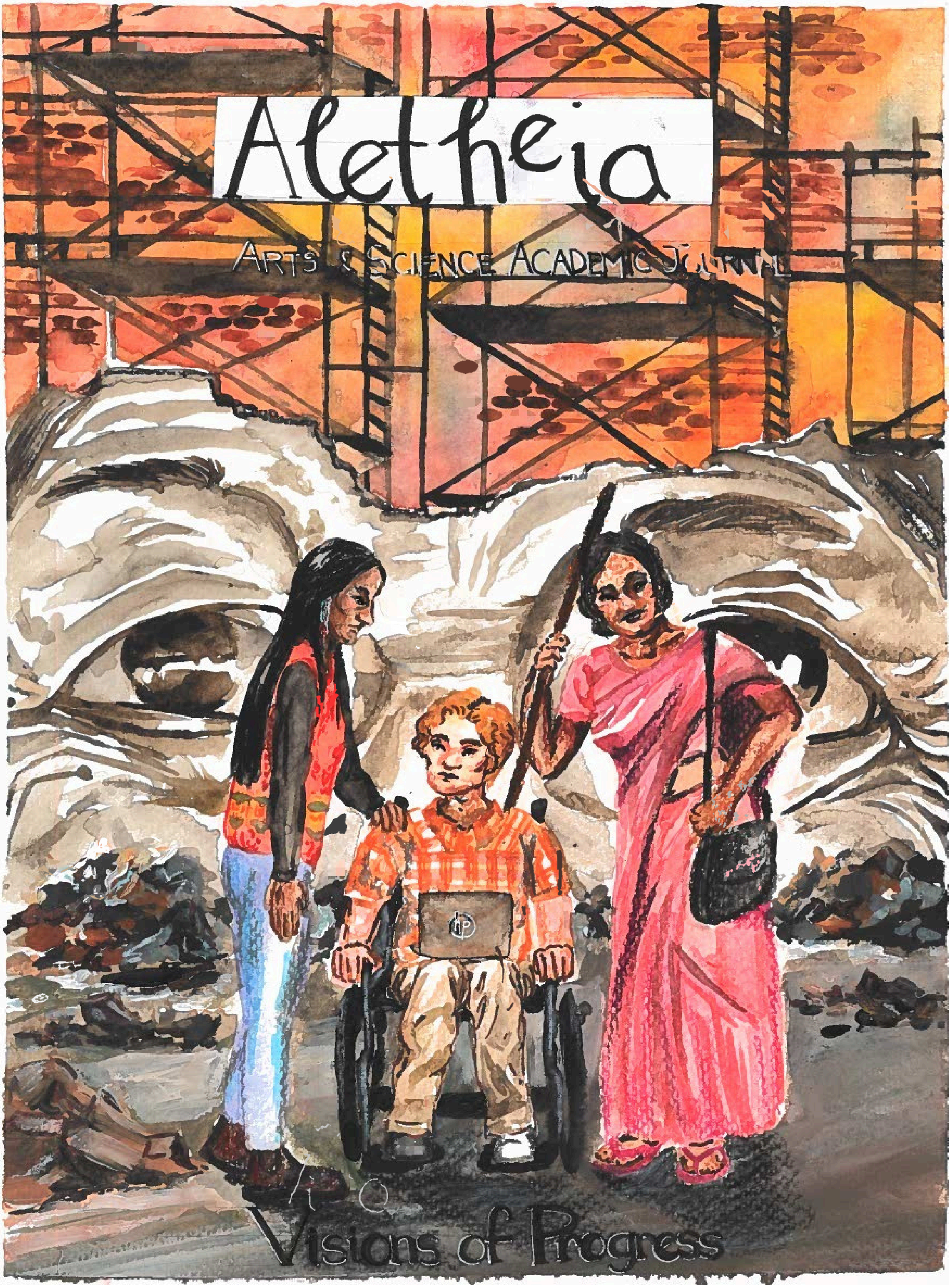
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OPPOSITION AND ANTI-COLONIALISM IN HEAVY METAL MUSIC

Kate Linardic

"Stepping on your throat / Reminisce the facts / Justice is what we'll have"
—Ethereal Tomb, "Death of the Indian"

A portrait of heavy metal music in North America is incomplete without considering its political and anti-colonial appeal in Indigenous communities. Across Canada and the United States, there are active metal music scenes where Indigenous creators are voicing their resistance to settler-colonialism (Flock 2019; Montgomery 2018). This trend can be explained; the globalization of metal music, its system of values and its advocative communities reveals the role metal plays in upholding Indigenous resistance theory and political refusal of the colonial state. This paper argues that the shared oppositional aims of heavy metal and Indigenous decolonial activism, when brought together, become their own, powerful form of anti-colonialism.

Between heavy metal and Indigenous resistance, the concept of 'opposition' is key. Opposition to the dominating forces of a society is what brings the two bodies of research together. Indigenous resistance theorists describe their opposition to the settler-colonial state and its politics of recognition, which attempts to destroy Indigenous sovereignty and police their history and identity (Simpson, "Indigenous resurgence" 22; Coulthard 36). Heavy metal scholars, on the other hand, delineate metal's oppositional code – subversive interpretations of dominant ideologies (Oxford Reference) – to challenge hegemony (Mayer & Timberlake 28) and its desire to be inflammatory or reactive to a society (Rafalovich & Schneider 131). Indigenous resistance theory and heavy metal music work hand-in-hand to combat the colonial body governance through the shared goal of subverting the state and the state desire to "control" (Grant 177). In the 21st century, this "metal resistance" became a true phenomenon across Indigenous communities (Montgomery 2018; Vincentelli 2023; Tapia & Mendoza 151; Garcia & Gama 172). When Indigenous musicians make metal music, they can further the anti-recognition work of Indigenous scholars and activists while embodying the radical anti-establishment stance of heavy metal, turning two seemingly distant communities into one powerful anti-colonial force.

Oppositional ideas underlie both anti-colonial work and heavy metal music. Anti-colonialism resists the settler-colonial states of Canada and the United States. The same holds true for metal music. These nation-states are understood as oppressive or counter to both their Indigenous populations and heavy metal communities. In the Indigenous context, settler-colonial states employ what historian Patrick Wolfe calls the "logic of elimination:" institutional violence enacted against Indigenous peoples to entirely remove their presence from the land (Ostler & Shoemaker 362). Therefore, by resisting these elimination efforts and claiming their sovereignty, Indigenous peoples oppose the state. Heavy metal music can be a structure well-suited for anti-colonial work; the genre itself is "a form of resistance towards a ruling class that [is] dominantly influenced by western cultural hegemony" (Tapia & Mendoza 146), leading to its growing popularity amongst Indigenous musicians in the past thirty years. By examining the role that 'opposition' plays in both of these communities, the connection between the two can be drawn. Predominantly, it is metal music's oppositional code that connects it to anti-colonial resistance.

Recent anti-colonial efforts and literature from Indigenous communities focus on outright opposition to colonial states. In Glen Coulthard's book Red Skin, White Masks, the idea of rejecting settler-colonial governance is held much higher than "reconciliation" which exists mostly for the benefit of the state. Rejection starts with opposing what is referred to as the "politics of recognition." Coulthard defines this as a reliance on recognition: the empowered state grants recognition to reliant minorities (30). In this case, Indigenous people are made to depend on the Canadian or American state (30-31). This relationship is one of domination and subordination, because the state continues to be in control of how Indigenous people can govern themselves and how settler society views them (Simpson, "I See Your Light: 175). If Indigenous people are reliant on recognition, they are submitting to the state as something which can govern them (Coulthard 31). The state has to push recognition politics in order for this to happen; as seen in recent attempts at "reconciliation," such as Stephen Harper's 2008 apology for residential schools, the Canadian state places the recognition of Indigenous existence and suffering at the forefront (CBC Archives 2018). Coulthard argues that this is what maintains the colonial relationship between the two parties: the state remains dominant and Indigenous nations are reliant on the state's acknowledgement of its destructive policies (31). Instead, Indigenous people must "turn away" from the colonial power and oppose their attempts at prolonging Indigenous dependency on settlers (Coulthard 31). Indigenous scholar Leanne Simpson expands upon this by discussing the need for "refusal" politics. Indigenous communities must refuse the existence of the hegemonic colonial state and "resurge" against it in ways that centre Indigenous practices (Simpson, "I See Your Light" 176).

Refusal of the colonial state is more than an abstract concept; Indigenous communities do this by governing their own nations as if the settler-state surrounding them does not exist. Author of Mohawk Interruptus, Audra Simpson, exemplifies this in her description of Mohawk nationhood: "[T]he Mohawks of Kahnawà:ke refuse…the 'gifts' of American and Canadian citizenship; they insist upon the integrity of Haudenosaunee governance" (7). The Mohawk nation becomes the embodiment of oppositional politics in their refusal of the settler-colonial state. The nation subverts statist expectations of submission to authority, and exercises their sovereignty such as through issuing passports to its members (Hill 2015). Canada and the U.S. do not recognize these documents as valid, but other states do, so Mohawk individuals continue to travel with them (Hill 2015). Directly confronting the colonial state and acting in exact contrast with its expectations, such as by ignoring its legal documents and creating others, is key. The Mohawk nation has a history of acting in contrast with state wishes; in 1990, the Mohawk peoples resisted the expansion of a golf course onto their land near Oka, Quebec. (Kanehsatake 1993). Acting in opposition to the city of Oka, the nation set up blockades and initiated a standoff with the Canadian military for seventy-eight days (Kanehsatake 1993). This type of opposition is anti-establishment in nature, since it rejects the settler establishments that try to claim jurisdiction in Indigenous territory. The settler colonial state consistently acts in ways that perpetuate colonialism, such as attempts at land expansion; this creates uneven power dynamics by picking and choosing when to acknowledge Indigenous suffering, like with residential schools, and rejects Indigenous sovereignty through the rejection of Mohawk passports, the only way for Indigenous people to resist is to oppose the state itself. This happens in the opposition of the politics of recognition. In both their commitment to following their own sovereignty and by recognizing the meaninglessness of being recognized by the colonial state, the Mohawk nation acts as a powerful anti-hegemonic force. Relating back to Coulthard's stance on recognition, it is evident that the Oka government can recognize land as belonging to the Mohawk nation and infringe upon that land all the same. This means that in this case, Indigenous nations would be reliant on the state for recognition of their land, without even the guarantee of sovereignty over it. This example goes further than just being a relationship of dependence; as stated by Coulthard and Leanne Simpson, the continuation of the "postcolonial" relationship between Indigenous people and the state is congenitally one of domination and subordination. Via opposition, this relationship is dismantled. Should Indigenous people oppose, reject and refuse the politics of the state, the colonial relationship ceases to exist. However, this requires constant opposition; the Mohawk nation living outside of the control of the colonial Canada and United States is an example of this ongoing resistance. The Mohawks do not only oppose individual acts, such as the construction of the golf course or citizenships, but oppose the entire state colonial structure. Simpson describes this every-day opposition as key to Indigenous resurgent movements (Simpson, "Indigenous resurgence" 24). Consequently, the only way to resist colonialism is through an existential opposition.

The oppressed refuse power structures in order to survive, but many others who feel disenfranchised also find it alluring to refuse mainstream society in their everyday lives, especially youth (Rafalovich & Schneider 131). As a result, inherently oppositional communities, like those of heavy metal, are born. Metal music can be described as non-political by scholars (Epp 93), but as illustrated by expert Deena Weinstein, metal music is more accurately understood as transcending any particular culture or politics, instead connecting people "trans-culturally" via its belief structure (46). This belief structure is one of extremism, transgression and nihilism, but not explicitly of one particular political leaning (Mayer & Timberlake 29). Metal music may be identifiable from these concepts, but the specific messages can take any form, from the neo-Nazi ideology of Norway's National Socialist black metal to the pro-vegan sentiments in American powerviolence music. What connects all of metal's various agendas together is opposition to mainstream ideas. Scholars Adam Rafalovich and Andreas Schneider describe this opposition as "a denial of culturally-constructed codes of conduct and their concomitant systems of morality" (135). This is a predominant feature in any heavy metal song. Accordingly, the genre itself is an expression of opposition to the mainstream (Tapia & Mendoza 145). Individuals turn to metal music as a way of acting out against what they feel is a repressive system, and pick up on a transgressive ethos so that they may oppose society's morals.

Metal music does not exist in a vacuum; it directly opposes the dominating group of the society in which it is created (Rafalovich & Schneider 137). This generally takes the form of opposing the dominating state (Tapia & Mendoza 151; Garcia & Gama 171). Metal music, unlike many globalized goods, is diffused in a "decentralized" manner, meaning not only can it take on the politics of whoever wishes to wield its oppositional power, but it does not serve the interests of a particular state or perpetuate uneven power dynamics between nations (Mayer & Timberlake 30). Metal positions itself as a "countercultural entity" that necessarily goes against the prevailing culture (Calvo 161). Consequently, metal music becomes an ideal mechanism for resistance against hegemonic states. Metal music also aims to be directly empowering to the individual (Epp 96). Since it appeals to those who feel ostracized from their societies, it looks to create an alternative community where these individuals are empowered (Rowe 113). This can become apparent within regimes that operate with authoritarian practices, such as those in Turkey and Egypt. Metal music from these countries target policies that infringe upon individual liberties, such as the restriction of alcohol consumption and the mandating of dress code in public (Epp 97). For instance, the Egyptian group Massive Scar Era criticize the heavy involvement of police in civilian life in their song "Freedom" (Epp 95). These metal songs take direct aim at the government for imposing its power on the people but are more focused on the implications of state-interference with the individual rather than the policies themselves. This anti-establishment attitude morphs to fit a local context. Heavy metal is an empty structure capable of containing various and varying politics; this is referred to as heavy metal's "ideoscape" (Mayer & Timberlake 45). The ability to shift and change regarding these loose political ideologies but strong oppositional beliefs has resulted in its near perfect alignment with the goals of anti-colonial resistance movements.

The relationship between Indigenous resistance theory and the heavy metal ethos exists in the thriving heavy metal community of North America; this subculture is comprised of Indigenous people working to combat colonialism (Flock 2019; Montgomery 2018). Metal is referred to as a "reactionary" genre (Rafalovich & Schneider 131) because it often springs up in communities facing hardship (Rowe 116; Tapia & Mendoza 151; Mendoza et al. 200). Rafalovich and Schneider conclude that metal music embodies a dialogue of criticism to the relationship between established culture and groups that feel “coerced” into following it (140). The same can be said of the relationship between settler-colonial states and Indigenous groups. As a result of the assimilation project of colonial governments, Indigenous people face the decision to either conform or risk further violent interference (Coulthard 4). Nevertheless, for those who wish to fight colonialism, resistance efforts have to be empowered and assertive in the face of the dominant power. If not, these efforts can be ignored, as is the case with resistance to some Canadian pipeline projects where protests go unnoticed until blockades are set up (Amnesty International 2022). This assertive discourse can come in the form of heavy metal. Since metal music exists to be transgressive, it empowers listeners and creators to feel “less controlled” by the dominating forces in society, and validates feelings of disenfranchisement and creates a sense of ‘visibility’ (Grant 177-178). When metal music’s oppositional power is invoked by Indigenous musicians, there are concrete impacts. On the Indigenization movement of the heavy music scene in Bolivia, the socio-political messages and Indigenous symbols embedded in the music reflected the problems that the country was facing (Tapia & Mendoza 143). The group LLaWaR, meaning Andean Shouts Wipalas At Rebirth (Llantos Andidos Wipalas A Renacer), embraced Indigenous identity as defense against Bolivia’s Western neoliberal system (Tapia & Mendoza 151-152). Bands like LLaWaR wanted to contribute to the political discourse in the country and effectively became a part of the academic and activist movement against neoliberalism (Tapia & Mendoza 152). The same occurs with Indigenous metal in North America. The resurgent organizing described by Leanne Simpson necessitates the use of Indigenous practices as everyday forms of resistance, and Indigenous heavy metal music makes use of these pieces of culture. When Ottawa’s Biipiigwan makes use of Ojibwe war whistles in their sludge metal songs about colonial power dynamics, or Arizona’s Diné band Morbithory embrace the Navajo language in their lyrics, there is an intrinsic refusal to accept assimilation and let one’s culture be lost (Montgomery 2018). By creating metal music that reflects Indigenous culture, these songs become their own form of resurgence against the settler-state that seeks to eliminate this culture in all its forms.

The goals of Indigenous communities are not all the same; their cultures, practices and the ways they have been impacted by colonialism are all different. This is where structurally “apolitical” heavy metal can be instrumentalized. Indigenous heavy metal groups are free to create music tailored to their own communities’ needs and objectives while drawing on metal music’s innately subversive capabilities. For instance, heavy metal from the Mohawk nation in the Adirondacks includes Blackbird, a creator of black metal music empowering Indigenous people in their connection to land and nature (Vincentelli 2023), whereas Cree doom metal group Ethereal Tomb writes about the ongoing Indigenous genocide in Canada in their song “Death of the Indian,” or about land degradation in “When the Rivers Dry” (Maure 2023). Despite their different goals, musicians choose heavy metal to communicate their message because of the genre’s inherent anti-hegemonic, necessarily political, and individually liberating ideologies. The decentralized diffusion of metal and its blank canvas “ideoscape” permits artists to take advantage of the oppositional overtones of the genre while still communicating their own ideas. As a result, Indigenous metal bands are able to oppose Coulthard’s “politics of recognition.” Settler states’ goals in reconciliation rely on Indigenous subordination and dependence on the colonists’ granting of permission to exist (Coulthard 31). This enforces the assimilation of Indigenous people into settler-colonial culture and governance, and perpetuates a colonial power imbalance. Metal music exists explicitly to resist this dynamic of domination. Since metal is both largely rejected by and functions to reject the mainstream (Mayer & Timberlake 33), by participating in the genre, Indigenous people are actively opposing the mainstream. If the colonial mainstream’s goal is assimilation, then Indigenous metal rejects assimilation (Ostler & Shoemaker 362). Indigenous metal musicians are aware of metal’s power-disrupting ability and play with the discomfort levels of the audience in both a sonic and lyrical capacity. The abrasiveness of metal causes discomfort and forces reflection, creating a greater awareness of the struggles for sovereignty. The music and consequently those who make the music both exist outside of and oppose what the dominating state will “recognize,” and the heavy metal community persists subversive to state control. Ultimately, the oppositional substructure of metal provides an ideal base for Indigenous artists to resist the colonial gaze by making society uncomfortable, and thus being noticed without entering colonial “legal” channels.

