CLAREMONT JOURNAL

OF LAW AND PUBLIC POLICY

Letter From The Editor

Dear Students of the Claremont Colleges,

Welcome to the third print edition of the Claremont Journal of Law and Public Policy. Volume Three, Number One includes six stimulating articles, ranging in scope from Chinese domestic policy to Pomona College law. As Editor-in-Chief I could not be happier with the writers who have put so much hard work into researching, writing, and editing their articles. Each writer has become somewhat of a mini-expert in their subject. It is my hope (and the mission of this Journal) that the writers have conveyed through their articles the hard-learned lessons from all their research and thought.

I'd like extend thanks to those who contributed to the Journal this semester. The staff writers, not just those who wrote articles appearing in this edition, are the backbone of our operation. The Journal is by and for the staff writers. Claire Gross, Zachariah Oquenda, Robert Beckles, Kyleigh Mann, Eric Millman, Ritika Rao, Olivia Lanaras, Seoyoon Choi, Emily Zheng, Jerry Yan, and Calla Cameron made my job as easy as they possibly could. Their commitment not only to their own research but also the success of the Journal as a whole has been extraordinarily helpful and encouraging. I'd also like to thank John Blattner, a contributor to this edition. Our senior editors, April Xiaoyi Xu, Brandon Granaada, Anna Balderston, and Sofi Cullen have guided the writing process in a way that made the semester run incredibly smoothly. Thanks to our writers and editors we have more articles this semester than in any other semester in the history of our Journal.

Thanks to our business directors, Bailey Yellen and Nicky Blumm, we have hosted two incredible and thought-provoking events at the Athenaeum so far this year. No doubt our business team will have more dynamic and interesting events ready for next semester. Christina Coffin, our interview correspondent, has secured multiple high-profile interviews for the Journal, giving us the chance not only to interact with legal and policy scholars but also to share their thoughts with the college community. Michelle Goodwin and David Wagner, our recruiting and marketing directors, have kept the journal running behind the scenes while also providing extremely valuable advice on just about everything central to the Journal's operations.

I want to especially thank our Chief Operations Officer, Al Reeser, and our Editor-in-Chief Emeritus, Byron Cohen. Al managed the business side of the Journal efficiently and thoughtfully. This print edition would have been impossible without him. Byron, as founder of the Journal, has been an especially close and valued advisor as the Journal moves forward.

This is my first semester as Editor-in-Chief of the Journal. I could not be more proud of the people who have made this possible and of our product. I look forward to more editions in upcoming semesters and I invite all 5C students to be a part of our future. If you feel you could be a valuable addition to our staff in any way, please email info.5clpp@gmail.com.

With Regards,
Martin Sicilian
Editor-in-Chief

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California Civil Asset Forfeiture: Origins, Evolution, and Reform

By: Zachariah J. Oquenda, CMC '16

Beginning with its origins in feudal times and evolving into its much more complex modern form, civil forfeiture law has existed in a variety of shades of muddled legal gray area for millennia. Today, in U.S. jurisprudence, asset forfeiture, or the process of law enforcement's confiscation of property, comprises a two-track legal system. In one track, a criminal forfeiture proceeding is brought *in personam*, or"against the owner." In these cases, the owner is charged with a crime, and forfeiture requires the owner be convicted of that crime. The alternative track is a civil forfeiture proceeding, which is brought *in rem*, or "against a thing," alleging that an inanimate piece of property can be "guilty" of a crime. While this may sound strange, guilt in this sense is purely associational. A "thing" is alleged to be the instrument of the wrong associated with some crime, meaning that some human actor, usually the owner, was ultimately responsible for implicating that "thing" in a wrongdoing. Thus, confiscating that thing becomes an indirect punishment to the owner.

Nevertheless, law enforcement does not have to actually prove that the owner did anything wrong as a prerequisite of seizing the property; instead, law enforcement needs mere probable cause that the property was involved in a crime. The consequences of such a legislation immediately concerning. Civil proceedings lack the constitutionally required procedural protections of criminal proceedings. Thus, when government officials seize and attempt to confiscate property, procedural rights such as the right to an attorney, the right to fair and speedy trial, and the right to due process, are disregarded. Civil proceedings often result in an unfair burden on the owner, who is often neither charged nor convicted of any crime, to prove his or her property innocent. This is far from the standard of proof of "beyond a reasonable doubt," which the prosecution is required to prove in criminal proceedings.

California has an increasingly toxic relationship with civil asset forfeiture. As recently as this September, California State Legislature voted down Senator Holly Mitchell's S.B. 443, which would have overhauled the state civil forfeiture law in order to bolster civil rights protections and close access to dangerous federal loopholes that state and local law enforcement often abuse. Although S.B. 443 would have been an improvement on the state's previous civil forfeiture law, it would not be enough to make California a model state in regard to this type of legislation.

Origins and Evolution

While asset forfeiture law has a long history in the U.S., many attribute the foundation of current U.S. civil forfeiture law both to President Richard Nixon's "War on Drugs" campaign, established in 1969, and Congress' subsequent legislative action, the Comprehensive Drug Abuse Prevention and Control Act

(CDAPCA) of 1970. The CDAPCA introduced civil asset forfeiture as a tool that law enforcement could use to combat drug trafficking. A strong enforcer of asset forfeiture, the FBI stated the following:

> "The use of asset forfeiture in criminal investigations aims to undermine the economic infrastructure of the criminal enterprise…Asset forfeiture can remove the tools, equipment, cash flow, profit, and, sometimes, the product itself, from the criminals and the criminal organization, rendering the criminal organization powerless to operate."

The government treated criminal organizations in the same way it treated legitimate businesses. Without a shop, oven, cooking supplies, and ingredients, a baker cannot operate their business. Take the baking supplies, and bakers cannot bake. Likewise, take drug-manufacturing supplies, and drug manufacturers cannot make drugs.

The Reagan administration inherited Nixon's civil forfeiture as a tool to achieve a "drug-free America." Reagan perceived civil forfeiture to be more useful in bringing down hard-to-catch, high-level drug cartels and money launderers. However, under closer scrutiny, some suggest that forfeiture is proportionally used more often against "low-level offenders or ordinary individuals." Some exceptional civil forfeiture cases achieved the intentions of the Nixon and Reagan administrations to make large seizures of criminal property. For example, in one case, law enforcement shut down massive child pornography distribution. In another, they seized and forfeited $404 million of fraudulent funds from Deutsche Bank.

Despite these notable examples, however, average forfeiture is not as large in magnitude. According to one study by the Drug Policy Alliance, California's average forfeiture value in 2013 was $5,145. In fact, since 1992, about 95 percent of all California state forfeitures were valued at no more than $5,000. These low monetary values suggest that a disproportionate amount of the seizure and forfeiture of property targets nearly everything except large criminal operations. This is akin to trimming weeds and never pulling out the roots.

Furthermore, police have abused this power to seize and forfeit property, spending the funds from civil forfeiture on, in some cases, anything from "flashy cars, to concert tickets, to popcorn machines." According to auditors in Montgomery County, TX, money from the District Attorney's civil forfeiture account was used to purchase tequila, rum, kegs, and a margarita machine for an office event. Unfortunately, little has been done to improve oversight in most States around the country. There have been reforms since 1984, such as the Civil Asset Forfeiture Reform Act (CAFRA) in 2000, but such amendments have done little to quell the financial incentives that are leading to police abuse and corruption in local counties and municipalities.

California's Road to Reform

Much of the issues perpetuated under federal law have led some states, such as Minnesota, Maine, North Dakota, and Vermont, to adopt strict regulations aimed at protecting their citizens from abuse. California also has been one of the more progressive states in terms of placing strict regulations on use of civil forfeiture funds, but, like many other states, seeing the revenue from forfeiture proceeds incentivized California to profit -- revenues increased from $27 million in 1985 to $556 million in 1993. Thus, California passed the Comprehensive Forfeiture Act (CFA) in 1989, which enabled California to profit. Before the CFA, California law operated under only the criminal forfeiture track. The CFA lifted this criminal forfeiture restriction, instead opting for the financial rewards of civil asset forfeiture. After all, civil forfeiture provided a new source of funds that could help mitigate fiscal crises and pay for new development programs, all in the name of thwarting criminals.

Californian citizens soon felt the consequences of the CFA. According to a 1993 article by Gary Webb of the Mercury News Sacramento Bureau, California was "stung by evidence of widespread abuse," and that "for four years [asset-forfeiture law]" had allowed police to "take money and property from people who were merely suspected of dealing drugs." In the same story, Webb pointed to the 1992 killing of Donald Scott in Ventura County as the epitome of law enforcement gone awry. In that case, Federal agencies merely suspected that Scott was dealing drugs from his 200-acre property, and thus, with a team of thirty officers as well as the authority of the federal equitable sharing laws, they raided the millionaire's home and killed him. They never found any traces of drugs on his property.

As a result of the public outrage, California Assembly Member John Burton introduced reform that aimed "to ensure that people's property rights, and due process rights, are protected." The debate in 1993 raised three questions that parallel the debate over forfeiture reform in 2015: first, whether a criminal conviction ought to be required; second, whether law enforcement and prosecutors ought to be allowed to seize and forfeit property of innocent third parties, and third, whether the distribution of forfeiture funds to budgets of law enforcement and prosecutors creates a financial conflict of interest, especially those transfers from federal agencies to state and local agencies pursuant to equitable sharing laws.

Other reform efforts include A.B. No. 639 (Norby) in 2012, which died in Senate Appropriations, and S.B. No. 1866 (Vasconcellos) in 2000, which was vetoed by Governor Gray Davis. On February 25, 2015, California State Senator Holly Mitchell mustered the political support to introduce the most recent forfeiture reform measure, S.B. No. 443. S.B. No. 443, projected to result in "unquantifiable revenue loss, in the millions, to state and local agencies," which never made it to the governor's desk.

Most of the costs of Mitchell's bill come from the added measures to address "punishment without conviction, the profit motive, [and] equitable sharing." S.B. No. 443 also extends a right to counsel for civil defendants and improves methods of reporting seizure and forfeiture transfers between agencies of all levels of government. All of these reforms are important, but what is the overall priority? Perhaps, more importantly, what ought to be the overall priority?

To begin, S.B. No. 443 would have reinstated a criminal conviction requirement for forfeitures both over and under $25,000, which attempts to address the problem of seizing and forfeiting the property of innocent third parties and to improve procedural and substantive due process protections. Unfortunately, criminal conviction alone is not enough. A recent report by the Drug Policy Alliance cites record profits from forfeitures for cities all over California. Cities such as Oakland and Bakersfield have netted $2,281,597 and $571,796, respectively, in forfeiture proceedings. Other cities toward the southern end of the state have profited at even higher margins, such as Long Beach, which raked in $4,410,910, and Pomona, a much less populated city, which saw disproportionately high profits of over $14.3 million in 2013. Most, if not all, of these figures result from the equitable sharing loophole. Instituting criminal requirements for forfeiture does not mean these numbers will decrease. To the contrary, a study by the Institute for Justice has found that the more restrictive state regulations are the more those States' law enforcement will circumvent those regulations, relying on more profitable, more generous equitable sharing.

To target this glaring hole in the law, Mitchell's bill restricts the financial incentives of state and local law enforcement by prohibiting federal "adoption" of seized property. To the same end, S.B. No. 443 requires that any forfeiture proceedings otherwise obtained, such as through "joint investigation," shall only be apportioned and distributed according to the new California forfeiture funding formula. Federal equitable sharing laws currently allow for California state and local law enforcement to receive 80 percent of proceeds of federally forfeited property, as opposed to 65 percent that they receive from state and local forfeiture proceeds. For this reason, many state and local law enforcement agencies opt to pass seizure opportunities to federal authorities, so localities may profit more from the resulting forfeiture.

