shavit space-launch vehicle, currently used to orbit satellites, to carry a 500 kg payload over 7,800 km. This could give Israel the capability to strike into Europe and parts of Russia, including Moscow.¹⁸

Israel has a potent air force that can deliver nuclear weapons through the F-4E, F-15, and F-16 fighter jets, all technologically advanced aircraft purchased from America. Given the geography of the region, this may represent the most successful means of covertly and accurately firing a nuclear weapon, as radar would likely detect missile flights of the Jericho series and the cruise missiles are less accurate than those delivered by aircraft; the plane could lose itself in the hills and valleys that characterize the region, thus avoiding radar detection.

Israel began organizing its nuclear capabilities into a triad in 2000, based on the American model, after taking delivery of three German-built Dolphin-class diesel submarines. If reports on Israeli cruise missiles are accurate, these submarines could launch nuclear warheads placed on these cruise missiles to a distance of 900 miles. This nuclear triad seems to be an indication that Israel is seeking to attain a second-strike nuclear capability. This desire appears to have been engendered by efforts on the part of its Arab neighbors, especially Iran and Iraq, to obtain nuclear weapons.

Domestic Factors Affecting the Program

The modifications carried out on these submarines demonstrate the sophistication of the Israeli defense establishment. While the submarines themselves were constructed at the Kiel shipyards, domestic

Israeli contractors added much of the navigation, communication, and weapons systems after delivery.¹⁹ Due to the dearth of literature on the subject, it is difficult to evaluate the nature of this work; however, it can be surmised that it is of the highest order when one considers the types of weapons that domestic industries have placed at the disposal of the IDF in the past. As Avner Cohen illustrates, the Israeli nuclear program has vastly contributed to the rapid development of Israeli science and technology. This progress has seeped over into institutions of higher learning. Israel has sought to train its own physicists and scientists, and has permitted their development through the funding of modern facilities and the retention of the brightest minds who might have otherwise gone abroad, as has been the case with many small nations who lose their elite to the so-called “brain drain” phenomena. Related research and development activities have also played a role in the advent of high-tech industries during the 1960s and 1970s, predominantly in the fields of computers, aeronautics, and telecommunications.²⁰ This has led to support among experts in the field for an Israeli nuclear program, along with the larger firms in sectors providing components for the weapons who have benefited economically from government contracts. It can be said that the Israeli high tech sector owes its current position as one of the most advanced in the world in part to the Israeli military’s contracts; some of the most vital fields alluded to above are vital in a nuclear weapons program. Computers factor heavily into this calculus; as a result of the policy of ambiguity, Israel has not been able to openly test its weapons and thus computer-simulated models assume greater importance for military planners in determining potential capabilities of the arsenal.

The impetus of the military has been crucial for the development of this program, as it was the military that supported Ben-Gurion’s decision to begin construction of a nuclear weapon.²¹ This choice arises out of the military’s fears of losing a war, which would either entail the destruction of Israel or would see the state much diminished as a result. This viewpoint is not an exclusively Israeli one, however, as no military has refused to support or cooperate on nuclear projects, simply because it facilitates their task of defending the nation’s vital interests. Despite this, the nuclear weapons have not been integrated into the overall IDF strategic command structure,²² and planning proceeds on the assumption of conventional conflict with non-nuclear enemies. The control and strategic planning of these arms remains firmly in the hands of a select group of officials headed by the prime minister, none of whom have ever formulated an official specific nuclear doctrine for the use of the weapons.²³ Thus, the constituency that is of crucial importance when evaluating internal factors with respect to nuclear weapons is not domestic public opinion, but rather the politicians in the Israeli government itself. While largely supporting the possession of nuclear weapons as the ultimate “ace-in-the-hole” against doomsday scenarios,²⁴ the public has little say on the issue, as the government cloaks all debate in the policy of opacity.

To date, there has only been one debate in the Knesset, the Israeli national assembly, on the nuclear weapons issue, which took place on 2 February 2000. Israeli Arab legislator Issam Makhul, from the predominantly Arab communist party Hadash, raised the debate, charging that the policy of ambiguity jeopardized national security.²⁵ In the past, such a debate would not have occurred, since the motion for debate would have been sent to a closed-door session of the Defense and Foreign Affairs Committee, where it would become irrelevant. Makhul circumvented this practice, however, by threatening to argue the validity of this procedure in front of the Israeli High Court of Justice. To avoid embarrassment, the speaker of the assembly permitted the debate to occur. Lasting fifty-two minutes, it degenerated into reciprocal acrimonious accusations of treason, and a subsequent motion on whether to hold a wider debate was soundly defeated.²⁶

In the aftermath of the debate, government officials issued declarations reinforcing the need for the policy of opacity to defend national interests. This tendency is symptomatic of the opinion held towards the nuclear program by the politicians in the Israeli government today. Gestures towards an easing of the ambiguity surrounding the weapons, such as that by Makhul in the Knesset, are rare within the government and are indicative of a reluctance to discuss the existence of nuclear weapons; such a debate would countervail almost a half-century of accepted policy. Thus, it can be concluded by their acquiescence in avoiding deliberations on the nuclear issue, and near stifling of debate, that the majority of the Israeli government favors the existence of a nuclear program. Makhul’s example illustrates a segment that may not be in agreement with such a policy; however, it appears to be small and marginalized and therefore not influential. It is not surmisable that this widespread domestic political support provides further stimulus to the continuation and development of the weapons program.²⁷

External Factors Affecting the Program

Israel has enjoyed a degree of foreign backing for its possession of nuclear weapons, particularly from certain members of the declared nuclear nations. Of these nations, the tacit collaboration with the U.S. has been perhaps the most important. While U.S. arms sales and military aid to Israel, such as the sale of cruise missiles that can be used as delivery systems for nuclear warheads, are immense and can be used to further Israel's nuclear capabilities, its most valuable contribution has been its continuance of its "don't ask don't tell" policy that started with President Richard Nixon's administration. By not openly demanding that Israel relinquish its weapons, or even acknowledge their existence, the U.S. has abstained from exerting the same pressure that was brought to bear on India and Pakistan after their respective nuclear tests. Israel has been permitted to continue possessing its weapons in an environment free of international diplomatic pressure demanding modification of its nuclear policy. This modus vivendi has facilitated Israeli acquisition of knowledge and secondary parts necessary for its weapons that could have otherwise been blocked by the Nuclear Suppliers Group (NSG), one of the two global organizations of nations that monitor the sales of nuclear weapons sensitive technology, the other being the Zangger Group. Clearly, this has furthered Israeli nuclear capabilities. Additionally, as demonstrated, French aid was instrumental in the inception of the nuclear program. France has also avoided openly condemning, or even discussing, Israeli possession of nuclear weapons, with results akin to those of U.S. policy. China, a large supplier of weapons to much of the world, has benefited from collaboration with Israel as well, cooperating on cruise missile development.²⁸ Russia has perhaps been the only nation of the declared states to have openly opposed Israeli's possession of nuclear weapons. The development of the Shavit space vehicle into an ICBM can be seen as an attempt to deter Russia from a missile attack, which it secretly hinted at during sensitive moments of the Cold War,²⁹ though these fears may be waning with the collapse of the Soviet Union. Thus, it may be concluded that the traditional nuclear powers, with the exception of Russia, have surreptitiously encouraged Israel's nuclear weapons program, to varying degrees.

International Treaty Commitments

This analysis is borne by an inspection of Israel's international treaty commitments in the weapons control regime. Israel is not a party to the 1968 NPT treaty and has thus far successfully resisted all efforts to make it adhere to its guidelines. In so doing, Israel has not agreed to full-scope International Atomic Energy Agency (IAEA) inspections and safeguards of its nuclear facilities, with the exception of the 1955 plant built by the U.S. at Nahal Soreq.³⁰ While IAEA inspectors have been taken on tours of the Dimona facility as a gesture of goodwill, they were not shown the entire facility and were duped as to its true scope by a series of artifices, such as false doors and walls. The absence of IAEA inspections has therefore permitted Israel to develop its weapons without the stringent controls that have limited other nations from acquiring these arms. Indeed, Israel has been able to maintain its regional monopoly on the weapons, in part thanks to the IAEA's success in controlling proliferation in the Middle East among the Arab nations. This remains a point of contention among these nations, who feel that Israel has benefited unjustly from the support of nuclear nations.

As a concession, Israel has signed both the Comprehensive Test Ban Treaty (CTBT), one of only three non-NPT states to do so, and the Partial Test Ban Treaty (PTBT).³¹ These signings were concessions; although Israel played a large role in the drafting of the CTBT, due to its policy of ambiguity, it cannot test its weapons irrespective of its membership in such treaties. It appears that its efforts in promoting the CTBT were to limit regional opponents in developing nuclear arms rather than stemming from a concrete desire to limit general testing. The CTBT replaced the PTBT, a treaty proposed in 1963, thus rendering the latter obsolete for our purposes.

In addition to these two treaties, Israel is a part of the Missile Technology Control Regime (MTCR), an informal export control arrangement introduced in 1987 and designed to limit the spread of missiles capable of carrying weapons of mass destruction. These missiles are defined in the accord as being capable of carrying a 500 kg payload over 300 km.³² As in the case of the CTBT, it is seen that Israel's motives for joining this pact are not entirely altruistic, since it possessed the weapons limited by the MTCR before joining. Thus, Israel can use the MTCR as a means of limiting nations that it sees as threats from acquiring the technology necessary to build the restricted missiles.

Interestingly, Israel is not party to the Biological Weapons Convention (BWC), nor has it ratified the Chemical Weapons Convention (CWC), though it has signed it. Israel is widely believed to possess both biological and chemical weapons of all types.³³ While for much of the Arab world, these weapons have represented an alternative to nuclear weapons, perhaps due to their inability to acquire such weapons, Israel views them as a complement to its nuclear arsenal and therefore has avoided signing treaties that would limit its ability to produce them. Oddly, Israeli strategy with regards to its potential chemical and biological weapons has not mirrored its nuclear strategy, perhaps as a result of the plethora of nations around the globe who are suspected, often with a high degree of certainty, of possessing these types of weapons. Those nations have not been prevented from doing so due to the fundamentally easier means of acquiring them when compared to those needed for nuclear arms.

Geo-Political Observations

The threat represented by the nations that possess rogue chemical and biological weapons has, in part, contributed to Israeli fears for its national security. Despite this, the time when Israel needed to fight six wars over the last century to preserve itself seems to have passed. The primary threat today stems not from hostile nation states but from transnational terrorist organizations that are often not state sponsored. This is not to say that the threat from neighboring nation states has vanished but that it has diminished to the extent that it no longer represents a basis for the strategy of possessing of nuclear weapons as a necessary deterrent. Examining Israel's traditional enemies, it will be established that none of them represent a definite threat to its national security at this point in time, and consequentially do not need to be deterred from hostile intentions by a nuclear arsenal.

Since the 1979 peace accord with Israel, Egypt has sought to establish itself as a regional mediator. While Egypt is suspected of possessing chemical and biological weapons,³⁴ as well as the means of delivering them to Israel through both missiles and aircraft, it appears that those arsenals are a holdover from the days of open tension between the two nations and now represent a means of defending national security from external threats. Egypt does not appear to be openly seeking the acquisition of nuclear arms, as its facilities are under IAEA safeguards. Indeed, Egypt is one of the major regional proponents of a nuclear free zone (NFZ) in the Middle East. Hosni Mubarak, while making large concessions to fundamentalist domestic groups during his presidency of Egypt, has not allowed these views to seep into his pro-Western oriented foreign policy. That policy has included increased efforts to establish peace in the region through participation in the discussions between Israel and Palestinians over a homeland for the latter. Visibly, these actions are not those of a hostile nation intent on engaging in armed conflict over territory, and therefore Israel can discount Egypt as the threat that it formerly represented.

Libya, Egypt's neighbor in Northern Africa, is another nation that was seen as a menace to Israeli security because of its support for several terrorist groups, such as Abu Nidal. During the 1980s, Israeli commandos entered Libyan territory on several occasions in order to assassinate heads of terrorist organizations sojourning under Colonel Muammar Qaddafi's patronage. Libya was also suspected of possessing chemical and biological weapons.³⁵ Notwithstanding these antecedents, Libya has recently attempted to turn away from its checkered past by concluding several economic agreements with nations in the European Union and reducing its anti-Israeli rhetoric. Additionally, since the threat posed by Libya has always been one of terrorism, it seems that any threat it represents would be best met by an alternate strategy not based on nuclear deterrence, as Libya cannot realistically destroy Israel with its current weapons. *[Editor's Note: Since the acceptance of this paper, Colonel Qaddafi has revealed his state's chemical and biological weapons program through disarmament talks with the United States and Great Britain.]*

Of Israel's traditional enemies, Iraq has suffered the most sudden decline. Today, a discussion of Iraq's capabilities is moot, as the state has undergone a regime change. While Israel felt sufficiently threatened by Iraq's Osirak nuclear reactor, which may not have been operational, to destroy it in 1981 with an air strike, the situation today has changed dramatically. In light of recent events, Iraq can be fully discounted as a threat to Israeli security, thus eliminating one of the nations against whom the Israeli nuclear deterrent was primarily directed.