The “unsettling” nature of heavy metal disturbs more than just the unaccustomed listener; it can unsettle the foundation of settler-colonial society. Forces of opposition aim to make the prevailing order uncomfortable, something which is true of both the oppositional force of Indigenous anti-colonial resistance and heavy metal music. Countering the continuation of colonialism requires interruption, rejection and opposition to the power relationship. It is critical to oppose the colonial relationship outside of the colonial structures themselves; therefore, the ideoscape of heavy metal becomes a space for the injection of various cultural elements and messages that can reach the ears of the state without accepting its legal systems and “recognizing” its governance. Furthermore, metal opposition becomes radical when it refuses to operate within the constraints of a colonial society. This radicalization allows for the extreme and sometimes violent calls for community action and land restitution. Toronto’s Cree hardcore band 2 The Bone, in their song “Serve and Project,” illustrate their radical opposition to the colonial police structure that violently targets Indigenous people: “We will never accept taking it out on us” (2 The Bone 1:57). In these rallying anthems and appeals to the “we,” the broader Indigenous activist community, Indigenous anti-colonial metal transforms from a theoretically appropriate space for a dialogue of Indigenous resistance to a tangible method of community organizing. Indigenous heavy metal is not only a part of the story of metal music, it is a very real way to create solidarity and put theory into action. After all is said and the song is done, the demand for justice remains.

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THE DIGITAL DEAD: DIGITAL REPATRIATION AS A TOOL FOR REPATRIATION UNDER NAGPRA

Ella Brown

Digitization in an ever-increasing online world is being employed more frequently and 3D digital models are rising in popularity. 3D morphometrics, computed tomography (CT), and photogrammetry are just a few technologies that can create 3D digital models from physical objects (Hirst et al., 2018). The use of 3D modelling technologies in the field of bioarchaeology is growing in popularity due their ease of application and relative inexpensiveness (Schug et al., 2021). An increase in the use of 3D modelling technologies in the discipline necessitates a call to better consider the ethics of the process of digitizing human remains. There have already been some ethical considerations incorporated into official guidelines. For example, in 2019, the British Association for Biological Anthropology and Osteoarchaeology (BABAO) added a set of ethical guidelines outlining their recommendations for dealing with the 3D digital reproduction of human remains (BABAO, 2019). However, BABAO's guidelines are still relatively new, and many anthropological organizations are still lacking any such regulation; therefore, it is paramount that the ethics of digitization be actively considered.

The Native American Graves Protection and Repatriation Act (NAGPRA) is considered a seminal document for bioarchaeology in the United States. Unfortunately, it has not been updated since 1990 and thus does not include any considerations of digital bioarchaeological data (Schug et al., 2021).[1] NAGPRA outlines requirements for the repatriation of Indigenous remains and associated funerary material. Repatriation is defined as the process of returning something to its origin, referring particularly to Indigenous remains and cultural materials in this case (NAGPRA, 1990). NAGPRA presents guidelines for finding, contacting, and collaborating with descendant Indigenous communities throughout the process of repatriation. Further, it necessitates consultation with Indigenous communities in all future archaeological endeavours involving Indigenous graves (NAGPRA, 1990).

Digital repatriation, which is not an officially regulated process, involves repatriating a digital copy of cultural materials or human remains (DeHass & Taitt, 2018). I argue that the digital repatriation of 3D reproductions of human remains can be an important starting point in the process of physical repatriation, facilitating an initial knowledge-sharing between the institution and the descendant community so that the Indigenous community might request physical repatriation under NAGPRA. However, it is imperative that neither physical nor digital repatriation happen without the other, as a digital reproduction is an extension of the subject, deeply linked with the real. On the other hand, a dig-

[1] Unfortunately, no federal level Canadian version of NAGPRA exists. Canada only recently adopted the United Nations Declaration of the Rights of Indigenous Peoples' (UNDRIP) regulations on repatriation into their domestic laws and thus its initial impact is unknown at this time (Hook, 2023).

ital reproduction is also different in important ways such that the digital cannot be a replacement for the real either. My argument will pull on ideas from Susan Sontag's On Photography (1973), using her work to conceptualize the complex technological subjugation undergone by the subject in the process of digitization, fundamentally linking the real and the replica. Part one of this paper will explore the applied implications of digital repatriation, teasing through the pros and cons of 3D digitization and demonstrating how, when paired with digital repatriation, digitization can be a powerful tool for Indigenous knowledge reclamation. Part two will focus on the philosophical aspect of digitization and will work through the relationship between the real human remains and their 3D digital models.

The digitization of that which is human may be met with more hesitancy than the digitization of objects. Thus, human remains, isolated from other cultural materials, will be the sole focus of my argument (Smith & Hirst, 2019). Though there are similar points to be made about non-human cultural material, human remains are caught up in issues of identity and surveillance due to the racist and colonial histories of the discipline of biological anthropology and its subfield bioarchaeology (Schug et al., 2021). Additionally, the relevant official repatriation laws, namely NAGPRA, only refer to human remains and their directly associated cultural material, thus making conclusions easier to base in pre-existing legal frameworks when solely considering human remains (NAGPRA, 2019).

Considerations in Digital Repatriation

Accessibility and the democratization of bioarchaeological information are often cited as strong reasons for digitizing human remains and conducting digital repatriation (Hirst et al., 2018). Within Indigenous communities, digital repatriation allows for wider access across the community, permitting community members to access materials online and on their own schedules. Additionally, digital materials can be accessed from multiple places at the same time, allowing for a more democratic access than would be possible with physical human remains (DeHass & Taitt, 2018). 3D materials also allow for closer analysis and the ability to see surface textures which is not as accessible with physical objects, particularly if the physical objects are delicate and should not be handled (DeHass & Taitt, 2018). However, it is important to acknowledge that this level of access presumes mass access to technology that can run 3D visualization software which may not be the case in places with bad internet access and insufficient technological infrastructure (Krupa & Grimm, 2021). Additionally, online databases require constant maintenance to ensure they do not become obsolete, with digital storage also often costing money, creating a barrier for digital repatriation for some communities (Kalusopa & Zulu, 2009). Though socioeconomic and infrastructural issues may prevent universal accessibility and democratization of 3D models within a community, digital repatriation is still useful for at least increasing access beyond the individual or institution that holds the physical object. Digitally repatriating Indigenous knowledge back to descendant communities in a way that is accessible participates in the process of decolonization (DeHass & Taitt, 2018).

Preservation is referenced as a main reason for the digitization of human remains. Digitization protects human remains from being over-handled during observation and protects them in case of damages caused by fires, floods, and other suboptimal storage conditions such as humidity. By creating a back-up that is a high-quality 3D record of the original material, the security of a collection is strengthened (Hirst et al., 2018). Preservation may also be a concern for Indigenous communities in case materials are damaged in transport to the community or prior to repatriation (Krupa & Grimm, 2021). Furthermore, in the event the descendant community lacks a storage facility for the remains, digital repatriation will ensure that the cultural heritage materials can be accessed by the community in the interim while a physical location for the remains is negotiated (DeHass & Taitt, 2018). Thus, for the reasons of preservation and democratization, digital repatriation is a powerful tool that guarantees at least a certain level of knowledge sharing between the Indigenous community and the repatriating institution. Repatriation not only decolonizes institutions, but it is also very important to Indigenous communities as it reaffirms Indigenous peoples' right to self-determination and allows them to reclaim their own history (Hook, 2023). Furthermore, repatriated cultural materials can be used by the community to strengthen, maintain, and reclaim traditional ceremonies and practices (Hook, 2023).

On the other hand, many proponents of 3D modelling as a democratizing process see accessibility going beyond the descendant community and want to extend access to the general public. Advocates of 3D modelling say it will increase public awareness of the discipline of bioarchaeology and increase potential educational and outreach opportunities (Hirst et al., 2021). Additionally, the proponents of the widespread open access of digital bioarchaeological data believe that this will lead to further scholarly engagement with better ability to create quality studies through drawing from a larger pool of information and materials (Hirst et al., 2021). Further, Schug and colleagues (2021) suggest that better public access to data will increase accessibility of materials for underrepresented groups that may want to work with the material.

Although it is likely true that increased public and scholarly access to materials will result in increased studies and engagement with the material, it is important that we not privilege scientific studies and advancement over the desires of descendant communities (Schug et al., 2021). Depending on cultural and spiritual beliefs, communities may not want the remains of their ancestors digitized (Smith & Hirst, 2019). This highlights the issue of consent, which is a common issue in the field of bioarchaeology but is particularly pronounced when it comes to the 3D digitization of human remains. Who is the consenting body? Who gets to speak for the dead? There are conflicting regulations regarding consent for human remains. The United Kingdom's Human Tissues Act (2004) notes that consent is not required when working with materials over 100 years of age, whereas NAGPRA positions the descendant community as the consenting body (NAGPRA, 1990). Digitization and digital repatriation have the possibility of being very positive and assisting in the process of Indigenous knowledge reclamation, but it is important to first and foremost respect the consent and cultural beliefs of the descendant community of the remains in question before simply assuming that digitization and digital repatriation is what the community wants and needs (Powell, 2011). By positioning descendant communities as the relevant stakeholders and the consenting body, NAGPRA is moving in the right direction towards decolonization, but we must continue to be active and critical in our approach to repatriation.

3D digital human remains, particularly when they are available in open access digital repositories, are at high risk of function creep. “Function creep” describes when original intentions are well-placed, but the function changes and materials are used for more despicable purposes (Madianou, 2018, p. 588). It is generally understood that a certain level of respect should be given to human remains hence the prohibition on taking photos in cadaver labs. In this context, there is an understanding that this respect needs to be taught, and without this earned respect, images could be used insensitively. Without being able to regulate and teach respect for the dead, there are concerns that 3D models may be commercialized, or 3D printed and used for inappropriate purposes (Alves-Cardoso & Campanacho, 2022). There is also worry that 3D models of human remains will be decontextualized and found on social media or used in problematic ways by malintent individuals to perpetuate incorrect scientifically racist information (Hook, 2023). Despite all these frightening possibilities, it is possible to mitigate these outcomes by teaching respect for human remains along with tightly regulating access to digital reproductions. Thus, it is important that the 3D digitization of human remains first only be done in service of digital repatriation to the descendent community. After that, the further dissemination of the material should be done as a collaborative process between the digitizing institution and the Indigenous community. In this way, the Indigenous groups can reap the benefits of the democratization of 3D digital models without having digital scans of their ancestors non-consensually subjugated to public open access.

The concept of 3D digitized human remains are exciting to some scientists as they see these digital remains as an opportunity to continue studying the remains even when the physical remains have been repatriated or reinterred (Schug et al., 2021). However, without consulting the relevant stakeholders, this goes against the spirit of NAGPRA which seeks to give Indigenous communities rights over their ancestral remains (Schug et al., 2021). Instead, without consent, scientists continuing to study the remains would be appropriating the materials and reinforcing colonial knowledges of culture and history. Additionally, Susan Sontag (1973) says imaging (photography in her case, but extended here to 3D digital reproductions) is thought of as a right now due to the modern prevalence of imaging technologies. There is a violating and surveillant aspect of imaging, where one sees the subject in a way that the subject will never see themselves (Sontag, 1973). The process of imaging can be violent, especially when considering colonial histories of the surveillance of the racialized body. To reiterate, it is key that science is not privileged over one's ethical responsibilities to the people they are studying. Additionally, collaborating with the Indigenous communities in the process of digitization is paramount to avoid undue harm.

Going further, some institutions may use the new possibility of digital repatriation as an excuse to perform digital repatriation instead of physical repatriation. Not committing to physical repatriation is paternalistic, perpetuating a colonial norm that descendant peoples are not capable of caring for and maintaining their own cultural materials (Krupa & Grimm, 2021). Thus, it is important that if digital repatriation does occur, it be done in tandem with physical repatriation. This will be expanded upon later. Digital repatriation, when recognized as a tool for physical repatriation as opposed to a replacement for it, can facilitate collaborative efforts between the descendent community and the institution possessing the human remains. The facilitation of collaborative efforts may mean faster quality access to culturally significant materials, meaning that, if done carefully and consensually, digital repatriation is incredibly useful in the process of repatriation.

3D Models of Human Remains on the Spectrum from Real to Copy

Although digital repatriation is a useful emerging tool for facilitating repatriation practices, as highlighted above, it cannot stand alone. By framing the digital recreation of a subject as enough to replace the physical presence of the original subject, one is privileging the visual dimensions of the remains over all other aspects of the physical object (BABAO, 2019). This effectively makes the claim that if visually the same, then the physical and the digital reproduction must be the same (Hassett, 2018). In the field of bioarchaeology, the sense of touch for, example, is very important as one might be able to pick up on pathologies not visible to the naked eye. Additionally, the weighted feeling of the bone may also provide information that a weight metric on a computer cannot confer. In this way, other senses are also important for communities receiving repatriated remains so that they can fully investigate and experience the remains of their ancestors. However, CT scanning complicates this argument as this type of 3D modelling allows for a surface and internal reconstruction, thus replicating more than just meets the eye (Villa & Lynnerup, 2012). This 3D scan could theoretically be 3D printed in a way where the visual and textural internal and exterior of the original are preserved in the model. However, despite being strikingly similar to the 3D model, the physical presence of the original remains may confer certain spiritual meanings (Hook, 2023). For example, it may be incredibly important to the community that the deceased individual be reinterred or have certain blessings placed upon it (Smith & Hirst, 2019). Further, digital repatriation cannot stand in for physical repatriation due to quality issues with current scanning technology (DeHass & Taitt, 2018). However, this issue may be fixed in the future with improving technologies.

When it comes to the issue of ownership, copyright, and intellectual property, it is also clear how the 3D digital model differs from the original. To gain intellectual property over a 3D model, one must either prove that it was altered in a significant enough way to make it different from the original or prove that the digital model required more than negligible skill to create (Smith & Hirst, 2019). Though the technicalities of copyright law are beyond the scope of this paper, it is important to mention issues of ownership and what this means about the integrity of the digital model. Why are intellectual property rights laws set up in a way in which one must pretend as though they own the human remains in question? Since a certain, although small, level of alteration of the original material is necessary to protect 3D models online, digital repatriation cannot replace physical repatriation as it is not a complete copy of the original. Furthermore, in the obvious and purely technical sense, a digital 3D model is digital after all, meaning in essence it is complex binary code compiled together, making its very building blocks fundamentally different in a *physical* sense.

When considering the relationship between the original and its digital recreation there are differences in ways that matter, but there are also similarities in ways that matter, and these do not contradict one another. While digital repatriation cannot stand in for physical repatriation for the reasons highlighted above, it is important to unpack the ways the digital model is deeply and inherently linked with the real and what this infers about the future treatment of digital repatriation. Even though this link may not be physical, there is still significance in that which is not physical but ontological.

Susan Sontag (1973) argues that unlike paintings which are representations of the subject, photographs are part of and extensions of the subject. Schug and colleagues (2021) and Hassett (2018) both agree that 3D digital models are better representations of the subject since no choice is made about how to represent the subject, thus removing the bias of the photographer. Since there are less influences that might remove the replica from the real in 3D digital modelling, we can extend Sontag's sentiment expressed above and claim that 3D digital models are extensions of the originals from which they come. As an extension of the subject, linked through the technological mediation of taking that which is physical and turning it digital, one can conclude that the 3D digital model is inherently linked with the physical subject and cannot be willingly separated.

Sontag's (1973) consideration of the connections between the real and the digital replica demonstrates that the binary understanding of real or fake is reductive and unhelpful in a consideration of the relationship between an original and its digital copy. She instead encourages a nuanced consideration of the ways in which "notions of image and reality are complementary" (Sontag, 1973, p. 123). Technologies like photography and more advanced technologies emerging now such as CT scanning and 3D geometric morphometrics have "de-Platonized our understanding of reality," removing us from a world in which society can be imagined through Plato's allegory of the cave, where the real (outside the cave) and the images (projected on the cave wall) are clearly defined (Sontag, 1973, p. 141). Sontag (1973) instead suggests we are moving towards a world in which the line between originals and copies is blurred (Sontag, 1973). Thus, though not physically the same, 3D models are an extension of the subject and thus if digital reproductions of the physical subject do exist, they must be repatriated with the physical material. By keeping the digitization, the institutions would violate the spirit of repatriation as it would effectively be holding onto part of the subject which they committed to, and are legally obligated to, repatriate to the descendant community.

Implications

It is clear that digital repatriation could be a helpful actor in the repatriation process when used carefully and deliberately. Digital repatriation and the 3D digitization of human remains should be explicitly regulated since 3D modelling technologies are developing quickly and could cause harm to descendant communities and others if regulations are not set in place. Though a full consideration of each article of NAGPRA and how it should be changed is beyond the scope of this paper, I suggest that NAGPRA should be updated to reflect modern technological considerations, removing the specification of physical when referring to the repatriation of human remains and meaningfully incorporating 3D digital models into the Act. However, this suggestion would be challenged by Hassett (2018) who asserts that universality in these regulations is unhelpful, and these should instead be considered on a case-by-case basis. Though in an ideal world a different 'perfect fit' scenario for each case would be created, unfortunately, without any official legal framework, it is unlikely that digital and physical repatriation will be combined meaningfully. Thus, I suggest incorporating digital re-patriation into NAGPRA with the hopes that other countries, like Canada, will eventually follow suit with their own versions of repatriation legislation. Additionally, it is key that other anthropological authorities like BABAO continue to develop robust ethical frameworks for dealing with 3D digital imaging.

Consultation as the Golden Standard

Digital repatriation can be an important tool for initial knowledge sharing between the descendant community and the institution housing their ancestral remains; however, in isolation, it is not enough to satisfy the requirements of NAGPRA and the spirit of repatriation. Furthermore, if 3D digital models of human remains are created, it is imperative they also be repatriated in tandem with the physical remains since the digital reproductions are fundamentally connected to the physical subject and are thus something the descendant community should also have control over. Sontag (1973) exerts that a photograph is "a potent means of acquiring [the subject], of gaining control over it" (p. 121). This final quotation from Sontag highlights the importance of collaborating with descendant communities as without cooperation, researchers, museums, and other institutions run the risk of slipping into a relationship defined by colonial notions of the racialized body as the subject to control. But instead, through properly understanding the essence of digital repatriation and the spirit of collaboration necessitated in the process of repatriation one can participate in a decolonizing process which gives agency and control back to the descendant communities.