To be clear, eliminating a federal adoption policy under S.B. No. 443 would remove only some of the profit incentive. As stated above, state and local law enforcement would be entitled to only 65 percent instead of 80 percent of the forfeiture proceeds. Though this may seem like an improvement, this minor reduction in potential relative profits changes little to curb local agencies' dependence on the funding to begin with. Nevertheless, a possible upside to eliminating federal adoption and tightening up the joint investigation distributions is that these improvements force all forfeiture proceeds that California receives, from federal or state forfeitures, to be distributed identically. In other words, under S.B. 443, state and local law enforcement agencies would receive the same absolute forfeiture proceeds of 65 percent with or without federal sharing, diluting the incentive for local authorities appealing to federal ones.

Still, diluting the incentive does not eradicate it. The root of the problem is in the leniency of federal laws. Because state and local law enforcement agencies can operate under more lenient federal forfeiture laws when doing joint investigations, state and local law enforcement can forfeit more property overall. If law enforcement agencies forfeit more property overall, then law enforcement agencies' 65 percent stake in the forfeiture business increases in absolute value: 65 percent of $80 million --the result of lenient federal law -- is greater than 65 percent of $30 million, or the result of stricter state law.

So how might California lawmakers address this problem? One solution to this problem is to reconfigure the California forfeiture funding formula. Under S.B. No. 443, California would redistribute funds through the forfeiture funding formula: from 65 percent to law enforcement down to 60 percent, from 10 percent to prosecutors down to 5 percent, from 24 percent to the General Fund down to 20 percent, and from 1 percent for ethics training to zero. S.B. No. 443 allocates the remaining funds to create a new Judicial Asset Forfeiture Fund and to bolsterbeef up the public defender's offices.

These improvements hardly solve the root of the problem, however. If lawmakers really hope to quash the troubling profit motives involved in equitable sharing, then lawmakers need to move substantially more funds, if not all, outside the bounds of law enforcement and prosecutors' discretion. One scholar, Karis Ann-Yu Chi, posits that the best distribution scheme would be to take all of the profits out of the forfeiture funds and divert them toward public education. This seems politically more tenable, given that it takes focus away from the "tough on crime" versus "soft on crime" dichotomy, which in

California's history has been the death of forfeiture reform, and also that it motivates and strengthens education interest groups. Alternatively, funds could be diverted toward improving and expanding drug intervention and rehabilitation programs. Funding programs like these align with the intention of asset forfeiture and could have added benefits that the current brute force strategy could desperately use.

But even with bipartisan issues such as funding education or addressing drug abuse, opposition to efforts to reform asset forfeiture law runs deep in California. While some of the opposition to S.B. No. 443 potentially includes the Police Chiefs' Association, the California Narcotics Officers' Association (CNOA), and California District Attorneys Association (CDAA), the Los Angeles County District Attorney's Office has officially come out in opposition. Most opposition to S.B. No. 443 is likely to argue that "forfeiture is an effective mode of crime control" and that removing civil forfeiture from law enforcement agencies' toolboxes will limit their ability to effectively police drug crime. This is based on the idea that seizing the means of production of drugs is more effective in demonstrating to criminals that "crime doesn't pay." According to most updated bill analysis, the Los Angeles County District Attorney's Office makes this same argument: "SB 443 reduces the amount of forfeited assets that may be distributed to law enforcement and prosecutors, thus hurting our ability to fund future anti-drug efforts. Loss of these funds could make it difficult to investigate and prosecute major illicit drug operations in California."

The problem is that this charge does not have any basis in reality. As criminologist John Worrall of the Department of Justice says, "Unfortunately, not a single published study has linked forfeiture activities to the prevalence of criminal activity." In other words, there is no evidence from federal, state, or local sources that civil forfeiture is effective to any measurable degree in combating illicit drug trade. Simply measuring the size of forfeiture proceeds does not provide an accurate account of stopping the drug trade. When more than 80 percent of forfeitures do not carry criminal convictions, and thus cannot firmly be connected to drug criminals, how can any study posit that forfeiture is thwarting drug criminals?

The second argument that opposition can be expected to make against S.B. No. 443 is that ending civil forfeiture would damage police budgets. Indeed, Michael Van Den Berg, argues, "[A]ny major drawdown of forfeiture could cripple other important law enforcement efforts." This is less of a counter-argument than it is a demonstration of the size and scope of the problem. Acknowledging that state and local law enforcement agencies' budgets are so dependent on civil forfeiture funds that removing those funds would cripple their ability to function shows how deep the profit motive extends. Law enforcement provides necessary public services, so if it is true that budgets are so strongly dependent on forfeiture proceeds, lawmakers have a serious problem. If lawmakers are serious about eliminating the profit motive from forfeiture law, they need to eliminate the link between law enforcement budgets and amount of seizures and forfeitures. One solution for lawmakers would be to divert most of the funds–say 65 percent of the funds, which equals the combined total that law enforcement and prosecutors will receive under S.B. No. 443–to the General Fund. Then legislators could allocate money to state and local law enforcement based on need alone—funds equal to the total cost of their seizing and forfeiting. This is within the state authority and would remove the direct link between local agencies' budgets and forfeiture proceeds, eliminating the local agency discretion and the threat of abuse. In short, limiting the opportunities for profit would limit the potential for abuse.

Recommendations

To recap, the most concerning consequences of civil forfeiture as discussed in this article are, first, the punishing of property owners by seizing their property without any criminal convictions; second, the degree to which profit motive exists in law enforcement agencies that rely on civil forfeiture proceeds to balance their budget; and third, the leniency of federal laws that perpetuate profit motives even when States create strong restrictions on forfeiture allocations.

Key to addressing these concerns is eliminating the direct link between civil asset forfeiture proceeds and law enforcement budgets. California should adopt the following three-pronged solution to address these problems: first, the state should permit forfeiture only within the criminal track. This would restore procedural protections and weaken the potential for citizens to be subject to abuse. Second, California should cap forfeiture fund appropriations, with or without federal sharing, to one formula for in-state allocation equal to the total cost for seizing, forfeiting, and litigating under criminal forfeiture track. This would permanently sever the profit motive. Third, to ensure the accountability in local agencies' budget and expenditure reports and to limit potential false reporting, lawmakers should establish randomized annual audits.

Ideally, California would be an exemplar for other states and encourage them to adopt similar reforms, ultimately creating enough national backing to spur lasting federal reform. At the present rate of states' changes, such as the most recent in Michigan, federal reform is on the horizon. Without that lasting federal reorganization of law and priorities, not only will drug operations of high-level crime syndicates be targeted and forfeited with little or no constitutional or procedural protections, but so too will the property of ordinary citizens across the U.S. Any system that allows such targeting and abuse by law enforcement is not a system that truly protects and serves the people.

Criminal Intent at Pomona College

By: Jerry Yan, PO '18

Two maxims are central to the practice of criminal law: "beyond a reasonable doubt" and "innocent until proven guilty." Both have appeared in countless movies, TV shows, and news articles. A third concept, equally important but less ubiquitous, is that a person should only be punished if he or she has a requisite degree of criminal intent, or mens rea.

However, the text of the Pomona College Student Code does not reflect that principle. Under the current Code, a student could well be punished for an accident, or other circumstances beyond his or her control. In order to prevent such an occurrence, the Pomona Student Code must be rewritten to define offenses using a two-ponged framework: *actus reus*, or the action itself, and *mens rea*, or the requisite mental state.

The term *mens rea* originates from the Latin phrase "*actus reus non facit reum nisi mens sit rea*." In English, the phrase translates roughly to "an act does not make a defendant guilty without a guilty mind." According to this phrase, there are two elements that make up a criminal action: the *actus reus*, or the action itself, and the *mens rea*, or the defendant's mental state. Many criminal statutes around the world, including many in the United States, employ this two-part framework in writing Penal Codes. Consider, for example, the federal definition of murder:

> 18 U.S.C. § 1111(a)
> The unlawful killing of a human being with malice aforethought.

The statute can be broken down like so:

1. *actus reus*: unlawful killing of a person
2. *mens rea*: malice aforethought

Thus, in order to find someone guilty of murder, a federal jury must find that the defendant killed someone unlawfully and showed malice aforethought. Finding that the defendant unlawfully killed someone is necessary, but not sufficient to convict under the murder statute. Unless the prosecutor can show that the defendant demonstrated malice aforethought,

the defendant cannot be found guilty of violating 18 U.S.C. § 1111(a). The same is true, of course, in the other direction: merely possessing the appropriate *mens rea* is not enough to convict someone under this statute. However, that is not to say that the defendant could not be found guilty under some other statute, rather, it just would not be the murder statute.

Federal law also defines many other crimes using this two-pronged framework. For example, consider the federal definition of arson, where the actus reus is italicized and the requisite mens rea is underlined:

> 18 U.S.C. § 81
> [When a person] willfully and maliciously *sets fire to or burns any building, structure, or vessel.*

Similar constructions are found in the laws of all 50 states and countries around the world. However, there is tremendous variation in what the requisite mental state is for a given crime. Furthermore, the definitions and classifications of the mental states themselves vary based on the jurisdiction, even among the 50 states.

In an attempt to standardize American criminal statutes, the American Law Institute released the Model Penal Code ("MPC") in 1962. In addition to providing definitions for many crimes, the MPC also defines four discrete criminal mental states:

1. Purposely (Intentionally) – When a person acts with the purpose/intent to produce a specific result.
2. Knowingly – When a person acts knowing that his or her actions will practically certainly give rise to a specific result.
3. Recklessly – When a person consciously disregards a substantial and unjustifiable risk associated with his or her actions.
4. Negligently – When a person should have known about a substantial and unjustifiable risk associated with his or her actions.

Despite their importance to defining criminal statutes, these mental states are missing from much of the Pomona College Student Code. In other words, the Pomona College Student Code defines proscribed conduct solely as the action itself without the corresponding mental state. Consider the Pomona College Student Code's definition of forgery with the U.S. Code's definition and the MPC's definition. Again, the actus reus is italicized and the mens rea is underlined.

> Pomona College Student Code art. III cl. 1
> Violations of the student code include […] *forgery, alteration or misuse of any college document, form, record, time sheet or instrument of identification.*

> 18 U.S.C. § 471
> [When a person] "with the intent to defraud, *falsely makes, forges, counterfeits, or alters any obligation or security of the United States.*"

> Model Penal Code Art. 224 § 224.1 (1)
> A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:
> (a) *alters any writing of another without authority*; or
> (b)*makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act* […]
> "Writing" includes printing or any other method of recording information […] and other symbols of value, right, privilege, or identification.

While both the U.S. Code's definition and the MPC's definition clearly specify the requisite *mens rea*, the Pomona Code does not address the matter. This poses a very significant problem that can be illustrated by a series of hypothetical situations.

Consider two Pomona students, Fred and Kelly. Fred, a 20-year-old student, photocopies his ID, changes the birthday on the photocopy, and tries to get alcohol with it. Kelly, on the other hand, photocopies a friend's ID and draws a mustache on the picture as a prank. Both Fred and Kelly clearly committed an alteration of an identifying document, satisfying the *actus reus* portions of each of the three statutes. Additionally, Fred had a clear intent to defraud, that is, he acted with the intention of deceiving someone so he could get alcohol. However, Kelly clearly did not act with the intent to defraud as she never intended to use the altered ID as an actual ID. As such, Kelly does not have the sufficient *mens rea* to be convicted under either the federal or MPC statute. Nonetheless, because there is no *mens rea* component in the Pomona statute, she, along with Fred, would likely be found responsible under the Pomona College Student Code's definition of forgery and face additional repercussions. Surely, any reasonable person would agree that while it would make sense to punish Fred, punishing Kelly would be entirely nonsensical.