It appears that Iran is taking note of the Iraqi demise, or at least the global isolation that its pre-war posture drew it into. This is exemplified by conciliatory gestures, such as permitting IAEA inspection of its two previously undeclared nuclear facilities that were recently discovered with satellite imagery. Iran

continues to permit IAEA inspection of several of its nuclear facilities as a party to the NPT, thus providing a certain degree of clarity on its nuclear program.³⁶ While Iran is suspected of possessing chemical and biological weapons,³⁷ the younger generations who can remember the scars caused by the Iran-Iraq war during the 1980s seemed disinclined to engage in a conflict that could have similar costs unless attacked, especially since much of Iran's attention is focused on internal movements towards greater freedoms and openness in society. Current President Mohammed Khatami is also important in this trend, as he supports a movement away from the cleric-based government of the revolution. This is not to say that Iran will become a Western democracy in the near future, but that all these indications amalgamated together indicate an easing of tensions and a space within which to work towards a resolution of mutual disagreements.

While Iran possesses a missile based on the No Dong, a Korean design, that is capable of hitting Israeli territory, it would seem that the acquisition of this weapon, along with its variants with extended ranges, is predicated on defending national borders, as are any Iranian efforts to acquire nuclear weapons. Since Israel sees Iran as perhaps its primary and most powerful military adversary in the region, this bodes well for Israeli fears of an Iranian attack. Furthermore, the regional geography does not lend itself to an Iranian attack directly on Israeli territory. A defensive posture by Iran may be mistaken as an offensive one by Israel due to the hostile rhetoric of fundamentalist clerics and the press. Iranian efforts to acquire Kilo-class attack submarines from Russia, in an apparent effort to counter the Dolphin-class Israeli submarines, also exemplify attempts to defend against what is seen as Israeli offensive capabilities; these inquiries have naturally augmented tensions, because Israel has viewed them as an Iranian endeavor to obtain the capabilities to destroy its submarines, perhaps preemptively.³⁸ While it is difficult to determine intentions, mutual fears appear to be impeding discussion. Were these fears to be alleviated by measures on both sides, this would facilitate diplomatic maneuvering.

Part of this apprehension may stem from the Iranian realization that their liquid-fueled No Dong missiles are inferior to the Israeli Jericho series. The Iranian missile, name the Shahab, takes longer to prepare for combat due to the fuel type and is both less sophisticated and accurate than the Jerichos.³⁹ Thus, Israeli conventional forces ensure superiority in the event of an exchange of missiles, since the Jerichos could be armed more rapidly than the Shahabs. Additionally, the principal threat from Iran has always been its support of terrorists, foremost among them the Hamas and Hezbollah groups. While this backing may not end, it is not through nuclear deterrence that these groups will be discouraged from attacking Israel, nor will Iran be coerced into halting aid due to a nuclear threat; this would be an unacceptable loss of face and acknowledgement of military inferiority. In spite of the problems posed by Iranian support of terrorism, however, a larger analysis of Iran's intentions illustrates the changing nature of its government towards the West, its openness to IAEA inspections, and the possible defensive posture of its missile program. These all indicate that, while Iran will not become Israel's ally, it is perhaps no longer the avowed enemy it was, therefore obviating the need for a nuclear deterrent against it.

Syria has long been one of Israel's traditional enemies, participating in almost all of the wars fought by the Arab states during the last half-century. It is suspected of possessing both chemical and biological weapons, and possesses missiles that could strike Israeli territory.⁴⁰ Syria, however, has been remarkably quiet since the 1980s. This may be a lesson from its unsuccessful military campaigns against Israel. It has perhaps recognized that it cannot defeat its neighbor and thus has ceased attempting to disturb the status quo out of a fear of being eliminated itself. Its leadership has also had internal problems with dissident and splinter movements that may have diverted its attention away from foreign policy. These trends indicate an absence of a Syrian threat to Israeli national security at the present time; it can be further surmised that, due to the large conventional superiority and the proximity between the two nations that would make a nuclear explosion in the one highly hazardous to the other, Israeli nuclear weapons were never meant to deter Syria.

Jordan has not been an Israeli enemy in many years and possesses neither chemical nor biological weapons, nor the means necessary to deliver such weapons to Israel. Additionally, Israel possesses an almost crushing conventional military superiority. Jordan can be considered the region's only quasi-neutral state, as far as any state in the area can be neutral, and its Western oriented government, led by the English-educated King Abdullah, bears no ill towards Israel at the present time. Thus, the threat from Jordan can be said to be almost nonexistent.

Saudi Arabia has recently entered into Israeli discourse as a nation that may be an adversary in the future. It possesses missiles capable of striking Israel, but does not have any chemical or biological weapons stockpiles.⁴¹ The fear of Saudi Arabia stems more from potential capabilities, as their petro-dollars

would allow them to purchase such weaponry quickly. These claims, however, focus more on the radical nature of the Wahhabi Muslim sect that controls religious life in the Kingdom and its virulent language, and ignore the secularized monarchy. Like Mubarak in Egypt, the Saudi royal family has made domestic concessions to radicals though this does not necessarily translate into hostility towards Israel; the close economic and political ties between the U.S. and the Kingdom, as well as a Saudi reluctance to become embroiled in regional power plays, makes the policy similar to that of the Jordanians. Thus, Saudi Arabia, like Jordan, does not seem to pose any peril to Israel in the near future.

Lebanon is included in the discussion of perceived threats to Israeli security because of its status as a haven for terrorist groups. Lebanon as a nation state presents no threat to Israel, but its lax policies towards monitoring entry and exit into its territory has made it a base of sorts for numerous terrorist groups. As stated previously, nuclear deterrence has little effect on these actors and Israel can do little with nuclear arms to prevent terrorists from wreaking havoc on its territory.

Conclusions and Proposals

Having examined the geo-political situation in the region, this paper's analysis leaves an inexorable conclusion: Israel does not need its nuclear weapons, as its deterrent has become obsolescent in a world where the primary threat to its national security is transnational terrorism, a menace that cannot be protected against through nuclear arms. The Israeli conventional forces are powerful enough both to repel any attack against its territory and to make any of its neighbors reflect deeply before launching a war against it. Funds would be better spent on conventional forces rather than on a nuclear program. While Israel receives extensive foreign aid from the U.S. and has considerable resources of its own for the project, its conventional forces could be enhanced by a reallocation of funds away from a nuclear program. The diplomatic dimension is vital in this context, as well, due to the strong commonalities in certain areas of foreign policy between Israel and the U.S. With the end of the Cold War, the U.S. no longer fears a Soviet reaction to any intervention in the region, and is therefore more inclined to do so in Israel's support should the need arise. The turbulent decades when Israel faced almost the entire Arab world arrayed in a hostile coalition have passed, and have been replaced by regional neighbors intent on preserving the peace and seeking a resolution to the seemingly endless Palestinian question.

This quest for peace has paradoxically been jeopardized by the nuclear deterrent as neighbors, such as Iran and Iraq, as well as Egypt, have felt threatened by the existence of these weapons and have attempted to acquire their own. Their efforts, coupled with Israel's weapons, have made them disinclined to achieve peace, since the status quo with Israel in a dominant position rather than a reasonable equilibrium of states would be unsatisfactory. Resentment in the Arab world has also sabotaged this process; the Arab nations, for reasons of prestige cannot accept Israel being the sole nuclear power. This does not mean that they would acquire the weapons for offensive purposes, but rather to establish themselves as nuclear equals, in a scenario similar to that between India and Pakistan. These views have prompted a slow burning arms race that has threatened regional stability and undermined the benefits found in deterrence. While the region has also been characterized by conventional arms races, these are more inherently stable due to their reduced destructive power when compared with nuclear weapons.

Ultimately, it can be stated that Israel's policy of nuclear deterrence has failed. Examining the various attacks on Israeli territory, it becomes apparent that adversaries were not deterred by nuclear weapons. Indeed, the Gulf War illustrated how easily Iraqi missiles could be fired at Israel with near impunity. It may be argued that adversaries were deterred from launching larger attacks, or that their aims would have been broader. However, an examination of several wars, notably in 1973, brings to mind the question of how much larger an attack or what broader aims would be needed to destroy the state of Israel, or at least to eviscerate it as a regional power. The distinctions that are numerically difficult to quantify suggest that the Israeli strategy of deterring massive attack has been a failure. That these attacks have not succeeded attests to the strength of the IDF.

The argument that the nuclear deterrent has prevented Israel from being the target of weapons of mass destruction falls short on several levels, as well. None of the actors in the region possess nuclear weapons. While they may have desired to use their chemical or biological weapons, these actors did not do so for the simple reason that Israel could have responded in kind. Thus, a similar deterrent could have been achieved without nuclear weapons. Furthermore, nations have traditionally been reluctant to use weapons of mass destruction. Nuclear weapons have been used once, before the world was fully cognizant of their

power, and afterwards every effort was made to avoid a scenario where they would be used again. Chemical weapons have been used during World War I and, most recently, in the Iran-Iraq War, setting a precedent for their use in the region. Despite the seemingly greater acceptance of the use of chemical weapons, perhaps because of their more restricted destructive potential, they have not been used very frequently in armed conflicts between nations. Indeed, in the case of the Iran-Iraq War, both sides used them in a limited scope and did not attempt to wipe out cities, which would have escalated the war into a holocaust. Thus chemical weapons are sufficient deterrent potential against weapons of mass destruction. The destructive potential has made nations reluctant to use these weapons because of public opinion, escalation of war into struggles for national survival rather than campaigns of territorial acquisition, and the difficulty in ensuring that they do not harm the troops firing them if they are swept back by adverse climatic conditions.

The harm to one's own territory adequately refutes the need for nuclear weapons. Due to the distances involved in the Middle East, firing a nuclear weapon would result in disastrous environmental consequences to Israel and her people. George Perkovich states that, in order to gain international acceptance for the use of nuclear weapons in a conflict, one must first use them on one's own territory. In Israel's case, this is impossible, due to the small size of the Israeli state where all land is vital, though Israeli planners have envisioned the use of tactical weapons in such a scenario. A nuclear explosion would cause infinitely more harm than a foreign invasion and is therefore an unpalatable choice. One need only look at the harm caused by the Chernobyl radioactive gas cloud to envision what sort of harm a similar cloud would cause in the Middle East with its dry winds and arid climate. Thus, if Israel wishes to retain a deterrent threat, it should be through the use of chemical weapons, which presents fewer notable environmental hazards than those posed by nuclear bombs.

Thus, Israel should relinquish its nuclear weapons voluntarily, in a manner similar to South Africa, though it should do so covertly. This need for secrecy is a consequence of the policy of ambiguity of the last fifty years. Were Israel to admit that it had been negligent in telling the truth with respect to its nuclear weapons program, this would cause a firestorm of anger in the Arab world that would destroy the basis for a peaceful transition to a weapons free zone. By not revealing whether it had weapons or not, Israel permits that Arab nations to retain face by not appearing as if they had been militarily. Thus, an NFZ is precisely what is needed in the region to allay fears about the acquisition of weapons of mass destruction. In addition, a pledge on the part of each nation in the region not to be the first to use chemical or biological weapons should be pursued. While it may be argued that is a utopian scenario, this may not be the case. Similar mistrust existed between Brazil and Argentina, yet today the South American NFZ is functioning smoothly.

This South American NFZ example should be the model for the NFZ in the Middle East. The basis for implementing such a program already exists in the form of the Multilateral Working Group on Regional Security and Arms Control.⁴² While Iran is currently not a member of this group, it would rapidly see the advantages of the decision to join; remaining on the outside would further cement its status as a pariah nation, which Iran is seeking to rectify. Egypt should be put in charge of these efforts, as it has been the primary proponent of the NFZ and has established itself as mediator in the region on such issues. Having been a close ally of the Arab world, but also having signed a peace treaty with Israel, Egypt is well placed to be accepted as the head of such a proposal by both sides. Using the Treaty of Tlateloco, which established the South American NFZ, as the basis for the NFZ, the Group should introduce a treaty for the Middle East. The joint inspections in the Tlateloco Treaty have functioned well and have alleviated much of the distrust between the South American nations. Due to the decline in tangible national security threats to Israel, this could be the ideal means of verifying that the neighboring countries are not surreptitiously attempting to acquire nuclear weapons in defiance of the treaty.