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TO REASON OR TO ROT: AN EXAMINATION OF ABORTION RIGHTS THROUGH WOLLSTONECRAFT'S *A VINDICATION OF THE RIGHTS OF WOMAN*

Hanako Stepanek

The patriarchal ideologies that Wollstonecraft criticizes in her 1792 work, A Vindication of the Rights of Woman, still pervade modern society in many ways—one of the most palpable of which is the state's infringement on women's bodily autonomy through the regulation of abortion. Wollstonecraft's critique on the education of women in society, or as she calls it, the "false system of education" (29), illuminates a new perspective on the current, convoluted discourse surrounding abortion rights. By examining how Wollstonecraft's Vindication applies to the decades-long sociopolitical struggle for reproductive rights, I argue that, when the state criminalizes abortion, it is reinforcing a "false system of education" (29) by reducing women's identities to their reproductive abilities.

Although reproductive rights have always been a significant fixture in the lives of women throughout history, many of the reproductive rights struggles in Western society today can be traced to the criminalization of abortion the late 19th century (Petchesky 72). Around this time, the United States' legislation reflected an increased interest in "the centralization and rationalization of control over the movement, passions, reproduction, and secretions of bodies" (Petchesky 72). The state's sudden need to seize control of abortion was a reaction to the emergence of women's rights movements around the time of the Civil War—which were not only demanding the right to vote, but also the right of voluntary motherhood (Siegel 929). Consequently, an anti-abortion movement surfaced, calling for the criminalization of abortion by emphasizing the importance of procreation. The argument put forth by the campaign against abortion was that without procreation, marriage was nothing more than "legalized prostitution" (Siegel 929). Underlying this anti-abortion movement was the fear that access to reproductive care could undermine the current social order where men were the dominant power in their families (Solinger 11). Thus, the criminalization of abortion was instituted to reinforce the stereotypical gender roles within marriages—where the man makes all the decisions, and the primary role of women is to procreate (Siegal 929). Regulating abortion then became an instrument of control, wielded by the state to enforce patriarchal ideals. To this day, the efforts of the state to exercise control over women through abortion laws continue. Most recently, the 2021 US Supreme Court Decision, Dobbs v. Jackson, effectively overturned Roe v. Wade and eliminated abortion as a constitutional right in the US (Dobbs v. Jackson Women's Health Organization) —reminding us that the discussion of abortion rights is as important as ever.

As I will show, Wollstonecraft's commentary on the "false system of education" (29) explains how the state uses the regulation of abortion to tie women's identities to reproduction in two different ways. First, I will examine how the "false system of education" contributes to the "miseducation" of women in their early years—where they are conditioned to adopt reproduction as part of their identities. Then, I will analyze how the regulation of abortion contributes to the other sphere of the "false system of education"—which is the neglect of women's education. Specifically, I will discuss how being denied access to an abortion puts a strain on the lives of women, preventing them from seeking an education, and thus, an identity beyond motherhood.

As Wollstonecraft argues in her Vindication, central to the "false system of education" (29) in society is the miseducation of women. As Wollstonecraft describes, women are only taught to mind their manners, and tend to their beauty, when instead, "they ought to cherish ambition" (29). Wollstonecraft points out that the reason why women are only focused on acquiring surface-level accomplishments is because they have been raised to believe that "the only way women can rise in the world … [is] by marriage" (32). Therefore, Wollstonecraft illustrates that the miseducation of women is caused by society teaching women that they should only ever aspire to gain domestic skills and accomplishments—like having a family—instead of developing rational minds. As Wollstonecraft explains, the idea that women should be relegated to domestic duties comes from the fact that they are seen by men to have inherent "desire[s] connected with the impulse of nature to propagate the species" (68). In other words, men have effectively reduced women as a means to an end—to their reproductive abilities—through the mass miseducation of women. Since women are "miseducated" from a young age to believe that domestic abilities are crucial to their success in life, they begin to internalize the belief that reproductive abilities are a defining part of their identities.

One of the main reasons why women begin to internalize reproductive abilities is because there is a persistent pressure on women to take control of their reproductive care from a young age. This is exemplified through the fact that women are taught from a young age to be primarily responsible for providing/taking different forms of birth control when engaging in heterosexual penetrative sex. It is important to note that out of all available birth control methods, eleven of them, including the contraceptive pill, intrauterine devices, and birth control patches, are designed to be used by cisgender women (Shahvisi 328-336). In contrast, only two birth control methods are designed for cisgender men: condoms and vasectomies (328-336). Even in cases where men use contraception, ninety-one percent of the time, women are predicted to have been "involved in ensuring contraception" (Shahvisi 328-336). Thus, women are often the ones who have to shoulder the burden of using/providing birth control based on what is available. In this way, society treats girls "like women, almost from their very birth" (Wollstonecraft 109) because they are told—from the time they first begin engaging in/thinking about sexual activity—that reproductive care is their responsibility as women in society.

The disproportionate responsibility placed on women to monitor their reproductive care from a young age only worsens when the state criminalizes abortion. There is a strong link between restrictive abortion laws and increased stigma surrounding abortion due to legislation's role in "conveying messages of social or moral disapproval" (Jozkowski et al. 443-461) to society. In addition, studies have shown that public opinion tend to hold women and healthcare providers the "most responsible for illegal abortion" (Jozkowski et al. 443-461). So, when abortion is criminalized, not only do women potentially face the criminal punishments enacted by the state, but they also face a secondary punishment—in the form of the social stigma associated with seeking an illegal abortion. As a result, women are more likely to closely regulate their sexual activity, out of fear of the added societal consequences of getting pregnant and having to seek out an illegal abortion. The looming threat of interpersonal and legal punishment forces women into impossible situations of internal turmoil where they essentially become "slaves to their bodies" (Wollstonecraft 70) because so much of their lives—and in turn, their identities—are determined by their ability to reproduce.

In this sense, the societal conditioning of women to internalize reproduction as a part of their identities can be viewed as part of the larger, centuries long, miseducation of women that Wollstonecraft describes in her Vindication. As Wollstonecraft says, women are only seen to be valuable through their connection with men as "daughters, wives, and mothers" (52), only defined by their capability of "fulfilling those simple duties" (52). So, women are "miseducated" into believing that domestic duties, including reproductive care, are their sole responsibility, and this is further demonstrated and perpetuated by the unavailability of alternative birth control methods. Furthermore, this means that when the state criminalizes abortion, there is an even larger responsibility put on women to regulate their reproductive care, which pushes women further into a state of "perpetual conflict" (110) where they are no longer able to distinguish between their individual identities and their ability to reproduce. Therefore, the state weaponizes abortion regulation as a means to spread the patriarchal delusion that reproduction is all a woman is capable of—which is what Wollstonecraft pinpoints as the detrimental belief shaping the false education of women.

Another critical message Wollstonecraft conveys in her Vindication is that the "false system of education" is not just the miseducation of women—where women are manipulated into embodying an identity placed on them by men—but is also the complete neglect of women's education. As Wollstonecraft states, because men desire for women to serve men's interests instead of forming their own identities, they purposely "endeavour to keep women in the dark" (51). Since the "false education" of women is focused on only teaching women to strive towards domestic achievements, what little knowledge they are able to learn is "rather by snatches; and … in general, [is] only a secondary thing" (49). Thus, women's education remains neglected because they only learn secondarily from men—who have vested interest in keeping women in a subordinate position. Whilst men are allowed to obtain reason, which effectively acts as the "power of improvement" (80), women are "not allowed to have this distinction" (80);

they are forever destined to only acquire knowledge from men and shape their identities around the desires of men. However, as Wollstonecraft argues, the ability to practice reason is inherent in us all (80). So, why should women's identities be chained to the ideals of man if they are capable of reason? Indeed, Wollstonecraft points out that, for this exact reason, women cannot remain uneducated—they must have "employment of life, an understanding to improve" (90) or else women are just left to "procreate and rot" (90). However, it is apparent that, in many instances in modern society, women still carry extraordinary burdens that inhibit them from obtaining a fulfilling employment in life—one of them being the responsibilities that come with motherhood.

The pattern of expecting women to responsible for the "domestic realm" continues into adulthood, as there is an overwhelming societal expectation that women should be primarily responsible for parenting children. As Betty Friedan describes in The Feminine Mystique, the "ideal" family in Western society traditionally required women to accept the occupation of "housewife," whereas men were in charge of financially providing for the family (Friedan 18). This "ideal" family was associated with "pretty pictures of the American suburban housewife, kissing their husbands goodbye ... [and] depositing their stationwagonsful of children at school" (Friedan 18). Although society has strayed from this idealization of the "nuclear family" that Friedan wrote about in the 1960's, society's expectations of women's roles in the home remain the same. It is a long-established fact that women are more likely to be the primary caregivers for

One of the undeniable consequences of the state criminalizing abortion is that many women are involuntarily plunged into motherhood before they are ready to raise children. Since women are far more likely to be the primary caregiver of a child, denying women access to abortion not only forces motherhood on them, but in many cases, often alters the trajectory of their lives. Studies have shown that women who are denied an abortion report serious financial struggles in the following years, with many of them not being able to cover basic living expenses (Foster et. al. 1290-1296). Moreover, considering that many of the women who seek abortions do so because they believe that they cannot financially support a child (1290-1296) and have lower levels of education (1290-1296), barring them from getting an abortion propels them further into the cycle of poverty. Being denied an abortion restricts women from going beyond motherhood because, as previously discussed, they now hold a disproportionate responsibility to care for a child. Many of the woman denied an abortion can hardly survive financially, let alone have enough mental capacity and capital to fund a social life or seek higher education outside of motherhood. In this sense, the criminalization of abortion puts women in an impossible predicament where being a mother dictates their life outcomes and becomes the defining factor in their personal identities.

Through this lens, the state then becomes complicit in the false system of education that Wollstonecraft describes because it contributes to the mass neglect of women's education. By denying women access to abortions, the state is physically preventing women from gaining an identity outside motherhood. As women are robbed of the ability to pursue personal ambitions—whether that is an education, a fulfilling means of employment, or anything else that enriches their lives—they are also being robbed of the ability to pursue reason. It is not to say that women who are mothers cannot possess reason—but rather it is to say that forcing motherhood on women significantly limits their ability to govern their identities because childcare often monopolizes their lives. In this sense, the state obscures the pursuit of reason from women and "keep[s] women in the dark" (Wollstonecraft 51) by making reproduction their primary purpose in life. However, as Wollstonecraft states, the ability to reason is essential to gaining "an immortal soul" (90) and becoming a complete person. So, when the state criminalizes abortion, it not only hinders women's ability to reason, but it also strips them of their humanity. When women do not have the right to an abortion, the message from the state is clear: women are not considered to be full, and complete human beings, capable of determining for themselves what is best for their bodies, their health, and their lives. Without education, women cannot develop the ability to reason; and without reason, women can never gain an individual identity separate from reproduction. It is essential then, for women to have the ability to determine for themselves if they want to have an abortion, not only because they are capable of reason, but because of the lasting impacts pregnancy and motherhood can have on their lives.

As the state's grip tightens around women's reproductive freedom, the question, "'[i]s this all?'" (Friedan 15) is raised by women again and again. We ask ourselves, is this all "[we] were … created for?" (Wollstonecraft 89). It is important, in these moments, to keep the beliefs and ideas of Mary Wollstonecraft's Vindication at the back of our minds. As I have shown, Wollstonecraft's idea of a false system of education highlights how the state uses the regulation of abortion as a means to diminish women's identities to their ability to reproduce through both the miseducation of women, and the neglect of women's education. Wollstonecraft wrote her Vindication with the belief that we were all born with the inherent ability to reason (80). If women are denied this ability through abortion restriction, then their identities become perpetually tied to being objects of reproduction; ultimately, under these conditions, they are left by society to merely "procreate and rot" (90). Thus, we must always remind ourselves of Wollstonecraft's belief that women were made for so much more than procreation—we were made to be "rational creatures" (31)—capable of deciding for ourselves what is best for our lives; capable of learning, growing, and becoming better than what we have been taught by the world.

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YUGOSLAV CONFLICT AND NATO: HUMANITARIAN ALTRUISM OR GLOBALIZATION INCENTIVE IN KOSOVO?

Graeme Lavrence

The conflict in the former-Yugoslavian province of Kosovo and the subsequent North Atlantic Trade Organization (NATO) intervention is a complicated issue with numerous legal, ethical, and political interpretations. Marking a "paradigmatic shift" in international politics and law, NATO's intervention, dubbed Operation Allied Force, has had significant ramifications (Ristić and Satjukow 191). Central to the discussion of this operation was the question of "whether it was legitimate to cause harm in order to prevent greater suffering" (Ristić and Satjukow 191). Involved in the discussion are conceptions of humanitarian intervention and of globalization, with arguments that paint the NATO intervention under either light; some allude to instances of globalization which have been disguised under the justifications of foreign aid and humanitarian intervention (Ayoob 100). Within the context of this paper, humanitarian intervention can be understood as "the impartial, in-dependent and neutral provision of aid to those in immediate danger" (Rysaback-Smith par. 2), whereas globalization will be understood as the spread of global homogeneity within an economic, cultural, political, or institutional context (Ritzer and Ryan 57-58). Oftentimes, international administration—wherein foreign states or institutions that act as the governmental body of a state—is a consequence of humanitarian intervention in Third World countries (Ayoob 100). This is especially true in instances wherein the intervention transpires without United Nations Security Council (UNSC) authorization and is carried out by major powers, like the United States (Ayoob 100). In this way, some forms of humanitarian intervention are seen by many as a threat to state sovereignty, and as "a revival of the "standard of civilization" that was used in the nineteenth century to justify colonial subjugation" (Ayoob 101). Furthermore, the concept of humanitarianism is one which is based on understandings of human rights and liberal world order that are founded upon Western cultural values (van Leeuwen 10-11). This establishment of hegemonic norms through globalization can allow for the proliferation of a Western world order (van Leeuwen 10-12). As the globe progresses further towards a homogenized society wherein international laws and standards are circumvented by militaristic superpowers, it is crucial to remain aware of potential instances of globalization and the different forms in which globalization may present itself. Through an analysis of the historical context, the varying humanitarian and globalization perspectives, and the political, legal, and moral aspects of the intervention, as well as its execution, I will prove the following: *The NATO intervention in the Kosovo conflict was influenced simultaneously by a humanitarian imperative and an incentive for globalization. While this intervention* *was not legally justified and may not have been altruistic—or even entirely successful—it was still necessary on moral grounds.*

The history of the NATO intervention is preceded by the longstanding historical significance that the autonomous Kosovo province has held for both Albanians and Serbs (Human Rights Watch, "Under Orders" 19). This shared interest resulted in frequent clashes between the groups throughout history, with mutual accusations of atrocities (Human Rights Watch, "Under Orders" 19). Since its post-WWII constitution, Yugoslavia, and specifically Kosovo, has been subject to economic depression and ethnic divisions that have consistently threatened the stability of the state (Human Rights Watch, "Under Orders" 20). The ethnic Albanian population in Kosovo has long-striven for independence as an ethnicity-based nation (Human Rights Watch, "Under Orders" 20). Widespread poverty and a power vacuum allowed for the rise of nationalism, fueling these ethnic divisions (Human Rights Watch, "Under Orders" 20; Kaufman). Slobodan Milošević, a nationalist Serb who weaponized ethnic divisions, was elected Serbian President in May of 1989 (Human Rights Watch, "Under Orders" 22-26). Following this, populism and anti-Albanian sentiment became commonplace (Human Rights Watch, "Under Orders" 22-26). Subsequently, in March of 1989, constitutional changes revoked Kosovo's autonomous status and returned control of the region to Belgrade, the capital of Serbia (Human Rights Watch, "Under Orders" 22-27; Kaufman). This was a turning point in Kosovo's political history and was succeeded by numerous substantial changes, including the suppression of Albanian state employees, and the dissolution of the Kosovar assembly (Kaufman). In 1990, the Kosovo Liberation Army (KLA) carried out terrorist attacks against Serbs, which contributed to Serbian opposition to the Kosovar people (Human Rights Watch, "Under Orders" 27; O'Connell 74-75).

The situation worsened with Milošević's election as Yugoslavian President in July of 1997, which coincided with a rise in attacks by the KLA and subsequent Serb police retaliation (O'Connell 75). This conflict escalated into full blown war in 1998, which prompted the U.S. and NATO to threaten involvement (Gromes 4; Kaufman; O'Connell 75-76; Ristić and Satjukow 190). Regardless, expulsions and massacres continued (Ristić and Satjukow 190). After further failed negotiations and ceasefire agreements, NATO began an entirely air-based militaristic intervention on March 24th, 1999, dubbed Operation Allied Force (Ristić and Satjukow 189-190). This Operation was the most intense and sustained military operation in Europe since the end of WWII and was the first combat operation for a humanitarian objective against a state committing atrocities within its own borders (Lambeth 219). The Kumanovo peace treaty took place on June 9th, 1999, and was accompanied by the withdrawal of Serbian troops from Kosovo (Ristić and Satjukow 190). Operation Allied Force lasted for 78 days, and officially ended on June 10th, 1999 (Gromes 6). The NATO-led Kosovo International Security Force (KFOR) was deployed in Kosovo as a peacekeeping group (Gromes 5; Ristić and Satjukow 193). Moreover, the UNSC adopted Resolution 1244, which authorized an international security presence in Kosovo, and would install an interim UN administration (Gromes 6). On the 19th of June, the conflict ended, KFOR was deployed, and KLA demilitarization followed suit (Gromes 6). Although this marked the end of the Kosovo conflict and NATO's direct involvement, it was not the end of the conflict within Kosovo, as violence continued against non-Albanians in the region as retribution for the decade of ethnic cleansing that predicated the 1999 intervention (Ristić and Satjukow 192-193).