But even if Kelly were to be punished, at least her actions were intentional. The problem with the lack of a mens rea clause becomes even more apparent when people are punished for *unintentional* actions. The Pomona College Alcohol Policy reads in part:

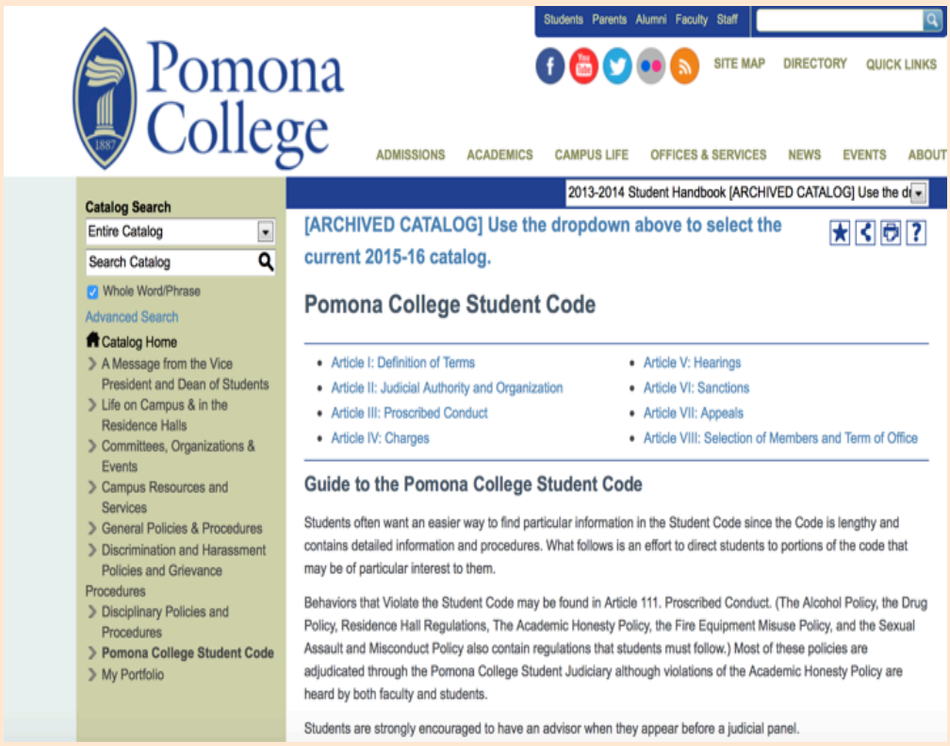
> Pomona College Alcohol Policy Art. I § 2
> Students under 21 years of age may not *consume, possess, distribute, or sell any alcoholic beverage.*

John, an 18-year-old Pomona first-year, is walking down the hall when someone comes running around corner

with a bottle of beer yelling "An RA is coming!" The person thrusts the bottle into John's hands and runs away. Before John realizes he is holding a bottle of beer, the RA turns the corner and writes John up for violating the Alcohol Policy. Under the current text of the Pomona College Student Code and the Alcohol Policy, John would be sanctioned for violating the Alcohol Policy despite really only being guilty of being in the wrong place at the wrong time.

Similarly, what if John had his juice spiked with vodka while at a party during substance free opening without him knowing and he drank it? The statute governing substance free opening is as follows:

> Pomona College Alcohol Policy Art. I § 15
> From the time that students arrive on campus in August until the beginning of the second week of classes, the College *does not permit alcoholic beverages to be served or consumed on campus.* […] All students, regardless of age or class standing, are required to observe Substance Free Opening.



John's conduct clearly qualifies as consumption – despite that he never intended to consume alcohol. He would then have to complete 10 hours of community service, pay a $100 fine, and would be barred from returning early to campus the next year. This "violation" would foreclose opportunities like being a sponsor or a student mentor – hardly fair treatment to someone who did not know what he was doing.

To be sure, *mens rea* qualifiers in the Pomona College Student Code could – and would – be abused. For instance, some students could attempt to falsely claim that they were unaware they were consuming alcohol to get away with violating the alcohol policy. So long as a mens rea clause were added, some would invariably attempt to abuse it.

There are, however, some safeguards for this inevitability. First, the threat of further sanctions for lying would deter students from lying to abuse *mens rea*. Secondly, as many students can attest to, most students who are caught violating the Alcohol Policy are caught doing so at a party, where there are other witnesses. Of course, witnesses are biased. Witnesses can lie. Witnesses can be forgetful. Witnesses at a party with alcohol can be especially forgetful. But the same is true even without a *mens rea* clause. Moreover, as the famed legal theorist William Blackstone wrote, "it is better that ten guilty persons escape than that one innocent suffer."

Additionally, mens rea is not a means for alleged policy violators to claim ignorance of the law itself. For example, John could certainly argue that he should not be found guilty because he did not know he consumed alcohol, but cannot argue that he should not be found guilty because he did not know about Substance Free Opening. In the words of the current Chief Justice of the U.S. Supreme Court:

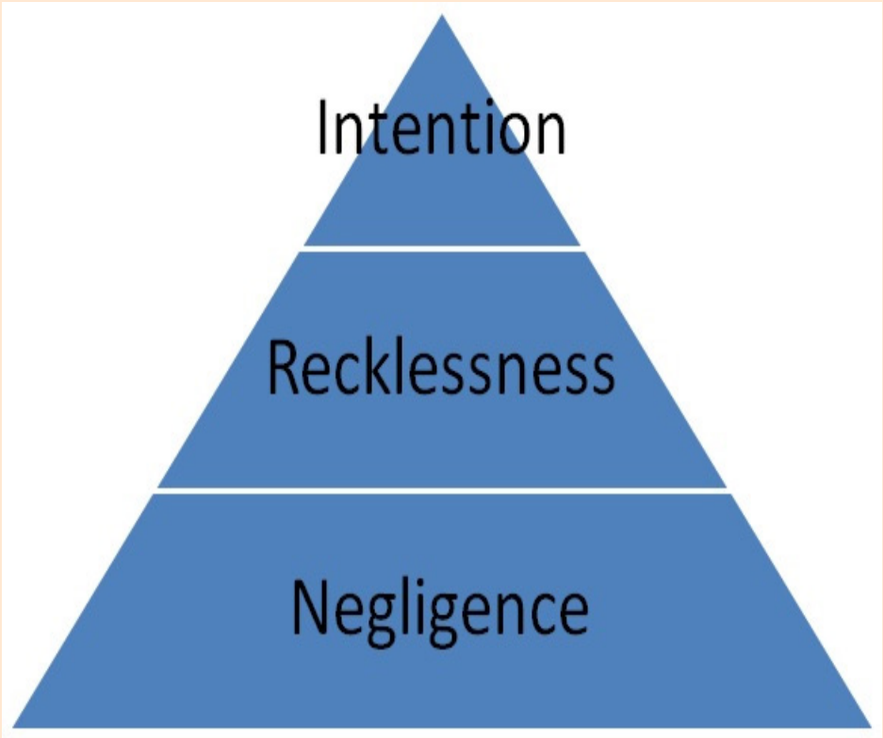
> This is not to say that a defendant must know that his conduct is illegal before he may be found guilty. The familiar maxim "ignorance of the law is no excuse" typically holds true. Instead, [the Supreme Court has] explained that a defendant generally must "know the facts that make his conduct fit the definition of the offense," even if he does not know that those facts give rise to a crime.

In other words, unknowingly doing something is distinct from not knowing what the law is. Including a *mens rea* clause does not give alleged policy violators the opportunity to claim that they did not know the rules; rather, it merely ensures that students do not get punished for genuine accidents or happenstance.

It is true that the Pomona administration exercises a great deal of prosecutorial discretion and that people like John or Kelly would likely never be prosecuted even if their actions somehow came to Pomona's attention. It is also true

that the alleged offender's attitude is a factor to be considered when deciding punishments and sanctions. However, a small likelihood does not imply impossibility. Moreover, there are matters of principle at stake here: rules are written to be enforced, not to be disregarded. No one should ever be punished, no matter how lightly, for something silly or for something they frankly do not deserve to be punished for. Additionally, individuals who find themselves in situations like Kelly or John would have their "violations" put on their permanent previous conduct record. That could go on to affect their ability to participate in College programs like study abroad or RHS (sponsors and RA's) and would lead to harsher sanctions should either of them ever break the Pomona College Student Code again, whether accidentally or intentionally.

Adding *mens rea* clauses to the definitions of each form of proscribed conduct would obviously be a very dramatic and fundamental shift in the Pomona College Student Code. Large portions of the Student Code and other policies, including the Alcohol and Substances Policies, would have to be rewritten from the ground up. In the first place, the Code should be written in a similar manner to the statutes in the MPC, both structurally and substantively. The first part of the new Pomona Student Code should contain a series of definitions of jargon and basic terms, including the four mental states. From there, the rest of the Code should be focused on defining individual offenses and forms of proscribed conduct that includes the *actus reus* and a *mens rea* qualifier. For example, a new forgery statute could read like so:



Forgery. When a person, with <u>purpose to defraud or injure any member of the College community, or with knowledge that he/she is facilitating a fraud or injury to be perpetrated by any member of the College community</u>, either:

(a) *alters any College writing without authority*, or

(b) *makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of a College official who did not authorize that act.*

"Writing" refers to any official College document, form, record, time sheet, or instrument of identification.

This statute would immediately rectify the most glaring flaw in the current definition of forgery. It clearly indicates both the *actus reus* and the corresponding mens rea. Using the MPC as a model, the College could adapt pre-existing statutes to include *mens rea* components. However, the College should not by any means adopt the entirety of the MPC. The MPC was never intended to be adopted by a college (or, arguably, by a state either) and is not tailored to the College's needs. Furthermore, the MPC was merely intended to provide guidance and introduce some degree of uniformity, not to be fully implemented. Moreover, adopting the MPC would pose a multitude of logistical challenges as the document is hundreds of pages long. Instead, the College should use the MPC as a point of reference in the process of designing and drafting a new Pomona College Student Code.

The Pomona College Student Code, as it stands right now, is very much an imperfect document. Adding *mens rea* to the definitions of the various forms of proscribed conduct would not resolve all of the Pomona Code's faults, but it would certainly resolve some. Without *mens rea* requirements built into the definitions of the various offenses outlined in the Pomona student code, some hapless student will inevitably be punished for an accident or other circumstances beyond his or her control. It is well within the Pomona administration and student government's power to prevent that from ever occurring and there is little doubt that they should do so.

In Defense of Smith: Why Religious Exemptions to Neutral Laws are Unnecessary

By: John Blattner, CMC '17

In 1993, the Religious Freedom Restoration Act (RFRA) passed through the House of Representatives without a single no vote cast. The act mandated that all laws, even neutral ones, be held to strict scrutiny when they are claimed to burden Free Exercise of religion; that is, the state must show that the law is narrowly tailored to a compelling governmental interest or else grant an exemption to the law. Democrats and Republicans, Liberals and Conservatives alike considered RFRA a victory for religious freedom, and the passage of RFRA was bipartisan and uncontroversial.

Today, the political context has changed. Most liberals oppose the Court's application of Free Exercise rights to for-profit corporations, as well as a prevalence of religious exemptions that conflict with the Democratic Party's platform in areas such as gay rights and birth control. The wisdom of religious exemptions to neutral laws is being seriously questioned for the first time since the passage of RFRA, to the point where mandated strict scrutiny for claims to Free Exercise exemptions could once again become a debated political issue. In considering whether it is wise to apply strict scrutiny to Free Exercise claims, it is useful to look back at the case that inspired RFRA, *Employment Division v. Smith* (1990).