While it may be argued that ideological or religious differences will undermine such a plan, one need only look at the U.S.-Soviet precedents on arms control to see that this may not be the case. It appears that joint inspections are the ideal means of providing the clarity necessary to overcome suspicions fomented by deep differences. This trust building would be enhanced by the declaration on the non-first use of chemical or biological weapons. It also appears as if the nations in the region are at a reasonably conciliatory moment in time, and this should be taken advantage of. Thus, using the Group to spearhead a treaty regime based on the Treaty of Tlateloco would represent the most likely means of having an NFZ in the Middle East.

Ultimately, relinquishing nuclear weapons will be a difficult decision for Israel, but it is also a necessary one. The aims that it seeks to accomplish through the possession of nuclear weapons did not materialize as the nation still suffered damage from hostile attacks. Israel still endures pain today from

terrorists who seek to destroy it as a state. These groups are not deterred by nuclear weapons, weapons that may even contribute to their hatred of Israel. An overview of Israel's motivations for acquiring nuclear weapons, its nuclear strategy, its capabilities, and the views of important constituencies on the issue have been sought in this paper. Then, all this information together has been amalgamated to conclude that threats against Israel are not of the kind that can be deterred by nuclear weapons and that it is preferable to relinquish them and pursue a peace strategy through other means, an NFZ. It is allowed that Israel may need to keep its chemical and biological weapons, if only as a defensive hedge against those of the neighboring countries; however, a no first use pledge is vital in this instance. Thus, a plan has been contributed that can be used as a means of bringing peace to a troubled area of the world that has seen incalculable suffering, a result of mutual animosities of the people that inhabit it. With the elimination of nuclear weapons and the eradication of the desire to acquire them due to the NFZ, steps in the direction of peace will indubitably be taken.

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- ³⁹ Cirincione, 95.
- ⁴⁰ Ibid., 68-69, 96.
- ⁴¹ Ibid., 96).
- ⁴² Cohen, "A Sacred Matter."

Committee Matters: Parliamentary Departmental Select Committees

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Departmental Select Committees have fascinated scholars, as well as the politically minded, for years. All acknowledge the strategic position of committees in Government, but debate the degree of their significance. This paper seeks to prove that Departmental Select Committees are significant. These committees, in their respective governmental departments, are able to scrutinize and influence effectively not only because of their increasing independence, but also because of the deceptions they reveal. Theories of significance are offered and some evidence from recent British Parliaments is provided.

Introduction

Departmental select committees (DSC) exist in the British Political System and perform various functions within the British Parliament. In recent decades, as DSCs have increased their activities within the House of Commons, substantial modernization has also occurred within Parliament. With this modernization, the House has become institutionalized for legislative intervention, dominated by professional politicians and increasingly rebellious and influential.¹ DSCs have been in the vanguard of this transformation and have established their approach to the job as one affecting the Government in many different forms, as they most often do by exerting influence, increasing scrutiny, and extending accountability. These committees participate in the political process as tools that keep check on the Government, and their chairs continue to play an increasingly important role.

It is contended that DSCs are significant; they are more important than many realize and their chairs play an especially important role. Thus it is asked, in what ways do DSCs operating with the House of Commons prove to make themselves significant? This question is addressed within a general analysis of DSCs, followed up by concrete examples of DSC significance.

The discussion and analysis is divided into eight sections. After presenting a brief overview of the role of committees and their chairs, and examining DSC power and parallels to the American Congress, theoretical perspectives are discussed in relation to the desirability of DSC membership and chairship. Then, various other assessments of DSC purpose, function, and significance that have been analyzed over the years are reviewed. Thereafter committee significance is exemplified through an instance of whip interference. The following two sections go on to further exemplify DSC significance by presenting examples of committee scrutiny and their affects, and then discussing how the Prime Minister helped to improve committee and chairship significance. Finally, it is concluded that DSCs are significant and some general observations are made.

Roles of DSCs in the Legislative Process

First, DSCs have been used by the House of Commons for centuries as small groups that monitor Government departments and produce corresponding detailed reports. The present system of DSCs, established in 1979, has the task of examining the expenditure, administration, and policy of principal Government departments and associated public bodies.² They determine their own subjects for inquiry and then proceed to gather written and oral evidence.³ DSCs generally operate openly, as they issue press notices about their inquiries and take evidence in public before publishing it with their reports.⁴

DSCs are formed from within the parliamentary body and are responsible for scrutiny of the Government. Each DSC scrutinizes a single department. There are currently sixteen functioning DSCs, viz,

- Culture, Media & Sport
- Defense
- Education & Skills
- Environment, Food & Rural Affairs
- Foreign Affairs
- Health
- Home Affairs
- International Development

- Northern Ireland Affairs
- Science & Technology
- Scottish Affairs
- Trade & Industry
- Transport, Local Government & the Regions
- Treasury
- Welsh Affairs
- Work & Pensions

Most DSCs are comprised of eleven backbench members. This allows a small number of Members of Parliament (MP) to focus on and specialize in a particular area, and thus improve the quality of scrutiny.⁵ The chairs of DSCs also tend to be some of Westminster's best-informed, most experienced and often most independent-minded operators.⁶

The chairs of DSCs play a key role in leading committee work. They take much initiative in key decisions about investigative strategy, such as who the committee shall call to give evidence.⁷ These individuals also have more influence than most other members when it comes to determining the topics of inquiry. Chairs typically take the lead and conduct deliberative meetings and evidence sessions.⁸ They are responsible for securing consensus on reports, retaining cohesion within the group, and ensuring the DSCs' overall effectiveness. It has also been argued that DSC chairs can influence the formulation of policy.⁹ While chairs have no special powers, they do have a casting vote if there is a tie in any vote in the committee.¹⁰ In most DSCs, however, the overall duty of chairs is to play the important part of maintaining consensus among members, which makes sure that the chemistry yields a worthwhile product.¹¹ The part played by chairs is very much crucial in regard to setting the individual tone of the committee.¹²

DSC Power in the Parliamentary Process and Parallels to the American Congress

DSCs have numerous powers at their disposal that enable them to gather evidence and prepare their reports. To begin with, DSCs have the power to send for persons, papers and records when gathering evidence.¹³ They can solicit written evidence from Government departments, public bodies, pressure groups, academics, and other interested parties.¹⁴ Only rarely, however, do committees need to use their powers to order the production of documents. DSCs also have the power to call on individuals and representatives of organizations to give oral testimony.¹⁵ Each DSC spends the majority of its time interviewing witnesses, notably ministers, senior civil servants and groups who have submitted memoranda.¹⁶ This allows DSCs to explore issues, gain greater insights into problems, and examine possible solutions. Witnesses usually come to give evidence willingly, but on occasion DSCs have to use their powers to order a witness to attend.¹⁷ After evidence is gathered, each committee has the power to decide how to interpret its terms of reference.¹⁸ Other than the powers mentioned, DSCs possess a number of administrative powers. For example, all DSCs have the power to appoint a sub-committee.¹⁹ DSCs also have the power to share evidence with other Commons and Lords committees and to meet jointly with other Commons committees to solicit evidence and deliberate.²⁰

While DSCs are allocated a substantial degree of power, they still operate within a narrow sphere, not nearly approaching the status or resources of their Congressional counterparts.²¹ The House of Commons is not the House of Representatives, and MPs are not Congress members. The American system involves a fairly strict separation of powers where the administration does not need to rely on a majority in the House, because the House asserts its own position recommended by its committees.²² The Commons is there not only to review government policy, but having provided the Government from amongst its own members, also to support it.²³ The jobs in the institutions, therefore, cannot be the same.

In recent years, a growing number of scholars and journalists have published articles comparing various aspects of the House of Commons with their counterparts in the American Congress; most of the honors have gone to Congress. The matters most frequently mentioned are the low pay and primitive working conditions of backbench MPs, the haphazard organization and underutilization of parliamentary committees, and the lack of power and significance of most backbenchers that results from the excessive power of the whips.²⁴ The powers of committees in the Commons are far from equivalent to that of congressional committees in the American system. In Congress, for example, the chairs of the most prestigious of these committees, in both the House and Senate, have a political standing second to none. They outlive presidents, and many ambitious representatives see membership of such centers of power as the ultimate political achievement.²⁵ This is not so in the House of Commons, where few would see DSCs in this light, and most would probably agree that their members often seem to be experts talking to other

experts and specialists.²⁶

Furthermore, the Commons has nothing to compare with the powerful Congressional research agencies, which provide invaluable resources for Congressional committees.²⁷ Unlike Congressional Committees, DSCs do not receive research budgets, nor do the DSC Offices house a central unit of researchers.²⁸ Nevertheless, while Commons committees are much less powerful than their American equivalents, they retain considerable prestige and moral authority and are about as powerful an instrument as can be found in the House of Commons.

A Theory of Membership and Chairship Desirability

A common issue of debate addresses the question of whether committee membership and committee chairship is a desired Parliamentary career path. Common questions include whether committee chairs are “dinosaurs” with little chance of ever making cabinet, or up-and-comers? Many also question if MPs would rather be the chair of a DSC, or a parliamentary private secretary (PPS), whip, minister without portfolio, etc.? In addressing these questions, however, it is first necessary to take a general look at Parliamentary careers.

MPs have been increasingly professionalized in the last thirty years, both in terms of their own attitudes and commitment, and in the degree and nature of the support and facilities they now command.²⁹ There certainly has been a change in the nature of the backbench membership in the House of Commons. It has become more a full-time professional occupation, whereas thirty to forty years ago a smaller percentage of MPs regarded it in this esteem.³⁰ There has been much comment in Britain about the growing commitment to politics as a career and about the fading of the amateur politician.³¹ Politicians are nowadays not only ambitious for office, but most are also eager to express themselves politically, to influence the course of events, to have a say in the formulation of policy and to be in a position to effectively challenge the executive.³² Given this new assertiveness, career politicians have to channel their energies somewhere, and given that ministerial posts are relatively few in number, aspiring Parliamentarians have to turn to other outlets. One appealing option is membership in a DSC, where MPs can invest a great deal of effort, demonstrate their independence, and even refuse to always tow the party line.³³

While committee members fulfill a number of roles, their backbench role is the predominant. The duty of keeping check on the executive, therefore, while important, should not become the top priority. This is why some critics argue that DSCs fail to provide an alternative career for MPs. They believe the main task of backbenchers should be in supporting their party either as Government or as opposition, and checking the national bureaucracy; they should neither be debating policy with ministers in DSCs nor infringing on the responsibilities of local government.³⁴ Many MPs themselves, however, think quite differently and rate committees highly. Various studies have shown how eager MPs are to serve on committees and how healthy the competition for DSC chairship is.³⁵

Although the positions of DSC chairs are greatly desired, they are still not regarded as any real substitute for front bench offices and DSCs commonly lose members through promotion to the front benches.³⁶ DSC chairs are not allocated the additional staff, or the increases in allowances and budgets that accompany the higher rated positions. In regard to the lack of such remunerations, the Hansard Society, a non-profit organization which works to promote knowledge and understanding of effective Parliamentary Government, reported that, “...committee service must be made more attractive...key posts on select committees should be paid and MPs chairing committees should receive a salary equivalent to that of a minister.”³⁷ Many MPs appear keen to leave committees when the most minor jobs in Government or opposition become available.³⁸ This is another reason why some believe that DSCs have succeeded in providing only a pale alternative to the more traditional Commons hierarchy constituted by the two front benches. As yet, no case has been reported of an MP refusing a post on one or the other of the front benches because he or she wanted to stay on a committee.³⁹ Most committee chairs, however, have proved conclusively that work on DSCs can be as challenging and rewarding as holding a government post.⁴⁰

About one in three of all MPs who are not on one of the front benches or a PPS now serve on a DSC.⁴¹ DSCs have played a part in giving MPs who want to be full-timers a full-time job to perform, and in providing them with more than superficial knowledge of at least one branch of governmental activity. While these experts may be admired for their specialist contributions, DSC membership is still not normally regarded as a way to gain political prominence, but rather can be construed as a stop along the

route of doing so.⁴² DSCs give inexperienced newcomers an ideal opportunity to learn about policy-making and administration and, perhaps to start making a name for themselves. Some individuals have undoubtedly benefited from the ability to use their expertise in the more specialized environment of DSCs and have become more widely known and respected in the process.⁴³ Speaking on this subject, Mr. Donald Anderson, current chair of the Foreign Affairs Committee, said that there exists a tradition that MPs first learn the ropes by serving on DSCs and in the whips' offices before entering the Government.⁴⁴ Although membership in DSCs can be seen as a route to political advancement, numerous committee members and chairs have also previously held front a bench office.⁴⁵ This proves that DSCs give both has-beens and the up-and-comers, along with the never-will-bes, a chance to participate actively and an opportunity to take a more independent stand.