There is a significant amount of academic literature which supports understandings of NATO's intervention as an act of humanitarianism (Henkin 826; O'Connell 80). Humanitarianism is predicated on the notion of universal human rights regardless of one's political affiliation, with "[p]roponents of humanitarian intervention suggest[ing] that a state forfeits its right to sovereignty if it fails to protect its own citizens from human rights abuses" (van Leeuwen 10). With this in mind, the humanitarian crisis in Kosovo demanded a response, as the NATO intervention was intended to help civilians suffering from horrendous human rights violations and crimes against humanity (Henkin 826), including ethnic cleansing and expulsion inflicted upon Kosovar ethnic-Albanians (Goldstone 143). Greenwood writes that humanitarian intervention is necessary in instances wherein a substantial portion of a state's population is threatened with either death or widespread suffering because of the actions of the state's government (34). These circumstances are certainly true with respect to the Kosovo conflict; Serb police and the Yugoslav army committed a plethora of atrocities against the Kosovar Albanians over a decade of repression (Human Rights Watch, "FRY Abuses"; Human Rights Watch, "Under Orders" 4-8). Some of these atrocities include civilian massacres, biological warfare, torture, rapes, mass killings, and arbitrary detentions, along with the destruction of homes, mosques, and civilian property (Human Rights Watch, "Under Orders" 4-8). Part of the meticulous expulsion campaign was identity cleansing, which involved the destruction of personal documentation and identification papers to prevent re-entry (Human Rights Watch, "Under Orders" 6). Through the efforts of the Yugoslav government, over 80% of Kosovo's population and 90% of all Kosovar Albanians were displaced (Human Rights Watch, "Under Orders" 4). In September of 1999, the Independent International Commission on Kosovo (IICK) held meetings to analyze the Kosovo crisis. This commission found that NATO's intervention was politically and morally legitimate due to the "egregious oppression and violations of the human rights of the Kosovar Albanians by their Serb rulers" (Goldstone 143). Surely, these circumstances warrant the humanitarian intervention carried out by NATO. To sum up using the words of Václav Havel, president of the Czech Republic, in regard to the Kosovo intervention: "If one can say of any war that it is ethical, or that it is being waged for ethical reasons, then it is true of this war" (qtd. in Ristić and Satjukow 192).

While there are many proponents of the humanitarian aspect to the NATO intervention, the globalization perspective is upheld by many throughout the literature. The rationale for this argument is two-pronged: the NATO bombardment was motivated by the pursuit of a hegemonic economic system and/or for the purposes of resource extraction and geostrategic interests (Bellamy 338; Talbot 102-106). As previously explained, the spread of a hegemonic world view has been cemented by globalization (van Leeuwen 11). In this process, the triumph of liberal values is often followed by humanitarian intervention with the aim of asserting a certain world order, which is subsequently followed by—and in some ways is a form of—globalization (van Leeuwen 11). This world order is Westernized and emphasizes democracy, free trade, and human rights (van Leeuwen 11). In the 1990's, the United Nations increasingly labelled humanitarian emergencies from across the globe as threats to international peace and security, which instilled ideals that the international norms of state sovereignty were subordinate to norms—and Western conceptions—of human rights (van Leeuwen 12). These norms have often been upheld by international institutions like the UN, European Union (EU) and NATO (van Leeuwen 12). From a Gramscian perspective, this consensus can be seen as an expansion of Western hegemonic power, which illustrates the dangers that come from underestimating the dimensions of power which can seemingly underlie uncontroversial values, such as human rights (van Leeuwen 14). Both Talbot and van Leeuwen comment on the mediatization of the conflict, insisting that it created both an intense demonization of Serbs—which suited NATO interests—while simultaneously reaffirming the humanitarian norms utilized by NATO in Kosovo (Talbot 94-95; van Leeuwen 13). Furthermore, some commentary suggests that the Yugoslav conflicts received a disproportionate amount of international media coverage when compared to similar crises of the same time, which contributed to media and public pressure against NATO to intervene (van Leeuwen 13). Moreover, van Leeuwen argues that the media emphasis placed upon the human rights violations in Kosovo served to reaffirm the importance of humanitarianism and human rights in Western minds, ultimately reaffirming the "humanitarian norms and values that NATO professed to defend in Kosovo" (13). To this point, van Leeuwen notes White House press briefings from the period, in which reporters failed to question "the validity of standing up for human rights" in the region (13).

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A further dimension of globalization is that of international administration, which usually serves as a by-product of some forms of humanitarian intervention (Ayoob 100). The threat of international administration often contributes to the reluctance of many Third World countries to allow for foreign aid or intervention, especially in instances wherein the intervening entity is operating without United Nations authorization (Ayoob 100). As previously explained, NATO and UNSC humanitarian missions often allow for a continuation of neocolonial rule in the form of international administration (Ayoob 100-101). Often, Western bodies such as NATO make decisions on the identification of targets deemed suitable for intervention based on their own interests (Ayoob 101). It is not uncommon for dominant international coalitions to obstruct humanitarian action when it does not suit their interests and promote such action when it is suitable (Ayoob 103, 109).

Further, van Leeuwen notes that the Liberal world order of the 1990's was neither complete nor unchallenged, something which institutions like the International Monetary Fund (IMF) and nations like the U.S. wished to change (14). Notably, after the Socialist Federal Republic of Yugoslavia (SFRY) split from the Communist Bloc, the nation held its own form of government called self-managing socialism, and largely resisted the "Liberal world order" of the Western powers (Kunitz 1901; Talbot 105). Changes to the international system, the accumulation of foreign debt, and a global economic recession in the 1980s disadvantaged the SFRY's economy (Kaufman). Due to this foreign debt, economic reforms—such as the privatization of public sector, wage freezes, and the introduction of new devalued currency

(Talbot 105-106)—were imposed by the IMF (Kaufman). Dubbed Structural Adjustment Programs (SAPs), these reforms had to be met for the SFRY to qualify for foreign aid (Talbot 109). Yugoslavia was largely unable to meet these reforms, partly due to workers strikes and government opposition to privatization and a free market system (Talbot 104). Spurred by Yugoslav inability and unwillingness to dismantle the welfare state, the U.S. imposed sanctions in the form of the 1990 Foreign Operations Appropriations Law (Kaufman; Talbot 105-106). These sanctions cut off all foreign aid, credit, and loans from the U.S. to Yugoslavia, causing further damage to the economy —which politicians used to fuel ethnic strife and right-wing nationalism (Talbot 104). One could understand the decline of the SFRY's economy as bearing the symptoms of a phenomenon described by Bellamy, wherein Western states and institutions—like the (IMF)—contribute to poverty in the Third World through "patrimonial politics" which are often the root cause of humanitarian emergencies (Bellamy 330).

These efforts from the U.S. display attempts to transition post-Cold War Eastern European countries into market-oriented economies (Talbot 104). This is reflected in a 1984 U.S. Policy Directive towards Yugoslavia which advocated for "expanded efforts to promote a 'quiet revolution' to overthrow communist government and parties," in the aim of instituting a capitalist system (qtd. in Talbot 104). Furthermore, prior to any indications in the media or politics of conflict within Kosovo, the CIA released a report in which they predicted "that the federated Yugoslavia will break apart most probably in the next 18 months and that civil war is highly likely" (qtd. in Talbot 104). These instances contribute to a perspective which illustrates nefarious intentions present in NATO's involvement in Kosovo (Talbot 104). For Talbot, the U.S. sanctions and NATO intervention send a message to nations of the entire world—especially those on the oil-rich Eurasian crescent—that, if they do succumb to U.S. bidding, they could be subject to divide-and-conquer tactics and "balkanized" (Talbot 102). This push is further reflected in the post-intervention agreements which called for the privatization of Kosovo's economy (Talbot 105).

Elsewhere, scholars point towards resources and interests within the Kosovo (and greater-Serbia) region and insist that economic and political motivators for U.S.-led globalization were plentiful (Ristić and Satjukow 192). Firstly, Serbia is rich in minerals, with Kosovo having the highest concentration of mineral resources in all of Europe west of Russia (Talbot 104-105). At the epicenter of this was the state-owned Trepca mining complex. Dubbed by the New York Times as "the most valuable piece of real estate in the Balkans," (qtd. in Talbot 105) this complex was worth at least $5 billion USD (Talbot 105). Furthermore, the complex was rich in a plethora of valuable minerals and generated tens of millions of annual profits (Talbot 105). Beyond this, Kosovo had 17 billion tons of coal reserves on its territory, not to mention oil reserves in Kosovo and Serbia-proper (Talbot 105). Secondly, on the subject of oil, this region of the Balkans was strategically important for the transshipment of oil and gas to Europe and abroad—utilizing shipping canals and waterways like the Danube River—while also containing pipelines, railways, and transportation corridors that ran from Russia, through Serbia, and into Central Europe (Talbot 109). Furthermore, in the north of Serbia, the province of Vojvodina was plentiful with extremely fertile soil and was a major "breadbasket" (Talbot 105) for Europe (Talbot 104-105). Lastly, at the time of the NATO intervention, Kosovo was rich with inexpensive workers which could easily be exploited as cheap labor by Western corporations (Talbot 104-105). Overall, it is clear that a great number of valuable resource opportunities existed with Kosovo and its neighbors at the time of the NATO intervention.

It is worth taking note of discrepancies of the NATO involvement, in comparison to both similar conflicts with greater-Yugoslavia and abroad. For example, in Croatia in 1995, hundreds of thousands of Serbs were expelled in what was characterized by some as the largest ethnic cleansing during the Yugoslav conflict (Talbot 95). Considering this conflict and violence against Serbs, questions arise about NATO's failure to intervene, and of mediatization which predominantly focused on Serb atrocities (Talbot 95). For Talbot, the former can be construed as the U.S. pursuing expansion in its post-Cold War global role through NATO, whereas the latter can be attributed to Western disinformation campaigns to conceal the true motives of NATO (Talbot 94-96). Elsewhere, as in Rwanda, Mozambique, El Salvador, Sierra Leone, and Palestine, human rights crimes and atrocities were being committed with a lack of intervention from NATO (Ayoob 103; Mandelbaum 6; Talbot 96). This prompts some suspicions about the motivations behind NATO's involvement (Ayoob 103). Furthermore, NATO's neglect of humanitarian crises in African states, largely due to a lack of strategic significance, adds to a perceived—and perhaps actual—lack of concern over the lives of Africans in contrast to the lives of Europeans (Ayoob 110). This 'selective humanitarianism' cements perceptions that most interventions are "a deliberate ploy on the part of the major powers to gain legitimacy for actions undertaken to enhance their own strategic and economic interests" (Ayoob 110). To sum up the globalization argument, Bellamy has written that "the use of humanitarian claims to legitimise armed intervention are crocodile tears shed by the very states and institutions that caused the problem in the first place" (332).

Regarding the legality of Operation Allied Storm, the consensus is that it lacked legitimate legal justification under international law. According to O'Connell, this intervention was carried out without UNSC authorization, was not justified by the UN Charter or by prior Security Council Conduct and was done without formal statements from either NATO or the United States which provided concrete legal justifications (O'Connell 57, 73, 80; Ristić and Satjukow 189-190). Primarily, the United Nations Charter, in Chapter 1, Article 2(4), prohibits the use of force within international relations in most instances, while allowing three exceptions to this rule (O'Connell, 58). The exceptions are as follows: Firstly, Chapter VII, Article 42 states that the Security Council may use force in order to "maintain or restore international peace and security" (qtd. in O'Connell 58). Secondly, Chapter VII, Article 51, permits the use of force as a means of collective self-defence for UN member states (O'Connell, 58). Finally, Chapter VIII, Article 53, states that the UNSC is permitted to use regional arrangements to govern the use of force, or to authorize regional arrangements to use force (O'Connell, 58). However, Chapter VIII, Article 53 contains the caveat that "no enforcement action shall be taken under regional arrangements … without the authorization of the Security Council" (qtd. in O'Connell 62-63). Indeed, NATO's intervention in Kosovo fails to qualify under any of the above exceptions (O'Connell 62-63, 67, 69). For example, collective self-defence can only pertain to instances wherein the 'victim' state has expressly called for outside intervention, which the SFRY had not done (Matheson 301; O'Connell 59). Further, as the exceptions in Chapter VII, Article 42 and Chapter VIII, Article 53 specify UNSC authorization—which NATO did not have—they fail to justify the intervention (O'Connell 58-59). Beyond this, there are some attempts to justify NATO actions in relation to prior UNSC Resolutions, yet none of those resolutions explicitly authorize use of force (Bellamy 325; O'Connell 77-78; Henkin 825; van Leeuwen 12). Conclusively, NATO acted without UNSC authorization—in the face of multiple vetoes from permanent members—with no legal precedent or justification under the UN Charter (Ayoob 109-110; Goldstone 143; Henkin 825-826; O'Connell 82; Kritsiotis 348,358; van Leeuwen 12). It would not be an over-exaggeration to say that NATO's actions intentionally circumvented and therefore violated international law, which complicates the question of both moral necessity and justification for NATO's intervention.

Another point of contention in the academic literature surrounding the Kosovo intervention is whether it was successful in preventing suffering and in bringing stability to the region. Indeed, it can be argued that NATO failed in those goals (Mandelbaum 2-5). Firstly, Kosovar casualties during the NATO intervention skyrocketed, both because of NATO's bombing and because of Serb and Yugoslav forces who increased ethnic cleansing (Ristić and Satjukow 193). The numbers vary, but scholars agree that NATO directly killed an estimated 495-758 Yugoslav civilians, with a total of 9,426 killed during the 78-day period—most of whom were ethnic-Albanians killed by the Yugoslav forces (Gromes 7; Ristić and Satjukow 190-193). Additionally, a total of 1.4 million people were displaced during the conflict (Mandelbaum 3; Ristić and Satjukow 193).

At the beginning of the conflict, NATO's targets included air defenses, surveillance systems, military headquarters, and military facilities, among others (Gromes 5). However, throughout the conflict, NATO—both intentionally and unintentionally—targeted infrastructure that was close to civilian targets or was crucial for civilian survival (Kritsiotis 355-357; Lambeth 240-242; Mandelbaum 6; Mertus 311; Ristić and Satjukow 190-193; Talbot 95). Some examples include Serbian news stations; electrical grids; water filtration systems; residential areas; busses, trains, and other vehicles containing civilians; public infrastructure like bridges; hospitals; historical monuments; churches; schools; senior residences; factories—the destruction of which released toxic chemicals into the environment; multiple refugee convoys; and the Chinese embassy in Belgrade (Kritsiotis 355-357; Lambeth 240-242; Mandelbaum 6; Ristić and Satjukow 190-193; Talbot 95). The release of toxic chemicals coupled with NATO's use of radioactive munitions contributed to long term health problems and environmental degradation (Ristić and Satjukow 190-193; Talbot 95). This destruction of non-military targets is forbidden under international law (Mertus 311). Furthermore, Article 14 of the 1977 Protocol to the Geneva Convention (1949), states that attacks are prohibited if they target "objects indispensable to the survival of the civilian population" (qtd. in Mandelbaum 6). With this in mind, it is understandable how one would condemn NATO's actions in Kosovo as war crimes (Lambeth 240).

Unfortunately, the end of the NATO-led Operation did not signify the end of conflict in Kosovo (Ristić and Satjukow 193). Once Serbia withdrew its troops from the region, KFOR entered the region to maintain peace (Ristić and Satjukow 193). However, KFOR was ill-equipped to prevent further suffering (Human Rights Watch, "FRY Abuses"; Talbot 97). Ethnic-Albanians and KLA members caused a mass exodus of Serbs, Roma, and other non-ethnic-Albanians from Kosovo (Gromes 7-8; Human Rights Watch, "FRY Abuses"; Ristić and Satjukow 193; Talbot 96-97). In this post-Operation period, the following crimes were reported: massacres; rapes; destruction of homes and schools; burning and looting; attacks on mosques, monasteries, and Orthodox churches; decapitations of elderly residents; as well as beatings, abductions, torture, and illegal imprisonment (Gromes 7-8; Human Rights Watch, "FRY Abuses"; Ristić and Satjukow 193; Talbot 96-97). Overall, the quality of life for residents was poor in the post-NATO Yugoslavia, with continuing ethnic clashes and unemployment (Lambeth 225; Talbot 96).

Moreover, the NATO intervention—and Kosovo conflict as a whole—significantly deteriorated regional stability. Many of the wider political consequences of the intervention were opposite to NATO's original intentions, with "virtually all the major political effects [being] unplanned, unanticipated, and unwelcome" (Mandelbaum 2). The crux of the Albanian struggle was the pursuit of independence and the right to national self-determination, while Serbia fought to maintain Kosovo within Yugoslavia, in the name of the inviolability of pre-existing borders, yet NATO supported only the latter—in-fact, in the post-conflict international landscape, NATO policy actively opposed the establishment of an independent Kosovo (Mandelbaum 5). Therefore, NATO had intervened in a civil war yet had embraced the position of their enemy (Mandelbaum 5). For the most part, the people of the Balkans emerged worse off than they had been prior to the war, with the entirety of the Balkans rendered less stable due to infrastructure damage and the influx of refugees in neighbouring states (Mandelbaum 2-3). NATO failed to prevent wider suffering and conflict within Kosovo and Serbia-proper, which raises concerns over the moral justifications—or lack thereof—and efficacy of NATO's intervention. These concerns are the next subject of dissection along with an analysis of the moral imperative for any such intervention.

In an effort for clarity, it is worth noting that the argument here is not one which claims NATO's intervention is morally justified, but rather morally necessary. There exists an important distinction between the two. While the former entails that NATO's actions in Kosovo were justified on moral grounds and therefore excusable, the latter attests that there was a moral imperative for NATO to act. The argument being put forward is not one which aims to justify NATO's actions as a morally successful operation or one that should be construed as a 'just war' in the realm of moral philosophy. Briefly on this subject, many scholars critique the NATO 'humanitarian intervention' as not fulfilling the principles of a 'just war' (Elshtain; Fixdal and Smith; Reitan). The failure of the NATO intervention to fulfill the principles of the 'just war' can be attributed to the notions of ius ad bellum and ius in bellum (Fixdal and Smith 286). The former, ius ad bellum, can be understood as justice in the resort to war, which the 1999 NATO intervention did not meet, considering it was not legitimate in its authority to declare war, and was not easily justifiable as motivated entirely by just cause (Fixdal and Smith 286). Whereas the latter, ius in bellum, refers to justice in the conduct of war, which was violated by the NATO intervention, given that noncombatants did not receive protection from discrimination, and since the war was not proportional in its causing of harm in proportion to good (Fixdal and Smith 286). This is echoed elsewhere in the literature and reflected above, as the actions of NATO increased the suffering of the people of Kosovo both through NATO bombardment and through a provocation of Milošević (Elshtain 6-9). Furthermore, it is argued by Shinoda all, the quality of life for residents was poor in the post-NATO Yugoslavia, with continuing ethnic clashes and unemployment (Lambeth 225; Talbot 96).