Employment Division v. Smith

Facts of the Case

The facts of the case in *Smith* were that Alfred Smith and Galen Black, two members of the Native American Church, were fired from their jobs as drug counselors after they ingested peyote in a religious ceremony. Smith and Black applied for unemployment insurance, and were denied their claim because they were fired for violating criminal law. Peyote was one of many Schedule I controlled substances that were prohibited for all citizens by Oregon law. Justice Antonin Scalia's majority opinion in *Smith* was one of the most unpopular decisions in Supreme Court history; it ruled that the Free Exercise Clause of the First Amendment does not require exemptions from a neutral and generally applicable law if said law indirectly burdens religious conduct, and that, because the drug laws in question were deemed neutral, Smith and Black had no Free Ex-

ercise right to be exempted from those statutes, and therefore no right to their unemployment insurance claims.

Criticism

Among the most prominent critics of the *Smith* decision was Michael W. McConnell, then a professor at the University of Chicago Law School, and later a Judge on the Tenth Circuit Court of Appeals from 2002 to 2009. McConnell supports a far broader reading of the Free Exercise Clause, which requires exemptions for religious conduct unless the exemptions would offend the "peace and safety of the State," which he later clarifies as "mean[ing] that we are free to practice our religions so long as we do not injure others." Between Scalia's narrow interpretation and McConnell's broad interpretation lies a third, intermediate interpretation, the Sherbert Test. The Sherbert Test states that religious accommodations must be granted to a law that burdens the free exercise of religion, unless that law is narrowly tailored to a compelling state interest.

This test was applied by four of the Justices in *Smith*, albeit to reach two different conclusions in the form of Justice Sandra Day O'Connor's concurring opinion and Justice Harry Blackmun's dissenting opinion, which was joined by Justices Thurgood Marshall and William Brennan. Clearly, there is no consensus on the Free Exercise Clause's requirement of exemptions. Even within the three factions described above, there is some divergence: Justice O'Connor's view of what constitutes a compelling government interest is much broader than Justice Blackmun's, and Justice John Paul Stevens, who joined the majority opinion in *Smith*, views all religious exemptions as not only not required, but impermissible.

Implications and Interpretations

For all the criticism that *Smith* inspired, and all the rival interpretations of the Free Exercise Clause that it contends with, it remains the most just and practical standard by which to measure claims for religious exemptions. Broader interpretations prove extremely difficult to apply consistently without severely infringing on the state's authority to regulate secular conduct, while the Free Exercise Clause under a State-Triggered Interest Test remains sufficient to guarantee religious liberty and equality.

There are certain protections that the Free Exercise Clause is nearly universally accepted to guarantee: that religious belief itself cannot be punished, that laws cannot target specific religions, that religious practice cannot be regulated unless it violates a valid statute, and that all religious denominations must be treated equally and neutrally. The definitions of the last two points are particularly controversial; the Smith test, the Sherbert test and the Peace and Safety Test all have different thresholds of how much secular interest is needed to deny an exemption, and there is widespread disagreement about how religions can be treated the most equally. The Smith Test would hold that, so long as a law provides members of all religions the same treatment under the law and was not intended to target a religion, it is truly neutral. But central to broader interpretations of the Free Exercise Clause is the argument that "the only hope for achieving denominational neutrality is a vigorous Free Exercise Clause." To McConnell and others, exemptions are necessary to protect the Free Exercise rights of members of minority religions, because "a genuine neutrality toward minority religions is preferable to a mere formal neutrality, which can be expected to reflect the moral and religious presuppositions of the majority." McConnell claims that a genuine neutrality is one in which all citizens can practice any and all aspects of their chosen religion, regardless of the law, so long as they do not violate the peace and safety of the state.

But how this "genuine" neutrality is more just than "formal" neutrality is unclear. While it is true that legislators may hold biases in favor of their religion, their ability to act on these potential biases is severely curtailed by the Establishment Clause. Conventional Establishment Clause jurisprudence prohibits endorsement or preference of any religious sect or sects in any statute, and all mainstream Free Exercise interpretations hold laws that target a specific religious sect unconstitutional. Therefore, any difference in treatment would be incidental, as a result of a religious practice requiring conduct that the government has a secular purpose for regulating. These restrictions on conduct would be applied equally to all citizens, which is as facially neutral as possible. While the Free Exercise Clause promises the right to adhere to any religion, it makes no promise that adherents of certain religions are given advantages over other citizens in secular matters.

This assumes, however, that the statute in question is truly a neutral law generally applied, which would require it to have no exemptions whatsoever. It is quite plausible that a legislature would pass a law that would be neutral if not for exemptions favoring a popular religion. This would surely show unfair preference, just as targeting a religious practice would show unfair discrimination. But it is consistent with the Smith Test to require exemptions for other religions in such cases, through the application of a State-Triggered Compelling Interest Test.

The use of a State-Triggered Compelling Interest Test provides far clearer boundaries for both legislatures and courts, by defining how and when the Compelling Interest Test – or Sherbert Test – must be applied. The basic premise of the State-Triggered Compelling Interest Test is that, in cases where statutes have no exemptions for morally or religiously motivated behavior, this lack of exemptions will be accepted as proof that the state is applying the law neutrally, and has valid reason to prohibit exemptions in general. However, if exemptions are made to the statute's policy for holders of certain religious, moral or ideological beliefs, this will be taken as proof that the state has no compelling interest in applying the statute's policy universally and without exemption. In these cases, the state would have to demonstrate how the denial of an exemption was narrowly tailored to the furthering of a compelling (and secular) government objective. This state-triggered test would give legislatures the authority to apply important policies uniformly and universally, while still guaranteeing religious minorities protection from legislative discrimination. It would also provide a stronger definition for when to

use the Compelling Interest Test, which has been applied so inconsistently at the Supreme Court level that Michael McConnell considered it a "Potemkin doctrine," or, in other words, used only in theory.

Indeed, there was disagreement at the time of *Smith* over not only which test should be used, but also which tests had been used in prior cases. Justice Scalia's interpretation of the Compelling Interest Test was that it had only become precedent for one narrow type of religious exemption: unemployment insurance claims. Scalia writes in his opinion that "we have, on three occasions, invalidated state unemployment compensation rules that conditioned the availability of benefits upon an applicant's willingness to work under conditions forbidden by his religion [but w]e have never invalidated any governmental action on the basis of the *Sherbert* test except the denial of unemployment compensation."

It makes sense that unemployment insurance claims would be treated differently than other cases for two main reasons: firstly, that insurance claimants are not breaking any law, but rather claiming coverage under a government policy, and secondly, that unemployment insurance often covers those who are unavailable for work due to a "good cause." This second point is particularly relevant because it proves unemployment insurance laws were "developed in a context that lent itself to individualized governmental assessment of the reasons for the relevant conduct." Incidentally, this second point would "trigger" the State-Triggered Compelling Interest Test, and therefore cause the court to hold the law to the same scrutiny that it would have faced under the Sherbert Test.

But drug laws have no such "good cause" exemption. Nor do minimum wage laws, business permit laws, traffic laws, laws regulating polygamy, or, in fact, the vast majority of neutral laws from which religious exemptions are claimed. And while Scalia admits that the court had "sometimes purported" to apply the Sherbert Test in other contexts, he also sees the facts that it had never mandated an exemption in any context other than unemployment insurance, and that the court had stopped applying it in most free exercise cases, as proof that the Sherbert Test held precedent only over unemployment compensation cases.

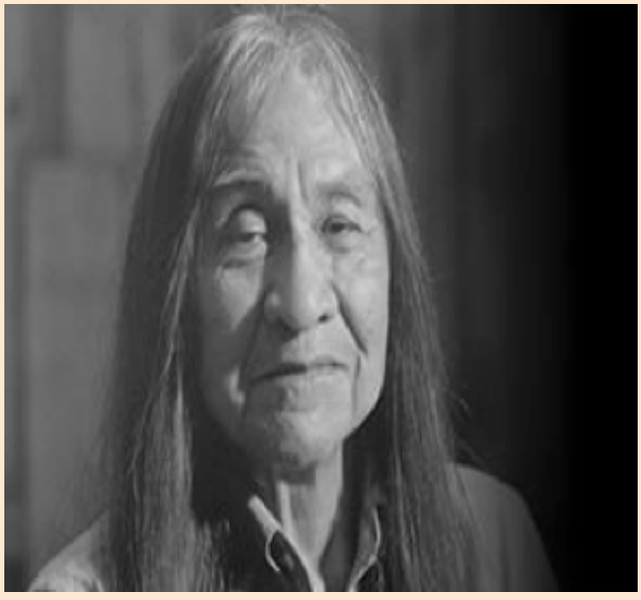
But contrary to Scalia's argument, this was not strictly true: in *Wisconsin v. Yoder* (1972), the court applied the Sherbert Test and ruled that the state had no compelling interest to deny an exemption. Scalia writes off *Yoder* as a special kind of "hybrid case," where the Free Exercise claim is supplemented by another claim to a separate right: here, the right to "direct the education of their children." This "hybrid" claim is rejected by McConnell, who postulates that "the notion of "hybrid" claims was created for the sole purpose of distinguishing *Yoder* [from Smith]." The *Yoder* decision itself lends credence to McConnell's skepticism, as the general right to direct education of children is not only withheld, but rejected outright by the Court. Chief Justice Warren E. Burger wrote in his majority opinion that "[a] way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations" and then states bluntly that the court "giv[es] no weight to such secular considerations" in the case at hand. *Yoder* was a Free Exercise case, and a Free Exercise case only.

What, then, to make of *Yoder*? It provides the counterpoint to Scalia's insistence that the Supreme Court "ha[d] never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate," and yet it is a unique case. Chief Justice Burger's majority opinion treats the Amish as a sect completely segregated from the rest of society; he writes that "their habits […] do indeed set them apart from much of contemporary society; these customs are both symbolic and practical." The Court is clear not to establish a general right to opt out of mandated education, as the right extends only to those whose entire religiously based and traditional lifestyle would be made impossible by compulsory high school education. But in differentiating the Amish from other groups, the Court may have ventured into the forbidden territory of religious preference. Burger's majority opinion places a heavy emphasis on the history and tradition of the Amish culture, as if to prove that it is a more legitimate claimant to a religious exemption. It emphasizes the longevity of the Amish religious culture, noting that "the respondents' religious beliefs and attitude toward life, family, and home have remained constant […] their religious beliefs and what we would today call "life style" have not altered in fundamentals for centuries." It also seems sympathetic to the unique challenges of the Amish lifestyle, recognizing that it "is inherently simple and uncomplicated, albeit difficult to preserve against the pressure to conform," and noting "almost 300 years of consistent practice [and] strong evidence of a sustained faith pervading and regulating respondents' entire mode of life." But an old and

traditionally based religion is no more entitled to government exemptions than a novel and modern religion, if the premise of equal treatment of denominations is to be taken at face value. The Chief Justice's approval of Amish values and history should be irrelevant to the case at hand.

Precedents and Exceptions

Regardless of the validity of *Yoder*, it was certainly a case in which the Court unanimously granted a religious exemption to a neutral law, neutrally applied; and therefore the Smith decision did, at least partially, overturn precedent. But *Smith* was hardly the first Free Exercise case to do so; indeed, such is the diversity of case results that it would be nearly impossible not to invalidate a previous Court ruling. The first major case involving a claim to religious exemption under the Free Exercise clause was *Reynolds v. United States* (1879). In Reynolds, the Court unanimously rejected a member of the Church of Latter Day Saints' claim to his right to practice polygamy, as was mandated by his church at the time. Chief Justice Morrison Waite's opinion stated that "[l]aws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices." In *Reynolds*, the Court established a doctrine that forbade Congress from regulating religious belief, but permitted them to regulate all religious conduct, provided they had any semblance of a secular purpose for doing so.