Regardless, DSC membership is onerous, time-consuming, and provides few rewards; this holds especially true in the case of chairs. If committee membership deliver a package of rewards and enhanced status, with even more of these perks going to chairs, a real incentive would exist to seek and keep these positions. This may also discourage chairs from taking ministerial positions. On the other hand, it is feared, especially by those who already see committee membership as a career path, that these changes would turn the positions into gifts, put in the hands of the whips to distribute. This could also potentially damage the nature of some DSCs. Others, however, who do not really see DSC membership or chairship as a genuine career path believe that if one is to be established, with consequent responsibilities and duties, some form of reward is essential.⁴⁶

Assessments of DSC Purpose, Function and Significance in Previous Research

While DSCs have been around for many years, their strength, influence and success have changed as they have undergone various reforms, with special regard to that of 1979. Defining their current purposes tends to be quite difficult because as Sear, Strickland, and Winstone argue, "since in a system of government which fuses rather than separates the legislative and executive branches the purpose of Parliament is itself a matter of considerable debate, it is hardly to be expected that there would be unanimity about the purpose of committees."⁴⁷ They also discover that there are contrasting perceptions about the function of DSCs amongst the committees themselves.⁴⁸

Looking to investigate DSCs further, Drewry found that DSCs impact the attitudes, perceptions, and expectations that MPs bring to work.⁴⁹ He demonstrates how committees have, in general, focused on indirect influence, information, and accountability, with influence being directed at the House, the Government, and public opinion.⁵⁰ This may be how DSCs have, over time, strengthened both Parliament's ability to scrutinize and hold the executive accountable, and the executive's sense of being accountable, as observed by Sear and associates.⁵¹ Drewry then extends his argument to state that the overall role of the DSC system is to act as a "critical but not hostile watch dog, keeping decision-makers on their toes and making them think and justify themselves."⁵²

The findings of Radice, however, present a different scenario. Radice finds empirical evidence to strongly suggest that the main function of DSCs has truly been to inform the House and contribute to debate on current issues.⁵³ More recently, Sear and associates have identified DSCs as providing independent scrutiny of the Government by enabling the critical questioning of Ministers and civil servants, and forcing them to explain policies.⁵⁴ These scholars also reported how, on occasion, DSCs have exposed ill-conceived and short-sighted policies and, from time to time, wrong-doing both in high places and low.⁵⁵ They believe that this is only possible because DSC "have been a source of unbiased information, rational debate, and constructive ideas." Nevertheless, the findings of Sear, Strickland, and Winstone suggest a significant relationship between the evolution of DSCs and the overall political process becoming less remote, and more accessible to the citizens who are affected by it.⁵⁶

Continuing the investigation of DSCs, Adonis agrees that DSCs have strengthened the Commons, giving outsiders a direct entrée to Westminster, and non-Government MPs a louder voice than they previously enjoyed.⁵⁷ He discovers that the most significant impact of DSCs has lain in the Chinese walls they have erected.⁵⁸ He cites DSC's as having, "engineered a partial but distinct institutional separation between the Commons' machinery for executive scrutiny and its forums for legislative and party political business."⁵⁹ This scholar goes on to argue that the weaknesses of DSCs are derived from inadequate resources, the overwhelming dominance of the executive over the business, and the mentality of the

Commons.⁶⁰ Adonis concludes that, "Select Committees appear to have an appropriate and necessary role, if Parliament is to be equipped to scrutinize the activities of the government it sustains."⁶¹

Quite apart from the other researchers, Searing initially looks at DSCs from a more cynical point of view, but inevitably describes them as surprisingly active and critical.⁶² He goes on to cite them as "changing the House of Commons from a Gothic club into a highly institutionalized and active organization."⁶³ The Liaison Committee issued a report in conjunction with this idea in March of 2000. It argues that, while DSCs have helped to significantly modernize the Commons, as well as proving successful in many other aspects, their further strengthening is mandated.⁶⁴

Committee Significance Exemplified in a Case of Whip Interference

Theoretically, it is proposed that DSCs in the House of Commons are of significance with special regards to their chairs. DSCs promote close scrutiny of the Government and help to create checks and balances in democratic procedures. The Government, however, does not always find it easy to accept that DSCs will scrutinize and sometimes criticize. This is apparent by whip resentment towards the independent-mindedness of some committee members, made obvious in their attempts at interference.⁶⁵ Such was the case when whips attempted to unseat two popular committee chairs recently.

In July of 2001, there was a proposal to remove both Gwyneth Dunwoody and Donald Anderson from powerful DSCs, which they had chaired in the previous Parliament, because of their assertion of the Commons's right to scrutinize the executive.⁶⁶ After propositions were made to omit Dunwoody from the Transport, Environment and Regional Affairs Committee and Anderson from the Foreign Affairs Committee, there was an outcry both in Parliament and from the press. The decision to remove the chairs infuriated MPs on all sides and fueled restiveness among Labour Party backbenchers over the so-called "control freakery" of the Labour Government under Blair.⁶⁷ Whips, who make the appointments, further angered MPs by nominating sacked ministers to fill the jobs.⁶⁸ The House saw the action as undue interference by the whips and refused to accept it.⁶⁹ The Government was also accused of being unable to tolerate a single voice of dissent.⁷⁰

The whips' action in removing Dunwoody and Anderson was seen as a blow to parliamentary scrutiny of the executive.⁷¹ Downing Street responded to the incident by publicizing how usual it is for DSC chairs to lose their positions in a post-election reshuffle.⁷² Many others, however, saw the maneuver as party jostling for position.⁷³ It was not believed that those being scrutinized should have a say in the selection of the scrutinizers.⁷⁴ This led to widespread discontent about the system, which was clearly not independent of the Government and party managers. Anderson comments on this, saying that in order for Parliament to enhance its role, it is imperative that DSCs be seen as independent.⁷⁵ Dunwoody argues that the jobs of DSCs are vital because the House of Commons must never become a great morass of people doing what they are told by the executive and not by the electorate.⁷⁶

Throughout the House, many MPs held sentiments that the chairs had genuinely been the victims of power machinations, and Anderson and Dunwoody agreed.⁷⁷ Anderson remarks, "It is essential for our democracy that watchdogs are allowed to bark and occasionally to bite."⁷⁸ While this may be true, others argue that Government backbenchers need to be careful. As one MP puts it, every dog is allowed one bite, but a dog that goes on biting all the time may not get its license renewed when it falls due.⁷⁹ Inevitably, party loyalty is still expected to be the dominant motive of MPs with party solidarity the dominant mode of MP's behavior.⁸⁰ While the development of DSCs is challenging this and encouraging change rather than diminishing it, the Government will not always stand for dissent.

Both Dunwoody and Anderson have distinguished themselves by asking questions of ministers that the latter preferred not to answer.⁸¹ Anderson embarrassed the Government with his committee's inquiry into the supply of arms to rebels in Sierra Leone.⁸² Dunwoody harassed the Government over its failure to come to grips with transport problems.⁸³ DSC reports such as these can influence opinion and thereby pressure the Government. This is one reason why governments concern themselves with committee activity, and occasionally, go so far as to interfere with their composition. If committees should have no influence, the whips would not bother with them.⁸⁴

In the case of Anderson and Dunwoody, MPs ultimately and unexpectedly rejected the Government's heavy-handed attempts to control the make-up of DSCs. The power of Government whips was curbed when the propositions to sack the chairs were thrown out.⁸⁵ More than 100 Labour MPs, over

one quarter of the Parliamentary party, joined the opposition to reject plans to remove Dunwoody and Anderson from their respective committees.⁸⁶ Although technically a free vote, it was widely seen as Blair's first Commons defeat since coming to power in 1997, and a massive rebuff from MPs who resented the leadership's "control freakery."⁸⁷ Both defeats were greeted by loud cheers and were a major embarrassment for Blair within weeks of his second general election landslide. The event was seen as a symbolic expression of backbench power and a sign that Labour MPs, many of whom gained reputations as uncritical supporters of the Government, were starting to reassert the rights of Parliament to scrutinize the Government.⁸⁸ Ministers were left stunned, being forced to rethink their ability to deliver controversial legislation.⁸⁹

A jubilant Mr. Anderson hailed the result as a peasants' revolt and a great day for Parliament, expressing hopes that whips learned a lesson from the incident.⁹⁰ He went on to warn ministers that it would be "very, very unwise" to ignore the new mood among MPs.⁹¹ Mrs. Dunwoody also believed it was a lesson for the Government. She said the Government did the entire thing very badly, and that the Parliamentary Labour Party was not going to tolerate it.⁹²

Regardless, if Committees, with particular reference to their chairs, were not important, whips would not bother going to such extremes measures to influence their composition. The Government loses nothing from the committees not functioning; indeed, this relieves departments from intermediate scrutiny.⁹³ Select committees that fail to make themselves something of a nuisance to ministers and civil servants are not doing their job; where exactly they should draw the line is, of course, open to legitimate dispute.⁹⁴

Tangible Examples of Committee Scrutiny and its Effects

DSCs function largely as scrutinizers of the Government, and in certain circumstances, their reports can make serious waves and even affect public opinion. While DSCs are diverse in their approach to tasks, it should be stressed that the impotence of some DSCs is primarily self-inflicted.⁹⁵ Committees that fail to sufficiently scrutinize their corresponding governmental department on particular issues have simply chosen not to do so. More commonly than not, however, DSCs seem to sufficiently and effectively function.

The scrutiny performed by DSCs is by far their most important and defining characteristics. Investigative committees, in combination with investigative journalism, have uncovered many abuses.⁹⁶ The report of the Foreign Affairs Committee's (FAC) on the controversial sinking of the Argentine cruiser *Belgrano* in the Falklands War in 1982, is one example of this. The committee argued that there had been evidence of ministerial deception within Parliament, and actually went as far as to give evidence that showed the Government was lying.⁹⁷

Committee scrutiny, as displayed by the FAC, has also occasionally led to the criticism of the ethicalness of British foreign policy. This is true of instances where the Government has been prepared to act, but has seemed to deliberately rank propriety below more traditional foreign policy criteria.⁹⁸ Cases of this nature include the Sadeline Affair in Sierra Leone, the Russian war on Chechnya, and the Anglo-American military and economic involvement in Iraq.⁹⁹

The case of Sierra Leone is an instance in which the FAC was clearly not afraid of embarrassing Government leadership in its report. The affair burst into view in 1998 and led to severe criticism of the Foreign and Commonwealth Office (FCO) by the FAC. The Sierra Leone issue involved the British private military company Sadeline providing arms to the exiled President of Sierra Leone in an attempt to help him return to power.¹⁰⁰ This involved the breaking of a United Nations arms embargo, which the British Government supported.¹⁰¹ Sadeline acted with the knowledge of the British High Commissioner to Sierra Leone and of some FCO officials.¹⁰² Undeniably, some parts of the official British foreign policy machinery were involved in breaching international law. The FAC report on the issue referred to "a remarkable admission of professional incompetence" and numerous failed duties.¹⁰³ This damning indictment was treated with disdain by the British Secretary of State.¹⁰⁴

DSCs have left an impression on many and have made their mark as scrutinizers. In 1990, the Procedure Committee found unanimous agreement among witnesses appearing before it, including politicians and academics, that DSCs achieve more rigorous scrutiny of executive actions than did either debates or questions on the floor of the House.¹⁰⁵ The 1992 controversy over the future of the coal industry exemplifies this. In a move that showed the significance of DSCs, virtually all those who called for a

review of the Government's decision to close half of Britain's mines saw the Trade and Industry DSC as the most appropriate body to conduct this review.¹⁰⁶ That the Trade and Industry Committee was believed to be sufficiently independent to conduct such a review marked a milestone for DSCs.¹⁰⁷