Moreover, the NATO intervention—and Kosovo conflict as a whole—significantly deteriorated regional stability. Many of the wider political consequences of the intervention were opposite to NATO's original intentions, with "virtually all the major political effects [being] unplanned, unanticipated, and unwelcome" (Mandelbaum 2). The crux of the Albanian struggle was the pursuit of independence and the right to national self-determination, while Serbia fought to maintain Kosovo within Yugoslavia, in the name of the inviolability of pre-existing borders, yet NATO supported only the latter—in-fact, in the post-conflict international landscape, NATO policy actively opposed the establishment of an independent Kosovo (Mandelbaum 5). Therefore, NATO had intervened in a civil war yet had embraced the position of their enemy (Mandelbaum 5). For the most part, the people of the Balkans emerged worse off than they had been prior to the war, with the entirety of the Balkans rendered less stable due to infrastructure damage and the influx of refugees in neighbouring states (Mandelbaum 2-3). NATO failed to prevent wider suffering and conflict within Kosovo and Serbia-proper, which raises concerns over the moral justifications—or lack thereof—and efficacy of NATO's intervention. These concerns are the next subject of dissection along with an analysis of the moral imperative for any such intervention.

In an effort for clarity, it is worth noting that the argument here is not one which claims NATO's intervention is morally justified, but rather morally necessary. There exists an important distinction between the two. While the former entails that NATO's actions in Kosovo were justified on moral grounds and therefore excusable, the latter attests that there was a moral imperative for NATO to act. The argument being put forward is not one which aims to justify NATO's actions as a morally successful operation or one that should be construed as a 'just war' in the realm of moral philosophy. Briefly on this subject, many scholars critique the NATO 'humanitarian intervention' as not fulfilling the principles of a 'just war' (Elshtain; Fixdal and Smith; Reitan). The failure of the NATO intervention to fulfill the principles of the 'just war' can be attributed to the notions of ius ad bellum and ius in bellum (Fixdal and Smith 286). The former, ius ad bellum, can be understood as justice in the resort to war, which the 1999 NATO intervention did not meet, considering it was not legitimate in its authority to declare war, and was not easily justifiable as motivated entirely by just cause (Fixdal and Smith 286). Whereas the latter, ius in bellum, refers to justice in the conduct of war, which was violated by the NATO intervention, given that noncombatants did not receive protection from discrimination, and since the war was not proportional in its causing of harm in proportion to good (Fixdal and Smith 286). This is echoed elsewhere in the literature and reflected above, as the actions of NATO increased the suffering of the people of Kosovo both through NATO bombardment and through a provocation of Milošević (Elshtain 6-9). Furthermore, it is argued by Shinoda that humanitarian intervention encompasses a duty not to damage the conditions of the population and to respect civil, political, social, cultural, and economic rights of the people, which may not apply to the situation of Kosovo (530). However, to fully ascertain whether NATO's involvement was morally justified is not within the scope of this paper.

Rather, the argument being presented is that due to the gross human rights violations of the time, it was morally necessary for NATO to act. In other words, someone had to do something, as crimes against humanity and genocide were taking place and no other actions by a state or collection of states had yet proven effective. It is widely accepted by scholars, expressed by some NATO members, and supported by many non-NATO states, that there was a clear humanitarian imperative in the Kosovo conflict (O'Connell 70,80-82; Goldstone 143; Henkin 824-826; Kritsiotis 358; Ristić and Satjukow 191). Furthermore, the humanitarian catastrophe, threat to neighbouring states, as well as the violations of international humanitarian law and human rights all warranted involvement (Henkin 824-826; O'Connell 80). Others have argued that this humanitarian catastrophe justified the bombing through an appeal to saving innocent lives at the expense of a nation's sovereignty (Ristić and Satjukow 191). This principle inherently violates the fundamentals of state sovereignty and is only applicable in instances wherein the state is "unwilling or unable to prevent such mass atrocities"—which is undoubtedly true for Kosovo (Henkin 824; Ristić and Satjukow 191). Through this, "proponents of humanitarian intervention suggest that a state forfeits its right to sovereignty if it fails to protect its own citizens from human rights abuses” (van Leeuwen 10). Elsewhere, it is argued that state-sovereignty should not be held above human rights, and that crimes against humanity hold greater importance than principles of international sovereignty (Henkin 824-826). Subsequently, there exists collective responsibility to intervene in instances wherein human rights are violated, and the use of force can therefore be legitimate to uphold society’s moral purpose (Bellamy 324). On this, Bellamy writes that: “Sovereignty … is not a veil that human rights abusers can hide behind … extreme cases of human suffering constitute a legitimate exception to the rule of non-intervention” (Bellamy 325). Following the NATO intervention, it has been acknowledged by some scholars that military enforcement without UNSC authorization is permissible to safeguard human rights (O’Connell 70). However, O’Connell states that at the time of the NATO intervention, no existing treaties allowed for violation of state-sovereignty based on humanitarian intervention, and there is a lack of evidence to support legal obligations to support humanitarian intervention (O’Connell 70).

Overall, it is argued that from a moral standpoint, the use of armed force was justified in terms of a moral imperative to act, even if NATO was acting in contradiction of international law (Kritsiotis 352). This raises questions over the disjoint between morality and legality on the international stage, and the potential need to rework understandings of international law as it pertains to humanitarianism. However, these critiques and subsequent solutions are not within the aim of this paper. Furthermore, some attempts have been made to suggest whether the kind of intervention utilized in this instance is the most suitable for solving humanitarian crises. Perhaps if substantial and unified action had taken place earlier in the conflict, using cohesive economic and political measures, then the outcome would have been more beneficial for the people of Kosovo.

To conclude, the Kosovo conflict and subsequent NATO intervention is a multi-faceted issue, with multiple equally compelling narratives. Rather than suggest that the drive behind Operation Allied Force was strictly humanitarianism or globalization, it is instead clear that both factors were at play; it may be that humanitarian outcomes were possible, even if motivations weren’t primarily humanitarian. As previously established, there was a compelling need for intervention on humanitarian grounds due to atrocities and ethnic cleansing; I argue that there existed a moral imperative for someone to intervene. While some argue that NATO was obligated to act—largely due to foreign economic meddling by NATO members with predisposed the state to collapse—I believe that some NATO members (the United States, for example) utilized the humanitarian crisis for economic purposes like resource extraction, strongarming the Alliance to act. This is emphasized by the numerous geostrategic and political interests within the region that surely played a factor in NATO’s actions. Operation Allied Force was clearly unjustifiable under international law, and far from successful in preventing furthering suffering as originally intended. Moreover, for those same reasons, it right to sovereignty if it fails to protect its own citizens from human rights abuses" (van Leeuwen 10). Elsewhere, it is argued that state-sovereignty should not be held above human rights, and that crimes against humanity hold greater importance than principles of international sovereignty (Henkin 824-826). Subsequently, there exists collective responsibility to intervene in instances wherein human rights are violated, and the use of force can therefore be legitimate to uphold society's moral purpose (Bellamy 324). On this, Bellamy writes that: "Sovereignty … is not a veil that human rights abusers can hide behind … extreme cases of human suffering constitute a legitimate exception to the rule of non-intervention" (Bellamy 325). Following the NATO intervention, it has been acknowledged by some scholars that military enforcement without UNSC authorization is permissible to safeguard human rights (O'Connell 70). However, O'Connell states that at the time of the NATO intervention, no existing treaties allowed for violation of state-sovereignty based on humanitarian intervention, and there is a lack of evidence to support legal obligations to support humanitarian intervention (O'Connell 70).

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A TARGETED UNIVERSALISM APPROACH TO UNIVERSAL ACCESSIBILITY

Sarah Gillies

Introduction

Disability, being one of the prohibited grounds of discrimination in the Canadian Human Rights Act (1977), is an important topic to consider in the context of human rights. Article 2 of the Universal Declaration of Human Rights (UDHR) says, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind" (United Nations General Assembly, 1948, article 2). Article 2 also requires that everyone has access to the goods and services that enable individuals to enact their rights and freedoms under the UDHR. The Canadian Human Rights Act says:

> All individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated … without being hindered in or prevented from doing so by discriminatory practices based on … disability (purpose).

For all individuals to have equal opportunities, regardless of ability, there must be universal accessibility. Thus, I propose that targeted universalism (TU), where the goal is universal accessibility, should be used as an approach to improve accessibility because anyone can become impacted by disability, disabilities impact people in various ways, acting proactively can prevent the disproportionate harm of individuals with disabilities, and improving accessibility is not a zero-sum game.

Definitions

Disability

Two common ways to understand disability are the social model, which says disabilities are biological differences that are made limitations by society's structures, and the medical model, which defines disabilities as differences that are inherently impairing (Barry, 2010). Many definitions and conceptions of disability lie somewhere between these models. The Accessible Canada Act (ACA) (2019) defines disability as:

> Any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment —or a functional limitation— whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person's full and equal participation in society (Definitions).

This definition considers disability as being an impairment itself (in line with the medical model) and becoming a hinderance when interacting with a barrier (aligned with the social model). One challenge in defining disability is identifying the degree of hindrance that qualifies something as a disability. For instance, at what point does weak vision become a visual disability (Sensoy & DiAngelo, 2017, p. 84)? According to the social model, there is no inherent distinction between disabled and able-bodied people (Barry, 2010). Under the medical model, however, disabilities are to be cured through medical practice or mitigated by special assistance, which requires the ability to distinguish individuals with disabilities from those without (Barry, 2010). Ultimately, there is no absolute definition of disability; instead, understandings of disability fall on a spectrum between the social and medical models.

Accessibility

Accessibility Services Canada (n.d.) defines accessibility as "The design of products, devices, services, or environments for people who experience disabilities" (definitions). This definition recognizes that people with disabilities may have different needs than able-bodied people. Accessibility can also be understood as the quality of being easily used, acquired, understood, and entered (Oxford University Press, n.d.). For all individuals to have equal opportunities, as outlined by the Canadian Human Rights Act, society should strive to be universally accessible.

Targeted Universalism (TU)

Targeted universalism (TU) is a framework for making change that involves having a universal goal and a targeted strategy (Powell et al., 2019). However, Powell et al. (2019) describe TU as more than a hybrid between universal and targeted policies. Universal policies aim to serve everyone, regardless of group membership. For instance, minimum wage policies apply to everyone in the same way. One benefit of universal policies is an increased likelihood of gaining political support because they serve everyone equally rather than favouring one group (Powell et al. 2019). Political support ultimately enables implementation and thus increased accessibility. However, universal polices may be seen as inefficient or wasteful of resources, especially when they provide a benefit to individuals who do not need the aid (Powell et al. 2019). For instance, universal polices involving higher pay provide more pay to everyone, including those who do not need it; therefore, they may be uneconomical (Powell et al. 2019). Furthermore, universal polices can heighten disparities between groups (Powell et al. 2019). By inaccurately assuming that everyone is equally positioned, universal designs serve people who fit an assumed universal norm while neglecting those who are situated differently (Powell et al. 2019).

In contrast to universal polices, targeted polices depend on group membership. Targeted polices benefit members of a target group regardless of other groups' needs, which creates an ingroup/outgroup binary (Powell et al. 2019). Consequently, a weakness of targeted polices is their lack of political support, especially if members of the target group are perceived as undeserving by other people (Powell et al. 2019). This occurs when people attribute a person's situation to individual choices and fail to recognize the systemic barriers faced by members of marginalized groups (Powell et al. 2019). Another weakness of this approach is the difficulty in identifying and applying effective policies (Charles and Fuentes-Rohwer, 2021).

In a TU approach, the universal goal is

critical as it reinforces social collective aspiration and counters intergroup conflict (Powell et al. 2019). TU is outcome-oriented: its targeted strategies are directed towards its universal goal (Powell et al. 2019). However, TU does not serve everyone in the same manner; instead, TU recognizes that people are situated differently and must be treated specially to achieve universal goals (Powell et al. 2019). Acknowledging the varying needs of different groups, TU implements a range of targeted strategies. Importantly, TU recognizes that individuals are subject to structures of society that are not neutral (Powell et al. 2019). Group positions and intergroup gaps are measured relative to the universal goal rather than to the dominant group (Powell et al. 2019). Powell et al (2019) emphasize that closing intergroup gaps, which targeted policies alone aim to do, is an incomplete goal because it fails to move all groups towards a shared universal goal.

Powell et al. (2019) outline the five steps of a TU approach: first, create a widely significant universal goal that addresses a persistent problem, demands policy action, and reflects collective aspiration. Second, assess the entire population in relation to that goal. Third, gauge the positions of distinct subgroups. Fourth, examine groups' interactions with the structures that are relevant to the goal; here, Powell et al. emphasize the importance of recognizing structures' dynamic nature and lack of neutrality. This step informs the targeted strategies of TU, which go beyond achieving neutrality. Fifth, develop a range of targeted strategies that serve every group. In this step, Powell et al. underline the importance of involving group members as leaders.

Powell et al. (2009) argue that TU recognizes that problems faced by marginalized groups can also be felt higher in the social hierarchy, and TU is proactive due to its universal goal. Powell et al. uses the example of curb cuts to illustrate the benefits of TU. While curb cuts are targeted for wheelchair users, they also aid people riding bikes, pushing strollers, and using walkers. Curb cuts can benefit anyone, including dominant group members, rather than merely bringing others up to the dominant group's level. Curb cuts are a targeted strategy for the universal goal of improving movement in cities (Mate, 2021). Yet, Basas (2021) insists accessibility does not equal disability justice: accessibility is a lack of barriers, but it is not a lack of ableist behaviour, language, and prejudice. I agree. However, I argue accessibility is a necessary step towards disability justice.

Disability Justice

Disability justice is a movement that recognizes all bodies as unique and essential (Berne, 2015). Intersectionality is a primary principle of disability justice, which highlights the diversity and complexity of individuals' experiences as a result of overlapping systems of oppression (Sins Invalid & Berne, P., 2015). Engelman et al. (2022) explain that people with disabilities have a wide range of experiences with their impairments, identities, and cultures. Therefore, Engelman et al. argue policy makers should use a disability justice approach that recognizes the heterogeneous conditions of disabilities and their intersections with other factors. Furthermore, Engelman et al. carefully distinguish equality and equity regarding disability justice and accessibility: access for all does not necessarily entail equitable access because gaining access may come at a greater cost to individuals with disabilities than those without disabilities. The other core principles of disability justice include leadership by people with disabilities, recognizing the inherent worth of every individual, aligning with other social justice movements, moving sustainably, and ensuring collective liberation.

TU agrees with disability justice in the rejection of both universal and targeted polices. The notion of intersectionality emphasized by disability justice demonstrates the insufficiency of targeted policies that aim to benefit a particular target group regardless of other groups' needs. The diverse needs of individuals with disabilities, which are underlined by the disability justice movement, highlight the inadequacy of universal policies that do not account for individuals' different positioning in society. Disability agrees with TU about developing a range of targeted strategies based on groups' dynamic needs and listening to individuals with disabilities as leaders in this approach. The collaboration of disability justice with other social justice movements also supports the importance of having a broadly significant universal goal.

Discussion

As Powell et al. (2019) explain, the first step of TU is creating a universal goal. Given the importance of accessibility to equal opportunities and human rights for all individuals, I propose universal accessibility is a significant goal and TU is a suitable approach for the following four reasons:

Anyone can become impacted by disability

Any individual can become impaired by an accident or chronic condition, or experience impairment secondhand through the impairment of a friend or relative. Moreover, at some point in their lives, most people will sustain a temporary injury or illness and therefore benefit from better accessibility. Even further, Barry (2010) notes that under the social model of disability, there is no inherent distinction between disabled and able; thus, anyone has the potential to be subject to discrimination based on disability. The World Health Organization (WHO) (2020) states "[d]isability is a part of being human. Almost everyone will temporarily or permanently experience disability at some point in their life" (para. 1). While the WHO claims about 16% of the global population currently lives with significant disability, they assert this number is growing because the population is aging and the prevalence of chronic disease is increasing. Morris et al. (2018) note in 2017, 22% of Canadians (aged 15 years and older) had one or more disabilities and that proportion increased with age. With advancements in medical technology, people are living longer, which provides more opportunity for people to develop disabilities (World Health Organization, 2021). Given that anyone can become permanently or temporarily impacted by disability, universal accessibility is a widely significant goal suitable for TU. Since disability can be developed over time and experienced temporarily, targeted policies that create a binary between people with and without disability may neglect some individuals. A range of dynamic targeted strategies guided by a universal goal, as per TU, may better account for the scope of individuals' experiences with disability.

Furthermore, Morris et al. (2018) note findings from the 2017 Canadian Survey on Disability (CSD) cannot be compared to results from the 2012 CSD. This is because the 2017 CSD employed filter questions that captured a broader range of disabilities, especially less visible disabilities, such as those associated with memory, pain, mental health, and learning (Morris et al., 2018). The change in filter questions from 2012 to 2017 indicates an evolution in society's understanding of disability. Therefore, people who were considered able-bodied in the past may be identified as disabled without undergoing a biological change. In this case, people may begin to be impacted by social stigma associated with disability. Powell et al. (2019) assert that TU rejects the notion of essentialism in defining groups and recognizes identity as dynamic rather than static. The evolution of the definition and scope of disability suggests TU is a more suitable approach to improving accessibility because it avoids statically defining groups in its development of strategies (Powell et al., 2019).

Disabilities impact people in various ways

The lack of distinction between disabled and able-bodied people under the social model of disability suggests that the impact of a person's biological difference depends on social and structural factors. Some individuals may be less hindered by their differences than others with the same condition. Disabilities exist in many forms and to various degrees, which, combined with intersectionality, makes people's experiences of disability unique. Therefore, universal policies may fail to meet everyone's needs. Since the spectrum of disability is broad and difficult to precisely distinguish from able, targeted policies may overlook some individuals who could benefit from better accessibility.

To capture some of the ways in which disability impacts people differently, Morris et al. (2018) use the 2017 CSD to examine the effect of age, gender, education, and severity of disability on employment and income. Morris et al. note there was an inverse relationship between employment and disability severity; people with disabilities who live alone were more likely to be living in poverty; and people with university degrees and severe disabilities were less likely to be employed than those with high school degrees or less and no disabilities. However, while the 2017 CSD provides some insight into how disability can impact people differently based on other factors, it fails to mention factors such as race, ethnicity, and sexuality.