This quite narrow view of the Free Exercise clause lasted for over 80 years, until *Cantwell v Connecticut* (1940). Cantwell unanimously overturned the belief-conduct barrier established by Reynolds, ruling that "the [First] Amendment embraces two concepts—freedom to believe and freedom to act." Without this reversal of precedent, there would be little debate over when religious exemptions are necessary; only a non-neutral law could violate Free Exercise right. *Cantwell* also incorporated the Free Exercise clause to the states for the first time, through the liberty provision of the Fourteenth Amendment. Soon after Cantwell, the Court delivered rulings in *Minersville v. Gobitis* (1940) and *Jones v. Opelika* (1942) that were swiftly overturned in *West Virginia State Board of Education v. Barnette* (1943) and *Murdock v. Pennsylvania* (1943), respectively. Clearly, it is not exceptional for the Court to overturn precedent. Smith itself was essentially overturned *de facto*, as RFRA effectively mandates the use of the Compelling Interest Test for Free Exercise exemptions at the federal level. The Supreme Court struck down RFRA's application to the states in *Boerne v. Flores* (1997), but it upheld RFRA's federal legitimacy in *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal* (2006), and a number of state legislatures have passed state-level RFRA equivalents.

Given that there is no universally accepted test to evaluate claims to religious exemptions, let alone clear judicial precedent, perhaps it is worth examining which test would be the fairest and clearest standard from this point forward. It is practically uncontested that belief itself cannot be regulated or targeted; but it is no less widely accepted that there is some religious conduct that the government must have the power to control. Even cases that grant exemptions are clear to emphasize this point; Justice Owen Roberts wrote in his unanimous *Cantwell* opinion that "[t]he first [freedom to believe] is absolute but, in the nature of things, the second [freedom to act] cannot be. Conduct remains subject to regulation for the protection of society." Likewise in *Yoder*, where Chief Justice Burger defends the state's authority to regulate conduct by stating that that "the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests."

The Peace and Safety test, advocated by Michael McConnell, is so broad as to hold that "[w]here the putative injury is internal to the religious community, the government generally has no power to intervene, with the narrow exception of injury to children." This is essentially a nonstarter, as the government is highly unlikely to relinquish its control over practices such as polygamy or drug use, let alone extreme examples like mass suicide. But even aside from these extreme examples, the Peace and Safety standard is so broad that the court could not possibly follow it strictly. Given that "the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege," and McConnell and the three *Smith* dissenters' insistence that each claim to exemption be viewed narrowly, on its own merits, there is no end to the plethora of claims that would be required by this test. If a Jehovah's Witness can claim selling merchandise or avoiding paying employees the minimum wage as religious conduct, is it any more offensive to "peace and safety" for Quakers to be exempted from paying the portion of their taxes that go toward military spending, or for the Amish to be exempted from paying into Social Security, or for Catholics to be exempted from taxes that fund contraceptives they consider abortive? If a Seventh-Day Adventist is entitled unemployment compensation despite her refusal to work on Saturdays, is a fundamentalist Muslim who refuses to work

closely with the opposite sex entitled to unemployment compensation? Subsidies, benefits, and tax exemptions are all different means to the same end: they drain money from public coffers. Public funding is zero-sum; what one person receives in subsidy is paid through another's taxes. These cases therefore present a burden on members of other religions, or irreligion, and provide, to some extent, a conflict of rights, as well as a potential threat to the social welfare state in a secular government. It is best left for the legislature to evaluate these complex questions of policy.

To further convolute the matter, Free Exercise claims to exemption now apply not only to private citizens and churches, but to private for-profit corporations as well. This broad guarantee of exemptions, claimed to a broad and growing group of entities, would effectively force the Court to act like a legislature, in a matter generally viewed as inappropriate to the judiciary's role in the federal system. The Peace and Safety test would itself become a "Potemkin doctrine," requiring both a broad interpretation of peace and safety and a narrow definition of religious belief for laws to retain any semblance of universal applicability. But even a narrower test, like the Compelling Interest Test, proves similarly insufficient at justly and clearly evaluating claims to religious exemptions. As the Court showed in the Yoder decision, the court often measures the sincerity and centrality of religious beliefs, the history of the religious tradition in question, or even the moral legitimacy of the religious beliefs when reaching a decision on the case. But this weighing of merits opposes the highest principle of the Free Exercise and Establishment clauses: that government cannot favor one religion over another, or hold any religion in particularly high esteem, for any reason. It is readily accepted that "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds."

The *Smith* dissent, too, relies on proving the legitimacy and morality of the Native American Church. Justice Blackmun writes that "the values and interests of those seeking a religious exemption in this case are congruent, to a great degree, with those the State seeks to promote." This is a dangerously subjective interpretation of how to evaluate the legitimacy of a religious claim; for a government to grant an exemption to a religion because it approves of its values and interests is a clear display of preference. But such judgment is necessary given the presence of religious claims that the state simply cannot admit precisely because they are anathema to the state's secular laws.

There is also the question of fraudulent claims to religious belief; the court must answer the question of what defines a religion in general, let alone how palatable it is to the state's sense of morality. As Chief Justice Burger wrote in Yoder, "a determination of what is a "religious" belief or practice entitled to constitutional protection may present a most delicate question." Nearly anything can be claimed as religiously motivated, and "[w]hat principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is "central" to his personal faith?" Even regarding accepted religions, one cannot help but wonder if Blackmun, Brennan and Marshall would have granted a member of an unpopular religion the same protection they granted Smith and Black, or whether the Burger Court would have granted those groups the same exemption from mandated education as it granted the Amish in *Yoder*. The Sherbert Test would grant them the means to deny these unpopular claims. Justice Blackmun claims that "It is not the State's broad [policy] interest […] that must be weighed against respondents' claim, but the State's narrow interest in refusing to make an exception." But Justice O'Connor, who also applied the Sherbert Test in *Smith*, disagreed with Blackmun on this point. And even if there were consensus, broad and narrow are relative terms on a sliding scale. A Court granted this much room for interpretation could never apply the test consistently in all cases, and unpopular religions would almost certainly suffer the consequences of this judicial leeway.

In effect, the Supreme Court has acted as a legislature when applying the Sherbert Test, exempting actions it considers offensive to the integrity of the state's secular authority while granting a right to exemption for claims they consider valid. This jurisprudence undermines the judgment and authority of proper legislatures, while simultaneously allowing for a preference of religion offensive to the Free Exercise and Establishment Clauses. A State-Triggered Compelling Interest Test would allow a legislature the authority to make policies truly neutral and universally applicable if it considers that universal application essential to the law's purpose. It would also provide a clearer standard for when to apply the Compelling Interest Test, such that judges could apply it more consistently in cases that do trigger strict scrutiny.

It should also be noted that a Free Exercise Clause under the State-Triggered Compelling Interest Test is still more than sufficient to prevent governmental religious discrimination. No belief may be targeted, no religion may be outlawed, no religious preference may be shown by the state, and no conduct may be targeted because of its religious connotations. These are strong protections, capable of guaranteeing religious liberty and equality. Legislatures are permitted to make religious exemptions to laws, and, in cases where similar exemptions have been allowed by the state, claims for further exemptions will be evaluated with strict scrutiny. Legal history and reason have shown us that any further guarantees to exemption from neutral laws are impossible to enforce consistently or justly, and are therefore unwise.

"One is best, at most two, never a third": Evaluating the Legitimacy of China's One-Child Policy

By: Ritika Rao PZ '17

The failed planning of the Great Leap Forward (1958-1961), a massive economic and social campaign aimed to ramp up development in China's agricultural and industrial sectors, and the escalation of birth rates to over four children per family led to a serious decline in Communist Party Chairman Mao Zedong's political legitimacy and ultimately gave way to a new direction of public policy planning in China. Even though China's birth rate eventually fell below three children per family by 1980, a new regime of Chinese leaders, including Li Xiannian and Chen Yun, believed that forcibly restricting population growth would lead to greater economic prosperity.

Introduced in 1978, the One-Child policy was initially summarized by the slogan "one is best, at most two, never a third." It was created to control the then-surging population and to alleviate social, economic, and environmental problems in China. The program created incentives for couples to have only one child as well as punishments for those parents who opted for three or four children. The government hired more than one million part-time and full-time workers to ensure women used birth control. Abortions and sterilizations were encouraged if women were found pregnant with more than one child.

By tracing the intentions of the One-Child policy and proceeding to analyze its effects, this article aims to address the fundamental questions of what the policy entails, its results, if it was ever really necessary, and what its recent termination means to China's society today.

The One-Child policy represents an extraordinary attempt to engineer national wealth, power, and global standing by drastically slowing population growth. It was believed that, as a leader among developing nations, China had an obligation to provide other developing countries with a model for population control that would enable them to maintain an ecological balance between the environment, food supply, and population size. Although the steps leading to the decision to move to a One-Child policy remain obscure, a precipitating factor was the government's outlook that the population, absent intervention,

was going to rise extremely quickly. Chinese authorities claim the policy has prevented over 400 million births from 1979 to 2011. This prevention has resulted in less pressure on worldwide food supplies and in less pollution in major Chinese cities. Despite this "success," the UN and other research organizations have claimed that the policy has caused irreversible damage to the structure of population growth in China.

The One-Child policy takes many shapes. While the official policy includes enforcement mechanisms like financial incentives/penalties and soft encouragement, forced abortions and sterilizations are all-too-real situations faced by couples in China during the last few decades. According to the Congressional-Executive Commission on China Annual Report (2008), "Violators of the [One-Child] Policy are routinely punished with exorbitant fines and in some cases subjected to forced sterilization, forced abortion, arbitrary detention, and torture."

With an iron determination and a long-term population goal in mind, China's government did far more than offer economic incentives to limit families to having one child. Each locality had a birth control worker – typically a woman – who visited other women regularly to keep tabs on their menstrual cycles. Population workers and other local officials received large bonuses if no women in their jurisdiction had unauthorized babies, so they had a strong incentive to be persuasive. For instance, a reported effort to meet local targets for sterilization in Tongwei County led authorities to detain and forcibly sterilize a Tibetan woman. Tongwei County also utilizes a system of paid informants – friends, neighbors, and co-workers – to report on "unsterilized households" with two children so that the women in these households can be coerced into sterilization.

Coercion and the strict regulation of women's reproductive decisions by government officials for future "societal benefits" raises the questions: To what extent is it the purview of the state to mandate contraceptive use or other reproductive behavior? And what, if any, conditions make such a mandate justifiable?

Masculinity is the crux of Chinese society – sons not only carry on the family line, they are also expected to provide for their parents in old age. A daughter, once married off, is obligated only to her husband's family. This traditional dynamic paired with the unnerving One-Child policy, as well as the unfortunate economic realities of rural Chinese villages, helped create an abnormal gender imbalance in China.Early stories emerging from rural villages told of coercive practices, including forced late-term abortions and involuntary sterilization. Backlash in rural communities throughout China led to modification of the policy in the mid 1980s, allowing a second child in families whose first child was either a girl or disabled.

Coined the "missing women of China," an already disparate sex ratio at birth in mainland China reached 117 to 100 male to female births, and remained steady between 2000 and 2013. This is significantly different than the biological benchmark ratio, 105 to 100 male to female births. Thus, rapid economic development went together with worsening female mortality. The compulsory measures of the One-Child policy resulted in the neglect of girls and, in some cases, female infanticide.

China's fertility rate unquestionably declined since the advent of the One-Child policy, but that decline is considered to be a continuation of a trend that was already well underway prior to the policy's official implementation. The country's total fertility rate was stagnant at nearly six births per woman in the 1960s, but by 1980, it had already fallen below three. As of 2013, the typical Chinese woman was expected to have about 1.6 children in her lifetime. Urbanization and economic development commonly lead to decreasing fertility rates, thus these elements likely contribute to the decline in the Chinese birth rate. Countries across Asia that do not have One-Child policy have experienced rapid declines in fertility rates in recent decades as well. For instance, the fertility rate in India has more than halved from 5.7 in 1966 to 2.7 in 2009.Further, some developing countries that have invested in controlling population growth have shown even greater falls in fertility rate than has China. For example, Iran has a fertility rate of 1.7 children per woman. Iran requires compulsory contraceptive counseling for all couples prior to marriage but does not come close to controlling reproductive rights as strictly China's One-Child policy. By observing both natural trends and examples of less stringent government intervention, one can conclude that China likely could have accomplished its population growth targets without the controversial One-Child policy.