The scrutiny of DSCs can also be very influential. In terms of committees' impact on public opinion and the media, there has been steady improvement over recent years.¹⁰⁸ While media attention to the work of DSCs appears to be proportional to parliamentary relevance, coverage of DSCs in the specialist press has been considerably better in recent years.¹⁰⁹ The work of DSCs contributes to opinion formation within Government departments, and this can enable committees to influence policy formation. Publicity is one of the few levers DSCs have, and since they are not an integral part of the decision making process, their impact upon that process can only come through making themselves and their doings known.¹¹⁰ Also, since there is very little time for committee reports to be debated, they are dependent upon publicity for making their reports known and especially for getting themselves noticed by other MPs and by the Government. The weighty and authoritative report may influence the thinking of departments, particularly if it stimulates reaction from interest groups.¹¹¹

An instance of a DSC inquiry catching the headlines and shaping public opinion is the FAC's 1989 investigation into the nationality status of British subjects in Hong Kong. This took place, fortuitously, just as the Chinese Communist leadership was suppressing the pro-democracy campaign in the country.¹¹² At the height of the crisis, the Foreign Secretary and the Governor of Hong Kong spent a morning each being cross-examined by the committee, the Governor using it as a forum to publicize his advice urging ministers to extend British citizenship rights to Hong Kong subjects.¹¹³

All these instances show how the focus of parliamentary scrutiny has been moving towards DSCs. Modern Parliament is now better able to monitor the Government through DSCs, and this helps it to be held in high public regard.¹¹⁴ In regards to scrutiny, DSCs are about as powerful an instrument as one can find in the House of Commons.¹¹⁵

Blair Helps Improve DSC and Chairs Significance

The Liaison Committee, which is comprised of all DSC chairs, meets from time to time to allocate reports for debate in the House and consider matters that generally affect committees.¹¹⁶ In April 2002, Prime Minister Tony Blair announced that he would appear before the Liaison Committee, twice yearly, to discuss domestic and international affairs. There was surprise in Westminster that Blair had chosen to subject himself to greater scrutiny after having refused invitations in the past.¹¹⁷ Blair had previously been invited to attend the Liaison Committee to discuss the Government's annual report.¹¹⁸ He was also asked to attend a session of the Public Administration Committee to discuss the Government and the manner in which it was being run.¹¹⁹ On both occasions, he turned down the invitation, citing the precedent that prime ministers did not attend Commons committees and should not be answerable to them.¹²⁰ Although the idea for appearing before a committee came from Blair, it came months after Iain Duncan Smith, leader of the opposition, promised to do the same.¹²¹

The Prime Minister said he made the decision because he felt he was not being subjected to the detailed scrutiny of policy which could further inform the political process and debate.¹²² This may be because during the 30-minute Prime Minister's Questions, held every Wednesday afternoon, issues blow in and blow out.¹²³ Blair made the argument that the size of the Government's majority gave an added responsibility to look at different ways of being open to scrutiny and accountability.¹²⁴ Others, however, believe that Blair's motives were less than honorable and argue that his decision to appear was motivated by a need to turn a tide of negative publicity and overcome the perception of news management.¹²⁵ "It was self-interest that drove Mr. Blair to the Commons, not the public interest," said one newspaper.¹²⁶

Regardless of motivation, the move was seen as a substantial new step in the scrutiny of the Government by Parliament and a significant extension of accountability to that institution.¹²⁷ It established a new benchmark, full of implications for the supervisory role of Parliament.¹²⁸ While the event was a constitutional departure that will almost certainly bind all future prime ministers, Blair is still not expected to appear before any other DSCs.¹²⁹ Special advisers and Downing Street officials will also still not appear, even though these individuals are believed to be very important in influencing policy decisions.¹³⁰

Determined to further hold the Prime Minister and the executive to account, some chairs wanted the meeting to establish their reputation as grand inquisitors.¹³¹ Others, who agreed that the executive was in need of further accountability, were also overwhelmingly responsive. Constitutional expert, Peter

Hennessy, argues that for too many years a vacuum and accountability gap had existed between Parliament and the executive and that the latter had become increasingly dominant.¹³² “The role of the Liaison Committee will help redress this imbalance in a significant way,” he said.¹³³ Robin Cook, Speaker of the House of Commons, agrees that the Liaison Committee is the right forum in which to question the Prime Minister.¹³⁴ This may be because the Liaison Committee consists of people with real experience in their areas. Whenever appearing before the Liaison Committee, Blair will be confronted with issues that matter, and he will have to answer for the actions of the entire executive; the Prime Minister will almost certainly never be in for an easy ride.¹³⁵

The first session was held in public, in July of 2002, and gave DSC chairs the opportunity to ask a range of in-depth questions. Prior to the meeting, the Liaison Committee agreed that much of the 2 ½ hour session would be devoted to Blair’s role; how he works with his colleagues, how the cabinet inter-relates, and his role in policy making.¹³⁶ It also decided to question him on hot-button topics relating to individual committees. The questions ranged from how to deal with the country’s decrepit transportation system, the National Health Service, housing and pensions, whether to adopt the euro as Britain’s currency, and even how to respond to the Bush administration’s talk of invading Iraq.¹³⁷ If, as has been pledged, future sessions spend more time on policy and less on duties and roles, the event may yet become a further valued part of the political process.¹³⁸

In the aftermath, Blair concedes that the center has been strengthened considerably.¹³⁹ He goes on to say, “if public services don’t improve by the next election, people will hold us heavily to account.”¹⁴⁰ Many others also look at the event from a similar perspective and in a positive light. One newspaper headline reads, “It is not often that, in a single day, the reputation of Parliament, MPs, the system of government and the personal standing of the Prime Minister are all improved.”¹⁴¹ Blair’s appearance before the committee, which was televised live by several stations, was billed in the British press as a fierce cross-examination by the most ruthless and persistent interrogators in Westminster.¹⁴² Many media sources have gone on to say that the public would notice that a sea of change in political accountability had occurred.¹⁴³

As DSCs evolve, they continue to strengthen the position of committee members, especially that of their chairs. The instance above, in regard to Blair’s decision to appear regularly before the Liaison Committee, suddenly made DSC chairship an even more influential political post. It was largely welcomed as a strengthening of accountability through further scrutiny.¹⁴⁴ That the Liaison Committee has been deemed as the appropriate body to carry out such a task helps demonstrate the significance of DSC chairs, who comprise this committee. In general, it seems that, with each passing year, the duties, strength, and overall impression of DSCs and their chairs, continue to improve. Prime Minister Blair’s contribution to DSC scrutiny will surely entail future implications that will both affect and benefit DSCs and the positions of their chairs.

Conclusion

DSCs are significant because they have much to offer. Backbenchers have a chance to specialize; ministers, as well as the prime minister, have a chance to explain themselves to a parliamentary audience; pressure groups are given opportunities to lay out their case in public, and are themselves brought into public scrutiny; and civil servants receive the benefits that come with arguing publicly and having their views put on record.¹⁴⁵

DSCs are significant because, in spite of their weaknesses, they have provided an independent standpoint within Parliament from which to evaluate Government activities critically.¹⁴⁶ They have enriched the quality of parliamentary debate, at least intermittently, by making many matters that would most likely otherwise not be discussed in Parliament open to both comprehensive examination and public attention.¹⁴⁷ Without them, much necessary information would simply not be available.

DSCs are significant because of the influence they exert. While the overall work of DSCs has been undeniably uneven, it seems that, if their members are prepared to work hard, it is possible for DSCs to have some impact in influencing both policy formation and public opinion. DSCs serve to both strengthen the scrutiny process and further Government accountability. Recent developments within them, combined with the rise of a new generation of full-time and more independent-minded MPs, have undoubtedly extended the strength of parliamentary scrutiny.¹⁴⁸

They have also sharpened the edge of ministerial interrogations, and both ministers the as civil servants who now have to account for themselves before committees as never before are well aware of this fact.¹⁴⁹ DSCs have, in general, done enough investigative work, even when embarrassing to parties and Government, to validate themselves.¹⁵⁰ Although their individual performances have been uneven, it cannot, on the evidence generated in this paper, be doubted that DSCs have increased the accountability of the Government considerably.

DSCs are significant, with special regards to their chairs, who play an important role in leading the committees, the very system, and the resulting work, for a number of reasons. For it is in all that DSCs have to offer those within the Commons, the information they provide, their impact upon debate, their influence, and their extension of scrutiny and accountability that they have extended both the actual grasp and the potential reach of the Commons considerably. Out of those who recognize this, some have gone on to identify DSCs as representing “a new House of Commons in waiting.”¹⁵¹ The sentiments of this paper must agree with this notion and those of others who have seriously assessed DSCs and their work, in identifying the committees as significant and concluding that they are “one of the most genuine and worthwhile constitutional innovations of the post-war period.”¹⁵²

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Sound Economic Policy or Bio-Piracy? A Global Political Economy of Indigenous Knowledge and Intellectual Property Rights

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As globalization continues, there is often little consideration of the cultural and economic rights of the indigenous peoples it directly affects. Bio-prospectors, pharmaceutical and agricultural seed industries, have begun patenting the knowledge of entire populations of indigenous people – a phenomenon the author refers to as “bio-piracy.” This paper will examine the cultural and economic rights of the indigenous people from whom Western bio-prospectors have profited, the developing field of intellectual property rights and its relevance to this debate, the concerns voiced by these indigenous peoples, and the challenges that bio-piracy presents to academic analysis and the international system.

“Indigenous peoples have a community of experiences relating to the exploitation of their cultural and intellectual property. [We] affirm that the knowledge of indigenous peoples of the world is of benefit to all of humanity; [we] recognize that indigenous peoples are capable of managing their traditional knowledge themselves, but are willing to offer it to all humanity, provided that their fundamental rights to define and control this knowledge are protected by the international community.”

-The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, June 1993

The traditional knowledge of indigenous peoples with respect to biological resources has become increasingly attractive to Western corporations and scientists in recent decades. The inclusion of biological resources under intellectual property rights agreements has facilitated the patenting of indigenous knowledge, with the aim of “discovering” profitable biological resources, notably for the pharmaceutical and agricultural seed industries. While these bio-prospectors venture into the most remote areas of the world in unprecedented numbers, they most often fail to consider the rights of the indigenous peoples that possess the knowledge to be patented.

This bio-prospecting with the intention of commercial use ultimately begs the question: Should culture, a set of characteristics shared by an entire social group, be patented for legally binding, exclusionary use? The failure of Western bio-prospectors to consider this and other ethical questions concerning the cultural and economic rights of the indigenous peoples from whom they extract valuable traditional knowledge has led to outcries and resistance from the worldwide indigenous community, who are often referring to this phenomenon as “bio-piracy.”

This paper will examine the phenomenon of bio-prospecting/bio-piracy. Topics to be addressed include the legal and economic motivations behind the phenomenon, concerns voiced by indigenous groups, and the challenges that the phenomenon presents to academic analysis and the international system. It will conclude with a look at what can be done to achieve pragmatic, yet just, solutions to the present problems posed to indigenous peoples by bio-prospecting and intellectual property rights regimes.

The term “indigenous” has been quite controversial in recent years, mainly due to its ambiguity. Important factors to the category remain genetics, relationship to the environment, experiences with colonialism, and relationship to the present nation-state.¹ Before the 1990s, peoples falling within the “indigenous” category and sending delegations to the United Nations (UN) Working Group on Indigenous Populations (WGIP) were dominated by groups native to the Americas and Australia. Since the early 1990s and the Rio Summit, when indigenous groups began to receive increased attention, African and Asian groups boosted their presence at the WGIP, raising the question of who should be considered indigenous. However, the term remains ambiguous and membership in the indigenous community seems to be quite flexible.

Patents too, are quite flexible. Although once restricted to industrial processes and inventions, patents are now applied to micro-organisms, animal cells and genes, plants, and even the cell lines of human beings. United States legal doctrine, which has served as an international model, stipulates that the “modification,” or artificial reproduction of genetic material can be interpreted as a “creation” or “invention,” allowing the patenting of slightly altered biological material.² Some form of alteration, no matter how superficial, is necessary, for if knowledge exists in some form already it cannot conform to the strictures of patent law.³ When granting the first ever patent on life in 1980, the U.S. Supreme Court interpreted life as “manufacture or composition of matter.”⁴ This historic shift opened the gates for the U.S. patent office to grant patents on seeds, cows, sheep, human cells, microorganisms, and products derived from indigenous knowledge of biological resources. Between 1990 and 1995, around 25,000 biotechnological patents were granted throughout the world, with approximately 37 percent originating in the U.S., a similar percentage in Japan, and 19 percent within the European Union.⁵

Patents on life were globalized by a decision during the drafting of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) of the World Trade Organization (WTO). Article 27.3(b) of the TRIPs agreement states:

Parties may exclude from patentability plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Joining the WTO compels governments worldwide to reform their intellectual property rights laws to include biological processes, even when they are derived from thousands of years of communally shared traditional knowledge. Though Article 27.3(b) allows for some exclusions by state governments, the ambiguous wording would surely subject governments to costly trade disputes if implemented. Also, it assumes that state governments properly represent indigenous minorities, which of course is rarely the case, even in liberal democracies.