The WHO (2021) claims factors such as age, sex, gender identity, sexual orientation, religion, race, ethnicity, and socioeconomic status make people's experience with disability unique. Goethals et al. (2015) argue a primary weakness of traditional disability studies is the tendency to essentialize the group of people with disabilities when, in fact, this group is very diverse. People in this group are assumed to have similar views and experiences regardless of other factors, and priority is often given to disability, rather than intersectionality, when categorizing people into groups (Goethals et al., 2015). Goethals et al. explain that many disability studies compare people with and without disabilities, which generates binary data. In contrast to the traditional disabled/abled binary, Goethals et al. argue disability studies should be based on intersectionality and avoid considering disability in isolation from other factors in order to better understand the complexity of people's experiences. Goethals et al.'s rejection of the disabled/abled binary indicates the inadequacy of targeted polices for meeting the needs of people with disabilities. Targeted policies depend on target group member/non-member binaries. In contrast, intersectionality and the social model of disability work to collapse the disable/abled binary, making purely targeted approaches ineffective. TU, with a range of dynamic targeted strategies based on a universal goal, would better account for the diverse experiences of individuals with disabilities.

The range of people's experiences with disability emphasizes the importance of developing a comprehensive understanding of the accessibility challenges faced by individuals with disabilities. Recognizing the variety and value of lived experience, both disability justice and TU suggest putting affected individuals in leadership positions to create effective change. Protonentis (2021) also argues change should be directed by people who are disadvantaged by current structures. Steps four and five of TU involve examining groups' dynamic interactions with society's structures and developing a range of targeted strategies based on those interactions; Powell et al. (2019) emphasize the importance of involving group members in these steps.

Acting proactively can prevent the disproportionate harm of individuals with disabilities

Employment and Social Development Canada (2022) says the goal of the ACA is to benefit all Canadians, especially individuals with disabilities, by proactively removing and preventing barriers to make Canada barrier-free by 2040. Powell et al. (2009) claims TU promotes proactive action due to its orientation around a universal goal. Crises, such as pandemics, natural disasters, and economic crises, disproportionately harm people with disabilities and emphasize the need for the proactive removal of barriers to help prevent the disproportionate harm of people with disabilities in future crises. Furthermore, since TU strives to benefit everyone, it may reduce harm for all in future crises. The United Nations (n.d.) states that people with disabilities are more likely to be abandoned during emergency evacuations due to a lack of preparation for their distinct needs and the inaccessibility of facilities, services, and transportation systems. Public Safety Canada (2010), in their emergency preparedness guide, explains that disasters and emergencies impact people with disabilities differently. Some people with physical impairments experience limited mobility and dependency on electrical devices, which may be threatened in emergencies, while others have difficulty understanding emergency warnings and evacuation instructions due to visual, auditory, or cognitive impairments (Public Safety Canada, 2010). In order to prevent the disproportionate harm of individuals with a wide range of needs, multiple targeted strategies, informed by individuals' complex experiences, should be implemented. Universal policies neglect individuals' unique needs, and targeted policies lack a universal goal that promotes proactive measures.

The COVID-19 pandemic underlined the disproportionate harm of people with disabilities (Protonentis, 2021). A survey of Canadians with long-term disabilities, administered by Statistics Canada (2020), found that the majority of participants reported a major or moderate impact of COVID-19 on at least one financial obligation or essential need, and participants with multiple impairments were even more likely to report impacts than those with one disability. Arim et al. (2020) report about the impact of COVID-19 on families of children with disabilities in Canada: a greater percentage of parents of children with disabilities were extremely concerned for their children's academic success and mental health than parents of children without disabilities. The COVID-19 pandemic highlights the disproportionate harm inflicted on people with disabilities in crises. This harm could be mitigated for future crises by taking a proactive approach that aims to benefit everyone while acknowledging the unique needs of disadvantaged individuals. Furthermore, since anyone can acquire a disability at any point in life, proactivity removing barriers may prevent the disproportionate harm of anyone who is currently considered able-bodied.

Improving accessibility is not a zero-sum game

Regardless of the potential for anyone to become impacted by disability, even those who are not impaired may benefit directly from strategies that are targeted towards people with disabilities. Some examples include curb cuts, closed captioning, elevators, and accessible evacuation procedures. Closed captioning is targeted at individuals with hearing impairments. The deaf community created closed captioning inspired by the intertitles in silent films after they were excluded from the film industry (Gernsbacher, 2015). However, closed captioning can also benefit others outside of this community: Gernsbacher (2015) notes many studies have found that closed captioning improves comprehension, attention, and memory for people without hearing impairments. Moreover, Gernsbacher found captions can improve reading skills, vocabulary, attention to lectures, pronunciation, and literacy rates in developing countries. Elevators are another example: while installed for wheelchair users or others with mobility challenges, elevators are beneficial for people who need to move a heavy load between stories or travel a large number of floors. Finally, more accessible evacuation procedures, targeted at people with disabilities, may improve evacuation for people without disabilities. For instance, the inclusion of both visual and auditory signals in fire alarm systems may enhance evacuation for everyone.

In addition, a range of targeted strategies that promote universal accessibility may have other broad advantages. For example, better accessibility may increase the number of potential workers. Currently, there is a labour shortage in Canada: Saba (2022) explains Canada's economy lost almost 13 billion dollars over the past year as a result of the labour shortage in the manufacturing sector. Many manufacturers have had to turn down contracts, postpone or cancel capital projects, and experience delays due to a lack of workers (Saba, 2022). The labour shortage has been heightened over the pandemic, especially with the baby boomer cohort nearing retirement age (Saba, 2022). The Canadian Manufacturers and Exporters' president and CEO, Dennis Darby, suggests the manufacturing sector needs to hire more underrepresented groups, including women, people of colour, and Indigenous people (Saba, 2022). Universal accessibility achieved through TU may help mitigate the labour shortage by increasing the number of available workers – namely people with disabilities who are currently unable to work due to inaccessibility. Furthermore, better accessibility for individuals with disabilities may also benefit businesses by increasing the number of potential customers able to access their services.

Finally, universal accessibility achieved through TU may help mitigate the burden on government assistance programs. From the 2017 CSD, Morris et al. (2018) found the likelihood of living in poverty increased with the severity of disability. Statistics Canada (2020) adds that job loss during the COVID-19 pandemic has increased the vulnerability of people with disabilities and their need for government assistance. Increasing accessibility and ability to work for people with disabilities may help reduce the number of individuals with disabilities living in poverty and thus relieve their reliance on government assistance. Essentially, by implementing multiple strategies based on groups' positions relative to a universal goal, TU avoids zero-sum games.

Conclusion

Disabilities can impact anyone at any point in life and in various ways. Proactively removing barriers can prevent the harm caused by disabilities, and improving accessibility is not necessarily a zero-sum game. TU recognizes that people are situated differently in society and even the dominant group's position can be improved. With a universal goal that aims to serve everyone and targeted strategies that are developed based on groups' needs, TU works proactively, combats intergroup conflict, and avoids zero-sum games. The goal of universal accessibility should guide a TU approach to improve accessibility for everyone. The UDHR and Canadian Human Rights Act indicate the importance of equal opportunity and entitlement to human rights. Kallen (2010) asserts, "Every human being, simply by belonging to the human species, has the same, inalienable human rights" (p. 52). Universal accessibility within society is critical to the equal possession of human rights, which makes universal accessibility an important goal. To achieve this goal, governments and organizations should adopt a TU approach, using the five steps outlined by Powel et al. (2019).

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COMMODIFYING BODIES AND REGULATING WOMBS: LEGACIES OF BLACK REPRODUCTIVE COERCION IN AMERICA

Serena Habib

Utilizing an abolition feminist lens, I present an analysis of approaches to Black fertility in the United States, demonstrating a parallel between immediate racial disparities and historical oppression. Throughout American history, the fertility of the Black woman has been manipulated for the economic profit of the White upper class in a process referred to as racial capitalism (Leong, 2013). From forced reproduction during slavery to coercive sterilizations of Black women after emancipation, the Black woman's womb has been reduced to a commodity subject to American governance (Twine, 2015). Defamatory assumptions of Black motherhood and images of the Black "welfare queen" (Davis et al., 2022, p. 52) have perpetuated racial discrimination in fertility care such that it is pervasive today. With the development of reproductive technologies that primarily benefit White families, fertility assistance has become yet another manifestation of racial stratification. Through oppressive ideologies, racial capitalism, structural oppression, and direct coercion, Black women are systemically robbed of their right to choose whether to have a child.

I approach this paper from the positionality of a woman of colour in Canada who has not experienced reproductive coercion but has encountered injustices and inequities involving women's reproductive health. I will begin by providing a background of abolition feminism as the theoretical basis for this paper. I will then describe the foundational aspects of reproductive coercion which developed during slavery. Next, I will illustrate the post-emancipation legacies of coercion through population control, structural oppression, medical discrimination, and technologies to treat infertility. I will conclude by suggesting changes that may be implemented at the micro and structural levels of society to address coercive practices.

Theoretical Background

As a "politically informed practice" (Davis et al., 2022, p. 20) that stems from feminists of colour, abolition feminism recognizes the relationality of structural oppression, state violence, and gender violence, considering how racism and class bias make Black women targets of the state. This practice is oriented toward addressing the structural causes of racism and violence, exploring their institutional manifestations, and challenging racial capitalism, while also addressing immediate injustices. Abolition feminists work toward creating cultural and sustainable changes through collective action (Davis et al., 2022).

Abolition feminist theory provides an approach to reproductive politics that is cognizant of the intersectional relationship between reproductive rights, race, and class (Solinger, 2019).

This framework acknowledges the connection between gender violence, reproductive justice, and the prison industrial complex. The prison industrial complex is one that encompasses "the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social and political problems" (Davis et al., 2022, p. 54). The processes of punishment and privatization in the United States have been established by the White dominant upper class, with a racial hierarchy that targets the fertility and freedom of Black women (Ross, 2020). The fertility of Black women has been governed by the state in response to social, political, and economic forces, degrading Black bodies into commodities that are designated particular economic values (Leong, 2013; Ross, 2020). Racial capitalism is a "systemic phenomenon" (Leong, 2013, p. 2152) that drives the structural oppression of Black women, through which "public policies, institutional practices, cultural representations, and other norms work [. . .] to perpetuate racial group inequity" (Gillispie-Bell, 2021, p. 221). These racially targeted policies, practices, and representations have created inequities which have materialized in fertility governance and treatment.

Slave Breeding: Foundations of Black Reproductive Coercion

Following the 1808 international slave trade prohibition, American slave-holders developed breeding schemes (Solinger, 2019, p. 8) to increase their labour force and capital investment. To maximize slave reproduction, slave-holders raped their Black female slaves to impregnate them.. Enslaved people were required to have numerous sexual partners to increase slave births and were disallowed from living in monogamy (Solinger, 2019). Bearing children increased a slave's economic value, decreasing her likelihood of being sold; barren female slaves were punished by abuse or death (Roberts, 1997). Thus, Black women's bodies were viewed as machines for slave production, and slaves had no legal claim to their children, who were recorded in the slaveholder's business ledger as products. Moreover, enslaved mothers were deprived of the opportunity to nurture their children. Mandated to toil in the fields soon after giving birth, mothers would carry their children while they worked or leave them behind. A child's status of enslavement depended on that of their mother; a mulatto, or mixed race child, was born a slave (Roberts, 1997). Slave masters had economic incentive to govern the reproductive lives of Black women and their children (Solinger, 2019). The practice of breeding schemes created a precedent for the White governance of Black reproduction. As stated by Dorothy Roberts (1997) in Killing the Black Body: Race, Reproduction, and the Meaning of Liberty, "the brutal domination of slave women's procreation laid the foundation for centuries of reproductive regulation that continues today" (p. 27).

Legacies of Coercion

To preface the following section, it is imperative to distinguish access to birth control, which provides individuals control over their childbearing, from forced birth control, which undermines a woman's right to choose whether she wants to have a child (Petchesky, 1990; Roberts, 1997). In my portrayal of imposed birth control below, I neither neglect nor oppose the contraceptive practices and voluntary sterilizations of Black women (Roberts, 1997; Schoen, 2005), but rather advocate for the autonomy and agency of Black women over their reproductive lives.

Population Control

The practice of sterilization is rooted in the criminal justice system, originating from the castration of Black men as a punishment for crime (Roberts, 1997). In 1942, the US Supreme Court acknowledged procreation as "one of the basic civil rights" (Skinner v. Oklahoma, 1942), rendering it illegal for the state to require the sterilization of criminals convicted of certain crimes. This implies that birthing children was a crime committed by Black women who were denied this right at various junctures throughout the 20th century.

To begin, with the rise of the American eugenics movement in the early 1900s, eugenicists believed the unfit should be prevented from reproduction to ensure a stronger American generation (Weisbord, 1975). This categorization was inherently linked to race, with Applied Eugenics co-authors declaring that the "Negro race is germinally lacking in the higher developments of intelligence" (Weisbord, 1975, p. 33). In North Carolina, 5,000 of the 8,000 people who were sterilized for being "mentally deficient" were Black (Davis, 1981). Many sterilizations in the latter half of the century would also be attributed to Black women being inadequately intelligent to practice birth control (Roberts, 1997). Furthermore, manipulating the reproductive abilities of poor Black women was positioned as the solution to urban poverty (Ross, 2020). Black women were labeled by the state as "reproductively unnatural" (Solinger, 2019, p. 154), alleged to be lacking the maternal desire to raise children and of intentionally having children to receive welfare. According to the state, a Black child was "worthless" (Solinger, 2019, p. 154) to society – a future criminal – while their mother, a "welfare queen" (Davis et al., 2022, p. 52), would misuse taxpayer's money through welfare funds. In accordance with abolition theory, assumptions surrounding criminality and class allowed for violence against Black female bodies. During World War II, local welfare agencies provided benefits to White women so they could stay home and raise their children, while Black women were denied support and forced to work (Solinger, 2019). This was comparable to the limitations to mothering faced by those in bondage.

With the emergence of the birth control pill, the desire to limit Black reproduction was also linked to a fear of "race suicide" (Weisbord, 1975, p. 53). Eugenicists, supported by President Theodore Roosevelt, feared the White population would become outnumbered by the Black population. Margaret Sanger, who spearheaded the birth control movement, utilized eugenicist goals to her advantage (Roberts, 1997). In a letter to a colleague calling for Black Ministers to propagandize birth control to Black communities, Sanger wrote, "we do not want word to get out that we want to exterminate the Negro population" (Gordon, 2002, p. 235). This was implemented in 1939, when the Birth Control Federation of America established the Negro Project, declaring, "the increase among Negroes, even more than among Whites, is from that portion of the population least intelligent and fit, and least able to rear children properly" (Gordon, 2002, p. 235). This deemed the Black population inferior and communicated they were unwanted. The state justified this project by displaying it as a solution to Southern poverty (Gordon, 2002). Family planning initiatives encouraged Black women to use contraceptives and undergo sterilization whilst denying equivalent services to White women who desired them (Ross, 2020). Black women on welfare were forced to accept sterilization if they wanted to continue receiving benefits, and others were sterilized without knowledge or consent (Ross, 2020). As stated by Davis (1981), "what was demanded as a 'right' for the privileged came to be interpreted as a 'duty' for the poor" (p. 113). White women had the right to choose if they wanted children; Black women's choices were made for them.

Minimizing Black fertility remained a political goal in future decades. When President Nixon expanded family planning policies in 1969, he presented statistics of increases in Black American children who were soon to become teenagers and "create social turbulence" (Ross, 2020, p. 60). During the 1970s, sterilization was the fastest growing form of birth control in the United States and were incentivized by government payments to doctors who performed them. 200,000 women were sterilized in 1970, and cases increased to 700,000 in 1980 often without medical reason or informed consent. The particular contraceptive, Depo-Provera, was itself harmful, as an experimental drug that was later found to cause cancer in animals (Davis, 1981; Roberts, 1997). Teaching hospitals performed unnecessary hysterectomies on poor Black women as practice for medical residents (Roberts, 1997). In Mississippi, involuntary sterilizations of Black women were so widespread that the practice gained the name "Mississippi Appendectomy" (Roberts, 2000, p. 93). In 1973, two sisters in Montgomery, Alabama, were sterilized at ages 12 and 14 after their illiterate mother was told to provide consent on a document she presumed was for their routine birth control injections. In 1991, legislation was introduced to provide $500 to women who agreed to receive Norplant, an injection that ensured five years of protection from pregnancy. The New Republic described Norplant as the "only practical option" to treating inner city poverty (Roberts, 1997, p. 113), illustrating that restricting Black fertility remained the response to dire economic conditions for which Black people were deemed responsible (Kuumba, 1993).

Sterilization practice continues in the U.S., particularly on Black prisoners (Ross, 2020). Between 1997 and 2010, over 100 women were coercively sterilized in Californian penitentiaries. In 2017, incarcerated individuals in Tennessee were offered lower sentences in exchange for receiving permanent or long lasting contraception (Kathawa & Arora, 2020). Ross (2020) argues that population control ideologies remain implicit in carceral practices, encouraging sterilization and contraceptive abuse in people of colour, who comprise the majority of the incarcerated population. Like slaves, incarcerated women are raped by prison guards and are pressured to seek abortions because their children provide no economic benefit to the White man (Ross, 2020).

Structural Oppression

Birth control policies have presented fertility and Black births births as the cause of poverty and racial inequality, assuming that poverty is a consequence of reprobate behaviour (Ross, 2020). These assumptions are inextricably linked to the carceral system, as demonstrated by former Secretary of Education William Bennett in 2005, who stated, “you could abort every Black baby in this country, and your crime rate would go down” (Ross, 2020, p. 57). In actuality, the fertility of Black women declined by one-third after emancipation due to poor nutrition (Roberts, 1997). In the 1940s, half of the Black population was undernourished, with an infant mortality rate of 60% (Gordon, 2002). Their poor health, which was environmental, was positioned as a genetic flaw by eugenicists (Gordon, 2002).

These distorted images of the Black mother and her child obscure the reality of Black poverty that stems from a history of social and economic oppression that serves to protect the hegemony of the White class. While Black mothers are disproportionately dependent on welfare (Roberts, 1997), the archetype of the Black “welfare queen” (Davis et al., 2022, p. 52) paints this grim reality as a choice instead of an imposed destiny. Black women are five times more likely to live in poverty and three times more likely to be unemployed than White women. Correspondingly, 50% of Black children in America live in poverty (Roberts, 1997).