2015 marked the end of the three-decade-old restriction. The move to allow two children for every couple was highly anticipated after the relaxing of the policy in early 2014. However, for China, the effects of three decades of the One-Child policy prove hard to undo. The country is at risk of becoming home to the most elderly population on the planet in just 15 years. This graying population will burden health care and social services and may result in slower economic growth for decades to come.

A lingering gender imbalance, caring for a rapidly aging population, and dangerously low fertility rates contribute to the long-term drawbacks China will be face. Experts claim that because having one child has become the social norm in China, the policy change earlier this year will only have a limited impact; it is now considered somewhat unpatriotic for parents to have more than one child and young people with siblings are often regarded with suspicion. For better or for worse, the economic, social, and cultural effects of the One-Child policy will survive long after the policy itself.

Asian American Underrepresentation: Political Consequences and Policy Reform

By: Emily Zheng, PO '19

Despite high education standards and high involvement in politics, Asian Americans continue to falter in governmental representation. From the local to the national stage, the underrepresentation prevails at all levels of government, especially in the legislature. Congress, for example, numerically should have 31 Asian Americans, instead of 12. Locally, "each additional percent in the population [of Asian Americans] only translates to about 0.4 percent on the city council." There is a large gap between the percentage of Asian Americans in positions of power and the percentage of Asian Americans in the country's overall population. Because of a complex history of restricting laws and expectations, Asian Americans have a representation problem.

Significance of the Issue

This inequality affects not only Asian Americans but also the community at large. Culture and background strongly influence the voting behavior and decision making of elected officials despite the diversity of their voters, so this dearth will prevent legislatures from adequately representing all their constituents. This consequently gives more influence to other races and can affect the policy process. Even as recently as 2014 in California, when an affirmative action law for state college admissions was proposed in the State Senate, there was a large backlash from the Asian American community because they believed that the law would hurt their families and friends. Senators Ted Lieu, Leland Lee, and Carol Liu, who are all of Asian descent, joined together to stop the bill from advancing further. These senators exemplify the positive aspects of representation because they heard the protests of their constituents and took action with the interests of the Asian American community in mind.

For the larger community, descriptive representation—the idea that elected officials should represent not only the preferences of their constituencies, but also their descriptive characteristics that are politically relevant, such as geographical area of birth, occupation, ethnicity, or gender—can increase voter turnout for all minorities, because they "might feel more empowered in the political system and hopefully in turn ensure that their needs are represented on the governmental level." Some scholars have also suggested that descriptive representation "might lend itself to the avoidance of extreme political activities such as protests, riots, or terrorism," which would positively affect the

entire population.

Background

Asians are the fastest growing immigrant population in the United States. Yet, Asian immigrants are often overlooked in politics because language and cultural barriers make communication between immigrants and political parties difficult. Before discussing the issue of underrepresentation, it is vital to understand the background of Asian American immigration and the attitudes of those who make up the majority of the population and hold the most power towards these immigrants because they influence how Asian Americans are perceived today in both the government and society.

Asian Americans' struggles are often masked by the model minority stereotype, which is the belief that Asian immigrants are superior to immigrants of other races socioeconomically, academically, and professionally. Asian Americans are thought to "possess the 'right' cultural traits and value education," which has led to the resentment of some who are "outperform[ed]" by these immigrants. However, it is important to realize that Asian immigrants "comprise many subgroups with very different and diverse needs and are not exempt from issues, such as poverty and unemployment, that face portions of all groups living in the United States," a reality that the model minority conception brushes aside. It is also vital to remember that Asians were not always hailed as an example, but rather as "unassimilable."

Asians immigrated to the United States for various reasons. Their first large-scale move occurred in 1848 during the Gold Rush. Many of the Chinese came to the United States to find fortune and return home wealthy. Similar to some of the Chinese and Japanese, many Indian unskilled and uneducated farmers immigrated to the United States to work on agriculture in California. The Asian immigrants population was primarily poorly educated, low-skilled, low-wage laborers, to the disdain of American citizens. The end of the Korean War, Vietnam War, and the "Secret Wars" in Southeast Asia led to a new wave of Asian American immigration with people from Korea, Vietnam, Laos, and Cambodia. Some were highly skilled and educated, and some were refugees seeking asylum.

Today's notion of highly educated Asian Americans derives from the passage of the Immigration and Nationality Act in 1965, which established a preference system based on immigrants' skills and family relationships with United States citizens or residents. The immigration policy was reformed in response to the growing strength of the civil rights movement. Previously, immigration was based on a nationality-based quota, which was contradictory to the civil rights movement's beliefs of equal treatment regardless of race or nationality. This Act created employment-based immigration channels instead. Because of this, "contemporary Asian immigrants who arrived after 1965 are, on average, highly selected," meaning that many of them are highly educated. The People's Republic of China continued to spur this movement in 1977 when it removed restrictions on emigration of college students and professionals, and people of similar backgrounds from India started immigrating to the United States around this time as well. In the first five years after the bill's passage, immigration to the U.S. from Asian countries quadrupled. By the end of the 20th century, the face of the American population greatly changed. In the 1950s, only six percent of immigrants were Asians; by the 1990s, 31 percent were of Asian descent.

A History of Persecution

How Asian Americans interact with the government cannot be fully understood until after reviewing their history of persecution. Anti-immigrant laws and rulings encouraged anti-Asian sentiment starting in the 1790s, when the Naturalization Act was passed. This severely restricted Asian immigration into the United States, because it stated that "any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen," therefore preventing any foreigners of color from becoming citizens. In 1858, the California Legislature passed a law explicitly barring entry to the Chinese and Mongolians. California passed another law in 1870 making the "import" of Chinese, Japanese, or Mongolian women for prostitution illegal. This was used to justify forbidding the entry of unmarried Asian women, and also skewed perceptions of Asian women's sexuality. 1882 marked the Chinese Exclusion Act, which prohibited Chinese immigration to the United States and naturalization for ten years. The Act was renewed in 1892 for another ten years, and in 1902 Chinese immigration was declared permanently illegal. It was finally repealed on December 17, 1943 by the Magnuson Act, two years after China became an official allied nation to the United States in World War II. Another law called the Alien Land Law was passed by Washington State in 1886 to bar Asians from owning land. Japanese immigrants could no longer receive naturalization papers from courts in 1906, and could not immigrate through Canada, Mexico, and Hawai'i due to President Theodore Roosevelt's executive order. Before 1922,

any woman who was a United States citizen and married a non-citizen would lose her citizenship. The Cable Act undid this, except for when women married Asian immigrants. *United States v. Bhagat Singh Thind* (1923) ruled that despite Indians being Caucasian, they were not white and were therefore unable to naturalize. These are only a fraction of all the laws that restricted Asians' access to the United States.

Asian Americans also face indirect persecution because of the bamboo ceiling. Similar to women's glass ceiling, the bamboo ceiling refers to the "barriers some Asian-American professionals believe that they face when trying to reach leadership roles in the workplace," and in this case, political positions of power. In fact, both male and female Asian Americans face challenges much like those faced by women overall. For example, Asian Americans and women often have a better education than their colleagues, yet advance slower in the workplace. Linda Akutagawa, president and CEO of Leadership Education for Asian Pacifics, which conducts leadership training for Asian-American executives, believes that a contributor to this bamboo ceiling is the "baked-in kind of assumption of what leaders are supposed to look like, what leaders are supposed to act like. And when it's different, then people sometimes have a hard time seeing beyond that." When attempting to crack this bamboo ceiling, Asian Americans often debate whether to believe that personal adaptation is the solution, or whether something greater like the understanding of managers and corporations should be achieved. Should Asian identity continue to be viewed as a hindrance to leadership achievement, or should companies adapt and realize that accepting these differences could help them gain even more?

Even when Asian Americans are elected into office, they still face persecution. GOP AAPI Assembly Member Ling-Ling Chang of Assembly District 55 in California was mocked by her colleagues on the Assembly floor on May 28, 2015. When she introduced AB 388, a bill she authored, fellow Assembly Member Donald Wagner of District 68 "complimented" Assembly Member Chang for her "gumption" in introducing a bill on her own after criticizing her co-authoring a previous bill with a Democrat. Following Assembly Member Wagner's remarks, Assembly Member Eric Linder of District 60 simply asked, "Ling-Ling, did you forget your bling-bling?" before returning to his seat. If even elected officials are mocking their colleagues, what must Asian Americans do in order to overcome a problem such as underrepresentation?

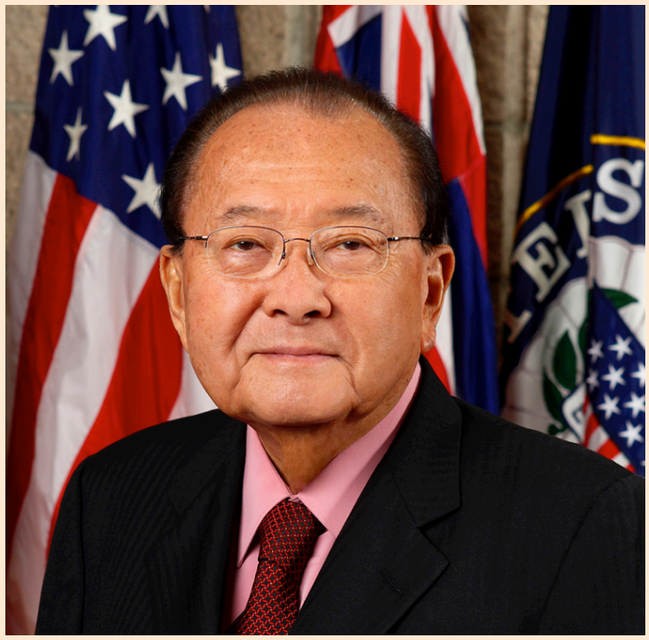
Possible Reasons for This Problem

The problem is not that Asian Americans are not running for office. In fact, "three times as many Asian-Americans have been running for Congress…than in the past two elections" according to CNN in 2012. Yet, despite the recent surge in Asian Americans running for office, there is still a representation problem. What is preventing voters from electing them? "There's always this stereotype -- we're quiet, we don't speak up, we don't fight back when we're made fun of, we're nerds, etc.," says Gloria Chan, president and CEO of the Asian Pacific Institute for Congressional Studies. "It's been difficult for Asian-Americans to break through those stereotypes." In many districts, the question of "How American are Asians?" frequently occurs, says Curtis Chin, board president of the Asian Pacific Americans for Progress. Many of those running for office are accused of having their loyalties and interests elsewhere. Often, their backgrounds are scrutinized for potential corrupt business and political relationships overseas. Most candidates of other backgrounds are not subject to the same treatment.

Is low political participation contributing to the issue? There is evidence of this, but it has become less and less of a major factor in election results. In the 2008 National Asian American Survey, 79% of recent Asian immigrants said they were politically Independent or uncommitted, so this may have lead to the lack of Asian voters. However, among those who had been in the U.S. for 25 or more years, that figure fell to 48%. Stephen Sham, Mayor of Alhambra, California, comments that Chinese-American political activity has been growing with increasing education levels and income, which could explain the rise in political participation with longer-term U.S. residents. He also believes that the history of migration directly relates to the awareness of political participation among Chinese-Americans. Because the history of the Chinese immigrating to the United States is much shorter than that of Africans or Europeans, the Chinese are generally less experienced with the governmental and electoral system than their counterparts. Therefore, Asian American political participation is rising with each successive generation. Their lack of experience will still influence their participation for some successive generations, but the effect will fade.