The fundamental dilemma regarding intellectual property rights agreements and traditional knowledge is that of communal versus private ownership. Since the emergence of capitalism, Western economic organization has been based on the concept of individualism, with the notion of communal ownership or resources dropped out of property law in the seventeenth century and as a result does not appear in the construction of intellectual property.⁶ In contrast, many non-Western forms of social organization feature economic systems based in communal ownership, including traditional knowledge passed down over many generations. It is this fundamental contradiction that raises resistance from indigenous groups against Western property rights laws, which allow privatization and exclusionary access to their communal resources.

Indigenous peoples have presented three primary points of opposition to the patenting of life forms and their components. The first is based on a principled opposition to any patenting of “life” on cultural and spiritual grounds.⁷ This would assume that human beings are above nature, which runs against traditional cultural values in many indigenous groups. At the International Conference of Indigenous Peoples held in the Philippines in 1999, delegates declared that “Western property rights regimes pose a direct threat to indigenous cosmologies and values... No corporation or individual can claim invention or discovery of medicinal plants, seeds, or other living things.”⁸

The second is based on the notion of “bio-piracy,” in which cultural resources are patented or even copyrighted by external corporations, often without any form of consent, or procedures to safeguard the human rights, religious/cultural beliefs, and ecosystems of indigenous groups.⁹ Of concern here is the ability of indigenous peoples to ensure that their traditional knowledge is used in ways that are in sync with their cultural/spiritual beliefs.

Third, patenting by external actors is opposed because the peoples from whom cultural knowledge and biological resources are taken are not guaranteed any benefits or “ownership rights” resulting from the marketing of commercial products.¹⁰ According to Antonio Jacanimijoy, General Coordinator of the Coordinating Body for Indigenous Peoples’ Organizations of the Amazon Basin (COICA):

Our peoples have for generations been involved in the discovery, improvement and conservation of innumerable plant species and animal breeds for the benefit of themselves and mankind as a whole. Nevertheless, under the cover of international treaties and national laws imposed in our countries, we have looked on helplessly as companies and research institutes have made use of our knowledge, appropriated our resources and made money from what they call “their inventions.”¹¹

This statement reveals one of the most significant divisions between indigenous groups throughout the world. While some indigenous peoples insist that traditional knowledge of the natural environment cannot be made into exclusive commodities, others seek to receive the economic benefits that they should clearly be entitled to under a Western-style economic system that commodifies knowledge.

Science has increasingly recognized the utility of indigenous knowledge in advancing research in the fields of botany, ecology, zoology, entomology, forestry, agriculture, and others. The commercial world has also taken notice, adopting traditional knowledge of the natural world for biotechnology applications in the pharmaceutical, agrochemical, seed, and cosmetics industries. The markets for bio-prospecting are enormous, such as \$43 billion per year for sales of natural product-based pharmaceuticals and \$50 billion for seeds derived from traditional crop varieties.¹² It is worth noting that these markets have been a saving grace for the environmental conservation community, as national governments in countries rich with biological resources treat their flora, fauna, and traditional knowledge as valuable natural resources that must be protected from exploitation, being “developed” instead to reap greater economic benefits.

In the pharmaceutical sector, scientists have realized that, contrary to earlier expectations, it is often easier to make drugs by starting with plant extracts, rather than by synthesizing molecules from scratch. New technologies have made it possible to screen plants for such uses, but local knowledge is still the best source for determining which plants should be screened. According to a World Bank report, “it has been estimated that by consulting indigenous peoples, bio-prospectors can increase the success ratio in trials [of plants being tested for possible medical use] from one in 10,000 samples to one in two.”¹³ Considering the vast economic value of indigenous knowledge to the growing pharmaceutical industry, it is no surprise that governments in the north and south are showing increasing interest in protecting traditional cultures.¹⁴

There have been a number of bio-prospecting cases studied in which indigenous peoples have worked with researchers and companies where both parties benefited without objectionable violations of cultural boundaries. In a landmark contract beginning in 1991 and renewed in 1994, Merck Pharmaceuticals negotiated a very successful bio-prospecting contract with INBio, a non-profit biodiversity institute created by the Costa Rican government. Merck provided an initial \$1.1 million and promised shares of royalties for 2,000 to 10,000 extracts from plants, insects, and micro-organisms found in Costa Rica.¹⁵ In another case, Shaman Pharmaceuticals, a U.S. based company uses ethno-botanical science as a drug discovery technique. The company has established relationships with local communities, traditional healers, and scientific institutions in Nigeria, and has pledged a portion of its sales from drugs derived from community-based knowledge to the communities involved with its bio-prospecting.¹⁶ It is these sorts of cases after which companies undertaking bio-prospecting activities should model their actions. Unfortunately, positive cases of bio-prospecting with mutual benefits to the prospector and indigenous communities have not been the norm up to this point in history.

When one sees the list of instances that merit categorization under the title “bio-piracy,” outrage and condemnation from indigenous communities become quite understandable. The best-known example is that of the Neem tree in India. Traditionally in rural India, the Neem tree has been used medicinally, for toiletries, as contraception, and various other social roles. Despite centuries of use as the “village Pharmacy,” American and Japanese corporations, including W.R. Grace & Company, have taken out patents on numerous products extracted from the tree against the wishes of local Indian groups.¹⁷ In May 2000, however, an alliance of Indian and European groups won a historic legal victory that protected one of the Neem tree’s products. Under considerable pressure, the European Patent Office decided to withdraw the patent it had previously granted to W.R. Grace for a chemical formulation derived from the tree.¹⁸ The case was a landmark in the struggle for indigenous people’s defence of their cultural rights, but unfortunately it is only one of the many patents extended in regards to Neem-based products. In preparation for controlling the genetic market of Neem products that it expects with patenting, Grace & Co is prepared to pay \$300 per ton of Neem seeds to control its raw material. Thus, what used to be a free,

communal resource for Indian farmers is now a highly priced one, causing Indian farmers considerable financial problems and pushing them towards an eventual reliance on Grace's "re-engineered" Neem seed.¹⁹ Unfortunately, the truly exploitive story of the Neem tree is not an isolated incident, but is rather the norm with respect to bio-prospecting projects undertaken by Western corporations in the global south.²⁰

The importance of traditional knowledge was built into the United Nations Conference on Conservation and Development (UNCED) through its Convention on Biological Diversity, signed in Rio de Janeiro in 1992, and is now ratified by 182 countries, but not the U.S. International agreements such as UNCED call for access to and protection of traditional technologies and benefit-sharing with respect to their use and application. However, enforcement mechanisms, or even agreements of what to enforce, are completely non-existent on the international scene.²¹ Regardless, the majority of indigenous peoples regard it as a grab for control by national governments that wish to exploit these indigenous capital resources.²² Many have a difficult time believing that those governments that have so often tried to displace or annihilate them are now suddenly working to defend their rights. They are also sceptical that any equitable sharing will trickle down into their communities, even though they are the sources of both the knowledge and genetic resources that their governments seek to "develop."

Despite suspicions by minority indigenous groups, there are several instances of southern state governments including the concerns of indigenous groups in their struggles with global north countries and corporations in the international political economy. As Vandana Shiva notes:

[After] centuries of the gene-rich south having contributed biological resources freely to the north, third world governments are no longer willing to have biological wealth taken for free and sold back at exorbitant prices to the third world as 'improved' seeds and packaged drugs. From the third world viewpoint, it is considered highly unjust that the south's biodiversity be treated as the 'common heritage of mankind' and the return flow of biological commodities be patented as the private property of northern corporations.²³

This passage suggests that the concerns of Third World governments are perhaps oriented more towards the economic realm than the cultural and communitarian concerns expressed by indigenous groups.

This concern for economics at the expense of culture is reflected in the vast majority of the literature surrounding intellectual property rights and the global south. For instance, authors of a recent World Bank discussion paper assert that:

[S]trong IPRs could foster local research or the formation of research joint-ventures with foreign companies, e.g. in the initial screening process of biological material and in the early research stages. However, there is concern that developing countries are not adequately compensated when foreign researchers develop products that are based on existing material or knowledge once taken out of the public domain of developing countries.²⁴

Such analyses based on macroeconomic considerations and the state system do little to address the struggle surrounding intellectual property rights and traditional knowledge when indigenous groups are a minority of the population and have often struggled with state governments regarding other issues such as land rights. Rather, such communities must use channels such as the United Nations Working Group on Indigenous Populations (a powerless group even by UN standards), non-governmental organizations (NGO), academia (particularly anthropology), and other organizations of indigenous groups to promote struggle for their cultural rights.

Many activists and leaders of indigenous communities throughout the world have called for dramatic overhauls of international intellectual property rights agreements and national laws to safeguard traditional knowledge and biodiversity. Shiva states, "Biopiracy is intellectual and cultural rape.... Anything short of stopping biopiracy through reforming TRIPs is participation in a crime against nature and the poor."²⁵ Recently, a strong local movement in the biodiversity rich/economically poor province of Chiapas, Mexico forced the cancellation of a \$2.5 million bio-prospecting project. While the movement, led by the Council of Indigenous Traditional Midwives and Healers of Chiapas (Compitch), was tainted by other outside interests and internal corruption, it nonetheless brought considerable worldwide attention to the issue of bio-piracy.²⁶ Feeling a sense of victory upon the cancellation of the project, Compitch

Secretary Antonio Pérez Méndez stated “indigenous peoples are asking for a moratorium on all bio-piracy projects in Mexico.”²⁷ The developments in Chiapas encouraged indigenous healers in Brazil to call for a moratorium on all bio-prospecting projects until the issues raised by such problems could be resolved, yet it did not result in concrete action.

Ironically, the most effective and realistic solution to protecting indigenous knowledge from unauthorized exploitation is through the existing intellectual property rights framework itself. While most indigenous practices are passed on from one generation to the next through oral traditions, it is necessary that this knowledge now be documented in written records.²⁸ This way, indigenous communities can effectively challenge patents granted to others for knowledge and practices that are traditionally their own. National governments and international institutions should also make their intellectual property rights laws and agreements with the flexibility and provision to accommodate ownership of knowledge by groups, rather than the culturally inappropriate model of individual ownership that remains dominant.

In East Asia, a strong movement has taken hold to protect local biodiversity from foreign commercial interests. Representatives from Thailand, Malaysia, Vietnam, the Philippines, and Indonesia now gather for an annual meeting of the Southeast Asian Network on Intellectual Property and Technology-Transfer Management. Thailand’s National Center for Biotechnology and Genetic Engineering works to protect homegrown biological resources through national and international intellectual property laws. Their work is assisted by the Thai Plant Variety Protection Act, which contains an internationally unprecedented right allowing whole communities, rather than individual “inventors,” to register traditional or new plant varieties for IPR protection.²⁹

In the Philippines, foreigners interested in examining biodiversity are required to get permission from both the national government and any local communities concerned and benefit-sharing agreements must be negotiated.³⁰ Like other commercial laws in southern countries, these regulations are very difficult to enforce. These initiatives, however, have not sprung up in response to claims of cultural sovereignty on the part of indigenous groups. Rather, they aim to capitalize on the massive global market for biodiversity and receive strong support from national business interests seeking protection from larger U.S. and Japanese biotechnology corporations.

A grassroots movement in India, known as Jaiv Panchayat, or “living democracy,” asserts that biological resources belong to the community and should never be privatized. In several states of India, the movement has caused the community patenting process to spread like wildfire from village to village, creating new obstacles for corporations wanting to expand their ownership of biological resources and traditional knowledge.³¹ This is one of the early examples that should be mimicked by indigenous groups seeking cultural sovereignty and prosperity from their traditional knowledge of biological resources. With the assistance of NGOs and academia, a global movement of community patents may prove to be the most effective safeguard of indigenous knowledge.