As explained by Gillispie-Bell (2021) in her examination of racial health disparities in the United States, structural racism has generationally been “perpetuated through racial residential segregation, economic suppression, and health care inequality” (p. 220). After segregation ended, anti-Black racism prevented many Black people in rural areas from owning homes, while those in cities made low wages and suffered job insecurity (Franklin & Wilson, 2020). Between 1934 and 1938, 98% of home loans were given to White applicants. In a process called “redlining” (Sutton et al., 2021), structural racism in the housing system forced Black people into specific neighbourhoods, leading to increased racial disparity in access to schools, services, and community resources (Baker & O’Connell, 2022; Sutton et al., 2021). Currently, White families have a median wealth that is 41 times higher than that of Black families (Gillispie-Bell, 2021). Black individuals are more likely to face discrimination in all areas of the labour market (Baker & O’Connell, 2022). Baker and O’Connell’s (2022) study on poverty among single mother and married parent households challenges the idea of the Black single mother as the cause for racial inequality. Married Black couples showed no economic advantage compared to their single-parent counterparts due to the discrimination faced by Black people in the labour market and the increased likelihood of Black spouses becoming incarcerated. Baker and O’Connell (2022) argue that the legacy of slavery is reproduced through racial inequality, discrimination, and profiling in the criminal legal system. Lack of access to employment and economic stability increases negative health outcomes; health, economic stability, and educational access show positive correlations to fertility (Gillipsie-Bell, 2011; Tamura et al., 2016). Despite these blatant correlations, Black populations are faulted for their poverty and then given the “duty” (Davis, 1981, p. 113) of absolving economic disparities by limiting their population.

Medical Discrimination

Approaches to fertility continue to discriminate against Black women in the medical system, illustrating the structural racism that underpins healthcare access and physician attitudes. Roberts (1997) explicates an example of medical abuse by American medical authorities through the faulty conflation of the sickle-cell trait, carried by one in 10 Black Americans, with sickle-cell anemia, which is found in 1 in 500,000 Black Americans. With over 250 screening programs that tested Black Americans, those with the trait were often misguided to believe they had the disease and advised not to have children (Roberts, 1997). Diagnoses for endometriosis have also been misrepresented as doctors view it as a "white, career woman's disease" (Roberts, 1997, p. 271). In 1976, a medical practice misdiagnosed 20% of Black patients with pelvic inflammatory disease, which stems from sexually transmitted infections (McCormack, 1994) when they actually had endometriosis (Roberts, 1997). This reflects assumptions described in the Negro Project, which states that Blacks breed "carelessly" (Gordon, 2002, p. 235). In 2016, many medical students and residents were found to hold false conceptions of racial biological differences, such as the belief that Black people feel less pain. Residents provided inadequate treatment recommendations based on these conceptions, dehumanizing their patients by diminishing their pain and suffering (Hoffman et al., 2016).

Within healthcare interactions, the lack of racial diversity among physicians decreases the quality of care provided to Black patients (Gillispie-Bell, 2021). Additionally, algorithms used by health care systems and insurance providers often categorize Black patients as low risk when their illnesses are more severe than those of their White counterparts. This results in treatment delays, inadequate resource provisions, and premature patient discharges (Gillispie-Bell, 2021). In fertility care specifically, interviews conducted with 50 Black women of varying socioeconomic backgrounds illustrated that no status level provided an advantage in medical settings (Ceballo et al., 2015). 26% of participants described discriminatory encounters with medical professionals, including assumptions about sexual promiscuity and the inability to support a child. Highly educated Black women with professional careers felt "a loss of control and an absence of agency when interacting with doctors" (Ceballo et al., 2015, p. 506).

Healthcare and legal systems continue to devalue Black women and punish them for systemic failures. This is apparent in Bhattacharjee's (2001) account of a teenage mother who did not receive medical treatment for her newborn due to processing delays and mistakes by the hospital and insurance provider. The woman was convicted of criminally negligent homicide after the death of her baby and presumed to be responsible for the circumstances imposed upon her and the institutional devaluation of her child's life.

Assisted Reproductive Technologies

Analogous to practices that once prevented fertility, technologies that assist with fertility, such as in vitro fertilization (IVF) and surrogacy, manifest in relation to race (Roberts, 1997). Medical responses to infertility correspond to notions of what makes a "good mother" (Kathawa & Arora, 2022, p. 327), which often excludes welfare recipients, who are predominantly Black (Roberts, 1997). Fertility clinics generally steer Black people way from infertility treatment (Roberts, 1997). The historical treatment of Black women also disincentivizes them from seeking support for infertility due to institutional mistrust and negative perceptions of the healthcare system (Gillispie-Bell, 2021; Roberts, 1997).

IVF involves collecting mature eggs from a mother's ovaries, fertilizing them with sperm in a lab, and then transferring the fertilized eggs to the uterus (In Vitro Fertilization (IVF), 2021). With an average cost of $25,000 (Gurevich, 2022), IVF is financially inaccessible to those of lower socioeconomic classes (Roberts, 1997). Although the highest rates of infertility in the United States are found in poor, Black women, IVF serves the opposite demographic, sustaining the "panic over White infertility" (Roberts, 1997, p. 286) while dismissing Black infertility. White families are the centre of advertisements for IVF, and blunders that have caused the insemination of White women with Black sperm are portrayed as tragedies, sustaining the inferiority ascribed to mulatto children.

The practice of surrogacy creates significant concerns for increased racial stratification and a "surrogate class" of marginalized poor women (Twine, 2015, p. 18). Gestational surrogacy allows a hired surrogate to be implanted with an embryo and to carry it until delivery, while traditional surrogacy utilizes the surrogate's eggs. White couples will typically employ White women as traditional surrogates and Black women as gestational surrogates to ensure the production of a White child (Bridges, 2014). Surrogacy imposes a risk of poor women commodifying and renting their wombs for reparations from White middle class couples who may dictate their everyday behaviours and actions (Bridges, 2014; Roberts, 1997). In court cases where a surrogate wants to keep her child, White traditional surrogates have been awarded the rights to their children while Black gestational surrogates have been denied these rights (Bridges, 2014). The practice of Black women producing children for White families over whom the women have no legal claim appears to continue the legacy of slave breeding, this time utilizing Black women to produce White children as it benefits the White population.

Conclusion: Addressing Coercive Legacies

Given the pressing methods of medical discrimination and imposed infertility that are entrenched in structural racism, the abolition feminist framework calls for both immediate and systemic action (Davis et al., 2022). Since current inequities are rooted in societal structures, I turn to Flynn et al.'s (2017) recommendations in The Hidden Rules of Race: Barriers to an Inclusive Economy, which describes the importance of targeted policies to address the current paucities in economic rights for Black Americans. Correspondingly, to prevent further perpetuating legacies of coercion, I suggest the revision of all institutional policies, medical education, and hiring practices. Public education on the history of structural oppression and reproductive coercion should also be provided (Sutton et al., 2021). Furthermore, it is imperative that diversity in the healthcare system is intentionally increased (Ross, 2020) and that medical institutions are audited to ensure and enforce just practices. These regulations and changes must be guided by those who experience racial discrimination and not the White dominant upper class. As an individual who is removed from the lived experience of anti-Black racism, I cannot presume to know how to ameliorate these inequities; however, I can be an advocate and an ally who supports suggestions from Black communities and who works to amplify Black voices.

For change to truly occur, the current system, which is grounded in racism and White dominance, needs to be abolished. The prison industrial complex and its effects on wealth and opportunity currently inhibit immediate changes towards meaningful transformation. Black communities must be at the forefront of a systemic restructure, having the opportunity to collectively organize and envision a change that has seemed unimaginable since the advent of slavery (Davis et al., 2022). Collectiveness is integral in conceptualizing a change of such magnitude (Davis et al., 2022) and ensuring that the array of oppressions facing intersectional identities are addressed. It is only through the dissolution of the current societal structure, in which racism is deeply embedded, and the emergence of a new society that dismantles White hegemony and views every body as equally human and worthy, that Black women will have the genuine right and respect to choose the trajectories of their bodies and their wombs.

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BEYOND PRICE: RETHINKING ANTITRUST IN THE DIGITAL ERA

A Critical Examination of Consumer Privacy in Data-Driven Mergers

Nimrat Kalirai

1. *Introduction*

In recent years, the growing importance of data in the business landscape has prompted concerns about the adequacy of current United States (US) antitrust laws. This concern is particularly pertinent when examining mergers and acquisitions involving substantial data assets. Antitrust laws, originally formulated to nurture fair competition and curb monopolistic practices, now grapple with new challenges in dynamic digital industries (Vassallo). High-profile cases like the mergers of Google-DoubleClick, Facebook-WhatsApp, and Microsoft-LinkedIn underscore the critical role of acquiring and integrating data assets to gain a competitive edge in digital services (Geoffrey 1327). As companies increasingly pursue data-driven mergers, where the main goal is combining or exchanging data assets, questions arise regarding the sufficiency of current antitrust regulations. Specifically, there is concern about how well these regulations oversee consumer privacy during merger evaluations (Geoffrey 1329).

The foundation of US antitrust laws lie in the Consumer Welfare Standard, a framework based on economic principles advocated by the Chicago School of Economics in the 1970s (Stucke and Ezrachi). This framework, adopted by the Federal Trade Commission (FTC), serves as the guiding principle in evaluating the impact of mergers within their respective markets (Cseres 123). Due to narrowly defined, economically driven criteria, the Consumer Welfare Standard prioritizes the aspects of price efficiency and output maximization through the facilitation of low prices (123). The FTC, as the federal agency entrusted with antitrust regulation in mergers, adheres to this framework. Its mandate revolves around "protecting consumers and competition by preventing anticompetitive, deceptive, and unfair business practices through the application of US antitrust laws" (Posner 54).

This paper posits that when mergers involve products offered to consumers without a monetary cost, relying on data collection as the revenue model, the conventional economic focus embraced by antitrust laws proves inadequate in addressing potential harms to consumers. If safeguarding consumers and competition is indeed the objective of antitrust laws in merger assessments, this paper argues the necessity of a broader approach that goes beyond economic considerations. This paper investigates the challenges in data-centric mergers within the framework of current US antitrust laws, focusing on the Facebook-WhatsApp merger. This paper examines how this merger has engendered harm to both competition and consumers through the lens of consumer privacy—which encompasses the collection, management, and utilization of sensitive personal information (Dengler 503). Section two presents a background of the merger, critically assesses the FTC's pre-merger evaluations, and identifies two key shortcomings in recognizing potential harms to competition: (1) A narrow definition of Facebook's market that failing d to include all the markets in which Facebook operated. (2) A misunderstanding of platform substitutability, which refers to how easily consumers could switch between different platforms or services offering similar functionalities. The examination then extends to three post-merger theories of harm concerning product quality, consumer choice, and innovation. In section three, a proposed framework for integrating consumer privacy into merger assessments is outlined, introducing three approaches: post-merger antitrust enforcement, the provision of opt-out options for consumers facing privacy changes, and research on data usage and competitive advantages. Through this analysis, this paper highlights deficiencies within current antitrust merger practices in relation to consumer privacy, and advocates for a comprehensive approach that addresses the evolving dynamics of data-driven markets.

2. *Facebook-Whatsapp Merger Case Study*

The 2014 Facebook-WhatsApp merger, initially sanctioned by the FTC, raised no immediate red flags (Esayas). Both platforms provided communication services, yet their consumer privacy approaches diverged: Facebook's Messenger collected user data for free access, while WhatsApp, operating on a nominal fee, refrained from extensive data collection and operated on end-to-end encryption. However, in 2016, apprehensions surfaced when Facebook altered WhatsApp's privacy policy, incorporating a collection of user information, such as account details, phone numbers, usage patterns, interactions, and IP addresses (Polyak 131). This policy shift triggered concerns about unfair competition. In response, despite the initial approval, the FTC reversed its stance in 2021, advocating for the dissolution of the tech giant due to anticompetitive behavior (Esayas). This unexpected turn of events prompted a crucial reevaluation of the initial approval process, exposing potential gaps in US antitrust laws concerning consumer privacy. This leads to the question: How did a merger, eventually deemed anticompetitive, manage to initially evade scrutiny within the U.S. regulatory framework?

FTC's Merger Assessment Shortcomings

The FTC's evaluation of the Facebook-WhatsApp merger lacked foresight in addressing emerging consumer privacy concerns, especially after substantial changes were made to WhatsApp's privacy policy. There were two critical deficiencies in the FTC's analysis, stemming from oversights in consumer privacy post-merger: a narrow market definition of Facebook and a misjudgment of platform substitut-ability.

Firstly, the FTC's heavy reliance on economic tools, specifically the Small but Significant and Non-Transitory

Increase in Price (SSNIP) and Herfindahl-Hirschman Index (HHI), exhibited a narrow focus (FTC). The analysis was primarily centered on the digital advertising market, as these economic tools could only be applied where revenue was generated. Facebook's Messenger being free to users and, therefore, not contributing to revenue in that market, was not included in this analysis (Carlson). This concentration on the digital advertising market, where Facebook held a 10% share, led to a failure in recognizing WhatsApp's unique position as a non-participant in digital advertising (Carlson). The oversight, which omitted consideration of the dynamics of multi-sided networks, hindered the acknowledgment of how Facebook's dominance in digital advertising could spill over into the messaging market. Facebook's dominance in digital advertising meant it had significant influence over advertisers and their spending (Carlson). This influence extended beyond just advertising itself; as it could also affect other areas of Facebook's operations, such as its messaging platforms like WhatsApp. For example, Facebook could leverage its dominance in advertising to cross-promote its messaging services, attract more users, or integrate advertising features into messaging apps. The conclusion that the merger wouldn't lead to a dominant market share overlooked Facebook's ability to gain significant market power by accessing WhatsApp's extensive user data through a post-privacy policy update.

Secondly, the FTC categorized Facebook and WhatsApp as non-competitors due to an 80-90 percent user base overlap (Kimmel 48). This oversimplified perspective neglects the intricate dynamics of "multihoming," where users engage with multiple platforms within the same market but each for distinct purposes (Belleflamme 21). In this context, users might have chosen each platform based on differing consumer privacy policies (Belleflame 32). The failure to recognize how this user overlap could be utilized as a competitive advantage and the potential of combined user data for targeted advertising led the FTC to overlook Facebook's strategic advantage in the digital advertising market.

Consequently, the FTC's analysis failed to discern Facebook's strategic leveraging of extensive user data collected via WhatsApp in the digital advertising market. The narrow definition of the relevant market and the misjudgment of platform substitutability hindered a comprehensive understanding of the merger's impact on consumer privacy. These identified shortcomings collectively underscore a critical issue: the inadequate scrutiny of Facebook's ability to alter WhatsApp's privacy policy post-merger, enabling the company to leverage user base overlap for strategic advantages, such as providing more targeted ads and consolidating its position in the digital advertising market (Sokol 1129).

Three Theories of Harm Emerging Post-Merger: The FTC asserts that US antitrust laws aim to thwart mergers that might substantially reduce competition, ultimately harming consumers (FTC). Competitive markets are characterized by their pursuit of lower prices, higher-quality products, increased choices, and enhanced innovation (Caldwell 247). This paper will delineate three theories of harm in the Facebook-WhatsApp merger, demonstrating a decline in competition and harm to consumers based on the FTC's criteria: diminished quality, reduced consumer choice, and suppressed innovation (FTC).

Reduction in Product Quality

In the realm of US competition, according to the Organization for Economic Cooperation and Development, the quality of products and services is a crucial factor that goes beyond mere pricing (OECD). This emphasis on delivering high-quality offerings is evident in superior product features and design, defining a business's competitive edge (OECD). The Facebook-WhatsApp merger, however, can be viewed as a reduction in product quality. Before the merger, WhatsApp set itself apart from Facebook Messenger by prioritizing consumer privacy, reflected in a robust policy refraining from extensive user data collection (Esayas). This commitment to privacy was integral to WhatsApp's initial success, evident in its annual subscription fee of $0.99 that users willingly paid (Esayas). The post-merger altered privacy policy, allowing data sharing with the Facebook family of companies, thus signified a noticeable decline in quality of privacy policies. This shift to a "less-privacy protective structure" raises concerns about consumer welfare, particularly for individuals who highly value privacy (Bird 17).

Considering WhatsApp's strategic positioning reveals the merger's impact on competitive constraints, especially regarding product quality. As a late entrant into the messaging platforms market, WhatsApp attracted consumers from Facebook by offering enhanced data privacy at a nominal fee (Bagnoli 15). This change in stance is significant, considering that Facebook Messenger offered a broader range of features and functionality compared to WhatsApp including features such as video calling, games, and extensive customization options. This further emphasized the success of WhatsApp's initial approach (Karapanos 893). This privacy-focused approach was instrumental, given that 80-90 percent of WhatsApp users were also users of Facebook's social network (Kimmel 48). The altered WhatsApp privacy policy, allowing increased data collection, indicates a departure from the initial commitment to privacy, potentially lifting competitive constraints on WhatsApp. Users faced a messaging service with diminished quality, as the altered privacy policy compromises the unique feature that initially attracted users from Facebook's social network.

Reduction in Consumer Choice

In a competitive market, consumer choice encompasses the array of products and services available to consumers, reflecting the options they have when deciding what to purchase or use (Foxall). The Facebook-WhatsApp merger can be interpreted as a reduction in consumer choice. Initially, consumers had a clear choice between two platforms: WhatsApp, which offered strong data protection for a small annual fee, and Facebook Messenger, which provided less privacy protection but more features at no cost. This coexistence enabled users to select their preferred privacy level or utilize both platforms for varying purposes. However, the 2016 alteration of WhatsApp's privacy policy post-merger eliminated this choice. The merger shifted the landscape to two platforms with a singular model—a free service with diminished privacy protection (Polyak 159). Consequently, users valuing privacy and willing to pay for it experienced reduced welfare due to the removal of their preferred choice. The merger restricted options and compromised users' ability to choose a privacy model aligned with their preferences.

Critics argue that dissatisfied WhatsApp users could turn to alternative messaging platforms like Threema and Telegram, which maintained similar privacy features before the merger (Kalyani). However, these alternatives, while offering enhanced privacy, had much smaller user bases (Esayas). Despite their privacy features, the influence of network effects cannot be ignored. Users tend to prefer platforms where they can easily connect with their existing family and friends, which creates a network effect that boosts a platform's value as more users join (Stobierski). Examining the significance of user bases highlights a lack of substantial competition. Meaningful competition necessitates an adequate number of competitors, each with a significant market share, exerting competitive pressure (Pike 11). WhatsApp's extensive user base, surpassing one billion monthly active users at the time of the privacy policy change, suggests a deficiency in such competition (Carlson), especially when compared to Threema's approximately 400,000 active users and Telegram's 50 million active users (Esayas). Despite the privacy changes, WhatsApp did not experience a noticeable decline in users (Carlson). This could suggest that while users may have turned to alternative platforms for some purposes, these alternatives were not effective in curbing WhatsApp's post-merger privacy practices or serving as viable replacements.