Jay Readey, the executive director of the Chicago Lawyers' Committee for Civil Rights Under Law, suggests that "minority voting groups are not necessarily getting the opportunity to elect the candidate of their choice" because

"their vote is diluted" over a wide area. "As municipalities [in Illinois] like Zion, Naperville, Hanover Park and Morton Grove became more diverse," writes the *Chicago Tribune*, "Latinos, Asians and African-Americans still could not wield power because their populations were spread out." Only in some areas where Asian Americans have large populations do they elect Asian American candidates at the local level. Examples include Vietnamese Americans in Orange County, California and Chinese Americans in San Francisco, California, though there are many exceptions. Koreatown in Los Angeles, for example, rarely elects Asian Americans into office: in May 2015, Los Angeles Council Member David Ryu was elected, becoming the first Korean American and the second AAPI elected to the Los Angeles City Council. His district includes a portion of Koreatown. AAPI Voices, a data-inspired AAPI-focused journalism site, found that "no individual state has Asian American legislators at parity with its Asian American population, although Hawaii comes close, with only a 3% representation gap. Asian Americans are particularly underrepresented in New York, where...the [one state representative] fails to reflect the seven percent of New York State residents who are Asian American." New York needs to elect 18 more representatives to their state legislature in order breach the underrepresentation.



Possible Solutions

Firstly, American education policy must be reformed to be more inclusive when teaching students about their country's diversity. Too often, minorities are overlooked or fleetingly gleaned upon, so citizens and residents of all backgrounds misunderstand minorities' culture, background, and struggles. Instead, students should be educated from the beginning about more of America's population and cultural history more comprehensively. Categories of analysis can include class, ethnicity, gender, race, religion, and/or sexuality and how their relationships to each other affect power dynamics in American society. Though these issues are usually addressed in collegiate studies, this knowledge should not be limited to those seeking higher education. Exposure to different cultures is only one step towards learning and practicing tolerance, but it is a necessary one.

Another possible solution is immigrant incorporation into the electoral system and government, which could encourage more immigrants, especially Asian Americans, to participate in voting and running for office. Increased ballot access through language policy can make voting more accessible due to multilingual ballots. This is a complex issue, however, because the difference in interpreting the legal requirements by government entities poses a challenge without a known legislative fix. Yet, some measures have already been enacted to foster this progression. The Voting Rights Act, first approved by Congress in 1975, requires States, counties and political subdivisions to provide ballots and election materials in other languages if Latinos, Asian Americans, American Indians, or Alaskan minority groups that cannot proficiently speak or understand English well enough to vote in elections make up at least 10,000 citizens or more than five percent of the voting-age population. The minority group should also have below national average literacy rates. James Thomas Tucker, a former Justice Department attorney and current voting rights lawyer, states that "the law has been key in the election of new Hispanic and Asian officials in many places." The United States Election Assistance Commission also provides glossaries of election terminology in six languages (Chinese, Japanese, Korean, Spanish, Tagalog, and Vietnamese) and voter's guides in eleven languages (Cherokee, Chinese, Dakota, English, Japanese, Korean, Navajo, Spanish, Tagalog, Vietnamese, and Yupik). However, the commission's materials are generally advisory, not mandatory. Half of the States started providing bilingual voting ballots in 2011. Though more and more languages and State participants are added over time, more can be done. Common Cause, a nonpartisan, grassroots organization dedicated to restoring the core values of American democracy, suggests that, though resources are often short in supply, "if elections officials identify their language needs early—especially with respect to the anticipated number of potential LEP voter turnout—they can seek out bilingual volunteers from nearby advocacy groups to provide necessary translation of voting documents and interpretation services."

Conclusion

This move towards greater and fairer representation in all levels of legislature would allow minorities to be heard. If underrepresentation continues, unfair or unfavorable governmental policies that may harm the Asian American population will go relatively uncontested during their creation. Without the balanced, multi-cultural view that the AAPI community offers, legislatures will be severely lacking in proper representation of their constituents. The underrepresentation of Asian Americans in the government is a problem that affects all citizens and should be addressed with vigor.

The Negative Effects of an All-Volunteer Force on Individualistic Societies

By: Olivia Lanaras, CMC '17

In 1973, the United States made the bold move to an All-Volunteer Force (AVF). This was done for a number of reasons. First, there were simply too many young men coming of draft-eligible age each year compared to the needs of the military; this meant that drafting could no longer be universal. Second, the U.S. had the money in its budget to pay an AVF. Third, there was a moral argument against forcing men to fight, and also that the draft targeted underprivileged members of society, since they were less likely to get deferments. Lastly, with the disciplinary issues from the draftees and lack of public support during the Vietnam War, the country was ready for a change in the system. The AVF was seen as a sustainable, effective means of alleviating these issues, while creating an overall superior force. However, 40 years on, the AVF has created a military elite that is both physically and culturally removed from the civilian population. This division has led to distrust between the civilian and military leadership, along with the creation of a society that is worryingly disengaged in military conflicts. This paper will use the case of the United States to expose the circumstances that have caused this separation. It will outline the targeted nature of who the AVF attracts; how the military has become an elite portion of society; the division between the civilian and military populations; the domestic implications of this dynamic; and finally, universal psychocultural dimensions that may predict similar civilian-military relationships in other countries. As more nations move to an AVF, it is important to assess their susceptibility to creating this same dynamic between the military and civilians, depending on their societal structure the resulting morality.

The Effect of an All-Volunteer Force on the Composition of Enlistees

The AVF has greatly concentrated the demographics of enlistees to disproportionately represent economically underprivileged groups. Original critics of the AVF predicted that this system, in conjunction with labor market dynamics, would lead to a self-selection among those who did not have better economic prospects through education or jobs. This was correct. Since its installation in 1973, African Americans have consistently comprised 20-22% of the AVF; this is compared to the

overall African American population of 11-14% during that time. Hispanic representation in the military has also greatly increased. Though the portion of Hispanics is less than that of their share of the general population, this is misleading, as it includes those who are not eligible to enlist based on their level of education. Taking this into account, out of the eligible population, they are slightly overrepresented. For instance, in 2001, Latinos made up 8.2% of the population qualified to enlist, while they made up 9.5% of enlisted service members. A shockingly disproportionate representation falls to minority women. Though women only make up around 14% of active duty members and 16% of officers, "half of the women serving in the military are minority women, with African Americans accounting for 30 percent of all military women," which is double their representation in the U.S. population. Though these racial minorities are examples of overrepresented groups, it is not their race that makes them more likely to enlist. It is their disadvantaged position as a result of discrimination or lack of opportunity because of their race.

Overall, the AVF military attracts members from the lower classes "with lower family incomes, larger family sizes (more sharing of scarce resources), and less educated parents." Though studies have recently reported that it is actually the upper class is overrepresented in the military, it cannot be taken as evidence that we have an elite military. Our "upper class" is considered to be the top 5% of the population,-- a very small proportion of the military -- even if they are "overrepresented." Also, it is highly likely that the reason those from the lowest class are underrepresented is that they are not even eligible for service to begin with. The Pentagon reported that 70% of those aged 17-24 in the United States are eligible to serve. The prerequisites for enlistment naturally favor the middle to upper class. A GED or high school diploma, which is positively correlated with income, is required. An inverse relationship applies to income and body mass index, which is another qualification for enlistees. Enlistees also cannot be previously convicted of a crime, which is more common in the lower class. Even seemingly superficial things like ear gauges and certain tattoos can deem someone ineligible, and they are all factors more common in the lower class. In this way, the data on the upper class being overrepresented is very skewed based on the fact that it takes everyone into account, instead of just those eligible for service.

Another circumstance that increases the chance of enlistment is personal relation to the military, through the family or community. In a test measuring state-to-state enlistment, there was a high correlation between enlistment and military presence in the state. Veteran presence was especially indicative of enlistment by state, with the South and the West having the highest rate of enlistment. In the qualitative portion of the study, the researchers found that many of the current troops said that this was true because they had knowledge of the military, and understanding of the culture, since their own communities were often closely intertwined with veteran or military communities. In another study, U.S. troops interviewed shortly after their service were asked why they chose to enlist. Significantly more of them answered that they wanted "to follow in the footsteps of a family member who had been in the military," as opposed to patriotic duty. Military service is quickly "becoming a family trade," as younger relatives of soldiers are often inspired or encouraged to enlist.

Both groups- those who are economically disadvantaged and those personally connected to the military- are overrepresented, and are more likely to either be career soldiers or have their military experience affect their future careers. This is not to say the military is entirely composed of these two groups- there are certainly enlistees that are from the privileged classes of society, and do not have ties to the military. However, the reason for enlistment differs by group, and this suggests a different long-term influence of the military on the soldier. For example, research has shown that black seniors in high school are more likely to enlist than their white classmates, but not as an alternative to the same situation. They do not join the military as a stepping stone to higher education, but instead as a direct link to their career, whether in the military or the job force. In these studies, the researchers compared black and white students in terms of which of these three options they chose after high school: college, workforce, or the military. While the majority of Caucasian enlistees see the military as the 'next best thing to college,' African Americans generally see the military as an alternative to the civilian work force; they often go in either to become career soldiers or train them for a career upon their exit. This suggests that the black enlistees will either be in the military for longer, or that the military will more greatly affect their future, since it is not just a stepping-stone to higher education. The implication of this is that the influence of the military is most likely intensified in economically disadvantaged groups, in which it serves as a larger and more essential role in the current and future livelihood of the soldiers. Similarly, those that come from military families or communities will likely have a strong military influence throughout life, as it was part of their upbringing and is what they are familiar with. Their service, then, would reinforce values with which they have grown up on. The nature of the AVF has concentrated the enlistment and influence of the military within these two groups, by either being the most viable economic option or the option most familiar based on the enlistees' background. The military accounts for a smaller portion of the population than ever at around .5%, but due to this role as an economic necessity or a family trade, "more than half" of all soldiers serve more than four years. This means that, within this small group, they are more heavily invested in the military as a career or major part of life.

The Rise of the Military Elite

By way of being a voluntary service, the AVF has come to be considered an elite and noble portion of society. Recruitment advertising for all of the branches focuses on the honor and righteousness that comes from being a soldier. The Marines are "The Few. The Proud." The Navy is "100% on Watch" as a protecting force for the United States. The Army is "Army Strong." In order to get enlistees, since it is a volunteer force, all of the advertisements create the impression that joining their respective service makes enlistees part of an elite. The fact that it is a voluntary force also gives enlistees the moral high ground, since they are voluntarily sacrificing their civilian lives in order to protect the rest of the country. This impression of being an elite member of society is compounded by troops' education. They are taught the importance of individual sacrifice for the collective success of the nation and, in a manner very similar to hazing, they are steeped in discipline in order to become the best possible tools of the military leadership. This has a very distinct function:

> To use sociological jargon, the latent function of hazing is that it differentiates and separates one from, and at the same time makes one feel superior to, whatever mainstream you're defining yourself against... seems like a post-Vietnam-era phenomenon, as the military got separated from the mainstream of society.

One could argue that in drafted wars, the soldiers were still taught to be obedient and patriotic. The key difference is that today's soldiers knowingly and willingly engage in this education, by volunteering for it, and are also exposed to it for much longer with their extended tours and soldier careers.

Society also reinforces the elitism of the military, as there are numerous discounts and movements dedicated to honoring soldiers. Many companies give military personnel reduced prices on movie tickets, home goods, etc. Though it can be argued that this may just be to incentivise this traditionally lower income group to buy more of their goods, the publicized reason for these discounts is to honor the service. There are social movements, like the yellow ribbons with "Support Our Troops" that were seen on bumpers across the U.S., as well as elementary school in-class projects where students draw pictures to send to deployed troops. In general, there is a societal expectation and norm to thank troops for their service. Public opinion polls consistently report high esteem for military personnel. This is only some of the ample evidence of the U.S.'s idolization and respect for the soldiers, regardless of the opinion of the conflict they may be involved in. This creation of the military elite, reinforced both by internal military forces and societal views, has created a group is greatly disconnected from the civilian population.