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Sex Selection: Violence Against Women in an International Context

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Various forms of sex selection have been commonly practiced for centuries. Although most assume this problem exists predominantly in developing countries, sex selection techniques have a very real presence throughout the Western world. Examples of male preference are documented throughout history in ancient proverbs and the evidence is indisputable. After addressing the history of sex selection and possible explanations for these patriarchal values, the author will take a closer look at four countries (China, India, South Korea, and the United States) and how this form of discrimination against women has affected each society. Then the paper will discuss about how this issue has been addressed by the international community and its range of governing bodies. Finally, the analysis will conclude by considering the ramifications of allowing this practice to continue, and by making specific policy recommendations to stop sex selection as a form of violence against women.

Introduction

The preference for male children in societies all over the world is not a new phenomenon.¹ This form of discrimination against women has been left virtually unaffected by women's movements internationally, and the seriousness of the ramifications of skewed gender ratios continues to escalate.² According to demographers, there are 100 million women "missing" from the world's population.³ Each year, the number of female babies born decreases and the male to female ratio continues to rise.⁴ Sex selection, as a form of violence against women, is responsible for many of these disturbing trends.⁵

There are two main types of sex selection that will be discussed in this paper: pre-conception techniques and post-conception techniques. Pre-conception sex selection relies on fairly recent technological advancements that use sperm-sorting and pre-implantation genetic diagnosis (PGD) to determine the sex of the sperm or embryo.⁶ Post-conception sex selection generally refers to abortion or infanticide. Sex selective abortion rests on the ability of a doctor to establish the sex of a fetus using amniocentesis or ultrasound.⁷ Both types of sex selection pose a serious threat to the human rights of women and violate international law.

This analysis will first focus on the historical background of sex selection and how it has been influenced by new technology. Then, it will examine the data proving the widespread preference for male children and the causes for this partiality. To get a better indication of the real world effects of sex selection, China, India, South Korea, and the United States will be used as case studies. In each case, the scope of sex selection is considered and the existing national policies on the issue are discussed. Finally, it will address sex selection as it applies to international human rights, and advance the argument for the regulation of sex selection.

Historical Background of Sex Selection

The pursuit of accurately selecting the sex of one's child dates back thousands of years.⁸ The most primitive form of sex selection was infanticide, the intentional killing of infants.⁹ This method ranged from the simple abandonment of female infants to the slower process of malnutrition or starvation.¹⁰ Ancient Greek philosophers recommended tactics such as tying off the left testicle during intercourse or for the female to lie on her right side after intercourse to insure the birth of a male child.¹¹ Special nutrition theories also came about, advising women to eat sour or acidic foods if they wanted a boy and sweet foods if they wanted a girl.¹² There were also timing theories that rely on having intercourse at different stages of a woman's menstrual cycle to influence the sex of the baby.¹³

In more recent times, sex selective abortion has become a common method of guaranteeing a male child.¹⁴ According to Gail Weiss, sex selective abortion is a "moral mistake" that is rooted on community ideals rather than a decision for which solely the individual is to blame.¹⁵ Furthermore, it is a practice that serves individual interest at the expense of the common good, and it reinforces problems with social

values.¹⁶ Since its conception, sex selective abortion has been used to abort an overwhelming majority of female fetuses. A study done in Maharashtra, a state in southeast Asia, found that out of 8,000 aborted fetuses, 7,999 were female.¹⁷

In the 1960s and 1970s, doctors developed new technology that allowed PGD and sperm-sorting.¹⁸ It was the first time that “test tube” babies actually became a reality through IVF research.¹⁹ These developments have raised completely new issues in the medical community, and some argue that this new technology is a threat to women’s psychological and physical health. Again, as critics of sex selective abortion claim, this sex selection technology is not exempt from social pressures and undermines women’s control of their own bodies.²⁰ Clearly, the concept of sex selection is not new and has developed throughout history to become a socially accepted practice in many communities.

Examples of Male Preference

The statistics of male versus female abortions alone reveal the clear preference for males that exists in the international community. Male preference, however, came about way before abortion was even conceptualized. There is evidence of this sexist attitude in ancient Asian and European proverbs. One eighteenth century English proverb says, “Daughters and dead fish are no keeping wares.”²¹ A common Korean saying states that, “A girl lets you down twice, once at birth and the second time when she marries.”²² Another Korean proverb goes, “If you have to marry someone you dislike, give him many daughters.”²³

Male preference is certainly not only an issue in Southeast Asia and “developing” countries. Americans typically think that male favoritism is not a Western problem, but studies show that the scarcity of female children is equally severe in “developed” nations as is it the non-Western countries.²⁴ In 1990, the ratio of girls to boys in the “developing” world was 954:1000, but the ratio in the “developed” world was 953:1000.²⁵ Williamson reports that numerous studies conducted from 1931 to 1975 in America and Europe showed evidence of boy preference, especially as firstborn children.²⁶ The facts clearly show that an international cultural bias favoring male children has existed since ancient times.

Causes of Male Preference

The evidence of male preference is undisputable. The causes of this trend, however, are clear when one reflects on male’s traditional power in society relative to that of the women.²⁷ The patriarchal nature of culture gives the rise to the social inequalities faced by women throughout the world.²⁸

There is a long history of discrimination against women, allowing them a lower place in society in relation to men.²⁹ Patricia Eastal points out that the laws prohibiting violence and discrimination against women have consistently been vague and poorly enforced.³⁰ Traditional gender roles also influence the place of women in society. These social constructions traditionally assume that masculine and feminine traits are controlling/yielding, assertive/passive, worldly/innocent, and strong/weak respectively.³¹ The media then reinforces these gender stereotypes, and places higher values on masculine traits.³²

In South Asian countries particularly, the laws governing inheritance and political power have been extremely pro-male. In South Korea, for example, the low status of women is evident in their Criminal Code and Family Law. Until 1953, a wife’s crime of adultery was grounds for divorce, yet the same crime committed by the husband was not. In property law, women have traditionally been placed last on the long list of household headship, even after youngest sons. For example, daughters receive only a quarter of what sons receive from family inheritance in South Korea. Although most of these male-preference biases have been revised since 1990, their influence on the status of women remains. Even today, women are systematically excluded from political offices and rarely secure upper-level positions in their fields.³³

It is a widespread belief in India and China that daughters represent “an investment with little return.”³⁴ Because of the social structure of many of these societies, a daughter burdens a family with many costs, such as her dowry, and then upon her marriage she becomes part of her husband’s family and all of her efforts go towards helping them. Weiss goes so far as to claim that traces of the dowry system are still present in American society today, seen in marriage traditions where the bride’s family pays all the wedding expenses regardless of their financial status in relation to the groom.³⁵ Besides these obvious economic reasons for male preference, there seems to be a common belief that sons simply have more

opportunities in the world than daughters.³⁶ Understandably, parents want the best for their children, and many think that having a son will allow them to realize this goal.

Case Study 1: China

In the most recent study completed in 2002, there were only 100 girls for every 117 boys born in China. Normal ratios of 100 girls to 102 or 106 boys were found in some areas of the country, but in the most affluent provinces, the ratios reached 130 to 136 boys to every girl.³⁷ Such ratios greatly increase the problem of “missing” girls in the world’s population, since China’s population accounts for one-fourth of the total population.³⁸ In 1993, these figures meant that 12 percent of all female fetuses were aborted or otherwise unaccounted for.³⁹

A significant factor contributing to the abundance of sex selection in China is the existence of strict family planning rules that the government enforces on Chinese citizens. At the end of the 1970s, President Mao Zedong of China introduced one of the world’s first and most rigid population policies. The tremendous growth of China’s population hurt the country’s economy and so the government felt family planning programs were necessary. The population policy in action today was put into place in 1980 and it requires, not simply encourages, one-child families. As a result, the practice of infanticide that began in feudal times has been revived and continues to occur despite the government’s laws against it.⁴⁰

China now leads the world in abortions, which perhaps indicates a failure in the government’s family planning programs. Although abortions are not illegal in China, they are to be provided only “on request after contraceptive failure or for health reasons.”⁴¹ However, given the dominance of male-preference in Chinese culture, many couples are afraid of “wasting” their one allotted child on an unwanted girl.⁴²

Male preference in China is a result of the cultural implications discussed earlier, but is compounded by the significance of Confucianism and an interdependent community in Chinese society. Traditional Confucian values assume that a large number of sons are an indication of “good moral conduct.”⁴³ Also, a male heir is required in order to continue performing ancestral rites.⁴⁴ Up until the Marriage Law of 1980 was introduced, it was also only a male that could carry on the family name and had a responsibility to care for his parents in their old age.⁴⁵

According to a study carried out by Chu Junhong in rural China, a few factors that have produced the skewed sex ratio at birth are, “the increased underreporting of female births, excessive female infant mortality, and increasing availability of sex determination and sex selective abortion of female fetuses.”⁴⁶ Even in rural areas, sex selective technology is widely available, and a survey showed that 84 percent of women in rural villages know about ultrasound technology. The same survey also reports that 23 percent of the women questioned had had one sex selective abortion, 5 percent had two, and 1 percent had three or more. Even so, 92 percent of the same group of women said that it is “wrong” to have female fetuses aborted.⁴⁷

What do these frightening statistics mean for China’s population? One of the most prominent concerns is for the lack of women on the marriage market in the future. While some think the scarcity of women will help improve their conditions in society, it is more likely that instead women will begin disappearing and be sold into marriage by criminal gangs. In light of this shortage of brides, it is anticipated that men will have to work much harder to obtain a wife and the marriage rates will be affected depending on economic and social status.⁴⁸

Case Study 2: India

As in China, abortion is legal in India, but sex selective abortion is not. Infanticide is illegal as well, but an alarming study done by an Indian women’s organization in the Salem district showed that 51 percent of the families surveyed had practiced infanticide in the previous two years.⁴⁹ In 1994, the Indian Parliament passed a bill entitled Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) that prohibited the use of sex determination technology, unless it was specifically needed to ensure the health of the mother or baby. The law states that a violation of these standards is punishable by up to three years in jail or a \$319 fine. At the time it was passed, approximately 50,000 female fetuses were being aborted every year in India after the sex of the fetus was determined.⁵⁰

Unfortunately, it appears that this law has been overwhelmingly ineffective. In 1999, five years after the Prenatal Diagnostic Techniques law was put into action, not a single doctor had been convicted under the law.⁵¹ Not only does the Indian government fail to enforce this law banning sex selection, but also Indian doctors are capitalizing on the practice of sex selective abortion. One member of the Indian Parliament said, “We are living in a country with a strong sex bias against women. In Uttar Pradesh, in Bihar and Rajasthan baby girls continue to be killed after birth, many more women and girls die from malnutrition and lack of medical care, and now killing female fetuses has become big business.”⁵² Doctors have gone so far as to create slogans advertising sex selective abortions, centering on the fact that parents can pay a fee to have an abortion now or they will be stuck paying a much larger sum down the road for their daughter’s dowry. Although the practice of required dowry payments has been illegal for years, the tradition is still commonly observed in reality.⁵³ It is evident that the Indian preference for males is mainly a result of the economic stress that daughters can put on a family. Between the costs of childhood ceremonies, marriage, setting up a home, childbearing, and dowry payments, daughters tend to be a lot more expensive than sons are in India.⁵⁴

The Indian Medical Association and Medical Council of India has taken a step forward in regulating sex selective abortions when, in 1999, it asked doctors to stop administering sex determination tests and aborting female fetuses for sex selective purposes. Since the government was not taking significant action, these two associations said they would be taking private action to investigate doctors in question and would revoke the licenses of those found guilty. Given that the proportion of females to males in some northern communities in India, like Rajasthan and Bihar, is one of the lowest in the world (600:1000), it is clear that government initiatives are not working and such actions of medical associations is desperately needed.⁵⁵

What is necessary in India to stop this discrimination against women is a long-term strategy aimed at changing cultural values and biases. The situation in India for women is so bad that one woman told researchers that, “I do not want my girls to suffer like me so I kill them.”⁵⁶ Perhaps this problem can be addressed most effectively by focusing on the mindsets of young boys and girls, encouraging them to oppose gender discrimination at an early age. In the meantime, women’s groups and medical associations are fighting to get stricter enforcement of sex selection laws and decrease the availability of ultrasound machines.⁵⁷

Case Study 3: South Korea

Much like India, the South Korean government has not been successful in enforcing its laws regarding abortion and sex determination tests. According to the South Korean Criminal Code, abortions or any other form of intentional miscarriage are explicitly outlawed. However, no person has ever been charged with violating this law and most Koreans do not even know the anti-abortion provisions exist.⁵⁸ The law was created in 1953 as a way of addressing the severe decline of population and social turmoil created by sexual promiscuity, both results of the 1951-1953 Korean War. However, the country’s policy changed slightly in 1973, when the South Korean legislature passed the Child Welfare Act. This legislation was passed in hopes of decreasing fertility rates to be equivalent of those in “developed” countries. The act allows abortions under five clearly specified circumstances: when the health of the mother is at stake, when the parents have an infectious disease, when there is a possibility of a genetic disorder, when the mother was raped, or when the pregnancy is a result of incest.⁵⁹

There are two major problems with the Child Welfare Act. Firstly, as a matter of principle, it does not consider valid social or economic reasons women may have for abortion. Secondly, in reality, it allows doctors to abort fetuses under virtually any pretext, because the specifics of the law are nearly impossible to enforce. As a result, the sex ratios in South Korea became increasingly unbalanced and the patriarchal bias of society became more prevalent as men coerced their wives to abort female fetuses.⁶⁰

Then, in 1994, the legislature passed the Medical Practices Act, which prohibits sex determination and imposes a nondisclosure agreement on doctors. The nondisclosure feature specifically forbids doctors to reveal their knowledge of the sex of the fetus after it is determined by examination. The punishment for violating this law is up to 3 years in prison and a fine up to \$25,000.⁶¹ As seen in other countries, this attempt to stop sex selection abortions failed because it was not enforced with enough tenacity. Surveys taken in 1998 show that South Korea’s annual per capita abortion rate is five times that of the U.S., and that

one out of every two married women has had an average of two abortions.⁶² Clearly, the failure of the nation's abortion laws has had disastrous results.