Suppression of Innovation

In the realm of US competition, a maverick is a company that plays a disruptive role in the market, introducing significant changes, innovation, or challenges to established norms within a specific industry (Baker 135). Disruptors have the ability to shake up traditional business models, create new market dynamics, and potentially redefine the competitive landscape (Bromfield). Facebook's acquisition of WhatsApp can be interpreted as the suppression of a maverick firm and therefore a suppression of innovation.

In 2009, when WhatsApp was launched, Facebook had already surpassed Myspace as the dominant social networking site with over 360 million users (Robards 193). Globally, innovation centered around 'free' business models heavily reliant on the collection and analysis of substantial personal data, financed through targeted advertising (Bromell 60). Facebook became a success story by championing such models and solidifying its market position (Creser 289). In contrast, WhatsApp positioned itself as a distinct alternative to Facebook's approach to user privacy and data handling. Offering users an ad-free experience with superior privacy protection, WhatsApp operated on a nominal yearly subscription fee (Esayas). This strategic positioning marked WhatsApp as a maverick in the industry, challenging the prevailing model of data harvesting for targeted advertising. The merger between Facebook and WhatsApp raises concerns about the loss of a disruptive force that could bring new benefits to consumers. WhatsApp, known for its innovative strategies like a modest subscription fee, limited data collection, and a commitment to avoiding targeted advertisements, directly challenged conventional data-centric business models. The merger might be perceived as an attempt to suppress innovation by absorbing a company that prioritized privacy-focused practices.

3. *Integrating Consumer Privacy in Antitrust Merger Assessments*

Companies including Facebook and WhatsApp argue that data collection enhances their services by providing insights into consumer behavior (Baser). The concern, however, is not merely about data collection but about how merging firms, each with distinct approaches to consumer privacy, alter their post-merger practices. This paper demonstrates how the FTC's oversight of consumer privacy during merger assessments has resulted in harm to both consumers and competition in the Facebook-WhatsApp merger, contrary to its prevention mission. Given these identified harms, a key question emerges: What measures can be taken to ensure the consideration of consumer privacy in mergers?

In response to the Facebook-WhatsApp merger case, this paper suggests three approaches to address this issue: (1) Utilizing post-merger antitrust enforcement, (2) Ensuring companies offer opt-out options to consumers in privacy changes, and (3) Researching and understanding data usage, collection practices, and the competitive advantages it provides to develop tools that can effectively capture potential harms arising in merger assessments. Regarding the first approach, in the domain of US antitrust, the FTC exercises jurisdiction for both ex ante and ex post merger reviews (FTC).. This dual approach allows the FTC to proactively identify potential anticompetitive issues and address concerns post-merger, ensuring a comprehensive oversight of the competitive landscape (FTC). However, despite this framework, historical data reveals the limited number of ex post merger reviews since 2006, averaging approximately three cases per year (Kwoka 1307). Enforcement actions have typically taken place shortly after the completion of mergers, suggesting that investigations often conclude post-merger consummation (13070).

The identified limitations in the FTC's merger assessment underscore the speculative nature of such evaluations. Recognizing the challenges in predicting post-merger developments, it becomes imperative to empower the FTC to address alterations that arise after merger approval. Notably, this proactive measure was not taken when Facebook changed WhatsApp's privacy policy in 2016, highlighting a gap in enforcement scrutiny (Esayas). This paper proposes that the FTC should utilize its ex-post merger jurisdiction by requiring companies to notify the agency of any changes related to consumer privacy. This proactive strategy advocates for consistent monitoring of privacy policy modifications to evaluate potential anticompetitive actions.

For the second approach, the Facebook-Whatsapp merger exemplifies the need for clear regulatory guidance within US antitrust laws regarding how companies, especially in digital markets, can impose and introduce privacy policy changes post-merger. When WhatsApp's consumers were presented with a notice upon opening the application. This notice not only outlined the shift toward collecting user data but also provided users with the sole option to "Accept", accompanied by a deadline for acceptance—a mandatory condition for continued WhatsApp usage (Abrar). Consequently, consumers had no choice but to accept, regardless of their preferences regarding data collection.

In the context of protecting consumers, particularly in digital markets, clear guidelines need to be established specifically addressing options for users to opt out of such post-merger privacy changes. This recognition is based on the understanding that consumers initially joined these platforms under different privacy standards. As emphasized earlier, although alternative platforms may exist, users are inclined to gravitate toward platforms where they can connect with existing friends and family (Stobierski). This creates a network effect that amplifies the value of a particular platform (Stobierski). This underscores the role of US antitrust regulators in ensuring consumer protection, particularly when consumers may not always be able to choose products aligning with their privacy preferences. Therefore, regulatory guidance that allows optout options for users in cases of substantial changes to privacy policies could enable the preservation of competition and the safeguarding of consumer interests during digital mergers.

To complement the previously outlined approaches, the third approach advocates for a thorough exploration of how data is utilized, collected, and the competitive advantage it confers within the realm of digital mergers. Digital platforms heavily depend on user data for revenue generation and competitive positioning (Geoffrey 1336). Thus, it is crucial for US antitrust regulators to delve into the specifics of data practices employed by merging entities. By understanding how companies use data in mergers, a nuanced toolkit and metrics can be crafted to evaluate potential anticompetitive behavior. This may involve scrutinizing the extent and depth of data collection, the level of user consent and understanding, and the repercussions of data sharing on competition. Metrics could be designed to gauge the concentration of data in a market, ensuring that the dominance of a merged entity does not impede competition.

Additionally, research can illuminate the competitive advantage derived from data assets. Understanding how data-driven advantages contribute to market dominance enables the identification of potential risks to competition. For example, if a merged entity gains a substantial competitive edge by leveraging consumer data, regulatory intervention may be necessary to prevent monopolistic practices (Witt 287). This research-driven approach offers a more comprehensive understanding of the dynamics in digital mergers, extending beyond the economic considerations highlighted by the Consumer Welfare Standard. It champions the development of tools aligned with the complexities of data-driven markets, ensuring that antitrust regulators are equipped to safeguard consumer interests and promote fair competition in an increasingly data-centric business environment.

Concerns about consumer privacy within the realm of antitrust extend far beyond individual mergers, penetrating the very core of the US regulatory framework that navigates the intricate landscape of data-driven markets. The Facebook-WhatsApp merger is but one glaring example, illuminating the necessity for a dynamic adaptation of antitrust laws amid the ceaseless evolution of the digital terrain. In the relentless transformation of technology and commerce, the agility of antitrust regulation is paramount in confronting the distinct challenges posed by mergers rooted in data-driven strategies. Departing from a narrow fixation on price is imperative to encompass the multifaceted harms that reverberate across both competition and consumers — including but not limited to concerns about consumer privacy. In this paradigm shift, only through such comprehensive measures can antitrust regulations assert their effectiveness and fulfill their mandate in the digital age.

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OF WOMEN, BY WOMEN, FOR WOMEN: THE GULABI GANG AND THE POTENTIAL FOR VIGILANTE JUSTICE AS AN EFFECTIVE ALTERNATIVE TO LEGAL FRAMEWORKS FOR WOMEN'S RIGHTS

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Despite its notional commitment to women's rights, as expressed through its signature of the United Nations Declaration of Human Rights (UDHR) and its specific ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), India's social climate does not embody these documented promises (Deva, 2016). Rather, the perception of female inferiority pervades cultural norms and institutional practices, emanating from a patriarchal history, which has normalized gender-based oppression in everyday life (Rayala, 2021). India's 2019-2021 National Family Health Survey (NFHS-5) illustrates this reality, stating that 29% of adult women (aged 18-49) reported experiencing physical violence since the age of 15 (International Institute for Population Sciences, 2021) — a statistic that does not account for barriers to admitting to victimization. Even with protective legislation, frequent practices such as domestic violence, child marriages, and dowry demands endanger the livelihoods of many Indian women (Thakkar, 2018).

The dissonance between India's declared dedication to gender parity and its tangible enforcement of it indicates the failure of its existing legal systems to actualize women's rights; moreover, it demonstrates a demand for on-the-ground protections for Indian women, which has been instead addressed by independent community actors, including a vigilante group known as the Gulabi Gang. By analyzing the role of the Gulabi Gang's activism in enacting women's rights despite the structural constraints of India's institutionalized women's rights frameworks, this paper elucidates the efficacy of vigilante justice as an alternative mechanism to conventional legal instruments for the pursuit of access to human rights.

Contextualizing the state of women's rights in India requires the integration of an economic lens, namely with respect to India's caste system. Based in Hindu religious tradition, the caste system classifies citizens into one of four castes upon birth using "blood purity" as a mechanism for differentiation. The caste system creates social stratification and causes inequitable distribution of economic and personal rights (Mayell, 2003). Although constitutionally prohibited for almost 75 years, the implications of the caste system persist due to its religious roots, particularly through systemic exclusion of Dalits (Mayell, 2003). Otherwise known as the "untouchables," Dalits were historically excluded from the caste system and therefore occupied the lowest stratum

(Mayell, 2003); today, Dalit families are overrepresented in communities of “multidimensional poverty” (United Nations Development Programme, 2021). Prior to the emergence of the Gulabi Gang, feminist movements in India catered to educated, middle-class women, thereby excluding Dalit women (Thakkar, 2018). However, their simultaneous economic and gender-based exclusion generates a unique and neglected plane of vulnerability, which is evidenced by the fact that 90% of rape victims in India are Dalit women (Walters, 2015).

This intersectional analysis emphasizes the dehumanizing conditions that lower caste women experience, which were the impetus for the Gulabi Gang. Formed in 2006 by Sampat Pal Devi, the Gulabi Gang is an Indian feminist vigilante group dedicated to “protect[ing] the powerless from abuse… fight[ing] corruption to ensure basic rights of the poor in rural areas and discourag[ing] traditions like child-marriages” (Gulabi Gang - Women Empowerment India, n.d.). The group operates from the rural Banda district in the northeastern state, Uttar Pradesh. The state’s per capita income rests under India’s national average, and more than 20% of the state’s residents are lower caste, which situates the Gulabi Gang in the economic constraints of an officially recognized “backward region” (Ministry of Panchayati Raj, 2009; Richards, 2016).

To illustrate the distinct capacities of the Gulabi Gang as an agent of justice, we must first ground the concept of vigilantism. At its core, vigilantism is the extralegal execution of justice in response to an offense. Beyond this, political science scholars disagree on whether to include violence, threats and collective action in its definition (Bateson, 2021). While the Gulabi Gang also engages in lawful interventions, such as creating a school in Banda and helping illiterate women apply for government assistance, their vigilante actions include forceful occupations like gherao, in which members completely encircle a government building to detain officials until they institute the Gulabi Gang’s demands (White & Rastogi, 2009). However, the Gulabi Gang’s most infamous practice is their brutalization of domestic abusers using lathis, a weapon readily crafted from bamboo; the Gulabi Gang only uses this retributive punishment after its members have reported this transgression to Banda police, spoken to the abusive husband, and neither has justly addressed the situation (White & Rastogi, 2009).

The inception of the Gulabi Gang responds to the lack of official action to adequately protect women’s rights. Despite its ratification of CEDAW, the Government of the Republic of India made a formal declaration (in response to Article 16(2)) that, although it supports the equalizing effect of compulsory marriage registration, it cannot practically implement this protection because of the “variety of customs, religions and level of literacy” across the nation (Mehra, 2013). Despite the eventual 2007 Supreme Court ruling for compulsory marriage registration without exception, the Uttar Pradesh state government has not mandated registration. This protection would promote women’s agency by reducing illegitimate child marriages and legitimizing their spousal rights, such as child custody, inheritance, and defense from intimate partner abuse; however, it would betray the longstanding cultural tradition of using women as transactional tokens for her family's economic gain (HAQ: Centre for Child Rights, n.d.). The state's unwillingness to sufficiently uphold women's rights is a structural consequence of the limited representation and agency of women in governmental leadership. Specifically, Rayala (2021) stated that women occupy only 14% of parliamentary seats, despite composing 48% of India's population. Moreover, governmental institutions that address the needs of female citizens, such as the Ministry for Women's Welfare, are subject to the control of male-dominated administrations (Rayala, 2021).

Anti-victim stigma appears in court judgements on various sexual violence cases, which is evident in Section 155(4) of the Evidence Act. Here, the Act previously offered "a man prosecuted of rape" acquittal if the female victim ("prosecutrix") exhibited "generally immoral character." Although this law was repealed in 2003, the sentiment reappeared in a 2017 gang-rape case; in the court order, two judges of a High Court in the State of Punjab and Haryan shamed the victim for drinking and smoking, described her as "promiscuous," and awarded bail to the three offenders (Rayala, 2021). In an examination of 14 rape cases, Otto et al. (2020) identified a trend of Uttar Pradesh police officers pressuring survivors to settle with their offenders outside of court and circumventing legal procedure. For example, in 12 of the 14 cases, the police defied the protocol under Section 154 of the Code of Criminal Procedure (CrPC) by using male (rather than female) officers to collect the first information of the offence. Moreover, in all cases, there were significant delays in registering a first information report (FIR). By lengthening the reporting timeline, the police force the survivors through an unnecessarily long and traumatizing process of retelling and reliving their abuse.

The literate female population in Uttar Pradesh is 66.1%, which is less than India's national average of 71.5% for women and 84.4% for men (International Institute for Population Sciences, 2021). Moreover, this statistic merely represents basic reading competency, not legal literacy or the ability to use these laws to pursue justice within the complex system (Raza, n.d.). Many affected women have little awareness of their legal autonomy or are shrouded by word-of-mouth misconceptions spread in their communities. For example, the 2006 Prohibition of Child Marriage Act states that child marriages are legal but voidable by the minor until 2 years after she turns 18. However, many child brides are not informed of this protection and do not access this right, and thus the validity of child marriages is preserved (Abbhi et al., 2013). 14% of women who experienced gender-based violence sought help, and only 6% of this subset utilized the police as their resource for help, illustrating the consequences of the structural and cultural inaccessibility of these existing legal frameworks (International Institute for Population Sciences, 2021).

The Gulabi Gang's grassroots leadership immerses its members in the local context. Due to their experiential knowledge of the intersecting cultural values, familial obligations, and socioeconomic barriers that Banda women endure, members can support the physical and emotional safety of sexual assault survivors while accommodating for obstacles that typically discourage them from seeking help (White & Rastogi, 2009). Rather than distant regulatory institutions with competing incentives and responsibilities, the Gulabi Gang prioritizes the wellbeing of Banda women. (White & Rastogi, 2009).

Unlike governmental bodies or legally compliant organizations, the Gulabi Gang's procedures are unencumbered by the bureaucratic proceedings of the law, so they can directly intervene in ongoing offenses. For women experiencing abuse, timely relief is central to their physical and mental health, specifically in the face of the consistent neglect from local authorities (Thakkar, 2018). The Gulabi Gang's extralegal capacity for violence provides them with greater agency to challenge governmental neglect and corruption. For example, when government officials disconnected Banda families from electricity for two weeks to extort money and sexual favours, the Gulabi Gang, armed with lathis, organized a gherao around the electrical office. After one hour, the officials restored the electricity in response to the Gulabi Gang's demands (White & Rastogi, 2009).

In 2014, the Gulabi Gang had amassed a total membership of approximately 20,000 women (Thakkar, 2018). Members—many of whom join after the Gulabi Gang assists them—are trained in counter-aggression techniques and participate in missions to support other women (Atreyee, 2013). This inclusive organizational structure empowers its members by integrating them into its on-the-ground activism, allowing survivors of gender-based oppression to shift away from the label of victims as a means of experientially reclaiming their identities (Richards, 2016). The Gulabi Gang forms a collective identity, so an injustice against an individual member reverberates as a personal attack felt by all members, validating the injustice endured by otherwise isolated victims (White & Rastogi, 2009). This solidarity is visually reinforced by the symbolism of the pink saris worn by the Gulabi Gang, which instills confidence in its members by virtue of being in a group (Thakkar, 2018).

The Gulabi Gang intentionally undermines the authority of the Uttar Pradesh police, among other government actors, by publicly shaming their inaction and by consistently violating the law. Consequently, the vigilante group breeds resentment from local authorities, who have regularly accused the Gulabi Gang of "assault and defamation" (Atreyee, 2012). Thus, some may argue that their strained relationship restricts the potential to collaboratively create change within the existing system. However, we must consider this tension alongside the inherent oppositional nature of all resistance. Moreover, the deep-seated discrimination against lower caste women already engenders reluctance from institutions to enact reform in support of women's rights, emphasizing the need for disruptive action.

While the Gulabi Gang also engages in non-violent and lawful initiatives, their international reputation centers their vigilante operations (Thakkar, 2018). Some may argue that a sensationalist fixation on the Gulabi Gang's violent functions can erode public sympathy, antagonizing the pursuit of women's rights and erasing more palatable activism. As is often done with other movements of violent resistance, their vigilantism is considered without critical context, instead mischaracterizing them as morally abhorrent abusers. However, this tension must be considered in the backdrop of incessant violence against lower caste women, which serves as a method to maintain their marginalization. Here, the Gulabi Gang co-opts this historical tool of violence used by hegemonic powers as a mechanism for establishing power to instead negotiate a new gender dynamic (Richards, 2016).

Using the Gulabi Gang as an exploratory case study, we may understand that practical barriers subsist in de jure human rights frameworks due to the resistance of official institutional actors to contradict dominant cultural ideologies. This prevents the introduction of critical legal protections or accountability measures to follow through on existing human rights commitments. This issue is compounded by the inaccessibility of these legal processes due to the limited access to education for Dalit women, who cannot navigate these complex systems alone. In contrast, the Gulabi Gang benefits from its vigilante foundation, allowing for leadership by and for women, timely intervention due to its extralegal status, and built-in community support because of its group membership structure. Despite possible objections to the Gulabi Gang's tactics based on their subversion of government authority and use of violence, these disruptive features critically capture the attention of otherwise neglectful institutions and counterbalance the oppressive function of violence as a tool to maintain patriarchal gender dynamics. While the Gulabi Gang's initiatives are primarily motivated by the pursuit of women's rights, their activism speaks to the potential of vigilante justice as a tool for actualizing a range of human rights for marginalized peoples in the absence of effective legal avenues.

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