The Division Between the Military and Civilian Population

As the AVF has both concentrated the influence of the military and its perceived moral righteousness, it has widened the military's separation from the civilian population, both culturally and physically.

As stated before, the military teaches collectivist values in order to make soldiers able, disciplined and selfless. This is directly at odds with American society. Hofstede's cultural dimension test, which is commonly used in the field of cultural psychology, shows that Americans are both highly individualistic and indulgent, and that they are becoming more and more so as time goes on. The United States is considered a vertically individualistic society, meaning that it values individual accomplishments more than the group's welfare, and accepts the hierarchical structure of society based on fundamental differences between individuals. Applying this information to the dynamic between the military and civilian population, it makes sense that there is an ideological divide. The AVF concentrates and solidifies the values of the military into a small group of acutely invested people.

However, American civilian society and the military do have one thing in common: they are vertical structures that accept inequalities among members. This, in conjunction with the fact that Americans are socially educated and exposed to the propaganda of military as an upstanding group, explains the idolization and overwhelming amount of respect given to military personnel in the country, even if it is superficial. In this way, the AVF has exacerbated the cultural division; the civilian population becomes increasingly individualized, while military personnel become more entrenched in their collective values.

Along with the cultural division, the AVF has also exacerbated the physical division between the military and civilians; civilians are decreasingly exposed to military influence. Due to the aforementioned self-selection factors (economic disparity and personal proximity to military) the military's sphere of influence is more concentrated. There are geographic regions and communities that have a higher concentration of military influence. As soldiers become career soldiers with relatives, military communities become more common, often centered around military bases, and those military bases are in increasingly concentrated areas:

> "Basing changes in recent years have moved a significant percentage of the Army to posts in just five states: Texas, Washington, Georgia, Kentucky and here in North Carolina. The state of Alabama, with a population of less than 5 million, has 10 Army ROTC host programs. The Los Angeles metro area, population over 12 million, has four host ROTC programs. And the Chicago metro area, population 9 million, has 3."

With a military mentality in the family, surrounded by other families that are operating the same way, it becomes an insulated society. Fundamentally, people choose friends and close relations based mainly on shared values and physical proximity to one another; military families live near each other and share values and are physically separated from most civilians, who live off bases or posts and usually far away from military enclaves. Overall, "…rural America is overrepresented in the American military and urban America is underrepresented." For instance, the "10 congressional districts with the lowest percentage of veterans by population are closely associated with major cities, such as Los Angeles, Chicago and New York City." Thus, by the nature of basic infrastructure and logistics, most of the country is not directly engaged, informed, or emotionally invested in the military and its affairs.

Implications of a Divided Society

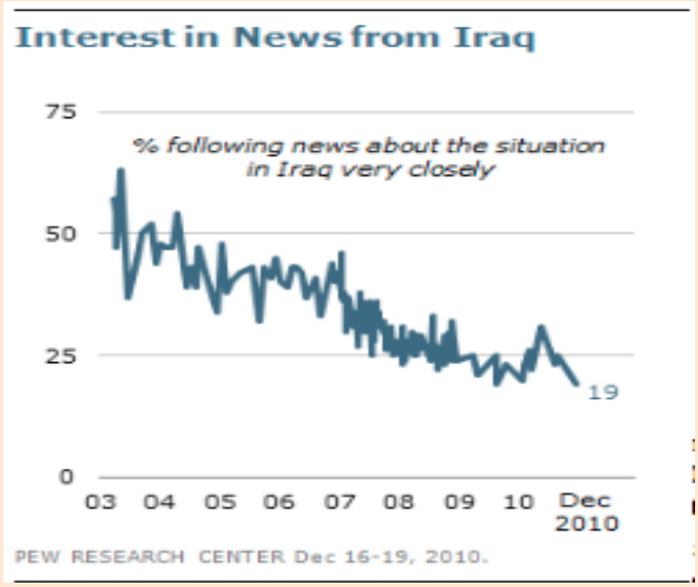
The division between the civilian population and the military force has troubling implications. The first is the lack of respect the military has for civilian leadership. This was captured perfectly in the McChrystal scandal. In a *Rolling Stone* piece on General Stanley McChrystal, former commander of U.S. troops in Afghanistan, he and his "brothers" divulged the tense relationship between them and the political leaders that they had to deal with, especially President Obama:

> Their first one-on-one meeting took place in the Oval Office four months later, after McChrystal got the Afghanistan job, and it didn't go much better [than their first meeting]. "It was a 10-minute photo op," says an adviser to McChrystal. "Obama clearly didn't know anything about him, who he was. Here's the guy who's going to run his fucking war, but he didn't seem very engaged. The Boss was pretty disappointed."

And concerning other politicians, the opinions weren't any more favorable:

> In private, Team McChrystal likes to talk shit about many of Obama's top people on the diplomatic side... Politicians like McCain and Kerry, says another aide, "turn up, have a meeting with Karzai, criticize him at the airport press conference, then get back for the Sunday talk shows. Frankly, it's not very helpful."

If political leaders do not take interest in military personnel, and are not "very engaged", they run a great risk of ineffectively planning missions, or misusing the military. Just like the rest of society, "in the absence of a draft or universal service, it is already the case that many of the nation's current political leaders have no personal experience of military service." Though this makes McChrystal's views more understandable, contempt from military leadership towards the civilian leaders is dangerous. These feelings are founded in the fact that the military leaders feel that with their experience, they know how to win a war; the inexperienced civilian leaders have no place directing them. They see the role of the military as a body meant to fight for the sake of winning militarily. As the military has become a voluntary, lifetime profession, it is understandable to want to be the best at that profession and execute missions in the most effective way possible on the basis of winning the conflict. However, the military is a political tool of the government- and success in war is irrelevant if it does not meet the intended political ends.



Another negative implication of the military's isolation is the decrease in the public's interest in war. Many experts postulate that societal ignorance is the reason the second Iraq War persisted for so long without public backlash., Though it was widely seen as an ineffective war, it continued for over 10 years. If there had been a drafted force, there most likely would have been far more civilian opposition. Instead, the population was uninformed and un-invested. Studies and polls have shown that public concern about the conflict was dismal. For instance, in 2008, only 28% of the public knew the accurate amount of American soldier fatalities from the War.

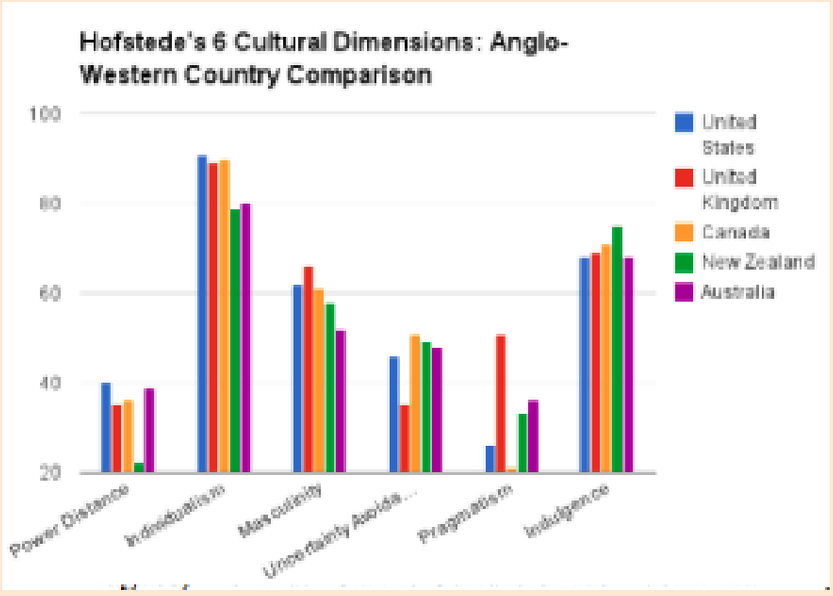
Even at the outset of the conflict, public interest has been astoundingly low. It peaked at around 60-65% in 2003, and steadily decreased from that point, with a low of under 20%. Simply, the public did not care about the Iraq War.

Without the concentration effect of the AVF, this could not happen. A conscripted service, even if it were the same size as now, would force the military to have a more diverse pool of soldiers, and thus increase their sphere of influence. More people would have a connection to a soldier, and be more emotionally invested in understanding and following military affairs.

Universal Implications

Despite it being well intentioned, it is clear that the AVF system is not entirely beneficial to the United States, as it has caused segregation between the civilian population and the military. As outlined before, a large reason for the division in the U.S. is the fundamental difference in military values compared to those of the rest of the population. Universally, soldiers are educated to create a vertical collectivist culture. However, the AVF system hyper-concentrates these traits, and its soldiers apply these throughout life more so than short-term draftees do. Essentially, the vertical collectivist structure is stronger in an AVF.

This is completely counter-intuitive: individualists value individual freedom over the good of the group, and so would naturally want the choice to join the military. There seems to be a tension between the cultural acceptance of how one joins the military and the long-term effects on military-civilian relations, in the context individualistic culture. It may be necessary for a nation to forgo adhering to individualist ideals and favor a military draft in order to maintain the soldiers' value of individualism long-term. On the outset, it would feel counterculture, but it would ensure less cultural isolation for the soldiers when rejoining the rest of society.



Almost all individualist nations have moved to an AVF, while strongly collectivist cultures tend to keep to a drafted military. The intense cultural and physical segregation of soldiers, and the resulting difficulty upon reintegration, is not only an issue in the United States. All of the other Anglo-Western militaries (Canada, New Zealand, Australia, and United Kingdom) have very similar military cultures to the U.S., with the intensity varying based on their military power. In the United Kingdom, which also has an AVF with rising numbers of career soldiers, "the British armed forces have occupied a 'self-contained social world.'" There is an acknowledged commonality of a cultural and physical segregation between the Anglo-Western militaries and civilians, where "it's at least as much about preserving necessarily distasteful (to civilians) military virtues and about a sincere wish on those civilians' part not to know too much of what the military does."

Interestingly, these countries all have strikingly similar psychological profiles. They share a high amount of both indulgence and individualism. Like the U.S., this puts the civilian culture at odds with the military culture.

Unfortunately, there are not any strongly individualistic nations that also still use conscription., Germany was the last to make the change in 2011, and were hesitant based on the consequences that have been seen in the other individualistic nations with an AVF. Given their history, they were especially worried of the division between the society and the military, believing that conscription was "essential to German democracy because it supposedly anchored the army within society, preventing it from becoming an elitist force, as in the Nazi era." Up until 2011, the military had been very connected to society. It will be interesting to see if they follow the same trajectory as the other individualist nations, or if their past will overpower the natural separation from occurring.

Conclusion

The All Volunteer Force has its merits. It is the appropriate system given the modern needs of the military in that it produces a smaller number of more technically skilled soldiers. However, in a holistic examination, it becomes apparent that an AVF does not make sense under certain cultural circumstances. Though it would seem like the best choice for individualistic nations, in terms of respecting individual rights of soldiers, this logic is flawed on multiple levels. On an individual level, the soldier is voluntarily opting into a hierarchical system that stifles their individuality; furthermore, they are more embedded within the system than ever. More are becoming career soldiers or living on military bases, meaning that they are in this rigid structure in an increasingly significant way. This cultural separation then exponentially grows by decreasing the ability to reintegrate into society, pushing them into further isolation. On a societal level, the division between the military and the civilian population leads to issues between their respective leadership. Though, possibly more significant, it leads to lack of public investment in military affairs.

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