To add to the dilemma of male-preference in South Korea, Family Law has historically been discriminatory against women, and attempts to modify it have been unsuccessful.⁶³ The South Korean Supreme Court even passed the hypocritical judgment that "fair discrimination" with regards to sex is permissible, so long as it is not "arbitrary and unreasonable."⁶⁴ How can any form of discrimination be "fair"? As a result of such biased attitudes in South Korean bureaucracy, women enjoy little privacy and few individual rights.⁶⁵

Case Study 4: United States

Although many Americans maintain the ethnocentric idea that sex selection in the U.S. is not an issue and could not skew the ratio of girls to boys,⁶⁶ social research has proven that male preference is prevalent in the United States, as well.⁶⁷ Sex selective abortion has spurred a heated debate among American feminists and has given way to much controversy over the constitutionality of such practices.⁶⁸ In the analysis of the United States, these issues will not only be addressed, but also the matter of pre-conception sex selection, a topic not yet significantly relevant in the other countries discussed.

Because of the difficulty in accurately determining the percentage of sex determination tests that are used solely for sex selection, the scope of sex selection abortion in the U.S. is not known.⁶⁹ However, the topic has been a popular source of debate within the feminist movement due to its controversial nature. Because feminists typically fight for a women's right to an abortion, it seems reasonable that they would be against any restrictions or regulations on abortion in America. This logic is true for a large majority of feminists. But since sex selection abortion typically targets female fetuses, which constitutes a form of violence against women, other feminists find themselves in the tricky position of being pro-choice but supporting restrictions on abortion as well. Lynne Kohm put it best when she says:

That tiny woman [the female fetus] is a part of the fraternity and fellowship of all women, even if, as feminists doctrine theorists would argue, only by virtues of her tiny womb and even tinier ovum, which may be taken from her without her consent because she has not had the opportunity to enjoy the liberty of being born: Another woman has deprived her of the freedom of choice.⁷⁰

Through this process of sex selective abortion, women are victimized by other women's choices to exercise their reproductive freedoms and personal liberty.⁷¹ Feminists are still waiting for a solution to this fundamental tension that exists because of the ability to choose the sex of one's child.

The dispute over the constitutionality of sex selection in the U.S. has centered on the decision in the historic U.S. Supreme Court case, *Roe v. Wade* (1973). The fundamental issue in *Roe* is the weight of the state's interests in comparison with the woman's interests when seeking an abortion. The Court ruled that the woman's interests in having an abortion can be calculated by asking three questions: what is she prepared to endure in the process of evading the pregnancy, how much will she regret having the baby, and how much will she regret having the abortion? By these standards, it is clear that a woman seeking an abortion solely for sex selection purposes has a far lesser interest than a woman facing the circumstances that Jane Roe faced.⁷² Furthermore, since the burdens connected with carrying a boy versus a girl are equal, it cannot be concluded that the woman's interest outweighs the state's interests.⁷³ Women do not have a constitutional right to an abortion for any reason they alone chose; it must be to avoid significant burdens associated with the pregnancy and birth of the child.⁷⁴ The arguments for protection of sex selection simply do not fall under the Substantive Due Process doctrine; unlike the cases to which it is often compared, sex selection is not about a couple's right to have a child at all, but rather what sex the child will be. Regulating sex selection would therefore promote America's values of liberty and justice by providing equal protection to women.⁷⁵

Since the advancement in reproductive technology that has allowed preconception sex selection processes, new debates have arisen concerning reproductive freedom. The United States still lacks any concrete laws condemning sex selection, and instead the regulation has been left in the hands of medical associations. Until 1999, the American Society for Reproductive Medicine (ASRM) discouraged physicians from using sex determination tests and sex selection purely to fulfill the parents' desire for a child of one particular sex. Then, in 2001, the ASRM changed its policy and said that sex selection is permissible in

order to ensure “gender variety” in American families.⁷⁶ Most recently, in 2002, the Ethics committee for the ASRM redefined its most recent decision and said that sperm-sorting is an acceptable form of sex selection, because it does not involve creating and then disregarding embryos in the fashion that PGD does. The committee concluded that the concern with pre-selecting the sex of one’s baby is not strong enough to rationalize using PGD and to do so was inherently sexist and discriminatory.⁷⁷

Existing International Human Rights Standards

Women’s rights and the prevention of violence against women have been increasingly significant topics in the field of international human rights. In the UN Charter, created in 1945, there is no specific mention of women’s rights, but Article 55 does explicitly prohibit “distinction” on the basis of “race, sex, language, or religion.”⁷⁸ Then, in 1948, this right was affirmed in the Universal Declaration of Human Rights, which was originally a non-binding document that states universal standards or principals of human rights. However, it has increased in importance and is now recognized as customary international law and, as such, is binding. There are comparable provisions in Article 2 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well.⁷⁹ However, these covenants are also non-binding, until ratified by individual countries.

Despite the declaration and covenants mentioned above, violence against women continued to be an international problem. So, in 1972 the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the monitoring group, the CEDAW Committee, were formed. The treaty has been ratified by 165 states; however the United States is not one of them. It was not until March 1999 that the Optional Protocol for CEDAW was passed, which allows survivors of violence against women to bring their cases to the Committee. In 1989, the Convention on the Rights of the Child (CRC) was adopted and ratified by all but two UN members, the U.S. and Somalia. Then, in 1993, the non-binding document, the Declaration on the Elimination of Violence Against Women, was created and invoked all nations to denounce all forms of violence against women.⁸⁰

The international community did not specifically address the issue of reproductive rights until the 1990s. The 1993 Vienna Declaration and Programme of Action affirms the concept of women’s rights as human rights and encourages increased interest in the human rights of the girl-child. A year later, the International Conference on Population and Development was held in Cairo. At this conference, a Programme of Action was created, and it specifically calls upon governments to “take necessary steps to prevent infanticide, prenatal sex selection, trafficking of girl children and use of girls in prostitution and pornography.”⁸¹ It is also argued that by the provisions put forth in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, states have the responsibility to eliminate gender-based violence.⁸² Unfortunately, even given all these treaties and conferences, violence against women is still a significant problem throughout the world, and there are many loopholes in the enforcement of relevant international law.

Conclusions

If the practice of sex selection continues, there are bound to be serious ramifications that will be felt by people around the world. A high sex ratio of men to women could lead to even more discrimination against women. It is argued that, if there were a shortage of women in the world’s population, they would begin to be valued for their reproductive abilities and be forced to conform to traditional roles as homemakers. In this situation, women would probably lack the power to fight back against such sex discrimination, because they would be a minority and most likely be underrepresented in positions of power. It is possible that there would be socio-economic consequences to future sex selection, as well. Because many sex selection procedures are relatively expensive, only people in the middle or upper classes can afford them. This would most likely cause a rise in the male population among these class lines and increase class stratification.⁸³ Furthermore, statistics show that males tend to be more violent than women and show less support for cultural events. Therefore, some argue that sex selection could eventually lead to a more violent and less cultured society.⁸⁴

In order to prevent these eventual outcomes, the international community needs to take action now to prevent both pre- and post-conception sex selection. First, preconception sex selection is addressed. A common argument supporting PGD is that it allows parents to avoid passing on genetic diseases to their

offspring. While this is a valid point, it can also be seen as a form of discrimination against persons with disabilities. The idea of denying persons with disabilities even the right to be born certainly violates their human rights. There is also the possibility that if sex selection were allowed only in order to avoid genetic diseases, people would lie about their health history to take advantage of the technology.⁸⁵ This meddling with the genetic makeup of fetuses also poses the threat of allowing the use of eugenics. This “slippery slope” argument holds that allowing parents to choose the desired sex of their child would soon lead to a desire to design every aspect of their offspring. Assuming this form of eugenics was permitted, would humanity be creating a world for itself in which the “perfect” genetically designed people would rise above the lower class of those “imperfect,” naturally created humans?⁸⁶ Clearly, allowing preconception sex selection to continue could lead to even bigger debates and have serious consequences.

Post-conception sex selection has significant cultural and social implications, as well. Perhaps the psychological damage done to women because of male-favored sex selection is most important. That there is an obvious preference for males universally would undoubtedly affect the self-esteem of female children, especially when parents have chosen to have a son as their first-born. It could easily invoke feelings of being “second choice” and an unequal member of the family. Furthermore, both the parents and children could be affected psychologically if the child fails to conform to traditional gender roles.⁸⁷

What should be done to rectify these issues surrounding sex selection? First, abortion solely for the purpose of sex selection should be banned by all nations. This type of regulation is certainly not a new idea, and several authors knowledgeable on this topic have entertained the idea before.⁸⁸ Many have come to the conclusion that enforcing such a ban would be impossible, as it is impossible to truly know the motives of a woman before she seeks an abortion.⁸⁹ Fletcher and Wertz illustrates this point perfectly by using the analogy of a murderer in a gun shop: few murders tell the owner of the gun shop that they plan to kill someone with the gun they are currently buying.⁹⁰ Therefore, the focus should be on the members of the medical community on enforcing explicit legislation. If nations’ medical associations and state medical societies enforces professional codes of ethics that banned sex selection abortion, it would not completely prevent the practice, but it could significantly help. A way to have added incentive for doctors to follow these codes is to threaten to take away their medical licenses if they fail to adhere to the ethical standards.⁹¹

Another method of preventing sex selective abortion is to use a nondisclosure statute. Specifically, doctors should withhold the information regarding the sex of the baby until the third trimester, or until abortion is no longer feasible. Many critics attack this idea because they claim it restricts the “free flow of information” from doctor to patient.⁹² But since the information has no relevance to the health of the baby or the mother, there is no problem with delaying the revealing of the sex of the fetus until later in the pregnancy. Also, doctors already do withhold some information for the good of their patients. A survey showed that 96 percent of doctors said they would withhold the information from a husband who turned out not to be the biological father of the baby to protect the relationship.⁹³ It turns out that this policy of nondisclosure is already in place in Japan, where the Japan Society of Obstetrics and Gynecology explicitly forbids doctors to tell women the sex of the fetus until after the twenty-second week of pregnancy. It appears that this method has been successful, given that Japan does not suffer from drastically unbalanced sex ratios, and that only 2 percent of Japanese women try to select the sex of their baby.⁹⁴

In general, increased awareness of the issues associated with sex selection and their severity is needed to help rectify this problem. All forms of preconception sex selection should be outlawed nationally and condemned internationally. The policy changes discussed above should be implemented to help stop sex selective abortion. According to Weiss, it makes no sense to punish sex selection abortion offenders, since they only use this technique because their social environment encourages it. It makes more sense to instead help inform families of the implications of their decision and other methods of serving their interests, rather than punishing them for not seeing the alternatives hidden by the dominant cultural norms.⁹⁵

All types of sex selection constitute a form of violence against women, are violations of human rights and are therefore condemned by the international community. As is evident through the analysis of China, India, South Korea, and the United States, every country’s involvement in sex selection is different and each state has particular causes for their use of the practice. However, regardless of the national conditions that seem to make sex selection permissible and/or necessary, states have the obligation under international law to protect the human rights of their citizens and combat violence against women.

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- ⁸⁴ Faust, Note 10, 290-291.

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